

SUBCOMMITTEE:

1 HOUSE BILL NO. 2099
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee for Courts of Justice
4 on _____)
5 (Patron Prior to Substitute--Delegate Coyner)

6 A BILL to amend and reenact §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia, relating to
7 limitations on enforcement of judgments; judgment liens; settlement agents.

8 **Be it enacted by the General Assembly of Virginia:**

9 **1. That §§ 8.01-251, 8.01-458, and 55.1-339 of the Code of Virginia are amended and reenacted as**
10 **follows:**

11 **§ 8.01-251. Limitations on enforcement of judgments.**

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

16 B. The limitation prescribed in subsection A may be extended ~~on motion of the judgment creditor~~
17 ~~or his assignee with notice to the judgment debtor, and an order of the circuit court of the jurisdiction in~~
18 ~~which the judgment was entered to show cause why the period for issuance of execution or bringing of an~~
19 ~~action should not be extended. Any such motion shall be filed within the 20-year period from the date of~~
20 ~~the original judgment or from the date of the latest extension thereof. If upon the hearing of the motion~~
21 ~~the court decides that there is no good cause shown for not extending the period of limitation, the order~~
22 ~~shall so state and the period of limitation mentioned in subsection A shall be extended for an additional~~
23 ~~20~~ 10 ~~years from the date of filing of the motion to extend. Additional extensions may be granted upon~~
24 ~~the same procedure, subject in each case to the recording provisions prescribed in § 8.01-458. This~~
25 ~~extension procedure is subject to the exception that if the action is against a personal representative of a~~
26 ~~decedent, the motion shall be within two years from the date of his qualification, the extension may be for~~

27 ~~only two years from the time of the filing of the motion, and there may be only one such extension by the~~
28 recording of a certificate in the form provided in subsection G prior to the expiration of the limitation
29 period prescribed herein in the clerk's office in which such lien is recorded and executed by either the
30 judgment lien creditor or by his duly authorized attorney-in-fact, or agent. Recording of the certificate
31 shall extend the limitations of the right to enforce such judgment lien for 10 years from the date of the
32 recording of the certificate. The clerk of the court shall index the certificate in both names in the index
33 of the judgment lien book and give reference to the book and page in which the original lien is recorded.

34 C. No suit shall be brought to enforce the lien of any judgment, including judgments in favor of
35 the Commonwealth, upon which the right to issue an execution or bring an action is barred by other
36 subsections of this section, nor shall any suit be brought to enforce the lien of any judgment against the
37 lands which have been conveyed by the judgment debtor to a grantee for value, unless the same be brought
38 within ~~10~~ five years from the due recording of the deed from such judgment debtor to such grantee and
39 unless a notice of lis pendens shall have been recorded in the manner provided by § 8.01-268 before the
40 expiration of such ~~10-year~~ five-year period.

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

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

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

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

57 G. Any extension of the limitations of the right to enforce a judgment shall conform substantially
 58 with the following form:

59 CERTIFICATE OF EXTENSION OF
 60 LIMITATION OF RIGHT TO ENFORCE JUDGMENT LIEN

61 Place of Record _____

62 Date Judgment Docketed _____

63 Judgment Lien Book _____ Book Page _____

64 Name of Creditor(s) _____

65 Name of Debtor(s) _____

66 I/we, the judgment lien creditor(s), do hereby certify that the aforementioned judgment lien be
 67 extended 10 years from the date of my/our endorsement upon this certificate.

68 Judgment Creditor/Attorney-in-Fact/Agent: _____

69 Commonwealth of Virginia

70 County/City of _____

71 Subscribed, sworn to and acknowledged before me by

72 _____ this _____ day of _____, 20 _____

73 My Commission expires: _____

74 Notary Public: _____

75 **§ 8.01-458. From what time judgment to be a lien on real estate; docketing revived judgment.**

76 Every judgment for money rendered in this Commonwealth by any state or federal court or by
 77 confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant
 78 in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the
 79 judgment lien docket of the clerk's office of the county or city where such land is situated; ~~provided,~~

80 ~~however, when a judgment is revived under the provisions of § 8.01-251, that such revived judgment shall~~
81 ~~not be a lien as prescribed in this section unless and until such judgment is again docketed as provided~~
82 ~~herein. In such event the lien shall be effective from the date of the original docketing.~~ Any judgment or
83 decree properly docketed under the provisions of this section shall, if the real estate subject to the lien of
84 such judgment has been annexed to or merged with an adjoining city subsequent to such docketing, be
85 deemed to have been docketed in the proper clerk's office of such city.

86 **§ 55.1-339. Release of deed of trust or other lien.**

87 A. As used in this section:

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

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

91 "Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee, or
92 obligee of a note, bond, or other evidence of debt and shall embrace the lien creditor or his successor in
93 interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond, or
94 other evidence of debt.

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

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

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

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

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

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

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

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

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

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

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

138 ~~If~~ Except as provided for judgment lien creditors in § 8.01-454, if the lien creditor has not, within
139 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it
140 to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor.
141 No settlement agent or attorney may take an assignment of the right to the \$500 penalty or facilitate such
142 an assignment to any third party designated by the settlement agent or attorney. Following the 90-day
143 period, if the amount forfeited is not paid within 10 business days after written demand for payment is
144 sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement,
145 the lien creditor shall pay any court costs and reasonable attorney fees incurred by the obligor in collecting
146 the forfeiture.

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

151 C. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent,
152 attorney, or attorney-in-fact or any person to whom the instrument evidencing the indebtedness has been
153 endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with
154 the certificate of satisfaction by the creditor, or his duly authorized agent, attorney, or attorney-in-fact,
155 with such clerk, stating that the debt therein secured and intended to be released or discharged has been
156 paid to such creditor or his agent, attorney, or attorney-in-fact, who was entitled and authorized to receive
157 such debt when the debt was satisfied.

158 D. When the certificate of satisfaction has been signed and the affidavit required by subsection C
159 has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of
160 satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is

161 entered and, if the encumbrance is by deed of trust, as a reconveyance of the legal title as fully and
162 effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

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

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

169 1. Notice to lienholder.

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

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

181 NOTICE OF INTENT TO RELEASE

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

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

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

195 (Name of settlement agent)

196 (Signature of settlement agent or title insurance company)

197 (Address of settlement agent or title insurance company)

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

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

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

202 a. If, within 90 days following the day on which the settlement agent or title insurance company
203 mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or
204 servicer does not send by certified mail or commercial overnight delivery service or the United States
205 Postal Service, and a receipt obtained, to the settlement agent or title insurance company a notice stating
206 that a release of the deed of trust or judgment lien has been recorded in the clerk's office or that the
207 obligation secured by the deed of trust or judgment lien has not been paid in full or that the lien creditor
208 or servicer otherwise objects to the release of the deed of trust or judgment lien, the settlement agent or
209 title insurance company may execute, acknowledge, and file with the clerk of court of the jurisdiction in
210 which the deed of trust or judgment lien is recorded a certificate of satisfaction, which shall include (i) the
211 affidavit described in subdivision 2 b and (ii) a copy of the notice of intent to release that was sent to the
212 ~~lender~~ lien creditor, the servicer, or both. The certificate of satisfaction shall include the settlement agent's
213 RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation

214 Commission, that was in effect at the time the settlement agent paid the obligation secured by the deed of
215 trust or judgment lien or obtained written confirmation from the lien creditor that such obligation has a
216 zero balance. The certificate of satisfaction shall note that the individual executing the certificate of
217 satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the
218 certificate of satisfaction, the settlement agent or title insurance company shall mail a copy of the
219 certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction
220 otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the
221 RESA registration number placed thereon or the failure to mail a copy of the recorded certificate of
222 satisfaction to the lien creditor or servicer and shall nevertheless release the deed of trust or judgment lien
223 described therein as provided in this subsection.

224 b. The certificate of satisfaction used by the settlement agent or title insurance company shall
225 include an affidavit certifying (i) that the settlement agent has satisfied the obligation secured by the deed
226 of trust or judgment lien described in the certificate, (ii) that the settlement agent or title insurance
227 company possesses satisfactory evidence of payment of the obligation secured by the deed of trust or
228 judgment lien described in the certificate or written confirmation from the lien creditor that such obligation
229 has a zero balance, (iii) that the lien of the deed of trust or judgment lien may be released, (iv) that the
230 person executing the certificate is the settlement agent or the title insurance company or is duly authorized
231 to act on behalf of the settlement agent or title insurance company, and (v) that the notice of intent to
232 release was delivered to the lien creditor or servicer and the settlement agent or title insurance company
233 received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be
234 substantially in the following form:

235 AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

236 The undersigned hereby certifies that, in accordance with the provisions of § 55.1-339 of the Code
237 of Virginia of 1950, as amended and in force on the date hereof (the Code), (a) the undersigned is a
238 settlement agent or title insurance company as defined in subsection A of § 55.1-339 of the Code or a duly
239 authorized officer, director, member, partner, or employee of such settlement agent or title insurance
240 company; (b) the settlement agent has satisfied the obligation secured by the deed of trust or judgment

241 lien; (c) the settlement agent or title insurance company possesses satisfactory evidence of the payment of
242 the obligation secured by the deed of trust or judgment lien described in the certificate recorded herewith
243 or written confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement
244 agent or title insurance company has delivered to the lien creditor or servicer in the manner specified in
245 subdivision E 1 of § 55.1-339 of the Code the notice of intent to release and possesses evidence of receipt
246 of such notice by the lien creditor or servicer; and (e) the lien of the deed of trust or judgment lien is
247 hereby released.

248 _____

249 (Authorized signer)

250 3. Effect of filing.

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

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

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

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

266 c. The procedure authorized by this subsection for the release of a deed of trust or judgment lien
267 shall constitute an optional method of accomplishing a release of a deed of trust or judgment lien secured

268 by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the
269 release of a deed of trust or judgment lien shall not give rise to any liability or any cause of action
270 whatsoever against a settlement agent or any title insurance company by any obligated party or anyone
271 succeeding to or assuming the interest of the obligated party.

272 5. Applicability.

273 a. The procedure authorized by this subsection for the release of a deed of trust may be used to
274 effect the release of a deed of trust after July 1, 2002, regardless of when the deed of trust was created,
275 assigned, or satisfied by payment made by the settlement agent. The procedure authorized by this
276 subsection for the release of a judgment lien may be used to effect the release of such judgment lien after
277 July 1, 2021, regardless of when the judgment lien was created, assigned, or satisfied by payment made
278 by the settlement agent.

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

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

287 **2. That the provisions of § 8.01-251 of the Code of Virginia, as amended by this act, shall affect**
288 **judgments recorded on or after July 1, 2021.**

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