



SOTTILE & BARILE
ATTORNEYS AT LAW

**Possible Retroactivity of Recent
Ohio Amendment on Defectively
Made, Executed and Acknowledged
Instruments Could Have Broad
Application in its State and Federal
Courts**

In late April, an appellate court conducted the first review of the 2017 amendment of R.C. Sec. 5301.07, Ohio Senate Bill (SB) 257, and released a decision addressing defectively-completed real estate instruments. See *Wells Fargo Financial Ohio 1, Inc. v. Doe* (2018- 10th Dist.), Franklin App. No. 17AP-727, 2018-Ohio-1472. Among the legislative intentions of SB 257 was the reduction “from twenty-one years to four years the period of time a real property instrument, for which the record showed there is a defect, is cured of defects by operation of law and becomes effective as if it had been legally made, executed, acknowledged, and recorded.” Ohio Legis. Svce C Final Analysis, Am. Sub. S.B. 257, Act Summary, Apr. 6, 2017. Moreover, the act sought to make this reduction of the period “retroactive to the fullest extent the Ohio Constitution permits”. *Id.*

In the case before the appellate court, the trial court issued a decision finding the 2007 mortgage, which contained a defective acknowledgment clause, to be unenforceable, an issue the trial court raised of its own accord. The lender appealed, citing the recently amended R.C. 5301.07 and arguing for its retroactive application to cure the decade-old mortgage by operation of law with a four-year curing, rather than a twenty-one-year curing period in effect at the time of the mortgage’s execution.

In its ruling, the appellate court set aside the trial court’s finding that the mortgage was unenforceable but remanded the case for the trial court to consider the propriety of a retroactive application of amended R.C. 5301.07 to the defective mortgage at issue.

This case in the trial court of Franklin County bears special watching in the months to come as a ruling broadly allowing the retroactive application of the four-year curing period would impact cases for lenders not in only state foreclosure cases but also in bankruptcy courts in Ohio where the trustees commonly file adversary actions to strip away these defectively executed and acknowledged mortgages.

For more information, please feel free to contact Senior Counsel, David Cliffe, at david.cliffe@sottileandbarile.com.