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North Carolina: Appellate Court Decides Note Holder Issue

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For years, the issue as to what constitutes competent evidence to prove that the lender seeking to foreclose is in fact the holder of the note at issue has been a hotly contested one in North Carolina. The North Carolina Court of Appeals and North Carolina Supreme Court have issued several opinions within the last several years, both published and unpublished, addressing the question of what is competent evidence to prove note holder status. Two such seminal cases are *In re Adams*, 204 N.C. App. 318 (2010), and *In re Bass*, 366 N.C. 464 (2013).

In recent years, and more frequently since *Adams* and *Bass*, the debtor's bar has contended that blank endorsements are a particular cause for concern because "no one can tell who holds the note." Typically debtor's counsel will cite to cases holding that "mere possession" alone is insufficient to prove that a party is the holder of a note. *In re Adams*, at 323. Generally, this argument is unsuccessful as long as lender's counsel provides an affidavit stating that the party seeking to foreclose is in possession of the original note.

Until earlier this year, the North Carolina Court of Appeals had not addressed the specific issue of proving the holder of a note endorsed in blank. In an unpublished opinion filed by that court in February, the appellate court held for the first time with specificity that an original note, or a copy of the original note with a blank endorsement coupled with an affidavit by the party seeking to foreclose averring that it is in possession of the original note endorsed in blank, constitutes sufficient evidence that the party seeking to foreclose is in fact the holder of the note. *In re Cornish*, No. COA 13-513, 2014 WL 636969 (N.C. Ct. App. Feb. 18, 2014). Although unpublished opinions are not binding authority, the *Cornish* case should have sufficient persuasive authority on lower courts throughout the state to resolve the "blank endorsement" dispute with finality.

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