
Priority of Residential Refinance Mortgage Over Subordinate Mortgage

Description

Virginia Code Â§ 55.1-319, entitled "Priority of residential refinance mortgage over subordinate mortgage," makes refinancing for borrowers who need to subordinate a second or lower priority deed of trust much easier in many cases by eliminating the need for the subordinate deed of trust lender's review and approval, as well as the execution, delivery and recordation of a subordination agreement. However, while the process is more streamlined and provides for automatic subordination of a lower priority deed of trust to a refinance of a prior, superior deed of trust, the statute is very specific as to what is required for the subordination to take effect, and should be followed to the letter. Specifically, for automatic subordination to take place, the current statute requires the following:

- 1) The original principal amount of the subordinated loan cannot exceed \$150,000. This was increased from \$50,000 in 2011.
- 2) The principal balance of the new refinance mortgage cannot be higher than the current principal balance of the loan being refinanced, plus \$5,000.
- 3) The interest rate on the new refinance must be the same or lower than the rate of loan being refinanced.
- 4) The subordinate mortgage must encumber real estate containing not more than one dwelling unit.
- 5) The new mortgage must replace the prior mortgage, and the prior mortgage must be paid in full and released of record.
- 6) The new mortgage must state the following on the first page 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 _____.

In addition, the statute **does not apply** to a subordinate a deed of trust to any governmental agency pursuant to an affordable dwelling unit ordinance, 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. Further, the statute does not apply if the subordinate deed of trust states:

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.



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