

# SENATE BILL REPORT

## HB 1420

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As Passed Senate, March 31, 2023

**Title:** An act relating to lien priority of mortgages and deeds of trust.

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

**Sponsors:** Representatives Hackney, Corry, Walen and Ormsby.

**Brief History:** Passed House: 2/28/23, 97-0.

**Committee Activity:** Law & Justice: 3/13/23, 3/22/23 [DP].

**Floor Activity:** Passed Senate: 3/31/23, 48-0.

### Brief Summary of Bill

- Clarifies that the first in time, first in right rule of lien priority applies to all mortgages and deeds of trusts regardless of whether the disbursements are obligatory.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

**Staff:** Ryan Giannini (786-7285)

**Background:** The common law rule for mortgage priority is that the first party to record 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.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Washington statutory law gives 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 recorded mortgage or deed of trust takes priority over all liens, mortgages, deeds of trust, and other encumbrances not recorded prior to the recording of the mortgage or deed of trust, regardless of when the secured sums are disbursed or whether the disbursements are obligatory.

The Washington Supreme Court held in *Commencement Bank v. Epic Solutions, Inc. (In re EM Property Holdings, LLC)*, 511 P.3d 1258 (2022), that Washington's 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' and materialmen's liens indicates that the Legislature intended the provisions to apply only to construction loans.

**Summary of Bill:** A mortgage or deed of trust has priority 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.

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

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Rules that were in place prior to a recent Washington Supreme Court decision are being codified into a broader applicable statute. The "first in time, first in right" principle will be more broadly established and would not have to rely on the courts to go to common law interpretations where there is a dispute regarding lien priorities.

**Persons Testifying:** PRO: Brad Tower, Community Bankers of WA.

**Persons Signed In To Testify But Not Testifying:** No one.