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SENATE BILL NO. 1176

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 25, 2017)

(Patron Prior to Substitute—Senator Chafin)

A *BILL to amend and reenact § 64.2-531 of the Code of Virginia, relating to nonexoneration of debts on property of decedent; notice to creditor and beneficiaries.*

Be it enacted by the General Assembly of Virginia:

1. That § 64.2-531 of the Code of Virginia is amended and reenacted as follows:

§ 64.2-531. Nonexoneration; payment of lien if granted by agent.

A. Unless a contrary intent is clearly set out in the will or in a transfer on death deed, (i) real or personal property that is the subject of a specific devise or bequest in the will or (ii) real property subject to a transfer on death deed passes, subject to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator, without the right of exoneration. A general directive in the will to pay debts shall not be evidence of a contrary intent that the mortgage, pledge, security interest, or other lien be exonerated prior to passing to the legatee.

B. *The personal representative may give written notice to the creditor holding any debt to which subsection A applies that there is no right of exoneration for such debt pursuant to this section. Such notice shall include a copy of this section. Any such notice shall be sent by certified mail (i) to the address the creditor last provided to the debtor as the address to which notices to the creditor are to be sent; (ii) if the personal representative cannot reasonably determine the address to which notices to the creditor are to be sent, to the address the creditor last provided to the debtor as the address at which payments to the creditor are to be made; or (iii) if the personal representative cannot reasonably determine either the address to which notices to the creditor are to be sent or at which payments to the creditor are to be made, to (a) the address of the creditor's registered agent on file with the Virginia State Corporation Commission or (b) if there is no such registered agent on file, to the creditor's last known address. The creditor holding such debt may file a claim for such debt with the commissioner of accounts pursuant to § 64.2-552 on or before the later of one year after the qualification of the personal representative of the decedent's estate or six months after the personal representative gives such written notice to the creditor. Once the personal representative has given notice to the creditor as provided in this section, unless the creditor files a timely claim against the estate as set forth in this subsection, the liability of a personal representative or his surety for such debt shall not exceed the assets of the decedent remaining in the possession of the personal representative and available for application to the debt pursuant to § 64.2-528 at the time the creditor presents a demand for payment of such debt to the personal representative. Nothing in this section shall affect either the liability of the estate for such debt to the extent of the decedent's assets remaining at the time a claim is filed or the liability of the beneficiaries that receive the decedent's assets to the extent of such receipt.*

In the event that any such claim is timely filed with the commissioner of accounts, the personal representative shall give the specific beneficiary receiving such real or personal property written notice, within 90 days after such claim is filed, to obtain from the creditor the release of the estate from such claim. The notice to a beneficiary may be made to the personal representative of a deceased beneficiary whose estate is a beneficiary, an attorney-in-fact for a beneficiary, a guardian or conservator of an incapacitated beneficiary, a committee of a convict or insane beneficiary, or the duly qualified guardian of a minor or, if none exists, a custodial parent of a minor. If the estate has not been released from such claim after the later of 180 days from such notice or one year from qualification, the personal representative may (a) sell the real or personal property that is the subject of a specific devise or bequest and that is also subject to the claim, (b) apply the proceeds of sale to the satisfaction of the claim, and (c) distribute any excess proceeds from such sale of the specific beneficiary of such property. If the proceeds of such sale are insufficient to satisfy the debt in full, the deficiency shall remain a debt of the estate to be satisfied from the other assets of the estate in accordance with applicable law. If such real property is subject to a transfer on death deed and is also subject to the claim, the personal representative may proceed as provided in § 64.2-634 to enforce the liability for such claim against such property.

C. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing at the date of death of the testator against any specifically devised or bequeathed real or personal property, or any real property subject to a transfer on death deed, that was granted by an agent acting within the authority of a durable power of attorney for the testator while the testator was incapacitated. For the purposes of this section, (i) no adjudication of the testator's incapacity is necessary, (ii) the acts of an agent within the authority of a durable power of attorney are rebuttably presumed to be for an

60 incapacitated testator, and (iii) an incapacitated testator is one who is impaired by reason of mental
61 illness, intellectual disability, physical illness or disability, chronic use of drugs, chronic intoxication, or
62 other cause creating a lack of sufficient understanding or capacity to make or communicate responsible
63 decisions. This subsection shall not apply (a) if the mortgage, pledge, security interest, or other lien
64 granted by the agent on the specific property is thereafter ratified by the testator while he is not
65 incapacitated; or (b) if the durable power of attorney was limited to one or more specific purposes and
66 was not general in nature.

67 ~~C.~~ D. Subsection A shall not apply to any mortgage, pledge, security interest, or other lien existing
68 at the date of the death of the testator against any specific devise or bequest of any real or personal
69 property, or any real property subject to a transfer on death deed, that was granted by a conservator,
70 guardian, or committee of the testator. This subsection shall not apply if, after the mortgage, pledge,
71 security interest, or other lien granted by the conservator, guardian, or committee, there is an
72 adjudication that the testator's disability has ceased and the testator survives that adjudication by at least
73 one year.

74 *E. Nothing in this section shall affect the priority of a secured debt with respect to the collateral*
75 *securing such debt.*