

Mortgage Follows the Secured Party (Not the Mortgage follows the Note)

Article §3-105 clearly states an instrument can be created with the purpose of giving rights to enforce the instrument to a holder or non-holder of the instrument.

Article §3-109 subsection (c) provides an instrument made payable to an identified party can be made to become payable to a holder (bearer) by the Payee indorsing the instrument in blank.

Applying Article §3-201 (Negotiation), where negotiation is executed by indorsing the instrument in blank, rights to enforce the instrument have been transferred to a subsequent holder of the instrument.

Subsection (c) Article §3-204 (Indorsement) provides that the Indorser of an Instrument transfers rights as holder to a subsequent party even if such action only transfers a security interest in the instrument.

Where a party is in possession of the instrument as holder or non-holder with rights to enforce the instrument have complied with laws governing the instrument, establishing oneself as the holder or non-holder of an instrument, but perfecting a secured party's interest in real property is not within the scope of the Uniform Commercial Code, Article 3 or Article 9.

To determine whether a holder or non-holder of an instrument is a secured party where such security collateral securing the instrument is real property requires compliance with the local laws of jurisdiction that governing lien perfection, assigning of lien perfection and maintaining continuous perfection.

Question, is a Mortgage nothing but a lien on real property securing an instrument (Note) where such instrument is a Secured Instrument?

Would an indorsement "In Blank" be sufficient to identify a Secured Party?

This writer has doubts, but the courts will need to adjudicate a final verdict.