

No. 1978-258

## AN ACT

SB 1540

Amending the act of January 30, 1974 (P.L.13, No.6), entitled "An act regulating agreements for the loan or use of money; establishing a maximum lawful interest rate in the Commonwealth; providing for a legal rate of interest; detailing exceptions to the maximum lawful interest rate for residential mortgages and for any loans in the principal amount of more than fifty thousand dollars and Federally insured or guaranteed loans and unsecured, noncollateralized loans in excess of thirty-five thousand dollars and business loans in excess of ten thousand dollars; providing protections to debtors to whom loans are made including the provision for disclosure of facts relevant to the making of residential mortgages, providing for notice of intention to foreclose and establishment of a right to cure defaults on residential mortgage obligations, provision for the payment of attorney's fees with regard to residential mortgage obligations and providing for certain interest rates by banks and bank and trust companies; clarifying the substantive law on the filing of and execution on a confessed judgment; prohibiting waiver of provisions of this act, specifying powers and duties of the Secretary of Banking, and establishing remedies and providing penalties for violations of this act," further clarifying the definition of "residential mortgage," adding a definition of a new term: "residential real property," further clarifying the definition of "security document," restating one of the exceptions to residential mortgage interest rates, clarifying the intent of residential property subject to confession of judgment and restating the effect of the act upon other acts for purposes of permissible interest rates.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "residential mortgage" and "security document" of section 101, subsection (f) of section 301, subsection (a) of section 407 and section 604, act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, are amended and section 101 is amended by adding a definition to read:

Section 101. Definitions.—As used in this act:

\* \* \*

"Residential mortgage" means an obligation to pay a sum of money in an original bona fide principal amount of fifty thousand dollars (\$50,000) or less, evidenced by a security document and secured by a lien upon real property located within this Commonwealth containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium unit. *The term "residential mortgage" shall apply only to transactions where the principal purpose of the transaction is the purchase of, or improvement or repair in connection with the acquisition of, residential real property, but does not include a transaction in which no purpose of the transaction is the purchase, improvement or repair of residential real estate.*

\* \* \*

***“Residential real property” means real property located within this Commonwealth containing not more than two residential units or on which not more than two residential units are to be constructed and includes a residential condominium unit.***

***“Security document” means a mortgage, deed of trust, real estate sales contract or other document creating upon recordation a lien upon real estate. A note or other instrument or document, other than a residential mortgage as defined by this act, evidencing an obligation for the payment of money is not a security document within the meaning of this act by reason of an authorization for the entry of a judgment by confession against the obligor if the obligation for the payment of money does not arise out of or in connection with the acquisition by the obligor of real property containing not more than two residential units or on which not more than two residential units are to be constructed or if the obligation arises out of a transaction subject to any statute within the scope of the first sentence of section 604 of this act.***

Section 301. Residential Mortgage Interest Rates.—\* \* \*

(f) The maximum lawful rate of interest set forth in this section and in **[section 201] Article II** of this act shall not apply to (i) an obligation to pay a sum of money in an original bona fide principal amount of more than fifty thousand dollars (\$50,000); (ii) an obligation to pay a sum of money in an original bona fide principal amount of fifty thousand dollars (\$50,000) or less, evidenced by a security document and secured by a lien upon real property, other than **[a] residential [mortgage] real property** as defined in this act; (iii) to a loan to a person subject to the act of April 27, 1927 (P.L.404, No.260), entitled “An act prohibiting corporations from pleading usury as a defense,” section 313 of the act of May 5, 1933 (P.L.364, No.106), known as the “Business Corporation Law,” or Title 15 Pa.C.S. section 7544; or (iv) an unsecured, noncollateralized loan in excess of thirty-five thousand dollars (\$35,000); or (v) business loans the principal amount of which is in excess of ten thousand dollars (\$10,000).

Section 407. Confession of Judgment.—(a) As to any residential **[mortgage] real property**, a plaintiff shall not have the right to levy, execute or garnish on the basis of any judgment or decree on confession, whether by amicable action or otherwise, or on a note, bond or other instrument in writing confessing judgment until plaintiff, utilizing such procedures as may be provided in the Pennsylvania Rules of Civil Procedure, files an appropriate action and proceeds to judgment or decree against defendant as in any original action. The judgment by confession shall be changed as may be appropriate by a judgment, order or decree entered by the court in the action. After the above mentioned original action has been prosecuted and a judgment obtained, that judgment shall merge with the confessed judgment and the confessed judgment shall be conformed as to amount and execution shall be had on the confessed judgment. The parties to the action shall have the same rights as parties to other original proceedings. Nothing

in this act shall prohibit a residential mortgage lender from proceeding by action in mortgage foreclosure in lieu of judgment by confession if the residential mortgage lender so desires.

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Section 604. Effect on Inconsistent Acts.—If any maximum lawful rate of interest provided for in this act is inconsistent with the provision of any other act establishing, permitting or removing a maximum interest rate, or prohibiting the use of usury as a defense, then the provision of such other act shall prevail. This shall include but not be limited to the provisions of the act of April 8, 1937 (P.L.262, No.66). **[Except with respect to residential mortgages on which the maximum lawful rate of interest shall be determined pursuant to section 301 of this act, nothing in this act shall prohibit banks]** *Banks* and bank and trust companies, subject to the act of November 30, 1965 (P.L.847, No.356), **[from charging]** *may charge* a maximum rate of interest not in excess of the maximum lawful interest rate permitted to be charged by a national bank located in Pennsylvania under 12 U.S.C. §85.

Section 2. This act shall take effect immediately.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP