



DEPARTMENT OF BUSINESS, OCCUPATIONAL AND PROFESSIONAL REGULATION  
BUREAU OF CONSUMER CREDIT PROTECTION  
(207)289-3731

ADVISORY RULING #60-A

January 5, 1985

Re: Future advance clauses in first lien mortgages

In light of two significant events that have occurred affecting Advisory Ruling #60, the Bureau decided an additional advisory ruling clarifying the situation was in order.

On May 25, 1983 the Kennebec County Superior Court decided the case of Franklin Savings Bank, et al., v. Robert A. Burgess (Docket No. CV-82-548) which effectively reversed the key portion of Advisory Ruling #60. Specifically, the Court reversed that portion of the AR which declared a loan for personal debt consolidation and home improvement, made through the future advance clause of an existing first lien mortgage, to be a Code transaction. Even though portions of AR #60 (specifically, examples one and three) remain accurate statements of the law and were unaffected by the Court's decision, for purposes of avoiding confusion the Bureau now formally repeals AR #60 in its entirety.

The second item affecting the issue of future advance clauses was the recent amendment of §1-202(8) of the Code. P.L. 1983, c. 720, §2 amended that section to provide that only those additional credit extensions, made through the mechanism of a future advance clause, that are (1) for the purpose of protecting the mortgagee's security, or (2) result from negative amortization of the loan balance will be treated as Code-exempt. All other extensions of credit that carry an interest rate in excess of 12¼% made through a future advance clause, such as education loans, home improvement loans, debt consolidation loans, etc., will be subject to the Maine Consumer Credit Code, notwithstanding their being secured by a first lien mortgage on real estate. This means that all Code provisions apply to the advance such as interest rate limitations, prohibitions on attorney's fees, cure provisions and the payment of volume fees, among others, despite provisions in the mortgage documents setting forth the mortgagee's rights to the contrary. P.L. 1983, c. 720 became effective on July 25, 1984.

/s/ Robert A. Burgess  
Robert A. Burgess  
Superintendent

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