



Ohio Legislative Service Commission

Synopsis of Senate Committee Amendments*

Lisa Sandberg

Sub. H.B. 479

129th General Assembly
(S. Judiciary)

The Senate Judiciary Committee adopted amendments that do the following:

1. Decrease the maximum limit of the exempted interest in one parcel of property that a person or person's dependent uses a residence from \$350,000 (As Passed by the House version) to \$125,000.

2. Provide that in any action to avoid a qualified disposition, the burden is upon the creditor to prove the matter by clear and convincing evidence instead of by a preponderance of the evidence.

3. Provide that a probate court has concurrent jurisdiction with, and the same powers at law and in equity as, the general division of the common pleas court to hear and determine any action with respect to a probate estate, guardianship, trust, or post death dispute that involves a designation or removal of a beneficiary of a life insurance policy, annuity contract, retirement plan, brokerage account, security account, bank account, real property, or tangible personal property; a designation or removal of a payable-on-death beneficiary or transfer-on-death beneficiary; a change in the title to any asset involving a joint and survivorship interest; an alleged gift; or the passing of assets upon the death of an individual otherwise than by will, intestate succession, or trust.

4. Provide that a postclosing solvency covenant may not be used, directly or indirectly, as a nonrecourse carveout or as the basis for any claim or action against a borrower or any guarantor or other surety on a nonrecourse loan and provide that a provision in the documents for a nonrecourse loan that does not comply with this provision is invalid and unenforceable.

5. Provide that paragraph 4 above does not prohibit a loan that is secured by a mortgage on real property located in Ohio from being fully recourse to the borrower or guarantor, including, but not limited to, as a result of a postclosing solvency covenant, if the loan documents for that loan do not contain nonrecourse loan provisions.

* This synopsis does not address amendments that may have been adopted on the Senate Floor.

6. Provide that the General Assembly recognizes that it is inherent in a nonrecourse loan that the lender takes the risk of a borrower's insolvency, inability to pay, or lack of adequate capital after the loan is made and that the parties do not intend that the borrower is personally liable for payment of a nonrecourse loan if the borrower is insolvent, unable to pay, or lacks adequate capital after the loan is made.

7. Provide that the General Assembly recognizes that the use of a postclosing solvency covenant as a nonrecourse carveout, or an interpretation of any provision in a loan document that results in a determination that a postclosing solvency covenant is a nonrecourse carveout, is inconsistent with the bill and the nature of a nonrecourse loan, is an unfair and deceptive business practice, and against public policy.

8. Provide that the intent of the General Assembly that the bill applies to any claim made or action taken to enforce a postclosing solvency covenant on or after the effective date of the bill and to any action to enforce a postclosing solvency covenant that is pending on the effective date of the bill, unless a judgment or final order has been entered in that action.