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HOUSE BILL NO. 251

Offered January 13, 2016

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A BILL to amend and reenact §§ 17.1-227.1 and 55-66.3 of the Code of Virginia, relating to cover sheets; multiple deeds or instruments concerning the same interest in real property; certificates of satisfaction.

Patrons—Minchew, Campbell, Collins, Lindsey, Mason and Simon; Senator: Chafin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-227.1 and 55-66.3 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-227.1. Use of cover sheets on deeds or other instruments by circuit court clerks.

A. Circuit court clerks may require that any deed or other instrument conveying or relating to an interest in real property be submitted for recordation with a cover sheet detailing the information contained in the deed or other instrument necessary for the clerk to properly index such instrument. The cover sheet shall be developed in conjunction with the Office of the Executive Secretary of the Supreme Court of Virginia and shall include the following information: (i) the name of each party to be indexed as grantor and the name of each party to be indexed as grantee and, in the case of any individual grantor or grantee, the surname of each individual identified as such; (ii) in the case of a deed or other instrument described in § 58.1-801 or 58.1-807, the amount of the consideration and the actual value of the property conveyed; (iii) the Virginia or federal law under which any exemption from recordation taxes is claimed; (iv) if required under § 17.1-252, the tax map reference number or numbers, or the parcel identification number (PIN) or numbers, of the affected parcel or parcels; and (v) the name and current address of the person to whom the instrument should be returned after recordation.

A1. Where multiple deeds or other instruments concern the same interest in real property, the circuit court clerks shall allow a single cover sheet to be filed with such multiple deeds or instruments, provided that the information to be included where each deed or instrument filed with its own cover sheet pursuant to this section is the same. Where such multiple deeds or instruments are filed with one cover sheet, all of the deed or instrument types shall be listed on the space provided on the cover sheet. The clerk shall assess only one filing fee where such multiple deeds or instruments are filed with one cover sheet pursuant to this section.

A2. Where a deed or other instrument has multiple titles, the circuit court clerks shall allow a single recording and shall allow a single cover sheet be filed with the deed or other instrument and shall assess only one filing fee.

B. In any clerk's office that does not require a cover sheet, the attorney or other party presenting a ~~deed~~ *any deeds* or other ~~instrument~~ *instruments* conveying or relating to an interest in real property may submit a cover sheet with such ~~deed~~ *deeds* or other ~~instrument~~ *instruments* containing all of the information required under subsection A, and in such case the ~~deed~~ *deeds* or other ~~instrument~~ *instruments* need not contain the information otherwise required to be included under subsection A of § 17.1-223, except that each page thereof shall be numbered consecutively as provided in subsection A of § 17.1-223.

C. The attorney or other party who prepares the cover sheet submitted with any deed or other ~~instrument~~ *instruments* conveying or relating to an interest in real property for recordation has the responsibility for ensuring the accuracy of the information contained in the cover sheet, and the clerk may rely on the information provided therein.

The cover sheet may be recorded with the ~~deed~~ *deeds* or other ~~instrument~~ *instruments* with which it is submitted, but it shall not be included as a page for determining the amount of any applicable filing fees pursuant to subdivision A 2 of § 17.1-275 except in the case of a cover sheet submitted pursuant to subsection B. The cover sheet shall be provided only for information purposes to facilitate the ~~recordation~~ *recordations* of ~~the~~ *any* deed or other ~~instrument~~ *instruments* with which it is submitted. The cover sheet shall not be construed to convey title to any interest in real property, purport to be a document in the chain of title conveying any interest in real property, or be considered a part of, or affect the interpretation of, ~~the~~ *any* deed or other ~~instrument~~ *instruments* with which it is submitted, regardless of whether the clerk records the cover sheet with such ~~instrument~~ *instruments*.

§ 55-66.3. Release of deed of trust or other lien.

A. 1. Except as provided in Article 2.1 of ~~this chapter~~ (§ 55-66.8 *et seq.*), after full or partial payment or satisfaction has been made of a debt secured by a deed of trust, vendor's lien, or other lien,

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59 or any one or more obligations representing at least 25 percent of the total amount secured by such lien,
60 but less than the total number of the obligations so secured, or the debt secured is evidenced by two or
61 more separate written obligations sufficiently described in the instrument creating the lien, has been fully
62 paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form
63 sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a
64 credit line deed of trust prepared pursuant to § 55-58.2 only when the obligor or the settlement agent
65 has paid the debt in full and requested that the instrument be released.

66 *Where full or partial payment has been made on a debt secured by one or more deeds or*
67 *instruments, only one certificate of satisfaction shall be required to release such liens.*

68 If the lien creditor receives notice from a settlement agent at the address identified in its payoff
69 statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide
70 the certificate, within 90 days after receipt of such notice, to the settlement agent at the address
71 specified in the notice received from the settlement agent.

72 If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days
73 after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording
74 by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's
75 office, by hand delivery or by courier hand delivery.

76 If the lien creditor has already delivered the certificate to the clerk's office by the time it receives
77 notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement
78 agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff
79 statement.

80 If the lien creditor has not, within 90 days after payment, either provided the certificate of
81 satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing,
82 the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or attorney may take an
83 assignment of the right to the \$500 penalty or facilitate such an assignment to any third party designated
84 by the settlement agent or attorney. Following the 90-day period, if the amount forfeited is not paid
85 within 10 business days after written demand for payment is sent to the lien creditor by certified mail at
86 the address for notification set forth in the payoff statement, the lien creditor shall pay any court costs
87 and reasonable attorney's fees incurred by the obligor in collecting the forfeiture.

88 2. If the note, bond or other evidence of debt secured by such deed of trust, vendor's lien or other
89 lien referred to in subdivision 1 or any interest therein, has been assigned or transferred to a party other
90 than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien
91 creditor for failure to comply with this subsection, as set forth in subdivision 1.

92 B. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney
93 or attorney-in-fact, or any person to whom the instrument evidencing the indebtedness has been
94 endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded
95 with the certificate of satisfaction, by the creditor, or his duly authorized agent, attorney or
96 attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or
97 discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when the
98 debt was satisfied, entitled and authorized to receive the same.

99 C. And when so signed and the affidavit hereinbefore required has been duly filed or recorded with
100 the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of
101 the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance be by
102 deed of trust, as a reconveyance of the legal title as fully and effectually as if such certificate of
103 satisfaction were a formal deed of release duly executed and recorded.

104 D. As used in this section:

105 "CRESPA" means Chapter 27.3 (§ 55-525.16 et seq.) of Title 55.

106 "Deed of trust" means any mortgage, deed of trust or vendor's lien.

107 "Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee or
108 obligee of a note, bond or other evidence of debt and shall embrace the lien creditor or his successor in
109 interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond or
110 other evidence of debt.

111 "Payoff letter" means a written communication from the lien creditor or servicer stating, at a
112 minimum, the amount outstanding and required to be paid to satisfy the obligation.

113 "Satisfactory evidence of the payment of the obligation secured by the deed of trust" means (i) any
114 one of (a) the original canceled check or a copy of the canceled check, showing all endorsements,
115 payable to the lien creditor or servicer, as applicable, (b) confirmation in written or electronic form of a
116 wire transfer to the bank account of the lien creditor or servicer, as applicable, or (c) a bank statement
117 in written or electronic form reflecting completion of the wire transfer or negotiation of the check, as
118 applicable; and (ii) a payoff letter or other reasonable documentary evidence that the payment was to
119 effect satisfaction of the obligation secured or evidenced by the deed of trust.

120 "Satisfied by payment" includes obtaining written confirmation from the lien creditor that the

underlying obligation has a zero balance.

"Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

"Settlement agent" has the same meaning ascribed thereto in § 55-525.16, provided that a person shall not be a settlement agent unless he is registered pursuant to § 55-525.30 and otherwise fully in compliance with the applicable provisions of Chapter 27.3 (§ 55-525.16 et seq.) of Title 55.

"Title insurance company" has the same meaning ascribed thereto in § 38.2-4601, provided that the title insurance company seeking to release a lien by the process described in subsection E issued a policy of title insurance, through a title insurance agency or agent as defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was satisfied by payment made by the title insurance agency or agent also acting as the settlement agent.

E. Release of lien by settlement agent or title insurance company.

A settlement agent or title insurance company may release a deed of trust in accordance with the provisions of this subsection (i) if the obligation secured by the deed of trust has been satisfied by payment made by the settlement agent and (ii) whether or not the settlement agent or title insurance company is named as a trustee under the deed of trust or otherwise has received the authority to release the lien.

1. Notice to lienholder.

a. After or accompanying payment in full of the obligation secured by a deed of trust, a settlement agent or title insurance company intending to release a deed of trust pursuant to this subsection shall deliver to the lien creditor by certified mail or guaranteed overnight delivery service a notice of intent to release the deed of trust with a copy of the payoff letter and a copy of the release to be recorded as provided in this subsection.

b. The notice of intent to release shall contain (i) the name of the lien creditor, the name of the servicer if loan payments on the deed of trust are collected by a servicer, or both names, (ii) the name of the settlement agent, (iii) the name of the title insurance company if the title insurance company intends to release the lien, and (iv) the date of the notice. The notice of intent to release shall conform substantially to the following form:

NOTICE OF INTENT TO RELEASE

Notice is hereby given to you concerning the deed of trust described on the certificate of satisfaction, a copy of which is attached to this notice, as follows:

1. The settlement agent identified below has paid the obligation secured by the deed of trust described herein or obtained written confirmation from you that such obligation has a zero balance.

2. The undersigned will release the deed of trust described in this notice unless, within 90 days from the date this notice is mailed by certified mail or guaranteed overnight delivery service, the undersigned has received by certified mail or guaranteed overnight delivery service a notice stating that a release of the deed of trust has been recorded in the clerk's office or that the obligation secured by the deed of trust described herein has not been paid, or the lien creditor or servicer otherwise objects to the release of the deed of trust. Notice shall be sent to the address stated on this form.

(Name of settlement agent)

(Signature of settlement agent or title insurance company)

(Address of settlement agent or title insurance company)

(Telephone number of settlement agent or title insurance company)

(Virginia CRESA registration number of settlement agent at the time the obligation was paid or confirmed to have a zero balance)

2. Certificate of satisfaction and affidavit of settlement agent or title insurance company.

a. If, within 90 days following the day on which the settlement agent or title insurance company mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send by certified mail or guaranteed overnight delivery service to the settlement agent or title insurance company a notice stating that a release of the deed of trust has been recorded in the clerk's office or that the obligation secured by the deed of trust has not been paid in full or that the lien creditor or servicer otherwise objects to the release of the deed of trust, the settlement agent or title insurance company may execute, acknowledge and file with the clerk of court of the jurisdiction wherein the deed of trust is recorded a certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b of this subsection and (ii) a copy of the notice of intent to release that was sent to the lender, the servicer, or both. The certificate of satisfaction shall include the settlement agent's CRESA registration number, issued by the Virginia State Bar or the Virginia State Corporation Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of trust or obtained written confirmation from the lien creditor that such obligation has a zero balance. The certificate of satisfaction shall note that the individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the certificate of

182 satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction otherwise
183 satisfying the requirements of this subsection shall not be affected by the inaccuracy of the CRESPA
184 registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction
185 to the lien creditor or servicer and shall nevertheless release the deed of trust described therein as
186 provided in this subsection.

187 b. The certificate of satisfaction used by the settlement agent or title insurance company shall include
188 an affidavit certifying (i) that the settlement agent has satisfied the obligation secured by the deed of
189 trust described in the certificate; (ii) that the settlement agent or title insurance company possesses
190 satisfactory evidence of payment of the obligation secured by the deed of trust described in the
191 certificate or written confirmation from the lien creditor that such obligation has a zero balance; (iii) that
192 the lien of the deed of trust may be released; (iv) that the person executing the certificate is the
193 settlement agent, the title insurance company, or is duly authorized to act on behalf of the settlement
194 agent or title insurance company; and (v) that the notice of intent to release was delivered to the lien
195 creditor or servicer and the settlement agent or title insurance company received evidence of receipt of
196 such notice by the lien creditor or servicer. The affidavit shall be substantially in the following form:

197 **AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY**

198 The undersigned hereby certifies that, in accordance with the provisions § 55-66.3 of the Code of
199 Virginia of 1950, as amended and in force on the date hereof (the Code) (a) the undersigned is a
200 settlement agent or title insurance company as defined in subsection D of § 55-66.3 of the Code or a
201 duly authorized officer, director, member, partner or employee of such settlement agent or title insurance
202 company; (b) the settlement agent has satisfied the obligation secured by the deed of trust; (c) the
203 settlement agent or title insurance company possesses satisfactory evidence of the payment of the
204 obligation secured by the deed of trust described in the certificate recorded herewith or written
205 confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement agent or
206 title insurance company delivered to the lien creditor or servicer in the manner specified in subdivision
207 E 1 of § 55-66.3 of the Code the notice of intent to release and possesses evidence of receipt of such
208 notice by the lien creditor or servicer; and (e) the lien of the deed of trust is hereby released.

209 (Authorized signer)

210 **3. Effect of filing.**

211 When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and
212 notarized as provided in this subsection, and accompanied by (i) the affidavit described in subdivision 2
213 b of this subsection, and (ii) a copy of the notice of intent to release that was sent to the lender, lien
214 creditor or servicer shall operate as a release of the encumbrance described therein and, if the
215 encumbrance is by deed of trust, as a reconveyance of the legal title as fully and effectively as if such
216 certificate of satisfaction were a formal deed of release duly executed and recorded.

217 **4. Effect of wrongful or erroneous certificate; damages.**

218 a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a
219 settlement agent or title insurance agent does not relieve the party obligated to repay the debt, or anyone
220 succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for
221 the debt or other obligations secured by the deed of trust that is the subject of the wrongful or erroneous
222 certificate of satisfaction.

223 b. A settlement agent or title insurance agent that wrongfully or erroneously executes and files or
224 records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the
225 recording of a wrongful or erroneous certificate of satisfaction.

226 c. The procedure authorized by this subsection for the release of a deed of trust shall constitute an
227 optional method of accomplishing a release of a deed of trust secured by property in the
228 Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a deed of
229 trust shall not give rise to any liability or any cause of action whatsoever against a settlement agent or
230 any title insurance company by any obligated party or anyone succeeding to or assuming the interest of
231 the obligated party.

232 **5. Applicability.**

233 a. The procedure authorized by this subsection for the release of a deed of trust may be used to
234 effect the release of a deed of trust after July 1, 2002, regardless of when the deed of trust was created,
235 assigned or satisfied by payment made by the settlement agent.

236 b. This subsection applies only to transactions involving the purchase of or lending on the security of
237 real estate located in the Commonwealth that is either (i) unimproved real estate with a lien to be
238 released of \$1 million or less or (ii) real estate containing at least one but not more than four residential
239 dwelling units.

240 c. The procedure authorized by this subsection applies only to the full and complete release of a deed
241 of trust. Nothing in this subsection shall be construed to authorize the partial release of property from a
242 deed of trust or otherwise permit the execution or recordation of a certificate of partial satisfaction.