

MEMORANDUM

TO: All Attorneys who file **Motions for Relief from Stay**

FROM: Judge Pat E. Morgenstern-Clarren, United States Bankruptcy Court

DATE: October 16, 2009

RE: Motions for Relief from Stay/Abandonment Update: Transfer of Mortgage
Securing a Note by alleged Attorney-in-Fact

As you know, motions for relief from stay and/or for abandonment are governed by both the Bankruptcy Code and state law. In my memo of February 12, 2009, I asked counsel to be mindful of the law relating to notes that are endorsed to a third party by an attorney-in-fact on behalf of the note holder. This memo is to raise the related issue of mortgages that are transferred to a third party by an attorney-in-fact on behalf of the mortgage holder. In that circumstance, the written power of attorney granting the power to transfer the mortgage should be attached to the motion to show that the transfer is effective. Additionally, documents should be attached showing that the individuals who signed on behalf of the entity holding the power of attorney are actually authorized to act under the power of attorney.

As noted in my earlier memo, counsel should carefully review the power of attorney to make sure that it grants the power to transfer a mortgage *under the circumstances of the case*. Many powers of attorney are limited and do not give the power to act under the facts presented by a motion for relief from stay. Also, many powers of attorney require that the entity receiving the power of attorney act to appoint specific individuals who may exercise the power. Please check to make sure that the individual(s) signing the mortgage transfer fall within that category.

Finally, if the real property at issue is in Ohio, please review Ohio Revised Code § 1337.01 (Power of attorney) and § 1337.04 (Recording of powers of attorney).

Review of this issue before the motion for relief from stay is filed will save time for all parties, and will prevent a movant from having to file a new motion with the accompanying filing fee.

As always, your anticipated attention to this matter is appreciated.