

Why MERS

Had To Be

To evolve from the paper world to the modern world of electronics it had to be.

The author will again have to touch upon the paper promissory note in dealing with the security instrument.

MERS by operations of law does not appear upon the face of the original paper promissory note nor does MERS have beneficial ownership interests in the original paper promissory note.

One must realize the paper promissory note is not the primary reason for MERS to exist. It is true that after the paper promissory note is converted into an unlawful electronic promissory note and registered on the MERS registry system, MERS tracks who has beneficial ownership of the unlawful electronic promissory note as this electronic promissory note is unlawfully negotiated up to the secondary market in electronic form. If the original paper promissory note was vaulted after electronic conversion the MERS registry should reflect the custodian that is in possession of the original paper promissory note as well. The investors that purchase the investment securities certificates are led to believe the collateral backing these investment vehicles are properly negotiated paper promissory notes.

MERS's greatest role is in that of the "Security Instrument". Why?

To properly negotiate a lawful "Secured" indebtedness up to Wall Street or Fannie Mae and Freddie Mac you need a paper promissory note, (Negotiable Instrument), along with a valid perfected paper security instrument.

Naming MERS as "Nominee" does not meet the definition of Lender.

Naming MERS as "Beneficiary" bifurcated the paper security instrument from the paper negotiable instrument at the moment of conception.

Herein is the timeframe issue that prohibited the banks from creating Investment Vehicles at a pace that would provide great amounts of profit at little or no risk.

The author is required to jump back and forth between documents and laws to provide understanding.

We shall begin with the Esign Act then turn attention to the investor's "PSA¹" which governs the investment vehicles.

The E-SIGN Act, 15 USC Chapter 96², is the heart of MERS' and the banks' claim that "Signatures" provide the legal authority that allow Electronic Negotiable Instruments and Electronic Security Instruments to be in electronic form. Take a closer look.

TITLE 15 CHAPTER 96 SUBCHAPTER I³:

§ 7003. Specific exceptions

(a) Excepted requirements

¹ Pooling and Servicing Agreement

² <http://www.law.cornell.edu/uscode/15/ch96schI.html>

³ http://www.law.cornell.edu/uscode/15/usc_sec_15_00007003----000-.html

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by— ...

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

The above noted exception clearly states E-SIGN does not govern electronic negotiable instruments or an electronic security instrument. Fact is the UCC⁴ governs paper negotiable instruments and paper security instruments and the UCC does not provide supporting law for the use of an electronic negotiable instrument or an electronic security instrument. Therefore any attempt by the banks to utilize the UCC as a legal authority before the courts in an attempt to show the UCC has legal governance over electronic negotiable instruments or electronic security instruments is misplaced.

A random Google search returned a URL link to a PSA⁵ that will be used as example. All the Pooling and Servicing Agreements reviewed by the author have the same or very similar wording.

The Warranty Deed transfers title of the property from the seller to the buyer and the author notes that this filing of Deed has most likely occurred in all cases. The transfer of title gives the borrower the authority to use the property as collateral in the paper security instrument securing payment to the paper promissory note which then creates a "Secured" indebtedness which is perfected by filing the lien, "Security Instrument" in public records. As this is done in paper the UCC provides the supporting laws and under UCC Article 9 the perfection of the lien is deferred to the laws of local jurisdiction.

Partial, PSA definitions:

"Assignment": An assignment of Mortgage, notice of transfer or equivalent instrument, in recordable form (excepting therefrom if applicable, the mortgage recordation information which has not been returned by the applicable recorder's office and/or the assignee's name), which is sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect of record the sale of the Mortgage.

"Custodian": A Custodian, which shall initially be Deutsche Bank National Trust Company.

"Depositor": Argent Securities Inc., a Delaware corporation, or its successor in interest.

"Lost Note Affidavit": With respect to any Mortgage Loan as to which the original Mortgage Note has been permanently lost, misplaced or destroyed and has not been replaced, an affidavit from the Seller certifying that the original Mortgage Note has been lost, misplaced or destroyed (together with a copy of the related Mortgage Note) and indemnifying the Trust Fund against any loss, cost or liability resulting from the failure to deliver the original Mortgage Note in the form of Exhibit B hereto.

"Master Servicer": Ameriquest Mortgage Company or any successor master servicer appointed as herein provided, in its capacity as Master Servicer hereunder.

"Mortgage": The mortgage, deed of trust or other instrument creating a first lien on, or first priority security interest in, a Mortgaged Property securing a Mortgage Note.

"Mortgage File": The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to this Agreement.

"Mortgage Loan": Each mortgage loan transferred and assigned to the Trustee pursuant to Section 2.01 or Section 2.03(d) of this Agreement, as held from time to time held as a part of REMIC I, the Mortgage Loans so held being identified in the Mortgage Loan Schedule.

"Mortgage Note": The original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

⁴ Uniform Commercial Code or the states equivalence

⁵ <http://www.secinfo.com/dqTm6.21Kx.d.htm>

"Originators": Collectively, Argent Mortgage Company, LLC and Olympus Mortgage Company.

"Seller": Ameriquest Mortgage Company, or its successor in interest, in its capacity as seller under the Mortgage Loan Purchase Agreement.

"Trustee": Deutsche Bank National Trust Company, a national banking association, or its successor in interest, or any successor Trustee appointed as herein provided.

Excerpts: **SECTION 2.01. Conveyance of Mortgage Loans**

"The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificateholders all the right, title and interest of the Depositor, including any security interest"...

"In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned, the following documents or instruments (a "Mortgage File"):

- (i) the original Mortgage Note,...*
- (ii) the original Mortgage with evidence of recording thereon*
- (iii) an original Assignment of the Mortgage assigned in blank, without recourse;*
- (iv) the original recorded intervening Assignment or Assignments of the Mortgage showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;..."*

In reviewing, items (iii) : Assignment of the Mortgage and definition of Mortgage.

"Mortgage" : *"The mortgage, deed of trust or other instrument creating a first lien on, or first priority security interest in, a Mortgaged Property securing a Mortgage Note"*

Now we begin to enter the world of diversion, deception and confusion.

We shall for the moment assume that the following is based upon paper documents as we know that electronic documents lack supporting laws to exist.

One of the battle cries used by the banks in the courts is, "Your Honor, Your Honor, the mortgage follows the note." Absolutely correct, a valid perfected lien does follow a valid lawful indebtedness, that indebtedness would be "Secured".

Item (iii) states the assignment of the mortgage needs to reflect it was assigned in blank. The paper promissory note can be assigned in blank and the mortgage (security instrument) would follow. Here is where an issue arises: failure to record in public records the new owner of the mortgage as a result of negotiating the negotiable instrument is a failure to maintain continuous lien perfection by filing in public records per laws of local jurisdiction, and, as such, the "Secured" indebtedness is rendered to an "Unsecured" status. The mortgage (security instrument) has been rendered a nullity.

In review, the paper negotiable instrument, to reach the Trustee for the investment trust, would have to have been negotiated from the loan originator, then to the Seller of the investment trust, then to the Depositor of the investment trust, and finally to the Trustee for the investment trust (the author will not address the Custodian of the investment trust). All of these negotiations of the negotiable instrument would have required the Seller as assignee, Depositor as assignee and Trustee as assignee to file in public records a Notice of Assignment to transfer the lien rights to each assignee to maintain a continuous perfection.

Each one of these filings of Notice of Assignment would have required time to be filed and recorded in public records and, as such, a delay would have resulted in a delay of finalizing the investment trust's creation.

As such, to eliminate the delay, the banks along with Mortgage Bankers Association, in the mid 1990's created MERS (Mortgage Electronic Registration System) and the electronic registry to track the change in ownership of the note. To facilitate and eliminate filing in public records subsequent purchasers of the note, MERS was named as "Nominee" and "Beneficiary" on the security instrument. If MERS is named at conception then it is known as a "MOM Loan" (MERS originated Mortgage). If MERS is not named at conception and then the security instrument is assigned to MERS, it represents a "Non-MOM Loan"; either is a bifurcation of the security instrument from the negotiable instrument.

Who would assign the Mortgage? Unlawfully, MERS.

We now expose a hidden fact: it was not a paper note that was negotiated from the loan originator to the Trustee of the investment trust. What was illegally transferred was an electronic negotiable instrument.

The author directs attention to Case No.: 09-1460 in the Supreme Court of Florida.

Florida Bankers Association⁶ whose partial list of members includes, JPMorgan Chase, Bank of America, Wells Fargo Bank, N.A., SunTrust Bank stated: *"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."*

The author will not allege a paper to electronic conversion took place as it has now been admitted too.

Suit was filed in the Superior Court of California entitled, *CHARLES SCHWAB CORPORATION VS. MERILL LYNCH, PIERCE, FENNER & SMITH, Case Number: CGC-10-501151.*

Filing of this suit in itself is not alarming, but review of this suit and the others that have proceeded it indicate the same claims are being made: the creators of the investment trust are alleged to not have disclosed all the risks about the quality of the underlying collateral (the mortgage pool).

If corporations like Charles Schwab, and major law firms are oblivious to the truth of fact that the underlying collateral could not legally exist in these investment trusts, then why would your local county drugstore judge know???

For more in depth detail graphic and text explanations visit:

<http://www.scribd.com/alviec> **or** <http://www.ourlemon.com>.

⁶ <http://www.floridabankers.com/>