Bifurcation

How do you split a Security Instrument from the Note?

YOU CAN'T

Bankruptcy Courts, Federal and State District Court's have opined similar and correctly to the opinion found in *Carpenter v. Longan,* 16 Wall. 271, 21 L.Ed. 313, 83 U.S. 271 (1872).

> *"The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."*
>
> *"All the authorities agree that the debt is the principal thing and the mortgage an accessory. Equity puts the principal and accessory upon a footing of equality, and gives to the assignee of the evidence of the debt the same rights in regard to both. There is no departure from any principle of law or equity in reaching this conclusion."*

Very clear to see by current case law of many courts the Security Instrument (Mortgage as applies to real property) and the Note cannot be bifurcated. As where many argue before the courts that the Note and Security were separated is an incorrect argument. Where many of modern day Security Instruments create a full value Intangible Obligation from the Tangible Obligation (Electronic Transferable Record, UCC 9), thus rendering the value of the Tangible Obligation to zero value. Additionally, without supporting law and in opposite of case law many of the modern day Security Instrument's provide verbiage that the Security Instrument is to follow the "or interest in the Note." As noted above, this is a legal impossibility.

This past week, counsel for a financial institution in open court objected to raising the term "electronic records." Where as most if not all Security Instruments are filed of public record and mostly introduced into a courts record, what grounds does counsel have for objecting to what the evidence shows?

A question arises in regards to enforcing the Note. If the full value of the Note was securitized as an Intangible Payment Obligation [stripping of all value from the Note]. Would there remain any value in the Note to sustain and action of law or equity. Not to mention the attempt by the transferor of the Note to transfer a Note that is affected by a fraudulent act. As the Security Instrument cannot be bifurcated from the Note and attached to the Intangible Payment Stream and as such this Security Instrument carries forward to the securities market a potential fraudulent act.

Where the Security Instrument cannot be bifurcated from the Note, and in the failure to follow the laws of local jurisdiction noting a proper chain of title for the Security Instrument, the Security Instrument not being bifurcated but fails to show a continuous perfection to a secured creditor, would possibly render the Note Unsecured. Were it to be opined that the Tangible Note no longer had value, would the Security Instrument expire by operation of law, if there is no debt, there is no enforceable security.

Robo-signing of assignment(s), in this writer's opinion is nothing more than an illusion to assign the non bifurcated security instrument back to the Note.