

WEST VIRGINIA CODE: §38-1-14

§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.

(a) Definitions: For purposes of this section, the following definitions shall apply:

(1) "Credit line deed of trust" is a deed of trust securing any obligation arising out of a loan agreement, a promissory note, a sales contract, a performance contract, or any other agreement or writing, under the terms of which the indebtedness or other obligation created may increase and/or decrease from time to time.

(2) "Future advance" means any form of increase in the indebtedness or obligation owed to the secured party under the terms of the credit line deed of trust, including, but not limited to, an increase arising from, but not limited to, an application for the same by the obligor; the advancement of loan proceeds pursuant to the terms of the credit line deed of trust or other agreement; the payment of any taxes, insurance premiums, interest, or other obligations pursuant to the terms of the credit line deed of trust or other agreement; or the occurrence of any condition, event or circumstance set forth in the credit line deed of trust.

(3) "Obligatory advance" means any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other such event. Obligatory advances include, but are not limited to, advances which the secured party has agreed to make as a term or condition of the credit line deed of trust or other related agreement; obligations arising out of the occurrence of a condition, event or circumstance contemplated by the agreement; obligations arising on a specified date or time; or advances made upon application therefor by the grantor under the credit line deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

(b) A credit line deed of trust shall comply with all the provisions of this article and shall either (i) have clearly entitled at the beginning thereof either in capital letters or in language underscored, the words, "A CREDIT LINE DEED OF TRUST", or (ii) state conspicuously either immediately above or beneath the caption at the top of the first page of the credit line deed of trust the words, "This instrument secures an obligation that may increase and decrease from time to time."

A credit line deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness or other obligations secured thereby at the time of recording and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the credit line deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the credit line deed of trust or whether the secured party under the credit line deed of trust readvances principal sums repaid. The credit line deed of trust shall also be security for

interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the credit line deed of trust or in the related loan agreement, note, contract, or other agreement or evidences of indebtedness or obligations secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the obligations outstanding at any time may increase the amount secured by the credit line deed of trust above the stated maximum amount.

(c) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The credit line deed of trust shall contain specific provisions permitting or requiring future advances and stating whether the future advances are intended to be obligatory or nonobligatory;

(2) At no time may the unpaid principal balance of the obligation or indebtedness secured by the credit line deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (b) of this section; and

(3) The original credit line deed of trust must be executed and recorded after June 6, 1984.

(d) Except as otherwise provided herein, a credit line deed of trust, to the extent of the principal amount of the loan indebtedness or obligation secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced on the date and at the time the credit line deed of trust is recorded.

(e) Any mechanic's lien, abstract of judgment, notice of lis pendens, other deed of trust or other lien of encumbrance, which affects the property encumbered by the credit line deed of trust and which is duly recorded and perfected as required by law after the recording of the credit line deed of trust, shall have priority over any advances secured by the credit line deed of trust that are not obligatory and that are made by the secured party under the credit line deed of trust after receipt by the secured party, at the address provided for the purpose of notification in the credit line deed of trust, of written notice of such mechanic's lien, judgment lien, notice of lis pendens, other deed of trust or other lien or encumbrance. However, any obligatory advances made by the secured party that are secured by the credit line deed of trust or any other related agreement, and any taxes, insurance premiums and obligations which the secured party has agreed to pay, or which under the credit line deed of trust or otherwise the secured party has the right to pay in connection with such credit line deed of trust, shall continue to have the priority created under subsection (b) of this section over a mechanic's lien, judgment lien, notice of lis pendens, deed of trust or other lien or encumbrance.

(f) Notwithstanding any other provision of this code, the secured party under a credit line

deed of trust subject to this section shall be obligated to release the credit line deed of trust at such time as all indebtedness or other obligations secured thereby have been paid in full or otherwise satisfied and the secured party has been duly released from any further obligation to make future advances under any note or agreement secured by the credit line deed of trust. This release shall become effective upon the recording of the release and the secured party shall be released and discharged from any further obligation.