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HOUSE BILL NO. 24

Offered January 8, 2014

Prefiled November 26, 2013

A BILL to amend and reenact § 55-96 of the Code of Virginia, relating to contracts, etc., void as to creditors and purchasers until recorded.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-96 of the Code of Virginia is amended and reenacted as follows:

§ 55-96. Contracts, etc., void as to creditors and purchasers until recorded; priority of credit line deed of trust.

A. 1. Every (i) such contract in writing, (ii) deed conveying any such estate or term, (iii) deed of gift, or deed of trust, or mortgage conveying real estate or goods and chattels and (iv) such bill of sale, or contract for the sale of goods and chattels, when the possession is allowed to remain with the grantor, shall be void as to all purchasers for valuable consideration without notice not parties thereto and lien creditors, until and except from the time it is duly admitted to record in the county or city wherein the property embraced in such contract, deed or bill of sale may be. The fact that any such instrument is in the form of or contains the terms of a quit-claim or release shall not prevent the grantee therein from being a purchaser for valuable consideration without notice, nor be of itself notice to such grantee of any unrecorded conveyance of or encumbrance upon such real estate goods and chattels. The mere possession of real estate shall not, of itself, be notice to purchasers thereof for value of any interest or estate therein of the person in possession. As to goods whose possession is retained by a merchant-seller the provisions of subsection (2) of § 8.2-402 of the Uniform Commercial Code shall be controlling. This section shall not apply to any security interest in goods under the Uniform Commercial Code except as provided in subsection (5) of § 8.9-302. Any bill of sale or contract for the sale of goods or chattels when possession is allowed to remain with the grantor shall be deemed to be duly recorded when it is filed in the same manner as Uniform Commercial Code financing statements are filed under the criteria and in the places established by § 8.9A-501 as if the grantor were a debtor and the grantee a secured party. A recordation under the provisions of this section shall, when any real estate subject to the lien of any such contract has been annexed to or merged with an adjoining city subsequent to such docketing, be deemed to have been recorded in the proper clerk's office of such city.

2. The clerk of each court in which any such instrument is by law required to be recorded shall keep a daily index of all such instruments admitted to record in his office, and, immediately upon admission of any such instrument to record, the clerk shall index the same either in the daily index or the appropriate general index of his office. All instruments indexed in the daily index shall be indexed by the clerk in the appropriate general index within 90 days after admission to record. During the period permitted for transfer from the daily index to the general index, indexing in the daily index shall be a sufficient compliance with the requirements of this section as to indexing.

3. a. In any circuit court in which any such instrument required to be recorded is not recorded on the same day as delivered, the clerk shall install a time stamp machine. The time stamp machine shall affix the current date and time of each delivery of any instrument delivered to the clerk for recording that is not immediately recorded and entered into the general or daily index.

b. In the event there is no time stamp machine, or it is not functioning, the clerk shall designate an employee to affix the current date and time of each delivery of any instrument delivered to the clerk for recording.

c. In any circuit court in which instruments required to be recorded are not recorded on the same day as delivered, for purposes of subdivision 1 of this subsection, the term "from the time it is duly admitted to record" shall be presumed to be the date and time affixed upon the instrument by the time stamp machine or affixed by the clerk in accordance with subdivision 3 b of this subsection unless the clerk determines that the applicable requirements for recordation of the instrument have not been satisfied.

d. The provisions of subdivision 3 shall not apply to certificates of satisfaction or partial satisfaction or assignments of deeds of trust delivered to the clerk's office other than by hand.

B. A credit line deed of trust, recorded pursuant to § 55-58.2, shall have validity and priority over any (i) contract in writing, deed, conveyance or other instrument conveying any such estate or term subsequently recorded or (ii) judgment subsequently docketed as to all advances made under such credit line deed of trust from the date of recordation of such credit line deed of trust, regardless of whether or

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59 not the particular advance or extension of credit has been made or unconditionally committed at the time  
60 of delivery or recordation of such contract in writing, deed or other instrument or the docketing of such  
61 judgment. Any judgment creditor shall have the right to give the notice contemplated by § 55-58.2 and  
62 from the day following receipt of such notice, the judgment as docketed shall have priority over all  
63 subsequent advances made pursuant to the credit line deed of trust except those which have been  
64 unconditionally and irrevocably committed prior to such date. Mechanics' liens created under Title 43  
65 shall continue to enjoy the same priority as created by that title. Purchase money security interests in  
66 goods and fixtures shall have the same priority as provided in § 8.9A-317 et seq.