

YOU CANNOT BIFURCATE?

How it happened

In Campbell v. Mortgage Electronic Registration Systems, Inc., the Campbells borrowed money from a lender to purchase a residence. No. 03-11-00428-CV, 2012 Tex. App. LEXIS 4030 (Tex. App.—Austin May 18, 2012, no pet. history).

*“The court of appeals next addressed the Campbells’ issue that the assignment of the deed of trust from the first trustee to Wells Fargo was not recorded in the public records. **The court noted that when a note is transferred, the mortgage or deed of trust is also automatically transferred to the note holder by virtue of the common law rule that “the mortgage follows the note.”** Therefore, when the original lender transferred the note to Wells Fargo, that transfer also served to transfer the deed of trust to Wells Fargo. Further, the court found that the assignment of the deed of trust from the original trustee to Wells Fargo was valid under Texas law where a deed of trust expressly grants a trustee the power of sale. The original trustee had the authority to transfer the rights and interests in the deed of trust to Wells Fargo, and when it did so, Wells Fargo obtained all of the original trustee’s rights and interest in the deed of trust, including the power to foreclose on the property. The court of appeals affirmed the trial court’s judgment for the lender.”*

NOTE: MERS was not the Trustee. MERS was the “Nominee”

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“The problem with this opinion, is that these decisions trample on long-standing case law stating that you can’t separate the security instrument from the note.

One of the oldest Texas case cites to this principle is Kirby Lumber Corp. v. Williams, 230 F.2d 330 (5th Cir. 1956) (“The rule is fully recognized in this state that a mortgage to secure a negotiable promissory note is merely an incident to the debt, and passes by assignment or transfer of the note. . . . The note and mortgage are inseparable.)”.

The oldest being:

West v. First Baptist Church of Taft 71 SW 2d 1090, 123 Tex. 388, 123 TX 388 – 1934; citing Carpenter v. Longan, U.S. Supreme Court (and neither still not overturned yet)

YOU CANNOT BIFURCATE

(Using a system similar to warehouse receipts)

The eMortgage Process Flow



**Carpenter v. Longan - 83 U.S. 271,
West v. First Baptist Church of Taft, 71 S.W. 2d 1090, 1098 (Tex. 1934),**

Period!

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YOU CANNOT BIFURCATE

Here is why;

How it happened

Before the Obligor/Grantor ever signed the security instrument, someone created, designed an unlawful Security Instrument that by operation of Law; lacks supporting laws. Case law proves that this cannot happen; also provided in this article.

The Security Instrument in itself is stating ; “*OR partial interest In*” **IS** the way of creating the **Transferable Record**.

MERS eRegistration system is the electronic registry that tracks the transferable record which a MERS member creates, registers and transfers. Rarely does the MERS system disclose the location of the Tangible Note. The “*OR partial Interest In*” **IS** the **Transferable Record**. No if and’s or but’s about it!

What the Security Instrument itself is attempting to do is to bifurcate the Security Instrument away from the Note and attach and perfect to the “OR Interest In” **OF THE TRANSFERABLE RECORD**. **[There is no law to support this action]**

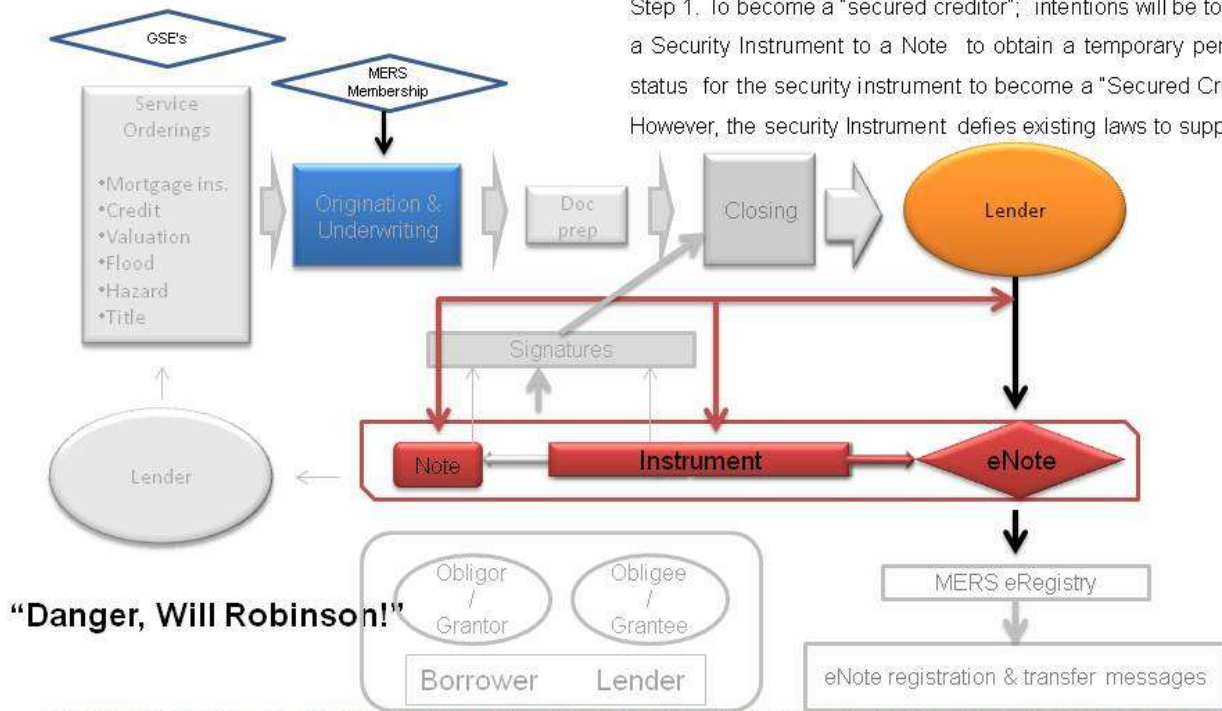
[It does not matter which form security instrument is used, when MERS or the GSE’s are involved. However the proof is shown clearly in the Fannie Mae form. When MERS is involved, a “transferable record “ is involved.

The so-called “Assignment” in public records is actual proof that there is an attempt assign the Security Instrument from the Transferable Record **BACK** to the **TANGIBLE NOTE** whereas such bifurcation could never exist according to age old case law.

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The eMortgage Process Flow



Step 1. To become a "secured creditor"; intentions will be to attach a Security Instrument to a Note to obtain a temporary perfection status for the security instrument to become a "Secured Creditor". However, the security Instrument defies existing laws to support it.

"Danger, Will Robinson!"

Fannie Mae Form 3044 – Texas Security Instrument

20. Sale of Note; Change of Loan Servicer; Notice of Grievance.

The Note or a **partial interest in the Note (together with this Security Instrument)** can be sold one or more times without prior notice to Borrower.

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How they tried to do something that cannot legally happen!

MEETING OF THE TASK FORCE ON JUDICIAL FORECLOSURE RULES

November 7, 2007

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

MR. BASTIAN: Well, MERS is going to be the (17) mortgagee of record. In about 60 percent of all loans (18) MERS is going to be the mortgagee of record, **but all MERS (19) is is a registration system.** That's all it is. It really (20) is a piggyback on what happened in the securities market (21) back in the early Seventies when Wall Street was (22) exploding, and back in those days whenever you bought and (23) sold stocks or bonds you had to have a paper certificate. (24) Well, the back rooms couldn't keep up with it, and Wall (25) Street almost cratered, and they came up with a book entry

YOU CANNOT BIFURCATE

How they tried to do something that cannot legally happen!

How it happened

(PG 27)

<http://www.supreme.courts.state.tx.us/frtf/pdf/110707transcript.pdf>

MR. BARRETT: Judge, I think that's a very (7) good point. **This is Mike Barrett**, and I know we've had (8) this difficulty. **There really isn't such a document**, and (9) maybe, Larry, you might explain mortgage servicing rights (10) because the servicer usually acquired their position in (11) the file through the purchase of MSR's. There is an (12) organized market in MSR's that really makes up maybe as (13) much as 40 to 50 percent of any mortgage company's assets, (14) and they acquired this -- their status of being a servicer (15) through the purchase of an MSR most of the time, or they (16) did it themselves, they created their own loan. **So (17) finding a document that says, "I am the owner and holder, (18) and I hereby grant to the servicer the right to foreclose (19) in my name" is an impossibility in 90 percent of the (20) cases.**

Pg 27-28

24 HONORABLE BRUCE PRIDDY: Yeah, in Dallas (25) we've wrestled with this issue, and I think most of the (Pg28)(1) courts in Dallas require some sort of assignment of the (2) note to the applicant so the applicant is actually the (3) person or the entity that has the rights under the --

(8) HONORABLE BRUCE PRIDDY: And what the -- (9) happens is **they just execute a document like Mr. Barrett (10) says doesn't exist. They just create one for the most (11) part sometimes, and the servicer signs it themselves (12) saying that it's been transferred to whatever entity they (13) name as the applicant. I think we can avoid a lot of (14) problems if we specifically allow the servicer standing (15) under Rule 736, because I think it's -- we don't (16) specifically allow the servicer to proceed, and I think if (17) we tie in with the Property Code provision that the (18) servicer can proceed with foreclosure if certain (19) circumstances are met, if we tie into that in the rule I (20) think we'll avoid a lot of these problems.**

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How they tried to do something that cannot legally happen!

How it happened

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21 MR. BAGGETT: Yeah, I think you might be (22) right because whatever vehicles we have, you do have a (23) servicer if there's multiple parties, and that is the most (24) logical entity to go forward. We just need -- if we're (25) going to do that, we need to figure out how we do it

(IN TEXAS)

The problem with the banks; they are using “warehouse receipts” and “bills of lading” in a court of law to support the argument that; (“The Mortgage follows the Note”)

BUSINESS AND COMMERCE CODE CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.001. SHORT TITLE. This chapter may be cited as the Uniform Electronic Transactions Act.

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;

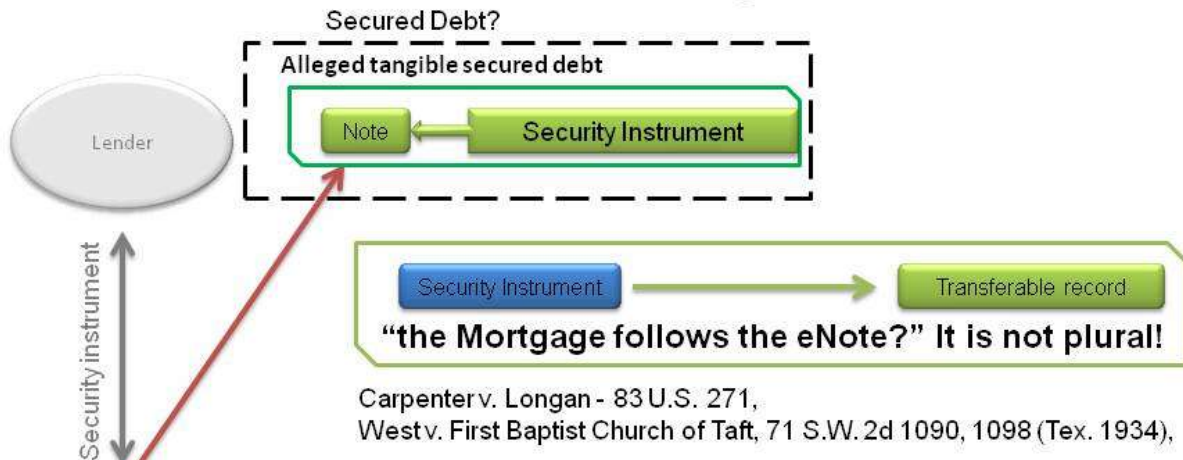
(Using a system similar to warehouse receipts)

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The eMortgage Process Flow

“Danger, Will Robinson!”



Fannie Mae Form 3044 – Texas Security Instrument

20. Sale of Note; Change of Loan Servicer; Notice of Grievance.

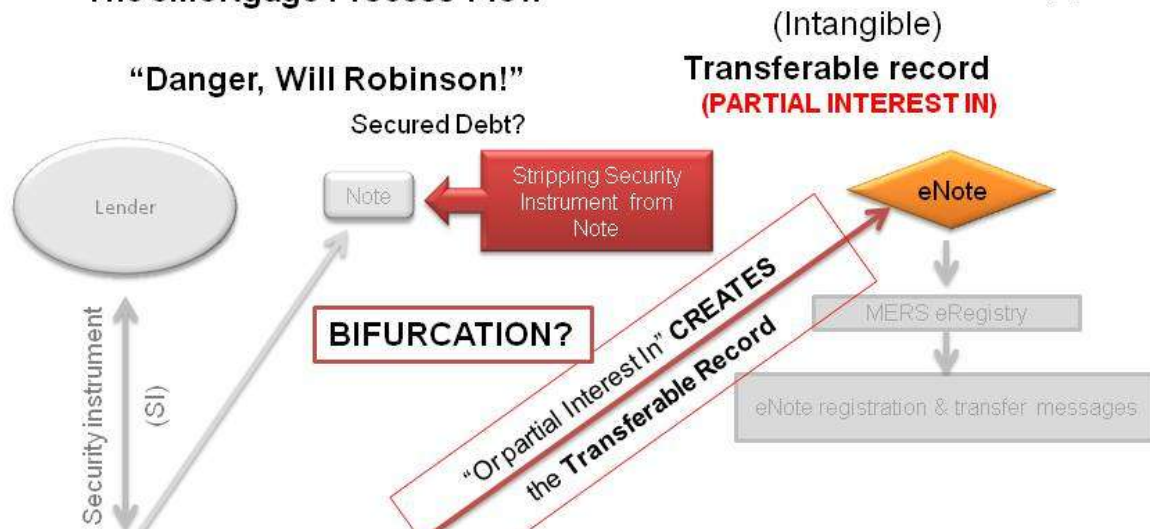
The Note or a **partial interest in the Note (together with this Security Instrument)** can be sold one or more times without prior notice to Borrower.

By the Security Instrument wording, the security instrument was void before a Obligor/Grantor ever signed the security instrument.

YOU CANNOT BIFURCATE

The eMortgage Process Flow

How it happened



Fannie Mae Form 3044 – Texas Security Instrument

20. Sale of Note; Change of Loan Servicer; Notice of Grievance.

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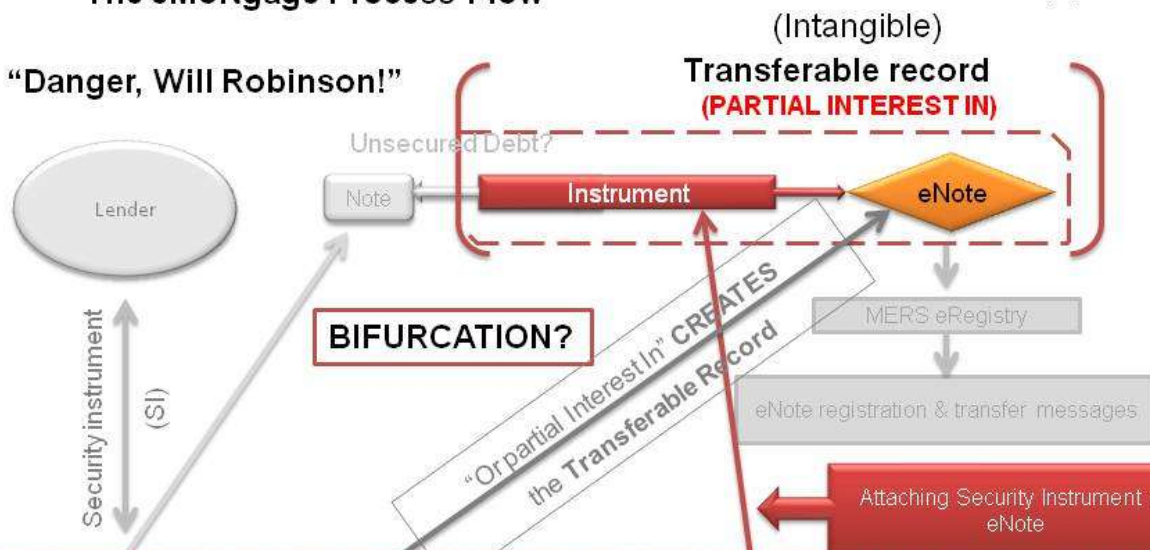
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YOU CANNOT BIFURCATE

The eMortgage Process Flow

How it happened



Fannie Mae Form 3044 – Texas Security Instrument

20. Sale of Note; Change of Loan Servicer; Notice of Grievance.

The Note or a **partial interest in the Note** (together with this Security Instrument) can be sold one or more times without prior notice to Borrower.

Meaning: Their intentions for the security instrument is to strip the SI from the Paper Note to create an alleged secured debt to present to investors.

By the Security Instrument wording, the security instrument was void before a Obligor/Grantor ever signed the security instrument.

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YOU CANNOT BIFURCATE

The Unsecured Mortgage
Process Flow



Carpenter v. Longan - 83 U.S. 271,
West v. First Baptist Church of Taft, 71 S.W. 2d 1090, 1098 (Tex. 1934),

"Danger, Will Robinson!"

Official Public Land records will provide prima facie evidence to prove bifurcation has occurred.

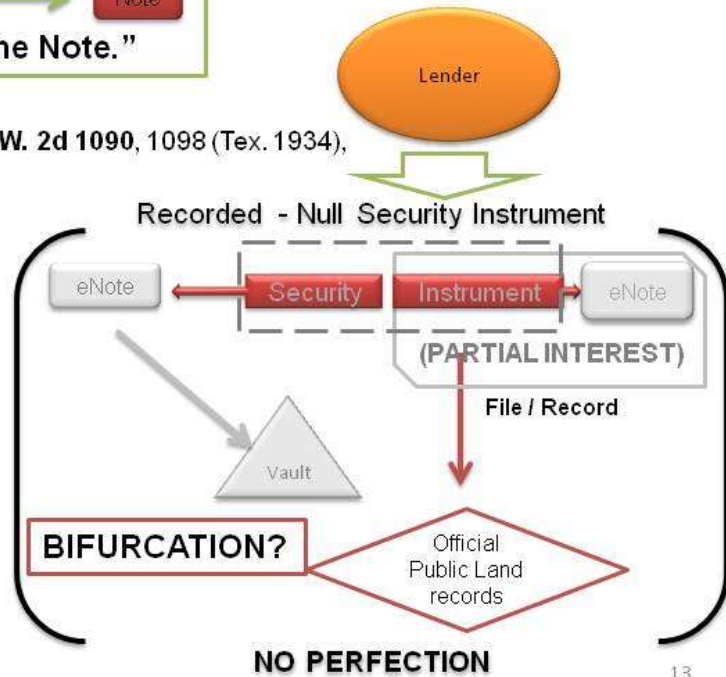
All those who feel they lost in court trying to win, but lost, actually did themselves a favor.

Now you have case law to support it. USE it?

{Not Legal Advice}

It happened

The Mortgage DOES NOT follow the Transferable Record



YOU CANNOT BIFURCATE

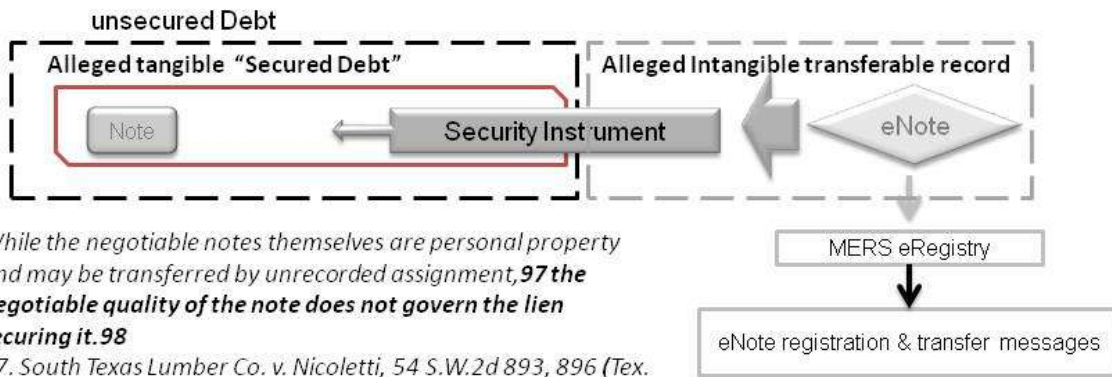
It happened

FRAUD
in Public records
The banks fraudulent attempt to re-connect the severed (nullity) security instrument BACK to the original Note?

Stripping the (null) Security Instrument from the transferable record (eNote) and attempting to re-attach to paper Note.

YOU CANNOT BIFURCATE

It happened



While the negotiable notes themselves are personal property and may be transferred by unrecorded assignment,⁹⁷ the negotiable quality of the note does not govern the lien securing it.⁹⁸

97. *South Texas Lumber Co. v. Nicoletti*, 54 S.W.2d 893, 896 (Tex. Civ. App. - Beaumont 1932, writ dismissed).

98. *McCarty v. Allen*, 113 S.W.2d 974, 976 (Tex. Civ. App. - Austin 1938, no writ).

A deed by a person unauthorized to act for the holder of legal title is void for want of capacity by the vendor to convey. *Bowman v. Oakley*, 212 S.W. 549, 552 (Tex. Civ. App. - Fort Worth 1919, writ refused).



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The “assignment” in public records

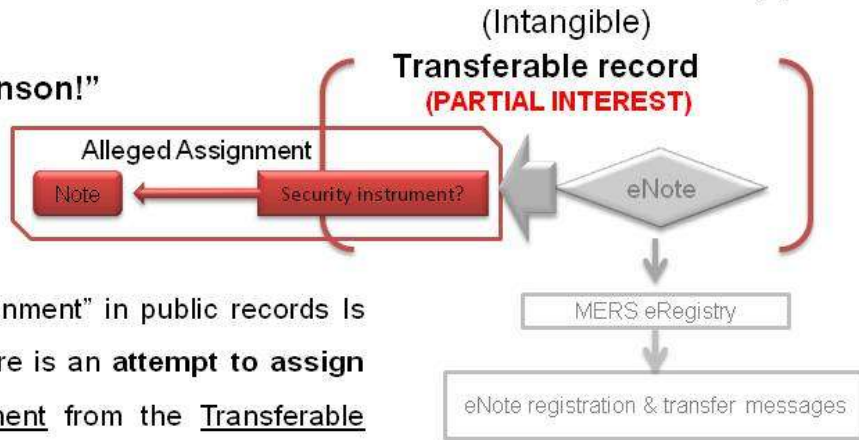


These “assignments” have many names

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It happened

“Danger, Will Robinson!”



The so-called “Assignment” in public records is actual proof that there is an **attempt to assign the Security Instrument from the Transferable Record BACK to the TANGIBLE NOTE** whereas such bifurcation could never exist according to age old case law.



Carpenter v. Longan - 83 U.S. 271, West v. First Baptist Church of Taft, 71 S.W. 2d 1090, 1098 (Tex. 1934),

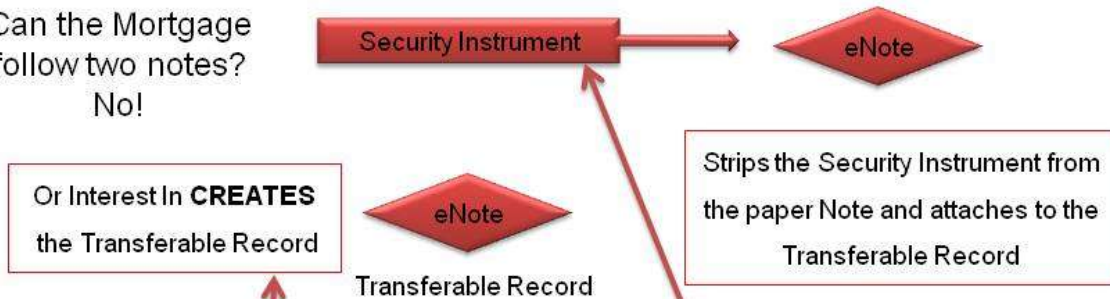
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YOU CANNOT BIFURCATE

It happened



Can the Mortgage follow two notes?
No!



“Danger, Will Robinson!”

Fannie Mae Form 3044 – Texas Security Instrument
 20. *Sale of Note; Change of Loan Servicer; Notice of Grievance.*
 The Note **or a partial interest in the Note together with this Security Instrument** can be sold one or more times without prior notice to Borrower.

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Carpenter v. Longan - 83 U.S. 271, West v. First Baptist Church of Taft, 71 S.W. 2d 1090, 1098 (Tex. 1934),

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YOU CANNOT BIFURCATE – SECURITIES FRAUD?
The Cuffs are coming

Next: MERS as “Nominee”



*It is still the same method, just different wording and
difficult to catch by the untrained eye.
Stay tuned, **OR** see if you can figure it out by yourself?*

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Peace be with you,