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SENATE BILL NO. 838

Offered January 12, 2011

Prefiled January 7, 2011

A *BILL to amend and reenact §§ 55-58.2 and 55-66.01 of the Code of Virginia, relating to a requirement for recordation of assignments of debts secured by real estate; fee.*

Patrons—Petersen and McEachin; Delegate: Marshall, R.G.

Referred to Committee for Courts of Justice

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 §§ 8.9A-317 et seq.

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 changed or modified by duly recorded 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~~ shall be set forth in the certificate of ~~transfer~~ assignment provided by § 55-66.01. Such original name or address, or if changed, such changed name or address, shall be the address for delivery of notices contemplated by this section. 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.

8. Notwithstanding the provisions of subsections 1, 2 and 3 of this section, if a deed of trust under this section is a subordinate mortgage, as defined in § 55-58.3, upon the recording of a refinance mortgage, as defined in § 55-58.3, the credit line deed of trust shall retain the same subordinate position with respect to the refinance mortgage as it had with the prior mortgage, as defined in subsection A of § 55-58.3, provided that the refinance mortgage complies with the requirements of § 55-58.3.

§ 55-66.01. Duty of assignee of debt secured by real estate to record certificate of assignment; form.

~~Whenever Effective July 1, 2011, whenever~~ a debt or other obligation, or partial interest therein, that is secured by a deed of trust, mortgage or vendor's lien on real estate ~~has been~~ is assigned, the assignor ~~or the assignee, at its option, may of the debt or other obligation shall cause the instrument a certificate~~

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59 of assignment to be recorded in the clerk's office of the circuit court where such deed of trust, mortgage
 60 or vendor's lien is recorded ~~provided such instrument is otherwise in recordable form, or may cause a~~
 61 ~~certificate of transfer signed by the assignor to be recorded in such clerk's office, and such instrument of~~
 62 ~~assignment or.~~ The certificate of transfer assignment, upon recordation, shall operate as a notice of such
 63 assignment. The instrument of assignment or certificate of transfer assignment shall be indexed in the
 64 name of the assignor, *the name of the assignee*, and in the names of the obligor or maker, and the
 65 trustees, as applicable, all of whose names shall be set forth in ~~such instrument or the~~ certificate. *The*
 66 *person filing the certificate of assignment shall pay the fee prescribed by subdivision A 2 of § 17.1-275*
 67 *to the clerk of the court, but no tax shall be due thereon.* The certificate of ~~transfer~~ assignment shall
 68 conform substantially to the following:

69 CERTIFICATE OF TRANSFER ASSIGNMENT

70 Place of Record: Clerk's Office of the Circuit
 71 Court of the of
 72, Virginia
 73 Date of [Deed of Trust/
 74 Mortgage/Vendor's Lien]:,
 75 Deed Book
 76, Page
 77 Name of Obligor or Maker:
 78 Names(s) of Trustee(s)
 79 [if a Deed of Trust]:
 80
 81 Name of Original
 82 Payee or Obligee:
 83 Original Amount Secured
 84 [if applicable]:
 85 \$
 86 The undersigned, ~~the original payee or obligee [or the subsequent assignee]~~
 87 of the obligation secured by the above-mentioned [Deed of Trust/Mortgage/
 88 Vendor's Lien], hereby certifies that the obligations secured thereby have
 89 been assigned to *the undersigned by:*-
 90
 91
 92 *[If a partial interest in the obligation secured thereby is assigned to the un-*
 93 *dersigned, a description of the interest so assigned, and the names and addres-*
 94 *ses of the holders of the other interests in the obligation secured thereby, a-*
 95 *re as follows:*
 96
 97 [If a credit line deed of trust, the name and address to which notice may
 98 be mailed or delivered to the Noteholder as provided by § 55-58.2 is as
 99 follows:
 100
 101]
 102 Given under [my/our] hand(s) as of the
 103 day of,
 104
 105 (~~Assignor~~ Assignee)
 106 of
 107 County/City of, to wit:
 108 Subscribed, sworn to and acknowledged before me by
 109 this day of 20.....
 110 My Commission Expires:
 111
 112 Notary Public

113 B. For purposes of this ~~statute~~ section, the word "assigned" shall include endorsed, pledged,
 114 hypothecated or otherwise transferred. Nothing in this ~~statute~~ section shall be deemed to invalidate any
 115 other form or notice of assignment that may have been heretofore recorded. ~~Nothing in this statute shall~~
 116 ~~imply that recordation~~

117 C. Effective July 1, 2011, recordation of the instrument certificate of assignment or a certificate of
118 transfer as required by subsection A is necessary in order to transfer to an assignee the benefit of the
119 security provided by the deed of trust, mortgage or vendor's lien.

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