

## Significant Changes to the Recording of Documents Effective July 1, 2020

Effective July 1, 2020, a significant change to the requirements for conveyances, mortgages, and other instruments to be recorded in a county recorder's office within the State of Indiana will become effective. Indiana Code § 32-21-2-3, currently provides that a document that is to be recorded must either be acknowledged by the grantor or proved before one person from the list of approved witnesses contained in Indiana Code § 32-21-2-3(a)(2). Beginning July 1<sup>st</sup>, Senate Enrolled Act No. 340 ("SEA 340") amends Indiana Code § 32-21-2-3(a) to provide that a document that is to be recorded must be acknowledged by the grantor and proved before one person from the list of approved witnesses.

On its face, the amendment to Indiana Code § 32-21-2-3 appears simple. In practice, however, the effect of the replacement of the word "or" with the word "and" is proving to be unclear. Certain stakeholders have interpreted the amendment to require conveyances, mortgages, and other instruments to be recorded to contain a notarized grantor acknowledgement and an additional notarized proof by a disinterested person. In contrast, other stakeholders have interpreted the amendment in a manner that does not require an additional proof by a disinterested person beyond the notarial acknowledgment. Until this ambiguity is clarified by the courts or the General Assembly, we believe that any document to be recorded should contain both a notarized acknowledgement of the party executing the document and the notarized proof by a disinterested witness.

Despite this upcoming change to the law, all may not be lost if a recorded mortgage does not contain both the acknowledgement and the proof. Indiana Code Section 32-21-4-1 provides that a recorded mortgage that does not comply with the technical requirements of section 32-21-2-3 still provides constructive notice to either a bona fide purchaser or a trustee in bankruptcy. Please note that this protection applies only to *recorded mortgages*. Though we do not believe that the legislative intent was to require an additional proof by a disinterested person, because of the uncertainty surrounding this issue and the resulting possibility that this ambiguity puts banks at risk that their mortgages may not be in "recordable form" without the additional proof and may potentially make the mortgage subject to avoidance by a bankruptcy trustee, we believe as we stated above that prudence dictates use of the acknowledgement and the proof until further notice.