



**TESTIMONY OF MICHAEL J. SIKORA III ON BEHALF OF NAIOP IN SUPPORT OF
HOUSE BILL 67
March 28, 2017**

Chairman Dever, Vice-chair Sprague, Ranking member Smith, and members of the Financial Institutions, Housing, and Urban Development Committee:

Thank you for the opportunity to present testimony on House Bill 67. I am Mike Sikora. I am an attorney, title agent, and business owner with offices in Downtown Cleveland and Downtown Columbus. My law practice is focused entirely on real estate matters throughout the State of Ohio.

NAIOP Ohio is made up of many of the top developers and owners of commercial real estate in Ohio and numerous other commercial real estate professionals, including lawyers, brokers, engineers, architects, and title professionals. NAIOP Ohio respectfully requests your favorable consideration of this Bill that would limit the use of cognovit provisions in notes, which would allow Ohio to have a fair, balanced, and competitive business environment that is more in line with the laws of other states throughout the country.

Enforcement of cognovit notes is not generally permitted in most states. Developers and owners who engage in real estate projects in Ohio are essentially forced to sign cognovit notes in order to obtain financing for their projects in Ohio. There is generally no other option. This puts Ohio at a competitive disadvantage compared to those states where businesses and property owners are not forced to agree to those onerous terms. Cognovit provisions are biased in favor of creditors, allowing creditors to automatically take a judgment as a result of a technical breach of a covenant or even a misunderstanding as to payment.

Cognovit notes run counter to our judicial process, and they presume that a person who signs it has done something wrong, which often-times is not the case. Then, the person who signs it has to retain counsel to try to reverse the judgment. Reversing or vacating a judgment is much more difficult than challenging the incorrect or unfounded allegations in the first place. Our respected members are essentially presumed liable, which is the opposite of how our judicial system works in all other respects.

Substitute House Bill 67 would do two things compared to current law. First, cognovits judgments could not be obtained when there is a technical default of some loan covenant. They could only be obtained when there is a monetary default or as part of the settlement of litigation. Second, even when a cognovit judgment is obtained when the plaintiff believes there is a monetary default, the borrower would have 30 days to request a hearing to prove that payment was made, and then an expedited hearing would take place within 7 days.

House Bill 67 has the support of NAIOP Ohio to bring greater balance to the commercial lending process in Ohio. Thank you for your time and consideration.