

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 172

An Act to amend and reenact § 55-58.3 of the Code of Virginia, relating to property; subordinate mortgages.

[S 549]

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 55-58.3 of the Code of Virginia is amended and reenacted as follows:

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

A. ~~For purposes of As used in this section;~~

a subordinate mortgage is "*Subordinate mortgage*" means 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 (i) 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;~~ or (ii) as a result of a previous refinancing.

B. ~~For purposes of this section, a refinancing is~~ "*Refinancing*" means 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 "*Refinance mortgage*" means the mortgage, deed of trust or other instrument creating a security interest in real estate given to secure a refinancing.

€ B. 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.

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

2. That the provisions of this act shall apply with respect to mortgages and deeds of trust recorded on or after July 1, 2002.