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## HOUSE BILL NO. 1444

Offered January 13, 1999

Prefiled October 20, 1998

*A BILL to amend and reenact § 55-66.5 of the Code of Virginia, relating to releases made by court; costs and attorneys fees.*

Patron—Howell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****That § 55-66.5 of the Code of Virginia is amended and reenacted as follows:****§ 55-66.5. Releases made by court; costs and attorneys fees.**

A. Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after twenty days' notice thereof to the person entitled to such encumbrance, apply to the circuit court of the county or city in whose clerk's office such encumbrance is recorded to have the same released or discharged. Upon proof that the encumbrance has been paid or discharged or upon a finding by the court that more than ~~twenty~~ fifteen years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the hearing, such court shall order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction which, when so recorded, shall operate as a release of such encumbrance.

All releases made prior to June 24, 1944, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

B. If the court finds that the person entitled to such encumbrance cannot with due diligence be located, and that notice has been given such person in the manner provided by § 8.01-319 or that tender has been made of the sum due thereon but has been refused for any reason by the party or parties to whom due, the court may in its discretion order the sum due to be paid into court, to be there held as provided by law, and to be paid upon demand to the person or persons entitled thereto. The court shall order the same to be recorded as provided in subsection A hereof, which certificate of satisfaction or certificate of partial satisfaction shall operate as a release of the encumbrance.

C. Upon a finding by the court that the holder of a mortgage or deed of trust which has been fully paid or discharged has unjustifiably and without good cause failed or refused to release such mortgage or deed of trust, the court, in its discretion, may order that costs and reasonable attorneys fees be paid to the petitioning party. This subsection shall not preclude a separate suit by the petitioning party for actual damages sustained by reason of such failure or refusal to release the encumbrance.

INTRODUCED

HB1444