Old School / New School

<u>Old School</u> - The way it used to be.

Foreclosure is the process by which a financial institution (e.g., the bank/loan servicer) can reclaim your home and/or land if you fail to make timely mortgage payments.

In a foreclosure in judicial foreclosure states, the bank files a complaint with the state court to foreclose the property.

In non-judicial foreclosure states, like Texas, a Notice of Trustee Sale is required according to both the Deed of Trust and Texas Property Code. Oftentimes banks do not have the right to bring such action due to their lack of ownership rights or missing assignments of the mortgage.

An assignment of mortgage is a written instrument that serves as proof of transfer of a loan obligation from the original borrower to a third party. It is recorded in the office of Public Records where the property is located.

First, it is important for you to understand the legalities of foreclosure and your rights for mortgage foreclosure solutions. Also understand negotiable instruments are negotiated, not transferred.

There are two basic instruments involved in a bank loan transaction, the promissory note ("Note") and the mortgage (Deed of Trust). The note is a contract that details the terms of a promise by you to pay a sum of money to the bank.

The terms of a note typically include the principal amount, the interest rate if any, and the maturity date. It also may contain provisions concerning the bank's rights in the event of default which may include foreclosure of your property. The note is an agreement between the "Borrower" and the "Lender". No other parties are included in the note.

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The mortgage (Deed of Trust) is a method of using real property as security for the performance of an obligation, usually the payment of a debt. It gives the bank the right to take away your property if you do not pay as specified in the note. Essentially, the mortgage is what gives the bank the right to foreclose. The mortgage contains the power of sale clause that allows the bank to foreclose on the property.

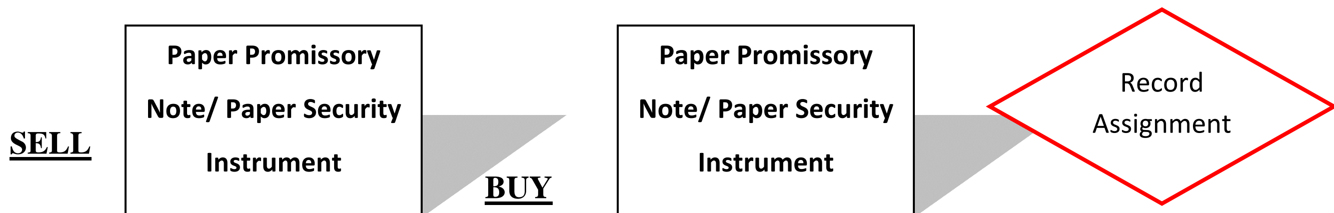
The note, by itself, is an unsecured debt.

On the other hand, the **note** accompanied with the **mortgage** creates a **secured debt**.

The difference between the two is that a secured debt allows the bank to force sale of the property which in turn permits satisfaction of the loan in case of default by you, the borrower.

However, without the mortgage, banks cannot force sale of the property to satisfy the debt.

In many cases, when a bank lends you money to purchase a home, it will subsequently sell the note, along with the mortgage, to investors in the secondary market.



The secondary market manages mortgages that were originated in the primary market. It consists of investors, both public and private, who buy the mortgage notes.

This allows the mortgage lenders to replenish the cash reserves, so that they can originate more mortgages to more consumers. In this way, the investors can profit by receiving interest payments from the mortgage interest charges paid by the homeowners.

It should be noted that when a loan is sold in the secondary market the bank is no longer the owner of the note and mortgage. However, the bank's rights under the mortgage are not automatically assigned to the investors. In order to assign such rights an assignment of mortgage is necessary.

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Generally, a title search of the property is conducted to determine whether an assignment of mortgage has been recorded. If an assignment does not exist, then a defense may be available to delay your case and/or prevent foreclosure of your property.

In the old days, this "spirit" of conveying the secured debt with the above scenario is just as it should be. But problems did arise with "clouded" titles. Things were paper back then.

New School

Since 2000, Congress passed Two "Act's" of importance for the electronic age.

Electronic **S**ignatures **I**n **G**lobal And **N**ational Commerce Act a.k.a. "**e-Sign"**, and

Uniform **E**lectronic **T**ransaction **A**ct, a.k.a., "**UETA**".

The Mortgage Industry offered up **M**ortgage **E**lectronic **R**egistration **S**ystems, Inc., a.k.a. "MERS", to "streamline the mortgage process".

An intrusive NON-PARTY, called "MERS" came into the picture with the impression that it would solve the problems the banks were having. As stated on MERS website:

"MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. Our mission is to register every mortgage loan in the United States on the MERS® System."

By using "electronic commerce paper"?

Only one mission? "*Our mission is to register every mortgage loan in the United States on the MERS® System."*

MERS clearly states that they have no intentions to register every mortgage loan in the United States into public record--**only** to the MERS' system.

What about the "electronic commerce paper?

The Collateral in a Mortgage Backed Security

As the Borrower negotiates with the Lender to achieve a loan, the conclusion of that loan is created when the Borrower provides a Title to Property to the Lender, as collateral, making a secured debt.

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After this negotiation the Lender most likely will sell off the Note and Mortgage. However, since the "Deed of Trust" (Security Instrument) was created, and MERS is a party named in the Security Instrument, questions come to mind regarding the legality of MERS's part in this alleged secured debt.

At the closing of the loan the Borrower signs a "Paper" Promissory Note and a "Paper" Security Instrument.

After signing the Deed of Trust, it (the security instrument) **must** be recorded in Public Records where the property is located to show the world there is a secured debt.

The security instrument reflects the "Holder" of the "wet ink" signed paper instruments. The original party to the note--the Lender.

As the Florida Bankers Association admitted,

"*In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the **form** in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed.*"

Paper to Electronic?

Outcome? MERS may claim to track who holds the promissory note and security instrument. MERS boldly claims to register every residential mortgage loan in the United States; this is disaster in the making.

MERS Hold Worthless papers.

The Mortgage Banking Industry created a tactile illusion that provides an imaginary way of how to streamline the mortgage process. It is actually "white collar" crime. The largest ponzi scheme in United States history.

The creators of investment vehicles will now provide electronic files for analysis to the rating agencies. This will give investors an idea of the value of these mortgage backed securities.

The secondary market manages electronic mortgages that were originated in the primary market. It consists of investors, both public and private, who buy these electronic mortgage notes.

The investors do not realize these electronic negotiable instruments have no lawful support.

MERS may claim to hold the electronic promissory note and the electronic security instrument; however, the conversion from a paper instrument to an electronic instrument destroyed the integrity of

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those instruments. If by chance the paper was not destroyed, then the MERS tracking system would reveal the custodian of the paper documents as well as who holds the electronic version.

Through banking practices it appears the banks actually destroyed a secured debt in the process of creating an electronic copy and eliminated the original “wet ink” paper instruments.

So how does one get out of such a bind?

Fraudulently is the only way out. Thus explained:

<u>Notice of Assignment:</u> Party #1 → Party #2

Many of the banks’ law firms create and file a “Notice of Assignment” of an electronic negotiation to give the illusion of legality when in fact they are committing fraud in public records.

Banks’ law firms either retrieve the non-negotiated paper promissory note, or create an electronic promissory note possibly by also creating a lost note affidavit. Then use a printed out version of the electronic promissory note and security instrument along with the affidavit as misleading proof of a right to foreclose.

<u>The filing of a false electronic Instrument to record into public records is fraud on Public Records.</u>

<u>The filing of a false electronic Instrument to record into evidence in Court is fraud on the Court.</u>

If the banks’ law firms get away with the fraud, nothing will be left but a vicious cycle of repeated foreclosures in the United States.

The Legality of all of this

The illegality of this “assignment fraud” is based on U.S. Laws and Texas Laws. The assignment fraud can be challenged most likely anywhere. This article refers to Texas Laws, the Uniform Commercial Code, the E-Sign Act and UETA to show the fraud.

Let’s start with the E-Sign Act. Negotiable Instruments and Security Instruments are **<u>excluded</u>**. See also 15 USC 7003.

Next look at UETA, Section 3 Scope **<u>excludes</u>** Negotiable Instruments and Security Instruments.

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UCC Article 3 does not provide support for electronic negotiable instruments.
Let's not forget UCC Revised Article 9--Security interest in a negotiable promissory note may be perfected by filing. Article 9 also refers to the local laws of jurisdiction. In my state, Texas, Local Government Code, Chapter 192 governs. The local Laws of jurisdiction require filing for perfection of the lien and the notice of assignment to maintain a continuous perfected lien.

According to these three Laws, Electronic Promissory Notes are not lawful. Neither are electronic Security Instruments

Therefore, if the banks use an assignment to gain the legal ability to enforce a foreclosure on the property, the security interest in the paper negotiable instrument must be perfected by filing. More importantly, it must be valid. It must have proper paper filings. The previously mentioned laws govern that.

However, Texas is a non-judicial foreclosure state, which is next to impossible to know without research. A simple title search can sometimes determine this, but an extensive title search should ultimately find it.

MERS may register all the mortgage loans in the United States, but MERS has failed to hold valid negotiable instruments or security instruments in the United States since 2000.

Investors bought Mortgage Backed Securities based on electronic collateral that had no intrinsic value at the time they purchased them.

The Sellers of these Mortgage Backed Securities may not have known that these securities were of no value. They have worked in a 10 year tactile illusion of the correct way to negotiate negotiable instruments.

Most everyone around do not realize these Secured Debts were forgiven not long after the "Borrower" "Wet Ink"-signed the paper promissory note and paper security instrument. And we continue to pay on a non-existent debt and the banks continue to sell worthless mortgage backed securities.

As the Florida Bankers Association admitted, paper instruments are converted to electronic files and the electronic files are being used. Not the paper instruments. Electronic Promissory Notes are not legal.

Those who read this should now know. If not, read more on ourlemon.com.

This is my explanation of what I have learned so far about the largest financial crisis in the United States. And there is still more to uncover in this can of worms with electronic negotiable instruments.

Thank you, James, for the education.

From Podunk, USA

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