

13101759D

HOUSE BILL NO. 2006

Offered January 9, 2013

Prefiled January 9, 2013

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

Patron—Toscano

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. As used in this section:

*"Fully amortizing fixed rate mortgage" means a mortgage, deed of trust, or other instrument creating a security interest in real estate that has no adjustable rate, balloon, or acceleration features except in the case of default.**"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 \$150,000, encumbering or conveying an interest in real estate containing not more than ~~one~~ *four* dwelling ~~unit~~ *units* 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~~ *four* dwelling ~~unit~~ *units*, 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 greater of the outstanding principal balance secured by the prior mortgage plus \$5,000 or the outstanding principal balance plus any accrued interest, fees, and any prepayment penalty required to satisfy the prior mortgage; 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, or the prior mortgage was not a fully amortizing fixed rate mortgage and the refinance mortgage is a fully amortizing fixed rate 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."*

INTRODUCED

HB2006