

## The Mortgage that went South

Peace be with you,

I honestly don't think America is getting the big picture. It is way bigger than robo-signers or foreclosure.

What I will explain is backed by U.S. laws.

Understand these two instruments;

Paper Promissory note – Governed by Article 3, Uniform Commercial Code

Paper Security Instrument (a.k.a Mortgage, Deed of Trust) - Governed by Article 9, Uniform Commercial Code and local laws of jurisdiction

To prove this, look at the following laws;

1. Uniform Commercial Code, Article 3 – Negotiable Instruments, Article 9 – Secured Transactions
2. Your states equivalence of the UCC as most states have them.
3. Your local laws of jurisdiction – Both Revised Article 9 and the mortgage/deed of trust mention this in that security instrument.
4. E-Sign (Electronic Signatures in Global and National Act & EUETA (Uniform Electronic Transactions Act))

Once you understand this explanation, you will find that the REMIC (Real Estate Mortgage Investment Conduit) is very flawed.

### The Start

To start with, after the borrower wet ink signs the paper promissory note and the paper security instrument. At this point, and according to the laws, the security instrument holds a temporary perfection of the security instrument. At some point after the borrower signs the paper security instrument and prior to the time limitation for the temporary perfection expires, the security instrument is recorded into public records to continue the perfection of that instrument. This is how it is supposed to work to be lawful.

### Mortgage Electronic Registration Systems, Inc.

However, when the security instrument is recorded into public records and that security instrument names MERS as the nominee, by the laws of the U.S. the security instrument becomes a nullity. Only the lender can be the nominee.

**Nominee:** *A person or firm into whose name securities or other properties are transferred in order to facilitate transactions, while leaving the customer as the actual owner. – Source: Investopedia*

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So, the security instrument became a nullity. It is void. The power of sale clause contained within the security instrument is no longer enforceable.

What this means, is the note and the security instrument are now separated. It is no longer a secured debt. It is unsecured. And only the original Lender, now Creditor can collect on the unsecured note.

If the lender was both, lender and nominee, then the lien would be perfected.

The next issue that comes along, is certain "characters", actually a 3<sup>rd</sup> party, file/record an "Assignment of Mortgage" into public records. This is an attempt to re-connect the separated note and security instrument. This is actually fraud in public records. This 3<sup>rd</sup> party has no lawful right to do so. The security instrument is no longer valid and cannot be used again. Only a new agreement between the original lender and the borrower is lawful. Anything else, such as a refinance or modification is only an attempt cover up an unsecured debt. It is not lawful, according to U.S. laws.

After that, comes another "character", another 3<sup>rd</sup> party, and files/records an "Appointment of Substitute Trustee:" in another attempt to cover up the fraud.

**Note:** One must remember, the clerk of public records does not verify the filing/recordation because a notary has attested that it is true and correct and the "person" who signed it in front of them is who they say they are. So, there is no validation to these filing/recording in public record.

Next step, depending upon the foreclosure laws of the state, another affidavit, by a 3<sup>rd</sup> party, is used either in court or otherwise to commit even more fraud. This is currently made public as I write this.

Then a wrongful foreclosure takes place. It does not matter if it is a Judicial or Non-Judicial foreclosure. It is a wrongful foreclosure because the security instrument is invalid. It is a nullity and cannot, I repeat, cannot be used to foreclose on the home/property, legally. It is a 3<sup>rd</sup> party foreclosing on a nullified security instrument. Now, here is an even bigger piece to this mess.

When the original lender received the paper note and paper security instrument, after it was signed by the borrower, it was then scanned, copied and eliminated. This is according the Florida Bankers Association's own admittance in Case No.# 09-1460, in the Florida Supreme Court.

*"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. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database."*

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*“Electronic storage is almost universally acknowledged as safer, more efficient and less expensive than maintaining the originals in hard copy, which bears the concomitant costs of physical indexing, archiving and maintaining security.”*

*“It is a standard in the industry and becoming the benchmark of modern efficiency across the spectrum of commerce—including the court system.”*

Industry Standard? What happened to the laws? I’ve heard this “phrase” in the mobile home industry.

You may wonder what might be wrong with that? It is electronic. It was scanned into an electronic image, that is being passed around to other lenders and being used to create the mortgage backed securities. The problem with this is that **15 USC 7003**, excludes the Uniform Commercial Code, which governs the paper note and paper security instrument.

This means, there are no laws to support these scanned images the banks are using as mortgages. It is an illusion. There are absolutely no laws to support electronic mortgages that are governed by the UCC.

Let’s look at it this way; If you take your driver’s license and scan it, then put that scanned copy in your back pocket and drive around, and should you get stopped for whatever reason and asked to produce your driver’s license, how far do you think you will get with that scanned copy? It is electronic. Not the real tangible. So, what did that do to investors? Loss.

So what did that do to the REMIC’s? Fatally flawed. And the banks want to redo the REMIC’s? How can they lawfully do that with electronic images?

Millions of Americans are in homes that cannot be foreclosed on, because the security instrument, (a.k.a. Mortgage, Deed of Trust) are no longer valid and the power of sale clause contained within that security instrument is no longer enforceable.

These mortgages are invalid. The mortgage debts, even for those people who are still paying are no longer paying on a secured debt. They are unsecured. Only the unsecured note, the debt, is remaining for the homeowner to pay off and can only be collected by the original Creditor. And If not, only the original creditor can produce the original paper note that contains the borrowers original wet ink signature.

No matter what the banks want to say about how they will fix this problem, they cannot. Only by a bigger fraud can they do this. Or maybe, if these banks can convince the American people to completely redo their loan from the start, with a new loan that is combined by a paper note and paper security instrument?

But the problem with that is; what happened to the monies already paid by the borrower?

Bottom line; Electronic Promissory Notes & Electronic Security instruments have no lawful support.

The homeowner’s secured obligation was destroyed, just like Humpty Dumpty. It cannot be put together again.

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Next. The Commercial Loans. Most are they the exact same way? After that, Student Loans? There are no supporting laws for electronic promissory notes.

So, please don't call these homeowners who have lost their homes deadbeats. They are not. They are victims, just like you who are paying monies to a 3<sup>rd</sup> party that is not the actual original lender.

I hope you understood this, and realize what magnitude of fraud the banks actually committed.



Merry Christmas,

Alvie