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HOUSE BILL NO. 1391

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 5, 2020)

(Patron Prior to Substitute—Delegate Leftwich)

*A BILL to amend and reenact § 55.1-320 of the Code of Virginia, relating to deeds of trust; fiduciary duties.***Be it enacted by the General Assembly of Virginia:****1. That § 55.1-320 of the Code of Virginia is amended and reenacted as follows:****§ 55.1-320. How deed of trust construed; duties, rights, etc., of parties.**

Every deed of trust to secure debts or indemnify sureties is in the nature of a contract and shall be construed according to its terms to the extent not in conflict with the requirements of law. Unless the deed of trust provides otherwise, it shall be construed to impose and confer upon the parties and beneficiaries the following duties, rights, and obligations in like manner as if the same were expressly provided for by such deed of trust:

1. The deed shall be construed as given to secure the performance of each of the covenants entered into by the grantor as well as the payment of the primary obligation.

2. The grantor shall be deemed to covenant that he will pay all taxes, levies, assessments, and charges upon the property, including the fees and charges of such agents or attorneys as the trustee may deem advisable to employ at any time for the purpose of the trust, so long as any obligation upon the grantor under the deed of trust remains undischarged.

3. The grantor shall be deemed to covenant that he will keep the improvements on the property in tenantable condition, whether such improvements were on the property when the deed of trust was given or were placed there at a later time.

4. The grantor shall be deemed to covenant that no waste shall be committed or suffered upon the property.

5. The grantor shall be deemed to covenant that in the event of his failure to meet any obligations imposed upon him, then the trustee or any beneficiary may, at his option, satisfy such obligations. The money so advanced, with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be otherwise recoverable from the grantor as a debt. In addition, to the extent not otherwise covered, the grantor shall be deemed to covenant that amount advanced or incurred by the trustee or any beneficiary under a deed of trust (i) with respect to an obligation secured by a lien or encumbrance prior to the lien of the deed of trust or (ii) for the protection of the lien secured by the deed of trust, together with interest as provided in the deed of trust, shall be a part of the debt secured by the deed of trust, to be paid next after expenses of executing the trust.

6. A covenant to pay interest shall be deemed a covenant to pay interest on the principal balance as such rate may vary or be modified from time to time by the parties under the original instruments or agreements or a written agreement of modification, whether or not recorded, and all the interest on the principal secured by the deed of trust shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust.

Any covenant, otherwise authorized by law, that the lender shall be entitled to share in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or similar event, shall be on an equal priority with the principal debt secured by the deed of trust, in the event of sale to be paid next after the expenses of executing the trust, and shall be specified in the recorded deed of trust or other recorded document in order to be notice of record as against subsequent parties.

7. In the event of default in the payment of the debt secured, or any part thereof, at maturity, or in the payment of interest when due, or of the breach of any of the covenants entered into or imposed upon the grantor, then at the request of any beneficiary the trustee shall forthwith declare all the debts and obligations secured by the deed of trust at once due and payable and may take possession of the property and proceed to sell the same at auction at the premises or in the front of the circuit court building or at such other place in the county or city in which the property or the greater part thereof lies, or in the corporate limits of any city surrounded by or contiguous to such county, or in the case of annexed land, in the county of which the land was formerly a part, as the trustee may select upon such terms and conditions as the trustee may deem best. *A trustee has no duties, rights, or obligations other than those imposed and conferred by the deed of trust or this article. A trustee shall comply with all restrictive covenants regarding affordability that affect the property secured by such deed of trust.*

8. If the sale is upon credit terms, the deferred purchase money shall bear interest from the day of

60 sale and shall be secured by a deed of trust upon the property contemporaneous with the trustee's deed
61 to the purchaser.

62 9. The party secured by the deed of trust, or the holders of greater than 50 percent of the monetary
63 obligations secured thereby, shall have the right and power to appoint one or more substitute trustees for
64 any reason and, regardless of whether such right and power is expressly granted in such deed of trust,
65 by executing and acknowledging an instrument designating and appointing a substitute. When the
66 instrument of appointment has been executed, the substitute trustee named therein shall be vested with
67 all the powers, rights, authority, and duties vested in the trustee in the original deed of trust. The
68 instrument of appointment shall be recorded in the office of the clerk in which the original deed of trust
69 is recorded prior to or at the time of recordation of any instrument in which a power, right, authority, or
70 duty conferred by the original deed of trust is exercised.

71 10. *A trustee under a deed of trust is a fiduciary for both the debtor and creditor; however, the*
72 *trustee does not breach such fiduciary duty if the trustee's actions are consistent with the duties imposed*
73 *upon the trustee under the terms of the deed of trust or by this article.*