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SENATE BILL NO. 422

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 29, 2018)

(Patron Prior to Substitute—Senator Chafin)

A *BILL to amend and reenact §§ 55-59.1 and 55-64 of the Code of Virginia, relating to foreclosure; notice of sale when owner is deceased; payment of surplus to personal representative.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-59.1 and 55-64 of the Code of Virginia are amended and reenacted as follows:

§ 55-59.1. Notices required before sale by trustee to owners, lienors, etc.; if note lost.

A. In addition to the advertisement required by § 55-59.2 the trustee or the party secured shall give written notice of the time, date and place of any proposed sale in execution of a deed of trust, which notice shall include either (i) the instrument number or deed book and page numbers of the instrument of appointment filed pursuant to § 55-59, or (ii) said notice shall include a copy of the executed and notarized appointment of substitute trustee by personal delivery or by mail to ~~(i)~~ (a) the present owner of the property to be sold at his last known address as such owner and address appear in the records of the party secured; ~~(ii)~~; (b) any subordinate lienholder who holds a note against the property secured by a deed of trust recorded at least 30 days prior to the proposed sale and whose address is recorded with the deed of trust; ~~(iii)~~; (c) any assignee of such a note secured by a deed of trust, provided *that* the assignment and address of assignee are likewise recorded at least 30 days prior to the proposed sale; ~~(iv)~~; (d) any condominium unit owners' association ~~which~~ *that* has filed a lien pursuant to § 55-79.84; ~~(v)~~; (e) any property owners' association ~~which~~ *that* has filed a lien pursuant to § 55-516; and ~~(vi)~~ (f) any proprietary lessees' association ~~which~~ *that* has filed a lien pursuant to § 55-472. Written notice shall be given pursuant to clauses ~~(iv)~~; ~~(v)~~ (d), (e), and ~~(vi)~~; (f) only if the lien is recorded at least 30 days prior to the proposed sale. *If the secured party has received notification that the owner of the property to be sold is deceased, the notice required by clause (a) shall be given to (1) the last known address of such owner as such address appears in the records of the party secured; (2) any personal representative of the deceased's estate whose appointment is recorded among the records of the circuit court where the property is located, at the address of the personal representative that appears in such records; and (3) any heirs of the deceased who are listed on the list of heirs recorded among the records of the circuit court where the property is located, at the addresses of the heirs that appear in such records.* Mailing of a copy of the advertisement or a notice containing the same information to the owner by certified or registered mail no less than 14 days prior to such sale and to lienholders, the property owners' association or proprietary lessees' association, their assigns and the condominium unit owners' association, at the address noted in the memorandum of lien, by ordinary mail no less than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice. The written notice of proposed sale when given as provided herein shall be deemed an effective exercise of any right of acceleration contained in such deed of trust or otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent failure to give notice as required by this subsection shall not impose liability on either the trustee or the secured party.

B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that effect, the trustee may nonetheless proceed to sale, provided *that* the beneficiary has given written notice to the person required to pay the instrument that the instrument is unavailable and a request for sale will be made of the trustee upon expiration of 14 days from the date of mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to the last known address of the person required to pay the instrument as reflected in the records of the beneficiary and shall include the name and mailing address of the trustee. The notice shall further advise the person required to pay the instrument that if he believes he may be subject to a claim by a person other than the beneficiary to enforce the instrument, he may petition the circuit court of the county or city where the property or some part thereof lies for an order requiring the beneficiary to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the sale on a finding that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or cannot be produced shall not affect the authority of the trustee to sell or the validity of the sale.

C. When the written notice of proposed sale is given as provided herein, there shall be a rebuttable presumption that the lienholder has complied with any requirement to provide notice of default contained in a deed of trust. Failure to comply with the requirements of notice contained in this section

60 shall not affect the validity of the sale, and a purchaser for value at such sale shall be under no duty to
61 ascertain whether such notice was validly given.

62 D. In the event of postponement of sale, which may be done in the discretion of the trustee, no new
63 or additional notice need be given pursuant to this section.

64 **§ 55-64. Disposition of surplus from trustee's sale after death of grantor.**

65 Whenever the grantor, or his successor in title, in any deed of trust by which any real property is
66 conveyed in trust to secure debts or indemnify sureties dies prior to a trustee's sale held pursuant to the
67 deed of trust and the deed of trust contains no definite provision for the distribution of any surplus in
68 the event of the death of the grantor or his successors in title prior to the trustee's sale held pursuant to
69 the deed of trust, or contains a provision that such surplus shall be paid to the grantor or his heirs or
70 assigns or personal representative, then any surplus of the proceeds of the sale remaining in the hands of
71 the trustee, after discharging the expenses of executing the trust, all tax liens upon the property sold, ~~and~~
72 all debts and obligations secured by the deed of trust, *and, in order of their priority, if any, the*
73 *remaining subsequent debts and obligations secured by the deed, and any liens of record inferior to the*
74 *deed of trust under which the sale is made, with lawful interest,* shall be paid by the trustee to the
75 personal representative of the decedent.

76 Any funds so coming into the hands of the personal representative shall constitute assets for the
77 payment by him ~~first, of all existing liens against the property foreclosed which are subsequent to the~~
78 ~~deed of trust under which the trustee sells in the order of their priority, and secondly, of any debts and~~
79 demands against the decedent's estate remaining unsatisfied after the personal estate has been exhausted.
80 Any surplus of the funds so paid to the personal representative and remaining in his hands after the
81 satisfaction of all debts and demands against the estate shall be paid over by him, if the decedent died
82 intestate as to the real property embraced in the deed of trust, to the heirs at law of the decedent, or
83 their successors in title, and if the decedent died testate as to the real property embraced in the deed of
84 trust, then such surplus shall be paid to the persons entitled to the real property under the terms of the
85 decedent's will, or to their successors in title.