

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1136

S.P. 380

In Senate, April 1, 1993

An Act to Clarify and Amend the Law Regarding Open-end Mortgages.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland.
Cosponsored by Representatives: ERWIN of Rumford, PINEAU of Jay.

Be it enacted by the People of the State of Maine as follows:

2 **Sec. 1. 9-B MRSA §436, sub-§4** is enacted to read:

4 4. Application. This section does not apply to mortgages
6 that are recorded on or after January 1, 1994.

8 **Sec. 2. 33 MRSA §505** is enacted to read:

10 **§505. Open-end mortgages**

12 1. Future advances. As used in this section, "future
14 advances" means debts or obligations secured by a mortgage that
16 arise subsequent to the execution and recording of a mortgage.
18 "Future advance" does not include advances made by a mortgagee
20 that are necessary to protect the mortgagee's security interest
22 or to collect amounts due to the mortgagee or amounts
24 representing interest earned on any obligation secured by the
26 mortgage, all of which have priority from the date of recording
28 of a mortgage. "Future advance" includes only those advances
30 made to or for the account of debtors designated in the mortgage.

32 2. Authorization. Any interest in real property that may
34 be conveyed as security for a debt or other obligation may be
36 mortgaged to secure future advances up to a total amount
38 outstanding from time to time as stated in the mortgage
40 instrument. Future advances secured by such a mortgage
42 instrument have priority over persons who, subsequent to the
44 recording of the mortgage, acquire any rights in or liens upon
46 the mortgaged real estate, in accordance with subsection 5, only
48 if the mortgage instrument states that it secures future advances
50 and specifies the total amount of future advances that it may
secure from time to time.

3. Applicability limited. This section may not be
construed to affect or otherwise change the law in effect on the
effective date of this section 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 amount
of those debts or obligations. These mortgages stating nominal
or no consideration and not expressly providing security for
future advances may not afford security for any advances made
subsequent to the execution of the mortgage, other than advances
that are necessary to protect the mortgagee's security interest
or to collect amounts due to the mortgagee.

4. Validity; requirements. A mortgage securing future
advances remains valid and retains its priority even if no funds
have been advanced or all future advances have been repaid as

2 long as an agreement regarding future advances remains in
3 effect. Upon termination of the agreement regarding future
4 advances and repayment of all amounts secured by the mortgage,
5 the mortgage must be discharged.

6 5. Priority. Future advances secured by a mortgage have
7 priority over the rights of all persons who, subsequent to the
8 recording of such a mortgage, acquire any rights in or liens upon
9 the mortgaged real estate to the extent that the aggregate amount
10 of all future advances outstanding at any one time does not
11 exceed the total amount stated in the mortgage, subject to the
12 following.

14 A. The mortgagor or any successor in interest may file in
15 the same recording office in which the original mortgage is
16 filed and send to the mortgagee by registered mail, return
17 receipt requested, a written notice limiting the amount of
18 the future advances, other than advances made pursuant to
19 commitment as defined in Title 11, section 9-105, subsection
20 1, paragraph K, secured by that mortgage to not less than
21 the amount actually advanced as of the end of the 3rd
22 business day following the delivery of the notice.

24 B. A person who, subsequent to the recording of such a
25 mortgage, acquires any rights in or liens upon the mortgaged
26 real estate and has perfected those rights by all required
27 filings or recordings may send to the mortgagee by
28 registered mail, return receipt requested, a written notice
29 stating that future advances made by the mortgagee after the
30 end of the 3rd business day following receipt of the notice
31 are junior to that person's rights in or lien upon the
32 mortgaged real estate, except that the written notice does
33 not affect the priority of advances made pursuant to a real
34 property construction or improvement financing agreement as
35 defined in the United States Internal Revenue Code of 1986,
36 Section 6323(c) and any amendments to that code as of
37 December 31, 1991.

38 For purposes of this subsection, any advance made pursuant to a
39 credit card or a negotiable instrument drawn against a credit
40 account secured by a mortgage is deemed to have been made on the
41 earlier of the date on the negotiable instrument or credit card
42 voucher and the date the debtor received value in exchange for
43 the negotiable instrument or credit card voucher.

46 6. Amount of future advances in excess of mortgage amount.
47 Until repaid, the amount by which any future advance causes the
48 aggregate amount of all future advances outstanding at any one
49 time to exceed the total amount stated in the mortgage does not
50 have priority over persons who, subsequent to the recording of

2 the mortgage, acquire any rights in or liens upon the mortgaged
3 real estate. The mortgagee may credit repayments first to
4 amounts exceeding the total amount of future advances stated in
5 the mortgage.

6 7. Application. This section applies to mortgages that are
7 recorded on or after January 1, 1994.

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10 **STATEMENT OF FACT**

12 This bill revises and clarifies the existing law set forth
13 in the Maine Revised Statutes, Title 9-B, section 436, regarding
14 the validity and priority of mortgages to financial institutions
15 authorized to do business in this State that secure advances to
16 be made to the borrower after the date of execution of those
17 mortgages. In addition, this bill extends the authorization to
18 accept open-end mortgages to mortgagees other than financial
institutions authorized to do business in this State.