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**HOUSE BILL NO. 2706**

Offered January 20, 1997

*A BILL to amend and reenact §§ 8.01-296, 15.1-227.64, 15.1-478.1, 18.2-3, 19.2-3, 19.2-28, 21-121, 21-121.1, 21-121.5, 21-140.1, 26-49, 26-58, 26-59, 33.1-166, 55-26.1, 55-63, 55-65, 55-65.1, 55-66, 55-66.4, 55-124, 55-133, 55-276, 57-8, 57-20, and 64.1-149 of the Code of Virginia, relating to validation statutes.*

Patron—Armstrong

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.01-296, 15.1-227.64, 15.1-478.1, 18.2-3, 19.2-3, 19.2-28, 21-121, 21-121.1, 21-121.5, 21-140.1, 26-49, 26-58, 26-59, 33.1-166, 55-26.1, 55-63, 55-65, 55-65.1, 55-66, 55-66.4, 55-124, 55-133, 55-276, 57-8, 57-20, and 64.1-149 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-296. Manner of serving process upon natural persons.

In any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:

1. By delivering a copy thereof in writing to the party in person; or

2. By substituted service in the following manner:

a. If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of sixteen years or older; or

b. If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than ten days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of ten days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, ~~1989~~1992, upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, ~~1989~~1992, is validated.

c. The person executing such service shall note the manner and the date of such service on the original and the copy of the process so delivered or posted under subdivision 2 and shall effect the return of process as provided in §§ 8.01-294 and 8.01-325.

3. If service cannot be effected under subdivisions 1 and 2 of this section, then by order of publication in appropriate cases under the provisions of §§ 8.01-316 through 8.01-320.

§ 15.1-227.64. Validation of bonds.

All proceedings taken before July 1, ~~1991~~1993, for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any unit are validated, ratified, approved and confirmed, and any bonds so issued are valid, legal, binding and enforceable obligations of the unit.

All proceedings taken before July 1, ~~1992~~1994, for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any unit are validated, ratified, approved and confirmed, and any bonds so issued, are valid, legal, binding and enforceable obligations of the unit.

§ 15.1-478.1. Validation of certain plats recorded before January 1, 1983.

Any subdivision plat recorded prior to January 1, ~~1953~~1983, if otherwise valid, is hereby validated and declared effective even though the technical requirements for recordation existing at the time such plat was recorded were not complied with.

§ 18.2-3. Certain notices, recognizances and processes validated.

Any notice given, recognizance taken, or process or writ issued before October 1, ~~1975~~1985, shall be valid although given, taken or to be returned to a day after such date, in like manner as if this title had

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60 been effective before the same was given, taken or issued.

61 § 19.2-3. Certain notices, recognizances and processes validated.

62 Any notice given, recognizance taken, or process or writ issued before October 1, ~~1975~~1985, shall be  
63 valid although given, taken or to be returned to a day after such date, in like manner as if this title had  
64 been effective before the same was given, taken or issued.

65 § 19.2-28. Certain notices, recognizances and processes validated.

66 Any notice given, recognizance taken, or process or writ issued, before January 1, ~~1974~~1985, shall be  
67 valid although given, taken or to be returned to a day after such date, in like manner as if this title had  
68 been effective before the same was given, taken or issued.

69 § 21-121. Validation of proceedings.

70 All proceedings had in the creation of sanitary districts in the Commonwealth prior to January 1,  
71 ~~1970~~1980, whether under general law or by special act, are validated and confirmed, and all such  
72 districts so created or attempted to be created under existing law or by special act are declared to have  
73 been validly created and established notwithstanding any defects or irregularities in the creation thereof.

74 § 21-121.1. Further validation of proceedings.

75 All proceedings had in the creation of sanitary districts in the Commonwealth prior to June 30,  
76 ~~1954~~1970, whether under general law or by special act, are validated and confirmed, and all such  
77 districts so created or attempted to be created, under existing general law or by special act, are declared  
78 to be validly created and established, notwithstanding any defects or irregularities in the creation thereof,  
79 including any curable unconstitutionality of a procedural character, such as failure of the act to  
80 correspond with title and such constitutional questions.

81 § 21-121.5. Validation of certain actions.

82 All proceedings had in the creation, enlargement or merger of sanitary districts in the Commonwealth  
83 prior to January 1, ~~1977~~1987, whether under general law or by special act, are validated and confirmed,  
84 and all such districts so created, enlarged or merged or attempted to be created, enlarged or merged  
85 under existing law or by special act are declared to have been validly created, established, enlarged or  
86 merged notwithstanding any defects or irregularities in the creation, enlargement or merger thereof.

87 § 21-140.1. Further validation of proceedings.

88 All proceedings had and all elections held in any sanitary district of the Commonwealth prior to June  
89 30, ~~1954~~1964, whether under general law or by special act, to provide for and in respect to the  
90 contracting of bonded indebtedness and the authorization, issuance, sale, execution, and delivery of  
91 bonds by or on behalf of such district prior to June 30, ~~1954~~1964, whether under general law or by  
92 special act, are ratified and confirmed, notwithstanding the lack of power of the governing body of the  
93 county in which such district is located to authorize and issue such bonds or to execute, sell or deliver  
94 the same, and notwithstanding any defects or irregularities in such proceedings or elections concerning  
95 such execution, sale, or delivery, and notwithstanding any curable unconstitutionality of a procedural  
96 character, such as failure of the act to conform to the title and such other constitutional questions; and  
97 such bonds so issued or to be issued are and shall be binding, legal, valid, and enforceable obligations  
98 of such sanitary district.

99 § 26-49. Appointment by beneficiaries.

100 Except as provided in subdivision 9 of § 55-59, in any deed of trust, or trust agreement, the maker or  
101 makers or grantor or grantors may grant to the beneficiary or beneficiaries, or a majority in amount of  
102 the holders of the obligations secured thereunder, the right and power to appoint a substitute trustee or  
103 trustees, in event of the resignation, death, incapacity, disability, removal or absence from the  
104 Commonwealth of the trustee or trustees; provided, however, that if the trust agreement so provides,  
105 substitution may be made at the discretion of the beneficiary or beneficiaries for any reason whatsoever.

106 When such power is so granted the beneficiary may designate and appoint a substitute trustee or  
107 trustees, in accordance with the deed of trust or other instrument creating or granting the power of  
108 appointment, by an instrument duly executed and acknowledged. When such instrument of appointment  
109 shall have been executed, the substitute trustee or trustees named therein shall be vested with all the  
110 powers, rights, authority and duties vested in the trustee or trustees in the original deed of trust or trust  
111 agreement and, prior to or at the time of recordation of any instrument in which such power, right,  
112 authority or duty is exercised, shall record such instrument in the office of the clerk of the court wherein  
113 the original deed of trust or trust agreement is recorded.

114 All acts done prior to July 1, ~~1970~~1990, in conformity with the provisions of this section, are hereby  
115 validated.

116 § 26-58. Trustee who is corporate stockholder or employee or counsel to noteholder not disqualified.

117 The mere fact that a trustee in a deed of trust to secure a debt due to a corporation is a stockholder,  
118 member, employee, officer or director of, or counsel to, the corporation, does not disqualify him from  
119 exercising the powers conferred by the trust deed nor does it render voidable a sale by such trustee in  
120 the exercise of the powers conferred on him by the trust deed so long as he did not participate in the  
121 corporation's decision as to the amount to be bid at the sale of the trust property. Moreover, if the

lender secured by the deed of trust bids the amount secured, including interest through the date of sale and costs of foreclosure, the trustee's participation in fixing the bid price by the party secured shall not be deemed improper and such sale shall not be rendered voidable solely by reason of his participation. All sales made before July 1, ~~1990~~1995, by such trustees by virtue of such deeds of trust, and all deeds made by such trustees in pursuance of such sales, shall be held, and the same are hereby declared to be, valid and effective in all respects, if otherwise valid according to laws then in force, the same as if such trustees had not been stockholders, members, employees, officers or directors of, or counsel to, the corporations thereby secured.

§ 26-59. Nonresident fiduciaries.

A. A natural person, not a resident of this Commonwealth, may be appointed or allowed to qualify or act as personal representative, or trustee under a will, of any decedent, or appointed as guardian of an infant's estate, or guardian of the person or property of an incapacitated person under § 37.1-132 or committee of any person non compos mentis.

Qualification of such person as a personal representative, or trustee under a will of any decedent shall be subject to the provisions of Article 1 (§ 64.1-116 et seq.) of Chapter 6 of Title 64.1.

At the time of qualification or appointment each such person shall file with the clerk of the circuit court of the jurisdiction wherein such qualification is had or appointment is made, his consent in writing that service of process in any action or proceeding against him as personal representative, trustee under a will, or guardian, or any other notice with respect to the administration of the estate, trust, or person in his charge in this Commonwealth may be by service upon the clerk of the court in which he is qualified or appointed, or upon such resident of this Commonwealth and at such address as he may appoint in the written instrument. In the event of the death, removal, resignation or absence from this Commonwealth of a resident agent or any successor named by a similar instrument filed with the clerk, or if a resident agent or any such successor cannot with due diligence be found for service at the address designated in such instrument, then any process or notice may be served on the clerk of such circuit court. Notwithstanding §§ 37.1-135 and 64.1-121, where any nonresident qualifies pursuant to this subsection, bond with surety shall be required in every case, unless a resident personal representative, trustee, or fiduciary qualifies at the same time or the court making the appointment waives surety under the provisions of § 26-4.

B. No corporation shall be appointed or allowed to qualify or act as personal representative, or trustee under a will, or as one of the personal representatives or trustees under a will, of any decedent, or appointed or allowed to qualify or act as guardian of an infant, or as one of the guardians of an infant, or guardian of the person or property of an incapacitated person under § 37.1-132, or as one of the guardians of the person or property of an incapacitated person under § 37.1-132, or as committee of any person non compos mentis, or as one of the committees of a person non compos mentis, unless such corporation is authorized to do business in this Commonwealth. Nothing in this section shall be construed to impair the validity of any appointment or qualification made prior to January 1, ~~1962~~1972, nor to affect in any way the other provisions of this chapter or of § 64.1-130. The provisions of this section shall not authorize or allow any appointment or qualifications prohibited by § 6.1-5.

C. The fact that an individual nominated or appointed as the guardian of the person of an infant is not a resident of this Commonwealth shall not prevent the qualification of the individual to serve as the sole guardian of the person of the infant.

§ 33.1-166. Certain abandonments validated.

All abandonments of roads sought to be effected before July 1, ~~1950~~1960, are hereby validated notwithstanding any defects or deficiencies in the proceedings provided the rights of third parties have not intervened.

§ 55-26.1. Validity.

Every gift, grant, devise or bequest which, since April 2, 1839, has been or at any time hereafter shall be made for literary purposes or for education, and every gift, grant, devise or bequest made hereafter for charitable purposes, whether made in any case to a body corporate or unincorporated, or to a natural person, shall be as valid as if made to or for the benefit of a certain natural person, except such devises or bequests, if any, as have failed or become void by virtue of the seventh section of the Act of the General Assembly passed on April 2, 1839, entitled "an act concerning devises made to schools, academies, and colleges." Nothing in this section shall be so construed as to give validity to any devise or bequest to or for the use of any unincorporated theological seminary. Every gift, grant, devise or bequest made for literary, educational or charitable purposes before April 6, ~~1976~~1986, is hereby validated.

§ 55-63. Construction of deeds requiring notice by advertisement in newspaper.

(a) Whenever any deed of trust to secure debts or indemnify sureties contains a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and such advertisement be published in a newspaper published daily or in a newspaper

published daily except Sunday, it shall be deemed a sufficient compliance with such provision if such notice be published in consecutive issues of such newspaper for the number of days specified, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such newspaper be published on Sunday. Both the first publication and the last publication may be on Sunday. The publication shall in all other respects comply with the provisions of §§ 55-59.2 and 55-59.3.

(b) Whenever such deed of trust requires advertisement once a week for a specified number of weeks, sale may be had on the day after the last advertisement appears or any day thereafter and all sales made in conformity herewith prior to January 1, ~~1972~~1992, and otherwise valid, are hereby validated.

§ 55-65. Validation of certain sales made under deeds of trust.

All sales which have been made prior to January 1, ~~1972~~1992, under deeds of trust to secure debts and indemnify sureties containing a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and which were made after publishing the advertisement of sale in a newspaper published daily or in a newspaper published daily except Sunday for the number of days specified in the deed of trust, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such paper was published on Sunday and whether or not such sales were held on the day of the last publication (provided that, in cases when the sale was held on the day of the last publication, the publication was in a newspaper the principal daily edition of which was delivered or publicly sold before the time fixed for the sale), and whether or not the first publication or the last publication, or both, appeared on Sunday, shall be held, and the same are hereby declared, to be valid and effective in all respects, if otherwise valid and effective according to the law then in force; provided, however, that nothing herein contained shall be construed as affecting any final order or decree heretofore entered by any court of competent jurisdiction or as affecting any suit or action now pending in any court of competent jurisdiction; and provided further, that nothing in this section shall be so construed as to affect intervening vested rights.

§ 55-65.1. Validation of certain sales made under deeds of trust prior to January 1, 1992.

All sales which were made prior to ~~October 1, 1977~~January 1 1992, under deeds of trust to secure debts and indemnify sureties when the notice, advertisement and conduct of the sale were in accordance with the law of this Commonwealth as it existed on ~~June 30, 1977~~July 1, 1992 (*or the date of sale if made under prior law*), are declared to be valid and effective in all respects; provided that nothing herein contained shall be construed as affecting any final order heretofore entered by any court of competent jurisdiction, or any suit or action now pending in a court of competent jurisdiction, nor as affecting intervening vested rights; and provided further, that no suit or action to vacate or set aside any such sale may be brought after ~~March 23, 1978~~December 31, 1997.

§ 55-66. Validation of other sales under deeds of trust.

All sales which were made prior to January 1, ~~1972~~1992, under deeds of trust to secure debts and indemnify sureties when the notice was not published once a week for four successive weeks or a specified number of successive weeks are declared to be valid and effective in all respects, if other reasonable advertisement of such sale was given and such sale was otherwise valid and effective; provided that nothing herein contained shall be construed as affecting any final order heretofore entered by any court of competent jurisdiction, or any suit or action now pending in a court of competent jurisdiction, nor as affecting intervening vested rights; and provided further that no suit or action may be brought after ~~January 1, 1972~~December 31, 1997, to vacate or set aside any such sale.

§ 55-66.4. Partial satisfaction or release.

It shall be lawful for any such lienor to make a marginal release or record a certificate of partial satisfaction of any one or more of the separate pieces or parcels of property covered by such lien. It shall also be lawful for any such lienor to make a marginal release or record a certificate of partial satisfaction of any part of the real estate covered by such lien if a plat of such part or a deed of such part is recorded in the clerk's office and a cross reference is made in the marginal release or certificate of partial satisfaction to the book and page where the plat or deed of such part is recorded. Such marginal partial release or satisfaction or certificate of partial satisfaction may be accomplished in manner and form hereinbefore in this chapter provided for making marginal releases or certificates of satisfaction, except that the creditor, or his duly authorized agent, shall make an affidavit to the clerk or in such certificate that such creditor is at the time of making such release the legal holder of the obligation, note, bond or other evidence of debt, secured by such lien, and when made in conformity therewith and as provided herein such partial satisfaction or release shall be as valid and binding as a proper release deed duly executed for the same purpose.

Any and all partial marginal releases made prior to July 1, ~~1966~~1990, in any county or city of this Commonwealth, in conformity with the provisions of this chapter, either of one or more separate pieces or parcels of real estate or any part of the real estate covered by such lien, or as to one or more of the obligations secured by any such lien, or as to all of the real estate covered by such lien instrument, are

hereby validated and declared to be binding upon all parties in interest; but this provision shall not be construed as intended to disturb or impair any vested right.

§ 55-124. Acknowledgment taken by trustee in deed of trust.

All certificates of acknowledgment to deeds of trust made and certified prior to ~~March 23, 1936~~ July 1, 1995, by persons being trustees in such deeds shall be held and the same are hereby declared valid and effective in all respects, if otherwise valid according to the law then in force; and each such deed of trust which has been admitted to record in any clerk's office in the State upon such a certificate shall be held to be duly and regularly recorded if such recordation be otherwise valid according to the law then in force.

Provided however that nothing in this section shall affect or diminish the rights or remedies of any person which intervened after the spreading of any such deed of trust on the record but prior to the date aforesaid.

§ 55-133. Acknowledgments taken before notary whose commission has expired.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~March 22, 1930~~ July 1, 1995, by notaries public appointed or commissioned by the Governor, who took and certified such acknowledgments after their term of office had expired, shall be held, and the same are hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force; and all such deeds and other writings which have been admitted to record in any clerk's office in the State upon such certificates shall be held to be duly and regularly recorded if such recordation be otherwise valid according to the law then in force.

§ 55-276. Commutation in case of persons under disability.

In any case in which under the laws of this Commonwealth provision is made for commutation in money of a life estate when all the parties interested are under no disability, such provision shall also apply when any of the parties interested are under disability, and in any such latter case the court, or the judge thereof in vacation, may, upon application of the guardian, committee, or trustee, if any, and, if not, by a guardian ad litem appointed by the clerk or judge of said court, of any such person, on behalf of his ward, and upon hearing evidence satisfactory to such court or judge, enter an order authorizing such guardian, committee, trustee or guardian ad litem, to consent on behalf of such person under disability to such commutation. Such consent when so given shall be as valid and effective as if the person on whose behalf it was given were sui juris and had given such consent. All judicial orders and decrees entered prior to July 1, ~~1960~~ 1995, authorizing any such commutation where persons under disability were interested, are hereby validated and confirmed; providing that nothing in this section contained shall be construed as intended to impair any vested right.

§ 57-8. Appointment of trustees to effect the purposes of conveyances, etc.; validation of certain appointments.

The circuit court of the county or the circuit [or corporation court] of the city, or the judge thereof in vacation, wherein there is any parcel of such land or the greater part thereof may, on the application of the proper authorities of such church diocese, religious congregation, church, or religious society or branch or division thereof, from time to time appoint trustees, either where there were, or are, none or in place of former trustees, and on such application and without notice to the trustee or trustees change those so appointed whenever it may seem to the court or judge proper to effect and promote the purpose and object of the conveyance, devise, or dedication, and the legal title to such land shall for that purpose and object be vested in the trustees for the time being and their successors.

All such changes and appointments ~~heretofore~~ {made before ~~March 31, 1966~~ July 1, 1995} made are hereby validated, ratified, approved and confirmed.

§ 57-20. Quantity of land benevolent and other associations may hold.

The trustee for the use of any benevolent or other association referred to in § 57-19 shall not hereafter take or hold, at one time, any land exceeding five acres; and the trustees of two or more bodies or societies may hold jointly, land not exceeding five acres; provided that the local governing body of any county or city may by ordinance authorize such trustee or trustees to take and hold in such county or city not exceeding ten acres of land at any one time. However, a school league may, in addition to the five acres held by such trustees, hold not exceeding ten acres as a home for the principal of the school for which the league is named. All such holdings heretofore acquired are validated; except holdings which are in litigation prior to or on July 1, ~~1964~~ 1995.

Any lodge of the Benevolent and Protective Order of Elks may hold not exceeding thirty-five acres of land.

Any association or post of the Veterans of Foreign Wars, American Legion, Spanish War Veterans, Disabled American Veterans or any similar association of veterans of the armed forces of the United States chartered by an act of Congress may hold not exceeding seventy-five acres of land. Notwithstanding any other provision of law conveyances of land made prior to June 29, 1948, to any such post or association of veterans is validated provided the same is not in excess of seventy-five acres.

306 § 64.1-149. Validation of certain conveyances by foreign executor.

307 Every conveyance of real estate within this Commonwealth made prior to ~~June 30, 1986~~ *July 1, 1987*,  
308 by the executor of a will which, prior to such sale, has been probated according to the laws of another  
309 state shall, without the qualification of the executor in this Commonwealth, be as valid and effectual to  
310 pass the title of such real estate as if the executor named in such will and making such conveyance had  
311 qualified in this Commonwealth, in every case in which the will under which the executor acted was  
312 duly executed according to the laws of this Commonwealth as a valid will and confers upon the  
313 executor the power to convey the real estate so conveyed and an authenticated copy of such will has  
314 been admitted to probate in this Commonwealth in the county or city in which the real estate or any  
315 part thereof is situated.