

# Recent Court of Appeals Decision Expands the Availability of Super-Priority Status for Mortgage Liens Created by Mortgage Bankers

In a recent e-Alert, the Reinhart Real Estate Opinion Team described recent court decisions clarifying the super-priority lien status granted to certain types of lenders pursuant to section [706.11\(1\) of the Wisconsin Statutes](#). As noted in that earlier e-Alert, section 706.11(1) provides priority status to Wisconsin mortgages on commercial real property granted to national banks, state banks, mortgage bankers and certain other lenders over all other liens, including construction liens, except for tax and special assessment liens and certain other lien rights held by the government.

At the time the earlier article was written, the Wisconsin appellate courts had not yet examined the question of whether a mortgage granted to a mortgage banker who was not duly licensed as a mortgage banker in Wisconsin would enjoy the same super-priority as a mortgage granted to a mortgage banker who was duly licensed in Wisconsin. However, things are always changing here in Wisconsin, and we are now ready to report that the Wisconsin Court of Appeals has recently issued an unpublished decision on this very question.

*In Re DOC Milwaukee, LP v. DOC Milwaukee LP et. al.*, No. 2012 AP 1610 (Wis. Ct. App. Feb. 20, 2014), the Wisconsin Court of Appeals held that the super-priority status granted to mortgage bankers would be available to any person who meets the definition of a mortgage banker set forth in section 224.71(3) of the Wisconsin Statutes. The Wisconsin Court of Appeals further held that it does not matter for such definitional purposes whether or not that mortgage holder has actually registered as a mortgage banker pursuant to the separate licensing statute found in section 224.72(1m) of the Wisconsin Statutes.

Based on the Wisconsin Court of Appeals holding, a mortgage holder would receive super-priority status for a mortgage encumbering Wisconsin real estate provided that it meets the definitional requirements for a mortgage banker set forth in section 224.71(3) of the Wisconsin Statutes. This appears to be good news for holders of mortgages on Wisconsin real estate who do not meet the definition of a national bank or a state bank and have not registered as mortgage bankers in Wisconsin. Such mortgage holders may now argue that their liens on Wisconsin

## POSTED:

Apr 9, 2014

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real property should enjoy super-priority status simply if they can meet the fairly generous definitional standards set forth in section 224.71(3), which extends the definition of "mortgage banker" to a person who "originates loans for itself, as payee on the note evidencing the loan, or for another person."

If you have questions about this update, please contact your Reinhart attorney or any member of the Reinhart Real Estate Opinion Team.

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