

Assignment 1 – Negotiation 2

Homeowner's Note and Security Instrument

Reference for this writing is the Uniform Commercial Code.¹

It looks like a duck, it squawks like a duck, and it waddles like a duck, but it can't fly backwards. MERS would like you to believe that assigning lien rights to a "valid note holder"/"non valid note holder" is flying the right legal path. Where is the FAA when you need them? Grand Pappy used to say, "It isn't illegal until you get caught." Time for duck soup?

OK, Squawkers, negotiation of the instrument is not the same as assigning lien rights to the security instrument to subsequent parties reflecting negotiation.

§ 9-102 of the Uniform Commercial Code states in part: "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment." § 3-104 NEGOTIABLE INSTRUMENT, (b) "Instrument" means a negotiable instrument. § 3-201 NEGOTIATION, (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

§ 9-102 identifies that negotiation is required to have any assignments of the lien to accompany the negotiation. For MERS to state they can make the assignment of the security instrument and that the note would follow it is like telling the duck to fly backwards.

Article 9 provides a temporary period of perfection in order to allow the subsequent purchaser to comply with the laws of the local jurisdiction in transferring perfection. Failure to transfer lien perfection according to laws of local jurisdiction renders the security instrument a nullity.

MERS and the PSA: MERS is named as "Nominee for Lender" on the security instrument. MERS as agent on the PSA: maybe between the loan originator and MERS, but MERS could not be an agent of a contract "PSA" that has not yet been executed. The PSA defines the agents of the trust and clearly identifies MERS as only a registry. Herein lies an issue, MERS may claim to be an authorized agent of the servicer or the Trustee of the Trust but no such agent relationship is readably identified in any PSA's the author has reviewed.

The author has written about a scenario as if the instrument and the security were in tangible form; in fact, things are worse, the means and methods that are currently being followed are that of an intangible transferable record. The Articles would support a transferable record but as an instrument and security cannot be in intangible form thus the procedure is fatally flawed.

Maybe in the future when laws are changed, then the banks' ducks would quack and be able to fly backwards, not today under current laws.

***Elections – November - Vote Trust In
If that means voting them all out, so let it be!***

¹ <http://www.law.cornell.edu/ucc/ucc.table.html>