

§436. Open-end mortgages

1. Authorization; requirements. Any interest in real property which may be mortgaged to a financial institution authorized to do business in this State may be mortgaged to secure existing debts or obligations, to secure debts or obligations created simultaneously with the execution of the mortgage, to secure future advances necessary to protect the security and to secure future advances to be made at the option of the parties up to a total amount stated in the mortgage; and all such debts, obligations and future advances, from and as of the time the mortgage is filed for record as provided by law, shall be secured by such mortgage and have priority over the rights of all persons who subsequent to the recording of such mortgage acquire any rights in or liens upon the mortgaged real estate. A mortgage securing future advances remains valid and retains its priority even if no funds have been advanced or all advances have been repaid so long as an agreement regarding advances remains in effect. Upon termination of the agreement regarding future advances and repayment of all advances, the mortgage shall be discharged. Such priority over subsequent persons shall be only to the extent that the aggregate amount outstanding at any one time of such debts, obligations and future advances does not exceed the total amount stated in the mortgage; except that:

A. The mortgagor or his successor in title is authorized to file for record, and the same shall be recorded in the same recording office as the original mortgage, a notice limiting the amount of optional future advances secured by such mortgage to not less than the amount actually advanced at the time of such filing; provided that a copy of such filing is filed with the mortgagee; and [PL 1975, c. 500, §1 (NEW).]

B. The priority of such debts, obligations and future advances shall not include any future optional advances secured by such mortgage made by such institution after any such person, in addition to acquiring such subsequent right or lien, sends to the institution by registered mail or delivers to an officer of the institution and secures a receipt therefor, express written notice stating that any such optional advances thereafter made will be junior to such person's mortgage or lien upon or rights in such real estate. [PL 1975, c. 500, §1 (NEW).]
[PL 1985, c. 647, §7 (AMD).]

2. Future advances. "Future advances" referred to in subsection 1 shall include only those made to recipients designated in the mortgage.
[PL 1975, c. 500, §1 (NEW).]

3. Applicability limited. The provisions of this subsection may not be construed to affect or otherwise change the present law that allows mortgages stating nominal or no consideration to secure existing debts or obligations, or debts or obligations created simultaneously with the execution of the mortgage, to the extent of the actual debts or obligations, existing or granted; but such mortgages, when not also expressly providing for future advances to be made at the option of the parties, may not afford security for any future advances except those necessary to protect the security.
[RR 1991, c. 2, §23 (COR).]

4. Exemption. This section does not apply to mortgages that are recorded on or after January 1, 1994.
[PL 1993, c. 229, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1985, c. 647, §7 (AMD). RR 1991, c. 2, §23 (COR). PL 1993, c. 229, §1 (AMD).

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