



SPONSOR: Rep. B. Short

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 256

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO GIVING CERTAINTY TO THE MORTGAGING OF LEASEHOLD INTERESTS.

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

1 Section 1. Amend § 2501, Title 25 of the Delaware Code by designating the existing paragraph as “(a)” and by
2 adding the following as new section “(b)” thereto: “For purposes of this Section, a lease or term of years shall be considered
3 to be for a term of 10 years or more, if at the time of entering into the lease or term of years that is to be mortgaged, the
4 stated term of the lease or term of years shall have been for 10 years or more (not including any renewals or extensions that
5 may be provided for under that lease or term of years), and notwithstanding that the unexpired term of the lease or the term
6 of years at the time of mortgaging the same is less than 10 years.”.

7 Section 2. This Act shall be effective as the date of its enactment.

SYNOPSIS

Delaware law is unclear whether, for purposes of this Section, the 10 year requirement applies to the original term of the lease as of the date it was entered into or the remaining balance of the term at the time of the mortgage transaction. The generally-accepted view in Delaware is that the original length of the term governs and not what remains of the term at the time of the mortgage. The purpose of this amendment is to allow for certainty regarding leasehold mortgage transactions in accordance with the custom and practice in Delaware.