The Barnyard Shuffle

Or

How the Banks Commit Fraud

By James McGuire

September 2010

Nobel-laureate economist Joseph Stiglitz was quoted as saying: "The big question is, who's going to swallow the losses". "It should be the banks, but they don't want to. We're likely to be in paralysis for years if they prevail."[1]

The Mortgage Backed Securities Market is not unlike that of a steam system. Its fluid mechanics in paper format, or is it?

The steam system and all of it components must be designed to follow the laws of physics, the Mortgage Backed Security and all of its underlying collateral is required to follow the laws of the land.

The primary external component required to allow a steam system to operate is fresh water. The primary external component required in the Mortgage Backed Securities is a valid tangible negotiable instrument.

How many thought it would be the boiler?

Ever met or know of a judge who could design a steam system? This author knows of none.

The author will not be writing this document to meet the standards of engineers or in legalese.

For those that are learned, except this author's apology.

(Obligor closes on the real property)

General Warranty Deed transfers title of the real property from the seller to the obligor.

- Title to real property is required if obligor is to offer the property as collateral to the negotiable instrument.
- The Warranty Deed contains the information that transfers the Title of the property from the seller to the buyer (Homeowner). Title to the property is required to offer the property as security in the security instrument as collateral for the paper promissory note. The Warranty Deed is required to be filed in Public Records. The Warranty Deed is not governed under the Uniform Commercial Code or states' equivalence and would be allowable under "eSign" to be filed in electronic form.

Obligor signs negotiable instrument, if indebtedness is to be a "secured debt", signs the security instrument, upon signing, the security instrument attaches to the negotiable instrument and is

[1] New York Times, Policy Options Dwindle as Economic Fears Grow an August 28,2010 (http://www.nytimes.com/2010/08/29/weekinreview/29goodman.html?hp)

temporarily perfected. Permanent perfection is achieved by filing the security instrument in public records. Filing in public records serves a twofold purpose, perfection and this perfection filing also establishes priority in regards to another security instrument being filed upon the same real property.

- The Paper Promissory Note: "a writing" in tangible form identifying an indebtedness governed by the Uniform Commercial Code or the states equivalence identifying the obligor and obligee. If the Paper Promissory Note is to be a "Secured" indebtedness, the Security Instrument is also identified within the Paper Promissory Note. The Paper Promissory Note is governed by the Uniform Commercial Code Article 3 or the states' equivalence, and "eSign"--15 USC 7003—which clearly excludes items governed by the Uniform Commercial Code Article 3 or the states equivalence and as such the indebtedness can be only in paper tangible form.

- The MERS registration system provides, by contract, a method for their members to determine who has a priority, but this system does not perfect the transfer of lien rights as required by law.
- The DTC Registry tracks the Investor's beneficial ownership interests in secondary market Certificates. (Legally Supported).

Obligor signs the security instrument, security for the negotiable instrument.

Upon signing, the negotiable instrument, warranty deed and the security instrument, the security instrument is temporally perfected and attaches to the note, the negotiable instrument is now a secured indebtedness.

As long as there is a valid Security Instrument and the negotiable instrument is not in default, title to the real property remains in the obligor's name. If the negotiable instrument has been declared to be in default, then under the security instrument, title to the real property transfers to the trustee until default is cured or the trustee sells property. There are only (3) parties that are required to be named under the security instruments, obligor, trustee, lender (holder in due course with rights to enforce the security instrument)

Texas Local Government Code 192.001 requires security instrument to be recorded in public records. (This filing is usually found in public records)

This recordation converts the temporary perfection of the security instrument in to a permanent perfection.

If Security Instrument is not filed in public records then the security instrument becomes a nullity. (Security instrument looses perfection after its temporary perfection period unless such Security Instrument is filed in public records)

Once the Security Instrument becomes a nullity, title to the real property will remain in the name of the obligor regardless of whether the negotiable instrument is in default or not.

(Post closing, MERS, the "Authoritative Registry")

Step X – Scanning, Storage, Destruction and Filing

- The Paper Promissory Note and the Security Instrument are scanned into an electronic digitized graphic package and at the same time the data from both sets of documents is scraped of data and this data is placed into an electronic data file and combined with the electronic version of the promissory note and security instrument along with all other closing documents which then is identified as the "Mortgage Loan Package".

The Paper Sale *(In this New World of Electronic Securitization, does not occur)*

- The "Loan Originator," (Assignor), offers the paper loan package under cover of a Bailee's Letter to a perspective buyer. The recipient, (Assignee), of the Bailee's Letter then must either accept the offering and tender funds and takes possession of the loan package, or refuse the offering in which case the Assignor retains ownership of the loan package.

- Assignee, upon acceptance of the paper loan package, would file a "Notice of Assignment" in Public Records to show the negotiation of the Paper Promissory Note, thereby transferring perfected lien rights from the Assignor to the Assignee, and, as such, a continuous perfection of lien rights is maintained. Failure to file this financing statement (Notice of Assignment) would allow the perfection of the lien to expire and thus render the Security Instrument to a "Nullity." The "Notice of Assignment" can be filed in Public Records by paper means or in electronic form.

The Electronic Sale/Assignment *(Investment Vehicle as Example, Fannie/Freddie Similar)*

- The "Loan Originator," (Assignor), offers the electronic loan package to a perspective buyer or a prearranged line of credit lender. The Recipient, (Assignee, Seller/Securitizer of the Investment Vehicle), of the electronic loan package then must either accept the offering and tender funds and takes control of the electronic loan package, or refuse the offering in which case the Assignor retains control of the electronic loan package.

    - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*

- "Notice of Assignment" reflecting this "electronic negotiation" is not filed in Public Records as such a filing would be unlawful as there is no law that supports an electronic negotiation of an electronic promissory note (eNote).

Loan originator scans the paper tangible negotiable instrument and paper tangible security instrument into an electronic digitized file. The data from the negotiable instrument and security instrument is scrapped into a digitized file and attached to the digitized file that represents the paper tangible negotiable instrument and the paper tangible security instrument.

After scanning, the paper tangible negotiable instrument and the paper tangible security instrument is vaulted or destroyed? We shall defer to the "Florida Mortgage Bankers Association" for the answer to the vaulted or destroyed question.

Comments of Florida Bankers Association to the Florida Supreme court, Case No.; 09-1460, stated in their pleading; *"In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database."*

(This electronic digitized package, in the electronic world, is the mortgage loan package; the author will refer to this as the electronic loan package)

Loan originator registers the electronic loan package in the MERS registry.

The MERS registry provides, the loan originator has control and ownership of the electronic loan package, the "authoritative copy". This electronic loan package, authoritative copy can also be called the "eNote". There is another factor that comes to bear, not only is scanning of paper into electronic not allowed, the creation of a computer generated "eNote" is also not lawful. These eNotes, whether scanned or generated electronically are nothing more than a "transferable record". A "transferable record" does fall under, ESIGN, UETA and the Uniform Commercial Code. Herein begins the problem, A "transferable record" does not meet the definition of a "negotiable instrument". A "transferable record is not in paper tangible form, (in writing).

Joseph Sommer of the New York Federal Reserve Bank explains; "*Hence the logical impossibility of an electronic promissory note."Promissory note" means unique piece of matter. "Electronic" means that there is no unique piece of matter, and we're dealing with authoritative registries.""* ucclaw-l@lists.washlaw.edu, Volume 87, Issue 10.

(Wall Street, MBS)

The Prospectus, Pooling and Servicing Agreement, provide the terms and conditions for the creation of the investment trust. The Pooling and Servicing Agreement also defines the procedures required for offering the certificates to investors for purchase. The trust documents provide the roles of the Seller/Securitizer, Depositor and Trustee. The Seller/Securitizer will be the responsible party for assembling the mortgage loans into a pool. Once the loan pool (mortgage loans) have been defined and assembled, the Pooling and Servicing Agreement then requires the loan pool to be assigned, transferred, and sold to the Depositor of the trust under the terms of the Pooling and Servicing Agreement. The Depositor of the trust was also created by the terms contained within the Pooling and Servicing Agreement. The Depositor, under the terms of the Pooling and Servicing Agreement issues the trust certificates. Now, the first barn yard shuffle begins, the trust's loan pool is swapped (as collateral) for the trust's certificates. (The Swap of the tangible paper documents for the intangible certificates, also swapped is the

laws that govern the tangible, loan pool, for the laws that govern the intangible, trust certificates.) Investors have purchased the intangible securities certificates and the investor's ownership is not by physical possession of a tangible paper certificate, ownership is reflected in a book-entry system by notice, the investors has "control" of the "authoritative copy" (intangible book-entry data).

This book-entry method of recording ownership of the trust certificates is in compliance with ESIGN, UETA. Here the investors do not know that while the trust certificates are in compliance with applicable laws, the underlying collateral that the investors own is not in compliance with applicable laws.

The cow patty shuffle, it becomes apparent, legal counsel for the Trustee squawks like a duck, the intangible laws governing the trust certificates are the same laws that govern the underlying collateral (loan pool, the paper tangible note and security instrument). Quack, Quack, wrong: The underlying collateral (paper tangible/promissory note) is still required to be in compliance with all applicable laws. A book-entry method of recording ownership of the tangible without physical transfer of the tangible would "not" be in compliance with the Uniform Commercial Code and never could be under ESIGN and UETA as both exclude items governed by Articles 3 & 9 of the Uniform Commercial Code, codified at 15 USC 7003. Quack, Quack again, the Trustee for the benefit of the Certificateholders has not achieved "holder in due course".

- The author's favorite; *"Buyer in ordinary course of business" means a person that buys goods in good faith,..".* The banks are not the purchaser; the newly created Investment Trust Vehicle (Seller/Securitizer) was the purchaser. The banks only operate as underwriters, trustees and servicers of these newly created Investment Trust Vehicles.

Back to the Depositor, to continue the process of securitizing the trust, the Depositor is also required to assign, transfer, and sell the loan pool to the Trustee of the trust for benefit of the Certificateholders. Quack, Quack again, the Depositor for the trust never achieved "holder in due course" and as such did not have the authority to assign/sell/transfer that of which in did not possess.
The cowa bongo, looking at a single trust it is noted that a different bank acts as the Underwriter and Trustee, nothing of major concern, or is it? In reviewing many trusts you begin to recognize that where a bank is Trustee in one trust it is the Underwriter in another trust and vice verse.

Once the Trustee has taken so called ownership of the loan pool, the Seller/Securitizer and the Depositor no longer need to exist and in most cases after the formation of the trust theses two parties cease to exist. The Trustee's right of ownership of the loan pool is recorded in the MERS registry as having the right of "control" over the "authoritative copy ("transferable record").

The underlying mortgages (paper tangible) should be present in the offering, instead the electronic intangible "authoritative copy" of a "transferable record" with rights of ownership to

control the “transferable record” is what is actually included in the offering. If by chance, the original paper tangibles were not destroyed, the MERS registry would reflect the custodian in possession and the Certificateholders are to have the ownership rights of the paper tangible under care of a “so called custodian”.

If the “authoritative copy” was anything other than a “negotiable instrument” or a “security instrument” governed under UCC Articles 3 & 9, there would have been compliance with ESIGN and UETA as [15 U.S.C. 7003], Specific Exceptions, (a) Excepted Requirements. — The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by — Article 3 of the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

There has not been a negotiation of the paper tangible from the loan originator to the Seller Securitizer to transfer rights as a “holder in due course”. Only, a registry update to reflect control of the “authoritative copy” has been transferred from the loan originator to the Seller Securitizer.

Under Texas law, negotiations of the paper tangible note are required to be filed in public record which is required under 192.007 Texas Local Government Code. The “Notice of Assignments” is notice that enforcement of lien rights has been transferred from the Assignor to the Assignee. Failure to transfer lien rights will not allow a subsequent purchaser of the paper tangible to enforce terms contained within the security instrument due to loss of perfection. If the Assignee achieves “holder in due course” in the purchase of the paper tangible and the security instrument still maintains lien perfection, and there is a default in the paper tangible then the “power of sale” clause is an available remedy to default. Cluck, cluck, the paper tangible was not negotiated, “control” over a “transferable record” is the action that occurred which reflects the intangible, “transferable record” was assigned and transferred and recorded in the MERS registry. Under the Uniform Commercial Code this is not a negotiation and therefore “holder in due course” has not been transferred. The note was rendered unsecured when the “Notices of Assignments” were not filed in public records. As such, title to the property remains in the name of the obligor noted on the paper tangible security instrument; the promissory note if properly proved up can be brought to trial in a court of equity demanding payment, but the “power of sale” clause containing the foreclosure sale by a trustee is beyond reach of enforcing. One procedure followed to provide illusion of legality is filing in public records a “Notice of Assignment” from the 2nd party (Loan Originator) to a 5th party (Trustee for the trust), this is a fictitious fraudulent creation filed in public records, and is fraudulent filing upon public records. In Texas, this act of filing a fraudulent assignment is a criminal offense. (Just one of many frauds) The servicer for alleged note holder or Trustee of the Trust sometimes files in public records “Notice to Substitute Trustee” that is name within the paper tangible security instrument. As the paper tangible note has not been properly negotiated to transfer rights, this is also a fraudulent filing upon public records. In a third fraudulent act, law firms lacking the authority, files in public records a “Notice of Trustee Sale”.

Once the lien becomes unenforceable, the taking of the real estate is theft, no matter how you slice and dice it.

- If the Security Instrument is to be governed by the Uniform Commercial Code Article 9 or the states equivalence, and as "eSign" (15 USC 7003), clearly excludes items governed by the Uniform Commercial Code Article 9 or the states equivalence, then such Security Instrument can only be in paper tangible form.

The donkey dun go, if rights of enforcement in the paper tangible negotiable instrument by chance are challenged in court it would be impossible for the note to be proved up with endorsements from the Seller/Securitizer or the Depositor years after their dissolution if such endorsements were not made at the time of securitization. When the paper tangible exists within the custody of the original custodian or closet, the party presenting the paper tangible in a court hearing usually provides the paper tangible showing endorsement in blank from the loan originator.

Uniform Commercial Code - PART 3. ENFORCEMENT OF INSTRUMENTS

§ 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

- "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

- As the newly created Investment Trust Vehicle has only ownership right to the "authoritative copy" and beneficial ownership right to the original non-negotiated "Wet Ink" negotiable instrument they have not met the definition of "Holder".

§ 3-302. HOLDER IN DUE COURSE.

- (a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:

  (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

- What the courts do not see, and what the obligors attorneys do not plead; the electronic negotiable instrument does not bear apparent evidence of forgery or alteration, an electronic negotiable instrument cannot legally lawfully exist under current laws.

- (2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured

default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).

- In "good faith"; there is absolutely no "good faith" when there is an intentional act of failure to comply with written laws. Here one must consider the combined parties in creating the investment trust vehicle. At this point, another set of players come into play, Fannie Mae and Freddie Mac; both require assigning/transferring of the electronic intangible with notice as to who is the custodian of the paper tangible.

- (b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
- (c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization….

As the loan originator assigned and transferred rights to an electronic intangible and not that of the paper tangible, "holder in due course" of the paper tangible was never negotiated to the Seller/Securitizer or any subsequent purchaser, (Depositor, Trustee or Trust). We have to wonder, where are the Bailee letters? Oopsie Doodle, wonder if the MERS registry audit tracking would provide that answer?

Transferable Record - Authoritative Copy

15 USC 7021 Definitions

(d) Status as Holder.--Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3-302(a), 9-308, or revised section 9-330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively.

Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

- *Would work for negotiable instruments; if and only if the law recognized a "transferable record" as being a negotiable instrument, it does not.*

The Second Electronic Sale/Assignment

- The "Seller/Securitizer of the Investment Vehicle," (Assignor), sells/assigns the electronic loan package to the buyer, (Depositor of the Investment Vehicle). The recipient, (Assignee, Depositor of the Investment Vehicle), of the electronic loan package under the terms of the trust accepts the transfer and takes control of the electronic loan package.

  - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*

- "Notice of Assignment" reflecting an "electronic negotiation" is not filed in Public Records as such a filing reflecting this unlawfully supported procedure would be a fraudulent filing.

  - *(It is not uncommon to find in Public Records a "Notice of Assignment" filed reflecting a transfer of lien rights from the Original Assignor to a 3rd subsequent Assignee(Trustee or Mortgage Servicer). In this scenario the perfection of lien rights "Perfected Chain of Title" does not match the match the "Chain of Negotiation" of the Paper Promissory Note, and, as such, proves the Paper Promissory Note and the Security Instrument are now bifurcated, which renders the Security Instrument a "Nullity." These filings in public records are fraud upon public records.)*

The Third Electronic Sale/Assignment

- The "Depositor of the Investment Vehicle," (Assignor), sells/assigns the electronic loan package to the (Trustee of the Investment Vehicle). The recipient, (Assignee, Depositor of the Investment Vehicle), then takes control of the electronic loan package. The "Depositor of the Investment Vehicle," in compliance with the Investment Trust's documents, takes control of the Investment Trust's Electronic Certificates in exchange for selling/assigning the electronic loan package to the Trustee of the Investment Vehicle for the benefit of the Certificateholders (The Swap).

  - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*

- "Notice of Assignment" reflecting an "electronic negotiation" is not filed in Public Records as such a filing reflecting this unlawfully supported procedure would be a fraudulent filing.

The Fourth Electronic Sale/Assignment

- The "Trustee of the Investment Vehicle," (Assignor), sells/assigns the electronic loan package to the (Custodian of the Investment Vehicle for the benefit of the Certificateholders). The Recipient, (Assignee, Custodian of the Investment Vehicle for the benefit of the Certificateholders), takes control of the electronic loan package.

- The "Depositor of the Investment Vehicle," in compliance with the Investment Trust documents, takes control of the Investment Trust's Certificates, in exchange for selling/assigning the electronic loan package to the Trustee of the Investment Vehicle for the benefit of the Certificateholders who then are in control of the electronic mortgage package.

- *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*

- "Notice of Assignment" reflecting an "electronic negotiation" is not filed in Public Records as such a filing reflecting this unlawfully supported procedure would be a fraudulent filing.

Non "Holder in Due Course" Alleges Default
(Trustee/Mortgage Servicer)

- Numerous actions of fraud are readily identifiable.

- As noted, four (4) electronic negotiations of the electronic loan package to securitization, there is a lack of supporting law to allow these electronic negotiations.

- There has been introduction of fraud into the Securities Market

- Fraudulent creation of assignments in attempt to transfer lien rights from Originator to 3rd or 4th subsequent purchaser bypassing 1st and 2nd purchasers resulting in fraudulent filing in public records.

- What is needed to be understood; the original "Wet Ink" negotiable instrument is not the instrument that was negotiated/assigned/transferred to the newly created Investment Vehicle. The creator's of the Investment Trust Vehicle assigned/transferred an electronic negotiable instrument, which lacks supporting laws to exist. This electronic negotiable instrument was created by scanning the original "Wet Ink" negotiable instrument whereby creating an electronic digitized copy as to be called the "authoritative copy" of the "transferable record". It is this "authoritative copy" that was electronically assigned/transferred in book entry form. In actuality, the registry that identifies the "authoritative copy" was updated to reflect who had beneficial ownership rights of the "authoritative copy". Since there was no negotiation of the original "Wet Ink" negotiable instrument to the newly created Investment Trust Vehicle, the Investment Trust Vehicle never became the holder or holder in due course of the original "Wet Ink" negotiable instrument.

- Of particular note: if the original "Wet Ink" negotiable instrument by chance was not destroyed then high probability exists that the original lender vaulted the documents and the same registry, (MERS), that identified the ownership of the "authoritative copy" will also identify the custodian holding the original "Wet Ink" and the identity of the entity that has beneficial ownership rights of the documents being held by this custodian.

- The Summary Judgment should only be granted when there are no material issues in dispute. Your Honor, Your Honor, got your ears on, the homeowner has disputed the debt. One needs not to look to Black's Law to understand the meaning of dispute. Dispute is defined as; "to question the truth, validity"[2].

[2] http://www.thefreedictionary.com/dispute

- Not only is the homeowner disputing the debt, they are disputing the banks right to foreclose. Two disputes. The debt is the note; the right to foreclose is the security instrument.

MERS eRegistry Fee Schedule[3], October 2009
eNote Converted to Paper – $10

In reviewing the MERS "Addendum to MERS Membership Agreement".

Item 1 states in part: *"The MERS® eRegistry is a registry system evidencing the transfer of interests in eNotes (transferable records) that are intended to satisfy the safe harbor provisions of Section 16 (c) of the Uniform Electronic Transaction Act ("UETA") and Section 201 (c) of the Electronic Signatures in Global and National Commerce Act ("ESIGN")."*

Very true statement, safe harbor for those items that UETA and ESIGN have governance over.

The Covington & Burling letter attached to the MERS Membership Kit states on page 3: *"Both E-SIGN and UETA contain rules regarding so-called "transferable records." UETA defines a "transferable record" as an electronic record that would be deemed to be a note or document for purposes of the Uniform Commercial Code ("U.C.C.") if it were a physical "writing," provided that the issuer of the note or document has expressly agreed that it is a transferable record. E-SIGN defines "transferable record" similarly, although it limits its application to loans secured by real property. In light of these definitions, an electronic mortgage note may qualify as a "transferable record" under either statute and therefore is valid consistently nationwide.*

Again, an accurate statement except a homeowner's note that is to be used in the secondary market must also meet the requirements of being negotiable.

Notes may be either negotiable or non-negotiable.

While both E-SIGN and UETA pertain to records that would be governed by the U.C.C. if they were paper instruments, the statutes also expressly state that they do not apply to records that are, in fact, governed by the U.C.C.7 In addition, the requirement that the issuer of the electronic record expressly agree that the record is a "transferable record" operates "to assure that transferable records can only be created at the time of issuance by the obligor." Thus, a paper note cannot later be converted to a "transferable record" for purposes of the statutes.

7 Specifically, the statutes state that they do not apply to a transaction or record to the extent it is governed by "The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2, and Article 2A." UETA § 3(b)(2); accord 15 U.S.C. §7003(a)(3)."

Damn well said, *they do not apply to records that are, in fact, governed by the U.C.C.*

Ride'm cowboys, Covington & Burling were acting as counsel to MERS.

Definitions

[3] http://www.mersinc.us/membership/WinZip/MERSeRegistryMembershipKit.pdf, copy attached.

E-SIGN Act:	*(Electronic Signatures In Global and National Commerce Act[4]) (15 USC ch. 96[5])*
UETA:	*(Uniform Electronic Transactions Act[6])*
Mortgage: property[7])	*(Mortgage Loan; a loan secured by a mortgage on real property[7])* *(Tangible Paper Promissory Note, Tangible Security Instrument) (A mortgage is a* security interest *in* real property *held by a* lender *as a security for a debt, usually a loan of money. While a mortgage in itself is not a debt, it is the lender's security for a debt. It is a transfer of an interest in land (or the equivalent) from the owner to the mortgage lender, on the condition that this interest will be returned to the owner when the terms of the mortgage have been satisfied or performed. In other words, the mortgage is a* security *for the loan that the lender makes to the* borrower*.)*
Assignee:	*The One that sells the Mortgage Loan Package.*
Assignor:	*The one that buys the Mortgage Loan Package.*
Tangible:	*(substantially real[8])*
Intangible:	*(not tangible; incapable of being perceived by the sense of touch[9])*
Promissory Note:	*(Payable Note[10])*
Negotiable Instrument:	*(Specialized type of "*contract*" for the payment of money that is unconditional and capable of transfer by negotiation.[11])*
Security Instrument:	*(Mortgages, Deeds of Trust or Security Deed[12])*
Secured Indebtedness:	*(Debt backed or secured by collateral to reduce the risk associated with* lending*. An example would be a mortgage, your house is considered collateral towards the debt. If you default on repayment, the bank seizes your house, sells it and uses the proceeds to pay back the debt.[13])*

[4] http://en.wikipedia.org/wiki/Electronic_Signatures_in_Global_and_National_Commerce_Act
[5] http://www.law.cornell.edu/uscode/15/usc_sup_01_15_10_96.html
[6] http://en.wikipedia.org/wiki/Uniform_Electronic_Transactions_Act
[7] http://en.wikipedia.org/wiki/Mortgage
[8] http://east.merriam-webster.com/dictionary/tangible
[9] http://dictionary.reference.com/browse/intangible
[10] http://en.wikipedia.org/wiki/Promissory_note
[11] http://en.wikipedia.org/wiki/Negotiable_instrument
[12] https://www.efanniemae.com/sf/formsdocs/documents/secinstruments/
[13] http://www.investopedia.com/terms/s/secureddebt.asp

Unsecured Indebtedness: *(A loan not secured by an underlying asset or collateral.[14])*

Perfected Lien: *(Perfection of a lien on real estate is accomplished by recording the mortgage deed of trust in public land records of a municipality, such as a town clerk's office.[15])*

Perfection: *(In American law, perfection is generally taken to refer to any steps required to ensure that the security interest remains enforceable on the debtor[16]... The holder may "perfect" the security interest to put third parties on notice thereof. Perfection is typically achieved by filing a financing statement with government, often the secretary of state located at a jurisdiction where a corporate debtor is incorporated. Perfection can also be obtained by possession of the collateral, if the collateral is tangible property.*

Absent perfection, the holder of the security interest may have difficulty enforcing his rights in the collateral with regard to third parties, including a trustee in bankruptcy and other creditors who claim a security interest in the same collateral.)

Negotiation: *(Transfer of possession.[17])*

Assignment: *(transfer of rights held by one party—the assignor—to another party—the assignee[18])*

Conveyance: (transfer of legal title of property from one person to another, or the granting of an encumbrance such as a mortgage or a lien.[19])

Author's Definitions:

Real property is the land, buildings and any rights that goes with the land.
Personal property is anything other than real property.

1. House and Land – Real Property
2. Paper Promissory Note – Personal Property – Tangible
3. Paper Security Instrument – Personal Property – Tangible
4. Electronic Promissory Note – Lacks supporting law.
5. Electronic Security Instrument – Lacks Supporting law.
6. Secondary Market Electronic Certificates – Personal Property - Intangible
7. Paper Promissory Note/Security Instrument as collateral – Personal Property - Tangible

[14] http://www.investopedia.com/terms/u/unsecureddebt.asp
[15] http://www.allbusiness.com/glossaries/perfected-lien/4946417-1.html
[16] http://en.wikipedia.org/wiki/Security_interest
[17] http://www.law.cornell.edu/ucc/3/3-201.html
[18] http://en.wikipedia.org/wiki/Assignment_%28law%29
[19] http://en.wikipedia.org/wiki/Conveyancing

(As collateral in MBS, Reflects interests in real property) Tangible as collateral for Intangible

8. Electronic Promissory Note/Security Instrument as collateral – Lacks supporting laws.

The Condensed Potomac Two Step

In 1929 the "Great Depression" hit and 4 years later in 1933 the "Glass-Steagall Act" was enacted by Congress. The Glass-Steagall Act requires that holding banks and investment banks be entirely different entities.

Fast forward to approximately 1996 and Weiss of Citicorp and others for a decade had wanted the "Glass-Steagall Act" repealed. Along comes the "Gramm-Leach-Bliley Act", in part authored by Phil Graham, that was enacted by Congress in 1998, which eliminated the separate bank requirement. Electronic capabilities had increased by this point and book-entry was in the process of going to an electronic database system. During this same period of time the banking industry in whole with the help of Mortgage Bankers Association, which was also a creation of the banks, created an electronic database processing entity named "Mortgage Electronic Registration System", "MERS" for short.

It has been discovered that in 1998 in Decatur County, Georgia MERS had been registering titles with the land records office which would evidence that MERS was functioning in some manner.

In 1999 the House of Representatives held hearings that addressed the forthcoming "E-Sign Act". In one hearing it was noted that only two (2) exclusions existed. These two (2) exclusions did not mention the Uniform Commerce Code (UCC). At present it is unknown how many hearings were held before President Clinton signed the E-Sign Act into law in 2000. The 2000 enacted version of the E-Sign Act had a third (3rd) exclusion added, Sections 1-107 and 1-206, Article 2, and Article 2A of the Uniform Commercial Code were the only sections that the E-Sign Act would not exclude. This exclusion stated that the E-Sign Act had no authority to override the Uniform Commercial Code except for the four (4) exceptions. It would be interesting to learn who authored the change and for what reason. None of these four (4) exceptions were Articles that govern "Negotiability" of "Negotiable Instruments".

Mortgage Bankers Association, MERS, and others began an advertising campaign to state that the E-Sign Act had now given Electronic Signatures the equal legal force of Blue Inked Paper Signatures.

The writer of this document does not argue the fact that an "Electronic Signature" has the same legal force of a ""Blue Inked Paper Signature" so long as it is created electronic and complies with all laws and is never required to be negotiable. Negotiability is required to further assign the "negotiable Instrument" for use in the secondary market place. Without this negotiability the loan originator has no legal framework to execute any transfer to any buyer, whether that buyer is a bank, Fannie Mae, Freddie Mac, etc.

There are several federal agencies that have stated the creation requirement by electronic is required. Several federal agencies also state that a "Blue Inked Paper Signature" cannot be converted to an "Electronic Signature"/"Electronic Transferable Record" after the fact.

In 2001 the "National Telecommunications Information Agency", part of the Department of Commerce, complied with the enacted E-Sign law and requested comments regarding the exclusions within the E-Sign Act. Several of the Federal Reserve banks, the National Consumer Law Center and others stated that the exclusion needed to remain. It was also mentioned that removal of the exclusion could possibly result in legal issues for items governed by the UCC.

Research has determined that beginning in 2002 the states' equivalence of the federal Uniform Commercial Code were being modified to allow for a "Lost Note Affidavit", and that this along with a copy of the "Negotiable Instrument" would suffice to provide legal standing in a court of law at the state level. At this point the "Originator" of the "Negotiable Instrument" in many instances has already scanned the "Negotiable Instrument"

into a graphic image and stored this scanned image alongside the data that was scrapped from the "Promissory Note/Negotiable Instrument". In this writing the term "Negotiable Instrument" is a representation of the "Original Blue Inked Signed Promissory Note" that for all intent was created to be used in the secondary market as a "Negotiable Instrument".

The procedure of imaging an "Original Promissory Note" into an electronic format has no legal basis for providing "Negotiability" for buying, selling or transferring to another party much less to the secondary market and "Wall Street" as defined by the "Uniform Commercial Code".

Research has shown that a high probability exists that at the time of scanning the "Original Blue Inked Signed Promissory Note" the originals are destroyed. This scanned created electronic version is being referred to as an "E-Note" has no lawful basis to exist. Forty (40) to fifty (50) million of these "E-Notes" have been registered on the "MERS" system and all claims are made they are lawful "Negotiable Instruments" when in fact they are fraudulent/fictitious documents that are deliberately being misrepresented.

In reviewing thousands of "Notice of Trustee Sales" and other documents filed in MERS' name at local county recordation offices and with the courts, "MERS" is indicated is an "Assignee", (step into my shoes) for a "Security" that was offered for sale on the secondary market. These notices give creed that an "E-Note" was bought and sold and used as collateral on "Wall Street". What is amazing is that in the Prospectuses themselves there is mention that the "Security/Collateral/Negotiable Instrument" can be represented by using a "Lost Note Affidavit/LNA" with a copy of the "Negotiable Instrument" as a source of validity that a true "Negotiable Instrument" had been offered up in the collateral pool and then lost. There is no lawful basis for the "Lost Note Affidavit/LNA" to exist if all reference is made to a fraudulent & fictitious document.

If the first security is sliced and diced to make many securities how many such LNA's would be required to withdraw an item of collateral from a collateral pool? If at the conception/scan negotiability was destroyed how could an item be offered up as collateral that had a legal basis of authority? It is not legally possible under current law. How many fictitious documents have been created, that possibly would fall under Title 18, Fraudulent & Fictitious Documents for legal interpretation?

This short story is a condensed version; the writer has not included other "Acts" such as "Check 21" that helped in disguising the fraud.

Offered opinion is that the banks got too far into book-entry and discovered that the (3rd) exclusion existed or they did not like the exclusion and had no other option but to conceal the exclusion so the electronic book-entry system would work regardless of whether legal or not, which allowed the massive unlawful book entry transfers to feed the appetite of Wall Street. So we have a massive smoke screen offered to the courts by the banks' legal counsels to make sure the fault is never uncovered. This document will not go into the financial fraud committed against the land records offices and other frauds.

Simple facts are that "Promissory Notes/Negotiable Instruments" for homeowners are governed by the Uniform Commercial Code, Article 3, and the Esign Act and UETA exclude items governed by Uniform Commercial Code, Article 3.

The banks and MERS, Mortgage Electronic Registration System, operate under the false impression the Esign Act and UETA laws gives them lawful status to operate using "eNotes" based on homeowners "Promissory Notes/Negotiable Instrument" and have attempted an all out effort to cloud the issue before the courts and the banks are aiding by clouding the eyes of Congress.

It also has been uncovered that since the laws of the land will not support the non-legal book-entry system there has been an effort to modify state law, specifically in the area of "Lost Note Affidavits".

Since the law will not support the non-legal book-entry system it appears there has been a multistate endeavor to influence the courts, see exhibit "1" below as one example. "If the law does not support us then let's change the court rules so we don't have to prove anything."

In short, converting a "Paper Promissory Note/Negotiable Instrument" into electronic book-entry to create a so called "eNote" has no legal basis. Once this "eNote" has been created within the book-entry system the "eNote" is then offered up as collateral to the "Secondary Market" on Wall Street or into the Federal Reserve's BIC program (Borrower in Custody) at which time a crime has been committed as the book-entry notes are non-negotiable as defined by the Uniform Commercial Code and a fraud has been introduced into the securities market. Once negotiability has been destroyed it can never be regained and cannot be bought/sold/transferred/assigned into the secondary market place. Issuance of a "Lost Note Affidavit" ends the negotiability of a lawful item.

The writer's comments: a paper note cannot be sliced and diced but the electronic version can be sliced and diced or duplicated, triplicated or quadricated. That is why so many different secondary market securities state they hold the same note and no true owner can be identified. One paper note for one collateral use; simple, and at present that is all that is allowed by law.

There are many areas the Esign Act & UETA laws work well such as in transit of goods, bills of lading, warehouse receipts, etc. An alarming issue at hand is how after the "Paper Promissory Note/Negotiable Instrument" has been converted into an unlawful eNote, a legal proceeding ensues in which some cases the original blue inked original "Paper Promissory Note/Negotiable Instrument" miraculously reappears or a graphic representation is offered up as "The Original". There goes the concept of "One Note" and "One Note" only. In reality there is an unlawful electronic version of the "Paper Note" being utilized in the secondary market while the "Paper Note" is in storage somewhere…or was the original destroyed when the electronic version was created? Under current laws both notes are not lawful; they both exist in tandem and neither can be enforced but it happens every day in the courts of this land.

E-Notes are "Not Legal"

Mortgage Bankers Association released a Technology White Paper[20] in 2007 titled "Security Interests in Transferable Records". On page two under the copyright notice the Technology White Paper is intended to be informational only and does not constitute legal advice.

"Because the paper notes are usually negotiable instruments, warehouse lenders have protected themselves against unauthorized sales by taking possession of the original notes and delivering them to investors, pending payment, subject to special protections provided by existing secured transactions laws. These special protections will not apply to electronic promissory notes. If warehouse lenders are to be protected when taking electronic promissory notes as collateral, a new set of strategies must be developed and deployed to address their needs," page four (4).

The President did not write the laws, Congress did!!! Vote all of them out!!!

[20] http://www.mbaa.org/files/Technology/MBAResTechWhitePaper-SecurityInterestsinTransferableRecords.pdf