

**OPINION NO. 2009-046****Syllabus:**

2009-046

1. The preparation of a document or instrument is completed for purposes of R.C. 317.114(A) when the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument are put into final written form for signing and execution.
2. Except as provided in R.C. 317.114(B), no part of the typed or printed information in the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, or other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in a page margin established by R.C. 317.114(A)(6)-(9).
3. Typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in the page margins established by R.C. 317.114(A)(6), (7), and (9).
4. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), no typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter may appear in the three-inch margin across the top of the first page of a document or instrument.
5. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a document's or instrument's caption, main text, footnote, endnote, heading, signature block, attestation or acknowledgement clause, or other part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or

- instrument traverses a page margin established by R.C. 317.114(A)(6)-(9) or when any of the document's or instrument's typed or printed information pertaining to (1) the document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for the document or instrument; or (4) any other matter traverses the three-inch margin across the top of the first page of the document or instrument.
6. A county recorder may not charge and collect the fees set forth in R.C. 317.114(A) when typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), or (9).
  7. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item traverses the three-inch margin of space across the top of the first page of a document or instrument.
  8. A county recorder may not charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), and (9).
  9. Except as provided in R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a certification or endorsement from an entity other than the county auditor, county engineer, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument.
  10. The requirements of R.C. 317.114(A) do not apply to a document's or instrument's attachments.

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**To: David P. Joyce, Geauga County Prosecuting Attorney, Chardon, Ohio**

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**To: Dennis P. Will, Lorain County Prosecuting Attorney, Elyria, Ohio**

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**To: Michael M. Ater, Ross County Prosecuting Attorney, Chillicothe, Ohio**

**By: Richard Cordray, Ohio Attorney General, November 25, 2009**

You have each requested an opinion concerning the application of newly enacted R.C. 317.114 to documents and instruments that are presented to a county recorder for recording.<sup>1</sup> Specifically, your letters present the following questions:

1. R.C. 317.114(A) references documents and instruments which “shall have been prepared” in accordance with the requirements specified in subsections (1) through (9). At what point is the preparation of a document or instrument complete?
2. Do R.C. 317.114(A)(6)-(9) prohibit anything from being typed or printed in the page margins of a document or instrument?
3. May a county recorder charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other item traverses a page margin established by R.C. 317.114(A)(6)-(9)?
4. May a county recorder charge and collect the fees set forth in R.C. 317.114(A) when a certification or endorsement from an entity other than the county auditor, county engineer, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument?
5. Do the requirements of R.C. 317.114(A) apply to a document’s or instrument’s attachments?<sup>2</sup>

R.C. 317.114(A) requires a document or instrument that is to be presented to the county recorder for recording to conform to certain requirements unless the document or instrument is described in R.C. 317.114(B):<sup>3</sup>

Except as otherwise provided in division (B) of this section, an instrument or document presented for recording to the county recorder shall have been prepared in accordance with all of the following requirements:

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<sup>1</sup> R.C. 317.114 became effective on July 1, 2009. Sub. H.B. 525, 127th Gen. A. (2008) (eff. Apr. 7, 2009, with certain sections effective on other dates) (section 3, uncodified).

<sup>2</sup> Additional questions concerning the application of R.C. 317.114 have been presented in the letters from Prosecutor Ater and Prosecutor Will. These questions concern matters that were not also presented by Prosecutor Joyce in his letter, and thus are addressed in 2009 Op. Att’y Gen. No. 2009-047.

<sup>3</sup> The requirements set forth in R.C. 317.114(A) do not apply to (1) a document that originates with any court or taxing authority; (2) a document authorized to be recorded under R.C. 317.24; (3) a plat, as defined in R.C. 711.001, that is required or authorized by the Revised Code to be recorded; (4) a document authorized to be recorded that originates from any state or federal agency; or (5) a document executed before July 1, 2009. R.C. 317.114(B).

- (1) Print size not smaller than a computer font size of ten;
- (2) Minimum paper size of eight and one-half inches by eleven inches;
- (3) Maximum paper size of eight and one-half inches by fourteen inches;
- (4) Black or blue ink only;
- (5) No use of highlighting;
- (6) Margins of one-inch width on each side of each page of the instrument or document;
- (7) A margin of one-inch width across the bottom of each page of the instrument or document;
- (8) A three-inch margin of blank space across the top of the first page of each instrument or document to accommodate any certification or indorsement of the county engineer, county auditor, or county recorder, as may be required by law, with the right half of that margin being reserved for the indorsement of the county recorder required by [R.C. 317.12]; and
- (9) A one and one-half inch margin across the top of each of the remaining pages of the instrument or document.

R.C. 317.114(A) also requires a county recorder to accept for recording a document or instrument that is not prepared in compliance with all the requirements set out in R.C. 317.114(A).<sup>4</sup> In such a circumstance, the county recorder is required to “charge and collect the following additional fees . . . : an additional base fee for the recorder’s services of ten dollars and a housing trust fund fee of ten dollars.”<sup>5</sup> R.C. 317.114(A).

<sup>4</sup> A county recorder may refuse to record a document or instrument that is not prepared in compliance with the requirements of R.C. 317.114(A) on other statutory grounds. *Cf.* R.C. 317.11 (certain instruments may not “be received for record of filing by the county recorder” when the instruments contain illegible signatures); R.C. 317.111 (certain instruments may not “be received for record or filing by the county recorder” when the preparer is not identified); R.C. 317.113 (a county recorder may refuse to “accept for recording a deed or other instrument in writing that is executed or certified in whole or in part in a language other than the English language unless it complies with [certain] requirements”).

<sup>5</sup> Various statutes prohibit a county recorder from charging fees when recording certain military documents and instruments. *See, e.g.,* R.C. 317.24; R.C. 317.322. For the purpose of this opinion, we do not consider whether these statutes prevent a county recorder from charging the fees set forth in R.C. 317.114(A). Nevertheless, we note that, under R.C. 317.114(B), a county recorder may not charge the fees set

**What Constitutes the Preparation of a Document or Instrument for Purposes of R.C. 317.114(A)**

Let us now turn to your first question, which asks when the preparation of a document or instrument is completed. R.C. 317.114(A) does not explicitly specify at what point in time the preparation of a document or instrument is completed and deemed ready for presentation to the county recorder for recording. Nevertheless, such a point in time may be inferred from the common, ordinary meanings attributed to the words used by the General Assembly in R.C. 317.114(A). *See generally State ex rel. Wolfe v. Delaware County Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000) (when addressing issues of statutory meaning, “[l]egislative intent is the preeminent consideration in construing a statute. To determine the legislative intent, we first review the statutory language. In reviewing the statutory language, we accord the words used their usual, normal, or customary meaning” (citations omitted)).

R.C. 317.114(A) states that, except as provided in R.C. 317.114(B), “an *instrument* or *document* presented for recording to the county recorder shall have been *prepared* in accordance with all of the . . . requirements” set forth in R.C. 317.114(A)(1)-(9). (Emphasis added.) In legal parlance, the terms “instrument” and “document” are defined as follows:

**document** . . . The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact.

. . . .

**instrument** . . . A written legal document that defines rights, duties, entitlements, or liabilities, such as a contract, will, promissory note, or share certificate.

*Black’s Law Dictionary* 555, 869 (9th ed. 2009). A “document” or “instrument,” as used in R.C. 317.114(A), thus is a writing that conveys information that establishes and defines rights, duties, entitlements, or liabilities. *See generally Merriam-Webster’s Collegiate Dictionary* 1447 (11th ed. 2005) (a “writing” is “something written: as . . . a letter, note, or notice used to communicate or record . . . : a written composition”).

In addition, the verb “prepare” commonly means “to put into written form.” *Id.* at 981. When the word “prepare” is read in conjunction with the words “document” and “instrument” in R.C. 317.114(A), it is apparent that the process of preparing a document or instrument for recording entails putting into writing information that establishes and defines rights, duties, entitlements, and liabilities.

The information needed to establish and define rights, duties, entitlements, and liabilities in a writing that serves as a document or instrument includes all the necessary facts, statements, and details that evince the rights, duties, entitlements,

forth in R.C. 317.114(A) when a military document is authorized to be recorded under R.C. 317.24 or originates from a federal agency.

and liabilities to be established and defined in the writing and that are needed in order to execute the writing.<sup>6</sup> This information is commonly provided in the writing's caption, main text, footnotes, endnotes, headings, signature block, and attestation and acknowledgement clauses. Hence, the requirements of R.C. 317.114(A) apply to a document's or instrument's caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument.

Once all the information needed to establish and define rights, duties, entitlements, and liabilities in a writing that serves as a document or instrument has been put into final written form, the writing is ready for signing and execution. At this point, the preparation of a writing that serves as a document or instrument is completed for purposes of R.C. 317.114(A) since the information needed to establish and define rights, duties, entitlements, and liabilities in the document or instrument has been put into written form. Therefore, in response to your first question, the preparation of a document or instrument is completed for purposes of R.C. 317.114(A) when the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument are put into final written form for signing and execution.

#### **The Placement of Printed or Typed Material in the Margins of a Document or Instrument**

Your second question asks whether R.C. 317.114(A)(6)-(9) prohibit anything from being typed or printed in the page margins of a document or instrument. R.C. 317.114(A)(6)-(9) mandate that a document or instrument that is to be presented to the county recorder for recording have the following page margins unless an exception set out in R.C. 317.114(B) applies: (1) side and bottom margins of one-inch width on each page, (2) a three-inch margin of blank space across the top of the first page, and (3) a one and one-half inch margin across the top of each page after the first page.

As explained previously, the page margin requirements of R.C. 317.114(A)(6)-(9) apply to the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument.<sup>7</sup> For purposes of R.C. 317.114(A), a "margin" is "the part of a page or sheet *outside* the main body of printed or written matter."

<sup>6</sup> With respect to the creation of legal documents and instruments, the verb "execute" means "[t]o make (a legal document) valid by signing; to bring (a legal document) into its final, legally enforceable form." *Black's Law Dictionary* 649 (9th ed. 2009).

<sup>7</sup> It appears that any border, line, or other printed or typed marking used to surround or separate the parts of a writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument is part of the writing

*Merriam-Webster's Collegiate Dictionary* 759 (11th ed. 2005) (emphasis added). See generally R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”).

Thus, in the context of R.C. 317.114(A), the top, bottom, and side page margins constitute the space *outside* the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument. As such, no typed or printed information from any of these sections of a document or instrument may appear in a page margin established by R.C. 317.114(A)(6)-(9). Accordingly, except as provided in R.C. 317.114(B), no part of the typed or printed information in the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, or other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in a page margin established by R.C. 317.114(A)(6)-(9).

It is important to note that, except for the page margin requirement set forth in R.C. 317.114(A)(8) (discussed below), the page margin requirements of R.C. 317.114(A)(6)-(9) only apply to the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument. This means that typed or printed information that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in the margins established by R.C. 317.114(A)(6), (7), and (9).

Typed or printed information establishes and defines rights, duties, entitlements, and liabilities under a document or instrument when the information sets forth facts, statements, and details that are necessary to establish and define the rights, duties, entitlements, and liabilities under the document or instrument. If typed or printed information in a document or instrument does not set forth facts, statements, and details that are necessary to establish and define rights, duties, entitlements, and liabilities under the document or instrument, the typed or printed information is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument.

Typed or printed information in a document or instrument that does not set forth facts, statements, and details that are necessary to establish and define rights, duties, entitlements, and liabilities under the document or instrument includes, but is not limited to, a document's or instrument's page numbers, marginal notations

since such border, line, or marking is inserted into the document or instrument prior to it being put into final written form for signing and execution. The page margin requirements of R.C. 317.114(A)(6)-(9) thus apply to any such border, line, or marking.

prescribed by statute,<sup>8</sup> and the name, logo, address, form number, and bar code of a company providing the form that serves as the base for a document or instrument.<sup>9</sup> Because a document's or instrument's page numbers, marginal notations prescribed by statute, and the name, logo, address, form number, and bar code of a company providing the form that serves as the base for a document or instrument do not establish and define rights, duties, entitlements, and liabilities under the document or instrument, such typed or printed information is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument and, as such, this information is not subject to the page margin requirements of R.C. 317.114(A)(6), (7), and (9). Accordingly, typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in the page margins established by R.C. 317.114(A)(6), (7), and (9).

However, unlike the page margin requirements established by R.C. 317.114(A)(6), (7), and (9), the page margin requirement of R.C. 317.114(A)(8) also applies to those portions of a document or instrument that do not set forth the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument unless one of the exceptions set forth in R.C. 317.114(A)(8) or R.C. 317.114(B) applies. Pursuant to R.C. 317.114(A)(8), a document or instrument that is to be presented to the county recorder for recording must have “[a] three-inch margin of *blank space* across the top of the first page” unless one of the exceptions of R.C. 317.114(B) applies. (Emphasis added.) This space is left blank to “accommodate any certification or indorsement of the county engineer, county auditor, or county recorder, as may be required by law, with the right half of that [space] being reserved for the indorsement of the county recorder required by [R.C. 317.12].” R.C. 317.114(A)(8).

The plain language of R.C. 317.114(A)(8) thus demonstrates that the General Assembly intended to ensure that a three-inch margin of space across the top of the first page of a document or instrument that is to be presented to the county recorder for recording remains blank or free of any and all markings so as to accommodate certifications and endorsements of the county engineer, county auditor, and county recorder. *See generally Merriam-Webster's Collegiate Dictionary* 130 (11th

<sup>8</sup> *See, e.g.*, R.C. 5301.28 (recording of a release of mortgage); R.C. 5301.31 (recording of an assignment or partial release of a mortgage); R.C. 5301.33 (recording of a cancellation, partial release, or assignment of a lease); R.C. 5301.331 (recording of cancellation, partial release, or assignment of a land contract); R.C. 5301.332 (recording of a forfeiture and cancellation of a natural gas and oil land lease); and R.C. 5301.35 (recording of a waiver of priority of the lien of a mortgage).

<sup>9</sup> A “form” is “[t]he outer shape or structure of something, as distinguished from its substance or matter,” and includes “[a] legal document with blank spaces to be filled in by the drafter.” *Black's Law Dictionary* 723 (9th ed. 2009).



ed. 2005) (the term “blank” means, among other things, “devoid of covering or content; *esp.* : free from writing or marks”). In light of this clearly expressed legislative intent, it follows that, except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), no typed or printed information pertaining to (1) a document’s or instrument’s page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter may appear in the three-inch margin across the top of the first page of a document or instrument. *See generally State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) (“[t]he polestar of statutory interpretation is legislative intent, which a court best gleans from the words the General Assembly used and the purpose it sought to accomplish. Where the wording of a statute is clear and unambiguous, this court’s only task is to give effect to the words used”).

**Imposition of the Fees Set Forth in R.C. 317.114(A) When an Item Appears in a Page Margin**

Your third question asks whether a county recorder may charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other item traverses a page margin established by R.C. 317.114(A)(6)-(9). Pursuant to R.C. 317.114(A), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a document or instrument that is presented to him for recording does not conform to the page margin requirements set forth in R.C. 317.114(A)(6)-(9) unless one of the exceptions set out in R.C. 317.114(B) applies.

As concluded earlier, except as provided in R.C. 317.114(B), no part of the typed or printed information in the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, or other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in a page margin established by R.C. 317.114(A)(6)-(9). Moreover, except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), no typed or printed information pertaining to (1) a document’s or instrument’s page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter may appear in the three-inch margin across the top of the first page of a document or instrument.

If a document’s or instrument’s caption, main text, footnote, endnote, heading, signature block, attestation or acknowledgement clause, or other part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument traverses a page margin established by R.C. 317.114(A)(6)-(9) or any of a document’s or instrument’s typed or printed information pertaining to (1) the document’s or instrument’s page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for the document or instrument; or (4) any other matter traverses the three-inch margin across the top of

the first page of the document or instrument, the document or instrument does not conform to the page margin requirements set forth in R.C. 317.114(A)(6)-(9) and a county recorder must charge and collect the fees set forth in R.C. 317.114(A) unless one of the exceptions set out in R.C. 317.114(A)(8) or R.C. 317.114(B) applies. Therefore, except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a document's or instrument's caption, main text, footnote, endnote, heading, signature block, attestation or acknowledgement clause, or other part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument traverses a page margin established by R.C. 317.114(A)(6)-(9) or when any of the document's or instrument's typed or printed information pertaining to (1) the document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for the document or instrument; or (4) any other matter traverses the three-inch margin across the top of the first page of the document or instrument.

However, as also concluded above, R.C. 317.114(A)(6), (7), and (9) do not prohibit typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument from appearing in the page margins established by R.C. 317.114(A)(6), (7), and (9). Hence, when such typed or printed information traverses a page margin established by R.C. 317.114(A)(6), (7), or (9), the page margin requirements of R.C. 317.114(A)(6), (7), and (9) are not violated and a county recorder may not charge and collect the fees set forth in R.C. 317.114(A).

Having discussed the application of the fees set forth in R.C. 317.114(A) to typed and printed information that traverses the page margins established by R.C. 317.114(A)(6)-(9), we must now examine the application of such fees when a signature, notary stamp or seal, endorsement, or other item that is not typed or written traverses the page margins established by R.C. 317.114(A)(6)-(9). First, R.C. 317.114(A)(8) plainly states that, except as provided in R.C. 317.114(B), the three-inch margin of space across the top of the first page of a document or instrument must remain blank or free of any and all markings so as to accommodate certifications and endorsements of the county engineer, county auditor, and county recorder. Thus, except for the situations set forth in R.C. 317.114(A)(8) and R.C. 317.114(B), the three-inch margin of space across the top of the first page of a document or instrument must remain blank or free of any and all markings. *See generally Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711 (1946) ("exceptions to a general law are not favored and must be strictly construed, and what is not clearly excluded from the operation of a law is clearly included therein").

A signature, notary stamp or seal, endorsement, or other non-typed or non-printed item therefore may not traverse the three-inch margin of space across the top of the first page of a document or instrument unless the item is a certification or

endorsement authorized by R.C. 317.114(A)(8) or one of the exceptions set out in R.C. 317.114(B) applies. If a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item traverses the three-inch margin of space across the top of the first page of a document or instrument, the document or instrument does not conform to the page margin requirement of R.C. 317.114(A)(8) and a county recorder must charge and collect the fees set forth in R.C. 317.114(A) unless the item is a certification or endorsement authorized by R.C. 317.114(A)(8) or one of the exceptions set out in R.C. 317.114(B) applies. Accordingly, except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item traverses the three-inch margin of space across the top of the first page of a document or instrument.

With respect to the application of the page margin requirements of R.C. 317.114(A)(6), (7), and (9) to a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item, we are guided by the principle that these margin requirements apply to the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument that are needed to put the document or instrument into final written form for signing and execution. Because signatures, notary stamps and seals, endorsements, and other non-typed or non-printed items are inserted into a document or instrument after the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument is put into final written form, such items are not part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument for purposes of R.C. 317.114(A). These items thus do not need to conform to the margin requirements of R.C. 317.114(A)(6), (7), and (9).

This means that, if a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), or (9), a county recorder may not charge and collect the fees set forth in R.C. 317.114(A). Hence, as a final response to your third question, a county recorder may not charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), or (9).

**Imposition of the Fees Set Forth in R.C. 317.114(A) When a Certification or Endorsement from an Entity other than a Person Named in R.C. 317.114(A)(8) Appears in the Page Margin Established by R.C. 317.114(A)(8)**

Your fourth question asks whether a county recorder may charge and collect the fees set forth in R.C. 317.114(A) when a certification or endorsement from

an entity other than the county auditor, county engineer, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument. R.C. 317.114(A)(8) explicitly reserves the three-inch margin of space across the top of the first page of a document or instrument for certifications and endorsements of the county engineer, county auditor, and county recorder unless one of the exceptions of R.C. 317.114(B) applies.

It is a well-established rule of statutory construction that “the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others.” *Fort Hamilton-Hughes Mem. Hosp. Ctr. v. Southard*, 12 Ohio St. 3d 263, 265, 466 N.E.2d 903 (1984). Because the General Assembly has expressly limited use of the three-inch margin across the top of the first page of a document or instrument to certifications and endorsements of the county engineer, county auditor, and county recorder, no other entity may place a certification or endorsement in this area.

If a certification or endorsement from an entity other than the county engineer, county auditor, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument, the document or instrument is not in compliance with the page margin requirements of R.C. 317.114(A), and, as such, a county recorder must charge and collect the fees set forth in R.C. 317.114(A). Therefore, except as provided in R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a certification or endorsement from an entity other than the county auditor, county engineer, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument.

#### **Application of R.C. 317.114(A) to a Document’s or Instrument’s Attachments**

Your final question asks whether the requirements of R.C. 317.114(A) apply to a document’s or instrument’s attachments. R.C. 317.114(A) requires a document or instrument that is to be presented to the county recorder for recording to conform to certain requirements unless one of the exceptions described in R.C. 317.114(B) applies.

An attachment to a document or instrument that is presented to the county recorder for recording is not presented to the county recorder for recording. Instead, it is “something . . . that is affixed or connected to” the document or instrument that is being presented to the county recorder for recording. *Black’s Law Dictionary* 146 (9th ed. 2009) (defining “attachment”). In other words, the document or instrument to which an attachment is affixed or connected is the thing being presented to the county recorder for recording, not the attachment.

Furthermore, as explained previously, the General Assembly intended the requirements of R.C. 317.114(A) to apply only to the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument. An attachment is not part of the writing

that establishes and defines rights, duties, entitlements, and liabilities under a document or instrument. Instead, an attachment provides information that is incorporated into a document or instrument by reference.

Because an attachment is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument, it appears that the General Assembly did not intend to extend the requirements of R.C. 317.114(A) to attachments to documents and instruments that are presented to county recorders for recording. Accordingly, the requirements of R.C. 317.114(A) do not apply to a document's or instrument's attachments.

### **Conclusions**

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. The preparation of a document or instrument is completed for purposes of R.C. 317.114(A) when the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, and other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument are put into final written form for signing and execution.
2. Except as provided in R.C. 317.114(B), no part of the typed or printed information in the caption, main text, footnotes, endnotes, headings, signature block, attestation and acknowledgement clauses, or other parts of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in a page margin established by R.C. 317.114(A)(6)-(9).
3. Typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument may appear in the page margins established by R.C. 317.114(A)(6), (7), and (9).
4. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), no typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter may appear in the three-inch margin across the top of the first page of a document or instrument.
5. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a document's or instrument's caption, main text,

footnote, endnote, heading, signature block, attestation or acknowledgement clause, or other part of the writing establishing and defining rights, duties, entitlements, and liabilities under the document or instrument traverses a page margin established by R.C. 317.114(A)(6)-(9) or when any of the document's or instrument's typed or printed information pertaining to (1) the document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for the document or instrument; or (4) any other matter traverses the three-inch margin across the top of the first page of the document or instrument.

6. A county recorder may not charge and collect the fees set forth in R.C. 317.114(A) when typed or printed information pertaining to (1) a document's or instrument's page numbers; (2) marginal notations prescribed by statute; (3) the name, logo, address, form number, or bar code of a company providing the form that serves as the base for a document or instrument; or (4) any other matter that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), or (9).
7. Except as provided in R.C. 317.114(A)(8) and R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item traverses the three-inch margin of space across the top of the first page of a document or instrument.
8. A county recorder may not charge and collect the fees set forth in R.C. 317.114(A) when a signature, notary stamp or seal, endorsement, or other non-typed or non-printed item that is not part of the writing establishing and defining rights, duties, entitlements, and liabilities under a document or instrument traverses a page margin established by R.C. 317.114(A)(6), (7), and (9).
9. Except as provided in R.C. 317.114(B), a county recorder must charge and collect the fees set forth in R.C. 317.114(A) when a certification or endorsement from an entity other than the county auditor, county engineer, or county recorder traverses the three-inch margin across the top of the first page of a document or instrument.
10. The requirements of R.C. 317.114(A) do not apply to a document's or instrument's attachments.