

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 550

An Act to amend the Code of Virginia by adding in Title 55.1 a chapter numbered 31, consisting of sections numbered 55.1-3100 through 55.1-3104, relating to judgment liens; release of specific property.

[H 2184]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55.1 a chapter numbered 31, consisting of sections numbered 55.1-3100 through 55.1-3104, as follows:

CHAPTER 31.

RELEASE OF SPECIFIC PROPERTY FROM JUDGMENT LIENS.

§ 55.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Date of notice" means the date the notice is dispatched by one of the enumerated methods of notice.

"Judgment lien" includes a judgment lien pursuant to § 8.01-458 but does not include any lien in favor of the federal, state, or local government, or any political subdivision thereof, or a lien arising from a judgment in excess of \$25,000, exclusive of interest and costs, as of the date of the award, or any judgement lien that was created or recorded within the immediately preceding three years.

"Lien creditor" or "creditor" means the holder, payee, or obligee of a judgment lien and includes the lien creditor as noted on the recorded judgment or abstract of judgment and his successor in interest, including any assignee noted on a recorded assignment or notice of assignment.

"Notice" means notice given in writing and sent by (i) certified mail, return receipt requested; (ii) commercial overnight delivery service for same day or next business day delivery; or (iii) the United States Postal Service for next business day delivery. The date of notice shall be stated in such notice.

"Property" means the piece or pieces of real property that are the subject of the settlement and cited on the notice and release.

"Settlement agent" means the same as it is defined in § 55.1-1000.

§ 55.1-3101. Release of judgment lien by settlement agent; notice to lien creditor.

A. A settlement agent may release property from a judgment lien in accordance with the provisions of this section if (i) the settlement agent has made a written request for a payoff amount from the lien creditor and his counsel of record, if any, as reflected in the judgment, judgment abstract, or any certificate of extension filed in the land records; (ii) the lien creditor (a) has not responded to such request within 15 days or (b) is unable to be located by the settlement agent after attempts at notice are made as provided in subsection B; (iii) the settlement agent has delivered or attempted to deliver a notice of intent to release pursuant to subsection C and the lien creditor has not responded as required by this section; and (iv) the owner of the property attests in an affidavit that (a) the owner has paid all or a portion of the judgment but in good faith does not have knowledge of the judgment balance or (b) the owner is not the judgment debtor and has no knowledge of the judgment balance. In such affidavit, such owner shall attest that he has exercised due diligence to locate the creditor and obtain a payoff amount, if the judgment is outstanding, and that all attempts to reach such creditor have been unsuccessful.

B. A settlement agent intending to release a specific piece of property from a judgment lien pursuant to this section shall deliver or attempt to deliver to the lien creditor and his counsel of record, if any, by certified mail, commercial overnight delivery service, or the United States Postal Service, a notice of intent to release and a copy of the release to be recorded.

C. The notice of intent to release shall contain (i) the name and current contact information of the settlement agent; (ii) a copy of the recorded judgment or judgment abstract and a copy of any related recorded assignment or notice of assignment of the judgment; and (iii) the street address, tax parcel number, or other identifying information for the property that is the subject of the release. The notice of intent to release shall conform substantially to the following form:

NOTICE OF INTENT TO RELEASE

(Date of notice)

Notice is hereby given to you concerning the judgment lien described on the certificate of release, a copy of which is attached to this notice, as follows:

1. The settlement agent identified below made a written request more than 15 days ago for payoff amounts related to the judgment lien cited in the attached recorded abstract of judgment incident to the conveyance or encumbrance of certain property identified below. Said payoff has not been provided as of the date of this notice.

2. The undersigned will release only the property from the judgment lien described in this notice unless, within 30 days from the date of notice, the lien creditor sends to the undersigned by (i) certified mail, return receipt requested; (ii) commercial delivery service for same day or next business day delivery; (iii) the United States Postal Service for next business day delivery; or (iv) electronic mail or facsimile transmittal to the electronic mail address or fax number provided by the settlement agent a notice stating that the lien creditor objects to the release of the property from the judgment lien without payment to the lien creditor and provides a complete payoff amount. Notice shall be sent to the address stated on this form.

(Name of settlement agent)

(Virginia RESA registration number of settlement agent)

(Address of settlement agent)

(Telephone number, fax number, and email address of settlement agent)

D. For the purposes of this chapter, a settlement agent shall maintain, for the lifetime of the judgement lien, all documents related to exercising due diligence to locate the creditor.

§ 55.1-3102. Certificate of release and affidavit of settlement agent.

A. If, within 30 days following the date of notice of the notice of intent to release pursuant to § 55.1-3101, the lien creditor has not sent by (i) certified mail, return receipt requested, (ii) commercial delivery service for same day or next business day delivery, (iii) the United States Postal Service for next business day delivery, or (iv) electronic mail or facsimile transmittal to the electronic mail address or fax number provided by the settlement agent a complete payoff amount, the settlement agent may execute, acknowledge, and file with the clerk of court of the jurisdiction in which the property is located a certificate of release. Such certificate of release shall include (a) an affidavit pursuant to subsection B, (b) a copy of the notice of intent to release in accordance with § 55.1-3101, and (c) the owner's affidavit pursuant to § 55.1-3101. The certificate of release shall include the settlement agent's registration number issued by a licensing authority as defined in § 55.1-1000. The certificate of release shall note that the settlement agent has the authority to execute the certificate of release pursuant to this section. After filing or recording the certificate of release, the settlement agent shall mail a copy of such certificate of release to the lien creditor. Failure to mail a copy of the recorded certificate of release to the lien creditor shall not affect the validity of a certificate of release that otherwise satisfies the requirements of this section and shall release the property from the judgment lien as provided by this section.

B. The certificate of release shall include an affidavit that certifies that (i) the settlement agent has not received a payoff amount as shown on the recorded abstract of judgment from the lien creditor, his assignee, or his representative, nor has the settlement agent received any objection to the release of the property from the judgment lien; (ii) the person executing the certificate of release is the settlement agent; (iii) the notice of intent to release was delivered to the lien creditor or delivery was attempted at the address shown on the recorded abstract of judgment and the settlement agent has received evidence of such delivery or attempted delivery; and (iv) the property is released from the judgment lien. The certificate of release and accompanying affidavit shall conform substantially to the following form:

CERTIFICATE OF RELEASE and AFFIDAVIT OF SETTLEMENT AGENT

The undersigned hereby certifies and affirms that, in accordance with the provisions of § 55.1-3101 of the Code of Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a settlement agent as defined in subsection A of § 55.1-3100 of the Code or a duly authorized officer, director, member, partner, or employee of such settlement agent; (b) the settlement agent, after exercising due diligence to locate the creditor, has sent to the lien creditor in the manner specified in subsection B of § 55.1-3101 of the Code the notice of intent to release the property from the lien of the below referenced judgment lien and possesses evidence of receipt of such notice by the lien creditor or evidence of failed attempts; (c) the settlement agent has not received a payoff amount from the lien creditor shown on the recorded abstract of judgment or any assignee or representative thereof or any objection to the release of the property from the lien of the judgment lien; and (d) the lien of the judgment lien is hereby released as to the subject property.

(Name of judgment debtor(s))

(Name of judgment lien creditor shown on recorded abstract of judgment)

(Recordation information for recorded judgment lien)

(Property subject to the release)

(Name of settlement agent)

(Virginia RESA registration number of settlement agent)

(Authorized signer and title)

(Notary clause)

§ 55.1-3103. Effect of filing of certificate of release.

A certificate of release filed or recorded with the clerk of court in the jurisdiction in which the property is located, provided that such certificate of release satisfies all the requirements prescribed in § 55.1-3102, shall operate as a release of a judgment lien of the specified property. Such certificate of release shall not be construed to release any other real property owned by the judgment debtor or

judgment debtors at the time of filing or any future interest in real property acquired by such judgment debtor or judgment debtors. In the absence of gross negligence or willful misconduct, the clerk of the circuit court of any jurisdiction shall be immune from civil liability arising from any act or omission relating to such clerk's compliance with the provisions of this chapter.

§ 55.1-3104. Liability for execution, filing, recording wrongful or erroneous certificate.

A. A certificate of release executed and filed or recorded wrongfully or erroneously by a settlement agent shall not relieve a party or his successor, assignee, or representative from obligation or liability for the debt or other obligations secured by the judgment lien.

B. A settlement agent who negligently executes and files or records an erroneous certificate of release shall be liable to the lien creditor for actual damages sustained due to the recording of such certificate of release. The minimum amount of such actual damages shall be the amount received by the owner of the property in the settlement and shall not exceed the outstanding balance of the unpaid judgment at the time of the sale of the property, plus attorney fees.

C. The procedure authorized by this chapter for the release of a judgment lien shall constitute an optional method of accomplishing a release of a judgment lien secured by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a judgment lien shall not give rise to any liability or any cause of action whatsoever against a settlement agent by any obligated party or anyone succeeding to or assuming the interest of the obligated party.

2. That the provisions of this act may be applied to a judgment lien created or recorded prior to July 1, 2023.