Chris Griswold,P.C.

News From the Firm April 2012

Message From Chris….

I've recently moved to a new location so please note my new contact information.

Since just January of this year, there have been ***8*** Oklahoma Supreme Court cases (mostly all residential cases) come down which deal with certain, **required, conditions precedent for lenders to have proper standing to commence foreclosure proceedings after mortgage assignments have occurred**. After reviewing all 8 (*Note*: all 8 of which still remain unpublished in the permanent law records and not yet good law to rely upon; but all of which will, in all probability, soon become good law upon becoming so published), *here are your takeaways – all in a logical, progression format so it's easier to understand*. The real "*meat and potatoes*" you can actually use is highlighted in yellow, the rest is just background info…. Read more below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Recent Developments in Foreclosure Law

First, the lender has the burden of proving itself to be the proper entity entitled to enforce the promissory note (the "Note") and initiate foreclosure proceedings (all this is called "standing");

Second, to have this standing, the lender must have "**possession** of the Note;"

Third, this "**possession**" occurs if any one of the following three (3) things are present: **a**) the lender is a holder of the Note, **b**) the lender is a non-holder of the Note but is in [actual] possession of the Note and the lender has the rights of a holder, or **c**) the lender is not in [actual] possession of the Note but it, nevertheless, is entitled to enforce the Note. (Note: the foregoing is all proved out through the specific facts of the case and most of these cases remand back down to the lower courts for further fact findings before entering for either party at this time);

Fourth, the Court equates "***standing***" with "***possession***" of the Note; all of which are tantamount to the lender being a "***holder***" of the Note. It is this concept of the lender being a "***holder***" of the Note (or something closely synonymous to being a holder of the Note as I define above) that we now look at;

Fifth, for this "***holder***" status to exist, the lender must have **both**: **a**) actual possession of the Note (or its equivalent), and **b**) in the event of any assignment of the mortgage to any new lender, an indorsement in the name of such new lender made either on the original Note itself or on an "*allonge*" to such original Note;

Sixth, most of these 8 cases center around the defendant debtors arguing that *since their new lender had just recently assumed their mortgage under an assignment of mortgage, such new lender was not the correct/proper lender to be initiating such foreclosure proceedings*. The

cases highlight the Court's holding that the indorsed Note or allonge in the name of the new lender must be ***dated prior*** to the date of such original foreclosure filing, and

Seventh, most all the lenders in the relevant cases attempt to present their "*mortgage assignments*" to the Court as a substitute to the requirement of having a previously dated, indorsed Note or allonge in the name of such new lender. The Court states that these assignments **cannot stand alone** and **must still be accompanied** with the newly indorsed Note or "allonge" and, furthermore, even if there is an assignment of mortgage, the assigment must still pre-date the original foreclosure filing.

What My Clients Are Saying

"Chris Griswold has a way of simplifying complex legal issues. He is quick to respond, efficient and professional in his delivery of services and fair and up front with his cost. Professional Insurors considers Chris an asset to both our business and our clients. Our trust in Chris grows each and every time we call upon his expertise."

Kelly Miller / President / Professional Insurors Agency, LLC / Oklahoma City, Oklahoma

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