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## SENATE BILL NO. 1368

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 1, 2017)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact §§ 55-59.2 and 55-63 of the Code of Virginia, relating to foreclosure advertisements; posted in the newspaper or on the website of the circuit court clerk.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 55-59.2 and 55-63 of the Code of Virginia are amended and reenacted as follows:**

**§ 55-59.2. Advertisement required before sale by trustee.**

A. Advertisement of sale by a trustee or trustees in execution of a deed of trust shall be (i) placed in a newspaper having a general circulation in the city or county ~~wherein~~ in which the property to be sold is located, or any portion thereof; lies, or (ii) posted on the website of the clerk of the circuit court of the city or county in which the property to be sold is located, or any portion thereof lies, pursuant to the following provisions:

1. If the deed of trust itself provides for the number of publications of such newspaper advertisement, which may be done by using the words "advertisement required" or words of like purport followed by the number agreed upon, then no other or different advertisement shall be necessary, provided that, if such advertisement be inserted on a weekly basis it shall be published not less than once a week for two weeks and if such advertisement be inserted on a daily basis it shall be published not less than once a day for three days, which may be consecutive days, and in either case shall be subject to the provisions of § 55-63 in the same manner as if the method were set forth in the deed of trust. Should the deed of trust provide for advertising on other than a weekly or daily basis either of the foregoing provisions shall be complied with in addition to those provided in such deed of trust.

Notwithstanding the provisions of the deed of trust, the sale shall be held on any day following the day of the last advertisement, which is no earlier than eight days following the first advertisement nor more than ~~thirty~~ 30 days following the last advertisement.

2. If the deed of trust does not provide for the number of publications of such newspaper advertisement, the trustee shall advertise once a week for four successive weeks; provided, however, that if the property or some portion thereof is located in a city or in a county immediately contiguous to a city, publication of the advertisement five different days, which may be consecutive days, shall be deemed adequate. The sale shall be held on any day following the day of the last advertisement, which is no earlier than eight days following the first advertisement nor more than ~~thirty~~ 30 days following the last advertisement.

B. Such newspaper advertisement shall be placed in that section of the newspaper where legal notices appear or where the type of property being sold is generally advertised for sale.

C. In addition to the advertisement required by subsection A ~~above~~, the trustee shall give such other further and different advertisement as the deed of trust may require and in addition may give such additional advertisement as he may deem appropriate.

D. In the event of postponement of sale, which postponement shall be at the discretion of the trustee, advertisement of such postponed sale shall be in the same manner as the original advertisement of sale.

E. Failure to comply with the requirements for advertisement contained in this section shall, upon petition, render a sale of the property voidable by the court.

F. Any provision in a deed of trust requiring advertisement in a newspaper shall be satisfied by posting on the website of the clerk of the circuit court in accordance with this section.

G. The clerk of the circuit court may charge a reasonable fee for posting an advertisement on the clerk's website, which fee shall be deposited by the clerk into the clerk's nonreverting local fund to be used to cover operational expenses as defined in § 17.1-295. The clerk shall maintain a record of the advertisements posted in accordance with the Virginia Public Records Act (§ 42.1-76 et seq.).

**§ 55-63. Construction of deeds requiring notice by advertisement in newspaper.**

(a) A. Whenever any deed of trust to secure debts or indemnify sureties contains a provision requiring the giving of notice of sale thereunder for a specified number of days by advertisement in one or more newspapers and such advertisement be published in a newspaper published daily or in a newspaper published daily except Sunday, it shall be deemed a sufficient compliance with such provision if such notice be published (i) in consecutive issues of such newspaper for the number of days specified, counting both the day of the first publication and the day of the last publication and intervening Sundays, whether or not such newspaper be published on Sunday, or (ii) on the website of the clerk of the circuit court for the number of days specified, counting both the day of the first publication and the day of the last publication. Both the first publication date and the last publication

60 *date* may be on Sunday. The publication shall in all other respects comply with the provisions of  
61 §§ 55-59.2 and 55-59.3.

62 ~~(b)~~ B. Whenever such deed of trust requires advertisement once a week for a specified number of  
63 weeks, sale may be had on the day after the last advertisement appears or any day thereafter and all  
64 sales made in conformity herewith prior to January 1, 1972, and otherwise valid, are hereby validated.

65 **2. That the provisions of this act shall become effective on January 1, 2018.**