

## CASE NOTE: DENMARK

CASE CITATION:  
U.2006.1341V

NAME AND LEVEL OF COURT:  
Danish Western High Court  
(Vestre Landsret)

DATE:  
27 February 2007

### **Refusal to accept scanned signatures as used by a mortgage bank for endorsement purposes.**

Mortgage bank N delivered a mortgage for the purpose of cancellation. The scanned signatures of A and B were affixed to the cancellation endorsement. By notice circulated to all judicial districts, N had authorised A and B to jointly endorse the mortgage by means of scanned manuscript signatures. The endorsements were added or attached to the original mortgage. The registration judge refused to cancel the mortgage because the signatures were not added by means of a manuscript signature in accordance with s9(1) of the Danish Registration of Property Act. The High Court upheld this decision.

In this respect, the registry takes the view that under section 261(2) of the Danish Administration of Justice Act, the endorsement must be signed, see the Danish weekly law reports (UfR) 2001.1980/IH, since section 10 of the Registration of Property Act does not derogate from the general principle that pleadings to the court must be signed. According to established case law, pleadings must further be available in their original form, and photocopies or facsimiles are therefore not sufficient. Section 148(a) of the Administration of Justice Act provides, by Act no. 447 of 9 June 2004, for the use of digital notifications by means of digital signatures. However, the Act has not yet come into force.

In addition, the registry takes the view that, on the grounds of due process, manuscript signatures are still required on documents to be registered (or cancelled), and that any change of this state of the law should, if necessary, be clarified by the legislature in the same way as the provisions on digital signatures. Such clarification is expected to take place or become superfluous in connection with the contemplated digitization of the Danish property registration system.

It should be noted that one of the aspects of due process that forms the basis of the requirement for an original signature is that photocopying makes it easy to produce forged documents. Although a scanned signature includes safety mechanisms ensuring that it is used at Nykredit, it still suffers from the fundamental problem that it cannot be distinguished from a photocopy. Thus, it will be possible to make

photocopies of an original, genuine, scanned signature without the registry being capable of revealing this.

Considering that mortgages are non-negotiable instruments, it may be argued with some weight that only Nykredit risks suffering a loss as a result of the proposed procedure, and if Nykredit has proposed and accepted the procedure, it ought to be acceptable if the registry had notice of it.

In this respect, the registry would, however, like to point out to Nykredit that a mortgage may both be released and cancelled merely on the basis of declaration, see s. 11(2) of the Registration of Property Act. Thus, a debtor who has previously obtained a copy of a scanned signature will quite easily be able to produce and forward a forged declaration even if the mortgage has not been released from the mortgage bank.

Finally, the registry finds - as pointed out by in the Danish weekly law reports (UfR) 1988.741 Ø - that it will violate the principles of due process if certain groups are exempted from the signature requirement. In this respect, it should be noted that the registry does not intend, nor is it authorised, to introduce any further 'registers' or general files with lists of companies or individuals that have accepted the use of scanned signatures. This also applies to the banks and mortgage banks from which the registry has in practice accepted general notices authorising certain persons to sign for the bank.

### **Decision of the Danish Western High Court.**

The High Court upholds the refusal by the registration judge to cancel the mortgage due to failure to obtain original signatures, see section 9(1) of the Registration of Property Act. It is therefore ordered:

That the decision of the registration court be upheld.  
26 February 2007

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<http://www.kromannreumert.com>  
ao@kromannreumert.com