EQUITABLE SUBROGATION IN VIRGINIA: THE SEQUEL

Description

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In 2001, I wrote an article for the Virginia Land Title Association (VLTA) *Examiner* simply entitled Equitable Subrogation *in* Virginia. The article appeared in Volume 7, Number 1, of the VLTA Examiner. Twenty-three years later, this is the sequel.

Occasionally, lenders who believe they are secured by a â??firstâ?• deed of trust are surprised to learn that they do not have the priority lien position they intended to have. For example, a lender may re-finance and pay off a loan secured by a prior first-lien deed of trust and, due to a missed intervening judgment, the refinance lender may find its refinance deed of trust subordinate to the intervening judgment. Courts in Virginia have liberally applied the doctrine of equitable subrogation to provide relief from such errors under certain circumstances. Accordingly, real property lawyers should be aware of the doctrineâ??s applications and limitations. The following briefly summarizes the law on equitable subrogation in Virginia.

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A. Equitable Subrogation is Based Upon Principles of Equity and Justice, FactSpecific, and is the Substitution of Another Person in the Place of a Creditor Whose Debt the Person Paid Off.

1. In Asset Management Holdings, LLC v. Wells Fargo Bank, N. A. (In re Wagner), Case No. 12-13285â??BFK, 2013 Bankr. LEXIS 4899 (Bankr. E.D. VA. Nov. 18, 2013), Judge Brian F. Kenney , applying Virginia state law, noted the Supreme Court of Virginia had described the principle of equitable subrogation as follows:
2. â??Subrogation is the substitution of another person in place of the creditor to whose rights he succeeds in relation to the debt. This doctrine is not dependent upon contract, nor upon privity between the parties; it is the creature of equity, and is founded upon principles of natural justice .â?? 179 Va. at 401, 18 S.E.2d at 920. â??Subrogation not being a matter of strict right, but purely equitable in its nature, dependent upon the facts and circumstances of each particular case , no general rule can be laid down which will afford a test in all cases for its application.â?? Id. at 402, 18 S.E.2d at 920. Nevertheless, we have expressly acknowledged that â??Virginia has long been committed to a *liberal application* of the principle of subrogation.â?? Id.

    *2013 Bankr. LEXIS 4899, at *18; (quoting Centreville Car Care, Inc. v. North Am. Mortg. Co. , 263 Va. 339, 345 (2002) (quoting Federal Land Bank of Baltimore v. Joynes, 179 Va. 394, 401-02 (1942)). (emphasis added); Dickerson v. Dickerson, No. CL17767, 2023 Va. Cir. LEXIS 92, at *3 (Orange Cnty. 2023).*

3. â??Subrogationâ?? is, in its simplest terms, the substitution of one party in the place of another with reference to a lawful claim, demand, or right so that the party that is substituted succeeds to the rights of the other.â?• Yellow Freight Syst., Inc. v. Courtaulds Performance Films, Inc., 266 Va . 57, 64 (citation omitted) (2003). Subrogation is not dependent on a contract or privity and is a solely equitable doctrine linked to the facts and circumstances of each particular case. Joynes, 179 Va. at 401-02.

Equitable subrogation â??is subrogation that arises by operation of law, and is not based on contract or privity of parties, but is purely equitable in nature, dependent on the facts and circumstances of each particular case.â?•â?• Dollar Tree Stores, Inc. v. Crum & Forster Specialty Ins. Co.. 91 Va. Cir. 433, 436 (Norfolk 2015) (citing XL Specialty Ins. Co. v. DOT, 269 Va. 362, 369 (2005) (quoting Centreville Car Care, Inc. v. N. Am. Mortg., 263 Va. 339, 345 (2002).

4. In *Wagner,* Judge Kenney further noted two principles that have been applied consistently by the Supreme Court in Virginia in the context of equitable subrogation:

   a) â??First, subrogation is not appropriate where intervening equities are prejudiced.â?• 2013 *Bankr. LEXIS at *19.*

   b) â??Second, ordinary negligence of the party claiming equitable subrogation does not bar the application of subrogation, where the equities strongly favor the subrogee.â?• *Id.*

5. In addition, all of the cases agree that the application of the principle of equitable subrogation is necessarily â??factâ??specific.â?• Id.; Dickerson, 2023 Va. Cir. LEX- IS 92, at *3; See also Bank of N.Y. Mellon Trust Co., N.A. v. Tysons Fin., LLC (In re Botero- Paramo), 483 F. Appâ??x 779, 786 (4th Cir. 2012) (Noting that â??the factâ??intensive inquiry required in subrogation claims does not generally support bright line rulesâ?•).

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Due largely to the â??factâ??specificâ?• application of equitable subrogation, in Virginia, some cases are favorable 1. and some cases are unfavorable.2

1 â?? See In re Wagner, No. 12-13285-BFK, Adv. Proceeding No. 13-01159 2013 Bankr. LEXIS 4899 (Nov. 18, 2013); In re Valley Vue Joint Venture, 123 B.R. 199 (Bankr. E.D. Va. 1991); In re Reasonover, 236 B.R. 219 (Bankr. E.D. Va. 1999); In re Smith, Case No. 98-26931, Adv. Proceeding No. 9902076 (Bankr. E.D. VA., July 12, 1999); Bankers Loan & Inv. Co. v. Hornish, 94 Va. 608 (1897); Helm v. Lynchburg Tr. and Sav. Bank, 106 Va. 603 (1907); Moritz v. Redd, 151 Va. 644 (1928); Morgan v. Gollehon, 153 Va. 246 (1929); Fed. Land Bank of Bal- timore v. Joynes, 179 Va. 394 (1942); Thompson v. Miller, 195 Va. 513 (1954); G.E. Capital Mortg. Serv. v. Monno, 53 Va. Cir. 154 (Fairfax Cnty. 2000); Deutsche Bank Natâ??l Tr. Co. v. Iqbal, 86 Va. Cir. 11 (Fairfax Cnty. 2012); Mortg. Elec. Registration Sys. v. Garnett, 84 Va. Cir. 72 (Madison Cnty. 2011); Mahaley v. Metters, No. CL21-2581-00, 2021 Va. Cir. LEXIS 769 (Arlington Cnty. Oct. 19, 2021); Mahaley v. Metters, 2023 Va. Cir. LEXIS 80 (Arlington Cnty. May 25, 2023).

2 â?? First Cmty. Bank v. E. M. Williams & Sons, Inc. (In re E. M. Williams & Sons, Inc.), Case No. 08-30054-KRH, 2009 Bankr. LEX- IS 1224 (Bankr. E.D. Va. May 8, 2009) (Huennekens, J.), affâ??d, No. 3:09cv533, 2010 U.S. Dist. LEXIS 30709 (E.D. Va. Mar. 30, 2010); So. Bank & Trust Co. v. Alexander (In re Alexander), No. 11-74515-565, 2014 Bankr. LEXIS 3048 (Bankr. E.D. Va. July 16, 2014) (St. John, J.); Wilson v. Moir (In re Wilson), 359 B.R. 123 (Bankr. E.D. Va. 2006); In re Botero-Paramo, 445 B.R. 530 (Bankr. E.D. Va. 2011), affâ??d, 483 F. Appâ??x 779 (4th Cir. 2012); Meridian Title Ins. Co. v. Lilly Homes, Inc., 735 F. Supp. 182 (E.D. Va. 1990), affâ??d, 934 F.2d 319, 1991 U.S. App. LEXIS 11315 (4th Cir. 1991); Deutsche Bank Natâ??l Trust Co. v. United States, No. 1:12-cv-1059, 2013 U. S. Dist. LEXIS 107423 (E.D. Va. July 31, 2013) (Hilton, J.); In re Perrow, 498 B.R. 560 (W.D. Va. 2013); Gregory v. United States Depâ??t of Treasury â?? IRS, No. 1:12cv00042,

B. Selected Cases.

1. An early Virginia case is Morgan v. Gollehon, 153 Va. 246 (1929).

a) Facts: When the property in this case was originally conveyed to a man and his mother, the sellers reserved a lien for a portion of the purchase price. The mother had a 1/3 life interest in the property with the remainder to her son. The son died, leaving his widow with a dower interest. The mother and widow borrowed money from a third-party to pay off the sellersâ?? lien. The sellersâ?? lien was paid off, and the third-party took a new lien on the land. But the lien was only effective as to the motherâ??s and widowâ??s limited interests in the land, not the whole fee. When the third-party loaned the money, he expected to receive a lien on the whole fee estate, not on the motherâ??s and widowâ??s partial interest. Thus, the third-party lender asked to be subrogated to the position of the sellersâ?? original lien.

b) Holding and Reasoning: The Court noted three classes of parties eligible for equitable subrogation and noted the lender was in the class least entitled to subrogation. Id. at 249. But the Court stated that subrogation is â??generally allowed where the loan was made by one who took a security from the borrower which turned out to be invalid.â?• Id. at 250. The Court reasoned that the widow and mother were certainly entitled to be subrogated to the sellersâ?? original lien since they had paid it off for the benefit of the fee. Thus, the Court concluded that the widow and mother should be viewed as having assigned their right to be subrogated to the third-party lender, who would then stand in the shoes of the seller.

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2. The Virginia case discussing equitable subrogation in the most detail is Federal Land Bank of Baltimore v. Joynes, 179 Va. 394 (1942).

a) Facts: The case arose out of a complicated fact pattern involving priority of liens. A mother had a lien on property that she had deeded to her sons so that the land would secure an annuity to her. The motherâ??s lien was the first lien on the property. The sons obtained a mortgage on the property, and the mother agreed to subordinate her lien to the bank mortgagorâ??s deed of trust. Then the sons obtained a second mortgage from another bank, which was used to pay off the first mortgage. The mother did not agree to subordinate her lien to the second mortgage (the mortgage bank apparently forgot to have her sign the paperwork), so technically her lien was first in priority over the second mortgage.

b) Holding and Reasoning: The Court allowed subrogation of the second mortgagor to the rights of the first mortgagor and kept the motherâ??s lien in a junior position. The Court stated that â??where the lender of money lent it with the intention and understanding that he be substituted to the position of the creditor whose debt he paid, but without taking an assignment, where there are no intervening equities to be prejudiced, the matter will be treated as if an assignment has been executed.â?• 179 Va. at 402.

3. In U.S. Bank National Association, as Trustee v. Stiles, Case No. CL13001399-00 (Stafford Cnty. *Cir. Ct*. Apr. 4, 2014), a credit line deed of trust that was in a second lien position was not paid off and released in the closing of a loan refinancing the first deed of trust. The refinance lender filed a lawsuit seeking alternative forms of equitable relief, including equitable subrogation. The Court entered an order equitably subrogating the refinance deed of trust to the lien position of the first deed of trust that was paid off and released to extent of the payâ??off amount. The Court ordered that â??the Refinance Deed of Trustâ?¦ shall be and hereby is equitably subrogated to the lien position of the Household Deed of Trustâ?¦ to the extent of $548,318.92â?• and â??that

the Refinance Deed of Trustâ?¦ shall be and hereby does have priority over the Credit Line Deed of Trustâ?¦ . . .â?•

2012 U.S. Dist. LEXIS 159307 (W.D. Va. Nov. 7, 2012); Deutsche Bank Natâ??l Trust Co. v. IRS, 361 F. Appâ??x 527 (4th Cir. 2010); Home Bldg. Assâ??n v. Mackall, 205 Va. 73 (1964); Centreville Car Care, Inc. v. N. Am. Mortg. Co., 263 Va. 339 (2002); Natâ??l Valley Bank v. United States Fid. & Guar. Co., 153 Va. 484 (1929); Mega Intâ??l Commerce Bank v. MCAP Capital, L.L.C., 74 Va. Cir. 132 (Norfolk 2007); Bristol Cnty. Ret. Sys. v. Senior Tour Players Fund I, L.P., No. 24302, 2006 Va. Cir. LEXIS 337 (Loudoun Cnty. Mar. 10, 2006).

4. In Wells Fargo Bank v. Anheuser-Busch Employeesâ?? Federal Credit Union, Case No. CL14000190- 00 (Isle of Wight Cnty. Cir. Ct. Feb. 24, 2014), a credit union scheduled a foreclosure sale based on a deed of trust that was in first lien position, according to the record title . Wells Fargo filed a complaint for injunctive relief, based on the theory that its later recorded refinance deed of trust was actually entitled to first lien position according to the doctrine of equitable subrogation, because its refinance loan had paid off a deed of trust that was recorded prior to the deed of trust held by the credit union. The Court entered an order enjoining the credit unionâ??s foreclosure sale for 60 days pending further hearings. The Court stated, â??The cloud on the title to the Property and the uncertainty as to the priority and extent of the deed of trust liens on the Property would have a chilling effect on the Foreclosure Sale, if the Court allowed it to proceed. It is likely that Plaintiffs will ultimately prevail on the merits of their case as set forth in the Complaintâ?¦â?• The case subsequently settled.
5. Very *Instructive Case:* Chase Manhattan Mortg. Corp. v. Smith (In re Smith), Case No. 98- 26931, Adv. Proceeding No. 99-02076 (Bankr. E.D. Va. July 1999), the Honorable Judge David A. Adams held that, based on Virginia state law, the doctrine of equitable subrogation, a refinance lender was entitled to equitably subrogate back to the lien position of and stand in the shoes of a prior purchase money deed of trust recorded *be-* fore a later recorded judgment, thereby giving it priority over an intervening judgment.

   In In re Smith in 1985, DePaul Hospital obtained a judgment for $23,518 plus interest against William M. Smith and Jeanne Marie Smith in the Norfolk Circuit Court (the â??DePaul Judgmentâ??). In 1994, â??William Smith, Sr.â?• (â??Smith, Sr.â??) â?? divorced and unremarriedâ?• acquired property by deed in the City of Norfolk recorded in the Norfolk Clerkâ??s Office. A portion of the purchase price paid by Smith was secured by a purchase money deed of trust (â??PMDTâ??). Two years later, in 1996, Smith, Sr. obtained a new refinance loan which was used, in part, to pay off the loan secured by the 1994 PMDT. The refinance loan was secured by a recorded deed of trust against the Property in 1996 and the deed of trust loan was later assigned to Chase. The prior PMDT was released by a certificate of satisfaction. In 1998, Smith, Sr. filed a Chapter 13 bankruptcy petition which was later converted to a Chapter 7 at which time a trustee was appointed.

   In April 1999, Chase filed an adversary proceeding asking this court to (a) declare the Chase Refinance Deed of Trust to be equitably subrogated back to the lien position of PMDT, and (b) declare the Chase Deed of Trust, as subrogated *to the PMDT*,had priority over the DePaul Judgment which was recorded *before* the Chase Deed of Trust. Once Chase was subrogated to the PMDT, the PMDT, under Virginia state law, took priority of the DePaul Judgment.

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> Judge Adams first found the resolution of the priority issue was governed by Virginia state law. In re Smith, (Order, p. 5). Next, Judge Adams found (a) â??[e]quitable subrogation is a concept which is recognized in Virginia and which is â??*liberally construedâ?•* to give in fact reality to the intentions of the parties and (b) the â??law of equitable subrogation was as set forth in Federal Land Bank of Baltimore v. Joynes, 179 Va. 394 (1942).â?• (emphasis added.) (Id., pp. 5-6.)

Based on the foregoing, Judge Adams then ruled, in relevant part, as follows:

> Where, as here, a new mortgage (Saul Deed of Trust) is used to pay off an existing first mortgage (Purchase Money Deed Trust), but there is an intervening lien (Judgment) unbeknownst to the new mortgagee (B.F. Saul). The doctrine of equitable subrogation provides that the new or refinancing mortgagee (B.F. Saul) who pays off the existing first mortgagee (Purchase Money Deed of Trust) is treated as having the same preferential position as a first mortgagee with priority over the intervening lien (â??Judgmentâ??). Based upon the facts of this case and as a matter of law, the Saul Deed of Trust is equitably subrogated to the position and all rights and remedies of the Purchase Money Deed of Trust including, but not limited to, priority over the Judgment. (Id., pp. 5-6.
>
> The opinion of Judge Adams stands for the proposition, among others, that (a) equitable subrogation is to be â??liberally construed to give in fact reality to the intentions of the parties,â?• (b) under equitable subrogation, where a refinance loan deed of trust paid off a prior loan, the refinance loan deed of trust will be subrogated back to the lien position of the deed of trust securing the paid off loan, and (c) the refinance loan deed of trust, as subrogated, will take priority over an intervening lien creditor. (Id., p. 5.)

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6. In Bankersâ?? Loan & Inv. Co. v. Hornish, 94 Va. 608 (1897), a loan company advanced money to pay off notes secured by a first deed of trust with the understanding that it would have a first lien, but did not due to intervening judgments. The Court held that the loan company was subrogated to the rights of the noteholders who had priority over the intervening judgment creditors.

7. In Moritz v. Redd, 151 Va. 644 (1928), a man paid off a loan secured by a prior lien with the understanding that he would be the second lien holder, but there were intervening judgments. The Court awarded equitable subrogation, leaving the judgment creditors behind in priority, and noting that the â??judgment creditors in this instance have in no just sense been prejudiced by applying the doctrine.â?• Id. at 653.

In short, under the facts of Hornish, Redd, and Smith, an intervening judgment lien creditor does *not* take priority of a later recorded deed of trust.

8. In Deutsche Bank National Trust Company v. Iqbal, 86 Va. Cir. 11 (Fairfax Cnty. 2012), a refinance deed of trust lender claimed it was entitled to, among other remedies, a constructive trust and equitable subrogation in a missing spouse case. In Iqbal, a couple both signed two purchase money deeds of trust in favor of WMC Mortgage Corpora- tion, but the wife did not sign a subsequent refinance deed of trust granted in favor of Aegis Wholesale Corporation (â??Aegis â??). Deutsche Bank succeeded Aegis with respect to the refinance deed of trust and filed suit asserting claims for declaratory judgment, reformation of the deed of trust, equitable subrogation, unjust enrichment, imposition of a resulting trust and/or constructive trust and an award of

monetary damages. The Iqbals failed to respond to the suit and the court entered an order finding them in default.

At a later hearing, Deutsche Bank moved for entry of a final order, specifically requesting that the court impose a constructive trust on both Iqbalsâ?? interest in the property and, alternatively, requesting relief under a theory of equitable subrogation. The court questioned whether Deutsche Bank stated a cause of action against Ms. Iqbal and requested the lender brief the issue. After reviewing Deutsche Bankâ??s brief, the court issued an opinion and order. The trial court first determined that Deutsche Bank was unable to establish a basis for a resulting trust because it did not pay any portion of the purchase price at the time of the original purchase and paid off the WMC deeds of trust not as its own, but as the ownerâ??s lender. However, the court found that Ms. Iqbal evidenced her intent to subject her interest in the property to WMCâ??s liens, which were paid off with the refinance deed of trust. Therefore, the Iqbals would be unjustly enriched if Deutsche Bank could not foreclose and was left only with the husbandâ??s unsecured promise to repay the refinance loan. Accordingly, the court agreed that Deutsche Bank was entitled to have a constructive trust imposed against the property. The court also concluded that, although Aegis was negligent in not obtaining Ms. Iqbalâ??s signature on the refinance deed of trust, failing to equitably subrogate the refinance deed of trust to the lien position of the purchase money deeds of trust would result in the Iqbals owning the property free and clear of any lien. Thus, the equities strongly weighed in favor of Deutsche Bank and it was entitled to equitable subrogation. In the order attached to the opinion, the court imposed a constructive trust, *nunc pro tunc* to the date the refinance deed of trust was recorded, under the same terms and conditions stated in the refinance deed of trust. The order does not address equitable subrogation and did not specifically reform the refinance deed of trust to add Ms. Iqbal as a grantor.

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C. Equitable Subrogation is also Invoked in Situations Where, for Some Reason Other than Inter vening Liens, **the Security of One Who Paid Off a Prior Indebtedness is Void or Ineffective** to **Protect his or her Interests**.

9. A Virginia case of this type is Helm v. Lynchburg Trust and Savings Bank, 106 Va. 603 (1907). Helm claimed that she did not sign a deed of trust and that another had forged her name to it. *The loan intended to be secured by the forged deed of trust was used to pay off prior encumbrances*. The Court recognized that if the deed of trust was invalidated as a forgery, the second bank that had paid off the prior lender with a first deed of trust was entitled to have a new lien placed upon the property in the lien position of the prior lender â??upon the equitable principle of subrogation ,â?• id. at 613, because of the benefit that had been bestowed.

D. In No Other Jurisdiction has **Equitable Subrogation Been More Firmly Adhered to or More Lib erally Applied**, **to Meet the Exigencies of Particular Cases, than in Virginia**.

10. â??[T]he Virginia Supreme Court reiterated that â??Virginia has long been committed to a liberal application of the principle of subrogation.â?? [Centerville Car Care], 263 Va. at 345; see also Fed . Land Bank of Baltimore, 179 Va. at 402 (â??In no other jurisdiction has the doctrine been more firmly adhered to or more liberally expounded and applied, to meet the exigencies of particular cases, than in Virginiaâ??) (quoting Sandsâ?? Admâ??r v. Durham, 99 Va. 263, 38 S.E. 145 (1901);â?•
11. Asset Mgmt. Holdings, LLC v. Wells Fargo Bank, N.A. (In re Wagner) No. 12-13285â??BFK, Adv. Proceeding No. 13-01159, 2013 Bankr. LEXIS 4899, at *20. (Bankr. E.D. Va. Nov. 18, 2013)

E. Equitable Subrogation is Primarily About Restoring the Interests of the Parties to their Intend ed Position Relative to Others.

In In re Smith, Judge David A. Adams emphasized that equitable subrogation is â??liberally construed to give in fact reality to the intentions of the parties.â?• In re Smith (Order, at p. 5).

Similarly, in Asset Management Holdings, Judge Kenney reasoned: â??At its heart, the doctrine of equitable subrogation is concerned with restoring the interests of the parties to their intended position relative to others. In re Perrow, 2013 Bankr. LEXIS 3757, 2013 WL 4787956, at *14.â?• 2013 Bankr. LEXIS 4899, at *24. Judge Kenney further noted that â??trueâ?• intervening lienholders in other published cases involving intervening lien creditors, really had â??no bargainedâ??for lien position with respect to the properties at issue.â?• Id., at *26; see also Deutsche Bank Natâ??l Trust Co. v. U.S., No. 1:12â??cvâ??1059, 2013 U.S. Dist. LEXIS 107423, at *1 (E.D. Va. July 31, 2013); Deutsche Natâ??l Bank Trust Co. v. Batmanghelidj (In re Batmanghelidj), No. 1:07cv683, 2007 U.S. Dist. LEXIS 68499, at *1 (E.D. Va. Sept. 17, 2007).

F. Another Factor Virginia Courts Consider is Balancing the Equities and Whether the Equities Favor the Claimant Seeking Equitable Subrogation.

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1. Under Virginia law, even if a mortgage lender negligently omitted to record a deed of trust, this would constitute only â??ordinary negligenceâ?• which is *not* a bar to subrogation. Fed. Land Bank of Baltimore, 179 Va. at 404; Asset Mgmt. Holdings, 2013 Bankr. LEXIS 4899, at *37.3 Meridian Title Ins. Co. v. Lilly Homes, Inc., 735 F. Supp. 182, 186 (E.D. Va. 1990).
2. Negligence of the party claiming equitable subrogation or that partyâ??s agent can be a defense. However, in Asset Management Holdings, the mortgage lender negligently did *not* conduct a prior title examination before recording the subject deed of trust and Judge Kenney still found in favor of the mortgage lender, under equitable subrogation. Asset Mgmt. Holdings, 2013 Bankr. LEXIS 4899, at *10.
3. In addition, if equitable subrogation is awarded, will there be prejudice to the intervening party because of the claimantâ??s equitable subrogation rights? Remember that a claim- antâ??s equitable subrogation rights are *limited to the amount actually paid to the prior lienholder4 (e.g., the prior lender to whom refinance proceeds were paid by the refinancing lender/claimant),* to fully satisfy the prior loan and release the prior deed of trust. See In re Reasonover, 236 B.R. 219, 232 (Bankr. E.D. Va. 1999) (limiting subrogeeâ??s rights to the amount paid to the prior lienholder).
4. Accordingly, for example, a prior lienholder would *not be prejudiced* at *all* by equitable subrogation because the lien position of the refinance lender/claimant, as subrogated, would actually be equal to the loan balance secured by the prior deed of trust to which the intervening lender was subordinate by virtue of the prior recorded deed of trust loan which was paid off by the refinancing lender/claimant.

3 â?? See Fed. Land Bank, 179 Va. at 404 (Negligence was alleged because the second mortgagor failed to search title records. The Court said, however, that the â??negligence of the subrogee must be more than ordinary negligence to bar the application of subrogation. Furthermore, the negligence should be chiefly of significance when there are subsequently intervening rights involved which would be prejudiced if subrogation were allowed.â?• Thus, the Court excused the lenderâ??s failure to conduct a title search. Id.); Morgan, 153 Va. at 246 (Court held that a partyâ??s negligence in failing to conduct a title search did not block equitable subrogation.); See also Centreville Car Care, 263 Va. at 345. (Supreme Court

reversed trial court granting equitable subrogation to first priority position for lender where lender and/or its agent failed to uncover in a title examination defendants second deed of trust when it lent money to new purchasers and extinguished a former first deed of trust.); See also Deutsche Natâ??l Bank Trust Co. v. Batmanghelidj, 2007 U.S. Dist. LEXIS 68499 (holding that equitable subrogation was not appropriate where it would place other liens in a worse position than they would be otherwise, where the borrower received a windfall by virtue of a cash disbursement of loan proceeds and where the equities did not strongly favor the subrogee.); Home Bldg. AssÊ¼n v. Mackall, 205 Va. 73 (1964) (Equitable subrogation will be denied if a party fails to establish the factual predicates entitling it to equitable subrogation. The plaintiff attempted to invoke equitable subrogation. The Court refused to apply the doctrine because the plaintiff introduced no evidence establishing that its funds had been used to pay off prior indebtedness.)

4 â?? But see Thompson v. Miller, 195 Va. 513 (1954) (equitable subrogation rights are limited to the amount actually paid to the prior lienholder, plus interest.)

I hope you have found this to be useful. Please do not hesitate to contact me if I can answer any questions or be of assistance in any way.

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James L. Windsor is a member with Kaufman & Canoles, P.C. and is based in the firmâ??s Virginia Beach office. He is the Chairman of the firmâ??s Real Estate Claims & Title Insurance Solutions Group. Jim is rated an AV Preeminent lawyer with over 39 years of experience and expertise in counseling, mediation, and litigation involving construction, mechanicâ??s liens, real property, title insurance, mortgage lending, and creditorsâ?? rights. Jim has co-authored a published text book, Modern Real Estate Practice; written a law review article regarding mechanicâ??s liens and many other articles; authored the â??Mechanicâ??s Liensâ?• chapter in Enforcement of Liens and Judgments in Virginia for 22 years and in other Virginia CLE publications; and has given over 120 seminars on topics involving construction and real estate law.
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