

# Holder

AS defined by the Uniform Commercial Code<sup>1</sup>

**UCC Article 3-103 Definitions do not define the term “Holder”**

**The term “Owner” also is not defined.**

**What is defined is “Holder in Due Course”.**

§ 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

(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\(a\)](#).

§ 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.

**Time to engage grey matter. For all you ladies “Pink Matter”**

Here we direct attention to 3-302 (a) (1); “negotiated to the holder”.

Let us first determine what was negotiated in the various stages of the securitization process.

*Homeowner Signs a Paper Promissory Note*

**Homeowner to the Loan Originator**

**NEGOTIATED: Paper Negotiable Instrument (Promissory Note)**

*Loan Originator Scans Paper Negotiable Instrument into an Electronic File*

*Loan Originator places the Paper Promissory note in custody of a Custodian*

*The Electronic File becomes a so called E-Note or the “Authoritative Copy” (Transferable Record)*

<sup>1</sup> <http://www.law.cornell.edu/ucc/3/article3.htm>

*Loan Originator Registers the Mortgage Loan Package on the MERS system  
MERS tracking now identifies the custodian of the Paper Records  
MERS tracking now identifies the Loan Originator as Owner of the E-Note “Authoritative Copy” (Transferable Record)  
MERS tracking now identifies the Loan Originator has ownership rights of the Paper documents held by the Custodian*

***Loan Originator negotiates to the Seller/Securitizer of a Secondary Market Investment Vehicle***

**NEGOTIATED: Electronic Negotiable Instrument (E-Note)**

*Loan Originator and Seller Securitizer negotiate the E-Note*

*MERS tracking system updated to show Seller Securitizer as Owner of E-Note*

*MERS tracking system updated to reflect Seller Securitizer has ownership rights of the Paper documents held by the Custodian*

***Seller/Securitizer negotiates to the Depositor of a Secondary Market Investment Vehicle  
(Per Contract requirements of the Investment Vehicle)***

**NEGOTIATED: Electronic Negotiable Instrument (E-Note)**

*Seller Securitizer and Depositor negotiate the E-Note*

*MERS tracking system updated to show Seller Securitizer as Owner of E-Note*

*MERS tracking system updated to reflect Depositor has ownership rights of the Paper documents held by the Custodian*

*The Swap – E-Notes for Investment Vehicle Certificates  
Banks sell the Certificates to Investors*

***Depositor negotiates to the Trustee of a Secondary Market Investment Vehicle for the Benefit of the Certificateholders***

***(Per Contract requirements of the Investment Vehicle)***

**NEGOTIATED: Electronic Negotiable Instrument (E-Note)**

*Depositor and Trustee negotiate the E-Note*

*MERS tracking system updated to show Certificateholders as Owner of E-Note*

*MERS tracking system updated to reflect Trustee for the Benefit of the Certificateholders has ownership rights of the Paper documents held by the Custodian*

One must not forget it is not just the negotiable instrument that is of concern; the Security Instrument is also a part of the Paper documents being held by the custodian for the benefit of whomever. Perfection of the Security Instrument in Public Records is paramount to having a valid enforceable lien in which to invoke the “Power of Sale” clause. The MERS tracking system invalidated the enforceability of the Security Instrument by failing to maintain a continuous perfected lien in Public Records.

As negotiation of the proper negotiable instrument per UCC has not been accomplished, Holder in Due Course with rights to enforce the indebtedness has not been achieved. Secondly, even if the Trustee retrieves the paper documents from the Custodian and proves up the negotiations, the Security Instrument has already become a nullity. The Power of Sale or Foreclosure is not within the Trustee’s reach.

The author understands the serious nature but will apologize for trying to maintain a little Pink sense of Humor.

# **Hello, Trillion Dollar FUBAR**