Bloomberg BNA
Monday, January 30, 2012

Photocopied Mortgage Note Good Enough

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Utah Appeals Court Says in Ruling for PNC Courts normally will accept a photocopied mortgage note instead of the original document, the Utah Court of Appeals held Jan. 20, saying a borrower failed to offer any reason to doubt the authenticity of the photocopy (Howard v. PNC Mortgage, Utah Ct.App., No. 20119772-CA, 1/20/12).

J. Mark Howard challenged a foreclosure action, arguing PNC Mortgage could not claim holder in due course status (which gives parties additional legal protection) unless it produced the original note.

Utah appellate courts have not previously addressed the question, but the court held for PNC in a 4-page decision, saying courts normally accept photocopies of notes or deeds unless evidence suggests they should not.

"Accordingly, an original copy of the note was not required to prove whether or not PNC Mortgage was a holder in due course," the court said.

Anthony C. Kaye, a partner in the Salt Lake City offices of Ballard Spahr who represented PNC, Jan. 27 told Bloomberg BNA that only a small number of state appellate courts have ruled on the question.

The Utah Court of Appeals cited Utah evidence rules in support of its holding, as well as rulings by intermediate appellate courts in North Carolina, Connecticut, and Texas that allow duplicates instead of original documents.

Kaye said lenders will welcome the decision. "This will put to rest another one of the many arguments that borrowers have tried to use to avoid foreclosure," he said.

According to the court, the plaintiff, J. Mark Howard, represented himself. Bloomberg BNA was unable to locate Howard to comment on the decision.