

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 693 Session of 1989

INTRODUCED BY GREENLEAF, DAWIDA, SALVATORE, FISHER, LEWIS AND MADIGAN, MARCH 16, 1989

SENATOR HOLL, BANKING AND INSURANCE, AS AMENDED, APRIL 25, 1990

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, establishing the priority
3 of advances made under certain mortgages; and providing for
4 the rights of mortgagees, mortgagors and other parties with
5 respect to certain mortgages.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Title 42 of the Pennsylvania Consolidated
9 Statutes is amended by adding sections to read:

10 § 8143. Open-end mortgages.

11 (a) General rule.--Whether or not it secures any other debt
12 or obligation, a AN OPEN-END mortgage, other than a purchase <—
13 money mortgage as defined in section 8141 (relating to time from
14 which liens have priority), may secure unpaid balances of
15 advances made after the SUCH OPEN-END mortgage is left for <—
16 record. to the extent that the total unpaid indebtedness, <—
17 exclusive of interest thereon, does not exceed the maximum
18 amount of indebtedness which the mortgage states may be
19 outstanding at any time. With respect to the unpaid balances,

1 ~~subsection (b) is applicable if the mortgage states, in~~  
2 ~~substance or effect, that the parties thereto intend that the~~  
3 ~~mortgage shall secure the same, not exceeding the maximum amount~~  
4 ~~of unpaid indebtedness, exclusive of interest thereon, which may~~  
5 ~~be outstanding at any time and contains at the beginning thereof~~  
6 ~~the term "open end mortgage."~~ The validity and enforceability of  
7 the lien of the AN OPEN-END mortgage shall not be affected by <—  
8 the fact that the first advance is made after the date of  
9 recording of the mortgage or that there may be no outstanding  
10 indebtedness for a period of time after an advance or advances  
11 may have been made and repaid.

12 (b) Unobligated advance after notice.--~~A mortgage complying~~ <—  
13 ~~with subsection (a) and AN OPEN-END MORTGAGE~~ securing unpaid <—  
14 balances of advances referred to in subsection (a) is a lien on  
15 the premises described therein from the time the mortgage is  
16 left for record for the full amount of the total unpaid  
17 indebtedness, including the unpaid balances of the advances that  
18 are made under the mortgage plus interest thereon, regardless of  
19 the time when the advances are made. ~~If such~~ HOWEVER, IF an <—  
20 advance is made ~~more than five business days~~ after the holder of <—  
21 the mortgage receives written notice which complies with  
22 subsection (d) of a lien or encumbrance on the mortgaged  
23 premises which is subordinate to the lien of the mortgage and if  
24 the holder is not obligated to make the advance at the time the  
25 notice is received, then the lien of the mortgage for the unpaid  
26 balance of the advance so made is subordinate to the lien or  
27 encumbrance unless the advance so made is in order to pay  
28 toward, or to provide funds to the mortgagor to pay toward, all  
29 or part of the cost of completing any erection, construction,  
30 alteration or repair of any part of the mortgaged premises, the

1 financing of which, in whole or in part, the mortgage was given  
2 to secure. If an advance is made ~~more than five business days~~ <—  
3 after the holder of the AN OPEN-END mortgage receives written <—  
4 notice of labor performed or to be performed or materials  
5 furnished or to be furnished for the erection, construction,  
6 alteration or repair of any part of the mortgaged premises and  
7 if the holder is not obligated to make the advance at the time  
8 the notice is received, then the lien of the mortgage for the  
9 unpaid balance of the advance so made is subordinate to a valid  
10 mechanic's lien for the labor actually performed or materials  
11 actually furnished as specified in the notice unless the advance  
12 so made is in order to pay toward, or to provide funds to the  
13 mortgagor to pay toward, all or part of the cost of completing  
14 any erection, construction, alteration or repair of any part of  
15 the mortgaged premises the financing of which, in whole or in  
16 part, the mortgage was given to secure.

17 (c) Mortgagor may limit indebtedness.--The mortgagor may  
18 limit the indebtedness secured by ~~the mortgage~~ AN OPEN-END <—  
19 MORTGAGE, AND RELEASE THE OBLIGATION OF THE MORTGAGEE TO MAKE  
20 ANY FURTHER PAYMENTS, to that in existence at the time of the  
21 delivery of a written notice to that effect to the recorder for  
22 record, if the notice is executed by the mortgagor, is  
23 acknowledged according to law and states the volume and initial  
24 page of the record or the recorder's file number of the  
25 mortgage, and a copy thereof is served upon the holder of the  
26 mortgage more than three days prior to the delivery of the  
27 notice to the recorder for record. The notice shall be recorded  
28 and indexed by the recorder as an amendment of the mortgage and  
29 shall be noted on the margin of the record of the mortgage,  
30 giving the book and page number where the notice is recorded.

<—

1 The right of the mortgagor to limit indebtedness secured by the  
2 mortgage is not applicable to interest subsequently accruing on  
3 indebtedness, ~~loan advances the holder of the mortgage is~~  
4 ~~obligated to make~~ or advances made after the delivery of the  
5 notice to the recorder for record in order to pay for all or  
6 part of the cost of completing any erection, construction,  
7 alteration or repair of any part of the mortgaged premises, the  
8 financing of which, in whole or in part, the mortgage was given  
9 to secure.

10 (d) Notice.--The written notices provided for in subsection  
11 (b) shall be signed by the holder of the lien or encumbrance or  
12 the person who has performed or intends to perform the labor or  
13 who has furnished or intends to furnish materials, or by his  
14 agent or attorney, and shall set forth a description of the real  
15 property to which the notice relates, the date, the parties to,  
16 the volume and initial page of the record or the recorder's file  
17 number of the mortgage over which priority is claimed for the  
18 lien or encumbrance, and the amount and nature of the claim to  
19 which the lien or encumbrance relates or the nature of the labor  
20 performed or to be performed or materials furnished or to be  
21 furnished and the amount claimed or to be claimed therefor. The  
22 written notices provided for in subsections (b) and (c) shall be  
23 deemed to have been received by or served upon the holder of the  
24 mortgage when delivered to the holder personally or by  
25 registered or certified mail at the address of the holder  
26 appearing in the mortgage or an assignment thereof or, if no  
27 address is so given, at the principal place of business or  
28 residence of the holder or the agent of the holder within this  
29 Commonwealth or, if the holder has no principal place of  
30 business or residence or agent within this Commonwealth, when

1 posted in some conspicuous place on the mortgaged premises.

2 (e) Section not exclusive.--This section is not exclusive  
3 and shall not be construed to change existing law with respect  
4 to the priority of the lien of advances made pursuant to a  
5 mortgage except to the extent that it gives priority to the lien  
6 for advances under an open-end mortgage complying with the  
7 requirements of this section which would not have such priority  
8 in the absence of this section.

9 (f) Definitions.--As used in this section, the following  
10 words and phrases shall have the meanings given to them in this  
11 subsection:

12 "Holder of the mortgage." The holder of the mortgage as  
13 disclosed by the records of the recorder or recorders of the  
14 county or counties in which the mortgaged premises are situated.

15 "Indebtedness." The unpaid principal balance of advances  
16 exclusive of interest and unpaid balances of advances and other  
17 extensions of credit secured by the mortgage made for the  
18 payment of taxes, assessments, maintenance charges, insurance  
19 premiums and costs incurred for the protection of the mortgaged  
20 premises.

21 "Mortgage." Includes a mortgage, deed of trust or other  
22 instrument in the nature of a mortgage.

23 "Mortgagor." Includes the mortgagor's successors in interest  
24 as disclosed by the records of the recorder or recorders of the  
25 county or counties in which the mortgaged premises are situated.

26 ~~"Obligated." A holder of a mortgage is "obligated" to make~~ ←  
27 ~~an advance if the holder or the person to whom the repayment of~~  
28 ~~the advance is owed has a contractual commitment to do so, even~~  
29 ~~though the making of the advance may be conditioned upon the~~  
30 ~~occurrence or existence, or the failure to occur or exist, of~~

~~1 any event or fact, which event or fact must occur or exist, or  
2 fail to occur or exist, within three years following the time  
3 the mortgage is left for record, but the three year limitation  
4 does not apply to any mortgage given to secure, in whole or in  
5 part, loan advances made to pay the cost of any erection,  
6 construction, alteration or repair of any part of the mortgaged  
7 premises.~~

8 "OPEN-END MORTGAGE." A MORTGAGE WHICH SECURES ADVANCES, UP ←  
9 TO A MAXIMUM AMOUNT OF INDEBTEDNESS OUTSTANDING AT ANY TIME  
10 STATED IN THE MORTGAGE, PLUS ACCRUED AND UNPAID INTEREST. SUCH A  
11 MORTGAGE SHALL BE IDENTIFIED AT THE BEGINNING THEREOF AS AN  
12 "OPEN-END MORTGAGE" AND SHALL CLEARLY STATE THAT IT SECURES  
13 FUTURE ADVANCES, WHICH IN THE CASE OF A HOME EQUITY PLAN, THE  
14 LENDER HAS A CONTRACTUAL OBLIGATION TO MAKE ON THE TERMS AND  
15 CONDITIONS SET FORTH IN THE MORTGAGE AND OPEN-END LOAN AGREEMENT  
16 WITH THE BORROWER. SUCH OPEN-END MORTGAGE SHALL BE DEEMED TO  
17 SECURE OBLIGATORY FUTURE ADVANCES EVEN THOUGH THE MORTGAGE OR  
18 LOAN AGREEMENT CONTAINS SOME OR ALL OF THE LIMITATIONS AND  
19 CONDITIONS ON THE OBLIGATION TO MAKE ADVANCES WHICH ARE  
20 PERMITTED FOR HOME EQUITY PLANS UNDER THE HOME EQUITY LOAN  
21 CONSUMER PROTECTION ACT (PUBLIC LAW 100-709, 102 STAT. 4725), AS  
22 IMPLEMENTED BY REGULATION Z ISSUED THEREUNDER IN 12 CFR 226.5(B)  
23 (RELATING TO GENERAL DISCLOSURE REQUIREMENTS).

24 "Recorder." The recorder of deeds or other official in  
25 charge of recording mortgages in each county in which the  
26 mortgaged premises are located.

27 § 8144. Mortgages to secure certain advances.

28 In addition to any other indebtedness, a mortgage may secure  
29 unpaid balances of advances made, with respect to the mortgaged  
30 premises, for the payment of taxes, assessments, maintenance

1 charges, insurance premiums or costs incurred for the protection  
2 of the mortgaged premises or the lien of the mortgage, expenses  
3 incurred by the mortgagee by reason of default by the mortgagor  
4 under the mortgage or advances made under a construction loan to  
5 enable completion of the improvements for which the construction  
6 loan was originally made, if such mortgage states that it shall  
7 secure such unpaid balances. A mortgage complying with this  
8 section is a lien on the premises described therein from the  
9 time the mortgage is left for record or the time of delivery to  
10 the mortgagee of a purchase money mortgage which is recorded  
11 within ten days after its date for the full amount of the unpaid  
12 balances of such advances that are made under the mortgage, plus  
13 interest thereon, regardless of the time when the advances are  
14 made.

15 Section 2. Effect of act on prior mortgages.

16 Nothing contained in this act shall be construed to affect  
17 the priority of advances made under any mortgage recorded before  
18 the effective date of this act.

19 Section 3. Effective date.

20 This act shall take effect in 60 days.