

# VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

## CHAPTER 13

*An Act to amend and reenact § 55.1-319 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-318.1, relating to deeds of trust; amendment to loan document; statement of interest rate of a refinanced mortgage.*

[H 1882]

Approved February 25, 2021

**Be it enacted by the General Assembly of Virginia:**

**1. That § 55.1-319 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-318.1 as follows:**

**§ 55.1-318.1. Effect of amendment to loan document on deed of trust.**

*A deed of trust that has been recorded and that states that it secures indebtedness or other obligations under a loan document and that it also secures indebtedness or other obligations under such loan document as it may be amended, modified, supplemented, or restated shall secure such loan document as amended, modified, supplemented, or restated from time to time, without the necessity of recording an amendment to such deed of trust and without regard to whether any such amendment, modification, supplement, or restatement may otherwise constitute a novation of the indebtedness or other obligations under the loan document, and shall have the same priority as the priority of the original deed of trust recorded. The foregoing provision shall not apply to any amendment, modification, supplement, or restatement of such loan document if (i) the deed of trust securing such loan document conveys an interest in residential real estate containing not more than one dwelling unit or (ii) such amendment, modification, supplement, or restatement of such loan document (a) increases the aggregate amount of the principal of the indebtedness secured by the original deed of trust, (b) changes or substitutes the noteholder, lender, or agent of any lender named in the original loan document, or (c) extends the maturity date of the indebtedness or obligation secured if such maturity date was set forth in the original deed of trust, and the effect of any such amendment, modification, supplement, or restatement shall be governed by the law that would otherwise apply without regard to this section. For the purposes of this section, "loan document" includes a note, loan agreement, credit agreement, or other document evidencing a loan or other indebtedness.*

**§ 55.1-319. Priority of residential refinance mortgage over subordinate mortgage.**

A. As used in this section:

"Prior mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a financing.

"Refinance mortgage" means a mortgage, deed of trust, or other instrument encumbering or conveying an interest in residential real estate containing not more than one dwelling unit to secure a refinancing.

"Refinancing" means the replacement of a loan secured by a prior mortgage with a new loan secured by a refinance mortgage 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 residential real estate containing not more than one dwelling unit that is subordinate in priority (i) under subdivision A 1 of § 55.1-407 or (ii) as a result of a previous refinancing.

B. Upon the refinancing of a prior mortgage, 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 \_\_\_\_\_ WHICH HAD AN INTEREST RATE OF \_\_\_\_% PER ANNUM.";

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 of the refinance mortgage at the time it is recorded and does not exceed the interest rate set forth in of the prior mortgage. *The interest rate of the prior mortgage shall be stated on the first page of the refinance mortgage.*

C. The priorities among two or more subordinate mortgages shall be governed by subdivision A 1 of § 55.1-407.

D. The provisions of subsection B shall not apply to a subordinate mortgage securing a promissory note payable to any locality 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-income 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."