
Civil Rights & Judiciary Committee

HB 1420

Brief Description: Concerning lien priority of mortgages and deeds of trust.

Sponsors: Representatives Hackney, Corry, Walen and Ormsby.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Establishes the first in time, first in right rule of priority for mortgages and deeds of trust.
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Hearing Date: 1/31/23

Staff: Matt Sterling (786-7289).

Background:

The common law rule for mortgage priority is that the first party to obtain a mortgage has first priority if multiple parties seek to collect on their security during a foreclosure, also known as first in time, first in right. Under the common law rule, if a mortgage secures optional future advances, any future advances are subordinate to any intervening encumbrance made between the initial mortgage and the advance when the advance is made with actual knowledge of the intervening encumbrance.

Statutory law provides priority to a party who obtains a mortgage later in time to a previous mortgage if that party records the mortgage first and does not have actual or constructive notice of the previous mortgage. Except for mechanics' liens and construction financing, any mortgage or deed of trust takes priority over all liens, mortgages, deeds of trust, and other encumbrances that are not recorded prior to the recording of the mortgage or deed of trust.

The Washington Supreme Court held in *In re Gen. Receivership of EM Prop. Holdings, LLC*,

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511 P.3d 1258 (2022), that the lien priority statute only applies to construction loans and liens as opposed to being generally applicable to mortgages and deeds of trust. The court found that the placement of the lien priority statute in the chapter pertaining to mechanics' liens indicates that the Legislature intended the provisions to apply only to construction loans.

Summary of Bill:

A new section is added to the chapter on foreclosure of mortgages and liens to provide that except for mechanics' liens and construction financing, any mortgage or deed of trust is prior to all liens, mortgages, deeds of trust, and other encumbrances that have not been recorded before the recording of the mortgage or deed of trust. All sums secured by the mortgage or deed of trust are allocated in this priority, regardless of when the secured sums are disbursed or whether the disbursements are obligatory or optional.

The bill applies to all causes of action that are commenced after the effective date of the bill regardless of when the cause of action arose.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.