

# Can the Court Change the Language of my Deed?

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## Bailment

### ***Woods v. Tye, 10th Dist. Franklin No. 18AP-278, 2019-Ohio-4863.***

In this appeal, the Tenth Appellate District affirmed the trial court's decision finding for the plaintiff on a claim for breach of contract bailment.

**The BulletPoint:** A mutual benefit bailment is a "bailment arising by operation of law or express contract, which exists where personal property is delivered by the owner to another person. Both parties benefit in the exchange." In order to establish a claim for bailment, a bailor must demonstrate (1) the contract of bailment, (2) delivery of the bailed property to the bailee, and (3) failure of the bailee to redeliver the bailed property undamaged at the termination of the bailment.

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## Rules of Construction for Deeds

### ***Brown v. Ward, 5th Dist. Guernsey No. 19CA00011, 2019-Ohio-4848.***

In this appeal, the Fifth Appellate District affirmed the trial court's decision to grant summary judgment to the defendants regarding claims for reformation and/or rescission of a deed.

**The BulletPoint:** Under Ohio law, a deed is to be construed most strongly against the grantor in the resolution of any ambiguities contained in the instrument; however, a deed's language is conclusively presumed to express the parties' intention absent "uncertainty" in the language employed. To that end, if a grantee accepts a deed, the knowledge of its provisions is legally imputed to him; and, by its acceptance, he is bound by all of its provisions and is stopped to deny their legal effect. The doctrine of "merger by deed" holds that whenever a deed is delivered and accepted "without qualification" pursuant to a sales contract for real property, the contract becomes merged into the deed and no cause of action upon said prior agreement exists. The purchaser is limited to the express covenants of the deed only, unless the elements of fraud or mistake are involved or unless the deed was accepted under protest and with a reservation of rights.

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## Truth-In-Lending Act

### ***Wells FargoBank, N.A. v. Pollard, 8th Dist. Cuyahoga No. 108257,2019-Ohio-4980.***

In this appeal, the Eighth Appellate District affirmed a trial court's decision to grant a lender summary judgment in a foreclosure action, finding, among other things, that the borrower failed to timely try and rescind the loan under the Truth-in-Lending Act.

**The Bullet Point:** The Truth-in-Lending Act (TILA), 15 U.S.C. 1635(a), "grants a right of rescission on any mortgage loan transaction for which the borrower uses his or her principal dwelling as security. This right of rescission generally extends to midnight of the third business day following consummation of the transaction. The borrower may rescind the loan transaction entirely if the lender fails to deliver certain forms or disclose important terms accurately. This right of rescission expires three days after the loan closes or upon the sale of the secured property, whichever date is earlier." "If, however, the lender fails to provide the necessary notices of that right, the borrower has up to three years to rescind the transaction." That three-year period is not subject to equitable tolling. In order to be timely, any claim for rescission under TILA must be brought at the latest within three years of the consummation of the loan.

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## Hearing to Determine Validity of Arbitration Clause

### ***DiFranco v. Licht, 8th Dist. Cuyahoga No. 108387, 2019-Ohio-4894.***

In this case, the Eighth Appellate District reversed the trial court's decision to grant a motion to compel arbitration under Ohio law without first holding a hearing.

**The Bullet Point:** "Chapter 2711 of the Ohio Revised Code authorizes direct enforcement of arbitration agreements through an order to compel arbitration under R.C. 2711.03, and indirect enforcement of such agreements pursuant to an order staying trial court proceedings under R.C. 2711.02." These are separate and distinct procedures under Ohio law that serve different purposes. To that end, and pursuant to R.C. 2711.03, where a party has filed a motion to compel arbitration and the opposing party has challenged the validity of the provision, the court must, in a hearing, make a determination as to the validity of the arbitration clause. Thus, when a party files a joint motion to stay a proceeding and compel arbitration under Ohio law, a hearing should be held to first determine whether the arbitration clause is valid.

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