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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 245

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO MORTGAGES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2108, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2108. Priority of purchase money mortgages.

~~If lands or tenements are sold and 1 or more mortgages on the same, or any part thereof, are made by the purchaser to the vendor for securing the purchase money or any part thereof, and if such mortgages are recorded within 5 days after the deed conveying such land or tenements from such vendor to such purchaser shall be recorded, the lien of the mortgages on the lands or tenements or any part thereof shall have preference to and priority over any judgment against the mortgagor or any other lien created or suffered by that mortgagor, although such judgment or lien is of a date prior to the mortgages. As between 2 or more such purchase money mortgages on the same land, they shall have priority and preference according to the times that they are severally recorded in the proper office. Two or more such mortgages, recorded at the same time, shall have no preference or priority as between themselves.~~

(a) For purposes of this section, "purchase money mortgage" means 1 or more of the following:

(1) A mortgage taken by the seller of the mortgaged property to secure the payment of all or part of the purchase price.

(2) A mortgage taken by a mortgagee other than the seller of the mortgaged property to secure the repayment of money actually advanced by the mortgagee to or on behalf of a mortgagor at the time the mortgagor acquires title to the property and used by the mortgagor at that time to pay all or part of the purchase price.

(b) A mortgage that states that the mortgage is intended to constitute a purchase money mortgage creates a rebuttable presumption that the mortgage is a purchase money mortgage under this section.

(c) A lien of a purchase money mortgage on lands or tenements, or any part thereof, has preference to and priority over a judgment against the mortgagor or any other lien created or suffered by the mortgagor, including a lien filed or

entitled to be filed under Chapter 27 of this title, although the judgment or lien is of a date before the purchase money mortgage, if both of the following occur:

(1) The lands or tenements are sold and 1 or more purchase money mortgages on the lands or tenements, or any part thereof, are made by the purchaser to the seller or mortgagee for securing the purchase money, or any part thereof.

(2) The mortgages are recorded within 10 days after the deed conveying the land or tenements from the seller to the purchaser is recorded.

(d) As between 2 or more purchase money mortgages on the same land, the mortgages have priority and preference according to the times that the mortgages are severally recorded in the proper office. Two or more mortgages, recorded at the same time, do not have preference or priority as between themselves.

SYNOPSIS

This Act amends the Real Estate Code to modernize the definition of purchase money mortgage under Delaware law to include lenders other than the seller of the mortgaged property who provide financing to purchase the property. Additionally, this Act extends the time period to record a purchase money mortgage from 5 days to 10 days and explicitly subordinates a mechanic's lien under Chapter 27 of Title 25 to a purchase money mortgage.

Finally, this Act makes technical corrections to conform existing language to the standards of the Delaware Legislative Drafting Manual. Specifically, the existing language of § 2108 of Title 25 is redrafted in § 2018(c) and (d) in this Act.

Author: Senator Paradee