NONRECOURSE MORTGAGE LOAN ACT
Act 67 of 2012

AN ACT to regulate the use and enforceability of certain loan covenants in nonrecourse commercial loan transactions in this state.

History: 2012, Act 67, Imd. Eff. Mar. 29, 2012.

Compiler's note: Enacting section 1 of Act 67 of 2012 provides:

"Enacting section 1. The legislature recognizes that it is inherent in a nonrecourse loan that the lender takes the risk of a borrower's insolvency, inability to pay, or lack of adequate capital after the loan is made and that the parties do not intend that the borrower is personally liable for payment of a nonrecourse loan if the borrower is insolvent, unable to pay, or lacks adequate capital after the loan is made. The legislature recognizes that the use of a post closing solvency covenant as a nonrecourse carveout, or an interpretation of any provision in a loan document that results in a determination that a post closing solvency covenant is a nonrecourse carveout, is inconsistent with this act and the nature of a nonrecourse loan; is an unfair and deceptive business practice and against public policy; and should not be enforced. It is the intent of the legislature that this act applies to any claim made or action taken to enforce a post closing solvency covenant on or after the effective date of this act; to any claim made to enforce a post closing solvency covenant that is pending on the effective date of this act; and to any action to enforce a post closing solvency covenant that is pending on the effective date of this act, unless a judgment or final order has been entered in that action and all rights to appeal that judgment or final order have been exhausted or have expired."

The People of the State of Michigan enact:

445.1591 Short title.

Sec. 1. This act shall be known and may be cited as the "nonrecourse mortgage loan act".

History: 2012, Act 67, Imd. Eff. Mar. 29, 2012.

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445.1592 Definitions.

Sec. 2. As used in this act:

(a) "Nonrecourse carveout" means a specific exception, if any, to the nonrecourse provisions set forth in the loan documents for a nonrecourse loan that has the effect of creating, if specified events occur, personal liability of the borrower or a guarantor or other surety of the loan for all or some amounts owed to the lender.

(b) "Nonrecourse loan" means a commercial loan secured by a mortgage on real property located in this state and evidenced by loan documents that meet any of the following:

(*i*) Provide that the lender will not enforce the liability or obligation of the borrower by an action or proceeding in which a money judgment is sought against the borrower.

(*ii*) Provide that any judgment in any action or proceeding on the loan is enforceable against the borrower only to the extent of the borrower's interest in the mortgaged property and other collateral security given for the loan.

(*iii*) Provide that the lender will not seek a deficiency judgment against the borrower.

(*iv*) Provide that there is no recourse against the borrower personally for the loan.

(*v*) Include any combination of subparagraphs (*i*) to (*iv*) or any other provisions to the effect that the loan is without personal liability to the borrower beyond the borrower's interest in the mortgaged property and other collateral security given for the loan.

(c) "Nonrecourse provisions" means 1 or more of the provisions described in subdivision (b)(*i*) to (*v*), whether or not the loan is subject to a nonrecourse carveout or carveouts.

(d) "Post closing solvency covenant" means any provision of the loan documents for a nonrecourse loan, whether expressed as a covenant, representation, warranty, or default, that relates solely to the solvency of the borrower, including, without limitation, a provision requiring that the borrower maintain adequate capital or have the ability to pay its debts, with respect to any period of time after the date the loan is initially funded. The term does not include a covenant not to file a voluntary bankruptcy or other voluntary insolvency proceeding or not to collude in an involuntary proceeding.

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445.1593 Post closing solvency covenant; prohibited use.

Sec. 3. (1) A post closing solvency covenant shall not be used, directly or indirectly, as a nonrecourse carveout or as the basis for any claim or action against a borrower or any guarantor or other surety on a nonrecourse loan.

(2) A provision in the documents for a nonrecourse loan that does not comply with subsection (1) is invalid and unenforceable.

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445.1594 Loan documents not containing nonrecourse loan provisions; use.

Sec. 4. This act does not prohibit a loan secured by a mortgage on real property located in this state from being fully recourse to the borrower or the guarantor, including, but not limited to, as a result of a post closing solvency covenant, if the loan documents for that loan do not contain nonrecourse loan provisions.

History: 2012, Act 67, Imd. Eff. Mar. 29, 2012.

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445.1595 Enforcement and interpretation of existing nonrecourse loan documents.

Sec. 5. This act applies to the enforcement and interpretation of all nonrecourse loan documents in existence on, or entered into on or after, the effective date of this act.

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