

CHAPTER 127

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**FINANCIAL INSTITUTIONS**

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**HOUSE BILL 02-1111**

BY REPRESENTATIVE(S) White;  
also SENATOR(S) Nichol, Hernandez, Lamborn, Takis, and Tate.

**AN ACT**

**CONCERNING THE TERMS OF FUTURE ADVANCES SECURED BY MORTGAGES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Part 1 of article 39 of title 38, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**38-39-106. Future advances.** (1) ANY MORTGAGE MAY, BY ITS TERMS, SECURE FUTURE ADVANCES UP TO A TOTAL MAXIMUM PRINCIPAL AMOUNT EXPRESSLY SET FORTH IN SUCH MORTGAGE. SUCH MORTGAGE SHALL BE EFFECTIVE TO SECURE PAYMENT OF ALL ADVANCES, BOTH OBLIGATORY AND OPTIONAL, UP TO THE STATED MAXIMUM PRINCIPAL AMOUNT TO THE SAME EXTENT AND WITH THE SAME EFFECT AND PRIORITY AS IF SUCH TOTAL MAXIMUM PRINCIPAL AMOUNT HAD BEEN FULLY DISBURSED ON OR BEFORE THE DATE SUCH MORTGAGE WAS RECORDED.

(2) SUCH MORTGAGE SHALL ALSO SECURE, TO THE SAME EXTENT AND WITH THE SAME EFFECT AND PRIORITY, THE FOLLOWING ADDITIONAL AMOUNTS REGARDLESS OF WHETHER SUCH ADDITIONAL AMOUNTS, WHEN ADDED TO THE PRINCIPAL AMOUNT OF THE INDEBTEDNESS, EXCEED THE MAXIMUM PRINCIPAL AMOUNT STATED IN THE MORTGAGE:

(a) ALL INCREASES IN THE PRINCIPAL AMOUNT THAT RESULT FROM NEGATIVE AMORTIZATION OR THE ADDITION OF DEFERRED INTEREST;

(b) ALL DISBURSEMENTS MADE FOR THE PAYMENT OF TAXES, LEVIES, OR INSURANCE WITH RESPECT TO THE PROPERTY SUBJECT TO THE MORTGAGE OR MADE TO PROTECT SUCH PROPERTY FROM WASTE, DAMAGE, OR ABUSE;

(c) IF THE MORTGAGE OR EVIDENCE OF DEBT SECURED BY THE MORTGAGE SO

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

PROVIDES, ALL REASONABLE EXPENSES ASSOCIATED WITH COLLECTION OF THE INDEBTEDNESS OR FORECLOSURE OF THE MORTGAGE; AND

(d) INTEREST ON ANY OF THE ITEMS SPECIFIED IN PARAGRAPHS (a) TO (c) OF THIS SUBSECTION (2) IN ACCORDANCE WITH THE TERMS OF THE MORTGAGE OR THE EVIDENCE OF DEBT SECURED BY THE MORTGAGE.

(3) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO ANY SUBSEQUENT ADVANCE AGAINST A MORTGAGE INSTRUMENT AFTER A MORTGAGEE HAS INITIALLY ADVANCED PRINCIPAL UP TO THE MAXIMUM AMOUNT STATED IN THE MORTGAGE, UNLESS THE MORTGAGE INSTRUMENT CLEARLY STATES THAT IT WAS MADE PURSUANT TO A REVOLVING CREDIT ARRANGEMENT.

(4) THIS SECTION SHALL HAVE NO APPLICATION TO THE PRIORITY OF GENERAL MECHANICS' LIENS ARISING PURSUANT TO ARTICLE 22 OF THIS TITLE, AND THE PRIORITY OF SUCH GENERAL MECHANICS' LIENS WITH RESPECT TO A MORTGAGE WHICH SECURES FUTURE ADVANCES SHALL BE DETERMINED WITHOUT REFERENCE TO THIS SECTION.

(5) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "MORTGAGE" MEANS A MORTGAGE, DEED OF TRUST, OR OTHER INSTRUMENT CREATING A LIEN ON REAL PROPERTY TO SECURE THE PAYMENT OF AN INDEBTEDNESS.

**SECTION 2. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to mortgages securing future advances entered into on or after the applicable effective date of this act.

Approved: April 25, 2002