

HOUSE BILL No. 5498

February 11, 1992, Introduced by Rep. Griffin and referred to the Committee on Corporations and Finance.

A bill to amend sections 1, 2, 3, and 4 of Act No. 348 of the Public Acts of 1990, entitled

"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,"

being sections 565.901, 565.902, 565.903, and 565.904 of the Michigan Compiled Laws; and to add section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 3, and 4 of Act No. 348 of the
2 Public Acts of 1990, being sections 565.901, 565.902, 565.903,
3 and 565.904 of the Michigan Compiled Laws, are amended and sec-
4 tion 3a is added to read as follows:

5 Sec. 1. As used in this act:

6 (a) "Future advance" means an indebtedness or other
7 obligation that is secured by a mortgage and arises or is
8 incurred after the mortgage has been recorded, whether or not the

1 future advance was obligatory or optional on the part of the
2 mortgagee.

3 (b) "Future advance mortgage" means a mortgage that secures
4 a future advance and is recorded either prior to or after the
5 effective date of this act. If a recorded mortgage is amended to
6 secure, EXPRESSLY AND NOT BY IMPLICATION, a future advance aris-
7 ing after the amendment, the mortgage becomes a future advance
8 mortgage ~~on the date~~ AT THE TIME the amendment ~~was~~ IS
9 recorded.

10 (C) "PROTECTIVE ADVANCE" MEANS A FUTURE ADVANCE THAT ARISES
11 BECAUSE THE MORTGAGEE MAKES AN EXPENDITURE OR EXPENDITURES FOR 1
12 OR MORE OF THE FOLLOWING:

13 (i) TO FULFILL OR PERFORM AN OBLIGATION OF THE MORTGAGOR
14 UNDER THE MORTGAGE, WITH RESPECT TO THE MORTGAGED PROPERTY, THAT
15 THE MORTGAGOR HAS FAILED TO FULFILL OR PERFORM.

16 (ii) TO PRESERVE THE PRIORITY OF THE MORTGAGE OR THE VALUE
17 OF THE MORTGAGED PROPERTY.

18 (iii) FOR ATTORNEYS FEES OR OTHER EXPENSES THAT ARE INCURRED
19 IN EXERCISING A RIGHT OR REMEDY UNDER THE MORTGAGE OR THAT THE
20 MORTGAGOR HAS AGREED IN THE MORTGAGE TO REIMBURSE TO THE
21 MORTGAGEE.

22 (D) "RESIDENTIAL FUTURE ADVANCE MORTGAGE" MEANS A FUTURE
23 ADVANCE MORTGAGE UPON 1 OR MORE OF THE FOLLOWING:

24 (i) A SINGLE STRUCTURE DESIGNED PRINCIPALLY FOR THE OCCU-
25 PANCY OF FROM 1 TO 4 FAMILIES.

26 (ii) A SINGLE MANUFACTURED HOME DESIGNED PRINCIPALLY FOR THE
27 OCCUPANCY OF FROM 1 TO 4 FAMILIES.

1 (iii) A SINGLE CONDOMINIUM UNIT OR COOPERATIVE UNIT,
2 DESIGNED PRINCIPALLY FOR THE OCCUPANCY OF FROM 1 TO 4 FAMILIES.

3 (iv) LAND UPON WHICH THE MORTGAGOR INTENDS TO CONSTRUCT A
4 SINGLE STRUCTURE DESIGNED PRINCIPALLY FOR THE OCCUPANCY OF FROM 1
5 TO 4 FAMILIES, IF THE STRUCTURE IS TO BE CONSTRUCTED USING PRO-
6 CEEDS OF A LOAN SECURED BY THE MORTGAGE, UNLESS THE MORTGAGOR
7 INTENDS TO RESELL THE STRUCTURE WITHOUT OCCUPYING IT AS A
8 DWELLING.

9 (v) LAND UPON WHICH THE MORTGAGOR INTENDS TO PLACE A SINGLE
10 MANUFACTURED HOME, IF IT WILL BE PURCHASED USING PROCEEDS OF A
11 LOAN SECURED BY THE MORTGAGE, UNLESS THE MORTGAGOR INTENDS TO
12 RESELL THE MANUFACTURED HOME WITHOUT OCCUPYING IT AS A DWELLING.

13 (E) NOTWITHSTANDING SUBDIVISION (D), A MORTGAGE IS NOT A
14 "RESIDENTIAL FUTURE ADVANCE MORTGAGE" IF THE LAND SUBJECT TO THE
15 MORTGAGE IS MORE THAN 25 ACRES IN SIZE.

16 Sec. 2. Except as otherwise provided by this act, a future
17 advance mortgage securing a future advance shall have priority
18 with respect to the future advance as if the future advance was
19 made ~~on the date~~ AT THE TIME the future advance mortgage was
20 recorded.

21 Sec. 3. Except as otherwise provided by this act, if a
22 recorded mortgage has been or is amended to become a future
23 advance mortgage, it shall have priority with respect to a future
24 advance secured by the mortgage as if the future advance was made
25 ~~on the date~~ AT THE TIME the amendment was recorded.

1 SEC. 3A. (1) SECTIONS 2 AND 3 DO NOT APPLY TO A RESIDENTIAL
2 FUTURE ADVANCE MORTGAGE, EXCEPT TO THE EXTENT THE MORTGAGE
3 SECURES A PROTECTIVE ADVANCE, WITHOUT BOTH OF THE FOLLOWING:

4 (A) THERE ARE SET FORTH IN A CONSPICUOUS MANNER ON THE FIRST
5 PAGE OF THE MORTGAGE OR ON THE FIRST PAGE OF AN AMENDMENT TO THE
6 MORTGAGE BOTH OF THE FOLLOWING STATEMENTS:

7 (i) "THIS IS A FUTURE ADVANCE MORTGAGE".

8 (ii) A STATEMENT OF THE MAXIMUM PRINCIPAL AMOUNT, EXCLUDING
9 PROTECTIVE ADVANCES, THAT MAY BE SECURED BY THE MORTGAGE.

10 (B) THE AMOUNT DOES NOT EXCEED THE TOTAL PRINCIPAL AMOUNT,
11 EXCLUDING PROTECTIVE ADVANCES, THAT THE MORTGAGEE REASONABLY
12 EXPECTS MAY AT ANY TIME BE SECURED BY THE MORTGAGE.

13 (2) FOR PURPOSES OF SUBSECTION (1), A PRINTED HEADING IN
14 CAPITALS IS CONSPICUOUS, AND LANGUAGE IN THE BODY OF A MORTGAGE
15 OR AMENDMENT TO A MORTGAGE IS CONSPICUOUS IF IT IS IN LARGER OR
16 OTHER CONTRASTING TYPE.

17 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), IF A RESIDENTIAL
18 FUTURE ADVANCE MORTGAGE IS AMENDED TO CONTAIN THE STATEMENTS
19 REQUIRED IN SUBSECTION (1), AND IF THE AMOUNT SPECIFIED IN THOSE
20 STATEMENTS DOES NOT EXCEED THE TOTAL PRINCIPAL AMOUNT, EXCLUDING
21 PROTECTIVE ADVANCES, THAT THE MORTGAGEE REASONABLY EXPECTS MAY AT
22 ANY TIME BE SECURED BY THE MORTGAGE, THEN THE MORTGAGE HAS PRIOR-
23 ITY WITH RESPECT TO A FUTURE ADVANCE SECURED BY THE MORTGAGE AS
24 IF THE FUTURE ADVANCE WERE MADE AT THE TIME THE AMENDMENT WAS
25 RECORDED.

26 (4) NOTWITHSTANDING SUBSECTIONS (1) AND (3), IF A
27 RESIDENTIAL FUTURE ADVANCE MORTGAGE WAS RECORDED BEFORE THE

1 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, AND
2 IF ANOTHER MORTGAGE, LIEN, OR OTHER INTEREST IN THE PROPERTY WAS
3 RECORDED AFTER THE RESIDENTIAL FUTURE ADVANCE MORTGAGE WAS
4 RECORDED, AFTER MARCH 31, 1991, AND BEFORE THE EFFECTIVE DATE OF
5 THE AMENDATORY ACT THAT ADDED THIS SECTION, THEN THE RESIDENTIAL
6 FUTURE ADVANCE MORTGAGE HAS PRIORITY, IN ACCORDANCE WITH SECTIONS
7 2 AND 3, WITH RESPECT TO A FUTURE ADVANCE SECURED BY THE MORT-
8 GAGE, OVER THE OTHER MORTGAGE, LIEN, OR OTHER INTEREST, EVEN
9 THOUGH THE RESIDENTIAL FUTURE ADVANCE MORTGAGE DOES NOT CONTAIN
10 THE STATEMENTS DESCRIBED IN SUBSECTION (1). IF A MORTGAGE IS
11 AMENDED TO BECOME A RESIDENTIAL FUTURE ADVANCE MORTGAGE, THEN FOR
12 PURPOSES OF THIS SUBSECTION THE MORTGAGE IS CONSIDERED TO HAVE
13 BEEN RECORDED ON THE DATE THE AMENDMENT WAS RECORDED.

14 (5) IF SECTIONS 2 AND 3 DO NOT APPLY TO A RESIDENTIAL FUTURE
15 ADVANCE MORTGAGE WITH RESPECT TO A FUTURE ADVANCE SECURED BY THE
16 MORTGAGE, THEN THE PRIORITY OF THE MORTGAGE WITH RESPECT TO THE
17 ADVANCE SHALL BE DETERMINED BY THE LAW THAT WOULD HAVE APPLIED IN
18 THE ABSENCE OF THIS ACT, EXCEPT AS PROVIDED IN SUBSECTION (4).

19 Sec. 4. This act does not give a FUTURE ADVANCE mortgage
20 priority over another mortgage, LIEN, OR OTHER INTEREST IN THE
21 PROPERTY that was recorded prior to April 1, 1991 ~~to the extent~~
22 ~~that~~ IF the other mortgage, LIEN, OR OTHER INTEREST IN THE
23 PROPERTY would have had priority ~~prior to April 1, 1991~~ IN THE
24 ABSENCE OF THIS ACT.