



The Importance of Proper Notarizations and Avoiding Document Execution Shortcuts

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A recent lawsuit in Ohio provides a reminder about the importance of properly executed notary clauses and exercising caution when using “stand-alone signature pages.” The lawsuit involves two companies which failed to make payments on a multi-million dollar promissory note. Ultimately, the lender obtained a judgment for a loan default against the borrowing companies.

The borrowers, however, have recently asked a Hamilton County judge to set aside the judgment. The loan documents in question arose from a restructuring of the loan in 2009. The borrowers contend that the fully-executed notary clauses on the signature pages of the revised loan documents were executed improperly because no notary public was present when the borrowers signed the documents. The borrowers further contend that they signed “stand-alone signature pages,” unattached to the revised loan documents, and argue that the revised loan documents contain harmful provisions to which they never agreed.

Expedited closing dates and time crunches often lead to the consideration of shortcuts in drafting and executing documents. However, these shortcuts can often lead to more trouble than they are worth. In the case above, if the allegations are true, the lender’s potential claim with respect to the mortgage could be seriously jeopardized and the notary public could be subject to significant penalties.

To avoid such a situation, lenders, title companies, and any other entities or individuals executing documents containing a notary clause should (i) forbid their notary public from notarizing documents without the signer being present and acknowledging that they signed the documents pursuant to applicable law; (ii) require their notary public to obtain proper identification from the signer, make a copy of such identification and keep it with copies of the executed documents; and (iii) exercise much caution in the utilization of “stand-alone signature pages” or similar time-saving tactics.