



Senate

General Assembly

File No. 478

February Session, 2006

Substitute Senate Bill No. 549

Senate, April 11, 2006

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 49-2 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2006*):

4 (c) Advancements may also be made by a mortgagee, or the
5 assignee of any mortgagee, under an open-end mortgage to the
6 original mortgagor, or to the assign or assigns of the original
7 mortgagor who assume the existing mortgage, or any of them, and any
8 such mortgage debt and future advances shall, from the time such
9 mortgage deed is recorded, without regard to whether the terms and
10 conditions upon which such advances will be made are contained in
11 the mortgage deed and, in the case of an open-end mortgage securing
12 a commercial revolving loan, a consumer revolving loan or a letter of
13 credit, without regard to whether the authorized amount of
14 indebtedness shall at that time or any time have been fully advanced,

15 be a part of the debt due such mortgagee and be secured by such
16 mortgage equally with the debts and obligations secured thereby at the
17 time of recording the mortgage deed and have the same priority over
18 the rights of others who may acquire any rights in, or liens upon, the
19 mortgaged real estate subsequent to the recording of such mortgage
20 deed, provided: (1) The heading of any such mortgage deed shall be
21 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall
22 contain specific provisions permitting such advancements and, if
23 applicable, shall specify that such advancements are made pursuant to
24 a commercial revolving loan agreement, a consumer revolving loan
25 agreement or a letter of credit; (3) the mortgage deed shall state the full
26 amount of the loan therein authorized; (4) the terms of repayment of
27 such advancements shall not extend the time of repayment beyond the
28 maturity of the original mortgage debt, provided this subdivision shall
29 not be applicable where such advancements are made or would be
30 made pursuant to a commercial revolving loan agreement, a consumer
31 revolving loan agreement or a letter of credit, and the mortgage deed
32 specifies that such advancements are repayable upon demand or by a
33 date which shall not be later than thirty years from the date of the
34 mortgage; (5) such advancements shall be secured or evidenced by a
35 note or notes signed by the original mortgagor or mortgagors or any
36 assign or assigns of the original mortgagor or mortgagors who assume
37 the existing mortgage, or any of them, but no note shall be required
38 with respect to any advancements made pursuant to a commercial
39 revolving loan agreement, a consumer revolving loan agreement or a
40 letter of credit as long as such advancements are recorded in the books
41 and records of the original mortgagee or its assignee; (6) the original
42 mortgage shall be executed and recorded after October 1, 1955; (7) the
43 original mortgagor or mortgagors, or any assign or assigns of the
44 original mortgagor or mortgagors who assume the existing mortgage,
45 or any of them, are hereby authorized to record a written notice
46 terminating the right to make such optional future advances secured
47 by such mortgage or limiting such advances to not more than the
48 amount actually advanced at the time of the recording of such notice,
49 provided a copy of such written notice shall also be sent by registered

50 or certified mail, postage prepaid and return receipt requested, to the
51 mortgagee, or a copy of such written notice shall be delivered to the
52 mortgagee by a proper officer or an indifferent person and a receipt for
53 the same received from the mortgagee, and such notice, unless a later
54 date is recorded or specified in the notice, shall be effective from the
55 time it is received by the mortgagee; (8) except that if any such
56 optional future advance or advances are made by the mortgagee, or
57 the assignee of any mortgagee, to the original mortgagor or
58 mortgagors, or any assign or assigns who assume the existing
59 mortgage, or any of them, after receipt of written notice of any
60 subsequent mortgage, lien, attachment, lis pendens, legal proceeding
61 or adjudication against such real property, then the amount of any
62 such advance, other than an advance made pursuant to a commercial
63 revolving loan agreement or a letter of credit, shall not be a priority as
64 against any such mortgage, lien, attachment, lis pendens or
65 adjudication of which such written notice was given; (9) any notice
66 given to the mortgagee under the terms of subdivision (8) of this
67 subsection shall be deemed valid and binding upon the original
68 mortgagee or any assignee of the original mortgagee, in the case of a
69 mortgagee other than a banking institution, on the next business day
70 following receipt by such mortgagee of such notice sent by registered
71 or certified mail, postage prepaid and return receipt requested, or by
72 hand delivery with a signed receipt, and in the case of a mortgagee
73 which is a banking institution, on the next business day following
74 receipt at the main office of such banking institution of such notice sent
75 by registered or certified mail, postage prepaid and return receipt
76 requested, or by hand delivery with a signed receipt. For the purposes
77 of this subsection: (A) "Banking institution" means a bank and trust
78 company, a national banking association having its main office in this
79 state, a savings bank, a federal savings bank having its main office in
80 this state, a savings and loan association, a federal savings and loan
81 association having its main office in this state, a credit union having
82 assets of two million dollars or more, or a federal credit union having
83 its main office in this state and having assets of two million dollars or
84 more; (B) "commercial revolving loan" means a loan to a foreign or

85 domestic corporation, partnership, limited liability company, sole
86 proprietorship, association or entity, or any combination thereof,
87 [organized for profit and engaged primarily in commercial,
88 manufacturing or industrial pursuits] the proceeds of which are not
89 intended primarily for personal, family or household purposes, which
90 loan entails advances of all or part of the loan proceeds and
91 repayments of all or part of the outstanding balance of the loan from
92 time to time; and (C) "consumer revolving loan" means a loan to one or
93 more individuals, the proceeds of which are intended primarily for
94 personal, family or household purposes, which is secured by a
95 mortgage on residential real property, and is made pursuant to an
96 agreement between the mortgagor and mortgagee which (i) provides
97 for advancements of all or part of the loan proceeds during a period of
98 time which shall not exceed ten years from the date of such agreement
99 and for repayments of the loan from time to time, (ii) provides for
100 payments to be applied at least in part to the unpaid principal balance
101 not later than ten years from the date of the loan, (iii) does not
102 authorize access to the loan proceeds by a credit card or any similar
103 instrument or device, whether known as a credit card, credit plate, or
104 by any other name, issued with or without a fee by an issuer for the
105 use of the cardholder in obtaining money, goods, services, or anything
106 else of value on credit, and (iv) does not provide that such a revolving
107 loan to more than one mortgagor will be immediately due and payable
108 upon the death of fewer than all the mortgagors who signed the
109 revolving loan agreement. Nothing in this subsection shall affect the
110 validity or enforceability of any loan agreement which provides for
111 future advancements by a lender to a borrower as between such
112 parties or their heirs, successors or assigns, or shall affect the validity
113 or enforceability of any mortgage securing any such loan that would
114 be valid and enforceable without the provisions of this subsection.

115 Sec. 2. Section 49-9 of the general statutes is amended by adding
116 subsection (d) as follows (*Effective October 1, 2006*):

117 (NEW) (d) A release of mortgage executed in accordance with this
118 section shall operate to release the interest of the releasor in the

119 mortgage which is the subject of the release, even if such interest is, in
120 fact, acquired by the releasor after executing such release or does not
121 appear of record until after the execution of such release. Nothing in
122 this subsection shall be construed to limit the effect of any release of
123 mortgage recorded before, on or after the effective date of this section.

124 Sec. 3. Section 49-10 of the general statutes is amended by adding
125 subsection (h) as follows (*Effective October 1, 2006*):

126 (NEW) (h) An assignment executed in accordance with this section
127 shall operate to assign the interest of the assignor in the mortgage
128 which is the subject of the assignment, even if such interest is, in fact,
129 acquired by the assignor after executing such assignment or does not
130 appear of record until after the execution of such assignment. Nothing
131 in this subsection shall be construed to limit the effect of any
132 assignment of mortgage debt recorded before, on or after the effective
133 date of this section.

134 Sec. 4. Section 49-13a of the general statutes is repealed and the
135 following is substituted in lieu thereof (*Effective October 1, 2006*):

136 (a) When record title to real property remains encumbered by any
137 undischarged mortgage, and the mortgagor or those owning [his] the
138 mortgagor's interest therein have been in undisturbed possession of
139 the property for at least [forty] twenty years after the expiration of the
140 time limited in the mortgage for the full performance of the conditions
141 thereof, or for at least forty years from the recording of the mortgage if
142 the mortgage does not disclose the time when the note or indebtedness
143 is payable or the time for full performance of the conditions of the
144 mortgage, unless a notice is recorded pursuant to subsection (b) of this
145 section, the mortgage shall be invalid as a further lien against the real
146 [estate] property, provided an affidavit, subscribed and sworn to by
147 the party in possession, stating the fact of such possession, is recorded
148 on the land records of the town [wherein] in which the property is
149 situated.

150 (b) The record holder of an undischarged mortgage on real property

151 may, prior to the expiration of the applicable time period specified in
 152 subsection (a) of this section, record a notice, on the land records of the
 153 town in which the property is situated, that contains: (1) The name or
 154 names of the mortgagors; (2) the recording information for the
 155 mortgage and any assignment of the mortgage; and (3) a statement of
 156 the reasons why the mortgage is valid and effective. Upon the
 157 recording of such notice in accordance with this subsection, the
 158 applicable time period after which the mortgage shall be invalid as a
 159 further lien against the real property as provided in subsection (a) of
 160 this section shall be tolled for a period of ten years from the recording
 161 of such notice. Any such notice shall be indexed in the grantor's index
 162 under the name or names of the mortgagors and in the grantee's index
 163 under the name of the record holder of the mortgage.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	49-2(c)
Sec. 2	October 1, 2006	49-9
Sec. 3	October 1, 2006	49-10
Sec. 4	October 1, 2006	49-13a

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various statutory changes concerning the conveyance of real estate. These changes have no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 549*****AN ACT CONCERNING MORTGAGES AND REAL ESTATE FINANCING.*****SUMMARY:**

This bill expands the type of entities that can secure a commercial revolving loan with an open-end mortgage to include non-profit organizations and limited liability companies.

It makes mortgage releases and assignments executed according to law, effective to release or assign the mortgagee's interest in the property even if the mortgagee acquires the interest, or does not record the interest, until after the release or assignment is executed. The bill specifies that it may not be interpreted to limit the effect of any release or assignment recorded before, on, or after October 1, 2006.

Also, the bill reduces, from 40 to 20 years after full performance was due, the time after which an unreleased mortgage is invalid under certain circumstances. The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

But the bill authorizes a record holder of an undischarged mortgage, before the applicable 20 or 40 year period expires, to record a notice, on the land records of the town in which the property is situated, that contains certain information. Under the bill, recording the notice tolls the applicable time period for 10 years. The bill requires that the notice be indexed in the grantor's index under the mortgagor's name or names and in the grantee's index under the name of the record mortgage holder's name.

EFFECTIVE DATE: October 1, 2006

COMMERCIAL REVOLVING LOANS

Under current law, a "commercial revolving loan," for purposes of the open-end mortgage law, involves advances of all or part of the loan proceeds and repayments of all or part of the outstanding balance of the loan from time to time. As long as the mortgage and underlying note comply with certain statutory requirements, the mortgage and the advances made under it will have priority over other claims recorded after the mortgage was recorded.

The bill expands the scope of such loans by requiring that the proceeds may not be intended primarily for personal, family, or household purposes, instead of requiring that the proceeds be to an entity organized for profit and engaged primarily in commercial, manufacturing, or industrial pursuits. Thus, it includes such loans made to non-profit entities. The bill also specifies such loans may be made to a limited liability company.

MORTGAGE RELEASE

The bill applies to mortgage releases that are executed according to existing law. The release must identify the mortgagor (borrower) and mortgagee (lender), the date the mortgage was executed, the town where it was recorded, and the volume and page of the land records where it appears. It must be signed by the releaser, acknowledged to be his free act and deed, and witnessed by two people.

MORTGAGE ASSIGNMENT

The bill applies to mortgage assignments that:

1. contain a sufficient description to identify the mortgage, assignment of rent, or assignment of interest in a lease given as security for a mortgage debt and
2. have been executed, attested, and acknowledged in the manner prescribed by law for deeds.

Whenever an assignment of any residential mortgage loan (1) made by a lending institution organized under the laws of or having its principal office in another state and (2) secured by mortgage on residential real estate located in this state is made in writing, the instrument must also contain the name and business or mailing address of all parties to the assignment.

INVALIDITY OF OLD MORTGAGES

Under current law, when the land records have a mortgage that has not been released and the mortgagor or those who own the land has been in undisputed possession for at least 40 years after the mortgage should have been paid off, the mortgage is invalid if the person in possession of the land files an affidavit that satisfies certain conditions in the land records. The bill reduces the time from 40 to 20 years.

The bill makes a mortgage invalid, under these same circumstances, 40 years after it was recorded on the land records if the mortgage does not disclose the time when the note or indebtedness is payable or the time for full performance of the mortgage conditions.

Notice from Mortgage Holder

Under the bill, the notice a record holder of an undischarged mortgage may file on the land records must contain: (1) the mortgagor's name or names; (2) the recording information for the mortgage and any mortgage assignment; and (3) a statement of the reasons why the mortgage is valid and effective.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (03/27/2006)