

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 77

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

[H 1682]

Approved March 14, 2011

**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. As used in this section:

"Refinance mortgage" means the mortgage, deed of trust or other instrument creating a security interest in real estate given to secure a refinancing.

"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.

"Subordinate mortgage" means a mortgage or deed of trust securing an original principal amount not exceeding ~~\$50,000~~ \$150,000, 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); or (ii) as a result of a previous refinancing.

B. Upon the refinancing of 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.

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

D. The provisions of subsection B shall not apply to a subordinate mortgage securing a promissory note payable to any county, city or town or any agency, authority or political subdivision of the Commonwealth if such subordinate mortgage is financed pursuant to an affordable dwelling unit ordinance adopted pursuant to § 15.2-2304 or § 15.2-2305, or pursuant to any program authorized by federal or state law or local ordinance or resolution, for (i) low- and moderate-income persons or households or (ii) improvements to residential potable water supplies and sanitary sewage disposal systems made to address an existing or potential public health hazard, and which mortgage, if recorded on or after July 1, 2003, states on the first page thereof in bold or capitalized letters: "THIS (DEED OF TRUST, MORTGAGE OR OTHER SECURITY INTEREST) SHALL NOT, WITHOUT THE CONSENT OF THE SECURED PARTY HEREUNDER, BE SUBORDINATED UPON THE REFINANCING OF ANY PRIOR MORTGAGE."