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SENATE BILL NO. 549

Offered January 9, 2002

Prefiled January 9, 2002

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

Patron—Mims

Referred to Committee for Courts of Justice

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.

CB. 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.

DC. 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.

INTRODUCED

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