

No. 1990-126

AN ACT

SB 693

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

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

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

§ 8143. Open-end mortgages.

(a) *General rule.*—*Whether or not it secures any other debt or obligation, an open-end mortgage, other than a purchase money mortgage as defined in section 8141 (relating to time from which liens have priority), may secure unpaid balances of advances made after such open-end mortgage is left for record. The validity and enforceability of the lien of an open-end mortgage shall not be affected by the fact that the first advance is made after the date of recording of the mortgage or that there may be no outstanding indebtedness for a period of time after an advance or advances may have been made and repaid.*

(b) *Unobligated advance after notice.*—*An open-end mortgage securing unpaid balances of advances referred to in subsection (a) is a lien on the premises described therein from the time the mortgage is left for record for the full amount of the total unpaid indebtedness, including the unpaid balances of the advances that are made under the mortgage plus interest thereon, regardless of the time when the advances are made. However, if an advance is made after the holder of the mortgage receives written notice which complies with subsection (d) of a lien or encumbrance on the mortgaged premises which is subordinate to the lien of the mortgage and if the holder is not obligated to make the advance at the time the notice is received, then the lien of the mortgage for the unpaid balance of the advance so made is subordinate to the lien or encumbrance unless the advance so made is in order to pay toward, or to provide funds to the mortgagor to pay toward, all or part of the cost of completing any erection, construction, alteration or repair of any part of the mortgaged premises, the financing of which, in whole or in part, the mortgage was given to secure. If an advance is made after the holder of an open-end mortgage receives written notice of labor performed or to be performed or materials furnished or to be furnished for the erection, construction, alteration or repair of any part of the mortgaged premises and if the holder is not obligated to make the advance at the time the notice is received, then the lien of the mortgage for the unpaid balance of the advance so made is subordinate to a valid mechanic's lien for the labor*

actually performed or materials actually furnished as specified in the notice unless the advance so made is in order to pay toward, or to provide funds to the mortgagor to pay toward, all or part of the cost of completing any erection, construction, alteration or repair of any part of the mortgaged premises, the financing of which, in whole or in part, the mortgage was given to secure.

(c) Mortgagor may limit indebtedness.—The mortgagor may limit the indebtedness secured by an open-end mortgage, and release the obligation of the mortgagee to make any further payments, to that in existence at the time of the delivery of a written notice to that effect to the recorder for record, if the notice is executed by the mortgagor, is acknowledged according to law and states the volume and initial page of the record or the recorder's file number of the mortgage, and a copy thereof is served upon the holder of the mortgage more than three days prior to the delivery of the notice to the recorder for record. The notice shall be recorded and indexed by the recorder as an amendment of the mortgage and shall be noted on the margin of the record of the mortgage, giving the book and page number where the notice is recorded. The right of the mortgagor to limit indebtedness secured by the mortgage is not applicable to interest subsequently accruing on indebtedness or advances made after the delivery of the notice to the recorder for record in order to pay for all or part of the cost of completing any erection, construction, alteration or repair of any part of the mortgaged premises, the financing of which, in whole or in part, the mortgage was given to secure.

(d) Notice.—The written notices provided for in subsection (b) shall be signed by the holder of the lien or encumbrance or the person who has performed or intends to perform the labor or who has furnished or intends to furnish materials, or by his agent or attorney, and shall set forth a description of the real property to which the notice relates, the date, the parties to, the volume and initial page of the record or the recorder's file number of the mortgage over which priority is claimed for the lien or encumbrance and the amount and nature of the claim to which the lien or encumbrance relates or the nature of the labor performed or to be performed or materials furnished or to be furnished and the amount claimed or to be claimed therefor. The written notices provided for in subsections (b) and (c) shall be deemed to have been received by or served upon the holder of the mortgage when delivered to the holder personally or by registered or certified mail at the address of the holder appearing in the mortgage or an assignment thereof or, if no address is so given, at the principal place of business or residence of the holder or the agent of the holder within this Commonwealth or, if the holder has no principal place of business or residence or agent within this Commonwealth, when posted in some conspicuous place on the mortgaged premises.

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

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

“Holder of the mortgage.” The holder of the mortgage as disclosed by the records of the recorder or recorders of the county or counties in which the mortgaged premises are situated.

“Indebtedness.” The unpaid principal balance of advances exclusive of interest and unpaid balances of advances and other extensions of credit secured by the mortgage made for the payment of taxes, assessments, maintenance charges, insurance premiums and costs incurred for the protection of the mortgaged premises.

“Mortgage.” Includes a mortgage, deed of trust or other instrument in the nature of a mortgage.

“Mortgagor.” Includes the mortgagor’s successors in interest as disclosed by the records of the recorder or recorders of the county or counties in which the mortgaged premises are situated.

“Open-end mortgage.” A mortgage which secures advances, up to a maximum amount of indebtedness outstanding at any time stated in the mortgage, plus accrued and unpaid interest. Such a mortgage shall be identified at the beginning thereof as an “open-end mortgage” and shall clearly state that it secures future advances, which in the case of a home equity plan, the lender has a contractual obligation to make on the terms and conditions set forth in the mortgage and open-end loan agreement with the borrower. Such open-end mortgage shall be deemed to secure obligatory future advances even though the mortgage or loan agreement contains some or all of the limitations and conditions on the obligation to make advances which are permitted for home equity plans under the Home Equity Loan Consumer Protection Act of 1988 (Public Law 100-709, 102 Stat. 4725), as implemented by Regulation Z issued thereunder in 12 CFR 226.5(b) (relating to general disclosure requirements).

“Recorder.” The recorder of deeds or other official in charge of recording mortgages in each county in which the mortgaged premises are located.

§ 8144. *Mortgages to secure certain advances.*

In addition to any other indebtedness, a mortgage may secure unpaid balances of advances made, with respect to the mortgaged premises, for the payment of taxes, assessments, maintenance charges, insurance premiums or costs incurred for the protection of the mortgaged premises or the lien of the mortgage, expenses incurred by the mortgagee by reason of default by the mortgagor under the mortgage or advances made under a construction loan to enable completion of the improvements for which the construction loan was originally made, if such mortgage states that it shall secure such unpaid balances. A mortgage complying with this section is a lien on the premises described therein from the time the mortgage is left for record or the time of delivery to the mortgagee of a purchase money mortgage which is recorded within ten days after its date for the full amount of the unpaid balances of such advances that are made under the mortgage, plus interest thereon, regardless of the time when the advances are made.

Section 2. Effect of act on prior mortgages.

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

Section 3. Effective date.

This act shall take effect in 60 days.

APPROVED—The 12th day of October, A. D. 1990.

ROBERT P. CASEY