

# Mortgage Electronic Registration Systems, Inc.

*The trouble wheel?..(In Texas)*



*Mortgagee of record?*

*Which record?*

# Mortgage Electronic Registration Systems, Inc.

*How long can they do it before someone figures it out?*

15 U.S.C. 7003

# Mortgage Electronic Registration Systems, Inc.

*(In Texas)*



*Mortgagee of record?*

*Which record?*

Official Public Land  
Records

Or

MERS eRegistration  
System Records

# Mortgage Electronic Registration Systems, Inc.

## BOTTOM LINE :

Was it lawfully recorded in  
Official Public Land Records?

*How long can they do it before someone figures it out?*

15 U.S.C. 7003

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

Tangible World  
(Old school)



→ Governed by UCC

Personal Property



→ Governed by Laws of local jurisdiction

Real Property

Lien

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

Tangible World  
(Old school)



→ Governed by UCC

Personal Property



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

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

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

Real Property

Lien

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Tangible World  
(Old school)



Personal Property



Real Property

Lien

→ Governed by UCC

Is the confusion with the words  
"security interest"?

security interest

**SECURITY INTEREST** - Black's Law 8<sup>th</sup>,  
2004

A property interest created by  
agreement or by operation of law to  
secure performance of an obligation  
(esp. repayment of a debt).

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Tangible World  
(Old school)



Personal Property



Real Property

Lien

→ Governed by UCC

Is the confusion with the words  
"security interest"?

security interest

## Section 9.102 - Definitions

(12) "Collateral" means the property  
subject to a security interest or  
agricultural lien. The term includes:

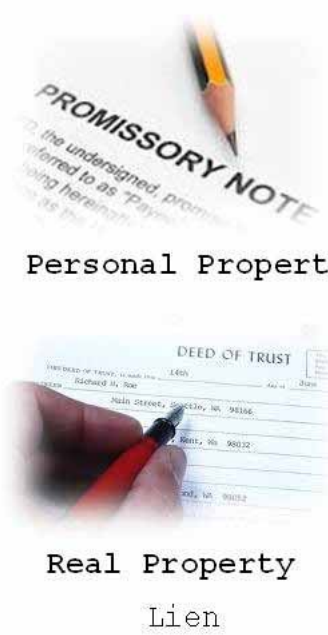
(A) proceeds to which a security  
interest attaches;

(B) accounts, chattel paper,  
payment intangibles, and  
promissory notes that have been  
sold; and

(C) goods that are the subject of  
a consignment.

Mortgage Electronic Registration Systems, Inc.  
(In Texas)

Tangible World  
(Old school)



Personal Property

Real Property  
Lien

→ Governed by UCC

Is the confusion with the words "security interest"?

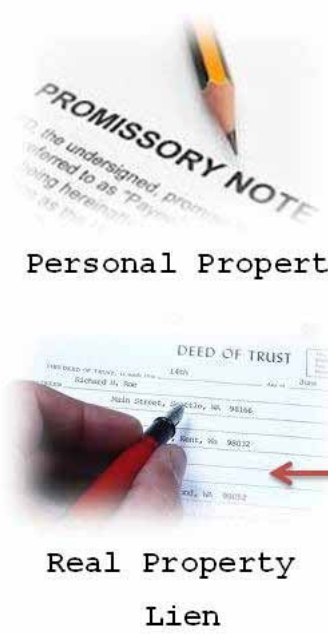
**NOTE:** (there are some exceptions) Sec. 9.109. SCOPE. (a) Except as otherwise provided in Subsections (c), (d), and (e), this chapter applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

security interest

Mortgage Electronic Registration Systems, Inc.  
(In Texas)

Tangible World  
(Old school)



Personal Property

Real Property  
Lien

→ Governed by UCC

Is the confusion with the words "security interest"?

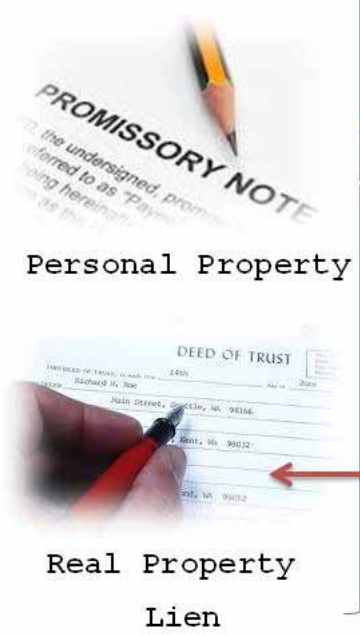
**Section 9.109**

(d) This chapter **does not** apply to:  
(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9.333 applies with respect to priority of the lien;

security interest

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



→ **Governed by UCC**

Is the confusion with the words "security interest"?

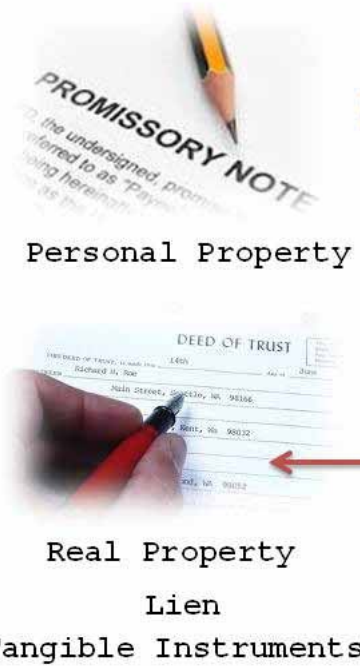
**Section 9.109**

(d) This chapter does not apply to:

- (11) the creation or transfer of an interest in or lien on real property, including a lease or rents, as defined by Section 64.001, Property Code, the interest of a vendor or vendee in a contract for deed to purchase an interest in real property,

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



→ **Governed by UCC**

Is the confusion with the words "security interest"?

**Section 9.109 (continued)**

(d) This chapter does not apply to:

- (11) ..or the interest of an optionor or optionee in an option to purchase an interest in real property, except to the extent that provision is made for:

(A) liens on real property in Sections 9.203 and 9.308;

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World - (Old school)**

For the sake of those confused by MERS, the following party(s) are designated in certain areas of this presentation as;

**The Players;**

**Potential Homeowner (PH)** - ("borrower"?)  
("Obligor") ("Obligor/**PH**" - Used for MERS references)

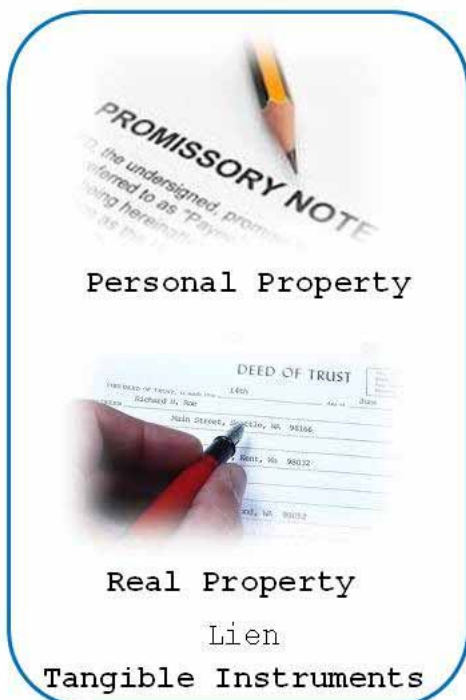
**Originating Lender (OL)?** - ("Lender1"?) ("Borrower")  
("Obligee 1") ("Obligor/**OL**" - Used for MERS references)

**Warehouse Lender (WL)** - ("Lender"?) ("Obligee/**WL**" -  
Used for MERS references)

**Subsequent Purchaser** - ("Obligee/**SP-#**") (This also is dependant upon the sequence number of the subsequent purchaser.)

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



**Old Money**

**The Players;**

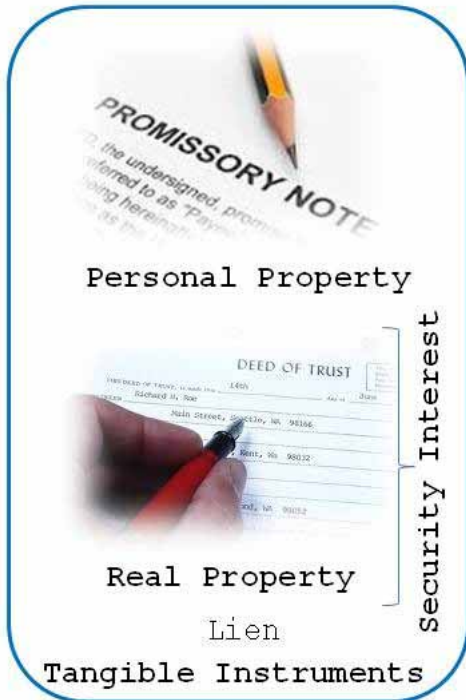
**Potential Homeowner**  
("borrower"?) ("Obligor")

**Originating Lender?**  
("Lender1"?) ("Obligee 1")

**Subsequent Purchaser?**  
("Obligee/**SP#**")

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



**Old Money**

The Players;

**Potential Homeowner**

("borrower"?) ("Obligor")

Signs Tangible Note and provides collateral in the form of a Deed of Trust lien for the real property. This is one example of "security Interest" as demonstrated in the tangible way of doing things considered "old money", "old school" way of doing things.

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Security Interest - [Investopedia](#)**

A legal claim on collateral that has been pledged, usually to obtain a loan.

**SECURITY** - *Black's Law 8<sup>th</sup> Edition - 2004*  
security, n.1. Collateral given or pledged to guarantee the fulfillment of an obligation; esp., the assurance that a creditor will be repaid (usu. with interest) any money or credit extended to a debtor. [Cases: Secured Transactions 11, 115. C.J.S. Secured Transactions §§ 3, 11, 84.]

**SECURITY INTEREST** - *Black's Law 8<sup>th</sup> Edition - 2004*  
A property interest created by agreement or by operation of law to secure performance of an obligation (esp. repayment of a debt).

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



**Personal Property**



**Old Money**

The Players;

**Potential Homeowner**

("borrower"?) ("Obligor")



**Real Property**

Although a Deed of Trust sounds like a "Trust" it is not. It is a Lien.

This Deed of Trust lien is not governed by the UCC. Do not confuse yourself with a security interest governed by the UCC.

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Deed - [Investopedia](#)**

A legal document that grants the bearer a right or privilege, provided that he or she meets a number of conditions. In order to receive the privilege - usually ownership,...

Deeds are most known for being used to transfer the ownership of automobiles or land between two parties



**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



Personal Property



**Old Money**

The Players;

**Originating Lender?**

("Lender1"?) ("Obligee 1")



Real Property

Lien

Funds the **Potential Homeowner** ("Obligor") with a loan.

The originating Lender ("Obligee 1") holds the Tangible Note?

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



Personal Property



**Old Money**

The Players;

**Originating Lender?**

("Lender1"?) ("Obligee 1")



Real Property

Lien

Security Interest

Also records the Deed of Trust lien in the Official Public Records in the county where the real property is located to perfect Obligee 1 as Secured Party (Creditor).

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



Personal Property



Real Property

Security Interest



Old Money

The Players;

**Originating Lender?**

("Lender1"?) ("Obligee 1")

By recording the Deed of Trust, this provides constructive notice of attachment and perfection of a Secured Creditor.

This lien is not governed by the UCC.

**Mortgage Electronic Registration Systems, Inc.**  
(In Texas)

**Tangible World**  
(Old school)



Personal Property



Real Property



Old Money

The Players;

**Originating Lender?**

("Lender1"?) ("Obligee 1")

Recording the Deed of Trust, a Secured Creditor mandatorily invokes Texas Local Government Code §192.001.

This lien is not governed by the UCC.

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Tangible World  
(Old school)



Personal Property



Old Money

LOCAL GOVERNMENT CODE  
TITLE 6. RECORDS  
SUBTITLE B. COUNTY RECORDS  
CHAPTER 192. INSTRUMENTS TO BE  
RECORDED BY COUNTIES



Real Property

Lien

**Sec. 192.001. GENERAL ITEMS.** The county clerk **shall** record each deed, mortgage, **(or)** other instrument that is required or permitted by law to be recorded. Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Tangible World  
(Old school)



Personal Property



Old Money

The Players;

**Potential Homeowner**

("borrower"?) ("Obligor")



Real Property

Lien

All the borrower needs to do is fulfill the agreement by making required payments and not default upon the debt. Once payoff is reached, lien release is recorded in land records. However, If an alleged default occurs...

# Mortgage Electronic Registration Systems, Inc. (In Texas)

A lawful **Deed of Trust** contains "power of sale" clause.

**PROPERTY CODE**  
TITLE 5. EXEMPT PROPERTY AND LIENS  
SUBTITLE B. LIENS  
CHAPTER 51. PROVISIONS GENERALLY  
APPLICABLE TO LIENS

**Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN.** (a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month.



This can be enforced according to Old School ways or New School ways if it is lawful.

# Mortgage Electronic Registration Systems, Inc. (In Texas)

**Old Money**

**Tangible World  
(Old school)**



Negotiation → **Subsequent Purchaser?**  
("Lender2"?)( "Obligee 2")

The Players;

**Originating Lender?**  
("Lender1"?)( "Obligee 1")

**Originating Lender?**  
("Lender1"?)( "Obligee 1")

If for some reason the Lender (Obligor 1) **sells the Note and Deed of Trust** to a subsequent purchaser (another bank?)(Obligee 2) steps are required to continue "secured" status.

# Mortgage Electronic Registration Systems, Inc.

(In Texas)

Old Money

Tangible World

(Old school)



Bailee Letter

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

The Players;

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

Upon negotiation the Note is indorsed to the subsequent purchaser (Obligee 2), the subsequent purchaser (Obligee 2) then records lawful constructive notice in Official Public records where the real property is located to continue perfection of the lien.

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

# Mortgage Electronic Registration Systems, Inc.

(In Texas)

Old Money

Tangible World

(Old school)



Bailee Letter

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

The Players;

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

This recordation is a requirement as this alleged transfer of the secured debt is an action related to the original Deed of trust lien, and by statute it MUST be recorded. Texas Local Government Code §192.007

Subsequent Purchaser?

("Lender2"?) ("Obligee 2")

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Old Money

Tangible World  
(Old school)



LOCAL GOVERNMENT CODE  
TITLE 6. RECORDS  
SUBTITLE B. COUNTY RECORDS  
CHAPTER 192. INSTRUMENTS TO BE  
RECORDED BY COUNTIES

Real Property  
Assignment of  
Lien

**Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS.** (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

# Mortgage Electronic Registration Systems, Inc. (In Texas)

Old Money

Tangible World  
(Old school)



**Subsequent Purchaser?**

("Lender2"?) ("Obligee 2")  
The Players;

**Subsequent Purchaser?**

("Lender2"?) ("Obligee 2")

Once lawfully recorded, the subsequent purchaser (Obligee 2) has provided constructive notice of being the Secured Creditor by assignment of perfection and thus reflecting perfection of priority.

**Subsequent Purchaser?**  
("Lender2"?) ("Obligee 2")

# Mortgage Electronic Registration Systems, Inc.

(In Texas)

Old Money

Tangible World  
(Old school)



Subsequent Purchaser?  
("Lender"?) ("Obligee 2")

The Players;

**Potential Homeowner**

("borrower"?) ("Obligor")

**Originating Lender?**

("Lender1"?) ("Obligee 1")

**Subsequent Purchaser?**

("Lender2"?) ("Obligee 2")

**Constructive Notice**

It is a pretty simple process.

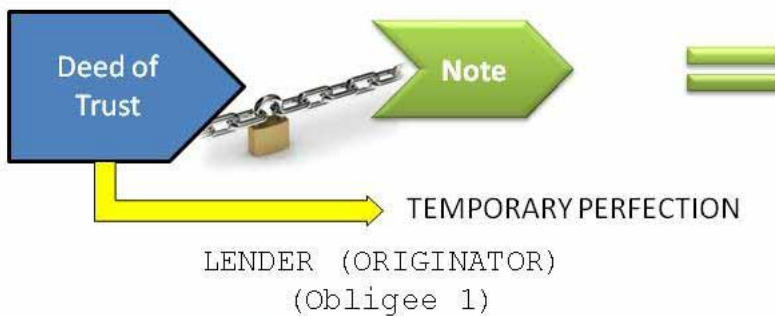
Subsequent Purchaser?  
("Lender2"?) ("Obligee 2")

## Old School, the tangible way

(In Texas)

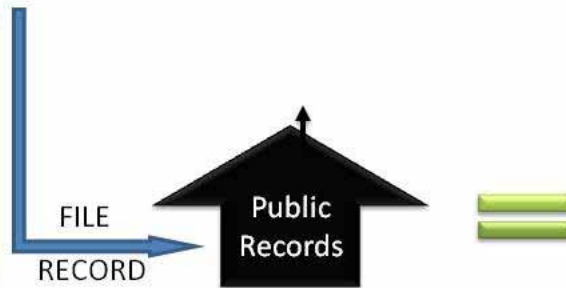
Old Money

LOAN ORIGINATION



LENDER  
(ORIGINATOR)  
(Obligee 1)

For continuation for perfection Constructive notice is needed.

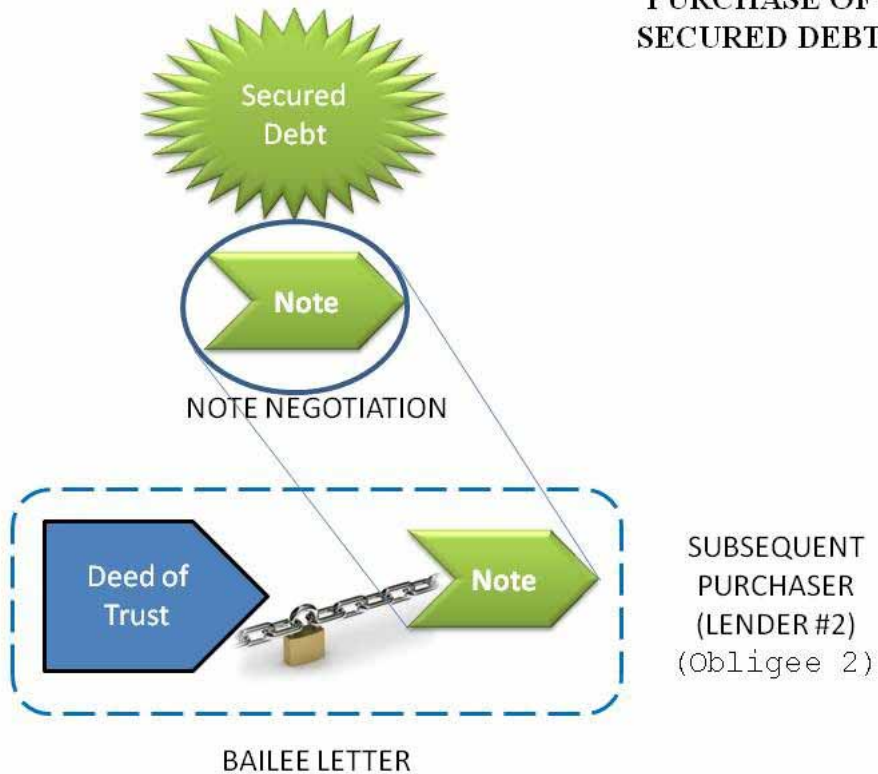


CONSTRUCTIVE NOTICE  
ATTACHMENT  
AND  
PERFECTION

**Old School, the tangible way**  
(In Texas)

Old Money

SUBSEQUENT  
PURCHASE OF  
SECURED DEBT



**Old School, the tangible way**  
(In Texas)

Old Money

Subsequent Purchase  
Reflects

Chain of Negotiation  
(indorsement)

Chain of Title  
(assignment/transfer of lien)

Indentured

Texas Local Government Code  
§192.007  
(MUST RECORD)

A lawful negotiation of the Mortgage Note and the timely recording of the assignment of the Security Instrument in the subsequent purchaser name would only transfer title rights of the real property to the subsequent purchaser and not possession.



# Old School, the tangible way

Old Money  
TWO CHAINS

(In Texas)

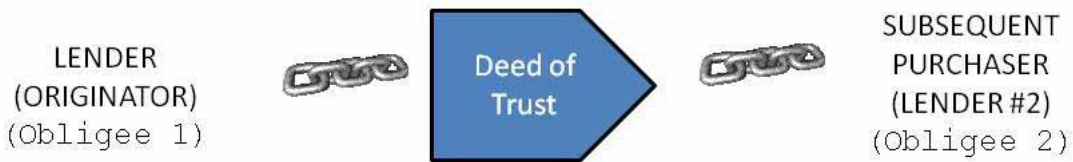
SELL/PURCHASE  
SECURED DEBT



CHAIN OF NOTE NEGOTIATION (INDORSMENT)



CHAIN OF TITLE (CONSTRUCTIVE NOTICE)



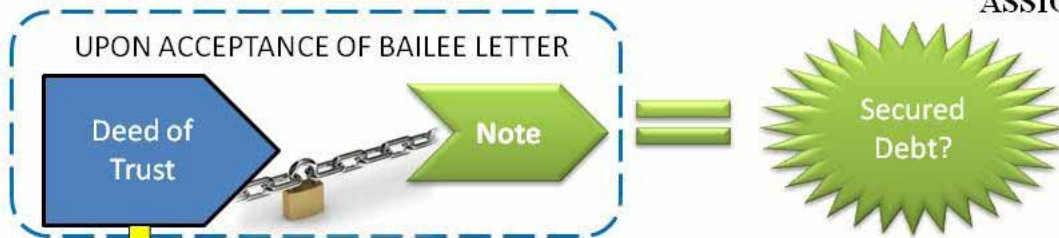
Under cover of a BAILEE LETTER  
(think of it as a FedEx package sent from the originator to the subsequent purchaser)

# Old School, the tangible way

Old Money

(In Texas)

PERFECTION OF  
ASSIGNMENT



TEMPORARY PERFECTION  
SUBSEQUENT PURCHASER (Obligee 2)  
SUBSEQUENT PURCHASER (Obligee 2)

Note: (Obligee#) would be dependant upon sequence of subsequent purchasers.

For continuation for perfection Constructive notice is needed.



# New School, the intangible way

*The trouble wheel? (In Texas)*

## New Money



## Mortgage Electronic Registration Systems, Inc.

The New way of record keeping?

*How long can they do it before someone figures it out?*

15 U.S.C. 7003

#	Instrument #	Date Filed	Document Type	Grantor	Grantee	Legal Description	Status	Image
1	2040769205	11/03/2004	DEED OF TRUST	CAMPBELL ALVE (H)	AMERICAN MORTGAGE NETWORK (H)	LOT 3 DOVE MEADOW NORTH	Pem	
2	2040769205	11/03/2004	AFFIDAVIT	CAMPBELL ALVE (H)	PUBLIC	LOT 3 DOVE MEADOW NORTH	Pem	
3	2040769205	11/03/2004	AFFIDAVIT	CAMPBELL ALVE (H)	PUBLIC	LOT 3 DOVE MEADOW NORTH	Pem	
4	2040769205	09/16/2005	AMORTIZATION	CAMPBELL ALVE (H)	CATNAI JOHN (H)	204009793	Pem	
5	2040769205	09/30/2005	ASSIGNMENT	CAMPBELL ALVE (H)	WELLS FARGO BANK (H)	LOT 3 DOVE MEADOW NORTH	Pem	
6	2111004410	09/16/2011	TRUSTEE DEED	CAMPBELL ALVE (H)	WELLS FARGO BANK (H)	LOT 3 DOVE MEADOW NORTH	Pem	
7	2111004410	09/27/2011	LIB RELEASE	CAMPBELL ALVE (H)	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (H)	LOT 3 DOVE MEADOW NORTH	Pem	

# CONSTRUCTIVE NOTICE

V.

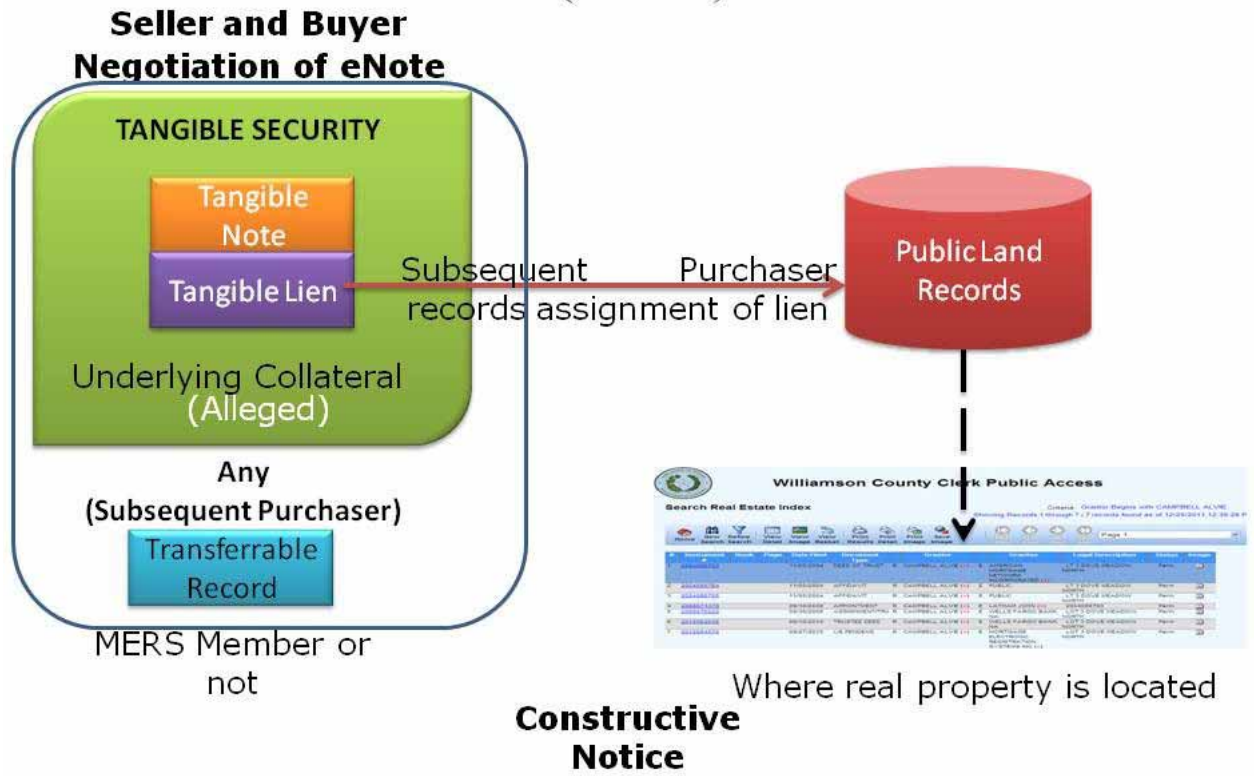
# ACTUAL NOTICE

MILESTONES for 1001310-2040769205-0

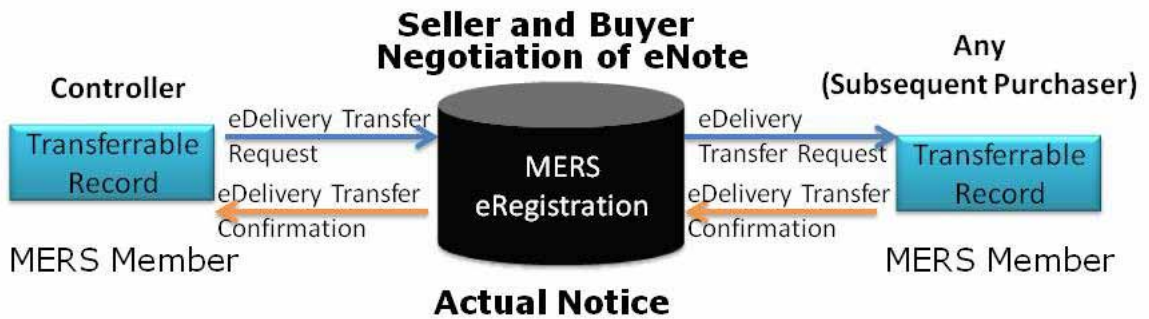


Description	Date	Initiating Organization / User	Milestone Information
Registration	11/03/2004	1001310 American Mortgage Network, LLC	MIN Status: Active (Registered)
		Batch	Servicer: 1001310 American Mortgage Network, LLC

# New School, the intangible way (In Texas)



# New School, the intangible way (In Texas)



MILESTONES for 1001310-2040769205-0



Description	Date	Initiating Organization / User	Milestone Information
Registration	11/03/2004	1001310 American Mortgage Network, LLC Batch	MIN Status: Active (Registered) Servicer: 1001310 American Mortgage Network, LLC

(Alleged Underlying Collateral)

**Actual Notice**

15 USC 7003

# New School, the intangible way (In Texas)

Old Money



Lien

Intangible World  
(New school?)

Security Interest



Transferable Record



New Money

- The Players;
- Potential Homeowner**  
("borrower"?) ("Obligor/PH")
  - Originating Lender?**  
("Lender1") ("Borrower/OL") ("Obligee/OL")
  - Warehouse Lender ("Lender")**  
("Obligee/WL")

MERS

Electronic Agent

# New School, the intangible way (In Texas)

Old Money



Lien

Intangible World  
(New school?)

Security Interest



Transferable Record



New Money

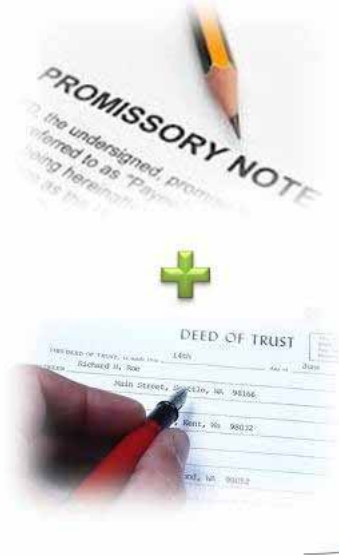
- The Players;
- Potential Homeowner**  
("borrower"?) ("Obligor/PH")

Signs Tangible Note and provides collateral in the form of a lien against the real property, a Deed of Trust.

# New School, the intangible way (In Texas)

Old Money

Intangible World  
(New school?)



Lien

Transferable Record



New Money

Security Interest

**But** before the potential homeowner ("Obligor/PH") signed on the dotted line, other actions took place.

# New School, the intangible way

The "Agent"?... (In Texas)  
Electronic, that is...

New Money



**M**ortgage **E**lectronic **R**egistration **S**ystems, Inc.

Book Entry System?

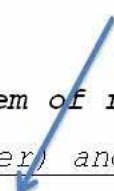
What kind?

*How long can they do it before someone figures it out?*

15 U.S.C. 7003

## New School, the intangible way (In Texas)

Authoritative Copy  
Transferable Record

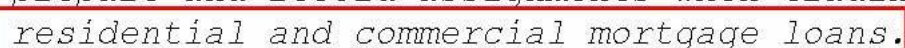


*"The **MERS® eRegistry** is a system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes, providing greater liquidity, transferability and security for lenders. It will reduce risk and generate more profits for lenders because the Notes registered on it will be in electronic format. It shortens the timeframe between the closing and the securitization of the loan, enabling the Note to move instantly, creating faster funding."*

## New School, the intangible way (In Texas)

Here is the catch;

*"MERS is an innovative **process that simplifies the way mortgage ownership and servicing rights are originated, sold and tracked**. Created by the real estate finance industry, MERS eliminates the need to prepare and record assignments when trading residential and commercial mortgage loans."*



Authoritative Copy  
Transferable Record

MERS is a "record keeping" system that was designed to replace Official public records. Mortgage means something different than Tangible mortgage when acting in the intangible secondary market.

# New School, the intangible way (In Texas)

Here is the catch;

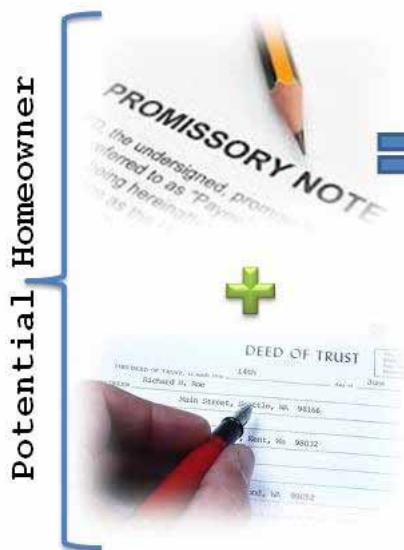
MERS is a "record keeping" system that was designed to replace Official public records. Mortgage means something different than Tangible mortgage when acting in the intangible secondary market.

The MERS system is a lawfully compliant system.

However, had MERS Members followed laws of local jurisdiction, this may have worked to a certain point. But greed allowed for an unsustainable outcome.

# New School, the intangible way (In Texas)

Old Money



Lien

Transferable Record

= Security  
= Interest

=

01100110101  
0100110101101  
1101111010100  
00101100100

?

New Money

The **Borrower** and **Lender** came to agreements.

Originating Lender?  
("Borrower"?) ("Obligor/OL")

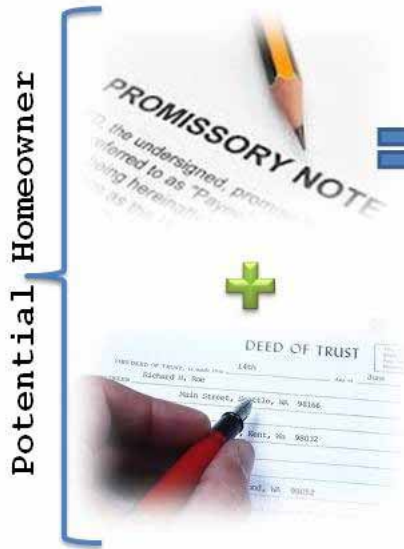
Warehouse Lender  
("Lender") ("Obligee/WL")

MERS

("Electronic Agent")

# New School, the intangible way (In Texas)

Old Money



Lien

= Security  
= Interest

Transferable Record



New Money

The **Borrower** and **Lender** came to agreements.

Originating Lender?  
("Borrower") ("Obligor/OL")

Warehouse Lender  
("Lender") ("Obligee/WL")

MERS

("Electronic Agent")

# New School, the intangible way (In Texas)



Warehouse Lender  
("Lender")  
("Obligee/WL")

Line of Credit



New Money



Originating Lender?  
("Borrower")  
("Obligor/OL")

Before the **Lender** ("Obligee/WL") extended a line of credit to the **Borrower** ("Obligor/OL") for the purposes of loaning money to **potential homeowners** ("Obligor/PH"), certain actions were to take place.



# New School, the intangible way (In Texas)



Warehouse Lender  
("Lender")  
("Obligee/WL")



Originating Lender?  
("Borrower"?)  
("Obligor/OL")

## ELECTRONIC TRACKING AGREEMENT WAREHOUSE LENDER

THIS ELECTRONIC TRACKING AGREEMENT dated as of \_\_\_\_\_, 20\_\_ (this "Agreement") among \_\_\_\_\_ ("Lender"), MERSCORP Holdings, Inc. ("Electronic Agent"), Mortgage Electronic Registration Systems, Inc. ("MERS") and \_\_\_\_\_ ("Borrower").

MERS  
("Electronic Agent")

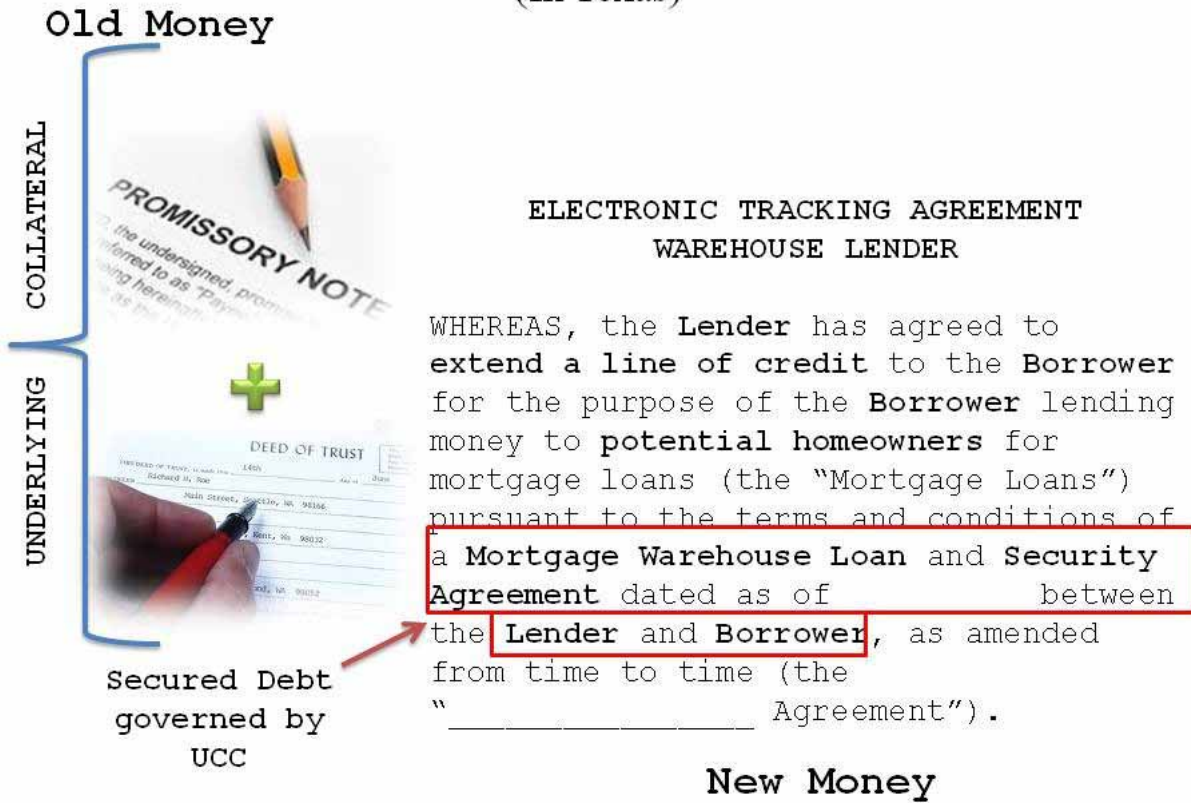
# New School, the intangible way (In Texas)

Definition of AGENT:

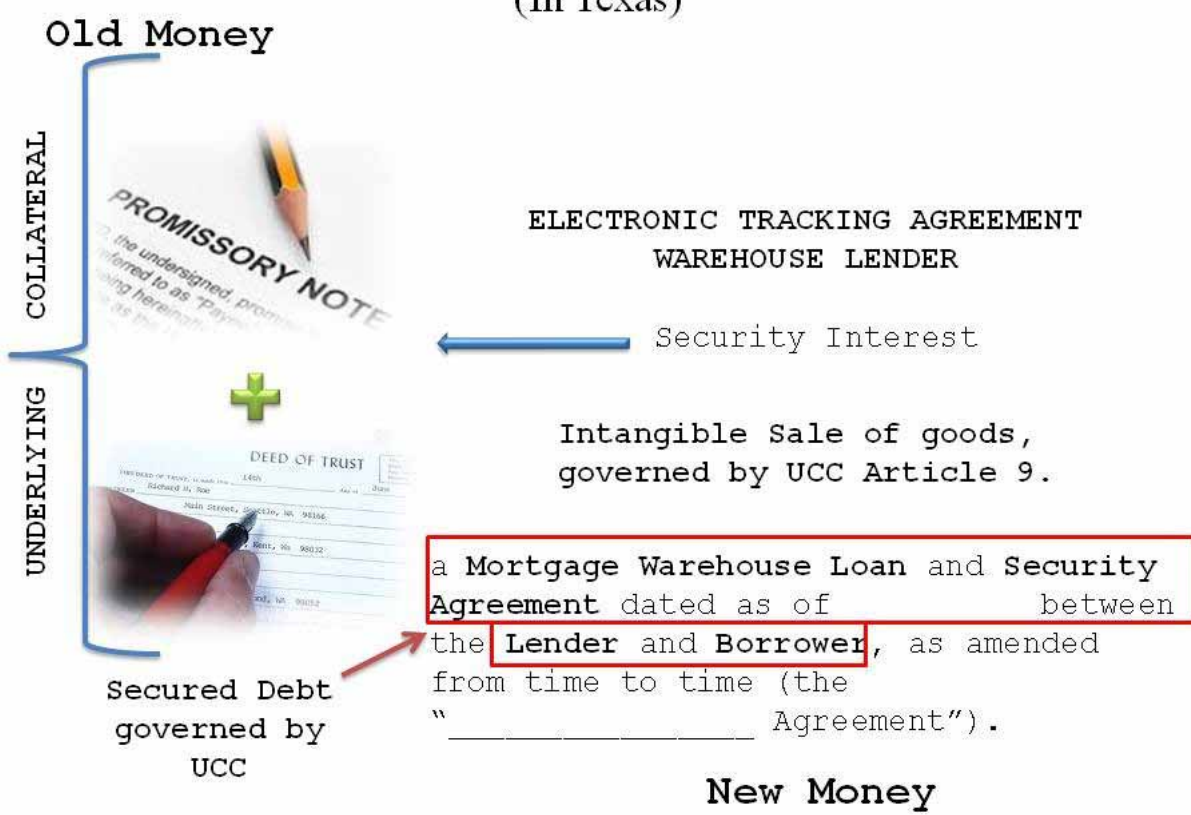
<http://blackslawdictionary.org/agent/>

One who represents and acts for another under the contract or relation of agency, q. v. Classification. **Agents are either general or special.** A general agent is one employed in his capacity as a professional man or master of an art or trade, or one to whom the principal confides his whole business or all transactions or functions of a designated class; or he is a person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment.

## New School, the intangible way (In Texas)



## New School, the intangible way (In Texas)



# New School, the intangible way (In Texas)

Old Money

COLLATERAL

UNDERLYING



## ELECTRONIC TRACKING AGREEMENT WAREHOUSE LENDER

WHEREAS, the **Borrower** is obligated to pledge the Mortgage Loans to the Lender and also to service the Mortgage Loans pursuant to the terms and conditions of the \_\_\_\_\_ Agreement and to complete all actions necessary to cause the issuance and delivery to the Lender of the Mortgage Notes (the "Mortgage Notes"), and

"Mortgage Note" shall mean a promissory note or other evidence of indebtedness of the obligor thereunder, representing a Mortgage Loan, and secured by the related Mortgage.

# New School, the intangible way (In Texas)

Words, words, words

## Definition of 'Mortgage'

*A debt instrument that is secured by the collateral of specified real estate property and that the borrower is obliged to pay back with a predetermined set of payments. Mortgages are used by individuals and businesses to make large purchases of real estate without paying the entire value of the purchase up front. - Investopedia*

*Mortgages are also known as "liens against property" or "claims on property".*

## Investopedia explains 'Mortgage'

*In a residential mortgage, a home buyer pledges his or her house to the bank. The bank has a claim on the house should the home buyer default on paying the mortgage. In the case of a foreclosure, the bank may evict the home's tenants and sell the house, using the income from the sale to clear the mortgage debt*

# New School, the intangible way (In Texas)

Words, words, words

## Get it?

*Mortgages are also known as "liens against property" or "claims on property".*

### In one sense;

The lien against the real property which the Potential Homeowner used as collateral.

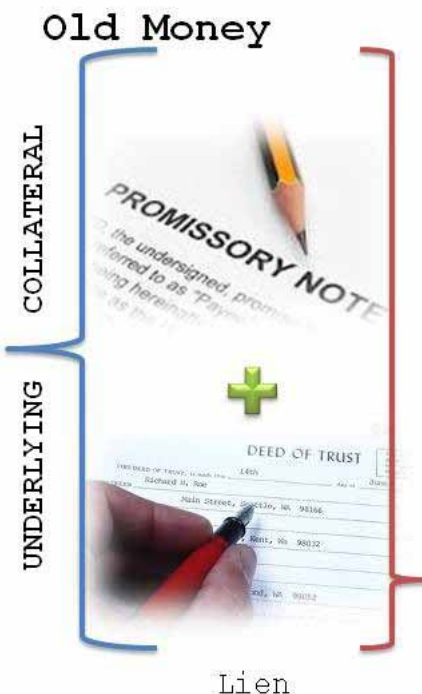
### In another sense;

In the secondary intangible market, investment world the lien or claim is the underlying collateral, the tangible Note and Deed of Trust lien which was used as collateral by the Borrower.

### Problem with words?

Potential Homeowners understand it in the tangible way,  
The evil ones understand it in the intangible way.

# New School, the intangible way (In Texas)



### Example:

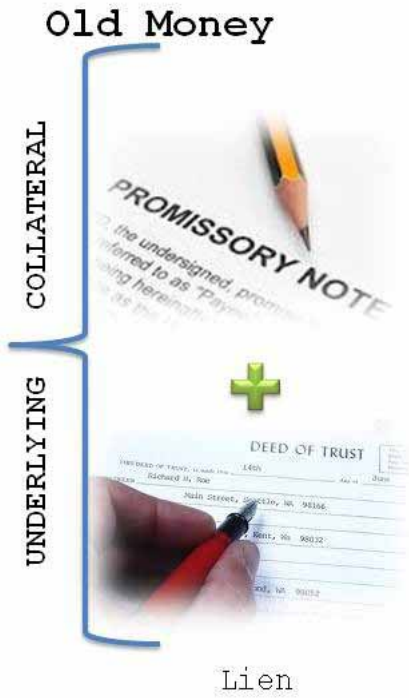
Say the Borrower has 50 Potential Homeowners lined up for approved loans. These 50 loans are the "security interest" the Borrower provides as collateral to the Lender. This is governed by the UCC.

Security Interest (SI)

$SI \times 50 = 1$  Line of Credit which could be modified on occasion.

Originating Lender? ("Borrower") ("Obligor/OL")  
Warehouse Lender ("Lender") ("Obligee/WL")

## New School, the intangible way (In Texas)



### ELECTRONIC TRACKING AGREEMENT WAREHOUSE LENDER

WHEREAS, the **Lender** and the **Borrower** desire to have certain Mortgage Loans registered on the **MERS®** System (defined below) such that the mortgagee of record under each Mortgage (defined below) shall be identified as MERS;

Originating Lender? ("**Borrower**") ("Obligor/OL")  
Warehouse Lender ("**Lender**") ("Obligee/WL")

## New School, the intangible way (In Texas)

### Definition of 'Mortgagee'

An entity that lends money to a borrower for the purpose of purchasing a piece of real property. By accepting a mortgage on the real property, the lender creates security in the full repayment of the loan in the future. - *Investopedia*

### **MORTGAGEE** - - *Black's 8th edition*

mortgagee (mor-g<<schwa>>-jee). One to whom property is mortgaged; the mortgage creditor, or lender. - Also termed mortgage-holder. [Cases: Mortgages 23. C.J.S. Mortgages §§ 73-75, 77.]

### **Sec. 51.0001. DEFINITIONS.** In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns. - *Texas Property Code*

## New School, the intangible way (In Texas)

Old Money

COLLATERAL

UNDERLYING



*"MERS was created by the mortgage banking industry to streamline the mortgage process by using electronic commerce to eliminate paper. Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers."*

Lien

Originating Lender? ("Borrower") ("Obligor/OL")  
Warehouse Lender ("Lender") ("Obligee/WL")

## New School, the intangible way (In Texas)

**NOMINEE** - Black's Law 8<sup>th</sup> Ed., 2004, Pg. 3325  
nominee (nom-i-nee), n.1. A person who is proposed for an office, membership, award, or like title or status. • An individual seeking nomination, election, or appointment is a candidate. A candidate for election becomes a nominee after being formally nominated. See CANDIDATE. 2. A person designated to act in place of another, usu. in a very limited way. 3. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.

**BENEFICIARY** - Black's Law 8<sup>th</sup> Ed., 2004, Pg. 468  
beneficiary (ben-*<<schwa>>*-fish-ee-er-ee or ben-*<<schwa>>*-fish-*<<schwa>>*-ree), n.1. A person for whose benefit property is held in trust; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument. 2. A person to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust. 3. A person who is initially entitled to enforce a promise, whether that person is the promisee or a third party. - beneficiary, adj.

## New School, the intangible way (In Texas)

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COLLATERAL

UNDERLYING



Lien

*"MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded."*

*MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies"*

\*\* Both Fannie Mae and Freddie Mac have changed their procedures with MERS.

## New School, the intangible way (In Texas)

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UNDERLYING



Lien

*"MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the mortgagee no matter how many times servicing is traded."*

Lender and Servicer/subservicer, one and the same according to the Electronic Tracking Agreement?

## **New School, the intangible way** (In Texas)

### **3. Designation of MERS as Mortgagee of Record; Designation of Investor and Servicer of Record in MERS.**

The **Borrower** represents and warrants that (a) it has designated or shall designate MERS as, and has taken or will take such action as is necessary to cause MERS to be, the mortgagee of record, as nominee for the Borrower, with respect to the pledged Mortgage Loans in accordance with the MERS Procedures Manual and (b) it has designated or will **promptly designate itself as the servicer** or subservicer in the MERS® System for each such pledged Mortgage Loan (each pledged Mortgage Loan, so designated is a "MERS Designated Mortgage Loan"), and has designated or will promptly designate the Lender as the interim funder on the MERS® System with respect to each MERS Designated Mortgage Loan.

#### **1. Definitions.**

Capitalized terms used in this Agreement shall have the meanings ascribed to them below.

"Mortgage Loan" shall mean each mortgage loan that is pledged by Borrower to Lender.

## **New School, the intangible way** (In Texas)

**Sec. 51.0001. DEFINITIONS.** In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns. - *Texas Property Code*



## New School, the intangible way (In Texas)

Old Money

COLLATERAL

UNDERLYING



Lien

*"MERS is an innovative process that simplifies the way mortgage ownership and servicing rights are originated, sold and tracked. Created by the real estate finance industry, MERS eliminates the need to prepare and record assignments when trading residential and commercial mortgage loans."*

### Get it Yet?

## New School, the MERS intangible way (In Texas)

Old Money

COLLATERAL

UNDERLYING

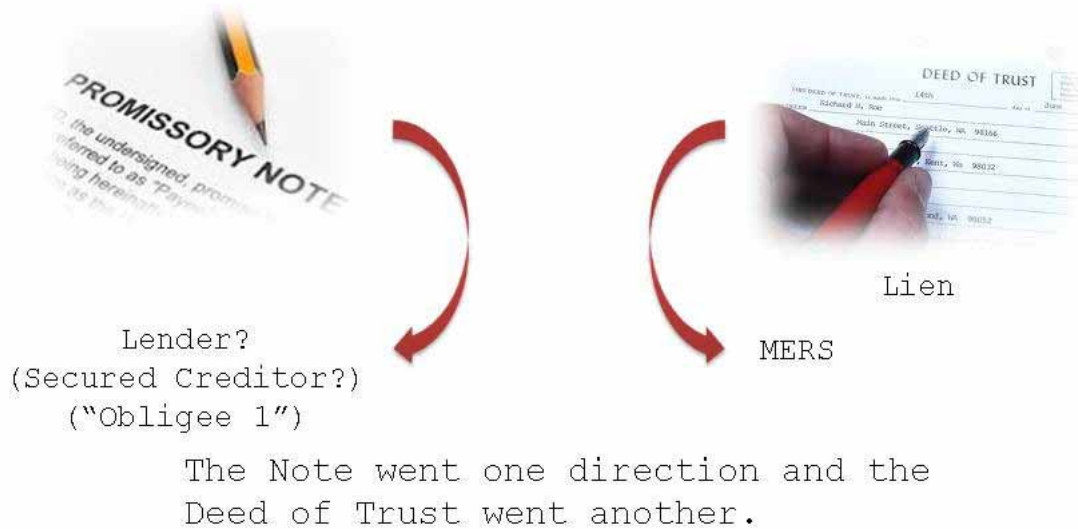


Lien

In essence the Borrower ("Obligor/OL") pledged potential homeowner mortgages (Note & Deed of Trust) to the Warehouse Lender ("Obligee/WL") to get monies to loan to potential homeowners ("Obligor #?"). Did the potential Obligor know this? No reason to!

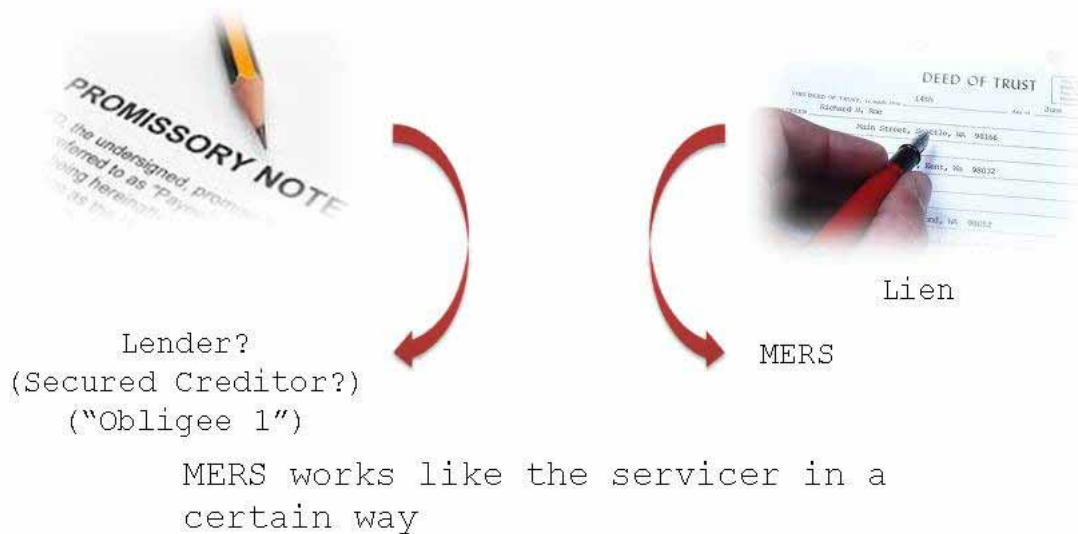
In order to provide this security interest, **MERS** a bankruptcy remote, was used in case the **Borrower** ("Obligor/OL") defaulted on the loan from the **Lender** ("Obligee/WL"). Hence the **Electronic Tracking Agreement**.

## New School, the MERS intangible way (In Texas)



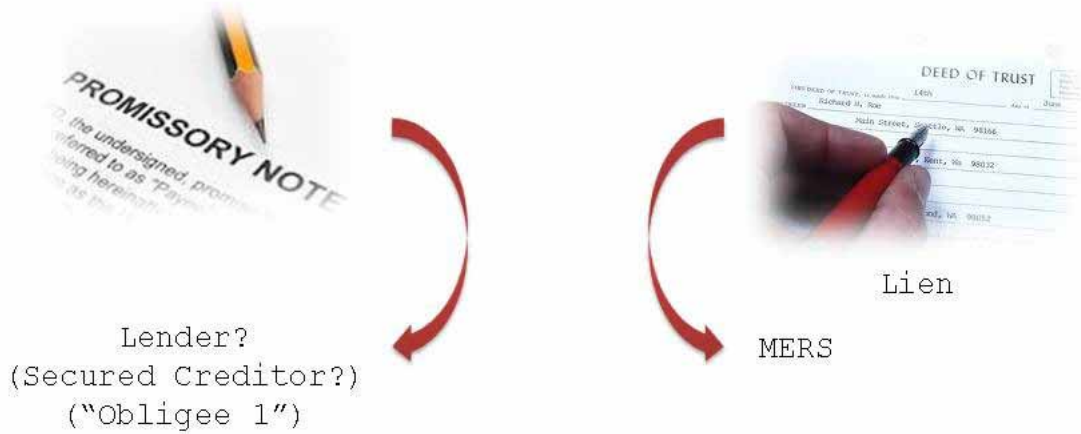
Originating Lender? ("Borrower") ("Obligee1") ("Obligor/OL")  
Warehouse Lender ("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)



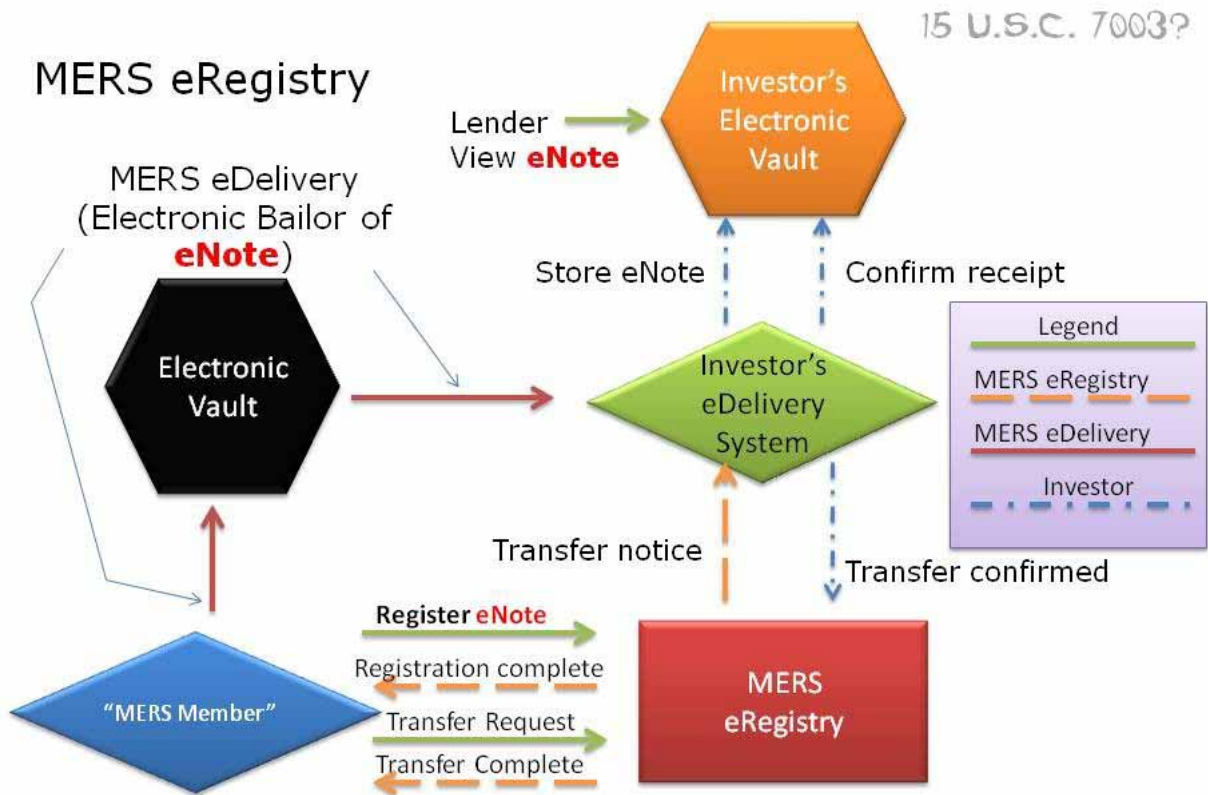
Originating Lender? ("Borrower") ("Obligee1") ("Obligor/OL")  
Warehouse Lender ("Lender") ("Obligee/WL")

# New School, the MERS intangible way (In Texas)



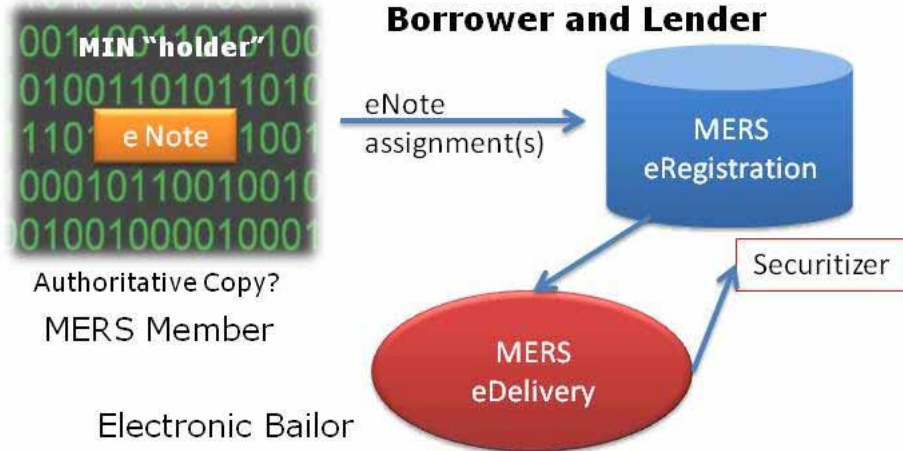
The following is a diagram of how MERS eRegistry works.

Originating Lender? ("**Borrower**") ("Obligee 1") ("Obligor/OL")  
Warehouse Lender ("**Lender**") ("Obligee/WL")



"Lender " starts here. Borrower("Obligor1") documents are scanned for use in electronic format, including the alleged tangible Note and Deed of Trust, lien as a security interest for an eNote, .a.k.a. MIN#.

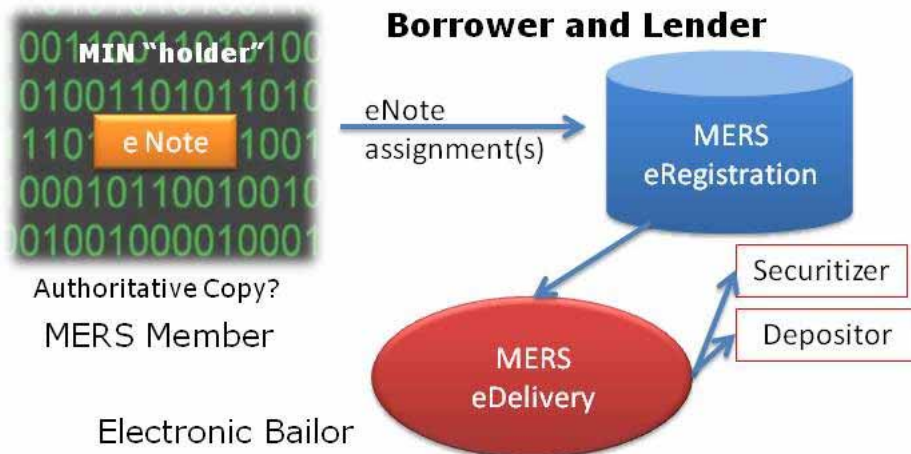
# New School, the MERS intangible way (In Texas)



Alleged Authoritative Copy  
of the tangible note?



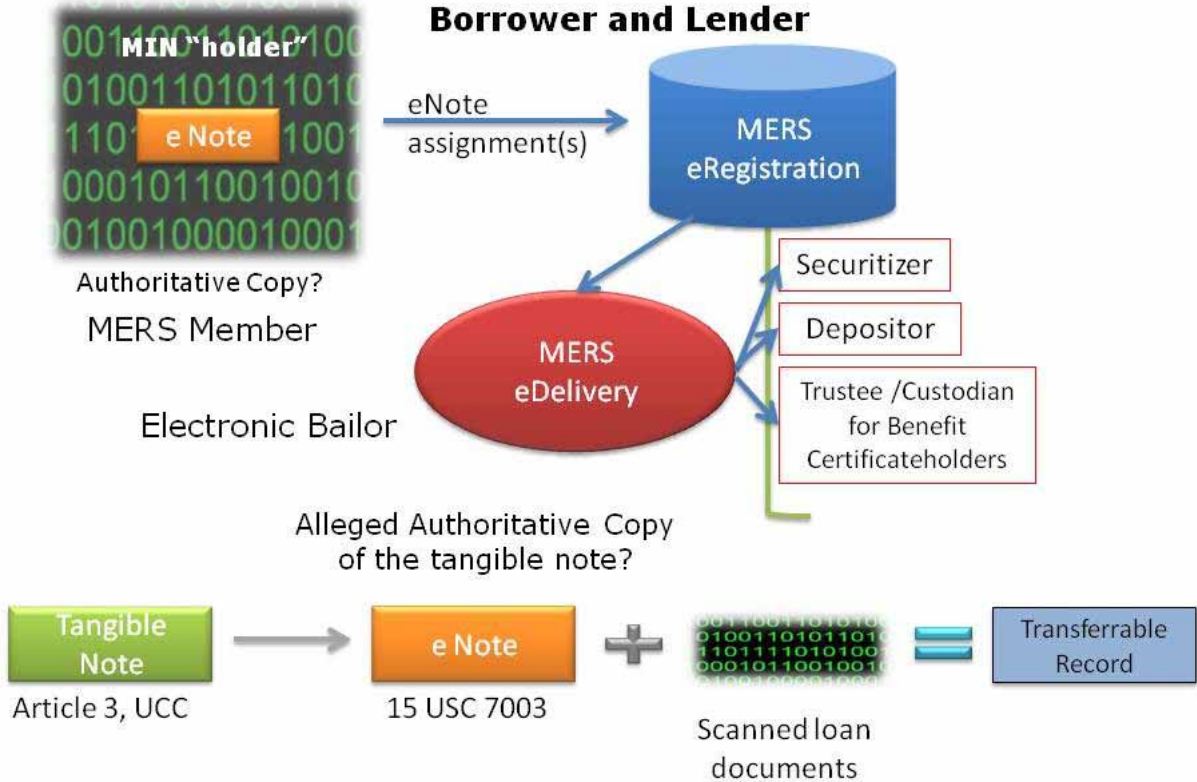
# New School, the MERS intangible way (In Texas)



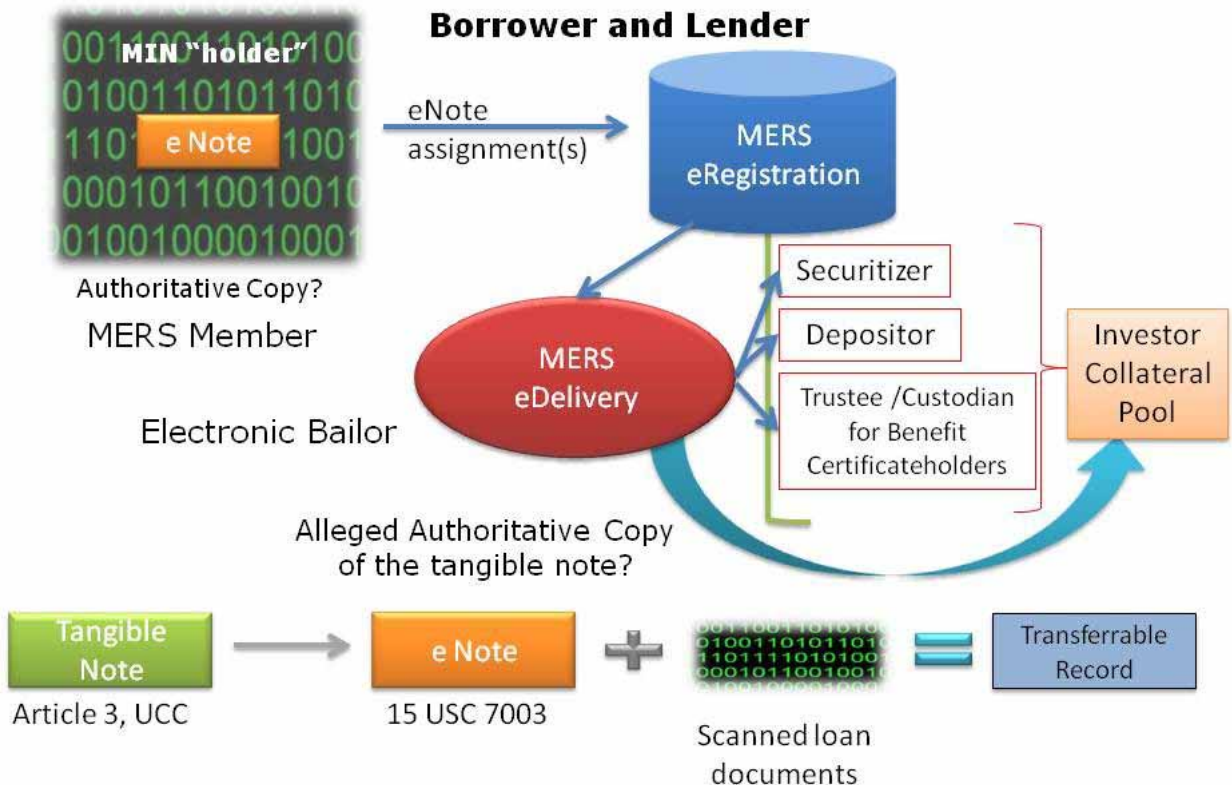
Alleged Authoritative Copy  
of the tangible note?



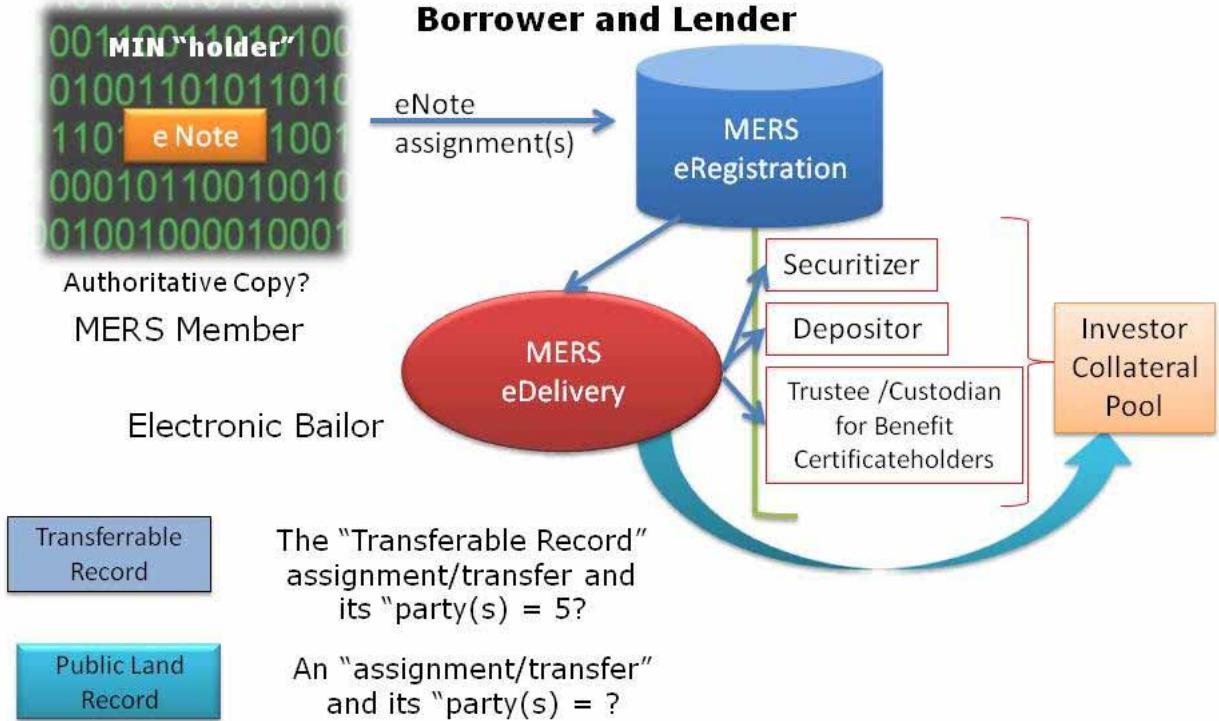
# New School, the MERS intangible way (In Texas)



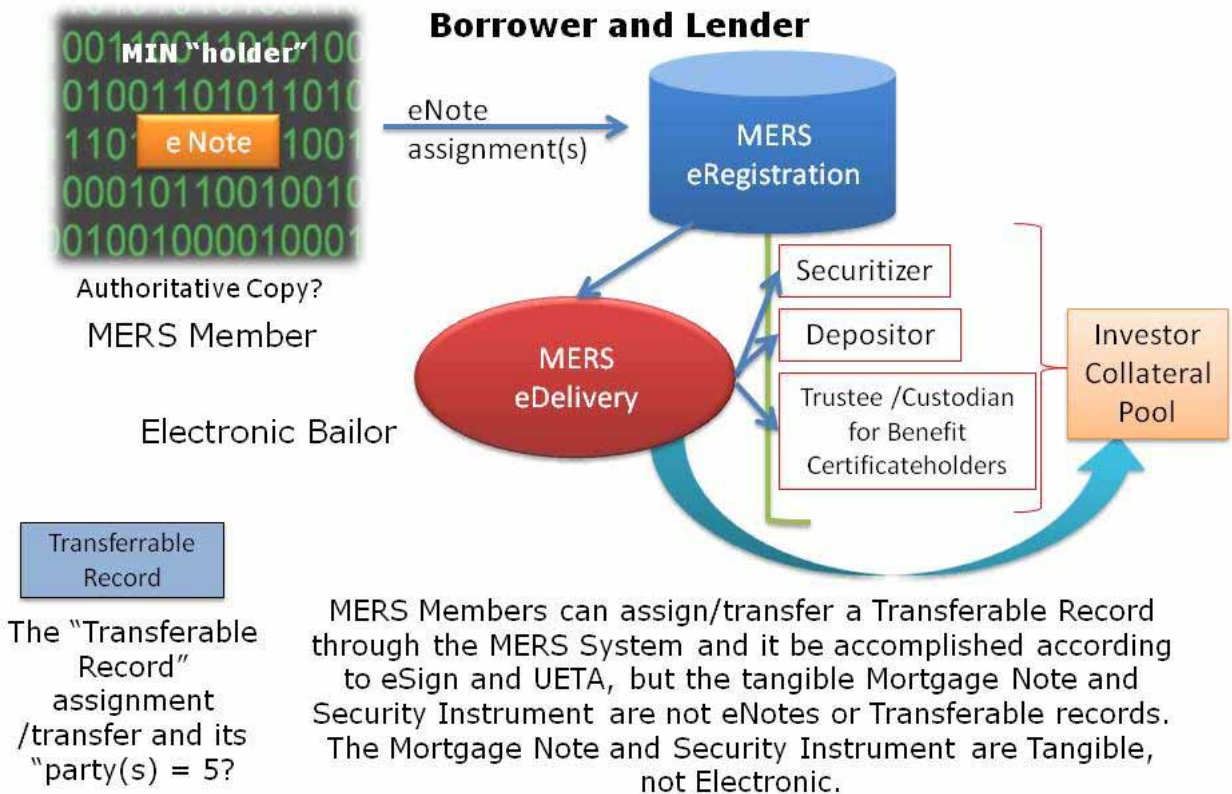
# New School, the MERS intangible way (In Texas)



# New School, the MERS intangible way (In Texas)



# New School, the MERS intangible way (In Texas)



## New School, the MERS intangible way (In Texas)

MERS is a National eNote registry, called a "book entry system".

The MERS® eRegistry is a system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes, providing greater liquidity, transferability and security for lenders. It will reduce risk and generate more profits for lenders because the Notes registered on it will be in electronic format. It shortens the timeframe between the closing and the securitization of the loan, enabling the Note to move instantly, creating faster funding.



Originating Lender?  
("Controller"?) ("Obligor/OL")

Warehouse Lender  
("Custodian") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

MERS agreements are between the "Borrower" and "Lender", not the Potential Homeowner and Lender.

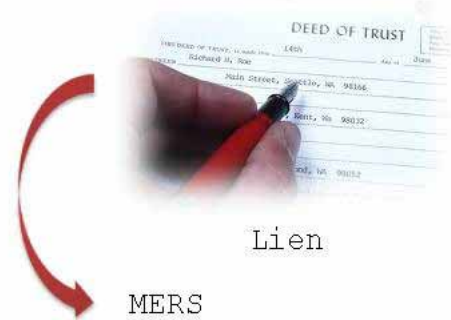


Originating Lender? ("Borrower") ("Obligor/OL")  
Warehouse Lender ("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

### 4. Obligations of the Electronic Agent

(a) The **Electronic Agent** shall ensure that **MERS**, as the mortgagee of record under each MERS Designated Mortgage Loan, shall promptly forward all properly identified notices MERS receives in such capacity to the person or persons identified in the **MERS®** System as the servicer or if a subservicer is identified in the MERS® System, the subservicer for such MERS Designated Mortgage Loan.

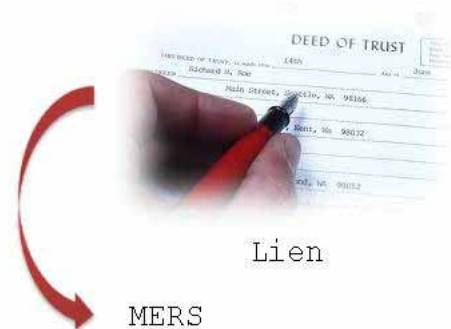


Originating Lender?  
("Borrower"/"Servicer"?)  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

### 4. Obligations of the Electronic Agent

(b) Upon receipt of a **Notice of Default**, in the form of Exhibit C, from the **Lender** in which the **Lender** shall identify the MERS Designated Mortgage Loans with respect to which the **Borrower's** right to act as servicer or subservicer thereof **has been terminated by the Lender** (the "Affected Loans"),



Originating Lender?  
("Borrower"/"Servicer"?)  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")



## New School, the MERS intangible way (In Texas)

### 4. Obligations of the Electronic Agent

the **Electronic Agent** shall modify the investor fields and/or servicer fields to reflect the investor and/or servicer on the MERS® System as the **Lender or the Lender's designee** with respect to such Affected Loans.



Originating Lender?  
("Borrower"/"Servicer"?)  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

### When the Borrower Defaults



# New School, the MERS intangible way (In Texas)

## EXHIBIT C NOTICE OF DEFAULT

\_\_\_\_\_, \_\_\_\_\_  
Attention: Sharon M. Horstkamp  
MERSCORP Holdings, Inc.  
1818 Library Street, Suite 300  
Reston, Virginia 20190

Ladies and Gentlemen:

Please be advised that this Notice of Default is being issued pursuant to Section 4(b) of that certain Electronic Tracking Agreement (the "Electronic Tracking Agreement"), dated as of \_\_\_\_\_, 200\_, by and among (the "Lender"), the (the "Borrower"), MERSCORP Holdings, Inc. (the "Electronic Agent") and Mortgage Electronic Registration Systems, Inc. ("MERS"). The Affected Loans are listed on the attached Schedule 1 (including the mortgage identification numbers). Accordingly, the Electronic Agent shall not accept instructions from the Borrower, the Servicer, any subservicer and from no party other than the Lender with respect to such Mortgage Loans, until otherwise notified by the Lender.

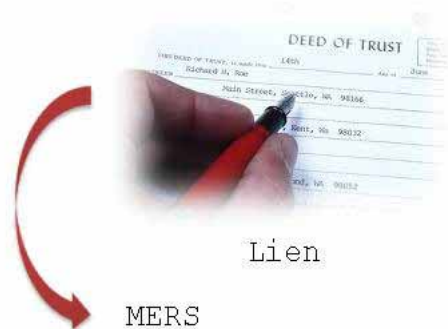
Any terms used herein and not otherwise defined shall have such meaning specified in the Electronic Tracking Agreement.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

# New School, the MERS intangible way (In Texas)

## 4. Obligations of the Electronic Agent

Following such **Notice of Default**, the **Electronic Agent** shall follow the instructions of the Lender with respect to the Affected Loans without further consent of the **Borrower**, and shall deliver to the **Lender** any documents and/or information (to the extent such documents or information are in the possession or control of the **Electronic Agent**) with respect to the Affected Loans requested by the Lender.



Originating Lender?  
("Borrower"/"Servicer"?)  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

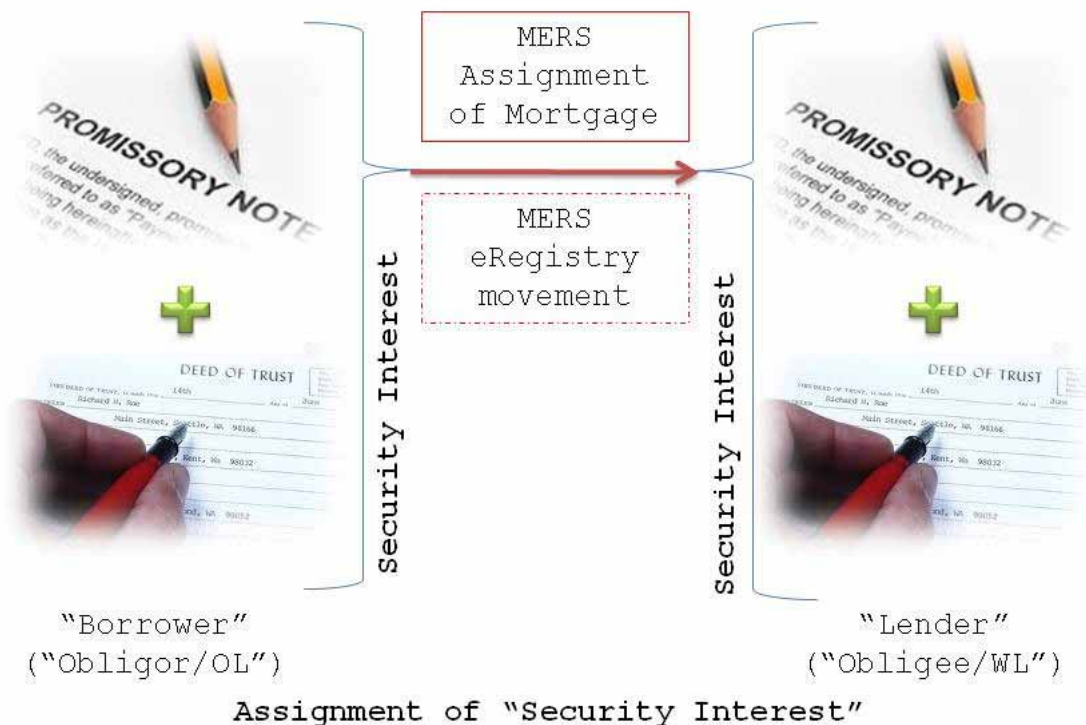
### 4. Obligations of the Electronic Agent

(c) Upon the **Lender's** request and instructions, and at the **Borrower's** sole cost and expense, the **Electronic Agent** shall deliver to the Lender or the Lender's designee, an **Assignment of Mortgage from MERS, in blank, in recordable form but unrecorded with respect to each Affected Loan**; provided however, that the **Electronic Agent** shall not be required to comply with the foregoing unless the costs of doing so shall be paid by the **Borrower** or a third party.



Originating Lender?  
 ("Borrower"/"Servicer"?)  
 ("Obligor/OL")  
 Warehouse Lender  
 ("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)



# New School, the MERS intangible way (In Texas)

## DEMONSTRATION PURPOSE

The following MERS alleged assignment is only for demonstration purposes as the "Default" between the "Borrower" and "Lender" would be a somewhat private matter between the parties to the Electronic Tracking Agreement. However, the following example does demonstrate the "Intangible negotiation" being transferred from one MERS member to another and recorded as evidence of that electronic transfer in Official Public Records where the real property is located.

# New School, the intangible way (In Texas)

[View PDF](#)

Hence ;

The "assignment/transfer" by alleged MERS members recorded in Official public records provide proof an intangible negotiation of the transferable record in the MERS eRegistry system.

Document ID: 2008075222

Effective: August 23, 2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

ASSIGNEE: WELLS FARGO BANK, N.A.

ASSIGNOR: ALL TEXAS HOMES, L.P. A CAMPBELL

DATE: October 19, 2004

OBJECT AMOUNT: \$ 117,887.00

PAYEE: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

NAME: GEORGE M. SHANKS, JR.

RECORDING INSTRUMENT: CLERK'S FILE NO. 2004026765 (WELLS FARGO)

PROPERTY (including any improvements) Subject to Deed of Trust: 7.073, HOME, MEADOW NORTH ACCORDING TO MAP OR PLAT THEREOF RECORDED IN CABINET, SLIDE 29) OF THE PLAT RECORDS OF WELLS JANSON COUNTY, TEXAS.

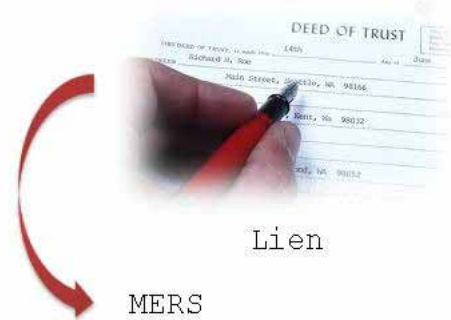
\*\*\*\*\* NO SECURED PARTY OF RECORD LISTED \*\*\*\*\*

Payment Intangible negotiation

## New School, the MERS intangible way (In Texas)

### 7. Covenants of MERS.

(MERS agrees that in no event shall MERS' status as mortgagee of record with respect to any MERS Designated Mortgage Loan confer upon MERS any rights or obligations as an owner of any MERS Designated Mortgage Loan or the servicing rights related thereto, and MERS will not exercise such rights unless directed to do so by the Lender.

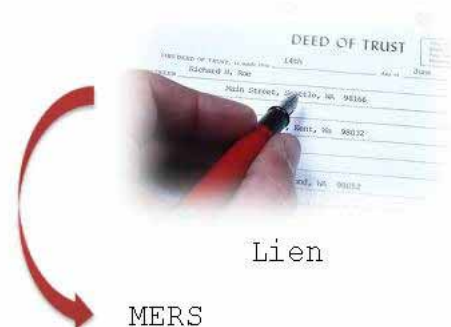


Originating Lender?  
("Borrower"/"Servicer")  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")

## New School, the MERS intangible way (In Texas)

### 8. Covenants of Borrower.

(a) The Borrower covenants and agrees with the Lender that with respect to each MERS Designated Mortgage Loan, it will not identify any party except the Lender in the field "interim funder" on the MERS® System.



(b) Borrower will provide the Lender with a Mortgage Identification Number ("MIN") for each MERS Designated Mortgage Loan that the Lender has extended credit on for which MERS is the mortgagee of record.

Originating Lender?  
("Borrower"/"Servicer")  
("Obligor/OL")  
Warehouse Lender  
("Lender") ("Obligee/WL")

# New School, the MERS intangible way (In Texas)

**9. No Adverse Interest of the Electronic Agent or MERS.**

By execution of this Agreement, the Electronic Agent and MERS each represents and warrants that it currently holds, and during the existence of this Agreement shall hold, no adverse interest, by way of security or otherwise, in any MERS Designated Mortgage Loan. The MERS Designated Mortgage Loans shall not be subject to any security interest, lien or right to set-off by the Electronic Agent, MERS, or any third party claiming through the Electronic Agent or MERS, and neither the Electronic Agent nor MERS shall pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any third party interest in, the MERS Designated Mortgage Loans.



Lien

MERS

**Originating Lender?**  
 ("Borrower"/"Servicer"?)  
 ("Obligor/OL")

**Warehouse Lender**  
 ("Lender") ("Obligee/WL")

## Mortgage Electronic Registration Systems, Inc.

*The troublemaker?... (In Texas)*



## Mortgage Electronic Registration Systems, Inc.

*How long can they do it before someone figures it out?*

## New School, the MERS intangible way (In Texas)

MERS agreements are between the "Borrower" and "Lender", not the Potential Homeowner and Lender. Do the courts realize this?

The beneficiary under the deed of trust is MERS, acting solely as a nominee for AMNET and its successors and assigns  
The deed of trust states:

[The potential homeowner] understand and agree that MERS holds only legal title to the interests granted by [The potential homeowner] in this Security Interest, 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. - 3<sup>rd</sup> Court of Appeals, Austin Texas.

The Banks and its attorneys failed to disclose just what borrower is being mentioned in an alleged Deed of Trust?



## New School, the MERS intangible way (In Texas)

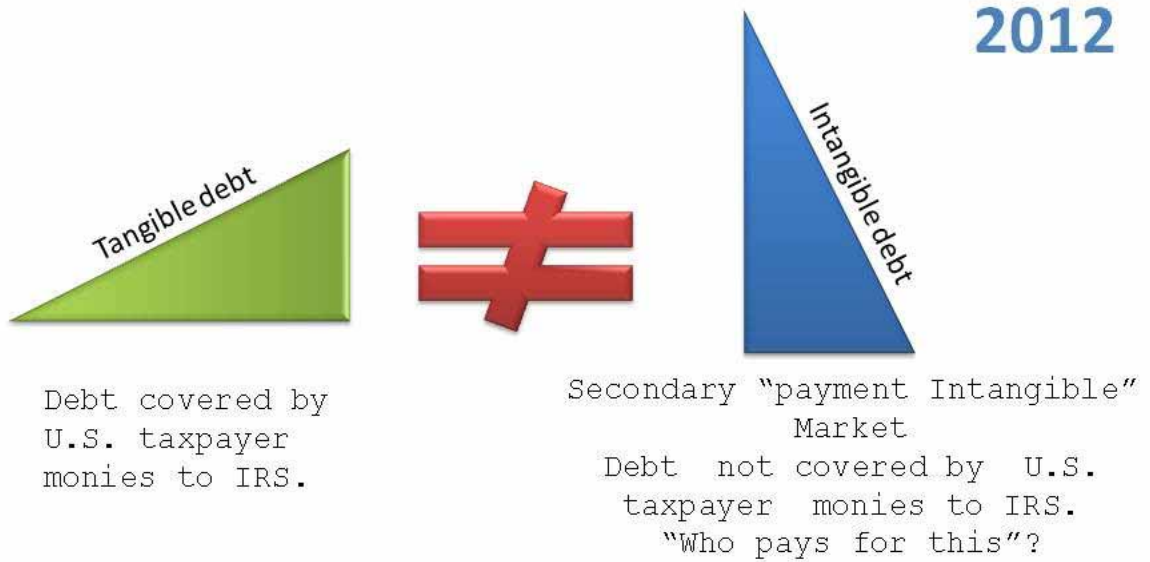


**Mortgage Electronic Registration Systems, Inc.**

*MERS is an electronic agent (computer database) for intangible transferable records keeping. Nothing else.*

# LET'S SEE IF YOU UNDERSTAND THIS ?

2012



The Secondary "Payment Intangible" Market can never be sustainable. It is inevitable that this "electronic promissory note" scheme and just as all other "ponzi" schemes, it will crash. At that time, the peoples of the world will truly see who is behind this largest crime in history.