Issues with Home Owners signatures on mortgages

We all have heard by now of the issues that banks and other lenders are having with enforcing mortgages due to "robo signing" or "rubber stamping" mortgage documents. Banks have been accused of committing fraud by not having the actual person sign the mortgage that is required to and as a result, foreclosure have been challenged, and in many cases successfully. However, what happens in the reverse situation. What if someone signs their name and then either at the time of the closing or later signs a co-debtors name to the mortgage document. What if your name appeared on a mortgage document, but was never notarized, you can't be held liable for that debt right? Don't answer so quickly. Under many state laws, you may be liable, especially if the co-debtor was a husband or wife.

If you take a look at the Massachusetts law relative to acknowledging signatures of homeowners on mortgages and other secured notes, (M.G.L. c. 183, § 29) the statute requires only mortgages to be acknowledged. That means other documents do not need to be notarized. With that said, there are very few registries that will accept other instruments such as a notices or lease, assignment of mortgage or security agreements without a duly executed acknowledgement form a notary. However, it is not to say that the law does not provide for such a document to be recorded.

It is equally clear that a notary only needs to witness and acknowledge one grantor, out of two or more. For example, as early as 1828, a Massachusetts Court decided that the acknowledgment of a deed by one of two grantors was enough to allow its recordation,

and to make the instrument binding against both grantors, even though the two grantors each separately owned distinct parcels *Shaw v. Poor*, 23 Mass. 86 (1827). So what this case tells us is that if you sign your name to a mortgage, and no one witnesses it or notarizes it, and your husband or wife also sign and their signature was notarized, that will be good enough to bind you to the mortgage obligation.

The obvious question, I ask following the analysis of Shaw, is would happen if someone else, such as your spouse sign your name to the mortgage. This requires a discussion of forged documents. A forged signature conveys no title, thus presenting a problem for the title examiner who usually has no way of ascertaining from the record whether or not an instrument a forgery. A valid acknowledgment lessens the danger of a defect for this reason. However, a notary owes no duty towards persons later relying on the notary's certificate of acknowledgment. See *New England Bond & mortgage Co. v. Brock*, 270 Mass 107, 169 N.E 803 (1930), in which a second mortgage relied on a notary's certificate to discharge of a first mortgage that was a forgery. The court held that there was not a cause of action that the law does not impose on persons authorized to take acknowledgments a duty toward every one who later relies on the accuracy of his or her certificate of acknowledgement, since the only use of a certificate of this nature was to entitle it to be recorded. So the bottom line is it will be difficult to prove you do not have a duty on the mortgage unless you can prove with evidence your signature was forged even after the closing.

The foregoing article was drafted by Attorney Michael Goldstein of the Phillips Law Offices, LLC, a consumer debt law firm in Massachusetts, Rhode Island and Maryland. For more information go to: http://www.phillipslaweast.com/blog