

Mortgages

III. Particular Types of Mortgages; Conveyance As Mortgage [§ § 97-162]

A. In General; Common Forms of Mortgages [§ § 97-99]

54A Am Jur 2d MORTGAGES § 99

§ 99 Wraparound mortgages

Definition: A wraparound mortgage is a method of financing whereby a new mortgage to cover a new loan is placed in a secondary position to an existing mortgage in the original loan. The entire loan is treated as a single obligation.ⁿ⁷⁷ The wraparound mortgage (or deed of trust) is a form of secondary financing typically used on older properties having first mortgages with low interest rates in which a lender assumes the developer's first mortgage obligation and also loans additional money, taking back from the developer a junior mortgage in total amount at an intermediate interest rate.ⁿ⁷⁸

Although there is authority to the contrary,ⁿ⁷⁹ a sale by means of a wraparound mortgage has been held not to violate various provisions of the prior mortgage.ⁿ⁸⁰

Upon default by the wraparound mortgagor, the wraparound mortgagee can foreclose for the entire amount due under the wraparound mortgage, including the amount due under the prior mortgage.ⁿ⁸¹ Where the wraparound mortgagee defaults in payments to the prior mortgagee, however, the wraparound mortgagor can recover against the wraparound mortgagee for breach of the covenant to pay the prior lien.ⁿ⁸²

In determining the proper valuation of the wraparound mortgage for purposes of assessing conveyance or document taxes, some jurisdictions have held that the value of the prior mortgage should be deducted from the face amount of the wraparound mortgage,ⁿ⁸³ while others have ruled that the entire face amount of the wraparound mortgage is used, including the obligation on the prior mortgage.ⁿ⁸⁴

FOOTNOTES:

ⁿ⁷⁷ 50 *Overlook Associates v Finance Administration of New York (1st Dept)* 72 App Div 2d 131, 423 NYS2d 659.

Validity and effect of "wraparound" mortgages whereby purchaser incorporates into agreed payments to grantor latter's obligation on initial mortgage, 36 A.L.R. 4th 144.

ⁿ⁷⁸ *Prince George's County v McMahon*, 59 Md App 682, 477 A2d 1218, cert den 301 Md 639, 484 A2d 274.

ⁿ⁷⁹ See *Mills v Nashua Fed. Sav. & Loan Ass'n*, 121 NH 722, 433 A2d 1312, in which the court held that a conveyance whereby the first mortgagor accepted a wraparound mortgage from the buyers was a "sale or transfer" within the meaning of the due-on-sale clause, but did not consider whether the wraparound mortgage constituted "the creation of a lien or encumbrance subordinate to this mortgage" as contemplated by an exclusionary provision contained in the due-on-sale clause.

n80 *Consolidated Capital Properties, II v National Bank of N. Am. (Fla App D5) 420 So 2d 618*, petition dismd (Fla) 429 So 2d 7, holding that a sale by means of a wraparound mortgage did not invoke a due-on-sale clause contained in the wraparound mortgagee's underlying mortgage agreement which provided for acceleration where, inter alia, "any other lien or mortgage is placed on the premises" without the written consent of the first mortgagee, on the basis that due-on-sale clauses are enforceable in equity only where the lender's security is impaired and the court found that there was insufficient evidence that the first mortgagee's security was impaired.

In *Daugharthy v Monrith Associates, 293 Md 399, 444 A2d 1030, 36 ALR4th 136*, the court stated that it would not imply that the buyer assumed the debt embodied in the pre-existing trust deed so as to invoke the operation of a clause in such pre-existing trust deed which permitted the noteholders, upon assumption, to charge the buyer with the interest rate prevailing at the time of assumption.

n81 *J. M. Realty Inv. Corp. v Stern (Fla App D3) 296 So 2d 588* (criticized in *Bayshore Garden Apartments v Real Estate Apartments (Fla App D2) 541 So 2d 158, 14 FLW 880*).

n82 *Newsom v Starkey (Tex Civ App Dallas) 541 SW2d 468*, writ ref n r e (Dec 22, 1976).

n83 *Department of Revenue v Brookwood Associates, Ltd. (Fla App D1) 324 So 2d 184*, cert den (Fla) 336 So 2d 600; *Prince George's County v McMahon, 59 Md App 682, 477 A2d 1218*, cert den 301 Md 639, 484 A2d 274; *First Fiscal Fund Corp. v State Tax Com. (3d Dept) 49 App Div 2d 408, 375 NYS2d 433*, affd 40 NY2d 940, 390 NYS2d 412, 358 NE2d 1037.

n84 *State, Dep't of Revenue v McCoy Motel, Inc. (Fla App D1) 302 So 2d 440*, app dismd (Fla) 307 So 2d 448; 50 *Overlook Associates v Finance Administration of New York (1st Dept) 72 App Div 2d 131, 423 NYS2d 659*.

REFERENCE: A.L.R. Digest: Mortgage § § 1, 6

A.L.R. Index: Mortgages;

A.L.R. Index: Wraparound Mortgages and Notes

13 Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § 179:17;

13A Am. Jur. Legal Forms 2d, Mortgages and Trust Deeds § § 179:271, 179:272