PUBLICATION

New Georgia Law Sets Deadlines for Deeds, Relaxes Attestation Requirements

May 15, 2015

If you thought you knew the decades-old Georgia requirements for attesting a security instrument or recording a deed under power, think again. These basic rules are changing on July 1, 2015, and the changes are expected to have a real effect on future mortgage servicing litigation.

At issue are two provisions of House Bill 322, which Georgia Governor Nathan Deal signed into law on May 6, 2015. Section nine of the bill amends O.C.G.A. § 44-14-160 to establish a $500 penalty for the late filing in the real property records of a deed under power or other deed evidencing a foreclosure. The penalty applies if the deed is recorded more than 120 days after the date of the foreclosure sale. The penalty will be collected by the clerk of court at the time the deed is presented for recording. The new statute states that the penalty will be paid by the holder of the deed to secure debt or mortgage, so it is unclear as to who will be required to pay the penalty in cases in which a property is sold to a third party at the foreclosure sale and the deed under power is delivered to the third party prior to recording. The previous version of this statute required that deeds under power be recorded within 90 days of a foreclosure sale, but did not establish a penalty for failure to record a deed within that timeframe. That version of the statute was often cited by borrower's counsel who argued that the failure to record a deed under power within the statutory timeframe made that deed invalid. While the new statutory language creates a late filing penalty for the first time, it also specifically allows the late filing of foreclosure deeds and eliminates the argument that a late filed deed is invalid.

Sections three to seven of the bill change the attestation requirements for mortgages and security deeds. Under the existing law, a mortgage or security deed had to be signed by two witnesses to the grantor's signature. Such instruments also had to be witnessed or acknowledged in front of a notary or other authorized officer. Generally, this meant security deeds would have one official witness (notary) and one unofficial witness. However, in cases where a deed was acknowledged to the notary (i.e. situations in which the notary did not actually see the grantor sign the deed, but was told by the grantor that the signature on the deed was his or hers), a deed had to have one official "witness" and two unofficial witnesses. This requirement was the subject of much litigation, mostly as the result of a chapter 7 bankruptcy trustee in the Northern District of Georgia seeking to avoid security deeds, which were not properly witnessed. The new law means that a security deed which is acknowledged to the notary needs only one unofficial witness.

If you have questions about this or any other aspects of the residential mortgage industry, please reach out to the Baker Donelson attorney with whom you work or one of our Residential Mortgage Lending and Servicing attorneys.