

Fanny Security Pack

By James McGuire 8-3-2011

Federal National Mortgage Association (FNMA), a/k/a Fannie Mae, note: that a Fannie Mae issued Mortgage Backed Security is nothing more than a beneficial ownership¹ in a singular pool mortgage or a group pool of mortgages. Here lies confusion.

- A. We first need to understand what a mortgage-backed security is.
- a. A mortgage-backed security is an intangible² that exists in book-entry accounting.
 - b. Investors who own a beneficial interest in the mortgage-backed security are entitled to collect tangible payments from the intangible mortgage-backed security.
 - c. Investors, to protect their mortgage-backed security investment, require the mortgage-backed security to be backed by a perfected security interest³, the pool. In mortgage-backed securities, the pool for the mortgage-backed security would normally consist of the Mortgage Notes secured by a perfected real estate lien⁴ (Mortgage, Deed of Trust, and Security Deeds).
 - d. If the payment stream on a pool security fails to tender payment, the pool would be entitled to collect the financial proceeds from the sale of the real estate contained within the pool, in lieu of collecting via the payment stream.

¹ <http://www.fanniemae.com/mbs/mbsbasics/index.jhtml>

² <http://dictionary.reference.com/browse/intangible>; 1. not tangible; incapable of being perceived by the sense of touch, as incorporeal or immaterial things; impalpable. 2. not definite or clear to the mind: intangible arguments. 3. (of an asset) existing only in connection with something else, as the goodwill of a business.

³ Secondary Market Security Interest attaches and are perfected and assigned under UCC Article 9 or the states equivalence.

⁴ Primary Market Security Instruments attaches and are perfected and assigned under the laws of local jurisdiction.

B. A fault within securitizing the mortgages into the pool using MERS has resulted in a fatal error that cannot legally be corrected in regards to the real estate lien.

- a. Originating lender, endorsing the note “In Blank,” as Indorser has complied with UCC Article §3-201 for bearer and non-bearer negotiation of the Mortgage Note.
- b. The courts will need to finish resolving whether or not MERS can be a nominee and beneficiary of the originating lender.
- c. For MERS to continue to operate in an agency relationship for subsequent purchasers of the Mortgage Note, the subsequent purchasers of the Mortgage Note are required to be identified--in cases of “Bearer Paper,” that becomes impossible. Therefore, all intervening negotiations of the Mortgage Note must identify all subsequent and intervening Indorsers and Indorsees.
- d. Negotiation by endorsement is required to identify subsequent Indorsers and Indorsees on the Mortgage Note before MERS can attempt to claim an agency relationship.
- e. An assignment of the real estate lien in most states requires timely assignment of lien rights to be filed of record; failure to timely record is without effect.
- f. An assignment of lien filed of record contains nomenclature on the face where the preparer is to accurately date the date of filing; attempts to claim a past date (a date prior to the date of filing) as valid in most states are not relevant. The date of filing the assignment of lien in public records is the lawful effective date. Gotta give them an antibody for this attempted Robo-signed back-dating deception.

C. Therefore:

- a. For all Mortgage Notes only endorsed “In Blank” up to Fannie Mae or for any other securitization where such note remains “In Blank,” rights to enforce the terms within the Mortgage Note have not been conveyed.
- b. For all Mortgage Notes only endorsed “In Blank” up to Fannie Mae or for any other securitization where such note remains “In Blank,” MERS has failed to maintain an agency relationship and is therefore without legal standing.
- c. For all Mortgage Notes endorsed “In Blank” up to Fannie Mae, or for any other securitization where such note remains “In Blank,” and where MERS is named as nominee for lender and lender’s successors and assigns on the lien filed in public records, by operation of law the lien has expired as MERS cannot be an agent of an unknown.
- d. This paper does not address the conversion of paper tangibles into an Intangible Electronic Digitized Data File.
- e. The Mortgage Note could be proved up by applying the missing Indorsers’ and Indorsees’ signatures, but loss of lien perfection can never be restored.
- f. One could sue on the Mortgage Note, but one could not foreclose with an expired lien.
- g. One must also be concerned with Res Judicata; first attempt to unlawfully foreclose may bar future collection suits on the Mortgage Note, two bites at the apple.