



House of Representatives

General Assembly

File No. 214

January Session, 2009

House Bill No. 6233

House of Representatives, March 25, 2009

The Committee on Banks reported through REP. BARRY of the 12th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS.

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2 repealed and the following is substituted in lieu thereof (*Effective*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, 2009*):

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] future advance loan, a consumer revolving
13 loan or a letter of credit, without regard to whether the authorized
14 amount of indebtedness shall at that time or any time have been fully

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

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

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

119 Sec. 2. Subsection (a) of section 49-4b of the general statutes is

120 repealed and the following is substituted in lieu thereof (*Effective*
121 *October 1, 2009*):

122 (a) If an open-end mortgage meets the requirements of this section,
123 such mortgage shall be deemed to give sufficient notice of the nature
124 of the obligation to secure the obligation of any person who is
125 secondarily liable for an open-end loan, including (1) a commercial
126 [revolving] future advance loan, as defined in subsection (c) of section
127 49-2, as amended by this act, without regard to whether the authorized
128 amount of indebtedness of such [revolving] loan constituting the
129 underlying obligation shall at that time or at any time have been fully
130 advanced, (2) future advances under such open-end loan, to the extent
131 that such mortgagor is secondarily liable for such future advances, and
132 (3) a letter of credit. Such mortgagor's secondary liability for such
133 future advances shall be secured by such open-end mortgage equally
134 with the obligation secured by such mortgage at the time of recording
135 such mortgage deed and shall have the same priority over the rights of
136 others who may acquire any rights in, or liens upon, the mortgaged
137 real estate subsequent to the recording of such mortgage deed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	49-2(c)
Sec. 2	<i>October 1, 2009</i>	49-4b(a)

BA *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 6233*****AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS.*****SUMMARY:**

By 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 have priority over other claims recorded after the mortgage was recorded (including advances made after the other claims).

The law also permits a person who guarantees an open-end loan for someone else, including a commercial revolving loan, to secure that guarantee with a mortgage on his or her real estate under the same conditions as apply to the borrower if certain statutory conditions are met.

Instead of limiting these protections to “commercial revolving loans,” the bill expands them to all “commercial future advance loans,” which specifically includes (1) a commercial revolving loan wherein all or part of the loan proceeds that have been repaid may be readvanced and (2) a commercial nonrevolving loan wherein previously advanced loan proceeds, once repaid, cannot be readvanced.

EFFECTIVE DATE: October 1, 2009

COMMITTEE ACTION

Banks Committee

Joint Favorable

Yea 16 Nay 0 (03/10/2009)