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BUSINESS & FINANCE LAW NEWS

THE UNEXPECTED CONSEQUENCES OF MODIFYING PENNSYLVANIA'S POWERS OF ATTORNEY STATUTE: POTENTIAL IMPACTS ON COMMERCIAL LOANS & LEASES

By Christopher D. Hill

Confession of judgment provisions in commercial documents remain in a state of flux until legislation pending in the Pennsylvania House Judiciary Committee is approved and enacted. Until such time, we will keep readers updated on any movement of the bill and corrections it offers.

Recent amendments to Pennsylvania statutes governing powers of attorney (20 Pa.C.S.A Chapter 56) have caused unintended consequences to the laws affecting commercial documents containing powers of attorney, including confession of judgment provisions. What some legislators contend is a drafting error in the statute, has potentially impacted many commercial documents unrelated to the amendments and placed the enforceability of the confession of judgment remedy contained in those documents in jeopardy.

The amendments modified the manner in which certain commercial documents should be drafted. Since January 1, in order to comply with the amended statute and preserve the confession of judgment remedy, documents (including all commercial loan documents and commercial leases containing a confession of judgment) now must include an acknowledgement of the signatory before a notary public plus a waiver of the agent's duties imposed by 20 Pa.C.S.A. § 5601.3 as well as a clarification as to the commercial nature of the relationship of the parties.

While these additions to affected commercial documents have not caused an undue burden, many lawyers and businesses are unaware of these new requirements, and as a result, many commercial loan documents and commercial leases drafted today do not contain these necessary inclusions. Without a correction to the statute to remove these allegedly erroneous requirements, the confession of judgment remedies provided in documents drafted after January 1, 2015 which do not contain the new provisions may be challenged, and possibly invalidated.

All may not be lost, however. On March 2, 2015, Rep. Mark Keller introduced Bill 665 which provides a resolution to this issue, and on that same day it was referred to the Judiciary Committee. If approved, the proposed bill would retroactively correct the alleged drafting errors by excluding the requirement of obtaining a notary acknowledgement and limiting the applicability of 20 Pa.C.S.A. § 5601.3, relating to agent's duties, for commercial documents which contain confession of judgment provisions.

Until the proposed bill is signed into law, however, it would be very prudent when drafting commercial loan documents and commercial leases which contain confession of judgment provisions to be sure to include the necessary additions as outlined above. Whether or not erroneously included in the recent amendment of the statute, they are the law until the statute is amended. If we can be of any help in

drafting such language, or confirming that your documentation is in order, please let us know. And of course, Obermayer will monitor the results of the upcoming Judiciary Committee meetings and the progress of the bill through the legislature, and will continue to provide you with relevant updates.

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