Alvie Explains It…

Fraud from the get-go

-<u>This document is not substitute for the advice of an attorney –</u>

AlvieC

This is no short story

(You've got to understand or you will keep losing)

A.Campbell P.O. Box 291, Coupland, Texas 78615

By now, you probably heard that “bifurcation” is absurd?

Well, according to the courts AND the banks, “you cannot bifurcate!”

And you may be confused with my first “Alvie Explains It – Assignment Fraud - Bifurcation”, because it didn’t work with the courts when you explained it?

Ask yourself this simple question; “Did I argue “Bifurcation” right”? If you are honest with yourself, your answer should be no I didn’t. Why?

The banks did not make this a simple task to argue in the courts. It is quite complex, yet so simple you may want to pinch yourself after you’ve read through this article. But, think of it this way; can you now use your own case law, other MERS “winning” case law along with the banks arguments to conquer the evil-doers?

First question? “Why do the banks use paper laws of old to support electronic intangibles” that are used in today’s MERS/GSE age? More specifically, a thing called a “*transferable record”*, which is an electronic record, an eNote if you will.

15 USC 7006 - definitions

(3) **Electronic agent**

The term ‘‘electronic agent’’ means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

Black’s Law:

illegal contract. A promise that is prohibited because the performance, formation, or object of the agreement is against the law. • Technically speaking, an illegal contract is not a contract at all, so the phrase is a misnomer. Cf. unenforceable contract; void contract. [Cases: Contracts 103. C.J.S. Contracts §§ 195–200, 213–214.]

“An illegal contract is exceptionally difficult to define. It does not merely mean a contract contrary to the criminal law, although such a contract would indubitably be illegal. But a contract can well be illegal without contravening the criminal law, because there are certain activities which the law does not actually prohibit, but at the same time regards as contrary to the public interest and definitely to be discouraged, for instance, prostitution. While a void contract is not necessarily illegal, an illegal contract is often void. However, the consequences of an illegal contract differ somewhat from those usually produced by a simply void contract, so illegal contracts are usually accorded separate treatment.” P.S. Atiyah, An Introduction to the Law of Contract 38 (3d ed. 1981).

BUSINESS AND COMMERCE CODE TITLE 10. USE OF TELECOMMUNICATIONS SUBTITLE B. ELECTRONIC COMMUNICATIONS CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.002. DEFINITIONS

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) **"Electronic agent"** means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(6) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(7) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(8) (you can read the definitions and more here:)
http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Sec. 322.016. TRANSFERABLE RECORDS.

(a) In this section, "**transferable record**" means an electronic record that:

(1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 1.201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Section 3.302(a), 7.501, or 9.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

> *The MERS system is "an **electronic** mortgage **registration system** and **clearinghouse** that tracks beneficial ownerships in, and servicing rights to, mortgage loans." In re Mortg. Elec. Registration Sys. (MERS) Litig., 659 F. Supp. 2d 1368, 1370 (J.P.M.L. 2009); see also Campbell v. Mortgage Elec. Registration Sys., No. 03-11-00429-CV, 2012 Tex. App. LEXIS 4030, at *13 (Tex. App.—Austin May 18, 2012, pet. filed) (mem. op.).*

MERS operates within the guidelines of Esign and UETA. It is the MERS members whom are out of line.

With MERs and the GSE's; the Transferable Record **IS** the **INTANGIBLE OBLIGATION** and **NOT** the **TANGIBLE OBLIGATION**.

Have you realized that this **THING** being used is something somewhat similar to a "*Warehouse receipt*"? This is also where the banks trick opposing litigants and the courts by using one word, "obligation".

So why are the banks and/or its "agents" using UCC 9 to support their fraud? According to §322.016 (f), why don't they prove up the transferable record? Because there is NO LAW TO SUPPORT IT! In Texas *See* 322.003(b)(2) or *see* 15 USC 7003.

Why do you think the wording in the security instrument, most call a deed of trust, has Mortgage Electronic Registration Systems, Inc. a.k.a. MERS in it?

It is not a trust. It is a lien. Need I explain this? Get a piece of paper out and draw a triangle. At the top of the triangle, put "Settlor". At the lower left corner of the triangle, put "Trustee". At the lower right corner of the triangle, put "Beneficiary".

Where doe MERS fit in this scenario?

There are two parties to the security instrument, grantor and grantee. The "trustee" is an in between for the two parties. If default happens, the trustee upon instructions from the grantee (lender?) sells the property according to the security instrument agreement. *When exercising a power contained in a deed of trust, the trustee becomes a special agent for both parties, and he must act with absolute impartiality and with*

fairness to all concerned in order to achieve the objective of the trust. See *Hammonds v. Holmes,* 559 S.W.2d 345, 347 (Tex.1977); *First Federal Sav. & Loan Ass'n v. Sharp,* 359 S.W.2d 902, 904 (Tex.1962). MERS "agency" contracts are with its members.

The Banks argue the alleged Security Instrument (a.k.a.Deed of Trust) contains:

> "*Borrower understands and agrees that* ***MERS holds only legal title to the interests*** *granted by Borrower in this Security Instrument,* ***but, if necessary to comply with law or custom****, MERS (as nominee for Lender and Lender's successors and assigns) has the right:* ***to exercise any or all of those interests****, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument*." (emphasis added)

Source: Freddie Mac

Hint: This wording allowed for the creation of a "transferable record" on the MERS/GSE registration systems creating an Intangible Obligation (eNote). It also allowed the MERS members a deceitful, yet successful way so far, to attempt to separate the Security Instrument away from the Obligor's Tangible Obligation (original promissory Note). Why are there two Notes? Why have they not been caught yet?

Can you see how MERS Members attempted to "Bifurcate"? They absolutely **CAN NOT BIFURCATE**! Case law supports this and the banks argue it also.

Now understand that due to the creation or design of this misleading security instrument, the banks goal in this fraud was to get the Obligor/Grantor to sign the security instrument, thus giving MERS members the ability to create a transferable record, an "Intangible Obligation". Then, the MERS members are attempting to strip the security instrument from the "Tangible Obligation", the original note AND attempt to attach it to the transferable record the MERS member created and registered. This transferable record is an **INTANGIBLE OBLIGATION**.

Then this eNote, a transferable record, is utilized on Wall street. At some point, the banks or whomever decided there was a default(?)[which they probably cannot prove], the "certifying officers" with titles such as Assistant Secretary or Vice President or whatever they call themselves, created a fictitious instrument and as it appears, they successfully recorded it into public records and claim it to be an "assignment". This so-called "assignment" is prima facie evidence that the MERS member was stripping the security instrument away from the INTANGIBLE OBLIGATION, a transferable record and are attempting to Re-Attach it BACK to the alleged original obligors TANGIBLE

OBLIGATION, the Note. It did not just happen in the residential arena, it happened in the commercial arena also.

So, since the MERS members attempted to strip the security instrument from the tangible obligation, and then created an intangible obligation evidenced by the eNote MIN number, what happened to the original tangible obligation?

My question to all; How could the MERS member attempt to BIFURCATE when case law, the banks and the courts say it cannot be done? The MERS members have a lot of explaining to do, which they cannot do lawfully without exposing fraud.

The rest of this just provides additional support for what I have explained.

Understand what you don't know and stop guessing;

If you read the Task Force Meeting from the Texas Supreme Court website you may begin to realize this whole manipulation of case law, Texas laws and bending of rules regarding an electronic registration system, allowed attaching avenues for a "mortgage servicer", a "book entry system", a "mortgagee", "beneficiary" and other such definitions were conjured up by men and women of the banking industry and a few judges;

http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf

I truly do not believe the Texas Legislature approved this type of activity?

They in turn, mislead others into believing an illusion, and induced many a "obligor/grantor" into unknowingly committing securities fraud and ultimately the loss of their real property.

The following excerpts are from : **(Vernon's TEXAS CODES ANNOTATED Volume 1 PROPERTY CODE Sections 1.001 to 21.040, http://west.thomson.com/pdf/texas/PropT2App.pdf -** This is really good reading material for the layman and attorneys.

Note: *Starting at page 93 of the pdf or page 156 of the document, it describes the "statutory history of the Texas Property code". You should see, it took a little time to get the fraud put into place.*

Mortgage or Deed of Trust*: A mortgage or deed of trust is an interest in real property providing security for the performance of an obligation, usually evidenced by a note. On default, the mortgage or deed of trust may be foreclosed, the property may be sold, and the proceeds applied for the mortgagee's benefit. While a mortgage is a two-party instrument between a mortgagor and mortgagee, a deed of trust is a conveyance to a trustee for the benefit of the mortgagee and, in Texas, gives the trustee the power of nonjudicial foreclosure and sale. Johnson v. Snell,* 504 S.W.2d 397, 399 (Tex. 1973*). The general practice in Texas is to use a*

deed of trust; however, lenders and attorneys commonly use the terms ‘‘mortgage’’ and ‘‘deed of trust’’ interchangeably. The secured creditor under a deed of trust is often identified as the ‘‘beneficiary’’ or ‘‘mortgagee,’’ the debtor is often identified as the ‘‘borrower,’’ ‘‘grantor,’’ or ‘‘mortgagor,’’ and the party having the power of nonjudicial foreclosure and sale in the event of default is identified as the ‘‘trustee.’’ – **Standard 15.10. Liens Generally-(Vernon's TEXAS CODES ANNOTATED Volume 1 PROPERTY CODE Sections 1.001 to 21.040, pg. 73-74)**

Lien Theory: Texas follows the ‘‘lien theory’’ of mortgages and deeds of trust, under which the creditor or the trustee, despite granting language in the instrument, is not regarded as the owner of the property securing the debt. *Taylor v. Brennan,* 621 S.W.2d 592, 593 (Tex 1981); *NCNB Tex. Nat'l Bank v. Sterling Projects, Inc*., 789 S.W.2d 358, 359 (Tex. App.– Dallas 1990, writ dism'd w.o.j.). Legal title does not pass from the mortgagor, and the mortgagee receives only a lien or equitable title. *Flag–Redfern Oil Co. v. Humble Exploration Co.,* 744 S.W.2d 6, 8 (Tex. 1987); *First Baptist Church v. Baptist Bible Seminary*, 347 S.W.2d 587, 590–591 (Tex. 1961). A mortgagee ordinarily has no right of possession. The mortgagor remains entitled to possession of the land and is entitled to use the land without being accountable to the mortgagee, except for waste. *State v. First Interstate Bank,* 880 S.W.2d 427, 429–430 (Tex. App.–Austin 1994, writ denied); *NCNB Tex. Nat'l Bank v. Sterling Projects, Inc*., 789 S.W.2d 358, 359 (Tex. App.–Dallas 1990, writ dism'd w.o.j.).

Formalities: Generally applicable conveyancing rules govern mortgages and deeds of trust.

A mortgage, deed of trust, or other contractual lien on real estate falls within the statute of frauds. Tex. Bus. & Com. Code Ann. § 26.01(a), (b)(4); *West v. First Baptist Church*, 71 S.W.2d 1090, 1100 (Tex. 1934); *Edward Scharf Assocs., Inc. v. Skiba*, 538 S.W.2d 501, 502–503 (Tex. Civ. App.–Waco 1976, no writ). Recordation of a mortgage or a deed of trust is not essential to make it a valid and binding obligation between the immediate parties. *Denson v. First Bank & Trust,* 728 S.W.2d 876, 877 (Tex. App.–Beaumont 1987, no writ). An unrecorded deed of trust is effective between the parties and against any other person who has notice of it. Tex. Prop. Code Ann. § 13.001(b); *Biggs & Co. v. Caldwell*, 115 S.W.2d 461, 463 (Tex. Civ. App.–Fort Worth 1938, writ dism'd). If after the execution of a mortgage or a deed of trust, the mortgagor subsequently acquires title to property described in the mortgage or deed of trust, the title is automatically encumbered by the lien by virtue of the doctrine of after-acquired title (estoppel by deed). *Clark v. Gauntt,* 161 S.W.2d 270, 271 (Tex. 1942); *Shield v. Donald*, 253 S.W.2d 710, 712 (Tex. Civ. App.–Fort Worth 1952, writ ref'd n.r.e.). The doctrine of estoppel by deed does not apply to quitclaim instruments.

Judgments or documents purporting to create a lien from a purported court not expressly created or established under the Texas or U.S. constitution or not consented to by the debtor, are presumed fraudulent. For example, a document purporting to establish or assert a lien against real property and filed by a prison inmate is presumed fraudulent. Tex. Civ. Prac. & Rem. Code Ann. §§ 12.001, 12.002; Tex. Gov't Code Ann. §§ 51.901(e) and (f).

Standard 16.10. Nonjudicial Foreclosure

An examiner must determine that all statutory and contractual requirements for a nonjudicial foreclosure sale have been satisfied. Specifically, an examiner must determine (1) that the security instrument confers the power of sale; (2) that there has been a default under the terms of the instrument; (3) that the trustee or substitute trustee was properly appointed; (4) that all statutory requirements in effect at the time of sale have been met; (5) that all additional requirements, if any, contained in the security instrument have been met; and (6) that a trustee's deed has been delivered.

Start with the basics, Existing case law to support that bifurcation cannot happen. I will use U.S. Supreme Court Case, and Texas Cases. One may realize they too can use the banks own case law against the banks? More importantly, MERS case law.

1. *Carpenter v. Longan*, 83 US 271 – Supreme Court 1873
   "*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*"

2. *West v. First Baptist Church of Taft* (71 SW 2d 1090, 123 Tex. 388, 123 TX 388 , 1934) - Citing' Carpenter v. Longan – *"the mortgage follows the note"*
3. *Johnson v. Snell, 504 SW 2d 397 – (Tex: Supreme Court 1973)*
   "The controlling question here is whether the terms of the contract, all of which are contained in the written agreement, are sufficiently certain and definite. Specific performance will be decreed only if the essential terms of the contract are expressed with reasonable certainty."
   "The real dispute here arises over the interpretation by the respondent of the provision relative to the interest."
4. *Neeley v. Intercity Management Corp*., (623 SW 2d 942 - Tex: Court of Appeals 1981)
   We cannot impose a trust where parties have contemplated another relationship. G. Bogert, Trusts & Trustees, § 45 at 316 (2d ed. 1965); Citing; *Barker v. Temple Lumber Co.*, 12 SW 2d 175 – 1929 **-** *Thus, the use of "trustee" in the deed is merely a description and without legal effect.*
5. *Costello v. Hillcrest State Bank of University Park*, (380 SW 2d 780 - Tex: Court of Civil Appeals); *The mere use of the word "Trustee" does not of itself create a trust.*

From: *Bonilla v. Roberson*, 918 SW 2d 17 – (Tex: Court of Appeals, 13th Dist. 1996)

The trustee or trustees are customarily appointed in the security instrument. The provisions for the appointment of a substitute trustee are usually set out in the security instrument, and the beneficiary must strictly comply with these provisions. Slaughter v. Qualls, 162 S.W.2d 671 (Tex. 1942); Michael v. Crawford, 193 S.W. 1070 (Tex. 1917).

In addition to the statutory requirements, there must be strict compliance with any other requirements the security instrument may contain pertaining to foreclosure. See, e.g., Ogden v. Gilbraltar Sav. Ass'n, 640 S.W.2d 232 (Tex. 1982); Houston First American Sav. v. Musick, 650 S.W.2d 764 (Tex. 1983).

A foreclosure sale may be instituted either by a judgment of the court establishing the debt and fixing the lien, or by a valid exercise of a power contained in a deed of trust. Taylor v. San Antonio Joint Stock Land Bank, 101 S.W.2d 868, 872 (Tex.Civ. App.—San Antonio 1936), rev'd on other grounds, 129 Tex. 335, 105 S.W.2d 650 (1937). The power of the trustee to sell the deed for the parties is derived wholly from the trust instrument. Winters v. Slover, 151 Tex. 485, 251 S.W.2d 726, 728 (1952). Because a power of sale under a deed of trust is a harsh method of collecting debts and of disposing of another's property, it can only be exercised by strict compliance with the note and conditions of sale. Crow v. Heath, 516 S.W.2d 225, 228 (Tex.Civ.App.—Corpus Christi 1974, writ ref'd n.r.e.). Thus, a trustee must strictly pursue the terms of the instrument, the provisions of law relative to such a sale, and the details prescribed as to the manner of the sale. See Durkay v. Madco Oil Co., 862 S.W.2d 14, 17 (Tex.App.—Corpus Christi 1993, writ denied); Randolph v. Citizens Nat'l Bank, 141 S.W.2d 1030, 1032 (Tex.Civ. App.—Amarillo 1940, writ dism'd judgm't cor.).

When exercising a power contained in a deed of trust, the trustee becomes a special agent for both parties, and he must act with absolute impartiality and with fairness to all concerned in order to achieve the objective of the trust. See Hammonds v. Holmes, 559 S.W.2d 345, 347 (Tex.1977); First Federal Sav. & Loan Ass'n v. Sharp, 359 S.W.2d 902, 904 (Tex.1962).

Unclean Hands?

Woe to you evil doers! The cuffs are coming!

Peace be with you,

A.Campbell P.O. Box 291, Coupland, Texas 78615