A man borrowed $150,000 from a bank to remodel his home and executed a promissory note agreeing to repay the loan over a 10-year period. The loan was secured by a mortgage on the home. The bank promptly recorded the mortgage, which was the only lien on the home at that time. Several months later, the man borrowed $40,000 from his mother in order to purchase a new truck and gave his mother a mortgage on the home to secure repayment of the debt. The mother promptly recorded the mortgage.

The man later lost his job and was struggling to make loan payments to both the bank and his mother. To accommodate the man's financial situation, the bank extended the amortization period of its loan to substantially reduce the amount of each monthly payment. The bank did not alter the interest rate or increase the principal amount of the loan. At the time of the modification of the bank loan, the man was not in default in his payments to his mother. Neither the bank nor the man informed the mother of the modification of the bank loan.

After the man later missed five payments to his mother, she commenced a foreclosure action. While the action was pending, the mother learned of the bank's loan modification. The mother asserted that her mortgage had become a first lien on the home and that the bank's mortgage had become a second lien.

Is the mother's assertion correct?

A. No, because the bank's loan modification was not detrimental to the rights of the mother.
B. No, because the man was not in default in his payments to his mother at the time of the bank's loan modification.
C. Yes, because the bank's loan modification was made without the mother's prior consent.
D. Yes, because the bank's loan modification was material.

Explanation:

When a **senior mortgage** (ie, first in time) is **modified** by the parties, it will **retain its priority** against junior interests so long as the modification **does not materially prejudice** the holders of the junior interests. There is a strong presumption that a time extension on repayment is not materially prejudicial because the debtor is less likely to default on the senior mortgage and force a foreclosure.

Here, the bank's mortgage was recorded first, so it is senior to the mother's mortgage. The bank later modified the mortgage by extending the amortization period of its loan. But since it is presumed that this time extension did not materially prejudice the mother's junior interest, the bank's mortgage retained its senior priority **(Choice D)**. As a result, the mother's assertion that her mortgage had become a first lien on the home is incorrect.

(Choice B) Whether the man was in default on the mother's loan at the time of the modification is irrelevant. The default would merely give the mother the right to foreclose on her junior mortgage, but the foreclosure would not extinguish the bank's senior mortgage.

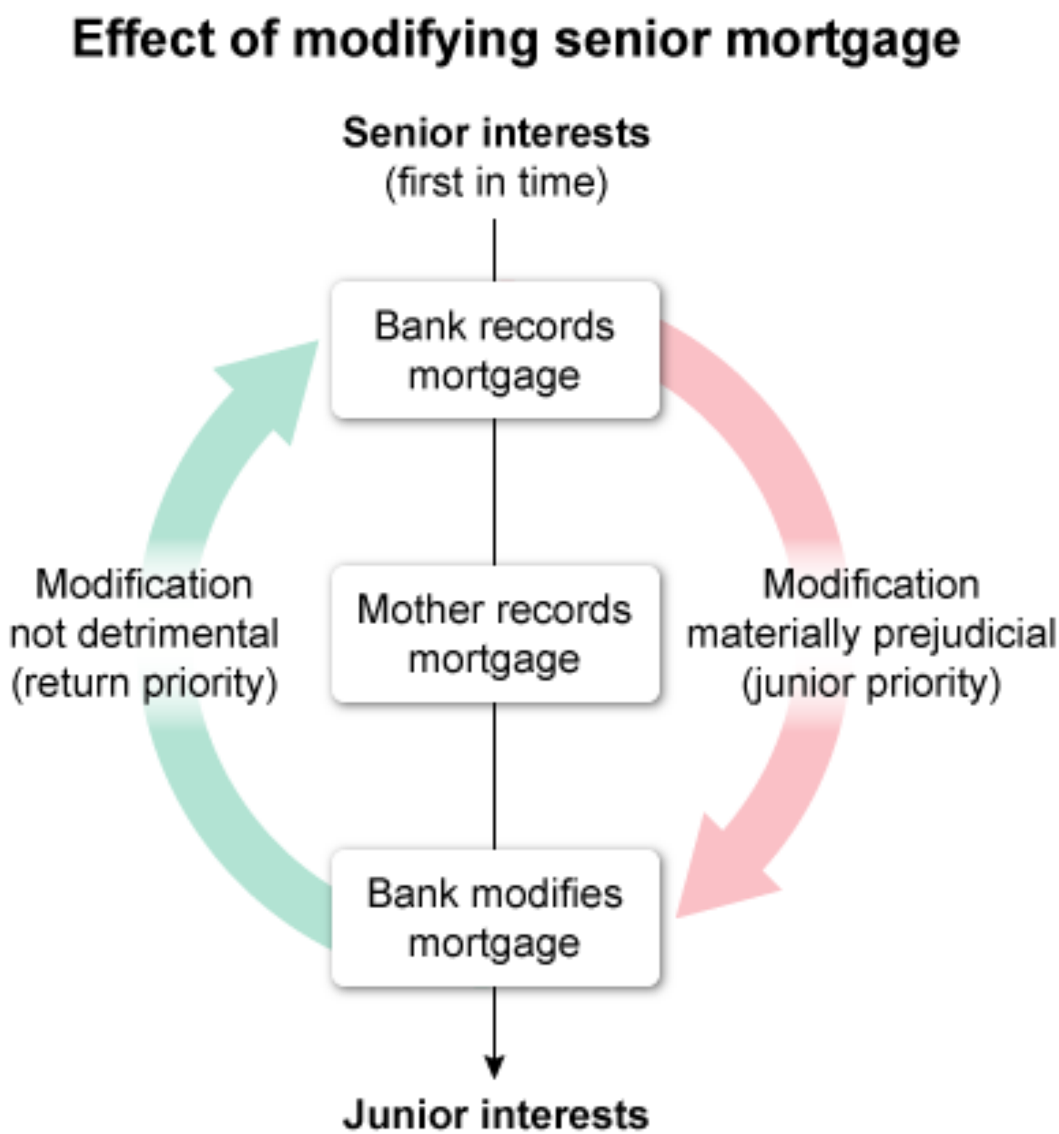
(Choice C) A junior interest holder's consent is not needed to modify a senior mortgage.

Educational objective:

A modified senior mortgage will retain its priority against junior interests so long as the modification does not materially prejudice the junior interest holders. It is strongly presumed that a time extension is not materially prejudicial.

References

Restatement (Third) of Property: Mortgages § 7.3(b) (Am. Law Inst. 1997) (effect of modifying senior mortgages on junior interests).


Effect of modifying senior mortgage
Senior interests
(first in time)
Bank records mortgage
Mother records mortgage
Bank modifies mortgage
Modification not detrimental (return priority)
Modification materially prejudicial (junior priority)
Junior interests