

# Title to Real Property? Whom has a legal right?



## One simple question?

Who has a legal claim for right of title to real property?



Who has a legal claim for right of title to real property?

### **TITLE**

1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>.

2. Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence < record your title with the county clerk>.

– Blacks law, 8<sup>th</sup> edition

### **record title**

A title as it appears in the public records after the deed is properly recorded. — Also termed title of record; paper title. [Cases: Vendor and Purchaser 132, 231(1). C.J.S. Vendor and Purchaser §§ 328, 496.]

– Blacks law, 8<sup>th</sup> edition

## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

“Though employed in various ways, [title] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word ‘title’ is used in one sense, the other sense is necessarily implied.” Kent McNeil, *Common Law Aboriginal Title* 10 (1989).

– Blacks law, 8<sup>th</sup> edition

### Who has a legal claim for right of title to real property?

#### **LIEN**

lien (leen or lee-*<<schwa>>n*), n. A legal right or interest that a creditor has in another's property, lasting usu. until a debt or duty that it secures is satisfied. • Typically, the creditor does not take possession of the property on which the lien has been obtained. Cf. PLEDGE(3). [Cases: Liens 1.C.J.S. Liens §§ 2–3, 12, 18.] — lien, vb. — lienable, liened, adj.

– Blacks law, 8<sup>th</sup> edition



## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

BENEFICIARY (Black's law, 8<sup>th</sup> edition)

beneficiary (ben-<<schwa>>-fish-ee-er-ee or ben-<<schwa>>-fish-  
<<schwa>>-ree), n.

1. A person for whose benefit property is held in trust; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument.

2. A person to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust.

→ 3. A person who is initially entitled to enforce a promise, whether that person is the promisee or a third party. — beneficiary, adj.— Blacks law, 8<sup>th</sup> edition

Important to understand



### Who has a legal claim for right of title to real property?

deed of trust. (Black's law, 8<sup>th</sup> edition)

A deed conveying title to real property to a trustee as security until the grantor repays a loan.

• This type of deed resembles a mortgage. — Also termed trust deed; trust indenture; indemnity mortgage. — Also termed common-law mortgage. [Cases: Mortgages 8. C.J.S. Mortgages §§ 5–6, 10.]



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### record title

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Court of law?

Contract law?

Statutory law?



Who has a legal claim for right of title to real property?

In other words, the Mortgage is the document that you signed at closing that gives the lender a secured interest in the title to real property. The Deed of Trust/Mortgage is security for the lender in the event that the borrower does not pay the Note. The terms of the Note spell out certain obligations and rights of both the borrower and the lender. The deed of trust provides the “power to sell” clause.

Court of law?

Contract law?

Statutory law?



## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

In more simple terms, the Note is your promise to pay the lender and the Mortgage (a.k.a Deed of Trust, Mortgage Deed, Security Deed, lien) is the tool that the lender uses to take your real property in the event that the *secured* Note is not paid according to its terms.

Court of equity?  
Court of law?

Contract law?  
Statutory law?



### Who has a legal claim for right of title to real property?

Your signature does carry a powerful message.

**SIGNATURE** (Black's Law 8<sup>th</sup> Edition, page 4312)

***signature.*** 1. A person's name or mark written by that person or at the person's direction.

Also termed *sign manual*. [Cases: Signatures 1–5. C.J.S. Signatures §§ 1–16.] 2. Commercial law. Any name, mark, or writing used with the intention of authenticating a document. UCC §§ 1-201(b)(37), 3-401(b). — Also termed *legal signature*. [Cases: Sales 29. C.J.S. Sales § 76.]

**CONTRACT** (Black's Law 8<sup>th</sup> Edition, page 970)

***contract, n.1.*** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>. [Cases: Contracts 1. C.J.S. Contracts §§ 2, 9, 12.] 2. The writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>.

*There is a difference between a paper contract and an electronic contract. Know it.*

Not legal advice. Not substitute for legal advice.

## **Title to Real Property? Whom has a legal right?**

### **Who has a legal claim for right of title to real property?**

Your signature does carry a powerful message.

Every real estate transaction involves the parties to the transaction whom indentured [signed] their hand written signature on at least two instruments and more likely several other documents. While the reasons behind requiring that signature have remained the same since the first time the law required that signature, the form of that signature has eluded from that of pen and ink, to electronic transmissions where certain documents can be signed and executed electronically.

### **Who has a legal claim for right of title to real property?**

Your signature does carry a powerful message.

The purpose of traditionally requiring a signature in a real estate transaction;

- The traditional requirement of a “writing” served to provide assurances that the person purporting to sign the agreement was the person whose signature appeared on that instrument
- Rooting out uncertainties or fraud in connection with the contracts
- The person signing the document intended to sign it and that both parties to the transaction were agreeing to the same transaction.

## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

Your signature does carry a powerful message.

It also serves a psychological purpose of encouraging parties to understand that each party was entering into a serious agreement which the party's had to understand by imposing the formality of an indentured signature.

The most common purpose of this placement of a signature at the end of a document is often directly under a block of text that confirms that the parties intend to be bound.

One illusion method of establishing a reasonableness argument in support of a signer's intent to be bound is the creation of a signing "ceremony", "click if you accept". An electronic signing closely resembles the paper signing process, but that is not the *ceremonial* paper signing process of a real property transaction. That is what took place, didn't it?

### Who has a legal claim for right of title to real property?



If a borrower signs a paper promissory note, why is an electronic promissory Note created, registered, transferred or sold, electronically in the MERS eRegistry that contains your information?

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



If a borrower signs a paper promissory note, why is the deed of trust attached to an electronic promissory note registered, transferred or sold, electronically in the MERS eRegistry that contains your information?

Who has a legal claim for right of title to real property?



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Who has a legal claim for right of title to real property?



It is an illusion

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



(Only used for educational purposes)

It has similarities to the “arrow” that is not seen in the word “FedEx” until it is brought to ones attention, then they see it.

It is an illusion

But, once you see it, it does not go away.

Who has a legal claim for right of title to real property?



A paper promissory note is not the same as the electronic promissory note no matter how much it is claimed to be.

Paper promissory Note = Tangible

Electronic promissory Note = Intangible

Not legal advice. Not substitute for legal advice.

# Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



A real property paper record is not the same as the electronic record no matter how much it is claimed to be.

Paper Record = Tangible

Electronic Record = Intangible

Who has a legal claim for right of title to real property?

Personal property



Real property



Electronic promissory Note  
[Transferable record]



Paper Promissory  
Note



Paper deed of trust

Electronic record

Paper record

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# Title to Real Property? Whom has a legal right?

## Who has a legal claim for right of title to real property?

Personal property



Real property



Electronic promissory Note  
[Transferable record]

Electronic record



Paper Promissory  
Note



Paper deed of trust

Paper record

An electronic record is governed by different laws than a real property paper record is, a paper record is not the same as the electronic record, no matter how much it is claimed to be.

Paper Record = Tangible

Electronic Record = Intangible

## Who has a legal claim for right of title to real property?

Personal property



Real property



Electronic promissory Note  
[Transferable record]

0's and 1's?



Paper Promissory Note

Real value?

An electronic record is governed by E-SIGN, UETA, different laws, from a real property paper record that is governed by real property laws. An electronic record is not the same as the real property paper record, no matter how much it is claimed to be.

Paper Record = Tangible

Electronic Record = Intangible

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# Title to Real Property? Whom has a legal right?

## Who has a legal claim for right of title to real property?

Personal property



Real property

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Electronic promissory Note  
[Transferable record]



Paper deed of trust

An electronic record is governed by E-SIGN, UETA, different laws than a paper title record that is governed by real property laws, a paper title record is not the same as the electronic record, no matter how much it is claimed to be.

Paper Record = Tangible

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Personal property



Real property

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Electronic promissory Note  
[Transferable record]



Paper deed of trust

E-SIGN, UETA

Deed of Trust. Contract law, real property law, local laws of a jurisdiction, statute of frauds

0's and 1's?

Real value?

Electronic Record = Intangible

Paper Record = Tangible

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## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



So, why is it so confusing?

Is it because the *claimer* is alleging a debt?

Just because a party alleges a debt does not mean it is a secured debt, or that they can lawfully claim title to real property if the claimer cannot prove how it allegedly obtained title to that real property lawfully, can they?

How can a party claim title to real property with an electronic promissory note?

Do you understand what an electronic promissory note is? An electronic promissory note is an obligation, but not a paper record of an obligation.

In other words, the eNote is not the paper promissory note! It is a completely separate debt. An intangible debt between an account debtor and a creditor.

Get it yet?

Who has a legal claim for right of title to real property?

### **Real property**

MERS did not replace tangible public land records or laws that govern a potential homeowners contract(s) most especially the lien, Deed of Trust, a title to real property. The MERS system contains electronic records, not paper records.

MERS, governed by E-SIGN, UETA, only exists within the **intangible** world of the “sale of goods and services” governed by the Uniform Commercial Code for the mechanics of purchasing and selling of transferable records, personal property goods, owned by a certain party, in which could be an owner of an electronic promissory Note, eNote, or a “Controller” of an eNote, in most MERS terms.

Is it not the Deed of Trust that allegedly supports all foreclosure arguments by banks or its counsel?

Not legal advice. Not substitute for legal advice.

## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

0's and 1's?

Real value?

Personal property



Real property



Electronic promissory Note  
[Transferable record]



Paper Promissory Note

The Note argument is a tricky argument if one lost attention. What “Note” is being referenced? IS it the tangible paper note or is it the eNote registered in the MERS eRegistration system? eNotes are the only “thing(s)” registered in the MERS eRegistration system. MERS was to designed to meet eSign and UETA guidelines.

### Who has a legal claim for right of title to real property?

0's and 1's?

Real value?

Personal property



Real property



Electronic promissory Note  
[Transferable record]



Paper Promissory Note

This “thing” is an *intangible* defined as a transferable record and this thing is acceptable in many transactions, except for real property, and especially in foreclosures.

This “thing” is allegedly owned by MERS members or its investors.

# Title to Real Property? Whom has a legal right?

## Who has a legal claim for right of title to real property?

Real value?

Personal property

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Electronic promissory Note  
[Transferable record]

(a) **Definitions** (15 USC § 7021 - Transferable records)

(1) **Transferable record**

The term “transferable record” means an electronic record that—

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) Other definitions

The terms “electronic record”, “electronic signature”, and “person” have the same meanings provided in section 7006 of this title.

## Who has a legal claim for right of title to real property?

Real value?

Personal property

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Electronic promissory Note  
[Electronic record]

**15 USC § 7006 – Definitions**

(4) **Electronic record** The term “electronic record” means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) **Electronic signature** The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record

(8) **Person** The term “person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity



## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

Their electronic signature does not carry the same message.

**SIGNATURE** (Black's Law 8<sup>th</sup> Edition, page 4312)

***digital signature.** A secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender. • A digital signature consists of a “hashed” number combined with a number assigned to a document (a private-encryption key). Generating a signature requires the use of private- and public-key-encryption software, and is often activated by a simple command or act, such as clicking on a “place order” icon on a retailer's website. Digital signatures are esp. important for electronic commerce and are a key component of many electronic message-authentication schemes. Several states have passed legislation recognizing the legality of digital signatures. See E-COMMERCE; KEY ENCRYPTION. [Cases: Signatures 2. C.J.S. Signatures § 14.]*

### Who has a legal claim for right of title to real property?

Their electronic signature does not carry the same message.

**SIGNATURE** (Black's Law 8<sup>th</sup> Edition, page 4313)

**electronic signature.** An electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document. • Types of electronic signatures include a typed name at the end of an e-mail, a digital image of a handwritten signature, and the click of an “I accept” button on an e-commerce site. The term electronic signature does not suggest or require the use of encryption, authentication, or identification measures. A document's integrity (unaltered content), authenticity (sender's identity), and confidentiality (of the signer's identity or document's contents) are not ensured merely because an electronic signature is provided for. [Cases: Signatures 3. C.J.S. Signatures § 12.]

## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

Their electronic signature does not carry the same message.

5) **Electronic signature** The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record

If a scanned image of your signature is attached to the eNote, what law makes the eNote the homeowner’s obligation?

Homeowner’s have a tangible paper obligation. That is one *thing*.

What is more important to understand is, the homeowner has another *thing* regarding title to real property, recorded as a paper record, in public records where the real property is located.

### Who has a legal claim for right of title to real property?

*a state of the situs of land*

In law, the situs (pronounced "sī'təs") (Latin for position or site) of property is where the property is treated as being located for legal purposes. This may be important when determining which laws apply to the property, since the situs of an object determines the *lex situs*, that is, the law applicable in the jurisdiction where the object is located, which may differ from the *lex fori*, the law applicable in the jurisdiction where a legal action is brought. For example, real estate in England is subject to English law, real estate in Scotland is subject to Scottish law, and real estate in France is subject to French law - *Wikipedia*

*Other examples are, real estate in Texas is subject to Texas laws, real estate in Oklahoma is subject to Oklahoma laws, real estate in Florida is subject to Florida laws, real estate in Colorado is subject to Colorado laws, etc. - me*

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?

*a state of the situs of land*

*“In those cases the right to the conveyance is not grounded in or created by a judgment which purports to adjudicate **title to real property** over which the court has no jurisdiction; rather, the right to the conveyance is grounded in and created by a contract of the parties which the court having the parties properly before it has jurisdiction to interpret and order performed.” - McElreath v. McElreath, 345 SW 2d 722 - Tex: Supreme Court 1961*

A deed conveying title to real property is a contract of the parties. The parties are named within that contract for title to real property.

Who has a legal claim for right of title to real property?

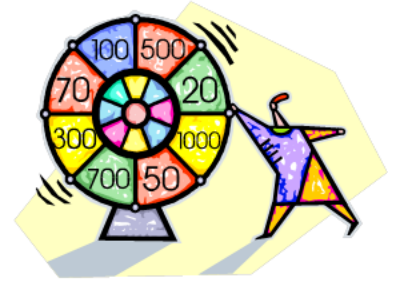


So, if MERS or its members are acting under separate laws from real property laws, how can an electronic record reflecting a negotiation between MERS members be lawfully recorded into public land records to, in essence, replace the original paper record, a deed of trust with a separate obligation created by a MERS member?

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?

Can you now understand why MERS members claim or argue a homeowner cannot challenge a pooling and servicing agreement, assignment, etc.?



**IT IS BECAUSE YOU ARE NOT INVOLVED IN THEIR  
ELECTRONIC OBLIGATIONS OR CONTRACTS!**

And if you begin to understand the electronic scam, neither are they involved in your paper obligations or contracts. Those were between you and the “Lender” named in those *paper* contracts. They are not electronic! If MERS members had followed the laws for real property, they might have an opportunity to make a claim, but they did not follow the laws of the contracts or the laws regarding secured real property transactions.

Who has a legal claim for right of title to real property?



So, who really has a legal claim for right of title to real property?

MERS members only have *possession* of an electronic promissory Note, a *holder*, in *control* of an eNote, not possession of, or title to real property

Not legal advice. Not substitute for legal advice.

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



The closest thing to a *colorable* claim to title to real property would be an expired “warranty type deed” recorded and never released by the party named in the deed of trust.

Why did the “*grantee*” named in the deed of trust never release the warranty type deed?

Who has a legal claim for right of title to real property?



It's a front.

A delusional front, it's a put on.

*“A delusion is a belief held with strong conviction despite superior evidence to the contrary.”*

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## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

If the deed of trust, a title to real property, is out of reach of the party alleging a secured indebtedness, does the lack of that party allegedly holding a note and purportedly secured by the deed of trust, remove the alleged secured creditors' argument that it does not need to present the paper promissory note, with all indorsments included, to reflect it as a lawful secured creditor when no paper title record is evidenced in its name in public land records?

### Who has a legal claim for right of title to real property?

One who sequesters property when he knows or should know that he has no **right to title** or possession of the property taken shows such a disregard for the rights of others as will authorize exemplary damages.

A mortgagee who attempts to take possession of property under the mortgage must act reasonably and have probable cause to apprehend the loss of his claim.

*Commercial Credit Equipment Corp. v. Elliott*, 414 SW 2d 35 - Tex: Court of Civil Appeals, 11th

## Title to Real Property? Whom has a legal right?

### Who has a legal claim for right of title to real property?

“In *Rice*, we concluded a landlord-tenant relationship existed and that the landlord could pursue a forcible detainer action in justice court while the tenant pursued a title dispute in district court. See generally [Rice, 51 S.W.3d at 705-13](#); see also [Haith, 596 S.W.2d at 197](#) (sales contract stated that landlord-tenant relationship formed when contract breached). But here, unlike in *Rice* and *Haith*, we have evidence the landlord-tenant relationship between Dass and Falcon Transit ended and a buyer-seller relationship between Dass and Smith began in 2001. Consequently, *Rice* and *Haith* are distinguishable from the facts of this case and do not control our decision.”

*Generally, unless standing is conferred by statute, a plaintiff must demonstrate he possesses an interest in the controversy distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury*

*Dass, Inc. v. Smith*, 206 SW 3d 197 - Tex: Court of Appeals, 5th Dist. 2006

### Who has a legal claim for right of title to real property?



Visit:

[Trillion Dollar FUBAR](#)

[OurLemon](#)

Read, learn, understand

Not legal advice. Not substitute for legal advice.

## Title to Real Property? Whom has a legal right?

Who has a legal claim for right of title to real property?



If that was not enough information about the contract for title to real property, do we need to go to *fraud in factum*?

Read, learn, understand

Peace be with you,  
may your head be anointed with oil, may  
your cup runneth over