

SPONSOR: Rep. Bush & Rep. Griffith & Rep. Lynn &
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Sen. Townsend
Reps. Hensley, Ramone, Michael Smith, Spiegelman,
K. Williams; Sens. Paradee, Walsh

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 338
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE SATISFACTION OF MORTGAGES AFTER A LAPSE OF TIME.

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

Section 1. Amend § 2123, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2123. Satisfaction of mortgage after lapse of time

(a) Any ~~consumer purpose~~ mortgage or ~~consumer purpose~~ deed of trust having the effect of a mortgage (hereinafter "mortgage") that is unsatisfied upon the public records and remains a lien on any real estate may be satisfied pursuant to the procedures set forth in subsection (b) of this section:

(1) After the lapse of ~~20~~ 10 years from the date for the maturity of such lien set forth in such mortgage, or in any modification, extension or continuance thereof duly recorded in like manner and place; or

(2) In the absence of any fixed or ascertainable maturity date stated in such mortgage or any such modification, extension or continuance thereof, after the lapse of ~~50~~ 40 years from the latest of the date of recording the mortgage or of any modification, extension, or continuance thereof (as the case may be).

(i) ~~The provisions of this section will be effective on December 24, 2006, and shall apply to all mortgages as defined in subsection (j) of this section.~~ A mortgagor, grantor, or interested party is entitled to the presumption that a mortgage that is unsatisfied on the public records and remains a lien on real estate has been paid and satisfied if any of the following has occurred:

(1) A lapse of 10 years from the date for the maturity of the lien set forth in the mortgage or a modification, extension, or continuance of the mortgage that is duly recorded in like manner and place.

(2) In the absence of any fixed or ascertainable maturity date stated in the mortgage or a modification, extension, or continuance of the mortgage, a lapse of 40 years from the latest of the date of recording of the mortgage or of a modification, extension, or continuance of the mortgage.

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(j) ~~For purposes of this section, "consumer purpose mortgage" and "consumer purpose deed of trust" shall mean mortgages or deeds of trust securing debt incurred primarily for personal, family or household purposes and encumbering only 1-to-4-family residential properties, and shall not include mortgages or deeds of trust encumbering any other properties, including multi-unit residential properties such as apartment buildings, office, commercial or industrial properties.~~ If an action has not been brought to enforce the lien of a mortgage within the time provided subsection (i) of this section then, notwithstanding any other right or remedy available either at law or equity, the lien created by the mortgage terminates, is no longer enforceable against the property, and is extinguished as a lien against the property.

(k) The termination and extinguishment, under subsection (j) of this section, of the lien created by the mortgage does not extinguish an obligation secured by the mortgage.

(l) This section applies to all mortgages recorded before, on, or after [the effective date of this Act].

(m) Subsection (a) of this section does not limit subsections (i) and (j) of this section.