



House Bill No. 6233

Public Act No. 09-161

AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS.

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

Section 1. Subsection (c) of section 49-2 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

(c) Advancements may also be made by a mortgagee, or the assignee of any mortgagee, under an open-end mortgage to the original mortgagor, or to the assign or assigns of the original mortgagor who assume the existing mortgage, or any of them, and any such mortgage debt and future advances shall, from the time such mortgage deed is recorded, without regard to whether the terms and conditions upon which such advances will be made are contained in the mortgage deed and, in the case of an open-end mortgage securing a commercial [revolving] future advance loan, a consumer revolving loan or a letter of credit, without regard to whether the authorized amount of indebtedness shall at that time or any time have been fully advanced, be a part of the debt due such mortgagee and be secured by such mortgage equally with the debts and obligations secured thereby at the time of recording the mortgage deed and have the same priority over the rights of others who may acquire any rights in, or liens upon,

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the mortgaged real estate subsequent to the recording of such mortgage deed, provided: (1) The heading of any such mortgage deed shall be clearly entitled "Open-End Mortgage"; (2) the mortgage deed shall contain specific provisions permitting such advancements and, if applicable, shall specify that such advancements are made pursuant to a commercial [revolving] future advance loan agreement, a consumer revolving loan agreement or a letter of credit; (3) the mortgage deed shall state the full amount of the loan therein authorized; (4) the terms of repayment of such advancements shall not extend the time of repayment beyond the maturity of the original mortgage debt, provided this subdivision shall not be applicable where such advancements are made or would be made pursuant to a commercial [revolving] future advance loan agreement, a consumer revolving loan agreement or a letter of credit, and the mortgage deed specifies that such advancements are repayable upon demand or by a date which shall not be later than thirty years from the date of the mortgage; (5) such advancements shall be secured or evidenced by a note or notes signed by the original mortgagor or mortgagors or any assign or assigns of the original mortgagor or mortgagors who assume the existing mortgage, or any of them, but no note shall be required with respect to any advancements made pursuant to a commercial [revolving] future advance loan agreement, a consumer revolving loan agreement or a letter of credit as long as such advancements are recorded in the books and records of the original mortgagee or its assignee; (6) the original mortgage shall be executed and recorded after October 1, 1955; (7) the original mortgagor or mortgagors, or any assign or assigns of the original mortgagor or mortgagors who assume the existing mortgage, or any of them, are hereby authorized to record a written notice terminating the right to make such optional future advances secured by such mortgage or limiting such advances to not more than the amount actually advanced at the time of the recording of such notice, provided a copy of such written notice shall also be sent by registered or certified mail, postage prepaid and return receipt

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

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

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provisions of this subsection.

Sec. 2. Subsection (a) of section 49-4b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2009*):

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

Approved June 30, 2009