

minutes

Date of Meeting: March 13-14, 1959
Date of Memo: March 5, 1959

Memorandum No. 5

SUBJECT: Study #24 - Mortgages for Future Advances

Attached is a letter which I have received from Senator Cobey enclosing a memorandum relating to S. B. 167 (Mortgages for Future Advances). Mr. Monaco's suggested changes should be discussed at the March meeting. To facilitate the discussion we enclose an item showing how the new code section proposed by the Commission would be modified if Mr. Monaco's suggestion were accepted.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

minutes

James A. Cobey

California Legislature
Senate
State Capitol
Sacramento 14, California

February 26, 1959

Professor John McDonough
Stanford Law School
Stanford, California

Dear John:

Re: S.B. 167

I enclose herewith a memorandum sent me by Albert Monaco of Heller, Ehrman, White & McAuliffe, suggesting certain changes in the above bill.

The California Cannery League has also expressed an interest in this bill and I have furnished Bill Sweigert of Desmond Miller and Sweigert, 616 I Street, Sacramento, their local attorney, with a copy of the bill, the Commission Report and a copy of the enclosed memorandum.

In his letter of transmittal Monaco informed me that he was a member of a local committee of attorneys who were requested to report to the Board of Governors of the State Bar on this bill and that the purpose of his amendments was to give "the broadest possible protection to chattel mortgagees". He does not indicate whether or not his committee has concurred in his proposed changes and you may wish to check this out directly with the State Bar.

With kind personal regards.

Very truly yours,

JAMES A. COBEY

JC:pj
enc.

MEMORANDUM

Re: Senate Bill 167

Repeal or revision of Civil Code sections 2974 and 2975 has been proposed by Senate Bill 167. This proposal is substantially in the language recommended by the California Law Revision Commission.

In order to provide the broadest possible protection for a lender, to make it clear that future advances may be secured in the same instrument as specific advances are secured, to make it clear that the enumeration of rights or remedies will not exclude others generally deemed to exist in connection with chattel mortgages, to make it clear that attachments or executions on property covered by a mortgage for future advances will not displace the lien of the mortgage for advances to be made thereafter, to make it clear that the last phrase in paragraph 2 of section 2975 does not modify the words "obligatory advances," to make the lien for advances to preserve the security clearly applicable to mortgages for specific advances as well as mortgages for future advances, and to make it clear that customary provisions for advances for insurance or costs of repossession or foreclosure and the like will have the same priority of lien as other advances under the mortgage, it is suggested that the proposed bill might well be amended to read substantially as follows:

"SECTION 1. Section 2974 of the Civil Code is hereby amended to read:

"2974. A mortgage of personal property or crops or both may be given wholly or in part to secure future advances.

"The lien originally established by the mortgage or subsequently attained thereby shall secure payment of such future advances, as follows:

"1. If the maximum amount of future advances to be secured is separately stated in the mortgage, such lien shall secure all advances to that amount unpaid at any one time (without regard to advances already repaid or discharged), whether such advances are optional or obligatory.

"2. If the fact that future advances are to be secured is not stated or the maximum amount thereof is not separately stated in the mortgage, such lien shall secure all optional advances made without actual notice of any intervening lien or levy and all obligatory advances made either before or after any intervening lien or levy or notice thereof.

"Accrued interest has the same priority as the advance to which it relates. Repayment in full of amounts owing under a mortgage stated to be for future advances does not extinguish the mortgage. Any mortgage for future advances shall be discharged on demand of the mortgagor in conformity with the provisions of section 2941 of this Code.

"As used in this section the term 'future advances' shall include all sums that may be advanced or loaned and all indebtednesses or obligations of the mortgagor to the mortgagee or assigns that may be made or incurred subsequent to the execution of the mortgage.

"SECTION 2. Section 2975 of the Civil Code is hereby amended to read:

"2975. In all cases, the lien of a mortgage of personal property or crops or both, as such lien shall be originally established or subsequently attained thereby, shall secure the repayment of all sums necessarily advanced to preserve the security and shall secure (to the extent the mortgage shall so provide) repayment of all sums advanced by the mortgagee to insure, maintain, repair or preserve the mortgaged property following failure of the mortgagor to comply with any covenant in the mortgage so to do or expended or to be expended by the mortgagee for attorney's fees or otherwise in obtaining possession of the mortgaged property or in storing, transporting, repairing or preparing the same preliminarily to or for sale or in selling the same or in foreclosing such mortgage and the payment of interest at the rate agreed (if any) on any such advance or expenditure by the mortgagee."

Monaco

New Section 2975 of the Civil Code proposed by Law Revision Commission as it would be amended if changes proposed by Mr. Monaco were made.

SECTION 1. Sections 2974 and 2975 of the Civil Code ~~are repealed.~~ is hereby amended to read:

2975 2974. ~~Mortgages~~ A mortgage of personal property or crops or both may be given wholly or in part to secure future advances.

~~The lien for the following advances and expenditures made by the mortgagee under a mortgage for future advances has the same priority as that~~ originally established by the mortgage; or subsequently attained thereby shall secure payment of such future advances, as follows:

1. If the maximum amount of future advances to be secured is separately stated in the mortgage, such lien shall secure all advances to that amount ~~secured~~ unpaid at any one time (~~excluding amounts~~ without regard to advances already repaid or discharged), whether such advances are optional or obligatory.

2. If the ~~maximum amount~~ fact that future advances are to be secured is not stated or the maximum amount thereof is not separately stated in the mortgage, ~~all obligatory advances and~~ such lien shall secure all optional advances made without actual notice of any intervening liens, or levy and all obligatory advances made either before or after any intervening lien or levy or notice thereof.

~~3.--In all cases, advances and expenditures necessary to preserve the security.~~

Accrued interest has the same priority as the advance ~~or expenditure~~ to which it relates. Repayment in full of amounts owing under a mortgage stated to be for future advances does not extinguish the mortgage. Any such mortgage for future advances shall be discharged on demand of the mortgagor in conformity with the provisions of Section 2941 of this code.

As used in this section the term "future advances" shall include all sums that may be advanced, ~~expenditures that may be made,~~ or loaned and all indebtednesses or obligations of the mortgagor to the mortgagee or assigns that may be made or incurred subsequent to the execution of the mortgage.

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Law Offices
LANDELS, WEIGEL AND RIPLEY

275 Bush Street
San Francisco 4, California

March 10, 1959

Mr. John R. McDonough
California Law Revision Commission
School of Law
Stanford
California

Re: S. B. 165, 167

Dear John:

We would appreciate your considering adoption of the following changes in these two measures:

Senate Bill No. 165:

On page 2, lines 23 and 29, after "creating", insert "or amending".

Strictly speaking, "creating" might be limited to the original document, whereas we believe it should clearly cover amendatory instruments.

Senate Bill No. 167:

1. On page 1, line 11, delete "secured" and on line 12, after "time" insert "outstanding".

This suggestion is made in the belief that the word "secured" at this point obscures the intended meaning.

2. On page 1, line 12, strike out "excluding amounts" and insert "without regard to advances".

This change would obviate the possibility that "excluding" might be interpreted to mean "deducting." If such were the result, the section would mean just the opposite of what is intended.

3. On page 1, line 15, after "advances" insert comma.

This would make clear that the phrase "without actual notice" does not modify "obligatory advances."

I trust that if there are any questions concerning these suggestions, you will not hesitate to contact me.

Very truly yours,
S/ Phil
For CALIFORNIA BANKERS ASSOCIATION

PJG:mg