Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Consumer Protection & Business Committee

SB 5831

Brief Description: Enacting the uniform mortgage modification act.

Sponsors: Senators Dozier, Pedersen, Kauffman, Nobles, Riccelli, Shewmake and Wilson, J.; by request of Uniform Law Commission.

Brief Summary of Bill

- Enacts the Uniform Mortgage Modification Act to establish that, in the case of specified types of mortgage modifications, the mortgage continues to secure the obligation, the priority of the mortgage is not affected, the mortgage retains its priority regardless of whether the modification is recorded, and the modification is not a novation.

Hearing Date: 2/18/26

Staff: Peter Clodfelter (786-7127).

Background:

Except for construction liens, any 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. This is known as the first in time, first in right priority rule for mortgages.

Washington's Mortgage Broker Practices Act (MBPA) defines a residential mortgage loan modification as a change in one or more of a residential mortgage loan's terms or conditions. Under the MBPA, changes to a residential mortgage loan's terms or conditions include but are not limited to forbearances; repayment plans; changes in interest rates, loan terms, or loan types;

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capitalizations of arrearages; or principal reductions.

There is no Washington law addressing how a mortgage modification affects the security or priority of a mortgage. Under the common law, a modification of a mortgage may cause it to lose priority to junior interests to the extent the modification is materially prejudicial to the junior interests.

The Uniform Law Commission promulgated the Uniform Mortgage Modification Act in 2024, which establishes provisions controlling the effect of certain mortgage modifications.

The federal Electronic Signatures in Global and International Commerce Act (federal E-Sign law) establishes that with respect to any transaction in or affecting interstate or foreign commerce: (1) a signature, contract, or other record relating to the transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to the transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

The federal E-Sign law also addresses consumer disclosures and consent to electronic records, and it excludes court orders, notices, official court documents, and certain other notices and documents from the law. The federal E-Sign law provides an exemption to preemption, to specify that a state statute or rule may modify, limit, or supersede the requirements of the federal E-Sign law with respect to state law if the law or rule meets certain requirements.

Generally, in contract law, a novation is the substitution of a new contract for an existing contract between the same or different parties.

Summary of Bill:

The Uniform Mortgage Modification Act. The Uniform Mortgage Modification Act (UMMA) is enacted. The UMMA applies to a mortgage modification made on or after the effective date of the bill regardless of when the mortgage or the obligation was created.

Definitions. Various terms are defined for purposes of the UMMA. "Mortgage" means an agreement that creates a consensual interest in real property to secure payment or performance of an obligation, regardless of how the agreement is denominated, including a mortgage, deed of trust, trust deed, security deed, indenture, and deed to secure debt, and regardless of whether the agreement also creates a security interest in personal property.

However, "mortgage" does not include an agreement that creates a consensual interest to secure a liability owed by a unit owner to a condominium association, owners' association, or cooperative housing association for association dues, fees, or assessments.

"Modification" includes a change, amendment, revision, correction, addition, supplementation, elimination, waiver, and restatement.

"Mortgage modification" means modification of: (1) a mortgage; (2) an agreement that creates an obligation, including a promissory note, loan agreement, or credit agreement; or (3) an agreement that creates other security or credit enhancement for an obligation, including an assignment of leases or rents or a guaranty.

Effect of Mortgage Modification. For a mortgage modification covered by the UMMA, it is established as a matter of law that:

- the mortgage continues to secure the obligation as modified;
- the priority of the mortgage is not affected by the modification;
- the mortgage retains its priority regardless of whether a record of the mortgage modification is recorded; and
- the modification is not a novation.

Scope. The UMMA applies to one or more of the following mortgage modifications:

- an extension of the maturity date of an obligation to a date no later than six years after the maturity date stated in the original mortgage, or no later than six years after the maturity date stated in the most recent recorded modification that extends the maturity date;
- a decrease in the interest rate of an obligation;
- if the change does not result in an increase in the interest rate of an obligation as calculated on the date the modification becomes effective: (1) a change to a different index that is a recognized index if the previous index to which changes in the interest rate were linked is no longer available; (2) a change in the differential between the index and the interest rate; (3) a change from a floating or adjustable rate to a fixed rate; or (4) a change from a fixed rate to a floating or adjustable rate based on a recognized index;
- a capitalization of unpaid interest or other unpaid monetary obligation;
- a forgiveness, forbearance, or other reduction of principal, accrued interest, or other monetary obligation;
- a modification of a requirement for maintaining an escrow or reserve account for payment of an obligation, including taxes and insurance premiums;
- a modification of a requirement for acquiring or maintaining insurance;
- a modification of an existing condition to advance funds;
- a modification of a financial covenant; and
- a modification of the payment amount or schedule resulting from another modification.

It is provided that the effect of a mortgage modification not described above is governed by other law.

It is also provided that the UMMA does not affect:

- law governing the required content of a mortgage;
- a statute of limitations or other law governing the expiration or termination of a right to enforce an obligation or a mortgage;
- a recording statute;
- a statute governing the priority of a tax lien or other governmental lien;

- a statute of frauds or the Uniform Electronic Transactions Act; or
- law governing the priority of a future advance, except for a modification of an existing condition to advance funds.

Additionally, the UMMA does not apply to:
- a release of, or addition to, property encumbered by a mortgage;
- a release of, addition of, or other change in an obligor; or
- an assignment or other transfer of a mortgage or an obligation.

Uniformity of Application and Construction. In applying and construing the UMMA, a court must consider the promotion of uniformity of the law among jurisdictions that enact it.

Relation to Electronic Signatures in Global and International Commerce Act. It is specified that the bill modifies, limits, or supersedes the federal E-Sign law, but does not modify, limit, or supersede provisions governing consumer disclosures, or authorize electronic delivery of specified orders or notices excluded under the federal E-Sign law.

Appropriation: None.

Fiscal Note: Available.

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