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HOUSE BILL NO. 2099

Offered January 13, 2021

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A *BILL to amend and reenact §§ 8.01-251 and 55.1-339 of the Code of Virginia, relating to limitations on enforcement of judgments; judgment liens; settlement agents.*

Patrons—Coyner, Simon, Adams, D.M. and Subramanyam; Senator: Lewis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-251 and 55.1-339 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-251. Limitations on enforcement of judgments.

A. No execution shall be issued and no action brought on a judgment, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, after ~~20~~ 10 years from the date of such judgment or domestication of such judgment, unless the period is extended as provided in this section.

B. The limitation prescribed in subsection A may be extended on motion of the judgment creditor or his assignee with notice to the judgment debtor, and an order of the circuit court of the jurisdiction in which the judgment was entered to show cause why the period for issuance of execution or bringing of an action should not be extended. Any such motion shall be filed within the ~~20-year~~ 10-year period from the date of the original judgment or from the date of the latest extension thereof. If upon the hearing of the motion the court decides that there is no good cause shown for not extending the period of limitation, the order shall so state and the period of limitation mentioned in subsection A shall be extended for an additional ~~20~~ 10 years from the date of filing of the motion to extend. Additional extensions may be granted upon the same procedure, subject in each case to the recording provisions prescribed in § 8.01-458. This extension procedure is subject to the exception that if the action is against a personal representative of a decedent, the motion shall be within two years from the date of his qualification, the extension may be for only two years from the time of the filing of the motion, and there may be only one such extension.

C. No suit shall be brought to enforce the lien of any judgment, including judgments in favor of the Commonwealth, upon which the right to issue an execution or bring an action is barred by other subsections of this section, nor shall any suit be brought to enforce the lien of any judgment against the lands which have been conveyed by the judgment debtor to a grantee for value, unless the same be brought within ~~40~~ five years from the due recordation of the deed from such judgment debtor to such grantee and unless a notice of lis pendens shall have been recorded in the manner provided by § 8.01-268 before the expiration of such ~~40-year~~ five-year period.

D. In computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted. Sections 8.01-230 et seq., 8.01-247 and 8.01-256 shall apply to the right to bring such action in like manner as to any right.

E. ~~The provisions of this section apply to judgments obtained after June 29, 1948, and to judgments obtained prior to such date which are not then barred by the statute of limitations, but nothing herein shall have the effect of reducing the time for enforcement of any judgment the limitation upon which has been extended prior to such date by compliance with the provisions of law theretofore in effect.~~

F. This section shall not be construed to impair the right of subrogation to which any person may become entitled while the lien is in force, provided *that* he institutes proceedings to enforce such right within five years after the same accrued, nor shall the lien of a judgment be impaired by the recovery of another judgment thereon, or by a forthcoming bond taken on an execution thereon, such bond having the force of a judgment.

G. *F.* Limitations on enforcement of judgments entered in the general district courts shall be governed by § 16.1-94.1, unless an abstract of such judgment is docketed in the judgment book of a circuit court. Upon the docketing of such judgment, the limitation for the enforcement of a district court judgment is the same as for a judgment of the circuit court.

§ 55.1-339. Release of deed of trust or other lien.

A. As used in this section:

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

"Judgment lien" includes a judgment lien prescribed by § 8.01-458 but does not include any lien in favor of the federal, state, or local government, or any political subdivision thereof.

"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee, or

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59 obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor or his successor in
60 interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond,
61 or other evidence of debt.

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

64 "RESA" means Chapter 10 (§ 55.1-1000 et seq.), Real Estate Settlement Agents.

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

72 "Satisfied by payment" includes obtaining written confirmation from the lien creditor that the
73 underlying obligation has a zero balance.

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

75 "Settlement agent" has the same meaning ascribed to it in § 55.1-1000, provided that a person shall
76 not be a settlement agent unless he is registered pursuant to § 55.1-1014 and otherwise fully in
77 compliance with the applicable provisions of RESA.

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

83 B. 1. Except as provided in Article 3 (§ 55.1-346 et seq.), after full or partial payment or satisfaction
84 has been made of a debt secured by a deed of trust, vendor's lien, or other lien, or any one or more
85 obligations representing at least 25 percent of the total amount secured by such lien, but less than the
86 total number of the obligations so secured, or the debt secured is evidenced by two or more separate
87 written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien
88 creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for
89 recordation reflecting such payment and release of lien. This requirement shall apply to a credit line
90 deed of trust prepared pursuant to § 55.1-318 only when the obligor or the settlement agent has paid the
91 debt in full and requested that the instrument be released.

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

96 If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days
97 after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording
98 by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's
99 office, by hand delivery, electronic delivery via the clerk's electronic filing system, or delivery by a
100 commercial overnight delivery service or the United States Postal Service, and a receipt obtained.

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

105 If *Except as provided for judgment lien creditors in § 8.01-454*, if the lien creditor has not, within
106 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered
107 it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien
108 obligor. No settlement agent or attorney may take an assignment of the right to the \$500 penalty or
109 facilitate such an assignment to any third party designated by the settlement agent or attorney. Following
110 the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for
111 payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff
112 statement, the lien creditor shall pay any court costs and reasonable attorney fees incurred by the obligor
113 in collecting the forfeiture.

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

118 C. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent,
119 attorney, or attorney-in-fact or any person to whom the instrument evidencing the indebtedness has been
120 endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded

121 with the certificate of satisfaction by the creditor, or his duly authorized agent, attorney, or
122 attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or
123 discharged has been paid to such creditor or his agent, attorney, or attorney-in-fact, who was entitled
124 and authorized to receive such debt when the debt was satisfied.

125 D. When the certificate of satisfaction has been signed and the affidavit required by subsection C has
126 been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of
127 satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is
128 entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and
129 effectually as if such certificate of satisfaction were a formal deed of release duly executed and
130 recorded.

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

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

137 1. Notice to lienholder.

138 a. After or accompanying payment in full of the obligation secured by a deed of trust *or judgment*
139 *lien*, a settlement agent or title insurance company intending to release a deed of trust *or judgment lien*
140 pursuant to this subsection shall deliver to the lien creditor by certified mail or commercial overnight
141 delivery service or the United States Postal Service, and a receipt obtained, a notice of intent to release
142 the deed of trust *or judgment lien* with a copy of the payoff letter and a copy of the release to be
143 recorded as provided in this subsection.

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

149 NOTICE OF INTENT TO RELEASE

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

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

155 2. The undersigned will release the deed of trust *or judgment lien* described in this notice unless,
156 within 90 days from the date this notice is mailed by certified mail or commercial overnight delivery
157 service or the United States Postal Service, and a receipt obtained, the undersigned has received by
158 certified mail or commercial overnight delivery service or the United States Postal Service, and a receipt
159 obtained, a notice stating that a release of the deed of trust *or judgment lien* has been recorded in the
160 clerk's office or that the obligation secured by the deed of trust *or judgment lien* described herein has
161 not been paid, or the lien creditor or servicer otherwise objects to the release of the deed of trust *or*
162 *judgment lien*. Notice shall be sent to the address stated on this form.

163 (Name of settlement agent)

164 (Signature of settlement agent or title insurance company)

165 (Address of settlement agent or title insurance company)

166 (Telephone number of settlement agent or title insurance company)

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

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

170 a. If, within 90 days following the day on which the settlement agent or title insurance company
171 mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or
172 servicer does not send by certified mail or commercial overnight delivery service or the United States
173 Postal Service, and a receipt obtained, to the settlement agent or title insurance company a notice stating
174 that a release of the deed of trust *or judgment lien* has been recorded in the clerk's office or that the
175 obligation secured by the deed of trust *or judgment lien* has not been paid in full or that the lien
176 creditor or servicer otherwise objects to the release of the deed of trust *or judgment lien*, the settlement
177 agent or title insurance company may execute, acknowledge, and file with the clerk of court of the
178 jurisdiction in which the deed of trust *or judgment lien* is recorded a certificate of satisfaction, which
179 shall include (i) the affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to
180 release that was sent to the ~~lender~~ *lien creditor*, the servicer, or both. The certificate of satisfaction shall
181 include the settlement agent's RESA registration number, issued by the Virginia State Bar or the

182 Virginia State Corporation Commission, that was in effect at the time the settlement agent paid the
183 obligation secured by the deed of trust *or judgment lien* or obtained written confirmation from the lien
184 creditor that such obligation has a zero balance. The certificate of satisfaction shall note that the
185 individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this
186 subsection. After filing or recording the certificate of satisfaction, the settlement agent or title insurance
187 company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The validity
188 of a certificate of satisfaction otherwise satisfying the requirements of this subsection shall not be
189 affected by the inaccuracy of the RESA registration number placed thereon or the failure to mail a copy
190 of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the
191 deed of trust *or judgment lien* described therein as provided in this subsection.

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

203 AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

204 The undersigned hereby certifies that, in accordance with the provisions of § 55.1-339 of the Code of
205 Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a
206 settlement agent or title insurance company as defined in subsection A of § 55.1-339 of the Code or a
207 duly authorized officer, director, member, partner, or employee of such settlement agent or title
208 insurance company; (b) the settlement agent has satisfied the obligation secured by the deed of trust *or*
209 *judgment lien*; (c) the settlement agent or title insurance company possesses satisfactory evidence of the
210 payment of the obligation secured by the deed of trust *or judgment lien* described in the certificate
211 recorded herewith or written confirmation from the lien creditor that such obligation has a zero balance;
212 (d) the settlement agent or title insurance company has delivered to the lien creditor or servicer in the
213 manner specified in subdivision E 1 of § 55.1-339 of the Code the notice of intent to release and
214 possesses evidence of receipt of such notice by the lien creditor or servicer; and (e) the lien of the deed
215 of trust *or judgment lien* is hereby released.

216 _____
217 (Authorized signer)

218 3. Effect of filing.

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

225 4. Effect of wrongful or erroneous certificate; damages.

226 a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a
227 settlement agent or title insurance agent does not relieve the party obligated to repay the debt, or anyone
228 succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for
229 the debt or other obligations secured by the deed of trust *or judgment lien* that is the subject of the
230 wrongful or erroneous certificate of satisfaction.

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

234 c. The procedure authorized by this subsection for the release of a deed of trust *or judgment lien*
235 shall constitute an optional method of accomplishing a release of a deed of trust *or judgment lien*
236 secured by property in the Commonwealth. The nonuse of the procedure authorized by this subsection
237 for the release of a deed of trust *or judgment lien* shall not give rise to any liability or any cause of
238 action whatsoever against a settlement agent or any title insurance company by any obligated party or
239 anyone succeeding to or assuming the interest of the obligated party.

240 5. Applicability.

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

244 subsection for the release of a judgment lien may be used to effect the release of such judgment lien
245 after July 1, 2021, regardless of when the judgment lien was created, assigned, or satisfied by payment
246 made by the settlement agent.

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

251 c. The procedure authorized by this subsection applies only to the full and complete release of a deed
252 of trust or judgment lien. Nothing in this subsection shall be construed to authorize the partial release of
253 property from a deed of trust or judgement lien or otherwise permit the execution or recordation of a
254 certificate of partial satisfaction.