PRIORITY OF MORTGAGES
Act 348 of 1990

AN ACT to establish the priority of a mortgage that secures an indebtedness or other obligation that arises or is incurred after the mortgage has been recorded.

History: 1990, Act 348, Eff. Apr. 1, 1991.

The People of the State of Michigan enact:

565.901 Definitions.

Sec. 1. As used in this act:

(a) "Future advance" means an indebtedness or other obligation that is secured by a mortgage and arises or is incurred after the mortgage has been recorded, whether or not the future advance was obligatory or optional on the part of the mortgagee.

(b) "Future advance mortgage" means a mortgage that secures a future advance and is recorded either prior to or after the effective date of this act. If a recorded mortgage is amended to secure, expressly and not by implication, a future advance arising after the amendment, the mortgage becomes a future advance mortgage at the time the amendment is recorded.

(c) "Protective advance" means a future advance that arises because the mortgagee makes an expenditure or expenditures for 1 or more of the following:

(*i*) To fulfill or perform an obligation of the mortgagor under the mortgage, with respect to the mortgaged property, that the mortgagor has failed to fulfill or perform.

(*ii*) To preserve the priority of the mortgage or the value of the mortgaged property.

(*iii*) For attorneys fees or other expenses that are incurred in exercising a right or remedy under the mortgage or that the mortgagor has agreed in the mortgage to reimburse to the mortgagee.

(d) "Residential future advance mortgage" means a future advance mortgage upon 1 or more of the following:

(*i*) A single structure designed principally for the occupancy of from 1 to 4 families.

(*ii*) A single manufactured home designed principally for the occupancy of from 1 to 4 families.

(*iii*) A single condominium unit or cooperative unit, designed principally for the occupancy of from 1 to 4 families.

(*iv*) Land upon which the mortgagor intends to construct a single structure designed principally for the occupancy of from 1 to 4 families, if the structure is to be constructed using proceeds of a loan secured by the mortgage, unless the mortgagor intends to resell the structure without occupying it as a dwelling.

(*v*) Land upon which the mortgagor intends to place a single manufactured home, if it will be purchased using proceeds of a loan secured by the mortgage, unless the mortgagor intends to resell the manufactured home without occupying it as a dwelling.

(e) Notwithstanding subdivision (d), a mortgage is not a "residential future advance mortgage" if the land subject to the mortgage is more than 25 acres in size.

History: 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

565.902 Priority of future advance mortgage.

Sec. 2. Except as otherwise provided by this act, a future advance mortgage securing a future advance shall have priority with respect to the future advance as if the future advance was made at the time the future advance mortgage was recorded.

History: 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

565.903 Priority of recorded mortgage amended to become future advance mortgage.

Sec. 3. Except as otherwise provided by this act, if a recorded mortgage has been or is amended to become a future advance mortgage, it shall have priority with respect to a future advance secured by the mortgage as if the future advance was made at the time the amendment was recorded.

History: 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

565.903a Priority of residential future advance mortgage.

Sec. 3a. (1) Sections 2 and 3 do not apply to a residential future advance mortgage, except to the extent the mortgage secures a protective advance unless there are set forth in a conspicuous manner on the first page of the mortgage or on the first page of an amendment to the mortgage both of the following statements:

(a) "This is a future advance mortgage".

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(b) A statement of the maximum principal amount, excluding protective advances, that may be secured by the mortgage.

(2) For purposes of subsection (1), a printed heading in capitals is conspicuous, and language in the body of a mortgage or amendment to a mortgage is conspicuous if it is in larger or other contrasting type.

(3) Except as provided in subsection (4), if a residential future advance mortgage is amended to contain the statements required in subsection (1), then the mortgage has priority with respect to a future advance secured by the mortgage as if the future advance were made at the time the amendment was recorded.

(4) Notwithstanding subsections (1) and (3), if a residential future advance mortgage was recorded before the effective date of the amendatory act that added this section, and if another mortgage, lien, or other interest in the property was recorded after the residential future advance mortgage was recorded, after March 31, 1991, and before the effective date of the amendatory act that added this section, then the residential future advance mortgage has priority, in accordance with sections 2 and 3, with respect to a future advance secured by the mortgage, over the other mortgage, lien, or other interest, even though the residential future advance mortgage does not contain the statements described in subsection (1). If a mortgage is amended to become a residential future advance mortgage, then for purposes of this subsection the mortgage is considered to have been recorded at the time the amendment was recorded.

(5) If sections 2 and 3 do not apply to a residential future advance mortgage with respect to a future advance secured by the mortgage, then the priority of the mortgage with respect to the advance shall be determined by the law that would have applied in the absence of this act, except as provided in subsection (4).

History: Add. 1992, Act 35, Eff. July 1, 1992.

565.904 Priority of future advance mortgage over another interest in property recorded prior to April 1, 1991.

Sec. 4. This act does not give a future advance mortgage priority over another mortgage, lien, or other interest in the property that was recorded prior to April 1, 1991 if the other mortgage, lien, or other interest in the property would have had priority in the absence of this act.

History: 1990, Act 348, Eff. Apr. 1, 1991;—Am. 1992, Act 35, Eff. July 1, 1992.

565.905 Applicability of act.

Sec. 5. This act does not apply to the extent that priority is governed by section 119 of the construction lien act, Act No. 497 of the Public Acts of 1980, being section 570.1119 of the Michigan Compiled Laws, or by section 29 of Act No. 122 of the Public Acts of 1941, being section 205.29 of the Michigan Compiled Laws.

History: 1990, Act 348, Eff. Apr. 1, 1991.

565.906 Effective date.

Sec. 6. This act shall take effect April 1, 1991.

History: 1990, Act 348, Eff. Apr. 1, 1991.

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