

971284202

HOUSE BILL NO. 1953

Offered January 9, 1997

A BILL to amend and reenact §§ 55-58.2 and 55-66.01 of the Code of Virginia, relating to credit line deeds of trust; change of noteholder.

Patrons—Deeds, Armstrong, Baker, Bennett, Davies, Howell, Johnson, McClure, McEachin and Moran

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-58.2 and 55-66.01 of the Code of Virginia are amended and reenacted as follows:

§ 55-58.2. Credit line deed of trust defined; relative priority of credit line deed of trust and other instruments of judgment.

1. For the purpose of this title, the term "credit line deed of trust" is any deed of trust, mortgage, bond or other instrument, entered into after July 1, 1982, in which title to real property located in this Commonwealth is conveyed, transferred, encumbered or pledged to secure payment of money including advances to be made in the future by the noteholder named in the credit line deed of trust.

2. A credit line deed of trust shall set forth on the front page thereof, either in capital letters or in language underscored, the words "THIS IS A CREDIT LINE DEED OF TRUST." Such phrase shall convey notice to all parties that the noteholder named therein and the grantors and other borrowers identified therein have an agreement whereby the noteholder may make or contemplates making advances from time to time against the security described in the deed of trust. Such deed of trust shall specify therein the maximum aggregate amount of principal to be secured at any one time.

3. From the date of the recording of a credit line deed of trust, the lien thereof shall have priority (i) as to all other deeds, conveyances, or other instruments, or contracts in writing, which are unrecorded as of such date and of which the noteholder has no knowledge or notice, and (ii) as to judgment liens subsequently docketed, except as provided in subsection 4 of this section. Such priority shall extend to any advances made following the recordation of the credit line deed of trust. Amounts outstanding, together with interest thereon, and other items provided by § 55-59, shall continue to have priority until paid or curtailed. Mechanics' liens created under Title 43 shall continue to enjoy the same priority as created by that title. Purchase money security interests in goods and fixtures shall have the same priority as provided in §§ 8.9-312 and 8.9-313.

4. Notwithstanding the provisions of subsections 1, 2 and 3 of this section, if a judgment creditor gives notice to the noteholder of record at the address indicated in the credit line deed of trust, such credit line deed of trust shall have no priority as to such judgment for any advances or extensions of credit made under such deed of trust from the day following receipt of that notice except those which have been unconditionally and irrevocably committed prior to such date.

5. In addition to the language specified in subsection 1 of this section, the credit line deed of trust shall set forth the name of the noteholder secured and the address at which communications may be mailed or delivered to him. Such name or address may be ~~amended~~ changed or modified by duly recorded ~~amendment to the deed of trust instrument executed by the noteholder only. If the note or indebtedness secured by the credit line deed of trust is assigned or transferred, the name and address of the new noteholder may be set forth in the certificate of transfer provided by § 55-66.01.~~ Such original name or address, or if changed by ~~amendment~~ such changed name or address, shall be the address for delivery of notices contemplated by this section; ~~notwithstanding transfer of the note.~~ Receipt of notice at such address shall be deemed receipt by the noteholder.

6. [Repealed.]

7. The grantor may require, at any time, a modification under the credit line deed of trust, whereby any priority over subsequently recorded deeds of trust is surrendered as to future advances, which advances are in the discretion of the party secured by the credit line deed of trust.

§ 55-66.01. Protection of assignees or transferees of debts secured by real estate; form of certificate of transfer.

Whenever a debt or other obligation secured by a deed of trust, mortgage or vendor's lien on real estate has been assigned, the assignor or the assignee, at its option, may cause the instrument of assignment to be recorded in the clerk's office of the circuit court where such deed of trust, mortgage or vendor's lien is recorded provided such instrument is otherwise in recordable form, or may cause a certificate of transfer signed by the assignor to be recorded in such clerk's office, and such instrument of assignment or certificate of transfer, upon recordation, shall operate as a notice of such assignment. The instrument of assignment or certificate of transfer shall be indexed in the name of the assignor and in

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HB1953

60 the names of the obligor or maker, and the trustees, as applicable, all of whose names shall be set forth
61 in such instrument or certificate. The certificate of transfer shall conform substantially to the following:

62
63
64 CERTIFICATE OF TRANSFER

65
66 Place of Record: Clerk's Office of the Circuit
67
68 Court of the of
69
70, Virginia
71

72 Date of [Deed of Trust/
73

74 Mortgage/Vendor's Lien]:,
75

76 Deed Book
77

78, Page
79

80 Name of Obligor or Maker:
81

82 Names(s) of Trustee(s)
83

84 [if a Deed of Trust]:
85

86
87

88 Name of Original
89

90 Payee or Obligee:
91

92 Original Amount Secured
93

94 [if applicable]:
95

96 \$
97

98 The undersigned, the original payee or obligee [or the subsequent assignee]-
99 of the obligation secured by the above-mentioned]Deed of Trust/Mortgage/Vendo-
100 r's Lien [, hereby certifies that the obligations secured thereby have
101 been assigned to
102

103
104

105 [If a credit line deed of trust, the name and address to which notice may -
106 be mailed or delivered to the Noteholder as provided by § 55-58.2 is as follow-
107 s:
108

109
110

111]
112

113 Given under [my/our] hand(s) as of the
114

115 day of,
116

117
118
119 (Assignor)
120
121 of
122
123 County/City of, to wit:
124
125 Subscribed, sworn to and acknowledged before me by
126
127 this day of 19
128
129 My Commission Expires:
130
131
132

133 Notary Public
134

135 For purposes of this statute, the word "assigned" shall include endorsed, pledged, hypothecated or
136 otherwise transferred. Nothing in this statute shall be deemed to invalidate any other form or notice of
137 assignment that may have been heretofore recorded. Nothing in this statute shall imply that recordation
138 of the instrument of assignment or a certificate of transfer is necessary in order to transfer to an assignee
139 the benefit of the security provided by the deed of trust, mortgage or vendor's lien.