



## Ohio Revised Code

### Section 5301.232 Open-end mortgages.

Effective: July 14, 1987

Legislation: Senate Bill 149 - 117th General Assembly

(A) Whether or not it secures any other debt or obligation, a mortgage may secure unpaid balances of loan advances made after the mortgage is delivered to the recorder for record, to the extent that the total unpaid loan indebtedness, exclusive of interest thereon, does not exceed the maximum amount of loan indebtedness which the mortgage states may be outstanding at any time. With respect to such unpaid balances, division (B) of this section is applicable if the mortgage states, in substance or effect, that the parties thereto intend that the mortgage shall secure the same, the maximum amount of unpaid loan indebtedness, exclusive of interest thereon, which may be outstanding at any time, and contains at the beginning thereof the words "OPEN-END MORTGAGE."

(B) A mortgage complying with division (A) of this section and securing unpaid balances of loan advances referred to in such division is a lien on the premises described therein from the time such mortgage is delivered to the recorder for record for the full amount of the total unpaid loan indebtedness, including the unpaid balances of such advances that are made under such mortgage, plus interest thereon, regardless of the time when such advances are made. If such an advance is made after the holder of the mortgage receives written notice of a lien or encumbrance on the mortgaged premises which is subordinate to the lien of the mortgage, and if such holder is not obligated to make such advance at the time such notice is received, then the lien of the mortgage for the unpaid balance of the advance so made is subordinate to such lien or encumbrance. If an advance is made after the holder of the mortgage receives written notice of work or labor performed or to be performed or machinery, material, or fuel furnished or to be furnished for the construction, alteration, repair, improvement, enhancement, or embellishment of any part of the mortgaged premises and if such holder is not obligated to make such advance at the time such notice is received, then the lien of the mortgage for the unpaid balance of the advance so made is subordinate to a valid mechanic's lien for the work or labor actually performed or machinery, material, or fuel actually furnished as specified in such notice.

(C) The mortgagor may limit the loan indebtedness secured by the mortgage to that in existence at the time of the delivery of a written notice to that effect to the recorder for record, if such notice is



executed by the mortgagor in the manner provided in section 5301.01 of the Revised Code, states the volume and initial page of the record or the recorder's file number of the mortgage, and a copy thereof is served upon the holder of the mortgage prior to the delivery of such notice to the recorder for record. Any such notice shall be recorded and indexed by the recorder as an amendment of the mortgage. Such right of the mortgagor to limit loan indebtedness secured by the mortgage is not applicable to interest subsequently accruing on loan indebtedness, loan advances the holder of the mortgage is obligated to make, or loan advances made after the delivery of any such notice to the recorder for record in order to pay for the cost of completing any construction, alteration, repair, improvement, enhancement, or embellishment of any part of the mortgaged premises the financing of which, in whole or in part, the mortgage was given to secure.

(D) The written notices provided for in division (B) of this section shall be signed by the holder of the lien or encumbrance or the person who has performed or intends to perform work or labor or who has furnished or intends to furnish machinery, material, or fuel, or by his agent or attorney, and shall set forth a description of the real property to which the notice relates, the date, parties to, the volume and initial page of the record or the recorder's file number of the mortgage over which priority is claimed for the lien or encumbrance, and the amount and nature of the claim to which the lien or encumbrance relates or the nature of the work or labor performed or to be performed or machinery, material, or fuel furnished or to be furnished and the amount claimed or to be claimed therefor. The written notices provided for in divisions (B) and (C) of this section shall be deemed to have been received by or served upon the holder of the mortgage when delivered to such holder personally or by registered or certified mail at the address of such holder appearing in the mortgage or an assignment thereof or, if no address is so given, at the principal place of business or residence of such holder or the statutory agent of such holder within this state or, if such holder has no principal place of business or residence or a statutory agent within this state, when posted in some conspicuous place on the mortgaged premises.

(E) As used in this section:

- (1) "Mortgage" includes a mortgage, deed of trust, or other instrument in the nature of a mortgage.
- (2) "Mortgagor" includes the mortgagor's successors in interest as disclosed by the records of the recorder or recorders of the county or counties in which the mortgaged premises are situated.



(3) "Holder of the mortgage" means the holder of the mortgage as disclosed by the records of the recorder or recorders of the county or counties in which the mortgaged premises are situated.

(4) A holder of a mortgage is "obligated" to make an advance if such holder or the person to whom the repayment of such advance is owed has a contractual commitment to do so, even though the making of such advance may be conditioned upon the occurrence or existence, or the failure to occur or exist, of any event or fact.

(5) "Statutory agent" means the statutory agent of a corporation as disclosed by the records of the secretary of state and provided for in sections 1701.07, 1702.06, and 1703.041 of the Revised Code.

(6) "Loan indebtedness" does not include unpaid balances of advances made for the payment of taxes, assessments, insurance premiums, and costs incurred for the protection of the mortgaged premises.

(F) This section is not exclusive, does not apply to any mortgage filed or recorded in conformity with section 1701.66 of the Revised Code, and does not prohibit the use of other types of mortgages permitted by law.