

## Farm Management

## Beware of cognovit notes

**O**HIO is one of only a few states in the country that allows for cognovit notes. The harshness and potential unfairness of cognovit notes is likely why so few states have them. Producers should be very aware of cognovit notes and avoid them if at all possible.

Cognovit notes are promissory notes or demand notes with a special cognovit provision. This provision must be prominently displayed on the note, which is usually done by putting it in an outlined box in bold, capital letters. The cognovit clause will contain the following words:

“Warning: By signing this paper, you give up your right to notice and court trial. If you do not pay on time, a court judgment may be taken against you without your prior knowledge, and the powers of a court can be used to collect from you regardless of any claims you may have against the creditor, whether for returned goods, faulty goods, failure on his part to comply with the agreement, or any other cause.”

## Defenseless

Upon default by the borrower, this provision allows the lender to obtain a court judgment against the borrower without the borrower being present or even knowing a judgment is being obtained. By not being present for the judgment, the borrower cannot assert any defenses. Even more alarming is that the lender can hire an attorney to confess a judgment on behalf of the lender. That is, the lender hires an attorney for the borrower who will admit the borrower owes the money. Upon obtaining the judgment from the court, the lender can then proceed toward collecting the debt.

Consider the following example: A farmer takes out an operating loan with a lender. The note executed for the loan includes a cognovit provision. A few months later, the lender claims the farmer is in default on the loan. The lender's attorney files a Petition of Cognovit Note with the court asking the court to declare the farmer in default on the loan and awarding the lender a judgment of the balance of the note.

Additionally, the lender hires an attorney who represents the farmer, and this attorney admits to the court that the farmer owes the money. The judge signs an order finding the farmer to be in default and awarding a judgment to the lender. All this is done without the farmer having an opportunity to defend himself or assert any defenses.

## Little recourse

The only option the farmer has is to ask the court to reverse its judgment against him. The farmer must convince the court that he has a meritorious defense. Ohio law allows only a very limited number of meritorious defenses. Some of these defenses include payment

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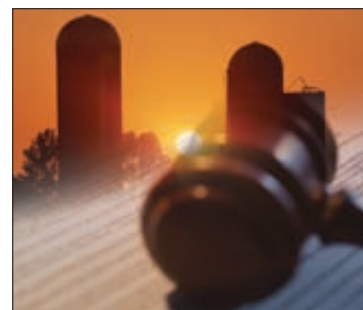
By ROBERT MOORE

of the debt and an improperly drafted or executed cognovit note.

The cognovit note is contrary to most of our notions of fairness. It essentially

hijacks one's ability to have their day in court to defend themselves against a lender's claim of default. Understandably, lenders prefer to have cognovit provisions in their lending documents.

Producers should carefully review all loan documents before signing. If a cognovit provision is included in the note, ask for the clause to be removed.



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## OSU Entomologists Studying the Damaging Impacts of Common Buckthorn

**A**n exotic invasive shrub, introduced in the 1800s as a garden plant, is being studied to demonstrate how its presence has a cascading damaging effect on natural flora and fauna, agriculture and public health. Ohio State University entomologists are collaborating with Michigan State University and Iowa State University in a three-year research project to determine the distribution of buckthorn throughout Michigan, Ohio, Minnesota and Iowa.

The study, “Common Buckthorn as a Keystone Invader in Agricultural Landscapes,” is supported in part by the Ohio Soybean Council and soybean checkoff, as well as an Agricultural and Food Research Initiative grant funded by the U.S. Department of Agriculture.

Buckthorn is the link in a chain of invaders that has a negative impact on the ecosystem. Not only does the shrub choke out native plants, but it is also the overwintering host for the soybean aphid, an invasive sapsucker that damages soybeans and spreads viruses to vegetable crops. In turn, the soybean aphid is food for the multi-colored Asian ladybeetle, an invasive insect that damages grapes, outcompetes native ladybeetles for food and habitat, and finds its way into the homes of many Ohioans.

“Without the invasion of buckthorn, it's probably unlikely that the soybean aphid would have established itself, and as a result, we'd have less impacts on crops and fewer issues with the multi-colored Asian ladybeetle,” said Andy Michel, an OSU entomologist with the Ohio Agricultural Research and Development Center.

By determining how much buckthorn is spread across the four states, researchers hope to learn more about how buckthorn influences aphid dispersal and populations of the multi-colored Asian ladybeetle. The goal, ultimately, is to identify best management practices for buckthorn to best control both insects.

One aspect of the study is to determine if soybean aphids found in Ohio are originating from buckthorn established in



**Buckthorn (pictured above) is an exotic invasive shrub, introduced in the 1800s, and serves as the overwintering host for the soybean aphid.**



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Ohio, or are migrating from more northern latitudes, such as Michigan.

“We are collecting aphids from Ohio and Michigan and using genetic markers to determine if aphids plucked from Ohio soybean fields are genetically similar to aphids being found on buckthorn in Ohio, or if perhaps they are originating from other locations, like Michigan,” said Michel, who also holds an Ohio State University Extension appointment.

The outcome of that work, said OARDC entomologist Mary Gardiner, is managing the soybean aphid by going back to the overwintering source.

“If we determine that aphid colonization in Ohio is localized, that is, if aphids in soybean fields are originating from local buckthorn establishments, then we can manage the aphid by eradicating the buckthorn within the local area,” said Gardiner, who also holds an OSU Extension appointment. “If we determine that aphids are migrating from more northern locations, then we can conclude that intensive buckthorn management in Ohio may not be as effective for soybean aphid control, and that aphids can migrate long distances and their management may be more difficult.”

Other objectives of the research include:

- Determining if the density of buckthorn within the landscape surrounding soybean fields influences the likelihood and

timing of aphid infestation.

- Examining whether aphid populations in areas with high density of buckthorn serve as a source of aphids in areas lacking significant buckthorn establishment.

- Determining if soybean fields in buckthorn-infested landscapes colonized early in the season with soybean aphid are more likely to attract the multi-colored Asian ladybeetle.

- Studying whether buckthorn surrounding vegetable cropping systems increases the likelihood of virus transmissions from the soybean aphid to the crop

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