

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 971

An Act to amend and reenact § 55-58.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55-58.3, relating to priority of certain refinance mortgages over subordinate mortgages.

[H 1207]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 55-58.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-58.3 as follows:

§ 55-58.2. Credit line deed of trust defined; relative priority of credit line deed of trust and other instruments of judgment.

1. For the purpose of this title, the term "credit line deed of trust" is any deed of trust, mortgage, bond or other instrument, entered into after July 1, 1982, in which title to real property located in this Commonwealth is conveyed, transferred, encumbered or pledged to secure payment of money including advances to be made in the future by the noteholder named in the credit line deed of trust.

2. A credit line deed of trust shall set forth on the front page thereof, either in capital letters or in language underscored, the words "THIS IS A CREDIT LINE DEED OF TRUST." Such phrase shall convey notice to all parties that the noteholder named therein and the grantors and other borrowers identified therein have an agreement whereby the noteholder may make or contemplates making advances from time to time against the security described in the deed of trust. Such deed of trust shall specify therein the maximum aggregate amount of principal to be secured at any one time.

3. From the date of the recording of a credit line deed of trust, the lien thereof shall have priority (i) as to all other deeds, conveyances, or other instruments, or contracts in writing, which are unrecorded as of such date and of which the noteholder has no knowledge or notice; and (ii) as to judgment liens subsequently docketed, except as provided in subsection 4 of this section. Such priority shall extend to any advances made following the recordation of the credit line deed of trust. Amounts outstanding, together with interest thereon, and other items provided by § 55-59, shall continue to have priority until paid or curtailed. Mechanics' liens created under Title 43 shall continue to enjoy the same priority as created by that title. Purchase money security interests in goods and fixtures shall have the same priority as provided in §§ 8.9-312 and 8.9-313.

4. Notwithstanding the provisions of subsections 1, 2 and 3 of this section, if a judgment creditor gives notice to the noteholder of record at the address indicated in the credit line deed of trust, such credit line deed of trust shall have no priority as to such judgment for any advances or extensions of credit made under such deed of trust from the day following receipt of that notice except those which have been unconditionally and irrevocably committed prior to such date.

5. In addition to the language specified in subsection 1 of this section, the credit line deed of trust shall set forth the name of the noteholder secured and the address at which communications may be mailed or delivered to him. Such name or address may be changed or modified by duly recorded instrument executed by the noteholder only. If the note or indebtedness secured by the credit line deed of trust is assigned or transferred, the name and address of the new noteholder may be set forth in the certificate of transfer provided by § 55-66.01. Such original name or address, or if changed, such changed name or address, shall be the address for delivery of notices contemplated by this section. Receipt of notice at such address shall be deemed receipt by the noteholder.

6. [Repealed.]

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

8. *Notwithstanding the provisions of subsections 1, 2 and 3 of this section, if a deed of trust under this section is a subordinate mortgage, as defined in § 55-58.3, upon the recording of a refinance mortgage, as defined in § 55-58.3, the credit line deed of trust shall retain the same subordinate position with respect to the refinance mortgage as it had with the prior mortgage, as defined in subsection A of § 55-58.3, provided that the refinance mortgage complies with the requirements of § 55-58.3.*

§ 55-58.3. *Priority of refinance mortgage over subordinate mortgage.*

A. *For purposes of this section, a subordinate mortgage is a mortgage or deed of trust securing an original principal amount not exceeding \$50,000, encumbering or conveying an interest in real estate containing not more than one dwelling unit that is subordinate in priority under subdivision A 1 of § 55-96 to a mortgage, deed of trust or other security interest in real estate (otherwise known as the*

prior mortgage) in existence at the time of the making of the loan secured by such subordinate mortgage.

B. For purposes of this section, a refinancing is the replacement of a loan secured by a prior mortgage with a new loan secured by a mortgage, deed of trust or other instrument and the payment in full of the debt owed under the original loan secured by the prior mortgage. A refinance mortgage is the mortgage, deed of trust or other instrument creating a security interest in real estate given to secure a refinancing.

C. Upon the refinancing of such a prior mortgage encumbering or conveying an interest in real estate containing not more than one dwelling unit, a subordinate mortgage shall retain the same subordinate position with respect to a refinance mortgage as the subordinate mortgage had with the prior mortgage, provided that:

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

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

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

D. The priorities among two or more subordinate mortgages shall be governed by subdivision A 1 of § 55-96.