



General Assembly

February Session, 2006

***Raised Bill No. 549***

LCO No. 2323

\*02323\_\_\_\_\_JUD\*

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***AN ACT CONCERNING THE COMMON INTEREST FORM OF OWNERSHIP, MORTGAGES AND REAL ESTATE FINANCING.***

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

1 Section 1. Section 47-205 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2006*):

3 (a) No zoning, building code, subdivision or other real property use  
4 law, ordinance, rule or regulation may prohibit the [conversion of any  
5 building to the common interest ownership] common interest form of  
6 ownership or impose any requirement upon a common interest  
7 community that it would not impose upon a physically identical  
8 building or development under a different form of ownership.

9 (b) Except as provided in subsection (a) of this section, the  
10 provisions of this chapter do not invalidate or modify the provisions of  
11 any zoning, building code, subdivision or other real property use law,  
12 ordinance, rule or regulation.

13 Sec. 2. Subsection (c) of section 49-2 of the general statutes is  
14 repealed and the following is substituted in lieu thereof (*Effective*

15 *October 1, 2006*):

16 (c) Advancements may also be made by a mortgagee, or the  
17 assignee of any mortgagee, under an open-end mortgage to the  
18 original mortgagor, or to the assign or assigns of the original  
19 mortgagor who assume the existing mortgage, or any of them, and any  
20 such mortgage debt and future advances shall, from the time such  
21 mortgage deed is recorded, without regard to whether the terms and  
22 conditions upon which such advances will be made are contained in  
23 the mortgage deed and, in the case of an open-end mortgage securing  
24 a commercial revolving loan, a consumer revolving loan or a letter of  
25 credit, without regard to whether the authorized amount of  
26 indebtedness shall at that time or any time have been fully advanced,  
27 be a part of the debt due such mortgagee and be secured by such  
28 mortgage equally with the debts and obligations secured thereby at the  
29 time of recording the mortgage deed and have the same priority over  
30 the rights of others who may acquire any rights in, or liens upon, the  
31 mortgaged real estate subsequent to the recording of such mortgage  
32 deed, provided: (1) The heading of any such mortgage deed shall be  
33 clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall  
34 contain specific provisions permitting such advancements and, if  
35 applicable, shall specify that such advancements are made pursuant to  
36 a commercial revolving loan agreement, a consumer revolving loan  
37 agreement or a letter of credit; (3) the mortgage deed shall state the full  
38 amount of the loan therein authorized; (4) the terms of repayment of  
39 such advancements shall not extend the time of repayment beyond the  
40 maturity of the original mortgage debt, provided this subdivision shall  
41 not be applicable where such advancements are made or would be  
42 made pursuant to a commercial revolving loan agreement, a consumer  
43 revolving loan agreement or a letter of credit, and the mortgage deed  
44 specifies that such advancements are repayable upon demand or by a  
45 date which shall not be later than thirty years from the date of the  
46 mortgage; (5) such advancements shall be secured or evidenced by a  
47 note or notes signed by the original mortgagor or mortgagors or any  
48 assign or assigns of the original mortgagor or mortgagors who assume

49 the existing mortgage, or any of them, but no note shall be required  
50 with respect to any advancements made pursuant to a commercial  
51 revolving loan agreement, a consumer revolving loan agreement or a  
52 letter of credit as long as such advancements are recorded in the books  
53 and records of the original mortgagee or its assignee; (6) the original  
54 mortgage shall be executed and recorded after October 1, 1955; (7) the  
55 original mortgagor or mortgagors, or any assign or assigns of the  
56 original mortgagor or mortgagors who assume the existing mortgage,  
57 or any of them, are hereby authorized to record a written notice  
58 terminating the right to make such optional future advances secured  
59 by such mortgage or limiting such advances to not more than the  
60 amount actually advanced at the time of the recording of such notice,  
61 provided a copy of such written notice shall also be sent by registered  
62 or certified mail, postage prepaid and return receipt requested, to the  
63 mortgagee, or a copy of such written notice shall be delivered to the  
64 mortgagee by a proper officer or an indifferent person and a receipt for  
65 the same received from the mortgagee, and such notice, unless a later  
66 date is recorded or specified in the notice, shall be effective from the  
67 time it is received by the mortgagee; (8) except that if any such  
68 optional future advance or advances are made by the mortgagee, or  
69 the assignee of any mortgagee, to the original mortgagor or  
70 mortgagors, or any assign or assigns who assume the existing  
71 mortgage, or any of them, after receipt of written notice of any  
72 subsequent mortgage, lien, attachment, lis pendens, legal proceeding  
73 or adjudication against such real property, then the amount of any  
74 such advance, other than an advance made pursuant to a commercial  
75 revolving loan agreement or a letter of credit, shall not be a priority as  
76 against any such mortgage, lien, attachment, lis pendens or  
77 adjudication of which such written notice was given; (9) any notice  
78 given to the mortgagee under the terms of subdivision (8) of this  
79 subsection shall be deemed valid and binding upon the original  
80 mortgagee or any assignee of the original mortgagee, in the case of a  
81 mortgagee other than a banking institution, on the next business day  
82 following receipt by such mortgagee of such notice sent by registered

83 or certified mail, postage prepaid and return receipt requested, or by  
84 hand delivery with a signed receipt, and in the case of a mortgagee  
85 which is a banking institution, on the next business day following  
86 receipt at the main office of such banking institution of such notice sent  
87 by registered or certified mail, postage prepaid and return receipt  
88 requested, or by hand delivery with a signed receipt. For the purposes  
89 of this subsection: (A) "Banking institution" means a bank and trust  
90 company, a national banking association having its main office in this  
91 state, a savings bank, a federal savings bank having its main office in  
92 this state, a savings and loan association, a federal savings and loan  
93 association having its main office in this state, a credit union having  
94 assets of two million dollars or more, or a federal credit union having  
95 its main office in this state and having assets of two million dollars or  
96 more; (B) "commercial revolving loan" means a loan to a foreign or  
97 domestic corporation, partnership, limited liability company, sole  
98 proprietorship, association or entity, or any combination thereof,  
99 [organized for profit and engaged primarily in commercial,  
100 manufacturing or industrial pursuits] the proceeds of which are not  
101 intended primarily for personal, family or household purposes, which  
102 loan entails advances of all or part of the loan proceeds and  
103 repayments of all or part of the outstanding balance of the loan from  
104 time to time; and (C) "consumer revolving loan" means a loan to one or  
105 more individuals, the proceeds of which are intended primarily for  
106 personal, family or household purposes, which is secured by a  
107 mortgage on residential real property, and is made pursuant to an  
108 agreement between the mortgagor and mortgagee which (i) provides  
109 for advancements of all or part of the loan proceeds during a period of  
110 time which shall not exceed ten years from the date of such agreement  
111 and for repayments of the loan from time to time, (ii) provides for  
112 payments to be applied at least in part to the unpaid principal balance  
113 not later than ten years from the date of the loan, (iii) does not  
114 authorize access to the loan proceeds by a credit card or any similar  
115 instrument or device, whether known as a credit card, credit plate, or  
116 by any other name, issued with or without a fee by an issuer for the

117 use of the cardholder in obtaining money, goods, services, or anything  
118 else of value on credit, and (iv) does not provide that such a revolving  
119 loan to more than one mortgagor will be immediately due and payable  
120 upon the death of fewer than all the mortgagors who signed the  
121 revolving loan agreement. Nothing in this subsection shall affect the  
122 validity or enforceability of any loan agreement which provides for  
123 future advancements by a lender to a borrower as between such  
124 parties or their heirs, successors or assigns, or shall affect the validity  
125 or enforceability of any mortgage securing any such loan that would  
126 be valid and enforceable without the provisions of this subsection.

127 Sec. 3. Section 49-9 of the general statutes is amended by adding  
128 subsection (d) as follows (*Effective October 1, 2006*):

129 (NEW) (d) A release of mortgage executed in accordance with this  
130 section shall operate to release the interest of the releasor in the  
131 mortgage which is the subject of the release, even if such interest is, in  
132 fact, acquired by the releasor after executing such release or does not  
133 appear of record until after the execution of such release.

134 Sec. 4. Section 49-10 of the general statutes is amended by adding  
135 subsection (h) as follows (*Effective October 1, 2006*):

136 (NEW) (h) An assignment executed in accordance with this section  
137 shall operate to assign the interest of the assignor in the mortgage  
138 which is the subject of the assignment, even if such interest is, in fact,  
139 acquired by the assignor after executing such assignment or does not  
140 appear of record until after the execution of such assignment.

141 Sec. 5. Section 49-13a of the general statutes is repealed and the  
142 following is substituted in lieu thereof (*Effective October 1, 2006*):

143 When record title to real property remains encumbered by any  
144 undischarged mortgage, and the mortgagor or those owning [his] the  
145 mortgagor's interest therein have been in undisturbed possession of  
146 the property for at least [forty] thirty years after the expiration of the

147 time limited in the mortgage for the full performance of the conditions  
 148 thereof, or for at least thirty years from the recording of the mortgage  
 149 when the mortgage does not disclose the time when the note or  
 150 indebtedness is payable or disclose the time for full performance of the  
 151 conditions of the mortgage, the mortgage shall be invalid as a further  
 152 lien against the real estate, [, provided an affidavit, subscribed and  
 153 sworn to by the party in possession, stating the fact of such possession,  
 154 is recorded on the land records of the town wherein the property is  
 155 situated.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2006	47-205
Sec. 2	October 1, 2006	49-2(c)
Sec. 3	October 1, 2006	49-9
Sec. 4	October 1, 2006	49-10
Sec. 5	October 1, 2006	49-13a

**Statement of Purpose:**

To specify that local zoning ordinances, building codes or other real property use laws may not prohibit or discriminate against the common interest form of ownership, to redefine "commercial revolving loan" for purposes of open-end mortgages to include loans made to nonprofit entities, to facilitate the clearing of real estate titles by providing that a release or assignment of mortgage operates to release or assign after-acquired title to the mortgage, to reduce the time period for invalidating undischarged mortgages, where the mortgagor or those who owned the land had been in undisturbed possession, from forty years to thirty years after the mortgage should have been paid off, to allow undischarged mortgages that have no stated maturity date to be released automatically thirty years after the recording of the mortgage and to eliminate the requirement that an affidavit be recorded on the land records in the case of an undischarged mortgage.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*