

382.385 Mortgage on real estate to secure payment of sums due under line of credit or revolving credit plan -- Priority of liens -- Mortgage amendment -- Release of lien.

(1) As used in this section:

(a) "Line of credit" means a note, commitment, instrument, or agreement in writing between a lender and a debtor pursuant to which:

1. The lender may extend loans, advances, or other extensions of credit to, or for the benefit of, the debtor; and
2. The total amount of loans, advances, or extensions of credit outstanding may increase or decrease from time to time.

(b) "Revolving credit plan" means an arrangement between a lender and a debtor pursuant to which:

1. The lender may extend credit to the debtor by permitting the debtor to make purchases of goods, services, and anything else of value or obtain loans, from time to time, directly from the lender or indirectly by use of a credit card, check, or other device, as the plan may provide;
2. The unpaid balances of purchases made, the principal of loans obtained, and finance and other appropriate charges are debited to the debtor's account;
3. A finance charge, if made, is not precomputed, but is computed on the outstanding unpaid balances of the debtor's account from time to time; and
4. The lender renders bills or statements to the debtor at regular intervals, which need not be a calendar month (the "billing cycle"), the amount of which bills or statements is payable by and due from the debtor on a specified date stated in the bill or statement or, at the debtor's option, may be paid in installments.

(2) (a) Any mortgage of real property may secure payment of any or all sums due and payable by the debtor under a line of credit or under a revolving credit plan if the mortgage:

1. States, in substance or effect, that the parties intend that the mortgage secures the line of credit or revolving credit plan;
2. Specifies the maximum principal amount of credit which may be extended under the line of credit or the maximum credit limit of the revolving credit plan which, in each case, may be outstanding at any time or times under the line of credit or plan, and which is to be secured by the mortgage.

(b) The mortgage shall remain in full force and effect until released of record as provided in subsection (5) of this section and the validity, continued effectiveness, and priority of the mortgage shall not be affected or impaired by the fact that no loan, advance, or extension of credit is made at the time of the execution or recordation of the mortgage, or that the outstanding balance due

under the line of credit or revolving credit plan secured by the mortgage is zero at any time or times.

- (3) Except as provided in paragraphs (a), (b), (c), and (d) of this subsection or in any written subordination or other written agreement entered into by the lender relating to the priority of the mortgage referred to in subsection (2) of this section, the lien of the mortgage referred to in subsection (2) of this section shall be superior to any liens or encumbrances of any kind created or arising after recordation of the mortgage, even to the extent of sums advanced by the lender with actual or constructive notice of a subsequently created lien, but the lien of the mortgage shall be inferior to:
- (a) Real estate tax liens and liens for public improvement assessments explicitly stated by statute to be superior to other nontax liens;
 - (b) Any construction funds advanced under, or any additional indebtedness incurred within the meaning of KRS 382.520 and secured by, the lien of any mortgage recorded prior to the mortgage referred to in subsection (2) of this section;
 - (c) Any sums specifically authorized to be advanced under any mortgage recorded prior to the mortgage referred to in subsection (2) of this section for, or paid on account of, taxes, charges, fines, and assessments against covering the property described in the mortgage or to effect insurance thereon; or
 - (d) Valid mechanics' or materialmen's liens, with respect to which all filing and other requirements of KRS Chapter 376 have been satisfied, for the performance of labor or furnishing of materials for those purposes set forth in KRS 376.010(1) with respect to an owner-occupied, single or double-family dwelling, but only to the extent of sums advanced by the lender after the filing of the statement required under the applicable section of KRS Chapter 376.
- (4) (a) The debtor or his agent may, at any time or times, request the lender to amend the mortgage to reduce the maximum amount of credit specified in the mortgage referred to in subsection (2) of this section which may be extended under the line of credit or revolving credit plan by sending by certified mail, return receipt requested, or physically delivering to the lender at the address and to the person or department, if any, specified in the agreement establishing the line of credit or revolving credit plan, a written request signed and acknowledged by all debtors obligated under the line of credit or revolving credit plan. The request shall:
- 1. Specifically, and not by implication, describe the line of credit or revolving credit plan by account or other identifying number and request that the line of credit or plan be amended by reducing the maximum amount of credit which may be extended under the line of credit or the amount of the credit limit of the revolving credit plan which, in either case, may be outstanding from time to time under the line of credit or revolving credit plan, to an amount specified in the notice. The amount may not, however, be less than the balance owing under the line of credit or revolving credit plan at the time the request referred to in this

paragraph is received;

2. Identify the real property covered by the mortgage referred to in subsection (2) of this section to which the request relates and give the date, volume, and first page of the records of the county clerk where the mortgage is recorded, which information shall be provided to the debtor within sixty (60) days of recording by the lender; and
 3. Be accompanied by funds sufficient to pay the filing fee for recording the amendment referred to in paragraph (b) of this subsection.
- (b) Within ten (10) business days after actual receipt of the request referred to in paragraph (a) of this subsection and of the funds sufficient to pay the filing fee, the lender shall record in the office of the county clerk in which the mortgage referred to in subsection (2) of this section is recorded an amendment to the mortgage reflecting the reduction in the maximum amount of credit at any time or times outstanding which may be extended under the line of credit or revolving credit plan secured by the mortgage.
- (c) If within the ten (10) day period the lender fails to record the amendment to the mortgage referred to in paragraph (b) of this subsection, the debtor may record a copy of the written request referred to in paragraph (a) of this subsection upon payment of the same filing fee as provided for in an amendment to a mortgage. If the request complies with all the requirements of this section, the recording of the request shall constitute and be deemed to be an amendment to the line of credit or revolving credit plan and the mortgage to the extent described in the request.
- (5) The lender shall be obligated to release the lien of the mortgage referred to in subsection (2) of this section:
- (a) If the line of credit or revolving credit plan is closed or terminated in accordance with its terms and all amounts owed by the debtor thereunder are paid in full; or
 - (b) Upon the written request to release the mortgage signed by all debtors or their agents obligated under the line of credit or revolving credit plan, which notice shall be sent by certified mail, return receipt requested, or physically delivered to the lender. The lender shall file a properly executed satisfaction of the mortgage upon payment of the balance owing under the line of credit or revolving credit plan at the time the request is received. From and after the request, the debtor shall have no right to request or demand that the lender extend credit under the line of credit or revolving credit plan, and the lender shall be released from all obligations and commitments to extend credit thereunder.
- (6) The provisions of KRS 382.330, 382.365, 382.430, and 382.520 shall not be applicable to the mortgage referred to in subsection (2) of this section.
- (7) This section is not exclusive and shall not prohibit the use of other types of mortgages or other instruments given for the purpose of creating a lien on real property permitted by law.

Effective: July 14, 1992

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