

State of Wisconsin



1997 Assembly Bill 243

Date of enactment: **December 15, 1997**

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1997 WISCONSIN ACT 44

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

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

SECTION 1d. 706.11 (1) (a) of the statutes is amended to read:

706.11 (1) (a) Any mortgage executed to a federal savings and loan association or state or federal savings bank.

SECTION 1m. 706.11 (1) (i) of the statutes is repealed.

SECTION 1r. 706.11 (1m) of the statutes is created to read:

706.11 (1m) (a) In this subsection:

1. "Commitment" means an agreement under which a mortgagee agrees to advance to the mortgagor or another person funds that will be secured by the mortgage.

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

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

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

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

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

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

779.01 (4) PRIORITY OF CONSTRUCTION LIEN. The lien provided in sub. (3) shall be prior to any lien which originates subsequent to the visible commencement in place of the work of improvement, except as otherwise provided by ss. 215.21 (4) (a), 292.31 (8) (i), [144.77] 292.41 (6) (d), 292.81 and 706.11 (1) and (1m). When new construction is the principal improvement involved, commencement is deemed to occur no earlier than the beginning of substantial excavation for the foundations,

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. The lien also shall be prior to any unrecorded mortgage given prior to the commencement

of the work of improvement, if the lien claimant has no actual notice of the mortgage before the commencement. Lien claimants who perform work or procure its performance or furnish any labor or materials or plans or specifications for an improvement prior to the visible commencement of the work of improvement shall have lien rights, but shall have only the priority accorded to other lien claimants.
