

46:9-8.1 to 46:9-8.4

LEGISLATIVE HISTORY CHECKLIST

NJSA: 46:9-8.1 to 46:9-8.4

(Mortgages--
clarify priority)

LAWS OF: 1985

CHAPTER: 353

BILL NO: S2308

Sponsor(s): Cowan and others

Date Introduced: October 18, 1984

Committee: Assembly: Banking and Insurance

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments during passage denoted
by asterisks

Date of Passage: Assembly: June 27, 1985

Senate: May 13, 1985

Date of Approval: November 8, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

SENATE, No. 2308

STATE OF NEW JERSEY

INTRODUCED OCTOBER 18, 1984

By Senators COWAN, RUSSO, DiFRANCESCO, O'CONNOR, CARDINALE, JACKMAN, VAN WAGNER, RAND and WEISS

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the priority of liens of mortgage loans and supplementing chapter 9 of Title 46 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Mortgage loan" means any loan or line of credit, except a
3 construction loan, which states a maximum specified principal
4 amount and which is secured by an interest in real property.

5 b. "Construction loan" means a loan or line of credit, for a fixed
6 term of no more than three years which is secured by a lien on
7 real property and which is made by the lender for the sole purpose
8 of financing the erection, construction, completion, addition to,
9 alteration or repair of improvements to real property.

10 c. "Modification" means:

11 (1) A change in the interest rate, due date or other terms and
12 conditions of a mortgage loan except an advance of principal or a
13 substitution in the collateral; or

14 (2) An advance made pursuant to a line of credit secured by a
15 mortgage which expressly provides in the mortgage that advances,
16 whether obligatory or at the option of the lender, may be made at
17 anytime subsequent to the recording of the mortgage, if the pro-
18 vision in the mortgage providing for these advances is in bold type.

1 2. Notwithstanding any other law to the contrary, the priority
2 of the lien of a mortgage loan which has been modified shall relate
3 back to and remain as it was at the time of recording of the original
4 mortgage as if the modification was included in the original mort-

5 gage or as if the modification occurred at the time of recording of
6 the original mortgage. The priority granted by this section shall
7 not apply to any balance due in excess of the maximum specified
8 principal amount which is secured by the mortgage, plus accrued
9 interest, payments for taxes and insurance, and other payments
10 made by the mortgagee pursuant to the terms of the mortgage.

1 3. The priority of the lien of a mortgage loan shall not be af-
2 fected by the fact that there may not have been any outstanding
3 indebtedness at some time or times during the term specified in
4 the mortgage.

1 4. Liens of mortgage loans recorded prior to the effective date
2 of this act:

3 a. With respect to liens effective prior to the effective date of
4 this act, shall continue the same priority position pursuant to the
5 law in effect prior to this act, and

6 b. With respect to liens effective on or after the effective date
7 of this act, shall have the priority provided in this act as if the
8 mortgage loan recorded prior to the effective date of this act was
9 recorded at the time this act became effective.

1 5. This act shall take effect at 12:01 a.m. of the day following
2 enactment.

STATEMENT

Within the last few years, many new types of mortgages have been used by lenders and borrowers. These include various kinds of adjustable or variable rate mortgages, balloon mortgages and lines of credit secured by real property. With these new forms of mortgages have come questions and concerns about priority upon modification, renewal, extension or rollover. These legal concerns have caused lenders to require additional title searches and title insurance and to require additional document recordings, all with their attendant legal and recording fees causing increased costs for borrowers. The purpose of this bill is to clarify the priority of mortgages upon modification of the mortgage and to eliminate the need for searches and title insurance upon modification, and thus to reduce charges to borrowers. It does this by giving priority to a mortgage, upon to an amount stated in the mortgage, as of the recording date of the mortgage notwithstanding subsequent advances, changes in interest, extension of due date or other modifications.

Construction loans are excepted from the provisions of the act so that current practices and priorities in the construction industry will not be changed.

11-8-85

[OFFICIAL COPY REPRINT]

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By Senators COWAN, RUSSO, DiFRANCESCO, O'CONNOR, CARDINALE, JACKMAN, VAN WAGNER, RAND and WEISS

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AN ACT concerning the priority of liens of mortgage loans and supplementing chapter 9 of Title 46 of the Revised Statutes.

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3 construction loan, which states a maximum specified principal
4 amount and which is secured by an interest in real property.

5 b. "Construction loan" means a loan ***[or line of credit,]*** for a
6 fixed term of no more than three years which is secured by a lien on
7 real property and which is made by the lender for the sole purpose
8 of financing the erection, construction, completion, addition to,
9 alteration or repair of improvements to real property.

10 *c. "*Line of credit*" means an agreement whereby a lender is
11 obligated to provide a specified amount of credit to a borrower from
12 time to time. The agreement may include provisions to amend or
13 change the interest rate or terms of repayment and shall be an
14 obligation for the purposes of this section notwithstanding the in-
15 clusion of one or more of the following limitations and conditions:

16 (1) *An expiration date of the agreement or an option of the lender*
17 *to cancel the agreement on notice to the borrower;*

18 (2) *The financial condition of any borrower;*

19 (3) *Continued compliance by the borrower with the terms of the*
20 *agreement and any mortgage or security agreement securing the*
21 *amounts advanced pursuant to the agreement;*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted June 20, 1985.**

22 (4) *The absence of an adverse change in the value or condition*
 23 *of any collateral securing the agreement;*

24 (5) *A requirement of certain procedures for activating the obliga-*
 25 *tion to make advances pursuant to the agreement; or*

26 (6) *A decision of the lender not to continue to engage in the*
 27 *business of providing lines of credit on terms similar to the agree-*
 28 *ment.**

29 ***[c.]*** *d.** “Modification” means:

30 (1) ***[A]*** *With respect to a mortgage loan other than a line of*
 31 *credit, a* change in the interest rate, due date or other terms and
 32 conditions of a mortgage loan except an advance of principal or a
 33 substitution in the collateral; or

34 (2) An advance made pursuant to a line of credit ***[**secured by a
 35 mortgage which expressly provides in the mortgage that advances,
 36 whether obligatory or at the option of the lender, may be made at
 37 anytime subsequent to the recording of the mortgage, if the pro-
 38 vision in the mortgage providing for these advances is in bold
 39 type**]***.

1 2. Notwithstanding any other law to the contrary, the priority
 2 of the lien of a mortgage loan which ***[**has been modified**]*** *by its*
 2A *terms is subject to modification, as defined by this act** shall relate
 3 back to and remain as it was at the time of recording of the original
 4 mortgage as if the modification was included in the original mort-
 5 gage or as if the modification occurred at the time of recording of
 6 the original mortgage. The priority granted by this section shall
 7 not apply to any balance due in excess of the maximum specified
 8 principal amount which is secured by the mortgage, plus accrued
 9 interest, payments for taxes and insurance, and other payments
 10 made by the mortgagee pursuant to the terms of the mortgage.

1 3. The priority of the lien of a mortgage loan shall not be af-
 2 fected by the fact that there may not have been any outstanding
 3 indebtedness at some time or times during the term specified in
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1 4. Liens of mortgage loans recorded prior to the effective date
 2 of this act:

3 a. With respect to liens effective prior to the effective date of
 4 this act, shall continue the same priority position pursuant to the
 5 law in effect prior to this act, and

6 b. With respect to liens effective on or after the effective date
 7 of this act, shall have the priority provided in this act as if the
 8 mortgage loan recorded prior to the effective date of this act was
 9 recorded at the time this act became effective.

1 5. This act shall take effect at 12:01 a.m. of the day following
 2 enactment.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

SENATE, No. 2308

STATE OF NEW JERSEY

DATED: JUNE 20, 1985

The purpose of the bill is to clarify questions regarding the priority of liens which have arisen with the advent of new types of mortgage instruments, such as balloon mortgage loans, and home equity loans.

It would preserve the priority of the lien of a mortgage loan although (1) the interest rate, due date and certain other terms and conditions may be changed, and although (2) advances on the loan may be made (whether obligatory or at the option of the lender). The priority of the lien established at the time of recording would be preserved even in the case of a line of credit when no use of the credit is made.

The bill would not apply (1) to construction loans, (2) to changes in a mortgage involving a substitution of collateral, or (3) to any balance due in excess of the maximum specified principal amount of the mortgage loan, plus certain other payments made by the mortgagee (e.g., accrued interest, taxes, and insurance).

The committee amendments were technical in nature.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
SENATE, No. 2308

STATE OF NEW JERSEY

DATED: DECEMBER 6, 1984

This bill provides that the priority of the lien of a mortgage loan (except a construction loan) in which the interest rate, due date or other terms and conditions (except substitution of collateral) may be changed or in which advances on the loan, whether obligatory or at the option of the lender, may be made, will retain the same priority as it had when the lien was recorded, even if any of these changes in the mortgage loan occur or advances are or are not made. However, this priority would not apply to any balance due in excess of the maximum specified principal amount of the mortgage loan, plus certain other payments made by the mortgagee.

The provisions of this bill would apply to mortgage loans recorded on or after the effective date of this bill and would apply to mortgage loans recorded prior to the effective date only as to their priority relationship to mortgage loans recorded on or after the effective date.

This bill addresses the problems that have arisen with the proliferation of new loan instruments. Two good examples are the balloon mortgage loan and the home equity loan. A balloon mortgage loan requires periodic installments of principal and interest plus a balance due in a lump sum at a specified date, usually at the end of the loan term. This lump sum is often refinanced by another balloon mortgage loan or a regular mortgage loan. When the lump sum is refinanced, the financial institution must request a title search and additional title insurance because the term of the balloon mortgage has ended and for all practical purposes a new mortgage loan is being made. If the borrower in question had borrowed money secured by a second mortgage after he had taken the original balloon mortgage (assume it is a first mortgage), the financial institution's first mortgage for the balloon loan would become a second mortgage upon refinancing. Not only does this situation result in additional title search and title insurance expenses, but the financial institution may not want to refinance what is often a large balloon loan, because of the loss of the priority position of its mortgage. This bill provides that, if the borrower refinances his balloon mortgage loan at the same financial institution, the priority of the lien

of the refinanced mortgage loan will be that which it was when the original balloon mortgage was recorded.

The second example is the home equity loan. The home equity loan is usually a line of credit backed by a second mortgage on a home. This line of credit is usually drawn upon by the borrower by writing checks or using his credit card. In short, it is a type of loan in which advances on the loan are usually made. The question that has arisen concerns whether the lien of the home equity loan is for the full amount of the line of credit or for the amount actually advanced on the line of credit at the time another lien is recorded against the property in question. In *Lincoln Federal Savings and Loan Association v. Platt Homes, Inc.*, 185 N. J. Super 457, the court said that where the mortgagee is committed under a recorded mortgage to lend a specific sum, and where several advances are required to consummate the agreement, the courts will give effect to the manifest intention of the parties and will treat the successive advances as a single transaction, fixed and effective as of the date the original commitment was recorded. In addition, the court stated that when the future advance is optional on the part of the mortgagee, actual notice of an intervening encumbrance will work a subordination of the advances made after such notice is received. Most home equity loans appear to provide for optional advances because of the nature of the home equity loan. If advances on a home equity loan are optional or are determined by the courts to be optional, the problem is evident. For example, let us suppose that a home owner has a \$60,000.00 first mortgage and a home equity loan with a line of credit for \$20,000.00 and with advances totaling \$6,500.00. If this home owner takes another second mortgage for \$5,000.00 or for some reason another lien is recorded on the property, what is the priority of the lien of the home equity loan in regard to the \$13,500.00 that has not been advanced? If advances under the home equity loan are optional, the descending order of the priority of the liens would be as follows: \$60,000.00 first mortgage, \$6,500.00 home equity loan, \$5,000.00 second mortgage, and \$13,500.00 home equity loan if no other liens are recorded. If intervening liens can take priority over the lien of a home equity loan to the extent that advances on that loan have not been made, financial institutions would have to request a title search every time the borrower issues a check or uses his credit card against the home equity loan. This, of course, would be almost impossible and therefore severely limits the use of such loans. In addition, it is doubtful that a financial institution wants to extend a borrower a substantial line of credit under a home equity loan if the lien priority of that loan, or part thereof, can be subordinated so easily. This bill provides that the liens of home equity loans retain their priority whether or not the advances under the loan are obligatory or optional by the lender.
