

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1931 Session of
1984

INTRODUCED BY RAPPAPORT AND SPENCER, FEBRUARY 13, 1984

AS AMENDED ON SECOND CONSIDERATION, IN SENATE,
NOVEMBER 27, 1984

AN ACT

1 ~~Establishing the priority of advances made under mortgages and~~ <—
2 ~~the validity of mortgages with no outstanding indebtedness.~~
3 AMENDING TITLE 42 (JUDICIARY AND JUDICIAL PROCEDURE) OF THE <—
4 PENNSYLVANIA CONSOLIDATED STATUTES, ESTABLISHING THE PRIORITY
5 OF ADVANCES MADE UNDER CERTAIN MORTGAGES; AND PROVIDING FOR
6 THE RIGHTS OF MORTGAGEES, MORTGAGORS AND OTHER PARTIES WITH
7 RESPECT TO CERTAIN MORTGAGES.

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

10 ~~Section 1. Priority of certain mortgage liens.~~ <—
11 ~~Except for a mortgage which is a first lien on a one family~~
12 ~~or two family dwelling only and does not secure either a~~
13 ~~construction or a revolving loan and except as otherwise~~
14 ~~provided in this act, the lien of all advances made under and~~
15 ~~other sums secured by any mortgage which provides that it~~
16 ~~secures future advances, states a maximum principal amount to be~~
17 ~~secured thereby and is recorded in this Commonwealth after the~~
18 ~~effective date of this act shall have priority as of the time~~
19 ~~the mortgage is left for record or, if it is a timely recorded~~

1 ~~purchase money mortgage, as of the time of delivery whether the~~
2 ~~advances are voluntary or obligatory. The lien of any portion of~~
3 ~~an advance which, when added to the unpaid principal balance of~~
4 ~~the mortgage, is in excess of the maximum principal amount~~
5 ~~stated in the mortgage shall have priority only as of the time~~
6 ~~the advance was made. However, the lien of the following~~
7 ~~advances made under or sums secured by the mortgage shall have~~
8 ~~priority as of the time the mortgage is left for record or, if~~
9 ~~it is a timely recorded purchase money mortgage, as of the time~~
10 ~~of delivery whether or not they result in a total unpaid~~
11 ~~principal amount in excess of the maximum principal amount~~
12 ~~stated in the mortgage:~~

13 ~~(1) Accrued interest.~~

14 ~~(2) Late, prepayment or service charges.~~

15 ~~(3) Advances made:~~

16 ~~(i) for the payment of taxes, assessments,~~
17 ~~maintenance charges or insurance premiums; or~~

18 ~~(ii) for the reasonable protection of the mortgaged~~
19 ~~property or the lien of the mortgage.~~

20 ~~(4) Expenses incurred by the mortgagee by reason of~~
21 ~~default by the mortgagor under the mortgage.~~

22 ~~(5) Advances made under a construction loan to enable~~
23 ~~completion of the improvements for which the construction~~
24 ~~loan was originally made.~~

25 ~~The priority of the lien of advances and the validity and~~
26 ~~enforceability of the lien of the mortgage shall not be affected~~
27 ~~by the fact:~~

28 ~~(1) that the first advance is made after the date of~~
29 ~~recording of the mortgage; or~~

30 ~~(2) that there may be no outstanding indebtedness for a~~

~~period of time after an advance or advances have been made
and repaid, provided as to the situation in this paragraph
that the mortgage provides that:~~

~~(i) its lien is preserved during the applicable
period of time when there is no outstanding indebtedness;
and~~

~~(ii) the mortgagor waives the right to have the
mortgage satisfied because of the fact that there is no
outstanding indebtedness during the applicable period of
time.~~

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, A MORTGAGE MAY SECURE UNPAID BALANCES OF LOAN
ADVANCES MADE AFTER THE MORTGAGE IS LEFT FOR RECORD, OR AFTER
THE TIME OF DELIVERY TO THE MORTGAGEE OF A PURCHASE MONEY
MORTGAGE WHICH IS RECORDED WITHIN TEN DAYS AFTER ITS DATE, TO
THE EXTENT THAT THE TOTAL UNPAID LOAN INDEBTEDNESS, EXCLUSIVE OF
INTEREST THEREON, DOES NOT EXCEED THE MAXIMUM AMOUNT OF LOAN
INDEBTEDNESS WHICH THE MORTGAGE STATES MAY BE OUTSTANDING AT ANY
TIME. WITH RESPECT TO THE UNPAID BALANCES, SUBSECTION (B) IS
APPLICABLE IF THE MORTGAGE STATES, IN SUBSTANCE OR EFFECT, THAT
THE PARTIES THERETO INTEND THAT THE MORTGAGE SHALL SECURE THE
SAME, THE MAXIMUM AMOUNT OF UNPAID LOAN INDEBTEDNESS, EXCLUSIVE
OF INTEREST THEREON, WHICH MAY BE OUTSTANDING AT ANY TIME AND
CONTAINS AT THE BEGINNING THEREOF THE TERM "OPEN-END MORTGAGE."
THE VALIDITY AND ENFORCEABILITY OF THE LIEN OF THE 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

1 NO OUTSTANDING INDEBTEDNESS FOR A PERIOD OF TIME AFTER AN
2 ADVANCE OR ADVANCES MAY HAVE BEEN MADE AND REPAID.

3 (B) UNOBLIGATED ADVANCE AFTER NOTICE.--A MORTGAGE COMPLYING
4 WITH SUBSECTION (A) AND SECURING UNPAID BALANCES OF LOAN
5 ADVANCES REFERRED TO IN SUBSECTION (A) IS A LIEN ON THE PREMISES
6 DESCRIBED THEREIN FROM THE TIME THE MORTGAGE IS LEFT FOR RECORD,
7 OR FROM THE TIME OF DELIVERY TO THE MORTGAGEE OF A PURCHASE
8 MONEY MORTGAGE WHICH IS RECORDED WITHIN TEN DAYS AFTER ITS DATE,
9 FOR THE FULL AMOUNT OF THE TOTAL UNPAID LOAN INDEBTEDNESS,
10 INCLUDING THE UNPAID BALANCES OF THE ADVANCES THAT ARE MADE
11 UNDER THE MORTGAGE, PLUS INTEREST THEREON, REGARDLESS OF THE
12 TIME WHEN THE ADVANCES ARE MADE. IF SUCH AN ADVANCE IS MADE MORE
13 THAN THREE DAYS AFTER THE HOLDER OF THE MORTGAGE RECEIVES
14 WRITTEN NOTICE WHICH COMPLIES WITH SUBSECTION (D) OF A LIEN OR
15 ENCUMBRANCE ON THE MORTGAGED PREMISES WHICH IS SUBORDINATE TO
16 THE LIEN OF THE MORTGAGE AND IF THE HOLDER IS NOT OBLIGATED TO
17 MAKE THE ADVANCE AT THE TIME THE NOTICE IS RECEIVED, THEN THE
18 LIEN OF THE MORTGAGE FOR THE UNPAID BALANCE OF THE ADVANCE SO
19 MADE IS SUBORDINATE TO THE LIEN OR ENCUMBRANCE UNLESS THE
20 ADVANCE SO MADE IS IN ORDER TO PAY TOWARD, OR TO PROVIDE FUNDS
21 TO THE MORTGAGOR TO PAY TOWARD, ALL OR PART OF THE COST OF
22 COMPLETING ANY ERECTION, CONSTRUCTION, ALTERATION OR REPAIR OF
23 ANY PART OF THE MORTGAGED PREMISES THE FINANCING OF WHICH, IN
24 WHOLE OR IN PART, THE MORTGAGE WAS GIVEN TO SECURE. IF AN
25 ADVANCE IS MADE MORE THAN THREE DAYS AFTER THE HOLDER OF THE
26 MORTGAGE RECEIVES WRITTEN NOTICE OF LABOR PERFORMED OR TO BE
27 PERFORMED OR MATERIALS FURNISHED OR TO BE FURNISHED FOR THE
28 ERECTION, CONSTRUCTION, ALTERATION OR REPAIR OF ANY PART OF THE
29 MORTGAGED PREMISES AND IF THE HOLDER IS NOT OBLIGATED TO MAKE
30 THE ADVANCE AT THE TIME THE NOTICE IS RECEIVED, THEN THE LIEN OF

1 THE MORTGAGE FOR THE UNPAID BALANCE OF THE ADVANCE SO MADE IS
2 SUBORDINATE TO A VALID MECHANIC'S LIEN FOR THE LABOR ACTUALLY
3 PERFORMED OR MATERIALS ACTUALLY FURNISHED AS SPECIFIED IN THE
4 NOTICE UNLESS THE ADVANCE SO MADE IS IN ORDER TO PAY TOWARD, OR
5 TO PROVIDE FUNDS TO THE MORTGAGOR TO PAY TOWARD, ALL OR PART OF
6 THE COST OF COMPLETING ANY ERECTION, CONSTRUCTION, ALTERATION OR
7 REPAIR OF ANY PART OF THE MORTGAGED PREMISES THE FINANCING OF
8 WHICH, IN WHOLE OR IN PART, THE MORTGAGE WAS GIVEN TO SECURE.

9 (C) MORTGAGOR MAY LIMIT INDEBTEDNESS.--THE MORTGAGOR MAY
10 LIMIT THE LOAN INDEBTEDNESS SECURED BY THE MORTGAGE TO THAT IN
11 EXISTENCE AT THE TIME OF THE DELIVERY OF A WRITTEN NOTICE TO
12 THAT EFFECT TO THE RECORDER FOR RECORD, IF THE NOTICE IS
13 EXECUTED BY THE MORTGAGOR, ACKNOWLEDGED ACCORDING TO LAW, STATES
14 THE VOLUME AND INITIAL PAGE OF THE RECORD OR THE RECORDER'S FILE
15 NUMBER OF THE MORTGAGE, AND A COPY THEREOF IS SERVED UPON THE
16 HOLDER OF THE MORTGAGE MORE THAN THREE DAYS PRIOR TO THE
17 DELIVERY OF THE NOTICE TO THE RECORDER FOR RECORD. THE NOTICE
18 SHALL BE RECORDED AND INDEXED BY THE RECORDER AS AN AMENDMENT OF
19 THE MORTGAGE. THE RIGHT OF THE MORTGAGOR TO LIMIT LOAN
20 INDEBTEDNESS SECURED BY THE MORTGAGE IS NOT APPLICABLE TO
21 INTEREST SUBSEQUENTLY ACCRUING ON LOAN INDEBTEDNESS, LOAN
22 ADVANCES THE HOLDER OF THE MORTGAGE IS OBLIGATED TO MAKE OR LOAN
23 ADVANCES MADE AFTER THE DELIVERY OF THE NOTICE TO THE RECORDER
24 FOR RECORD IN ORDER TO PAY FOR ALL OR PART OF THE COST OF
25 COMPLETING ANY ERECTION, CONSTRUCTION, ALTERATION OR REPAIR OF
26 ANY PART OF THE MORTGAGED PREMISES THE FINANCING OF WHICH, IN
27 WHOLE OR IN PART, THE MORTGAGE WAS GIVEN TO SECURE.

28 (D) NOTICE.--THE WRITTEN NOTICES PROVIDED FOR IN SUBSECTION
29 (B) SHALL BE SIGNED BY THE HOLDER OF THE LIEN OR ENCUMBRANCE OR
30 THE PERSON WHO HAS PERFORMED OR INTENDS TO PERFORM THE LABOR OR

1 WHO HAS FURNISHED OR INTENDS TO FURNISH MATERIALS, OR BY HIS
2 AGENT OR ATTORNEY, AND SHALL SET FORTH A DESCRIPTION OF THE REAL
3 PROPERTY TO WHICH THE NOTICE RELATES, THE DATE, PARTIES TO, THE
4 VOLUME AND INITIAL PAGE OF THE RECORD OR THE RECORDER'S FILE
5 NUMBER OF THE MORTGAGE OVER WHICH PRIORITY IS CLAIMED FOR THE
6 LIEN OR ENCUMBRANCE, AND THE AMOUNT AND NATURE OF THE CLAIM TO
7 WHICH THE LIEN OR ENCUMBRANCE RELATES OR THE NATURE OF THE LABOR
8 PERFORMED OR TO BE PERFORMED OR MATERIALS FURNISHED OR TO BE
9 FURNISHED AND THE AMOUNT CLAIMED OR TO BE CLAIMED THEREFOR. THE
10 WRITTEN NOTICES PROVIDED FOR IN SUBSECTIONS (B) AND (C) SHALL BE
11 DEEMED TO HAVE BEEN RECEIVED BY OR SERVED UPON THE HOLDER OF THE
12 MORTGAGE WHEN DELIVERED TO THE HOLDER PERSONALLY OR BY
13 REGISTERED OR CERTIFIED MAIL AT THE ADDRESS OF THE HOLDER
14 APPEARING IN THE MORTGAGE OR AN ASSIGNMENT THEREOF OR, IF NO
15 ADDRESS IS SO GIVEN, AT THE PRINCIPAL PLACE OF BUSINESS OR
16 RESIDENCE OF THE HOLDER OR THE AGENT OF THE HOLDER WITHIN THIS
17 COMMONWEALTH OR, IF THE HOLDER HAS NO PRINCIPAL PLACE OF
18 BUSINESS OR RESIDENCE OR AGENT WITHIN THIS COMMONWEALTH, WHEN
19 POSTED IN SOME CONSPICUOUS PLACE ON THE MORTGAGED PREMISES.

20 (E) SECTION NOT EXCLUSIVE.--THIS SECTION IS NOT EXCLUSIVE
21 AND SHALL NOT BE CONSTRUED TO CHANGE EXISTING LAW WITH RESPECT
22 TO THE PRIORITY OF THE LIEN OF ADVANCES MADE PURSUANT TO A
23 MORTGAGE UNDER WHICH THE HOLDER IS OBLIGATED TO MAKE ADVANCES.

24 (F) DEFINITIONS.--AS USED IN THIS SECTION THE FOLLOWING
25 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
26 SUBSECTION:

27 "HOLDER OF THE MORTGAGE." THE HOLDER OF THE MORTGAGE AS
28 DISCLOSED BY THE RECORDS OF THE RECORDER OR RECORDERS OF THE
29 COUNTY OR COUNTIES IN WHICH THE MORTGAGED PREMISES ARE SITUATED.

30 "LOAN INDEBTEDNESS." THE UNPAID PRINCIPAL BALANCE OF LOAN

1 ADVANCES, EXCLUSIVE OF INTEREST AND UNPAID BALANCES OF ADVANCES,
2 MADE FOR THE PAYMENT OF TAXES, ASSESSMENTS, MAINTENANCE CHARGES,
3 INSURANCE PREMIUMS AND COSTS INCURRED FOR THE PROTECTION OF THE
4 MORTGAGED PREMISES.

5 "MORTGAGE." INCLUDES A MORTGAGE, DEED OF TRUST, OR OTHER
6 INSTRUMENT IN THE NATURE OF A MORTGAGE.

7 "MORTGAGOR." INCLUDES THE MORTGAGOR'S SUCCESSORS IN INTEREST
8 AS DISCLOSED BY THE RECORDS OF THE RECORDER OR RECORDERS OF THE
9 COUNTY OR COUNTIES IN WHICH THE MORTGAGED PREMISES ARE SITUATED.

10 "OBLIGATED." A HOLDER OF A MORTGAGE IS "OBLIGATED" TO MAKE
11 AN ADVANCE IF THE HOLDER OR THE PERSON TO WHOM THE REPAYMENT OF
12 THE ADVANCE IS OWED HAS A CONTRACTUAL COMMITMENT TO DO SO, EVEN
13 THOUGH THE MAKING OF THE ADVANCE MAY BE CONDITIONED UPON THE
14 OCCURRENCE OR EXISTENCE, OR THE FAILURE TO OCCUR OR EXIST, OF
15 ANY EVENT OR FACT, WHICH EVENT OR FACT MUST OCCUR OR EXIST, OR
16 FAIL TO OCCUR OR EXIST, WITHIN THREE YEARS FOLLOWING THE TIME
17 THE MORTGAGE IS LEFT FOR RECORD, BUT THE THREE-YEAR LIMITATION
18 DOES NOT APPLY TO ANY MORTGAGE GIVEN TO SECURE, IN WHOLE OR IN
19 PART, LOAN ADVANCES MADE TO PAY THE COST OF ANY ERECTION,
20 CONSTRUCTION, ALTERATION OR REPAIR OF ANY PART OF THE MORTGAGED
21 PREMISES.

22 § 8144. MORTGAGES TO SECURE CERTAIN ADVANCES.

23 IN ADDITION TO ANY OTHER DEBT OR OBLIGATION, A MORTGAGE MAY
24 SECURE UNPAID BALANCES OF ADVANCES MADE, WITH RESPECT TO THE
25 MORTGAGED PREMISES, FOR THE PAYMENT OF TAXES, ASSESSMENTS,
26 MAINTENANCE CHARGES, INSURANCE PREMIUMS OR COSTS INCURRED FOR
27 THE PROTECTION OF THE MORTGAGED PREMISES OR THE LIEN OF THE
28 MORTGAGE, EXPENSES INCURRED BY THE MORTGAGEE BY REASON OF
29 DEFAULT BY THE MORTGAGOR UNDER THE MORTGAGE OR ADVANCES MADE
30 UNDER A CONSTRUCTION LOAN TO ENABLE COMPLETION OF THE

1 IMPROVEMENTS FOR WHICH THE CONSTRUCTION LOAN WAS ORIGINALLY
2 MADE, IF SUCH MORTGAGE STATES THAT IT SHALL SECURE SUCH UNPAID
3 BALANCES. A MORTGAGE COMPLYING WITH THIS SECTION IS A LIEN ON
4 THE PREMISES DESCRIBED THEREIN FROM THE TIME THE MORTGAGE IS
5 LEFT FOR RECORD OR THE TIME OF DELIVERY TO THE MORTGAGEE OF A
6 PURCHASE MONEY MORTGAGE WHICH IS RECORDED WITHIN TEN DAYS AFTER
7 ITS DATE, FOR THE FULL AMOUNT OF THE UNPAID BALANCES OF THE
8 ADVANCES THAT ARE MADE UNDER THE MORTGAGE, PLUS INTEREST
9 THEREON, REGARDLESS OF THE TIME WHEN THE ADVANCES ARE MADE.

10 Section 2. Effect of act on prior mortgages.

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

14 Section 3. Effective date.

15 This act shall take effect in 60 days.