

Pennsylvania Lawmakers Fix Pennsylvania Lawmakers Drafting Errors

PUBLISHED ON

October 7, 2016

On Tuesday, Gov. Tom Wolf signed Act 103 of 2016 (HB665) into law, which changes Pennsylvania's power of attorney law by excluding commercial transactions from certain provisions of the law. According to the original memorandum from the sponsor of the bill, the act fixes "drafting errors" made in last year's revisions to the Pennsylvania power of attorney statute which inadvertently removed the exclusion for commercial transactions.

When lawmakers amended the power of attorney statute nearly two years ago, they created a problem for commercial lenders. The removal of the commercial transaction exclusion affected power of attorney appointments and confession of judgment clauses in commercial loan documents. It also placed certain duties on the bank as agent (the person or entity to whom the power of attorney is given) that did not previously exist.

Following the changes to the power of attorney law in 2015, attorneys began including notary acknowledgements on all commercial loan documents containing power of attorney or confession of judgment language. Language was also included addressing the duties placed on the lender as agent. Many lenders also updated internal loan documents to reflect the new law. Loan officers and other bank employees noticed that instead of only having their recorded documents notarized, nearly all of their documents now had acknowledgements and contained language to address the duties placed on the bank to its borrower or guarantor. The additional notary requirements often required coordinating the signing of documents when a notary was present which often added cost to the borrower and required additional personnel to be present when documents were signed.

The act amends the law by removing the requirements of notary acknowledgements and the duties of the lender as agent for commercial transactions. The application of these requirements was generally viewed as an oversight by the legislature when the law was passed, and the memorandum accompanying the bill, along with the retroactive effective date of Jan. 1, 2015, in the amended bill, confirmed this. The retroactive effective date of the act benefits lenders who did not update the documents since the passage of the power of attorney law revisions. Failure to include acknowledgements on those documents will now not affect their enforceability.

Barley Snyder attorneys have been tracking this bill since March 2015 and we are glad to see the Pennsylvania legislature has corrected this oversight. For more information regarding HB 665 and what we can do to help you understand it, contact any of the attorneys in Barley Snyder's [Finance and Creditors' Rights](#) practice group.

Barley Snyder's Practice Excellence initiative is an ongoing effort by everyone in our firm to constantly increase our capacity to provide excellent service, professional quality and outstanding value to our clients.

We Have Updated Our Commercial Loan Document Forms Following The Passage Of Act 103 And Will Continue To Update Them As More Changes In The Law Occur.

:



Derek P. Dissinger

Partner

Tel: (717) 553-1075

Email: ddissinger@barley.com