



1997 ASSEMBLY BILL 243

April 3, 1997 - Introduced by Representatives WARD, HOVEN, KAUFERT, ALBERS, M. LEHMAN, ZIEGELBAUER, AINSWORTH, KELSO, LADWIG, HAHN, HANSON, LA FAVE, OLSEN, SYKORA, GOETSCH, DOBYNS, HUBER, GROTHMAN, BRANDEMUEHL and POWERS, cosponsored by Senators PLACHE, WINEKE, RUDE, WELCH and MOORE. Referred to Committee on Financial Institutions.

1 **AN ACT to amend** 779.01 (4); and **to create** 706.11 (1m) of the statutes; **relating**
2 **to:** priority of future advances under mortgages.

Analysis by the Legislative Reference Bureau

Under current law, certain duly recorded mortgages (generally, any mortgage to a financial institution, the United States, the state, a municipality, an insurer, an authority or a mortgage banker) have priority over all liens on the mortgaged premises. This bill provides that if a mortgagee advances to the mortgagor or another person funds that are secured by the mortgage and that are paid after the mortgage is recorded, the secured advance has the same priority as the mortgage under certain conditions that are specified in the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 706.11 (1m) of the statutes is created to read:
4 706.11 **(1m)** (a) In this subsection:
5 1. "Commitment" means an agreement under which a mortgagee agrees to
6 advance to the mortgagor or another person funds that will be secured by the
7 mortgage.

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1 2. "Construction mortgage" means a mortgage that secures an obligation
2 incurred for the construction of an improvement on land, including the acquisition
3 cost of the land.

4 (b) An advance of funds, including accrued but unpaid interest on the advance,
5 that is secured by a duly recorded mortgage specified in sub. (1) (a) to (d) and that
6 is made after the mortgage has been recorded has the same priority as the mortgage
7 if the advance is made before the mortgagee has actual knowledge of an intervening
8 lien or, regardless of when the advance is made, if any of the following applies:

9 1. The advance is made under a commitment that is entered into before the
10 mortgagee has actual knowledge of an intervening lien, regardless of whether the
11 advance was made after a default or other event outside of the mortgagee's control
12 relieved the mortgagee of the obligation to advance funds under the commitment.

13 2. The advance is made for the reasonable protection of the mortgagee's
14 interest, including for the payment of real property taxes, property insurance or
15 assessments or other maintenance charges imposed under a condominium
16 declaration or a restrictive covenant.

17 3. The mortgage is a construction mortgage that clearly states on the first page
18 of the mortgage that it is a construction mortgage and the advance is made to enable
19 completion of the contemplated improvement on the mortgaged premises.

20 **SECTION 2.** 779.01 (4) of the statutes is amended to read:

21 779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall
22 be prior to any lien which originates subsequent to the visible commencement in
23 place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a),
24 292.31 (8) (i), [144.77] 292.41 (6) (d), 292.81 and 706.11 (1) and (1m). When new
25 construction is the principal improvement involved, commencement is deemed to

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1 occur no earlier than the beginning of substantial excavation for the foundations,
2 footings or base of the new construction, except where the new construction is to be
3 added to a substantial existing structure, in which case the commencement is the
4 time of the beginning of substantial excavation or the time of the beginning of
5 substantial preparation of the existing structure to receive the added new
6 construction, whichever is earlier. The lien also shall be prior to any unrecorded
7 mortgage given prior to the commencement of the work of improvement, if the lien
8 claimant has no actual notice of the mortgage before the commencement. Lien
9 claimants who perform work or procure its performance or furnish any labor or
10 materials or plans or specifications for an improvement prior to the visible
11 commencement of the work of improvement shall have lien rights, but shall have
12 only the priority accorded to other lien claimants.

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(END)