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## HOUSE BILL NO. 2184

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 27, 2023)

(Patron Prior to Substitute—Delegate Coyner)

A BILL 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.

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.

"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 utilized all available means 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.

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

68 (Name of settlement agent)

69 (Virginia RESA registration number of settlement agent)

70 (Address of settlement agent)

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

72 **§ 55.1-3102. Certificate of release and affidavit of settlement agent.**

73 A. If, within 30 days following the date of notice of the notice of intent to release pursuant to  
74 § 55.1-3101, the lien creditor has not sent by (i) certified mail, return receipt requested, (ii) commercial  
75 delivery service for same day or next business day delivery, (iii) the United States Postal Service for  
76 next business day delivery, or (iv) electronic mail or facsimile transmittal to the electronic mail address  
77 or fax number provided by the settlement agent a complete payoff amount, the settlement agent may  
78 execute, acknowledge, and file with the clerk of court of the jurisdiction in which the property is located  
79 a certificate of release. Such certificate of release shall include (a) an affidavit pursuant to subsection  
80 B, (b) a copy of the notice of intent to release in accordance with § 55.1-3101, and (c) the owner's  
81 affidavit pursuant to § 55.1-3101. The certificate of release shall include the settlement agent's  
82 registration number issued by a licensing authority as defined in § 55.1-1000. The certificate of release  
83 shall note that the settlement agent has the authority to execute the certificate of release pursuant to this  
84 section. After filing or recording the certificate of release, the settlement agent shall mail a copy of such  
85 certificate of release to the lien creditor. Failure to mail a copy of the recorded certificate of release to  
86 the lien creditor shall not affect the validity of a certificate of release that otherwise satisfies the  
87 requirements of this section and shall release the property from the judgment lien as provided by this  
88 section.

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

97 **CERTIFICATE OF RELEASE and AFFIDAVIT OF SETTLEMENT AGENT**

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

109 (Name of judgment debtor(s))

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

111 (Recordation information for recorded judgment lien)

112 (Property subject to the release)

113 (Name of settlement agent)

114 (Virginia RESA registration number of settlement agent)

115 (Authorized signer and title)

116 (Notary clause)

117 **§ 55.1-3103. Effect of filing of certificate of release.**

118 A certificate of release filed or recorded with the clerk of court in the jurisdiction in which the  
119 property is located, provided that such certificate of release satisfies all the requirements prescribed in  
120 § 55.1-3102, shall operate as a release of a judgment lien of the specified property. Such certificate of  
121 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.

**§ 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.**