

Can an Allonge be a Forgery?

Depends

First we visit Uniform Commercial Article §3-202, actually for this exercise the writer will be using California Commerce Code §3202 & §3202: other states are similar in verbiage.

(a) Negotiation is effective even if obtained (1) from an infant, a corporation exceeding its powers, or a person without capacity, (2) by fraud, duress, or mistake, or (3) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Yes sir indeed diaper Dan, we can determine holder in due course of a negotiated note.

What a minute there Diaper Dan, what about California Commerce Code §3203:

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the Indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this division and has only the rights of a partial assignee.

From subsection A to C it is clear that an Allonge would be applicable for obtaining Holder in Due Course where an indorsement is missing upon the face of the instrument except when subsection B applies to fraud or illegality affecting the instrument..

To substantiate subsection (d) one needs to turn attention to the Security Instrument that was to secure the instrument. In this example we shall use verbiage from a standard Fannie Mae Security Instrument¹:

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. *The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower.*

“or a partial interest in the Note (together with this Security Instrument)” is substantial in the fact it supports along with the notes standard being” indorsed in blank” the need to create an allonge. In reviewing the securitization process it is evident that we have A as the originating lender

¹ <https://www.fanniemae.com/singlefamily/security-instruments>

and B, C, D as intervening parties to investor purchase of the intangible certificates. Not that the tangible note arrived via negotiation to the investors collateral pool, in fact the tangible note by legal definition never lawfully left A. Whereas D acts as servicer to conceal the failure of fiduciary duty and applying subsection (b) *“Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.”* an allonge could not be created to give the illusion the tangible note was negotiated and further applying subsection (d) of California Commerce Code §3203 the investors purchase of an intangible interest in the tangible note reducing the value of the tangible note would not allow the note to be negotiated and therefore no subsequent holder of the tangible note could be a Holder in Due Course. Whereas the Security Instrument hints as the Security Instrument is to follow the intangible obligation, one would need to inquire of such instrument eligible for recordation to secure a tangible note as the Security Instrument does not comport to law.

Who is the Holder in Due Course of a Secured Instrument?

Don't crap in your pants over this one, NOBODY...

Who is the Holder in Due Course of an Unsecured Instrument?

“ A “