

1 CHAPTER ~~4~~ X [3].

2 FORM AND EFFECT OF DEEDS AND COVENANTS; LIENS.

3 **Drafting note: Existing Chapter 4, Form and Effect of Deeds and Covenants;**
4 **Liens, is retained as proposed Chapter XX [3]. This proposed chapter is divided into**
5 **four articles: Article 1, Form ad Effect of Deeds: Easements; Article 2, Form and Effect**
6 **of Deeds of Trust; Sales Thereunder; Assignments; Releases; Article 3, Mortgage**
7 **Satisfaction; Article 4, Effect of Certain Expressions in Deeds. Existing Article 4, the**
8 **Residential Ground Rent Act, consisting of existing §§ 55-79.01 through 55-79.06, is**
9 **relocated to proposed Chapter XX of Subtitle III, Rental Conveyances.**

10 Article 1.

11 Form and Effect of Deeds ~~and Leases;~~ Easements.

12 **Drafting note: Existing Article 1, relating to the form and effect of deeds, is**
13 **retained. Existing §§ 55-57 and 55-57.1, dealing with deeds of lease, are logically**
14 **relocated to proposed Chapter XX of Subtitle III. The proposed article is retitled to**
15 **reflect the sections related to easements.**

16 § ~~55-48~~ 55.1-xxx. Form of a deed.

17 Every deed and corrected or amended deed may be made in the following form, or to
18 the same effect: "This deed, made the _____ day of _____, in the year _____,
19 between (here insert names of parties as grantors or grantees), witnesseth: that in consideration
20 of (here state the consideration, nominal or actual), the said _____ does (or
21 do) grant (or grant and convey) unto the said _____, all (here describe the
22 property or interest therein to be conveyed, including the name of the city or county in which
23 the property is located, and insert covenants or any other provisions). Witness the following
24 signature (or signatures)."

25 **Drafting note: No change.**

26 § ~~55-49~~ 55.1-xxx. How construed.

27 ~~Every such~~ Unless the deed provides otherwise, any deed conveying ~~lands~~ land shall,
28 ~~unless an exception be made therein,~~ be construed to include all the estate, right, title, and
29 interest ~~whatever,~~ both at law and in equity, of the grantor in or to such ~~lands~~ land.

30 **Drafting note: Language is updated for modern usage.**

31 § ~~55-49.1~~ 55.1-xxx. Construction of generic terms.

32 In the interpretation of deeds, adopted persons and persons born out of wedlock are
33 included in class gift terminology or terms of relationship in accordance with rules for
34 determining relationships for purposes of intestate succession unless a contrary intent appears
35 on the face of the deed. In determining the intent of a grantor, adopted persons are
36 presumptively included in such terms as "children," "issue," "kindred," "heirs," "relatives,"
37 "~~deseendents~~" "descendants," or similar words of classification and are presumptively
38 excluded by such terms as "natural children," "issue of the body," "blood kindred," "heirs of
39 the body," "blood relatives," "~~deseendents~~" "descendants of the body," or similar words of
40 classification.

41 **Drafting note: Technical changes.**

42 § ~~55-50~~ 55.1-xxx. Appurtenances, etc., included in deed of land; ~~relocation of~~
43 easement.

44 Every deed conveying land shall be construed to include all buildings, privileges, and
45 appurtenances of every kind belonging to ~~the lands therein embraced~~ such land unless an
46 exception ~~therefor~~ is made in the deed.

47 § 55.1-xxx. Relocation of easement.

48 The owner of land ~~which that~~ is subject to an easement for the purpose of ingress and
49 egress may relocate the easement, on the servient estate, by recording in the office of the clerk
50 of the circuit court of the county or city ~~wherein in which~~ the easement or any part thereof of
51 such easement is located, a written agreement evidencing the consent of all affected persons
52 and setting forth the new location of the easement. In the absence of such written agreement,

53 the owner of the land ~~which~~ that is subject to such easement may seek relocation of the
54 easement on the servient estate upon petition to the circuit court and notice to all parties in
55 interest. The petition shall be granted if, after a hearing held, the court finds that (i) the
56 relocation will not result in economic damage to the parties in interest, (ii) there will be no
57 undue hardship created by the relocation, and (iii) the easement has been in existence for not
58 less than ~~ten~~ 10 years.

59 **Drafting note: Existing § 55-50 is divided into two proposed sections because it**
60 **contains two distinct topics: appurtenances and relocation of an easement. Technical**
61 **changes are made.**

62 § ~~55-50.1~~ 55.1-xxx. Enjoyment of easement.

63 Unless otherwise provided for in the terms of an easement, the owner of a dominant
64 estate shall not use an easement in a way that is not reasonably consistent with the uses
65 contemplated by the grant of the easement, and the owner of the servient estate shall not
66 engage in an activity or cause to be present any objects either upon the burdened land or
67 immediately adjacent ~~thereto~~ which to such land that unreasonably interferes with the
68 enjoyment of the easement by the owner of the dominant estate. ~~The term~~ For the purposes of
69 this section, "object" ~~as contained in this section shall~~ does not include any fence, electric
70 fence, cattle guard, gate, or division fence adjacent to such easement as those terms are defined
71 in §§ ~~55-298.1~~ 55.1-xxx through ~~55-322~~ 55.1-xxx. Any violation of this section may be
72 deemed a private nuisance, provided, however, that the remedy for a violation of this section
73 shall not in any manner impair the right to any other relief that may be applicable at law or in
74 equity.

75 **Drafting note: Technical changes are made.**

76 § ~~55-50.2~~ 55.1-xxx. Utility easements.

77 A. For the purposes of this section, "utility services" means any products, services, and
78 equipment related to energy, telecommunications, water, and sewerage.

79 B. Where an easement, whether appurtenant or gross, is expressly granted by an
80 instrument recorded on or after July 1, 2006, that imposes on a servient tract of land a covenant
81 (i) to provide an easement in the future for the benefit of utility services; (ii) to relocate,
82 construct, or maintain facilities owned by ~~a~~ an entity that provides utility services; or (iii) to
83 pay the cost of such relocation, construction, or maintenance, such covenant shall be deemed
84 for all purposes to touch and concern the servient tract, to run with the servient tract, its
85 successors, and assigns for the benefit of the entity providing utility services, its successors,
86 and assigns.

87 ~~"Utility services" for the purposes of this section, means any products, services and~~
88 ~~equipment related to energy, telecommunications, water and sewerage.~~

89 **Drafting note: Technical changes.**

90 § ~~55-50.3~~ 55.1-xxx. Public road easements; maintenance and improvements.

91 Whenever a public road that has never been abandoned but is no longer publicly
92 maintained serves as access for more than one property owner and operates as the primary
93 source of ingress and egress for that property, any one of the property owners may maintain,
94 repair, or improve the road at his own expense without the express permission of the other
95 property owners but only after administrative review by the local government. All other
96 property owners shall be notified by mail of any pending maintenance, repair, or
97 improvements prior to commencement of the work. Nothing in this section, ~~however~~, shall be
98 construed as allowing the property owner who is doing the maintenance, repairs, or
99 improvements to the road to interfere with the other property owners' use of the road for
100 ingress and egress.

101 **Drafting note: Technical change.**

102 § ~~55-50.4~~ 55.1-xxx. Private roads; public use; maintenance and improvements.

103 Notwithstanding any provision of a recorded deed or plat to the contrary, a private
104 road serving a subdivision of 50 or fewer lots may be dedicated for public use and may be

105 taken into the secondary state highway system, subject to the provisions and requirements set
106 forth in §§ 33.2-335 and 33.2-336, if the owner of the fee interest in such private road obtains
107 the written consent of every lot owner in the subdivision whose lot is served by the private
108 road and the holder of any restrictive covenant or easement rights over and concerning the
109 private road prior to making such dedication and before requirements for acceptance of the
110 road into the secondary state highway system are met. Such consent shall be recorded in the
111 land records of the clerk's office of the circuit court of the county ~~wherein in which~~ the private
112 road is located.

113 **Drafting note: Technical change.**

114 § ~~55-52~~ 55.1-xxx. Conveyance of property not owned but subsequently acquired.

115 When a deed purports to convey property, real or personal, describing it with
116 reasonable certainty, ~~which that~~ the grantor does not own at the time of the execution of the
117 deed, but subsequently acquires, such deed shall, as between the parties ~~thereto~~, have the same
118 effect as if the title ~~which that~~ the grantor subsequently acquires were vested in him at the
119 time of the execution of such deed and thereby conveyed.

120 **Drafting note: Technical changes.**

121 § ~~55-53~~ 55.1-xxx. Vendor's equitable lien abolished.

122 If any person ~~hereafter convey~~ conveys any real estate and the purchase money or any
123 part thereof ~~remain~~ remains unpaid at the time of the conveyance, he shall not thereby have a
124 lien for such unpaid purchase money, unless such lien is expressly reserved on the face of the
125 conveyance.

126 **Drafting note: Technical changes.**

127 § ~~55-54~~ 55.1-xxx. Certain deeds to county real estate validated.

128 All deeds executed prior to January 1, 1920, by a county commissioner, ~~or county~~
129 commissioners, or a board of supervisors, ~~conveying that convey~~ any part of the real estate
130 previously acquired by such county for county purposes, are hereby validated, and declared

131 to have effectually passed the title to the part so conveyed even though the conveyance thereof
132 reduced the real estate of the county to an area less than the county was required by law to
133 own at the time of such conveyance.

134 **Drafting note: Technical changes.**

135 § ~~55-55~~ 55.1-xxx. Validation of sales, etc., by county courts prior to 1860.

136 All sales or leases made prior to the year 1860; by the county court, or court of monthly
137 session, of any county; of any land or building then owned by such county and situated within
138 the limits of land previously acquired by such county as a site for its courthouse and other
139 public buildings, when the consideration therefor has been fully paid and the purchaser, or
140 lessee as the case may be, and those claiming through or under him, shall have held continuous
141 possession of such land or building from January 1, 1860, until January 1, 1934, are hereby
142 validated and declared to be forever binding upon such county.

143 **Drafting note: Technical changes.**

144 § ~~55-56~~ 55.1-xxx. Deeds and writings executed for persons in military service, etc.,
145 under defective powers.

146 All deeds or other writings executed by an agent or ~~attorney in fact~~ attorney-in-fact for
147 a person in the armed forces or military service of the United States, or for a person who after
148 executing a power of attorney or agency agreement entered the armed forces or military
149 service of the United States, or for a person who departed from the United States by permission
150 or direction of any department or official of the United States in connection with work relating
151 to the prosecution of the war, when the power of attorney or agency agreement under which
152 the deed or other instrument was signed was not executed in such a manner as to be valid as
153 a sealed instrument, shall be held, and the same are hereby declared, valid and effective in all
154 respects if otherwise valid according to the law then in force.

155 The provisions of this section shall not operate to affect adversely intervening vested
156 rights.

157 **Drafting note: Technical change.**

158 § ~~55-57.2~~ 55.1-xxx. Effect of option; recording.

159 A. Any option to purchase real estate, and any memorandum, renewal, or extension
160 ~~thereof of such option~~, shall be void as to (i) all purchasers for valuable consideration without
161 notice ~~who are~~ not parties ~~thereto to such instrument~~ and (ii) lien creditors, until such
162 instrument is recorded in the county or city ~~where in which~~ the property embraced in the
163 option, memorandum, renewal, or extension is located.

164 B. Notwithstanding any rule of law or equity denominated "fettering," "clogging the
165 equity of redemption" or "claiming a collateral advantage" or any similar rule:

166 1. A party secured by a mortgage or deed of trust, without adversely affecting his
167 security interest, may acquire from a borrower any direct or indirect present or future
168 ownership interest in the collateral encumbered thereby, including rights to any income,
169 proceeds, or increase in value derived from such collateral; and

170 2. An option to acquire an interest in real estate granted to a party secured by a
171 mortgage or deed of trust, other than an option granted to such party in connection with a
172 mortgage loan as defined in § 6.2-1600, is effective according to its terms and takes priority
173 as provided in subsection A ~~of this section~~ if the right to exercise the option is not dependent
174 upon the occurrence of a default under the mortgage or deed of trust.

175 **Drafting note: Technical changes.**

176 Article 2.

177 Form and Effect of Deeds of Trust; Sales Thereunder; Assignments; Releases.

178 **Drafting note: Existing Article 2 is retained and contains provisions pertaining to**
179 **the effect of deeds of trust, sales thereunder, assignments, and releases.**

180 § ~~55-58~~ 55.1-xxx. Form of deed of trust to secure debts, etc.

181 A deed of trust to secure debts or indemnify sureties may be in the following form, or
182 to the same effect: "This deed, made the _____ day of _____, in the year _____,

183 between _____ (the grantor) and _____ (the
184 trustee), witnesseth: that the said _____ (the grantor) does (or do) grant
185 (or grant and convey) unto the said _____ (the trustee), the following
186 property (here describe it): In trust to secure (here describe the debts to be secured or the
187 sureties to be indemnified and insert covenants or any other provisions the parties may agree
188 upon). Witness the following signature (or signatures)."

189 **Drafting note: No change.**

190 § ~~55-58.1~~ 55.1-xxx. Requirements for trustees.

191 A. No person may be named or act, in person or by agent or attorney, as the trustee of
192 a deed of trust conveying property to secure the payment of money or the performance of an
193 obligation, either individually or as one of several trustees, unless such person is a resident of
194 the Commonwealth. No corporation, limited liability company, partnership, or other entity
195 may be named or act as the trustee or as one of the trustees of a deed of trust conveying
196 property to secure the payment of money or the performance of an obligation, unless it is
197 organized under the laws of the Commonwealth or of the United States ~~of America~~. However,
198 the foregoing requirements shall not apply to any deed of trust conveying property lying partly
199 in the Commonwealth and partly outside the Commonwealth or to a deed of trust conveying
200 property in the Commonwealth to secure bonds or obligations that are also secured by one or
201 more deeds of trust or mortgages conveying property outside of the Commonwealth.

202 B. A deed of trust conveying property to secure the payment of money or the
203 performance of an obligation shall state the full residence or business address of the trustee ~~or~~
204 ~~trustees~~ named therein in such deed of trust, including street address and zip code, ~~which and~~
205 such address shall be valid for purposes of all notices under the deed of trust to the trustee.
206 Such address of the trustee ~~or trustees~~ may be changed by amendment of the deed of trust or
207 by a separate instrument executed by the trustee ~~or trustees~~, or by the beneficiary of such deed

208 of trust, stating the changed address and otherwise in recordable form, and recorded in the
209 office of the clerk of the circuit court where the deed of trust was recorded.

210 C. Notwithstanding any other provisions of this section, if any deed of trust is ~~admitted~~
211 recorded by a clerk ~~for recordation~~, it shall be conclusively presumed that such deed of trust
212 complies with all the requirements of this section, and it shall be deemed to be validly
213 recorded.

214 D. All deeds of trusts, mortgages, bonds, or other instruments recorded by ~~the a~~ clerk
215 prior to January 1, 1999, without the residence or business address of the trustee ~~or trustees~~
216 named ~~therein in such deed of trust~~ shall be valid for all purposes as if such address had been
217 named ~~therein~~, if such recordation ~~be is~~ otherwise valid according to the law then in force,
218 provided that this section shall not affect any right or remedy of any third party that accrued
219 after the recordation of ~~said such~~ instrument or before July 1, 1960.

220 **Drafting note: In subsections B and D, "or trustees" is deleted on the basis of §**
221 **1-227, which states that throughout the Code any word used in the singular includes the**
222 **plural. Technical changes.**

223 § ~~55-58.2~~ 55.1-xxx. Credit line deed of trust defined; relative priority of credit line
224 deed of trust and other instruments of judgment.

225 A. For the purpose of this section:

226 "Beneficiary" means the noteholder, lender, or other party or parties identified in the
227 credit line deed of trust as secured thereby. In the case of a credit line deed of trust that
228 identifies a party acting as agent for all of the lenders or parties secured by a credit line deed
229 of trust, such agent shall be the beneficiary for purposes ~~hereof of this section~~.

230 "Credit line deed of trust" means any deed of trust, mortgage, bond, or other
231 instrument, entered into after July 1, 1982, in which title to real property located in the
232 Commonwealth is conveyed, transferred, encumbered, or pledged to secure payment of
233 money, including advances, or other extensions of credit, to be made in the future.

234 B. A credit line deed of trust shall set forth on the front page ~~thereof~~, either in capital
235 letters or in language underscored, the words "THIS IS A CREDIT LINE DEED OF TRUST."
236 Such phrase shall convey notice to all parties that advances or other extensions of credit are
237 to be made or are contemplated to be made from time to time against the security described
238 in the credit line deed of trust. Such credit line deed of trust shall specify ~~therein~~ the maximum
239 aggregate amount of principal to be secured at any one time.

240 C. From the date and actual time of the recording of a credit line deed of trust, the lien
241 ~~thereof~~ shall have priority (i) as to all other deeds, conveyances, or other instruments, or
242 contracts in writing, ~~which that~~ are unrecorded as of such date and time of recording and of
243 which the beneficiary has no knowledge or notice and (ii) as to judgment liens subsequently
244 docketed, except as provided in subsection D. Such priority shall extend to any advances or
245 other extensions of credit made following the recordation of the credit line deed of trust.
246 Amounts outstanding, together with interest ~~thereon~~, and other items provided by § ~~55-59~~
247 55.1-xxx, shall continue to have priority until paid or curtailed. Mechanics' liens created under
248 Title 43 shall continue to enjoy the same priority as created by that title. Purchase money
249 security interests in goods and fixtures shall have the same priority as provided in Subpart 3
250 (§ 8.9A-317 et seq.) of Part 3 of Title 8.9A.

251 D. Notwithstanding the provisions of subsections A, B, and C, if a judgment creditor
252 gives written notice to the beneficiary of record at the address indicated in the credit line deed
253 of trust, such credit line deed of trust shall have no priority as to such judgment for any
254 advances or extensions of credit made under such credit line deed of trust from the day
255 following receipt of that notice except those ~~which that~~ have been unconditionally and
256 irrevocably committed prior to such date.

257 E. In addition to the language specified in subsection B, the credit line deed of trust
258 shall set forth the name of the beneficiary and the address at which communications may be
259 mailed or delivered to the beneficiary. Such name or address may be changed or modified by

260 duly recorded instrument executed by the beneficiary only. If the note or indebtedness secured
261 by the credit line deed of trust is assigned or transferred, the name and address of the new
262 beneficiary may be set forth in the certificate of transfer provided by § ~~55-66.04~~ [55.1-xxx](#).
263 Such original name or address, or if changed, such changed name or address, shall be the
264 address for delivery of notices contemplated by this section. Receipt of notice at such address
265 shall be deemed receipt by the beneficiary.

266 F. The grantor may require, at any time, a modification under the credit line deed of
267 trust, whereby any priority over subsequently recorded deeds of trust is surrendered as to
268 future advances or other extensions of credit, which advances or extensions of credit are in
269 the discretion of the party secured by the credit line deed of trust.

270 G. Notwithstanding the provisions of subsections A, B, and C, if a deed of trust under
271 this section is a subordinate mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#), upon
272 the recording of a refinance mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#), the
273 credit line deed of trust shall retain the same subordinate position with respect to the refinance
274 mortgage as it had with the prior mortgage, as defined in subsection A of § ~~55-58.3~~ [55.1-xxx](#),
275 provided that the refinance mortgage complies with the requirements of § ~~55-58.3~~ [55.1-xxx](#).

276 **Drafting note: Technical changes.**

277 § ~~55-58.3~~ [55.1-xxx](#). Priority of residential refinance mortgage over subordinate
278 mortgage.

279 A. As used in this section:

280 "Prior mortgage" means a mortgage, deed of trust, or other instrument encumbering
281 or conveying an interest in residential real estate containing not more than one dwelling unit
282 to secure a financing.

283 "Refinance mortgage" means a mortgage, deed of trust, or other instrument
284 encumbering or conveying an interest in residential real estate containing not more than one
285 dwelling unit to secure a refinancing.

286 "Refinancing" means the replacement of a loan secured by a prior mortgage with a
287 new loan secured by a refinance mortgage and the payment in full of the debt owed under the
288 original loan secured by the prior mortgage.

289 "Subordinate mortgage" means a mortgage or deed of trust securing an original
290 principal amount not exceeding \$150,000, encumbering or conveying an interest in residential
291 real estate containing not more than one dwelling unit that is subordinate in priority (i) under
292 subdivision A 1 of § ~~55-96~~ [55.1-xxx](#) or (ii) as a result of a previous refinancing.

293 B. Upon the refinancing of a prior mortgage, a subordinate mortgage shall retain the
294 same subordinate position with respect to a refinance mortgage as the subordinate mortgage
295 had with the prior mortgage, provided that:

296 1. Such refinance mortgage states on the first page thereof in bold or capitalized letters:
297 "THIS IS A REFINANCE OF A (DEED OF TRUST, MORTGAGE OR OTHER SECURITY
298 INTEREST) RECORDED IN THE CLERK'S OFFICE, CIRCUIT COURT OF (NAME OF
299 COUNTY OR CITY), VIRGINIA, IN DEED BOOK _____, PAGE _____, IN
300 THE ORIGINAL PRINCIPAL AMOUNT OF _____, AND WITH THE
301 OUTSTANDING PRINCIPAL BALANCE WHICH IS _____.";

302 2. The principal amount secured by such refinance mortgage does not exceed the
303 outstanding principal balance secured by the prior mortgage plus \$5,000; and

304 3. The interest rate is stated in the refinance mortgage at the time it is recorded and
305 does not exceed the interest rate set forth in the prior mortgage.

306 C. The priorities among two or more subordinate mortgages shall be governed by
307 subdivision A 1 of § ~~55-96~~ [55.1-xxx](#).

308 D. The provisions of subsection B shall not apply to a subordinate mortgage securing
309 a promissory note payable to any ~~county, city or town~~ [locality](#) or any agency, authority, or
310 political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant
311 to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 or 15.2-2305, or

312 pursuant to any program authorized by federal or state law or local ordinance or resolution,
313 for (i) ~~low-~~ low-income and moderate-income persons or households or (ii) improvements to
314 residential potable water supplies and sanitary sewage disposal systems made to address an
315 existing or potential public health hazard, and which mortgage, if recorded on or after July 1,
316 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST,
317 MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE
318 CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON
319 THE REFINANCING OF ANY PRIOR MORTGAGE."

320 **Drafting note: The phrase "county, city, or town" is replaced with "locality" on**
321 **the basis of § 1-221, which states that throughout the Code "'locality' means a county,**
322 **city, or town." Technical changes are made.**

323 § ~~55-59~~ 55.1-xxx. How deed of trust construed; duties, rights, etc., of parties.

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

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

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

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

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

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

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

358 Any covenant, otherwise authorized by law, that the lender shall be entitled to share
359 in the gross income or the net income, or the gross rent or revenues, or net rents or revenues
360 of the property, or in any portion of the proceeds or appreciation upon sale or appraisal or
361 similar event, shall be on an equal priority with the principal debt secured by the deed of trust,

362 in the event of sale to be paid next after the expenses of executing the trust, and shall be
363 specified in the recorded deed of trust or other recorded document in order to be notice of
364 record as against subsequent parties.

365 7. In the event of default in the payment of the debt secured, or any part thereof, at
366 maturity, or in the payment of interest when due, or of the breach of any of the covenants
367 entered into or imposed upon the grantor, then at the request of any beneficiary the trustee
368 shall forthwith declare all the debts and obligations secured by the deed of trust at once due
369 and payable and may take possession of the property and proceed to sell the same at auction
370 at the premises or in the front of the circuit court building or at such other place in the county
371 or city~~or county~~ in which the property or the greater part thereof lies, or in the corporate limits
372 of any city surrounded by or contiguous to such county, or in the case of annexed land, in the
373 county of which the land was formerly a part, as the trustee may select upon such terms and
374 conditions as the trustee may deem best.

375 8. If the sale is upon credit terms, the deferred purchase money shall bear interest from
376 the day of sale and shall be secured by a deed of trust upon the property contemporaneous
377 with the trustee's deed to the purchaser.

378 9. The party secured by the deed of trust, or the holders of greater than fifty 50 percent
379 of the monetary obligations secured thereby, shall have the right and power to appoint a one
380 or more substitute ~~trustee or~~ trustees for any reason and, regardless of whether such right and
381 power is expressly granted in such deed of trust, by executing and acknowledging an
382 instrument designating and appointing a substitute. When the instrument of appointment has
383 been executed, the substitute trustee ~~or trustees~~ named therein shall be vested with all the
384 powers, rights, authority, and duties vested in the trustee ~~or trustees~~ in the original deed of
385 trust. The instrument of appointment shall be recorded in the office of the clerk ~~wherein in~~
386 which the original deed of trust is recorded prior to or at the time of recordation of any

387 instrument in which a power, right, authority, or duty conferred by the original deed of trust
388 is exercised.

389 **Drafting note: In subdivision 9, "or trustees" is deleted on the basis of § 1-227,**
390 **which states that throughout the Code any word used in the singular includes the plural.**
391 **Technical changes.**

392 § ~~55-59.1~~ 55.1-xxx. Notices required before sale by trustee to owners, lienors, etc.; if
393 note lost.

394 A. In addition to the advertisement required by § ~~55-59.2~~ 55.1-xxx, the trustee or the
395 party secured shall give written notice of the time, date, and place of any proposed sale in
396 execution of a deed of trust, ~~which and such~~ notice shall include either (i) the instrument
397 number or deed book and page numbers of the instrument of appointment filed pursuant to §
398 ~~55-59, 55.1-xxx~~ or (ii) ~~said notice shall include~~ a copy of the executed and notarized
399 appointment of substitute trustee by personal delivery or by mail to ~~(i)~~ (a) the present owner
400 of the property to be sold at his last known address as such owner and address appear in the
401 records of the party secured, ~~(ii); (b)~~ any subordinate lienholder who holds a note against the
402 property secured by a deed of trust recorded at least 30 days prior to the proposed sale and
403 whose address is recorded with the deed of trust, ~~(iii); (c)~~ any assignee of such a note secured
404 by a deed of trust, provided that the assignment and address of assignee are likewise recorded
405 at least 30 days prior to the proposed sale, ~~(iv); (d)~~ any condominium unit owners' association
406 ~~which that~~ has filed a lien pursuant to § ~~55-79.84, (v)~~ 55.1-xxx; (e) any property owners'
407 association ~~which that~~ has filed a lien pursuant to § ~~55-516, 55.1-xxx~~; and ~~(vi)~~ (f) any
408 proprietary lessees' association ~~which that~~ has filed a lien pursuant to § ~~55-472~~ 55.1-xxx.
409 Written notice shall be given pursuant to clauses ~~(iv), (v) and (vi); (d), (e), and (f)~~ (d), (e), and (f) only if the
410 lien is recorded at least 30 days prior to the proposed sale. Mailing of a copy of the
411 advertisement or a notice containing the same information to the owner by certified or
412 registered mail no less than 14 days prior to such sale and to lienholders, the property owners'

413 association or proprietary lessees' association, their assigns, and the condominium unit
414 owners' association, at the address noted in the memorandum of lien, by ordinary mail no less
415 than 14 days prior to such sale shall be a sufficient compliance with the requirement of notice.
416 The written notice of proposed sale when given as provided ~~herein~~ [in this subsection](#) shall be
417 deemed an effective exercise of any right of acceleration contained in such deed of trust or
418 otherwise possessed by the party secured relative to the indebtedness secured. The inadvertent
419 failure to give notice as required by this subsection shall not impose liability on either the
420 trustee or the secured party.

421 B. If a note or other evidence of indebtedness secured by a deed of trust is lost or for
422 any reason cannot be produced and the beneficiary submits to the trustee an affidavit to that
423 effect, the trustee may nonetheless proceed to sale, provided [that](#) the beneficiary has given
424 written notice to the person required to pay the instrument that the instrument is unavailable
425 and a request for sale will be made of the trustee upon expiration of 14 days from the date of
426 mailing of the notice. The notice shall be sent by certified mail, return receipt requested, to
427 the last known address of the person required to pay the instrument as reflected in the records
428 of the beneficiary and shall include the name and mailing address of the trustee. The notice
429 shall further advise the person required to pay the instrument that if he believes he may be
430 subject to a claim by a person other than the beneficiary to enforce the instrument, he may
431 petition the circuit court of the county or city where the property or some part thereof lies for
432 an order requiring the beneficiary to provide adequate protection against any such claim. If
433 deemed appropriate by the court, the court may condition the sale on a finding that the person
434 required to pay the instrument is adequately protected against loss that might occur by reason
435 of a claim by another person to enforce the instrument. Adequate protection may be provided
436 by any reasonable means. If the trustee proceeds to sale, the fact that the instrument is lost or
437 cannot be produced shall not affect the authority of the trustee to sell or the validity of the
438 sale.

439 C. When the written notice of proposed sale is given as provided ~~herein in this section,~~
440 there ~~shall be~~ is a rebuttable presumption that the lienholder has complied with any
441 requirement to provide notice of default contained in a deed of trust. Failure to comply with
442 the requirements of notice contained in this section shall not affect the validity of the sale, and
443 a purchaser for value at such sale shall be under no duty to ascertain whether such notice was
444 validly given.

445 D. In the event of postponement of sale, which may be done in the discretion of the
446 trustee, no new or additional notice ~~need is required to~~ be given pursuant to this section.

447 **Drafting note: Technical changes.**

448 ~~§ 55-59.1:1. Expired.~~

449 **Drafting note: Expired pursuant to Acts 2008, c. 878, on July 1, 2010.**

450 ~~§ 55-59.2~~ 55.1-xxx. Advertisement required before sale by trustee.

451 A. Advertisement of sale by a trustee or trustees in execution of a deed of trust shall
452 be in a newspaper having a general circulation in the county or city ~~or county wherein in which~~
453 the property to be sold, or any portion ~~thereof of such property~~, lies pursuant to the following
454 provisions:

455 1. If the deed of trust itself provides for the number of publications of such newspaper
456 advertisement, which may be done by using the words "advertisement required" or similar
457 words ~~of like purport~~ followed by the number agreed upon, then no other or different
458 advertisement shall be necessary, provided that, if such advertisement be inserted on a weekly
459 basis, it shall be published not less than once a week for two weeks, and if such advertisement
460 be inserted on a daily basis, it shall be published not less than once a day for three days, which
461 may be consecutive days, and in either case shall be subject to the provisions of ~~§ 55-63~~ 55.1-
462 xxx in the same manner as if the method were set forth in the deed of trust. Should the deed
463 of trust provide for advertising on other than a weekly or daily basis, either of the foregoing
464 provisions shall be complied with in addition to those provided in such deed of trust.

465 Notwithstanding the provisions of the deed of trust, the sale shall be held on any day following
466 the day of the last advertisement ~~which that~~ is no earlier than eight days following the first
467 advertisement ~~nor or~~ more than ~~thirty~~ 30 days following the last advertisement.

468 2. If the deed of trust does not provide for the number of publications of such
469 newspaper advertisement, the trustee shall advertise once a week for four successive weeks;
470 provided, however, that if the property or some portion ~~thereof of such property~~ is located in
471 a city or in a county immediately contiguous to a city, publication of the advertisement five
472 different days, which may be consecutive days, shall be deemed adequate. The sale shall be
473 held on any day following the day of the last advertisement ~~which that~~ is no earlier than eight
474 days following the first advertisement nor more than ~~thirty~~ 30 days following the last
475 advertisement.

476 B. Such advertisement shall be placed in that section of the newspaper where legal
477 notices appear or where the type of property being sold is generally advertised for sale.

478 C. In addition to the advertisement required by subsection A ~~above~~, the trustee shall
479 give such other further and different advertisement as the deed of trust may require and in
480 addition may give such additional advertisement as he may deem appropriate.

481 D. In the event of postponement of sale, which postponement shall be at the discretion
482 of the trustee, advertisement of such postponed sale shall be in the same manner as the original
483 advertisement of sale.

484 E. Failure to comply with the requirements for advertisement contained in this section
485 shall, upon petition, render a sale of the property voidable by the court.

486 **Drafting note: Technical changes.**

487 § ~~55-59.3~~ 55.1-xxx. Contents of advertisements of sale.

488 A. The advertisement of sale under any deed of trust, in addition to such other matters
489 as may be required by such deed of trust or by the trustee, in his discretion, shall set forth a
490 description of the property to be sold, ~~which~~ Such description need not be as extensive as that

491 contained in the deed of trust, ~~and~~ but it shall identify the property by street address, if any,
492 or, if none, shall give the general location of the property with reference to streets, routes, or
493 known landmarks. Where available, tax map identification may be used but is not required.
494 The advertisement shall also include the time, place, and terms of sale and shall give the name
495 or names of the trustee or trustees. It shall set forth the name, address, and telephone number
496 of ~~such a~~ person ~~(, either a trustee or the party secured or his agent or attorney)~~ as who may
497 be able to respond to inquiries concerning the sale.

498 B. 1. If the property being sold is a time-share estate ~~or estates~~, the advertisement of
499 sale required under subsection A of § ~~55-59.2~~ 55.1-xxx shall set forth, in addition to such
500 other matters as the trustee finds appropriate, (i) a description of the specific time-share estate
501 or estates to be sold, ~~which and such~~ description shall also ~~shall~~ include (a) the name of the
502 time-share project and (b) the street address of the time-share project; ~~or,~~ if no street address,
503 the general location of the time-share project with reference to streets, routes, or known
504 landmarks; (ii) the date, time, place, and terms of sale; (iii) the name of the trustee; and (iv)
505 the name, address, and telephone number of the representative, agent, or attorney who is
506 authorized to respond to inquiries concerning the sale and shall give additional information
507 concerning the time-share estate or estates to be sold.

508 2. In lieu of the requirements of subdivision 1, the advertisement shall set forth (i) the
509 name of the time-share project in which the time-share estate or estates to be sold are
510 contained; (ii) the street address of the time-share project in which the time-share estate or
511 estates to be sold are contained; ~~or,~~ if no street address, the general location of the time-share
512 project with reference to streets, routes, or known landmarks; (iii) the date, time, place, and
513 terms of sale; (iv) the name of the trustee; and (v) the name, address, and telephone number
514 of the representative, agent, or attorney who is authorized to respond to inquiries concerning
515 the sale and shall give additional information concerning the time-share estate or estates to be
516 sold, including providing, upon request, in either hard copy or electronic form, a schedule of

517 the time-share estate or estates to be sold. In addition, the advertisement shall contain a website
518 address where a description of the specific time-share estate or estates to be sold is displayed.

519 **Drafting note: In subdivision B 1, "or estates" is deleted on the basis of § 1-227,**
520 **which states that throughout the Code any word used in the singular includes the plural.**
521 **Technical changes.**

522 § ~~55-59.4~~ 55.1-xxx. Powers and duties of trustee in event of sale under or satisfaction
523 of deed of trust.

524 A. In the event of sale under a deed of trust, the trustee shall have the following powers
525 and duties in addition to all others:

526 1. Written one-price bids may be made and shall be received by the trustee from the
527 beneficiary or any other person for entry by announcement of the trustee at the sale. Any
528 person other than the trustee may bid at the foreclosure sale, including a person who has
529 submitted a written one-price bid. Upon request to the trustee ~~or trustees~~, any other bidder in
530 attendance at a foreclosure sale shall be permitted to inspect written bids. Whenever the
531 written bid of the beneficiary is the highest bid submitted at the sale, such document shall be
532 filed by the trustee with his account of sale required under § 64.2-1309. The written bid
533 submitted pursuant to this subsection may be prepared by the beneficiary, its agent, or its
534 attorney.

535 2. The trustee may require of any bidder at any sale a cash deposit of as much as ~~ten~~
536 per centum 10 percent of the sale price ~~(, unless the deed of trust specifies a higher or lower~~
537 maximum, which may be done by the words "bidder's deposit of not more than _____
538 dollars may be required;" or similar words ~~of like purport~~), before his bid is received, which
539 shall be refunded to the bidder unless the property is sold to him, otherwise to be applied to
540 his credit in settlement or, should he fail to complete his purchase promptly, to be applied to
541 pay the costs and expense of sale and the balance, if any, to be retained by the trustee as his
542 compensation in connection with that sale.

543 3. The trustee shall receive and receipt for the proceeds of sale, account for the same
544 to the commissioner of accounts pursuant to § 64.2-1309 and apply the same, first, to
545 discharge the expenses of executing the trust, including a reasonable commission to the
546 trustee; secondly, to discharge all taxes, levies, and assessments, with costs and interest if they
547 have priority over the lien of the deed of trust, including the due pro rata thereof for the current
548 year; thirdly, to discharge in the order of their priority, if any, the remaining debts and
549 obligations secured by the deed, and any liens of record inferior to the deed of trust under
550 which sale is made, with lawful interest; and, fourthly, the residue of the proceeds shall be
551 paid to the grantor or his assigns; provided, however, that the trustee as to such residue shall
552 not be bound by any inheritance, devise, conveyance, assignment, or lien of or upon the
553 grantor's equity, without actual notice thereof prior to distribution; and provided further that
554 such order of priorities shall not be changed or varied by the deed of trust. The trustee's deed
555 shall show the trustee's mailing address.

556 B. Upon discharge ~~(, other than by sale by the trustee),~~ of all debts, duties, and
557 obligations imposed by the deed upon the grantor, including any expenses incurred
558 preparatory to sale, then upon the grantor's request the trustee shall execute and deliver a good
559 and sufficient deed of release at the grantor's own proper costs and charges.

560 **Drafting note: In subdivision A 1, the phrase "or trustees" is deleted after**
561 **"trustee" on the basis of § 1-227, which states that throughout the Code any word used**
562 **in the singular includes the plural and vice versa. Technical changes are made.**

563 § ~~55-60~~ 55.1-xxx. Meaning of phrases that may be included in ~~such trust~~ deed of trust.

564 The following provisions may be incorporated in any ~~such~~ deed of trust to secure debts
565 or indemnify sureties in the respective short forms indicated, namely:

566 ~~(1)~~ 1. The words "identified by trustee's signature;" or similar words ~~of like purport,~~
567 shall be construed as if the deed set forth: "All of which said notes (or other obligations) bear

568 the marginal signature of the trustee for the purpose of identification but for no other purpose
569 whatever."

570 ~~(2)~~2. The words "deferred purchase money," "purchase money," or similar words ~~of~~
571 ~~like purpose~~, shall be construed as if the deed set forth: "This deed of trust is a
572 contemporaneous purchase money deed of trust and secures the payment of deferred purchase
573 money due by the grantor upon the property hereby conveyed." Any deed of trust securing a
574 loan, proceeds of which are used by the borrower to acquire the secured real property, shall
575 be deemed to be a purchase money deed of trust.

576 ~~(3)~~3. The words "exemptions waived," or similar words ~~of like purpose~~, shall be
577 construed as if the deed set forth: "The grantor hereby waives the benefit of his exemptions as
578 to the debt hereby secured and as to all other obligations ~~which that~~ may be imposed upon
579 him by the provisions of this deed of trust."

580 ~~(4)~~4. The words "subject to call upon default," or similar words ~~of like purpose~~, shall
581 be construed as if the deed set forth: "Should default be made in the payment of any part of
582 the debt hereby secured, principal or interest, at the maturity of such part, or in the event of
583 the breach of any of the covenants entered into or imposed upon the grantor, then the entire
584 obligation of this deed of trust and the whole debt hereby secured shall, at the option of the
585 beneficiaries, become forthwith due and payable."

586 ~~(5)~~5. The words "renewal or extension permitted," or similar words ~~of like purpose~~,
587 shall be construed as if the deed set forth: "The grantor hereby consents and agrees that the
588 debt hereby secured, or any part thereof, may be renewed or extended beyond maturity as
589 often as may be desired by agreement between the creditor and any subsequent owner of the
590 property, and no such renewal or extension shall in any way affect the grantor's responsibility,
591 whether as surety or otherwise."

592 ~~(5a)~~6. The words "reinstatement permitted" or similar words ~~of like purpose~~ shall be
593 construed as if the deed set forth: "The grantor and any other party assuming liability

594 hereunder hereby consent and agree that if the property conveyed hereby or a substantial
595 portion thereof is transferred to any subsequent owner, and the creditor exercises the right to
596 accelerate the debts secured hereby, the creditor may accept any delinquent payments or other
597 cure of default giving rise to such acceleration from the then owner of the property or any
598 other person and reinstate the indebtedness in accordance with the schedule of maturity as of
599 the time of acceleration or upon such new schedule as may be agreed if renewal or extension
600 are otherwise permitted and no such reinstatement shall in any way affect the liability of such
601 prior parties, whether as surety or otherwise."

602 The words "renewal, extension, or reinstatement permitted;" or similar words ~~of like~~
603 ~~purpose~~, shall have the meaning ascribed to the individual words or phrases in this ~~subsection~~
604 ~~(5a)~~ subdivision and in ~~subsection (5)~~ subdivision 5.

605 ~~(6)~~ 7. The words "right of anticipation reserved;" or similar words ~~of like purpose~~, shall
606 be construed as if the deed set forth: "The grantor reserves the right to anticipate the payment
607 of the debt hereby secured, or any part thereof which is represented by a separate note (or
608 other obligation) at any interest period by the payment of principal and interest to the date of
609 such anticipated payment only."

610 ~~(7)~~ 8. The words "priority in direct order of maturity;" or similar words ~~of like purpose~~
611 shall be construed as if the deed set forth: "The notes (or other obligations) hereby secured
612 have priority amongst themselves in the direct order of their maturities, each having priority
613 over all others falling due after its maturity." And the words, "priority in inverse order of
614 maturity;" or similar words ~~of like purpose~~, shall be construed as if the deed set forth: "The
615 notes (or other obligations) hereby secured have priority amongst themselves in the inverse
616 order of their maturities, each having priority over all others falling due before its maturity."

617 ~~(8)~~ 9. The words "insurance required _____ dollars;" or similar words ~~of similar~~
618 ~~purpose~~, shall be construed as if the deed set forth: "The grantor covenants that he will keep
619 the improvements on the property insured against fire in some solvent insurance company

620 approved by the trustee for the benefit of the beneficiaries hereunder in the sum of at least
621 _____ dollars, and will deposit with the trustee or beneficiary the policies, with standard
622 loss payable clauses with full contribution in favor of the trustee as his interest may appear;
623 and the grantor further covenants that in the event of his failure to keep the property so insured
624 and the policies so deposited, then the trustee or any beneficiary may, at his option, effect such
625 insurance and pay the premium thereon, and the money so paid, with interest thereon, shall
626 become a part of the debt hereby secured, in the event of sale to be paid next after the expenses
627 of executing this trust, and shall be otherwise recoverable from the grantor as a debt, but there
628 shall be no obligation upon the trustee or beneficiary to effect such insurance."

629 ~~(9)~~10. The words "substitution of trustee permitted," or similar words ~~of like purport,~~
630 shall be construed as if the deed set forth: "Grantor grants unto the beneficiary or beneficiaries
631 or to a majority in amount of the holders of the obligations secured hereunder and to their
632 assigns the right and power, under the provisions of § ~~55-59~~ 55.1-xxx, to appoint a substitute
633 trustee or trustees."

634 ~~(10)~~11. The words "any trustee may act," or similar words ~~of similar purport,~~ shall be
635 construed as if the deed set forth: "The grantors, and all interested in the obligations hereby
636 secured, by accepting the benefits hereof, agree that all authority, power, and discretion
637 hereinabove granted to the trustees may be exercised by any of them, without any other, with
638 the same effect as if exercised jointly by all of them."

639 ~~(11)~~12. The words "this is a credit line deed of trust," or similar words ~~of like purport,~~
640 if in capital letters or underscored and on the first page of the deed of trust and containing the
641 name and address of the noteholder, shall have the meaning set forth in § ~~55-58.2~~ 55.1-xxx.

642 **Drafting note: In the first sentence, the phrase "to secure debts or indemnify**
643 **sureties" is added to modify "deed of trust;" the language is taken from existing § 55-**
644 **59, which, at its original enactment, immediately proceeded existing § 55-60. Technical**
645 **changes.**

646 ~~§ 55-60.1. Evidences of indebtedness placed on equal footing.~~

647 ~~When bonds, notes or other evidences of indebtedness are secured by a deed of trust,~~
648 ~~mortgage, vendor's lien or other lien, such bonds, notes, or other evidences of indebtedness~~
649 ~~shall, in the event the lien is executed or foreclosed, be secured on an equal footing and shall~~
650 ~~be paid ratably out of the proceeds of any sale of property subjected to the lien and shall have~~
651 ~~no priority, the one over the other, whether by priority of assignment or otherwise, unless the~~
652 ~~instrument creating the lien expressly provides otherwise.~~

653 **Drafting note: Existing § 55-60.1 is recommended for repeal because it is obsolete.**

654 ~~§ 55-61~~ 55.1-xxx. Sales under deeds of trust ~~which~~ that contain no maturity date or
655 provision authorizing sale.

656 When any property, real or personal, is conveyed by deed of trust, ~~whether heretofore~~
657 ~~or hereafter made~~, to a trustee, to secure the payment of a debt, money, notes, bonds, stocks,
658 or other evidences of debt and there is no date fixed for the maturity thereof and such deed of
659 trust contains no provision authorizing the trustee to make sale of such property, or any part
660 thereof, and the reinvestment of the proceeds of sale in other property subject to the terms of
661 such deed of trust, the circuit ~~and corporation courts~~ court, or such court having jurisdiction
662 of the subject matter, upon a ~~bill~~ complaint filed by any one or more of the lien debtors, in
663 which ~~bill~~ complaint all persons interested in such lien and all holders of the evidences of debt
664 secured by the deed of trust thereon, and all other necessary or proper parties, except the
665 plaintiffs, shall be made defendants, may ~~decree~~ order a sale of such property, or any part
666 thereof, and may invest the proceeds of sale under ~~decree~~ order of court subject to the terms
667 of the deed of trust; ~~provided~~, that (i) the ~~bill of~~ complaint ~~shall set~~ sets forth facts ~~which~~ that
668 will justify the sale of the property, to be verified by the affidavit of at least one of the
669 plaintiffs; ~~provided, further, that~~, (ii) no ~~decree~~ order shall be made authorizing such sale
670 unless it ~~shall be~~ is shown to the satisfaction of the court that the interests of the lien debtor
671 or debtors will be promoted and the interests of no person ~~or persons~~ holding the evidences of

672 debt secured by the deed of trust will be violated thereby; ~~provided, further, that, and (iii)~~ the
673 plaintiff or the party for whose benefit the ~~suit~~ action is brought shall bear the cost.

674 **Drafting note: Language used in the old equitable pleading practice, including**
675 **"bill," "decree," and "suit," is replaced with modern terminology. "Or persons" is**
676 **deleted on the basis of § 1-227, which states that throughout the Code any word used in**
677 **the singular includes the plural. Technical changes are made.**

678 § ~~55-61-1~~ 55.1-xxx. Validation of conveyances of real property under trust instrument
679 not authorizing sale.

680 When any real property is conveyed by deed of trust; or other trust instrument; ~~whether~~
681 ~~heretofore or hereafter made,~~ to a trustee and there is no provision authorizing the trustee to
682 convey the property that is the subject of the deed of trust, or any part ~~thereof, which is the~~
683 ~~subject of such deed of trust of such property,~~ and the trustee conveys ~~said~~ such property or
684 any part ~~thereof of such property,~~ such conveyance shall be valid after a period of ~~thirty~~ 30
685 years from the date of such conveyance, provided that (i) there have been no adverse claims
686 against the property so conveyed in the interim, and ~~provided that (ii)~~ such conveyances to
687 and from ~~said~~ such trustee were properly recorded and indexed at the time of the conveyance,
688 in the appropriate clerk's office ~~wherein in which~~ deeds are recorded in the county or city
689 ~~wherein in which~~ the property lies.

690 **Drafting note: Technical changes.**

691 § ~~55-62~~ 55.1-xxx. Permissible form for notice of sale under deed of trust.

692 Notice of sale under any deed of trust ~~whether the same be in conformity with § 55-~~
693 ~~59 or not~~ regardless of whether it conforms with § 55.1-xxx, in the absence of provision
694 ~~therein in such deed of trust~~ requiring other or additional matter, may be substantially in the
695 following form ~~following~~:

696 Trustee's Sale of

697 _____ (brief description or
698 identification of property)

699 In execution of a deed of trust; (name or names of grantor or grantors unless grantor
700 or grantors request in writing that the same be omitted;), dated _____, recorded
701 in the Clerk's Office of the _____ court of _____ in Deed Book
702 _____, page _____, _____, the undersigned trustee will offer for
703 sale at public auction (a brief description of the property to include street number or, if none,
704 the general location of property and place of sale) on the _____ day of
705 _____, 20_____ at _____ (ante meridian) (noon) (post meridian), the property
706 described in such deed.

707 Terms: (Cash) (_____)

708 _____

709 Trustee(s)

710 FOR INFORMATION CONTACT:

711 _____

712 (A trustee or the secured party or his agent)

713 _____

714 Address

715 _____

716 Telephone number

717 **Drafting note: Technical changes.**

718 § ~~55-63~~ 55.1-xxx. Construction of deeds requiring notice by advertisement in
719 newspaper.

720 ~~(a)~~ A. Whenever any deed of trust to secure debts or indemnify sureties contains a
721 provision requiring the giving of notice of sale thereunder for a specified number of days by
722 advertisement in one or more newspapers and such advertisement ~~be~~ is published in a

723 newspaper published daily or in a newspaper published daily except Sunday, it shall be
724 deemed a sufficient compliance with such provision if such notice ~~be is~~ published in
725 consecutive issues of such newspaper for the number of days specified, counting both the day
726 of the first publication and the day of the last publication and intervening Sundays, whether
727 or not such newspaper ~~be is~~ published on Sunday. Both the first publication and the last
728 publication may be on Sunday. The publication shall in all other respects comply with the
729 provisions of §§ ~~55-59.2~~ 55.1-xxx and ~~55-59.3~~ 55.1-xxx.

730 ~~(b)~~ B. Whenever such deed of trust requires advertisement once a week for a specified
731 number of weeks, sale may be had on the day after the last advertisement appears or any day
732 thereafter, and all sales made in conformity ~~herewith~~ with this section prior to January 1, 1972,
733 and otherwise valid, are hereby validated.

734 **Drafting note: Technical changes.**

735 § ~~55-64~~ 55.1-xxx. Disposition of surplus from trustee's sale after death of grantor.

736 Whenever the grantor, or his successor in title, in any deed of trust by which any real
737 property is conveyed in trust to secure debts or indemnify sureties dies prior to a trustee's sale
738 held pursuant to the deed of trust and the deed of trust contains no definite provision for the
739 distribution of any surplus in the event of the death of the grantor or his successors in title
740 prior to the trustee's sale held pursuant to the deed of trust, or contains a provision that such
741 surplus shall be paid to the grantor or his heirs or assigns or personal representative, then any
742 surplus of the proceeds of the sale remaining ~~in the hands~~ possession of the trustee, after
743 discharging the expenses of executing the trust, all tax liens upon the property sold, and all
744 debts and obligations secured by the deed of trust, shall be paid by the trustee to the personal
745 representative of the decedent.

746 Any such funds ~~so coming into the hands of~~ possessed by the personal representative
747 shall constitute assets for the payment by him, first, of all existing liens against the property
748 foreclosed ~~which that~~ are subsequent to the deed of trust under which the trustee sells in the

749 order of their priority, and, secondly, of any debts and demands against the decedent's estate
750 remaining unsatisfied after the personal estate has been exhausted. Any surplus of the funds
751 so paid to the personal representative and remaining in his ~~hands~~ possession after the
752 satisfaction of all debts and demands against the estate shall be paid over by him, if the
753 decedent died intestate as to the real property embraced in the deed of trust, to the heirs at law
754 of the decedent, or their successors in title, and if the decedent died testate as to the real
755 property embraced in the deed of trust, then such surplus shall be paid to the persons entitled
756 to the real property under the terms of the decedent's will, or to their successors in title.

757 **Drafting note: Language is updated for modern usage. Technical changes are**
758 **made.**

759 § ~~55-64.1~~ 55.1-xxx. Title to real estate sold not affected by nonlisting of secured notes
760 for taxation.

761 The title to real estate ~~heretofore or hereafter~~ sold under a deed of trust shall not be
762 drawn in question upon the ground that the holder of the notes secured by such deed of trust
763 did not list the same for taxation.

764 **Drafting note: Technical change.**

765 § ~~55-65~~ 55.1-xxx. Validation of certain sales made under deeds of trust.

766 All sales ~~which that~~ have been made prior to January 1, 1972, under deeds of trust to
767 secure debts and indemnify sureties containing a provision requiring the giving of notice of
768 sale thereunder for a specified number of days by advertisement in one or more newspapers
769 and ~~which that~~ were made after publishing the advertisement of sale in a newspaper published
770 daily or in a newspaper published daily except Sunday for the number of days specified in the
771 deed of trust, counting both the day of the first publication and the day of the last publication
772 and intervening Sundays, whether or not such paper was published on Sunday and whether or
773 not such sales were held on the day of the last publication ~~(,~~ provided that, in cases when the
774 sale was held on the day of the last publication, the publication was in a newspaper the

775 principal daily edition of which was delivered or publicly sold before the time fixed for the
776 sale), and whether or not the first publication or the last publication, or both, appeared on
777 Sunday, shall be held, and the same are hereby declared, to be valid and effective in all
778 respects, if otherwise valid and effective according to the law then in force; provided,
779 however, that nothing ~~herein~~ contained in this section shall be construed as affecting any final
780 order ~~or decree heretofore~~ entered prior to March 24, 1934 by any court of competent
781 jurisdiction or as affecting any ~~suit or~~ action now pending in any court of competent
782 jurisdiction; and provided further, that nothing in this section shall be so construed as to affect
783 intervening vested rights.

784 **Drafting note: Language used in the old equitable pleading practice, including**
785 **"decree" and "suit," is replaced with modern terminology. The phrase "prior to March**
786 **24, 1934" is added because it is the date the statute was originally enacted. Technical**
787 **changes are made.**

788 § ~~55-65.1~~ 55.1-xxx. Validation of certain sales made under deeds of trust prior to
789 October 1, 1977.

790 All sales ~~which that~~ were made prior to October 1, 1977, under deeds of trust to secure
791 debts and indemnify sureties when the notice, advertisement, and conduct of the sale were in
792 accordance with the law of ~~this the~~ Commonwealth as it existed on June 30, 1977, are declared
793 to be valid and effective in all respects; provided that nothing ~~herein contained~~ in this section
794 shall be construed as affecting any final order ~~heretofore~~ entered prior to March 23, 1978 by
795 any court of competent jurisdiction, or any ~~suit or~~ action now pending in a court of competent
796 jurisdiction, ~~nor or~~ as affecting intervening vested rights; and provided further, that no ~~suit or~~
797 action to vacate or set aside any such sale may be brought after March 23, 1978.

798 **Drafting note: Language used in the old equitable pleading practice, including**
799 **"suit," is replaced with modern terminology. The phrase "prior to March 23, 1978" is**

800 added because it is the date the statute was originally enacted. Technical changes are
801 made.

802 § ~~55-66.55.1-xxx~~. Validation of other sales under deeds of trust.

803 All sales ~~which~~ that were made prior to January 1, 1972, under deeds of trust to secure
804 debts and indemnify sureties when the notice was not published once a week for four
805 successive weeks or a specified number of successive weeks are declared to be valid and
806 effective in all respects, if other reasonable advertisement of such sale was given and such
807 sale was otherwise valid and effective; ; provided that nothing herein contained shall be
808 construed as affecting any final order ~~heretofore~~ entered prior to March 1, 1944 by any court
809 of competent jurisdiction, or any ~~suit or~~ action now pending in a court of competent
810 jurisdiction, ~~nor or~~ as affecting intervening vested rights; ; and provided further that no ~~suit or~~
811 action may be brought after January 1, 1972, to vacate or set aside any such sale.

812 **Drafting note: Language used in the old equitable pleading practice, including**
813 **"suit," is replaced with modern terminology. The phrase "prior to March 1, 1944" is**
814 **added because it is the date the statute was originally enacted. Technical changes are**
815 **made.**

816 § ~~55-66.01~~ 55.1-xxx. Protection of assignees or transferees of debts secured by real
817 estate; form of certificate of transfer.

818 Whenever a debt or other obligation secured by a deed of trust, mortgage, or vendor's
819 lien on real estate has been assigned, the assignor or the assignee, at its option, may cause the
820 instrument of assignment to be recorded in the clerk's office of the circuit court where such
821 deed of trust, mortgage, or vendor's lien is recorded, ; provided that such instrument is
822 otherwise in recordable form, or may cause a certificate of transfer signed by the assignor to
823 be recorded in such clerk's office, and such instrument of assignment or certificate of transfer,
824 upon recordation, shall operate as a notice of such assignment. The instrument of assignment
825 or certificate of transfer shall be indexed in the name of the assignor and in the names of the

826 obligor or maker, and the trustees, as applicable, all of whose names shall be set forth in such
827 instrument or certificate. The certificate of transfer shall conform substantially to the
828 following:

829 CERTIFICATE OF TRANSFER

830 Place of Record:

831 Clerk's Office of the Circuit Court of the _____ of _____,

832 Virginia

833 Date of [Deed of Trust/Mortgage/Vendor's Lien]: _____,

834 Deed Book _____, Page _____

835 Name of Obligor or Maker:

836 _____

837 Names(s) of Trustee(s) [if a Deed of Trust]:

838 _____

839 _____

840 Name of Original Payee or Oblige:

841 _____

842 Original Amount Secured [if applicable]: \$_____

843 The undersigned, the original payee or obligee [or the subsequent assignee] of the
844 obligation secured by the above-mentioned [Deed of Trust/Mortgage/Vendor's Lien], hereby
845 certifies that the obligations secured thereby have been assigned to _____

846 _____

847 [If a credit line deed of trust, the name and address to which notice may be mailed or
848 delivered to the Noteholder as provided by § ~~55-58.2~~ [55.1-xxx](#) is as follows:

849 _____

850 _____]

851 Given under ~~[my/our]~~ (my/our) hand(s) as of the _____ day of
852 _____, _____.

853 _____

854 (Assignor)

855 _____ of _____

856 County/City of _____, to wit:

857 Subscribed, sworn to, and acknowledged before me by _____ this

858 _____ day of _____, 20_____.

859 My Commission Expires: _____

860 _____

861 Notary Public

862 Notary Registration Number: _____

863 For purposes of this ~~statute section~~, the word "assigned" ~~shall include~~ includes
864 endorsed, pledged, hypothecated, or otherwise transferred. Nothing in this ~~statute section~~ shall
865 be deemed to invalidate any other form or notice of assignment that may have been ~~heretofore~~
866 recorded prior to July 1, 1994. Nothing in this ~~statute section~~ shall imply that recordation of
867 the instrument of assignment or a certificate of transfer is necessary in order to transfer to an
868 assignee the benefit of the security provided by the deed of trust, mortgage, or vendor's lien.

869 **Drafting note: "Notary Registration Number" is added to the signature line of**
870 **the certificate because it is a requirement of notarization. The phrase "prior to July 1,**
871 **1994" is added because it is the date the statute was originally enacted. Technical**
872 **changes are made.**

873 ~~§ 55-66.1.~~

874 **Drafting note: Repealed by Acts 1992, c. 532.**

875 ~~§ 55-66.1:01.~~

876 **Drafting note: Repealed by Acts 1995, c. 807.**

877 § ~~55-66.1-1~~ 55.1-xxx. Required notice of foreclosure or repossession of manufactured
878 home.

879 Whenever any assignee of an installment note secured by a security interest on a
880 manufactured home determines that legal action is desirable to enforce the debt resulting in a
881 potential foreclosure or repossession, he shall give prior notice by mail of any action to
882 foreclose or repossess the collateral to any assignor who is liable under a recourse
883 endorsement or by virtue of a reserve account at least ~~ten~~ 10 business days prior to the
884 enforcement of the security interest or eviction. Assignment by way of pledge of the security
885 interest granted by the assignor shall not be an assignment within the meaning of this section.
886 The failure to so notify the assignor shall not affect any rights of the assignee as against the
887 principal debtor or any party other than the assignor with recourse or a person with rights in a
888 reserve account. Provisions of this section may not be waived by such assignor at the time of
889 the original sale of the installment paper; but only after the expiration of at least ~~thirty~~ 30 days
890 from such initial transfer. The assignee shall send such notice to the last known address of the
891 assignor as it appears in the records of the assignee.

892 **Drafting note: Technical changes.**

893 § ~~55-66.2~~ 55.1-xxx. Release to person dead inures to successors.

894 A release of a deed of trust or a conveyance of the property embraced ~~therein in such~~
895 deed of trust may in all cases be made to the original grantor, whether living or dead, and any
896 release or reconveyance ~~heretofore or hereafter~~ so made shall inure both in law and in equity
897 to the successors in title of such grantor.

898 **Drafting note: Technical changes.**

899 § ~~55-66.3~~ 55.1-xxx. Release of deed of trust or other lien.

900 A. As used in this section:

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

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

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

908 "RESA" means Chapter XX (§ 55.1-xxx et seq.) [Chapter 27.3 (§ 55-525.16 et seq.)],
909 Real Estate Settlement Agents.

910 "Satisfactory evidence of the payment of the obligation secured by the deed of trust"
911 means (i) any one of the following: (a) the original canceled check or a copy of the canceled
912 check, showing all endorsements, payable to the lien creditor or servicer, as applicable, (b)
913 confirmation in written or electronic form of a wire transfer to the bank account of the lien
914 creditor or servicer, as applicable, or (c) a bank statement in written or electronic form
915 reflecting completion of the wire transfer or negotiation of the check, as applicable, and (ii) a
916 payoff letter or other reasonable documentary evidence that the payment was to effect
917 satisfaction of the obligation secured or evidenced by the deed of trust.

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

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

922 "Settlement agent" has the same meaning ascribed to it in § 55.1-xxx [§ 55-525.16],
923 provided that a person shall not be a settlement agent unless he is registered pursuant to §
924 55.1-xxx [§ 55-525.30] and otherwise fully in compliance with the applicable provisions of
925 RESA.

926 "Title insurance company" has the same meaning ascribed to it in § 38.2-4601,
927 provided that the title insurance company seeking to release a lien by the process described in

928 [subsection E issued a policy of title insurance, through a title insurance agency or agent as](#)
929 [defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was](#)
930 [satisfied by payment made by the title insurance agency or agent also acting as the settlement](#)
931 [agent.](#)

932 [B. 1.](#) Except as provided in Article ~~2.1 of this chapter~~ [3 \(§ 55.1-xxx et seq.\)](#), after full
933 or partial payment or satisfaction has been made of a debt secured by a deed of trust, vendor's
934 lien, or other lien, or any one or more obligations representing at least 25 percent of the total
935 amount secured by such lien, but less than the total number of the obligations so secured, or
936 the debt secured is evidenced by two or more separate written obligations sufficiently
937 described in the instrument creating the lien, has been fully paid, the lien creditor shall issue
938 a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for
939 recordation reflecting such payment and release of lien. This requirement shall apply to a
940 credit line deed of trust prepared pursuant to § ~~55-58.2~~ [55.1-xxx](#) only when the obligor or the
941 settlement agent has paid the debt in full and requested that the instrument be released.

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

946 If the notice is not received from a settlement agent, the lien creditor shall deliver,
947 within 90 days after such payment, the certificate to the appropriate clerk's office with the
948 necessary fee for recording by certified mail, return receipt requested, or when there is written
949 proof of receipt from the clerk's office, by hand delivery ~~or by courier hand delivery,~~ [electronic](#)
950 [delivery via the clerk's electronic filing system, or delivery by a commercial overnight](#)
951 [delivery service or the United States Postal Service, and a receipt obtained.](#)

952 If the lien creditor has already delivered the certificate to the clerk's office by the time
953 it receives notice from the settlement agent, the lien creditor shall deliver a copy of the

954 certificate to the settlement agent within 90 days of the receipt of the notice at the address for
955 notification set forth in the payoff statement.

956 If the lien creditor has not, within 90 days after payment, either provided the certificate
957 of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary
958 fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or
959 attorney may take an assignment of the right to the \$500 penalty or facilitate such an
960 assignment to any third party designated by the settlement agent or attorney. Following the
961 90-day period, if the amount forfeited is not paid within 10 business days after written demand
962 for payment is sent to the lien creditor by certified mail at the address for notification set forth
963 in the payoff statement, the lien creditor shall pay any court costs and reasonable ~~attorney's~~
964 attorney fees incurred by the obligor in collecting the forfeiture.

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

970 ~~B. C.~~ The certificate of satisfaction shall be signed by the creditor or his duly
971 authorized agent, attorney, or attorney-in-fact, or any person to whom the instrument
972 evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such
973 release. An affidavit shall be filed or recorded with the certificate of satisfaction, by the
974 creditor, or his duly authorized agent, attorney, or attorney-in-fact, with such clerk, stating
975 that the debt therein secured and intended to be released or discharged has been paid to such
976 creditor, or his agent, attorney, or attorney-in-fact, who was, ~~when the debt was satisfied,~~
977 entitled and authorized to receive ~~the same such debt when the debt was satisfied.~~

978 ~~C. D. And when so~~ When the certificate of satisfaction has been signed and the
979 affidavit ~~hereinbefore~~ required by subsection C has been duly filed or recorded with the

980 certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a
981 release of the encumbrance as to which such payment or satisfaction is entered and, if the
982 encumbrance ~~be is~~ by deed of trust, as a reconveyance of the legal title as fully and effectually
983 as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

984 ~~D. As used in this section:~~

985 ~~"CRESPA" means Chapter 27.3 (§ 55-525.16 et seq.) of Title 55.~~

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

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

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

993 ~~"Satisfactory evidence of the payment of the obligation secured by the deed of trust"~~
994 ~~means (i) any one of (a) the original canceled check or a copy of the canceled check, showing~~
995 ~~all endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in~~
996 ~~written or electronic form of a wire transfer to the bank account of the lien creditor or servicer,~~
997 ~~as applicable, or (c) a bank statement in written or electronic form reflecting completion of~~
998 ~~the wire transfer or negotiation of the check, as applicable; and (ii) a payoff letter or other~~
999 ~~reasonable documentary evidence that the payment was to effect satisfaction of the obligation~~
1000 ~~secured or evidenced by the deed of trust.~~

1001 ~~"Satisfied by payment" includes obtaining written confirmation from the lien creditor~~
1002 ~~that the underlying obligation has a zero balance.~~

1003 ~~"Servicer" means a person or entity that collects loan payments on behalf of a lien~~
1004 ~~creditor.~~

1005 ~~"Settlement agent" has the same meaning ascribed thereto in § 55-525.16, provided~~
1006 ~~that a person shall not be a settlement agent unless he is registered pursuant to § 55-525.30~~
1007 ~~and otherwise fully in compliance with the applicable provisions of Chapter 27.3 (§ 55-525.16~~
1008 ~~et seq.) of Title 55.~~

1009 ~~"Title insurance company" has the same meaning ascribed thereto in § 38.2-4601,~~
1010 ~~provided that the title insurance company seeking to release a lien by the process described in~~
1011 ~~subsection E issued a policy of title insurance, through a title insurance agency or agent as~~
1012 ~~defined in § 38.2-4601.1, for a real estate transaction wherein the loan secured by the lien was~~
1013 ~~satisfied by payment made by the title insurance agency or agent also acting as the settlement~~
1014 ~~agent.~~

1015 E. Release of lien by settlement agent or title insurance company.

1016 A settlement agent or title insurance company may release a deed of trust in
1017 accordance with the provisions of this subsection (i) if the obligation secured by the deed of
1018 trust has been satisfied by payment made by the settlement agent and (ii) whether or not the
1019 settlement agent or title insurance company is named as a trustee under the deed of trust or
1020 otherwise has received the authority to release the lien.

1021 1. Notice to lienholder.

1022 a. After or accompanying payment in full of the obligation secured by a deed of trust,
1023 a settlement agent or title insurance company intending to release a deed of trust pursuant to
1024 this subsection shall deliver to the lien creditor by certified mail or ~~guaranteed commercial~~
1025 ~~overnight delivery service~~ or the United States Postal Service, and a receipt obtained, a notice
1026 of intent to release the deed of trust with a copy of the payoff letter and a copy of the release
1027 to be recorded as provided in this subsection.

1028 b. The notice of intent to release shall contain (i) the name of the lien creditor, the
1029 name of the servicer if loan payments on the deed of trust are collected by a servicer, or both
1030 names;₂ (ii) the name of the settlement agent;₂ (iii) the name of the title insurance company if

1031 the title insurance company intends to release the lien; and (iv) the date of the notice. The
1032 notice of intent to release shall conform substantially to the following form:

1033 NOTICE OF INTENT TO RELEASE

1034 Notice is hereby given to you concerning the deed of trust described on the certificate
1035 of satisfaction, a copy of which is attached to this notice, as follows:

1036 1. The settlement agent identified below has paid the obligation secured by the deed
1037 of trust described herein or obtained written confirmation from you that such obligation has a
1038 zero balance.

1039 2. The undersigned will release the deed of trust described in this notice unless, within
1040 90 days from the date this notice is mailed by certified mail or ~~guaranteed commercial~~
1041 overnight delivery service or the United States Postal Service, and a receipt obtained, the
1042 undersigned has received by certified mail or ~~guaranteed commercial~~ overnight delivery
1043 service or the United States Postal Service, and a receipt obtained, a notice stating that a
1044 release of the deed of trust has been recorded in the clerk's office or that the obligation secured
1045 by the deed of trust described herein has not been paid, or the lien creditor or servicer
1046 otherwise objects to the release of the deed of trust. Notice shall be sent to the address stated
1047 on this form.

1048 (Name of settlement agent)

1049 (Signature of settlement agent or title insurance company)

1050 (Address of settlement agent or title insurance company)

1051 (Telephone number of settlement agent or title insurance company)

1052 (Virginia ~~CRESPA~~ RESA registration number of settlement agent at the time the
1053 obligation was paid or confirmed to have a zero balance)

1054 2. Certificate of satisfaction and affidavit of settlement agent or title insurance
1055 company.

1056 a. If, within 90 days following the day on which the settlement agent or title insurance
1057 company mailed or delivered the notice of intent to release in accordance with this subsection,
1058 the lien creditor or servicer does not send by certified mail or ~~guaranteed commercial~~
1059 overnight delivery service or the United States Postal Service, and a receipt obtained, to the
1060 settlement agent or title insurance company a notice stating that a release of the deed of trust
1061 has been recorded in the clerk's office or that the obligation secured by the deed of trust has
1062 not been paid in full or that the lien creditor or servicer otherwise objects to the release of the
1063 deed of trust, the settlement agent or title insurance company may execute, acknowledge, and
1064 file with the clerk of court of the jurisdiction ~~wherein~~ in which the deed of trust is recorded a
1065 certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b ~~of~~
1066 ~~this subsection~~ and (ii) a copy of the notice of intent to release that was sent to the lender, the
1067 servicer, or both. The certificate of satisfaction shall include the settlement agent's ~~CRESPA~~
1068 RESA registration number, issued by the Virginia State Bar or the Virginia State Corporation
1069 Commission, that was in effect at the time the settlement agent paid the obligation secured by
1070 the deed of trust or obtained written confirmation from the lien creditor that such obligation
1071 has a zero balance. The certificate of satisfaction shall note that the individual executing the
1072 certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After
1073 filing or recording the certificate of satisfaction, the settlement agent or title insurance
1074 company shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The
1075 validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection
1076 shall not be affected by the inaccuracy of the ~~CRESPA~~ RESA registration number placed
1077 thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien
1078 creditor or servicer and shall nevertheless release the deed of trust described therein as
1079 provided in this subsection.

1080 b. The certificate of satisfaction used by the settlement agent or title insurance
1081 company shall include an affidavit certifying (i) that the settlement agent has satisfied the

1082 obligation secured by the deed of trust described in the certificate; (ii) that the settlement
1083 agent or title insurance company possesses satisfactory evidence of payment of the obligation
1084 secured by the deed of trust described in the certificate or written confirmation from the lien
1085 creditor that such obligation has a zero balance; (iii) that the lien of the deed of trust may be
1086 released; (iv) that the person executing the certificate is the settlement agent, or the title
1087 insurance company; or is duly authorized to act on behalf of the settlement agent or title
1088 insurance company; and (v) that the notice of intent to release was delivered to the lien
1089 creditor or servicer and the settlement agent or title insurance company received evidence of
1090 receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in
1091 the following form:

1092 AFFIDAVIT OF SETTLEMENT AGENT OR TITLE INSURANCE COMPANY

1093 The undersigned hereby certifies that, in accordance with the provisions § ~~55-66.3~~
1094 55.1-xxx of the Code of Virginia of 1950, as amended and in force on the date hereof (the
1095 Code), (a) the undersigned is a settlement agent or title insurance company as defined in
1096 subsection ~~D A~~ of § ~~55-66.3~~ 55.1-xxx of the Code or a duly authorized officer, director,
1097 member, partner, or employee of such settlement agent or title insurance company; (b) the
1098 settlement agent has satisfied the obligation secured by the deed of trust; (c) the settlement
1099 agent or title insurance company possesses satisfactory evidence of the payment of the
1100 obligation secured by the deed of trust described in the certificate recorded herewith or written
1101 confirmation from the lien creditor that such obligation has a zero balance; (d) the settlement
1102 agent or title insurance company has delivered to the lien creditor or servicer in the manner
1103 specified in subdivision E 1 of § ~~55-66.3~~ 55.1-xxx of the Code the notice of intent to release
1104 and possesses evidence of receipt of such notice by the lien creditor or servicer; and (e) the
1105 lien of the deed of trust is hereby released.

1106

1107

(Authorized signer)

1108 3. Effect of filing.

1109 When filed or recorded with the clerk's office, a certificate of satisfaction that is
1110 executed and notarized as provided in this subsection; and accompanied by (i) the affidavit
1111 described in subdivision 2 b ~~of this subsection~~; and (ii) a copy of the notice of intent to release
1112 that was sent to the lender, lien creditor, or servicer shall operate as a release of the
1113 encumbrance described therein and, if the encumbrance is by deed of trust, as a reconveyance
1114 of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed
1115 of release duly executed and recorded.

1116 4. Effect of wrongful or erroneous certificate; damages.

1117 a. The execution and filing or recording of a wrongful or erroneous certificate of
1118 satisfaction by a settlement agent or title insurance agent does not relieve the party obligated
1119 to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party
1120 as to the debt, from any liability for the debt or other obligations secured by the deed of trust
1121 that is the subject of the wrongful or erroneous certificate of satisfaction.

1122 b. A settlement agent or title insurance agent that wrongfully or erroneously executes
1123 and files or records a certificate of satisfaction is liable to the lien creditor for actual damages
1124 sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

1125 c. The procedure authorized by this subsection for the release of a deed of trust shall
1126 constitute an optional method of accomplishing a release of a deed of trust secured by property
1127 in the Commonwealth. The nonuse of the procedure authorized by this subsection for the
1128 release of a deed of trust shall not give rise to any liability or any cause of action whatsoever
1129 against a settlement agent or any title insurance company by any obligated party or anyone
1130 succeeding to or assuming the interest of the obligated party.

1131 5. Applicability.

1132 a. The procedure authorized by this subsection for the release of a deed of trust may
1133 be used to effect the release of a deed of trust after July 1, 2002, regardless of when the deed
1134 of trust was created, assigned, or satisfied by payment made by the settlement agent.

1135 b. This subsection applies only to transactions involving the purchase of or lending on
1136 the security of real estate located in the Commonwealth that is either (i) unimproved real estate
1137 with a lien to be released of \$1 million or less or (ii) real estate containing at least one but not
1138 more than four residential dwelling units.

1139 c. The procedure authorized by this subsection applies only to the full and complete
1140 release of a deed of trust. Nothing in this subsection shall be construed to authorize the partial
1141 release of property from a deed of trust or otherwise permit the execution or recordation of a
1142 certificate of partial satisfaction.

1143 **Drafting note: The definitions are relocated to subsection A. The methods of**
1144 **delivery are updated throughout the proposed sections to conform with other delivery**
1145 **methods used throughout the title. Technical changes are made.**

1146 § ~~55-66.3-1~~ 55.1-xxx. Release by financial institution upon payment of debt placed
1147 with it for collection.

1148 In any case where a note, bond, or other evidence of indebtedness placed by a creditor
1149 for collection with a bank, trust company, savings institution, small loan company, or credit
1150 union is fully paid at such financial institution, the financial institution, through its authorized
1151 agents, may execute all certificates, releases, and affidavits required of a creditor by this
1152 chapter to effectuate a release. The financial institution may execute and deliver to the clerk
1153 an affidavit to the effect that the financial institution had been acting as collecting agent for
1154 the creditor on the debt and that the debt has been paid in full at such institution.

1155 **Drafting note: Technical changes.**

1156 § ~~55-66.4~~ 55.1-xxx. Partial satisfaction ~~or release~~.

1157 It ~~shall be~~ is lawful for any ~~such lienor~~ lien creditor to ~~make a marginal release or~~
1158 record a certificate of partial satisfaction of any one or more of the separate pieces or parcels
1159 of property covered by such lien. It shall also be lawful for any such ~~lienor~~ creditor to ~~make a~~
1160 ~~marginal release or~~ record a certificate of partial satisfaction of any part of the real estate
1161 covered by such lien if a plat of such part or a deed of such part is recorded in the clerk's office
1162 and a ~~cross reference~~ cross-reference is made in the ~~marginal release or~~ certificate of partial
1163 satisfaction to the book and page where the plat or deed of such part is recorded. Such ~~marginal~~
1164 ~~partial release or satisfaction or~~ certificate of partial satisfaction may be accomplished in
1165 manner and form ~~hereinbefore~~ prescribed in this chapter ~~provided~~ for making ~~marginal~~
1166 ~~releases or~~ certificates of satisfaction, except that the creditor, or his duly authorized agent,
1167 shall make an affidavit to the clerk or in such certificate that such creditor is at the time of
1168 making such ~~release~~ satisfaction the legal holder of the obligation, note, bond, or other
1169 evidence of debt, secured by such lien, and when made in conformity ~~therewith and as~~
1170 ~~provided herein~~ with the provisions of this chapter such partial satisfaction ~~or release~~ shall be
1171 as valid and binding as a proper release deed duly executed for the same purpose.

1172 Any and all partial marginal releases made prior to July 1, 1966, in any county or city
1173 of ~~this~~ the Commonwealth, in conformity with the provisions of this chapter, either of one or
1174 more separate pieces or parcels of real estate or any part of the real estate covered by such
1175 lien, or as to one or more of the obligations secured by any such lien, or as to all of the real
1176 estate covered by such lien instrument, are hereby validated and declared to be binding upon
1177 all parties in interest, but this provision shall not be construed as intended to disturb or impair
1178 any vested right.

1179 **Drafting note: The term "lienor" is replaced with the term "lien creditor" for**
1180 **conformity with the terminology used in § 55.1-xxx [§ 55-66.3]. References to "marginal**
1181 **release" are stricken as obsolete (see 2014 Acts of Assembly, Chapter 330). Technical**
1182 **changes are made.**

1183 § ~~55-66.4:1~~ 55.1-xxx. Permissible form for certificate of satisfaction or certificate of
1184 partial satisfaction.

1185 Any release by a certificate of satisfaction or certificate of partial satisfaction shall be
1186 in conformity with §§ ~~55-66.3, 55-66.3:1, and 55-66.4~~ 55.1-xxx, 55.1-xxx, and 55.1-xxx and
1187 shall conform substantially with the following Certificate of Satisfaction or Certificate of
1188 Partial Satisfaction forms:

1189 CERTIFICATE OF SATISFACTION

1190 Place of Record _____

1191 Date of Note/Deed of Trust _____

1192 Face Amount Secured/Face Amount of Note: _____

1193 Deed Book _____ Page _____

1194 Name(s) of Grantor(s)/Maker(s); _____

1195 Name(s) of Trustee(s) _____

1196 Face Amount of Note(s) \$ _____

1197 I/we, holder(s) of the above-mentioned note(s) secured by the above-mentioned deed
1198 of trust, do hereby certify that the same has/have been paid in full, and the lien therein created
1199 and retained is hereby released.

1200 GIVEN UNDER MY/OUR HAND(S) THIS _____ DAY OF
1201 _____, 20_____.

1202 _____

1203 _____

1204 (NOTE HOLDERS)

1205 Commonwealth of Virginia,

1206 County/City of _____ to wit:

1207 Subscribed, sworn to, and acknowledged before me by _____ this
1208 _____ day of _____, 20_____.

1209 My Commission Expires: _____

1210 _____

1211 NOTARY PUBLIC

1212 [Notary Registration Number:](#) _____

1213 VIRGINIA;

1214 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT

1215 This certificate was presented, and with the Certificate annexed, admitted to record on

1216 _____ at _____ o'clock _____ .m.

1217 Clerk's fees: \$_____ have been paid.

1218 Attest: _____, Deputy Clerk

1219 

1220 CERTIFICATE OF PARTIAL SATISFACTION

1221 Place of Record _____

1222 Date of Deed of Trust _____

1223 Deed Book _____ Page _____

1224 Name(s) of Grantor(s) _____

1225 Name(s) of Trustee(s) _____

1226 Maker(s) of Note(s) _____

1227 Date of Note(s) _____

1228 Face Amount of Note(s) \$_____

1229 The lien of the above-mentioned deed of trust securing the above-mentioned note is

1230 released insofar as the same is applicable to _____ (description of property)

1231 recorded in deed book _____ at page _____ in the clerk's office of this court. The

1232 undersigned is/are the legal holder(s) of the obligation, note, bond, or other evidence of debt

1233 secured by said deed of trust.

1234 Given under my/our hand(s) this _____ day of _____, 20_____.

1235 _____

1236 _____

1237 (NOTE HOLDERS)

1238 Commonwealth of Virginia,

1239 County/City of _____ to wit:

1240 Subscribed, sworn to, and acknowledged before me by _____ this

1241 _____ day of _____, 20_____.

1242 My Commission Expires: _____

1243 _____

1244 NOTARY PUBLIC

1245 Notary Registration Number: _____

1246 The clerk shall satisfy the requirements of § 17.1-228.

1247 Certificates conforming to this section prior to the amendment effective July 1, 1984,

1248 shall be deemed to be in substantial conformity ~~thereto~~ to this section.

1249 **Drafting note: "Notary Registration Number" is added to the signature line of**
1250 **the certificate because it is a requirement of notarization. Technical changes are made.**

1251 § ~~55-66.4:2~~ 55.1-xxx. Where certificates of satisfaction are to be indexed.

1252 ~~A~~ The clerk shall record a certificate of partial satisfaction or a certificate of

1253 satisfaction ~~shall be recorded by the clerk~~ on the grantor index, both under the name of each

1254 grantor on the underlying deed of trust and under the name of the first-named trustee under

1255 which the deed of trust was indexed, all as identified on the certificate of satisfaction. The

1256 deed book and page number or the instrument number of the released deed of trust shall also

1257 be designated in the index. Any clerk using a separate index book or data file for grantees only

1258 shall also record ~~therein~~ in such book or file the name of each grantor on the underlying deed

1259 of trust as identified on the certificate of satisfaction.

1260 **Drafting note: Technical changes.**

1261 § ~~55-66.5~~ 55.1-xxx. Releases made by court; costs and attorney fees.

1262 A. Any person who owns or has any interest in real estate or personal property on
1263 which ~~such an~~ encumbrance as described in § 55.1-xxx [§ 55-66.3] exists may, after 20 days'
1264 notice ~~thereof~~ to the person entitled to such encumbrance, apply to the circuit court of the
1265 county or city in ~~whose clerk's office~~ which such encumbrance is recorded to have the same
1266 released or discharged. Upon proof that the encumbrance has been paid or discharged or upon
1267 a finding by the court that more than 15 years have elapsed since the maturity of the lien or
1268 encumbrance, raising a presumption of payment ~~which that~~ is not rebutted at the hearing, such
1269 court shall order the clerk to record a certificate of satisfaction or a certificate of partial
1270 satisfaction ~~which that~~, when so recorded, shall operate as a release of such encumbrance.

1271 All releases made prior to June 24, 1944, by any court under this section upon such
1272 presumption of payment so arising and not rebutted shall be validated.

1273 B. If the court finds that the person entitled to such encumbrance cannot with due
1274 diligence be located, and that notice has been given such person in the manner provided by §
1275 8.01-319 or ~~55-66.10~~ 55.1-xxx, or that tender has been made of the sum due thereon but has
1276 been refused for any reason by the party ~~or parties~~ to whom due, the court may in its discretion
1277 order the sum due to be paid into court, to be there held as provided by law, and to be paid
1278 upon demand to the person ~~or persons~~ entitled thereto. The court shall order the same to be
1279 recorded as provided in subsection A ~~hereof~~, which and such certificate of satisfaction or
1280 certificate of partial satisfaction shall operate as a release of the encumbrance.

1281 C. Upon a finding by the court that the holder of a mortgage or deed of trust ~~which~~
1282 that has been fully paid or discharged has unjustifiably and without good cause failed or
1283 refused to release such mortgage or deed of trust, the court, ~~in its discretion~~, may order that
1284 costs and reasonable ~~attorneys~~ attorney fees be paid to the petitioning party. This subsection
1285 shall not preclude a separate ~~suit~~ action by the petitioning party for actual damages sustained
1286 by reason of such failure or refusal to release the encumbrance.

1287 **Drafting note: Language used in the old equitable pleading practice, including**
1288 **"suit," is replaced with modern terminology. In subsection B, "or parties" and "or**
1289 **persons" are stricken on the basis of § 1-227, which states that throughout the Code any**
1290 **word used in the singular includes the plural. In subsection C, the phrase "in its**
1291 **discretion" is deleted as unnecessary. Technical changes are made.**

1292 § ~~55-66.6~~ 55.1-xxx. Recordation of certificate of satisfaction, etc., required when
1293 release of lien recorded.

1294 Whenever a release of a deed of trust or other obligation ~~shall be admitted to record is~~
1295 recorded in the office of the clerk of any circuit court, such clerk shall record a certificate of
1296 satisfaction or certificate of partial satisfaction, stating that such deed or other obligation is
1297 released. The fee charged by the clerk for recording such release shall be paid by the lien
1298 debtor. Such certificate shall be indexed in the name of the grantors and grantees of the
1299 instrument being released. If any clerk fails for ~~ten~~ 10 days to do anything required of him by
1300 this section, he shall be liable for any damage ~~which that~~ any person may sustain by reason of
1301 such failure.

1302 **Drafting note: Technical changes.**

1303 § ~~55-66.7~~.

1304 **Drafting note: Repealed by Acts 1992, c. 651.**

1305 Article ~~2.1~~ 3.

1306 ~~Mortgage~~ Satisfaction of Security Interest in Real Property.

1307 **Drafting note: Existing Article 2.1 is retained as proposed Article 3 and contains**
1308 **provisions pertaining to satisfaction of security interests. The article title is amended to**
1309 **reflect the article's applicability to all security interests, not only mortgages.**

1310 § ~~55-66.8~~ 55.1-xxx. Applicability.

1311 The procedure authorized by this article for the release of a ~~mortgage security interest~~
1312 in real property using an automated electronic recording system may be used to effect the

1313 release of a ~~mortgage security interest~~ regardless of when the ~~mortgage security interest~~ was
1314 created, assigned, or satisfied by payment made by the settlement agent. The procedure
1315 authorized by this section for the release of a ~~mortgage security interest~~ shall constitute an
1316 optional method of accomplishing a release of a ~~mortgage security interest~~ secured by
1317 property in the Commonwealth.

1318 **Drafting note: The term "mortgage" is replaced with "security interest" to**
1319 **reflect that this article is applicable to all security interests, not only mortgages.**

1320 § ~~55-66.9~~ 55.1-xxx. Definitions.

1321 As used in this article, unless the context requires otherwise:

1322 "Day" means calendar day.

1323 "Document" means information that is:

1324 1. Inscribed on a tangible medium or that is stored in an electronic or other medium
1325 and is retrievable in perceivable form; and

1326 2. Eligible to be recorded in the land records maintained by the clerk.

1327 "Electronic," as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et
1328 seq.), means relating to technology having electrical, digital, magnetic, wireless, optical,
1329 electromagnetic, or similar capabilities.

1330 "Electronic document" means a document received by the clerk in electronic form.

1331 "Electronic notarization" means an official act by a notary public in accordance with
1332 the Virginia Notary Act (§ 47.1-1 et seq.) and § ~~55-118.3~~ 55.1-xxx with respect to an
1333 electronic document.

1334 "Electronic signature," as defined in the Uniform Electronic Transactions Act (§ 59.1-
1335 479 et seq.), means an electronic sound, symbol, or process attached to or logically associated
1336 with a record and executed or adopted by a person with the intent to sign the record.

1337 "eRecording System" means the automated electronic recording system implemented
1338 by the clerk for the recordation of electronic documents among the land records maintained
1339 by the clerk.

1340 "Filer" means an individual, corporation, business trust, estate, trust, partnership,
1341 limited liability company, association, joint venture, public body, public corporation,
1342 government, or governmental subdivision, agency, or instrumentality, or any other legal or
1343 commercial entity ~~who~~ that files an electronic document among the land records maintained
1344 by the clerk.

1345 "Good faith" means honesty in fact and the observance of reasonable commercial
1346 standards of fair dealing.

1347 "Landowner" means a person that, before foreclosure, has the right of redemption in
1348 the real property described in a security instrument. ~~The term~~ "Landowner" does not include
1349 a person that holds only a lien on the real property.

1350 "Land records document" means any writing authorized by law to be recorded,
1351 whether made on paper or in electronic format, ~~which~~ that the clerk records affecting title to
1352 real property.

1353 "Organization" means a person other than an individual.

1354 "Person" means an individual, corporation, business trust, estate, trust, partnership,
1355 limited liability company, association, joint venture, public corporation, government, or
1356 governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

1357 "Real property" means real property that is used for residential or nonresidential
1358 purposes.

1359 "Recording data" means the date, and deed book and page number or instrument
1360 number, that ~~indieate~~ indicates where a document is recorded in the land records of the clerk
1361 of the circuit court pursuant to Chapter ~~6~~ XX (§ ~~55-106~~ 55.1-xxx et seq.).

1362 "Secured creditor" means a person ~~who~~ that holds or is the beneficiary of a security
1363 interest or that is authorized both to receive payments on behalf of a person that holds a
1364 security interest in real property and to record a satisfaction of the security instrument upon
1365 receiving full performance of the secured obligation. ~~The term~~ "Secured creditor" does not
1366 include a trustee under a security instrument. ~~The term~~ "Secured creditor" also includes
1367 "lender" as used in Chapter ~~27.3~~ XX (§ ~~55-525.16~~ 55.1-xxx et seq.) ~~of Title 55~~ and "lien
1368 creditor" and "servicer" as used in § 55-66.3.

1369 "Secured obligation" means an obligation the payment or performance of which is
1370 secured by a security interest.

1371 "Security instrument" means an agreement, however denominated, that creates or
1372 provides for a security interest, whether or not it also creates or provides for a lien on personal
1373 property.

1374 "Security interest" means an interest in real property created by a security instrument,
1375 securing payment, or performance of an obligation and includes a mortgage or deed of trust.

1376 "Sign" means, with present intent to authenticate, accept, or adopt a document:

1377 1. To execute or adopt a tangible symbol; or

1378 2. To attach to or logically associate with the document an electronic sound, symbol,
1379 or process.

1380 "State" means a state of the United States, the District of Columbia, Puerto Rico, the
1381 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
1382 of the United States.

1383 "Submit for recording" means to deliver, with required fees and taxes, a document
1384 sufficient to be recorded under this article; ~~to the office of the clerk of the circuit court pursuant~~
1385 ~~to Chapter 6~~ XX (§ ~~55-106~~ 55.1-xxx et seq.).

1386 **Drafting note: Technical changes.**

1387 § ~~55-66.10~~ 55.1-xxx. Document of rescission; effect; liability for wrongful recording.

1388 A. ~~In~~ As used in this section, "document of rescission" means a document stating that
1389 an identified satisfaction, certificate of satisfaction, or affidavit of satisfaction of a security
1390 instrument was recorded erroneously or fraudulently, the secured obligation remains
1391 unsatisfied, and the security instrument remains in force.

1392 B. If a person records a satisfaction, certificate of satisfaction, or affidavit of
1393 satisfaction of a security instrument in error or by fraud, the person may execute and record a
1394 document of rescission. Upon recording, the document rescinds an erroneously recorded
1395 satisfaction, certificate, or affidavit.

1396 C. A recorded document of rescission has no effect on the rights of a person who:

1397 1. Acquired an interest in the real property described in a security instrument after the
1398 recording of the satisfaction, certificate of satisfaction, or affidavit of satisfaction of the
1399 security instrument and before the recording of the document of rescission; and

1400 2. Would otherwise have priority over or take free of the lien created by the security
1401 instrument under the laws of the Commonwealth ~~of Virginia~~.

1402 D. A person, other than the clerk of the circuit court or any of his employees or other
1403 governmental official in the course of the performance of his recordation duties, who
1404 erroneously, fraudulently, or wrongfully records a document of rescission is subject to liability
1405 under § ~~55-66.3~~ 55.1-xxx.

1406 **Drafting note: Technical changes.**

1407 § ~~55-66.11~~ 55.1-xxx. Secured creditor to submit satisfaction for recording; liability for
1408 failure.

1409 A. A secured creditor shall submit for recording a satisfaction of a security instrument
1410 within 90 days after the creditor receives full payment or performance of the secured
1411 obligation in accordance with subsection A B of § ~~55-66.3~~ 55.1-xxx. If a security instrument
1412 secures a line of credit or future advances, the secured obligation is fully performed only if,
1413 in addition to full payment, the secured creditor has received a notification requesting the

1414 creditor to terminate the line of credit or containing a statement sufficient to terminate the
1415 effectiveness of the provision for future advances in the security instrument.

1416 B. A secured creditor who is required to submit a satisfaction of a security instrument
1417 for recording and fails to do so by the end of the period specified in subsection A is subject to
1418 liability under § ~~55-66.3~~ 55.1-xxx.

1419 **Drafting note: No change.**

1420 § ~~55-66.12~~ 55.1-xxx. Form and effect of satisfaction.

1421 A. A document is sufficient to constitute a satisfaction of a security instrument if it
1422 conforms substantially in form and content to the requirements of § ~~55-66.4:1~~ 55.1-xxx and
1423 it:

1424 1. Identifies the security instrument, the original parties to the security instrument, the
1425 recording data for the security instrument, and the office in which the security instrument is
1426 recorded;

1427 2. States that the person signing the satisfaction is the secured creditor;

1428 3. Contains a legal description of the real property identified in the security instrument,
1429 but only if a legal description is necessary for a satisfaction to be properly indexed; otherwise,
1430 the deed book and page number or instrument number is sufficient;

1431 4. Contains language terminating the effectiveness of the security instrument; and

1432 5. Is signed by the secured creditor and acknowledged as required by law for a
1433 conveyance of an interest in real property.

1434 B. The clerk of the circuit court shall accept for recording a satisfaction document,
1435 unless:

1436 1. An amount equal to or greater than the applicable recording fees and taxes is not
1437 tendered;

1438 2. The document is submitted by a method or in a medium not authorized by the laws
1439 of the Commonwealth ~~of Virginia~~; or

1440 3. The document is not signed by the secured creditor and acknowledged as required
1441 by law for a conveyance of an interest in real property.

1442 **Drafting note: Technical changes.**

1443 § ~~55-66.13~~ 55.1-xxx. Relation to Electronic Signatures in Global and National
1444 Commerce Act.

1445 To the extent permitted by law, this article modifies, limits, and supersedes the
1446 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except
1447 that nothing in this article modifies, limits, or supersedes §§ 7001(c) and 7004 of that Act or
1448 authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

1449 **Drafting note: No change.**

1450 § ~~55-66.14~~ 55.1-xxx. Uniform standards.

1451 In consultation with the circuit court clerks, the Executive Secretary of the Supreme
1452 Court, and interested citizens and businesses, the Virginia Information Technologies Agency
1453 shall develop standards to implement electronic recording of real property documents. The
1454 [Virginia Information Technologies](#) Agency shall consider standards and practices of other
1455 jurisdictions; the most recent standards promulgated by national standard-setting bodies, such
1456 as the Property Records Industry Association; views of interested persons and other
1457 governmental entities; and needs of localities of varying sizes, population, and resources.

1458 **Drafting note: Technical change.**

1459 Article ~~3~~ 4.

1460 Effect of Certain Expressions in Deeds ~~and Leases~~.

1461 **Drafting note: Existing Article 3 is retained as proposed Article 4 and contains**
1462 **provisions pertaining to the effect of certain expressions in deeds. Existing §§ 55-76**
1463 **through 55-79, dealing with deeds of lease, are relocated to Chapter XX of Subtitle III.**

1464 § ~~55-67~~ 55.1-xxx. Effect of word "covenants."

1465 When a deed uses the words "the said _____ covenants," such covenant shall
1466 have the same effect as if it were expressed to be by the covenantor, for himself, and his heirs,
1467 personal representatives, and assigns and shall be deemed to be with the covenantee, and his
1468 heirs, personal representatives, and assigns.

1469 **Drafting note: Technical changes.**

1470 § ~~55-68~~ 55.1-xxx. Effect of covenant of general warranty.

1471 A covenant by the grantor in a deed, "that he will warrant generally the property hereby
1472 conveyed," shall have the same effect as if the grantor had covenanted that he, and his heirs
1473 and personal representatives will forever warrant and defend such property unto the grantee,
1474 and his heirs, personal representatives, and assigns, against the claims and demands of all
1475 persons ~~whomsoever~~.

1476 **Drafting note: Technical changes.**

1477 § ~~55-69~~ 55.1-xxx. ~~Of Covenant of~~ special warranty.

1478 A covenant by any such grantor "that he will warrant specially the property hereby
1479 conveyed" shall have the same effect as if the grantor has covenanted that he, and his heirs
1480 and personal representatives will forever warrant and defend such property unto the grantee,
1481 and his heirs, personal representatives, and assigns, against the claims and demands of the
1482 grantor, and all persons claiming or to claim by, through, or under him.

1483 **Drafting note: Technical changes.**

1484 § ~~55-70~~ 55.1-xxx. Words "with general warranty," "with special warranty," and "with
1485 English covenants of title" construed.

1486 The words "with general warranty," in the granting part of any deed, shall be deemed
1487 to be a covenant by the grantor "that he will warrant generally the property hereby conveyed."
1488 The words "with special warranty," in the granting part of any deed, shall be deemed to be a
1489 covenant by the grantor "that he will warrant specially the property hereby conveyed."

1490 The words "with English covenants of title" or words of similar import, in the granting
1491 part of any deed shall be deemed to be an expression by the grantor of those covenants set out
1492 in §§ ~~55-74~~ 55.1-xxx through ~~55-74~~ 55.1-xxx, ~~inclusive~~, and in addition thereto the covenant
1493 that he is seized in fee simple of the property conveyed.

1494 **Drafting note: Technical changes.**

1495 § ~~55-70.1~~ 55.1-xxx. Implied warranties on new homes.

1496 A. As used in this section:

1497 "New dwelling" means a dwelling or house that has not previously been occupied for
1498 a period of more than 60 days by anyone other than the vendor or the vendee or that has not
1499 been occupied by the original vendor or subsequent vendor for a cumulative period of more
1500 than 12 months, excluding dwellings constructed solely for lease. "New dwelling" does not
1501 include a condominium or condominium units created pursuant to Chapter XX (§ 55.1-xxx et
1502 seq.) [Chapter 4.2 (§ 55-79.39 et seq.)].

1503 "Structural defects" means a defect or defects that reduce the stability or safety of the
1504 structure below accepted standards or that restrict the normal use of the structure.

1505 B. In every contract for the sale of a new dwelling, the vendor shall be held to warrant
1506 to the vendee that, at the time of the transfer of record title or the vendee's taking possession,
1507 whichever occurs first, the dwelling with all of its fixtures is, to the best of the actual
1508 knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to
1509 pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to
1510 pass without objection in the trade.

1511 B.-C. In addition, in every contract for the sale of a new dwelling, the vendor, if he is
1512 in the business of building or selling such dwellings, shall be held to warrant to the vendee
1513 that, at the time of transfer of record title or the vendee's taking possession, whichever occurs
1514 first, the dwelling together with all of its fixtures is sufficiently (i) free from structural defects,

1515 so as to pass without objection in the trade; (ii) constructed in a workmanlike manner, so as
1516 to pass without objection in the trade; and (iii) fit for habitation.

1517 ~~C. D.~~ The ~~above~~ warranties described in subsections B and C implied in the contract
1518 for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not
1519 in lieu of, any other express or implied warranties pertaining to the dwelling, or its materials
1520 or fixtures. A contract for sale may waive, modify, or exclude any or all express and implied
1521 warranties and sell a new home "as is" only if the words used to waive, modify, or exclude
1522 such warranties are conspicuous ~~(, as defined by subdivision (b) (10) of § 8.1A-201)~~, set forth
1523 on the face of such contract in capital letters ~~which that~~ are at least two points larger than the
1524 other type in the contract and only if the words used to waive, modify, or exclude the
1525 warranties state with specificity the warranty or warranties that are being waived, modified,
1526 or excluded. If all warranties are waived or excluded, a contract ~~must shall~~ specifically set
1527 forth in capital letters ~~which that~~ are at least two points larger than the other type in the contract
1528 that the dwelling is being sold "as is."

1529 ~~D. E.~~ If there is a breach of warranty under this section, the vendee, or his heirs or
1530 personal representatives in case of his death, shall have a cause of action against his vendor
1531 for damages; provided, however, for any defect discovered after July 1, 2002, such vendee
1532 shall first provide the vendor, by ~~registered or~~ certified mail at his last known address, or by
1533 commercial overnight delivery service or the United States Postal Service, and a receipt
1534 obtained, a written notice stating the nature of the warranty claim. Such notice also may be
1535 hand delivered to the vendor with the vendee retaining a receipt of such ~~hand-delivered hand-~~
1536 delivered notice to the vendor or its authorized agent. After such notice, the vendor shall have
1537 a reasonable period of time, not to exceed six months, to cure the defect that is the subject of
1538 the warranty claim.

1539 ~~E. F.~~ The warranty shall extend for a period of one year from the date of transfer of
1540 record title or the vendee's taking possession, whichever occurs first, except that the warranty

1541 pursuant to clause (i) of subsection ~~B~~C for the foundation of new dwellings shall extend for
1542 a period of five years from the date of transfer of record title or the vendee's taking possession,
1543 whichever occurs first. Any action for its breach shall be brought within two years after the
1544 breach thereof. For all warranty claims arising on or after January 1, 2009, sending the notice
1545 required by subsection ~~D~~E shall toll the limitations period for six months.

1546 ~~F. As used in this section, the term "new dwelling" shall mean a dwelling or house that~~
1547 ~~has not previously been occupied for a period of more than 60 days by anyone other than the~~
1548 ~~vendor or the vendee or that has not been occupied by the original vendor or subsequent~~
1549 ~~vendor for a cumulative period of more than 12 months excluding dwellings constructed~~
1550 ~~solely for lease. The term "new dwelling" shall not include a condominium or condominium~~
1551 ~~units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.~~

1552 ~~G. The term "structural defects," as used in this section, shall mean a defect or defects~~
1553 ~~that reduce the stability or safety of the structure below accepted standards or that restrict the~~
1554 ~~normal use thereof.~~

1555 ~~H. G.~~ In the case of new dwellings where fire-retardant treated plywood sheathing or
1556 other roof sheathing materials are used in lieu of fire-retardant treated plywood, the vendor
1557 shall be deemed to have assigned the manufacturer's warranty, at settlement, to the vendee.
1558 The vendee shall have a direct cause of action against the manufacturer of such roof sheathing
1559 for any breach of such warranty. To the extent any such manufacturer's warranty purports to
1560 limit the right of third parties or prohibit assignment, ~~said~~ such provision shall be
1561 unenforceable and of no effect.

1562 **Drafting note: Definitions are relocated to subsection A. In proposed subsection**
1563 **E, the methods of delivery of notice are updated to conform with other delivery methods**
1564 **used throughout the title. Technical changes are made.**

1565 ~~§ 55-70.2~~ 55.1-xxx. Effect of certain transfer fee covenants.

1566 A. As used in this section, unless the context requires a different meaning:

1567 "Transfer" means assignment, conveyance, gift, inheritance, sale, or other transfer of
1568 ownership interest in real property located in the Commonwealth.

1569 "Transfer fee" means a fee or charge payable to a nongovernmental person or entity
1570 upon transfer or payable for the right to make or accept such transfer, regardless of whether
1571 the fee or charge is a fixed amount or is determined as a percentage of the value of the property,
1572 the purchase price of the property, or other consideration given for the transfer. "Transfer fee"
1573 does not include:

1574 1. Any consideration that is payable by a grantee to a grantor for the interest in real
1575 property being transferred;

1576 2. Any commission that is payable to a licensed real estate broker for a transfer under
1577 an agreement between the broker and the grantor or grantee;

1578 3. Any amount, charge, fee, or interest that is payable by a borrower to a lender under
1579 a loan secured by a deed of trust or mortgage on real property, including (i) any fee that is
1580 payable to the lender for consenting to an assumption of the loan or a transfer of the real
1581 property subject to the deed of trust or mortgage and (ii) any consideration allowed by law
1582 that is payable to the lender in connection with the loan;

1583 4. Any amount, charge, fee, reimbursement, or rent that is payable by a lessee to a
1584 lessor under a lease, including any fee that is payable to the lessor for consenting to an
1585 assignment, sublease, encumbrance, or transfer of the lease;

1586 5. Any consideration that is payable to the holder of an option to purchase an interest
1587 in real property, the holder of a right of first refusal, or the holder of a right of first offer to
1588 purchase an interest in real property for releasing, waiving, or not exercising the option or
1589 right upon the transfer of the property to a person other than the holder;

1590 6. Any assessment, charge, or fee authorized by statute, the recorded condominium
1591 instrument, or the recorded declaration to be charged by, or payable to, a common interest

1592 community as defined in § ~~55-528~~ [55.1-xxx](#) or a cooperative as defined in § ~~55-426~~ [55.1-xxx](#);

1593 or

1594 7. Any amount, assessment, charge, fee, fine, or tax that is payable to or imposed by a
1595 governmental authority.

1596 "Transfer fee covenant" means a covenant or declaration that purports to affect real
1597 property and that requires or purports to require, upon a subsequent transfer of such property,
1598 the payment of a transfer fee to the declarant or other nongovernmental person or entity
1599 specified in the covenant or declaration or to the assigns or successors of such declarant or
1600 nongovernmental person or entity.

1601 B. A transfer fee covenant recorded in the Commonwealth on or after July 1, 2011,
1602 shall not run with the title to real property and is not binding on, or enforceable at law or in
1603 equity against, any subsequent owner, purchaser, or mortgagee of any interest in real property
1604 as an equitable servitude or otherwise. Any lien purporting to secure the payment of a transfer
1605 fee under a transfer fee covenant recorded in the Commonwealth on or after July 1, 2011, is
1606 void and unenforceable.

1607 **Drafting note: Technical changes.**

1608 § ~~55-71~~ [55.1-xxx](#). Covenant of "right to convey."

1609 A covenant by the grantor in a deed for land; "that he has the right to convey the said
1610 land to the grantee;" shall have the same effect as if the grantor had covenanted that he has
1611 good right, full power, and absolute authority to convey the land, with all the buildings
1612 thereon; and the privileges and appurtenances thereto belonging, unto the grantee, in the
1613 manner in which the same is conveyed or intended so to be by the deed, and according to its
1614 true intent.

1615 **Drafting note: Technical changes.**

1616 § ~~55-72~~ [55.1-xxx](#). ~~For~~ [Covenant for](#) "quiet possession" and "free from all
1617 encumbrances."

1618 A covenant by any such grantor "that the grantee shall have quiet possession of the
1619 said land" shall have as much effect as if he covenanted that the grantee, and his heirs and
1620 assigns might, at any and all times thereafter, peaceably and quietly enter upon and have, hold,
1621 and enjoy the land conveyed by the deed, or intended so to be, with all the buildings thereon
1622 and the privileges and appurtenances thereto belonging, and receive and take the rents and
1623 profits thereof, to and for his and their use and benefit, without any eviction, interruption, suit,
1624 claim, or demand whatever. If to such covenant there be added "free from all encumbrances,"
1625 these words shall have as much effect as the words "and that freely and absolutely acquitted,
1626 exonerated, and forever discharged, or otherwise by the said grantor or his heirs saved
1627 harmless and indemnified of, from, and against any and every charge and encumbrance
1628 whatever."

1629 **Drafting note: Technical changes.**

1630 § ~~55-73~~ 55.1-xxx. ~~For~~ Covenant for "further assurances."

1631 A covenant by any such grantor "that he will execute such further assurances of the
1632 said lands as may be requisite" shall have the same effect as if he covenanted that he, the
1633 grantor, and his heirs or personal representative will at any time, upon any reasonable request,
1634 at the charge of the grantee, and his heirs or assigns, do, execute, or cause to be done or
1635 executed all such further acts, deeds, and things for the better, more perfectly and absolutely
1636 conveying and assuring the said lands and premises thereby conveyed or intended so to be
1637 unto the grantee, and his heirs and assigns in manner aforesaid, as by the grantee, and his heirs
1638 or assigns, and his or their ~~counsel in the law~~ attorney, shall be reasonably devised, advised,
1639 or required.

1640 **Drafting note: Technical changes.**

1641 § ~~55-74~~ 55.1-xxx. ~~Of~~ Covenant of "no act to encumber."

1642 A covenant by any such grantor "that he has done no act to encumber the said lands"
1643 shall have the same effect as if he covenanted that he had not done or executed, or knowingly

1644 suffered, any act, deed, or thing whereby the lands and premises conveyed, or intended so to
1645 be, or any part thereof, are or will be charged, affected, or encumbered in title, estate, or
1646 otherwise.

1647 **Drafting note: Technical changes.**

1648 § ~~55-75~~ 55.1-xxx. Effect of certain words of release in a deed.

1649 Whenever ~~in~~ any deed ~~there shall be used~~ uses the words: "The said grantor (or the
1650 said _____) releases to the said grantee (or the said _____) all his claims upon
1651 the said lands," such deed shall be construed as if it set forth that the grantor (or releasor) ~~hath~~
1652 has remised, released, and forever quitted claim and by these presents ~~doth~~ does remise,
1653 release, and forever quitclaim ~~unto to~~ the grantee (or releasee); and his heirs and assigns all
1654 right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises
1655 granted (or released) or intended ~~so~~ to be granted (or released), so that neither he nor his
1656 personal representative, ~~his~~ heirs, or assigns, shall at any time thereafter, have, any type of
1657 claim, challenge, or demand on the lands and premises, or any part thereof, ~~in any manner~~
1658 whatever.

1659 **Drafting note: Language is updated for modern usage. Technical changes are**
1660 **made.**

1661 #