

The Mortgage Fraud Envelope

“one shitty deal”¹

Really - Many

When the feces hits the rotating steel blades of the oscillating fan all hell going to break loose.

It is unknown why the label “deadbeat” has been applied to homeowners in default.

The writer assumes this label has been attached to aid in covering up the real depth of the fraud in the securitization process and the unlawful acts in the secondary market. The Filing of a lawsuit by Basis against Goldman Sachs is clear evidence that even sophisticated learned persons have also been deceived by the perpetrators of the fraud.

One only has to look at the news today to see that multi-million dollar commercial mortgages are also in default. This fact along with the following comments should help clear the air on the term “deadbeat”. These commercial endeavors are not the common “deadbeat” but arranged by sophisticated learned persons.

In multiple conversations with peoples across this nation the writer is under the impression that very few outside of the securitization process have any clear clue as to the depth of the fraud and how it was perpetrated.

The writer in watching the show; “Are you smarter than a 5th grader” was unable to answer some of the questions that the 5th grader could answer.

So, the writer will try to explain the fraud to where even a 7 year old² can understand.

Take notice, the banks don’t want the property, they want money.

Step 1

(Loan Originating)

Obligor signs a paper promissory note (pNote)³ and a paper security instrument (pSI). The pNote is the indebtedness and the pSI is the security for the pNote. Both of

¹ <http://www.bloomberg.com/apps/news?pid=20601087&sid=abrmAmWervME&pos=7> (Basis v Goldman)

² For Julia and Liese

these items constitute a “Tangible” interest in real property and shall be considered the paper mortgage package (pMP) for this article. The pSI to be enforceable requires that the laws of local jurisdiction must be followed to perfect the pSI as a valid lien against the real property. The Uniform Commercial Code Article 9 itself relates the validation of a lien affecting real property is to the laws of local jurisdiction (Public Records).

Failure to name the same party on the pNote and the pSI has its own ramification as to being bifurcated which is addressed in other publications.

This pMortgage Package becomes the property of the originator of the loan and the obligor takes possession of the property.

Step 2

(Loan Originator Actions after Closing)

Under guise of the E-Sign Act (15 USC 7001) and UETA the pMP is scanned into an electronic mortgage package (eMP) and the pMP is either vaulted or destroyed. This newly created eMP also contains a data file containing the data scrapped from the pMP. The author in this writing will assume that all pMP’s are vaulted and are placed within custody of a custodian for the benefit of subsequent purchasers. In most cases the obligor can review the closing papers and find that most loan originations were destined to be sold to a subsequent purchaser. It is now that the servicing of debt and the indebtedness part company. Congress has passed a number of laws regulating the actions of servicers. Local laws of jurisdiction still govern the pSI and its perfection while finance laws still govern the pNote and its negotiations to subsequent purchasers.

It is “NOW” that the newly created eMP is negotiated to a subsequent purchaser. Now we start to identify a number of possible paths of negotiation of the eMP.

Fannie Mae & Freddie Mac: the loan originator negotiates the eMP to a large financial institution by electronic means and the rights to claim ownership of the pMP held in custody by a custodian is transferred to the large financial institution. The mechanism that tracks the rights to ownership of the pMP is currently done by the use of Mortgage Electronics Registration System (MERS) where MERS has been named on the pSI as Mortgagee of Record. Where MERS is named at conception is referred to as a MERS Originated Mortgage (MOM Loan). Where MERS was not

³ This article will be dealing with notes and clear precise definition is required as to what type of note is being referenced.

originally named Mortgagee of Record the banks would then execute a publically recorded assignment transferring the rights of ownership of the pSI to MERS as Mortgagee of Record. All of these transfers of ownership of the rights to the pMP are tracked within the MERS system.

It is now that the large financial institutions negotiate the eMP to Fannie Mae and Freddie Mac and the MERS tracking system is updated to reflect that Fannie Mae and Freddie Mac are now the owners of the eMP and have ownership rights of the pMP which is still in possession of the original custodian.

To increase profit potential under servicing rights there are scenarios that create two different investment vehicles, one being a principal only and the other being interest only. Both of the investment vehicles claims the right of ownership of the pMP still held by the original custodian and approved by Fannie Mae and Freddie Mac.

This paper will not dwell into the legal requirements of Fannie Mae's or Freddie Mac's creation of investment vehicles.

All sounds swell and dandy to the non professional who does not have in depth and very specific understanding of laws surrounding this negotiation scenario. If there was such an understanding the investors of the world would not have purchased these investment vehicles and the American people would not be bailing out Fannie Mae and Freddie Mac knowing that the investment vehicles were based on non compliance with laws.

Now you ask; non compliance with what laws.

Two part answer, one; electronic negotiable instruments lack supporting laws for existence, two; the pNote was not properly negotiated to allow Fannie Mae and Freddie Mac to become holder/owner/holder in due course.

The use of Esign as the basis for lawful existence of an eMP must be addressed by looking at the Esign exclusion, 15 USC 7003, Article 3 & 9 of the Uniform Commercial Code and the states equivalence are specifically excluded by the Esign Act itself.

Here there is a failure to properly reflect in public records continuous lien perfection by the use of the MERS tracking system.

The servicers are required as the pivot point, so as the eMP moves along the market place so does the updating of records to reflect who is the current servicer.

Securitization on Wall Street: the loan originator negotiates the eMP to a securitizer of the investment vehicle by electronic means and the rights to claim ownership of the pMP held in custody by a custodian is transferred to the securitizer of the investment vehicle. Here again the tracking of ownership rights of the pMP and the owner of the eMP is tracked on the MERS system.

Per the investment vehicles requirements the securitizer then by electronic means transfers rights to claim ownership of the pMP held in custody by a custodian to the depositor of the investment vehicle. Here again the tracking of ownership rights of the pMP and the owner of the eMP is tracked on the MERS system.

It is now required that the depositor and done by electronic means transfers rights to claim ownership of the pMP held in custody by a custodian to the trustee of the investment vehicle. Here again the tracking of ownership rights of the pMP and the owner of the eMP is tracked on the MERS system.

The next procedure is the transfer of ownerships and rights to the custodian of the investment vehicle for the benefit of the certificate holders, imagine this custodian is the same custodian as at loan origination, as Liese would say, hmmm.

Here the investors certificates are interest in personal property and the Intangible and the underlying eMP is without supporting laws and if by chance the pMP is still valid it would be an interest in real property and the Tangible.

The laws governing the Tangible are not the same laws that govern the Intangible.

Simply put, the Tangible (pMP) have governing laws and the laws of the Intangible have no bearing. The Intangible Certificates have governing laws and the laws governing the Tangible still apply.

The author's question: if the investment vehicle could not have lawfully existed then how would one go about creating a Credit Default Swap or Credit Default Obligation?

The one major question the writer has; how do you legally justify the existence of a paper mortgage package and an electronic mortgage package that lacks supporting laws at the same time.

As the large financial institutions own the servicers and MERS there is the means and method and a requirement for concealment.