

## §505. Open-end mortgages

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Contingent obligations" means obligations that become fixed or certain at some time after the recording of a mortgage securing those obligations, such as obligations under a guarantee. Contingent obligations have priority from the date of recording of the mortgage, in the full amount of the contingent obligation identified in the mortgage, if the maximum amount of the contingent obligation secured by the mortgage is stated in the mortgage. [PL 1993, c. 229, §3 (NEW).]

B. "Future advances" means debts or obligations secured by a mortgage that arise subsequent to the execution and recording of the mortgage; except that the term does not include protective advances or contingent obligations. The term "future advances" includes only those advances made to or for the account of debtors designated in the mortgage. Future advances have priority as provided in this section. [PL 1993, c. 229, §3 (NEW).]

C. "Protective advances" means advances made by a mortgagee that are necessary to protect the mortgagee's security interest, to collect amounts due to the mortgagee or represent interest earned on an obligation secured by the mortgage. Protective advances have priority from the date of recording of a mortgage. [PL 1993, c. 229, §3 (NEW).]

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**2. Authorization.** An interest in real property that may be conveyed as security for a debt or other obligation may be mortgaged to secure future advances up to a total amount outstanding from time to time as stated in the mortgage instrument. Future advances secured by such a mortgage instrument have priority over persons who, subsequent to the recording of the mortgage, acquire any rights in or liens upon the mortgaged real estate, in accordance with subsection 5, only if the mortgage instrument states that it secures future advances and specifies the total amount of debts or obligations, including future advances, that it may secure from time to time.

[PL 1993, c. 229, §3 (NEW).]

**3. Applicability limited.** This section may not be construed to affect or otherwise change existing law that allows mortgages to secure existing debts or obligations, debts or obligations created simultaneously with the execution of the mortgage, contingent obligations, protective advances, accrued interest and other debts or obligations that may be secured by a mortgage under existing law, but if such a mortgage states no or nominal consideration and does not expressly provide for future advances, the mortgage does not afford security for any advances made subsequent to the execution of the mortgage, other than protective advances.

[PL 1993, c. 229, §3 (NEW).]

**4. Validity; requirements.** A mortgage securing future advances remains valid and retains its priority even if no funds have been advanced or all future advances have been repaid as long as an agreement regarding future advances remains in effect. Upon termination of the agreement regarding future advances and repayment of all amounts secured by the mortgage, the mortgage must be discharged.

[PL 1993, c. 229, §3 (NEW).]

**5. Priority.** Future advances secured by a mortgage have priority over the rights of all persons who, subsequent to the recording of such a mortgage, acquire any rights in or liens upon the mortgaged real estate to the extent that the aggregate amount of all debts or obligations secured at any one time, including future advances but excluding protective advances, does not exceed the total amount stated in the mortgage, subject to the following.

A. The mortgagor or a successor in interest may file in the same recording office in which the original mortgage is filed and send to the mortgagee by registered mail, return receipt requested, a

written notice limiting the amount of future advances, other than advances made pursuant to a commitment as defined in Title 11, section 9-1102, subsection (68), secured by that mortgage to not less than the amount actually advanced as of the end of the 3rd business day following the delivery of the notice. [PL 1999, c. 699, Pt. D, §21 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

B. A person who, subsequent to the recording of such a mortgage, acquires any rights in or liens upon the mortgaged real estate and has perfected those rights by all required filings or recordings may send to the mortgagee by registered mail, return receipt requested, a written notice stating that future advances made by the mortgagee after the end of the 3rd business day following receipt of the notice are junior to that person's rights in or liens upon the mortgaged real estate, except that the written notice does not affect the priority of advances made pursuant to a real property construction or improvement financing agreement as defined in the United States Internal Revenue Code of 1986, Section 6323(c) and any amendments as of December 31, 1991. [PL 1993, c. 229, §3 (NEW).]

For purposes of this subsection, an advance made pursuant to a credit card or a negotiable instrument drawn against a credit account secured by a mortgage is deemed to have been made on the earlier of the date on the negotiable instrument or credit card voucher and the date the debtor received value in exchange for the negotiable instrument or credit card voucher.

[PL 1999, c. 699, Pt. D, §21 (AMD); PL 1999, c. 699, Pt. D, §30 (AFF).]

**6. Amount of future advances in excess of mortgage amount.** Until repaid, the amount by which a future advance causes the aggregate amount of all debts or obligations secured at any one time, exclusive of protective advances, to exceed the total amount stated in the mortgage does not have priority over persons who, subsequent to the recording of the mortgage, acquire any rights in or liens upon the mortgaged real estate. The mortgagee may credit repayments first to amounts exceeding the total amount of secured debts or obligations stated in the mortgage.

[PL 1993, c. 229, §3 (NEW).]

**7. Application.** This section applies to mortgages that are recorded on or after January 1, 1994. [PL 1993, c. 229, §3 (NEW).]

#### SECTION HISTORY

PL 1993, c. 229, §3 (NEW). PL 1999, c. 699, §D21 (AMD). PL 1999, c. 699, §D30 (AFF).

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