MERS to the nth

Carpenter v. Longan - 83 U.S. 271, if in Texas, West v. First Baptist Church of Taft, 71 S.W. 2d 1090, 1098 (Tex. 1934), the Mortgage follows the Note. Under following theses established legal opinions, a Homeowners Mortgage securing a Homeowners Note cannot follow a "interest in" (Intangible Payment Stream, henceforth IPS) Note by relying upon Uniform Commercial Code Article 9 into various trusts as many secondary market investments vehicles would like us to believe.

To allow the securitization fraud to work in the electronic world using a paper Homeowners Note, to securitize the IPS, the payment stream derived from a Homeowners Note, required the IPS to be bifurcated from the Homeowners Note. To provide further illusion of lawfulness, Uniform Commercial Code Article 9 was argued to state an electronic copy of Security Instrument claiming to secure the Homeowners Note would follow as security for the IPS. The security to the IPS is the promise of a payment stream derived from the Homeowners Note. Perfection and assigning perfection of the Security Instrument securing a Homeowners Note is under governance of local laws of jurisdiction as such affects an interest in Real Property which requires recordation in public records, whereas assigning security rights to the IPS where such is not involve real property would be under UCC Article 9.

Investment vehicles commonly note in their prospectus, private place memorandums, .i.e., the security for the IPS is a promise to the payment stream derived from a Homeowners Note. The IPS and the UCC Article 9 allow for the IPS to be further bifurcated into different

payment streams, i.e. “Interest Only” and “Principal Only”. Here at this point of bifurcating Interest and Principal into splits makes it possible to apply Credit Default Swap(s) to provide for hedging loss. Wherefore, the creation of the splits is not in conformance to law, applying Credit Default Swaps would not be allowable? This creates a misunderstanding of application of law as the investment vehicles commonly requires an underlying action, negotiating a Secured Homeowners Note with all necessary chain of Indorsements and a perfected chain of assigned rights to the Homeowners Security Instrument into the investment trust by a specific closing date. Investment vehicles commonly note that compliance with state laws is not applicable when the Homeowners Loan package has been register on the MERS system. What few realize, MERS only tracks the buying and selling of the IPS, at best, the MERS Registry might be able to identify a custodian that may hold the Homeowners Note indorsed “in blank” whereas physical delivery has not occurred to subsequent purchaser of the IPS.

This provides the illusion that the trust has a perfected interest in the Homeowners Security Instrument which was to have secured the Homeowners Note.

Securitization utilizing the MERS Registry and applying UCC Article 9 for assigning security interest of the IPS to apply to the Homeowner Security Instrument circumnavigated states recordation laws and willful failure to file of public record and as such public records contain no identity as to what Secured Party has rights to the Security Instrument beyond the originating party of record. Where some state

have a finite time frame for filing of assigning rights, filing of an assignment beyond such date is a legal impossibility and if not timely filed in some states the filing of an instrument beyond a required timeframe instrument could be construed as a criminal offense. Additionally, the filing of these untimely instrument could be prima facie proof that the terms and conditions of the investment trusts were not complied with, this writer shall leave it up to the investment trust attorneys to determine if securities laws have been violated.

Whereas when the Note travels a path lacking true sale "special indorsement" negotiation by indorsement "in blank" has a fatal flaw that violates UCC Article 3 which UCC Article 9 cannot overcome. The assigning of the rights to the Homeowners Security Instrument was not timely conveyed. Additionally, MERS may be an agent to a party of the IPS but MERS losses agency relationship to the unidentified "missing" intervening Indorsers and Indorsee of the Homeowners Note and the missing intervening assignments of the Homeowners Security Instrument.

The Homeowners Security Instrument for the fraud to work would require the Homeowners Security Instrument [not the IPS Security Interest securing] to not follow the Note but follow an Interest in the Homeowners Note, the bifurcation of the Intangible Payment Stream from the Note lacks supporting law for the Homeowners Security Instrument to be secured to the Intangible Payment Stream.

The banks allege the Homeowners Security Instrument follows the Intangible Payment Stream and as-such is that of a party entitled to enforce the Homeowners Note and the Homeowners Security

Instrument. In many cases the Homeowners Note resides (hopefully not destroyed for such destruction might be a discharge of the obligation) endorsed "in blank" with a holder and non owner, Original Payee. Under UCC Article 3, a subsequent Indorsee is entitled to obtain the indorsement from the Indorser to complete the negotiation for a special indorsement. Where there has been multiple conveyances of the Note indorsed "in blank", each Indorsee in turn would need to realize the indorsement from each predecessor Indorser to obtain a chain of indorsement to allow the final subsequent holder and owner of the Note to claim entitlement rights to a Secured Note along with proof of a chain of timely assignments of the Security Instrument. Chain of title does not work with a "bearer" instrument. A bearer instrument would give rights to enforce a Note but a bearer instrument does not convey the real property security underlying. Personal Property, another story.

The Uniform Commercial Code Article 9 and real property laws of local jurisdiction of many states have no legal method available for proving up a lost chain of entitled rights to the Security Instrument. Whereas there is no method to repair a broken timely filed chain of title to the Homeowners Security Instrument, the final Indorsee of a proved up Note has only rights to the Note and under bankruptcy law is considered an "Unsecured Creditor". As to the Security Instrument where it claims that the Security Instrument is to follow the IPS has the potential of being the bridge for fraud, one would need to follow the path of the Security Instrument to determine the level of fraud.

It's not a House of Cards; It's an Upside Down House of Cards.

Explains the reason for 15 USC § 7003

For many states, the Mortgage is nothing but a lien that provides security for the Note. Bankruptcy Rule 3001(d) requires that in filing the Proof of Claim as a Secured Creditor of a Note, proof of such Secured Status must also be entered into the court record. In many bankruptcy cases, the alleged creditor files the Original Security Instrument, similar to the one previously noted, and notice of this Security Instrument being assigned to the filer of the Proof of Claim. Could one consider the assignment of a Security Instrument that contains a fraudulent act to be an assignment of the fraudulent act?

TITLE 11 App. > FEDERAL > PART III > Rule 3001[1]
Rule 3001. Proof of Claim

> *(d) Evidence of Perfection of Security Interest. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.*

[1] http://www.law.cornell.edu/uscode/html/uscode11a/usc_sec_11a_00003001----000-.html