

Cognovit Legislation Testimony

Hello, I am Lance Osborne and am happy to be here today to discuss Ohio's cognovit legislation. My job is a real estate investor and I am tasked with allocating capital to the highest return with the lowest risk opportunities. Ohio's cognovit legislation makes investment in Ohio inherently more risky than the forty-five states that outlaw it. As such, all industries in competing states that don't have the cognovit feature are more attractive to investors. I feel that Ohio's legislation should be structured in a way to attract the most capital providing for economic growth, more jobs and higher state tax receipts. By amending the cognovit legislation this will be one step in that direction.

The current cognovit legislation was passed decades ago when commercial loan documents contained a simple promissory note, mortgage and guaranty. Since then, loan documentation has evolved and is far more sophisticated with various loan covenants and copious terms. The law is such that a lender can bypass the judicial process and file judgment on a borrower and guarantor(s) for a highly technical default, without them even knowing it. This was abused by some financial institutions during the Great Recession as they found they had an over-concentration of loans in one industry. Regulatory pressures forced lenders to lower these concentrations, resulting in many loans being forcefully called before their stated maturity date. The tool used was the cognovit. It left borrowers who never missed a payment and with a loan that hadn't matured looking for a replacement lender in a terrible economic environment.

For illustration, I have a binder of collateral documents for a \$1,500,000 construction loan. This loan enabled the clean-up of a former gas station, the employment of countless construction trades, and the permanent employment of approximately forty people. On the flipside, I am confident that an attorney can find a technical default somewhere in this ream of paper. Thus, even though the project is financially performing better than proforma, our lender can call this loan over a technicality and have a judgment filed today, without my knowledge.

The proposed legislation limits the cognovit feature to simply monetary defaults. If a borrower doesn't pay their monthly payment then their lender can obtain judgment with a thirty day notice to the borrower. This legislation will remove the ability for a creditor to immediately obtain a judgment for a technical default.

Over the last few years business has been good, but we're entering the phase in the economic cycle where I ask myself is the risk of executing the cognovit worth it? I am certainly not the only person questioning whether to invest in Ohio or somewhere else. I appreciate your time.