

# Personal property Piggy bank



## MERS and the Digital Game. . .



### A Whopping GSE. . .

**Six Hundred [plus] Trillion Dollar “payment intangible”  
debt**

# **This is really simple to understand**

A Personal Property Mortgage is not a Real Property Mortgage.



**But, you may not know what I know.**

**This is kind of long so hang there. I hope you understand.**

## **MERS is used for Personal Property Mortgages**

The National eNote Registry is a compliance vehicle to satisfy certain requirements imposed by the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) so that the owner of an eNote (the Controller) would have legal rights similar to those that a "Holder in Due Course" has with a paper negotiable promissory note.

An eNote issued in compliance with Section 16 of UETA or Title II of ESIGN is called a Transferable Record (TR).

**eNote:** The electronic promissory note. For this eNote to be negotiable and transferable, it must be clearly labeled the Authoritative Copy of the electronic promissory note.

**Authoritative Copy (AC):** The unique, identifiable and mostly unalterable version of the eNote that (1) identifies the person asserting control as *the person to which the Transferable Record was issued or most recently transferred*, (2) ensures that "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 (3) any revision of the AC is readily identifiable as authorized or unauthorized

# **Transferable Records are not Paper Promissory Notes**

**Transferable Record (TR):** An eNote issued in accordance with the provisions of Section 16 of the UETA and Title II of E-SIGN

**In Texas;**

TEXAS BUSINESS AND COMMERCE CODE, Section §322

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.

The concept of a National eNote Registry (National Registry) has evolved out of the need to track and identify electronic promissory notes (eNotes) in an evolving industry infrastructure for electronic mortgages (eMortgages).

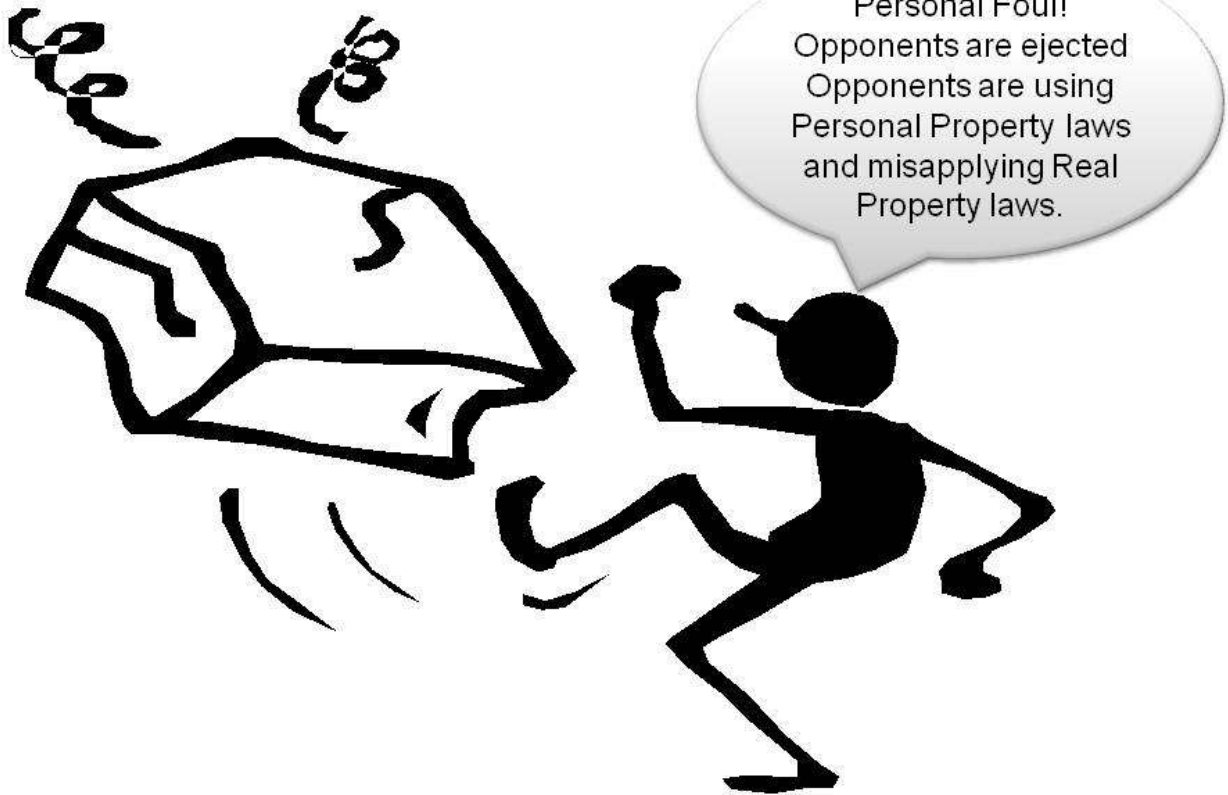
Personal Property mortgages

**Take MERS out of the Digital Game. . .**



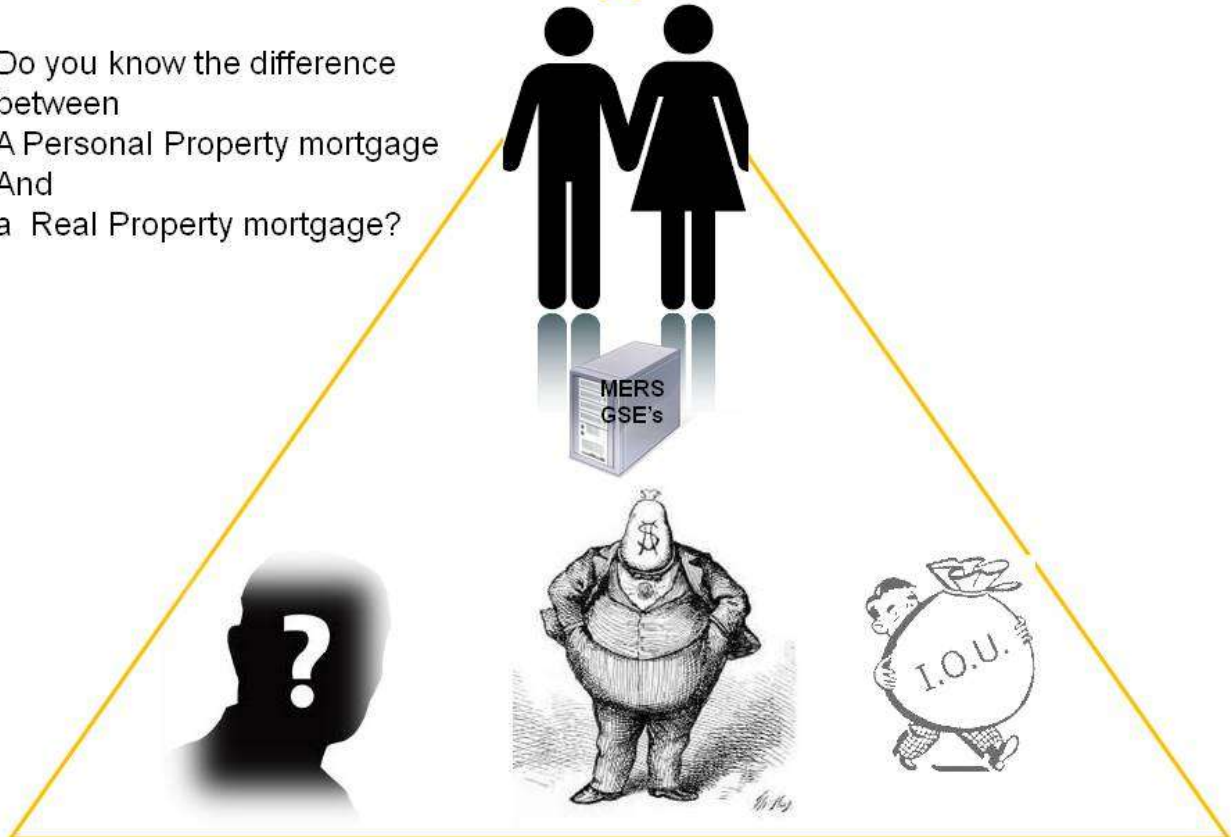
You're Out of here!

# MERS members Track electronic Mortgages



## MERS members ☀️ and "property"

Do you know the difference  
between  
A Personal Property mortgage  
And  
a Real Property mortgage?





# MERS and the cloud

## Are you a Borrower? (Real Property)

borrower:

someone who receives something on the promise to return it or its equivalent.

A person that has applied, met specific requirements, and received a monetary loan from a lender. The individual initiating the request signs a promissory note agreeing to pay the lien holder back during a specified timeframe for the entire loan amount plus any additional fees. The borrower is legally responsible for repayment of the loan and is subject to any penalties for not repaying the loan back based on the lending terms agreed upon.

This borrower could also be a bank.

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

## Difference between Mortgages

Why the "**Mortgage**" Word?

Simple. To confuse you.

Why is the Uniform Commercial Code [UCC] always mentioned?

Do you have a "Personal Property" mortgage?

**OR**

Do you have a "Real Property" mortgage?



Is it easier to understand real estate statutes and the UCC are like two separate worlds? The UCC governs "personal property" and real estate statutes govern "real property" deeds of trust, liens?

Is the "security agreement" behind each UCC loan transaction the practical equivalent of the mortgage behind each real estate mortgage?

# The Banks don't care. They get two-fold

"Personal Property" mortgage?

OR

"Real Property" mortgage?

Each of these agreements gives one party; [the secured party (UCC)] or [mortgagee (Real Estate)] a security interest in property owned by the other party; [the debtor (UCC)] or [mortgagor (Real Estate)] as collateral for a loan.

Real property and personal property are distinguished from one another because different rules may apply to each, such as laws of inheritance, tax laws and contract laws.

**Real property** is immoveable property, such as land, buildings attached to land, and other things incidental to land.

**Personal property** is generally moveable and is every kind of property that is not real property. Personal property is classified as **tangible**, such as furniture, livestock, or tractors, and **intangible**, such as stocks, bonds, notes payable, patents, copyrights, and court judgments (which are representations of property).

<http://www.ernst.cc/uccvsre.asp>

<http://www.ncsu.edu/project/are306/lecturenotes/Unit10NReal%20Property.pdf>

## There is a difference with the word "mortgage"

Personal Property Mortgage?



(Personal property collateral)  
(security interest)

Real Property Mortgage?



(Real Property Collateral)  
(deed of trust, Lien)

v.

The Uniform Commercial Code (UCC) deals with the law of sales and commercial transactions involving **personal property**, and Article 2 of the UCC deals specifically with the sale of goods, that are tangible and moveable. It may apply to goods associated with real property.

Which "Mortgage" are you talking about?

# Security Interest Mortgage?

Under the UCC, a lender may acquire a "security interest" in collateral.

A security interest is a property interest over specific assets that secures performance of an obligation, typically the payment of a debt.

The security interest is typically created through a document known as a security agreement and signed in conjunction with the execution of a promissory note or another loan document.

## Definition of 'Asset'

1. A resource with economic value that an individual, corporation or country owns or controls with the expectation that it will provide future benefit.
2. A balance sheet item representing what a firm owns.

Source: Read more: <http://www.investopedia.com/terms/a/asset.asp#ixzz2AtYPJ88J>

Personal Property mortgages

# Purchase Money Security Interest?

## Purchase Money Security Interest –

Despite the general rule, the priority of a perfected security interest in after-acquired property can be overcome by a purchase money security interest. A purchase money security interest arises in a situation when a party loans the debtor the money necessary to finance the purchase of goods, and the same goods are used as collateral to secure repayment of the loan.

Do you understand now?

Personal Property mortgages



# UCC and Personal Property

(not real property)

Uniform Commercial Code (UCC). Article 9 was significantly revised in 2001 and the substantive revisions have been adopted in every state and govern virtually all such transactions. It has simplified the use of *personal property* as collateral by providing for an almost uniform set of rules nationwide.

Security Interests in Personal Property

<http://www.extension.umn.edu/distribution/businessmanagement/components/DF2590.pdf>

## UCC does not apply to real estate transactions.

MERS members use eNotes. These notes could be governed by UCC.

eNotes are electronic promissory Notes called Transferable records. eNotes are not paper promissory Notes. Transferable records are Personal Property.

Get it?

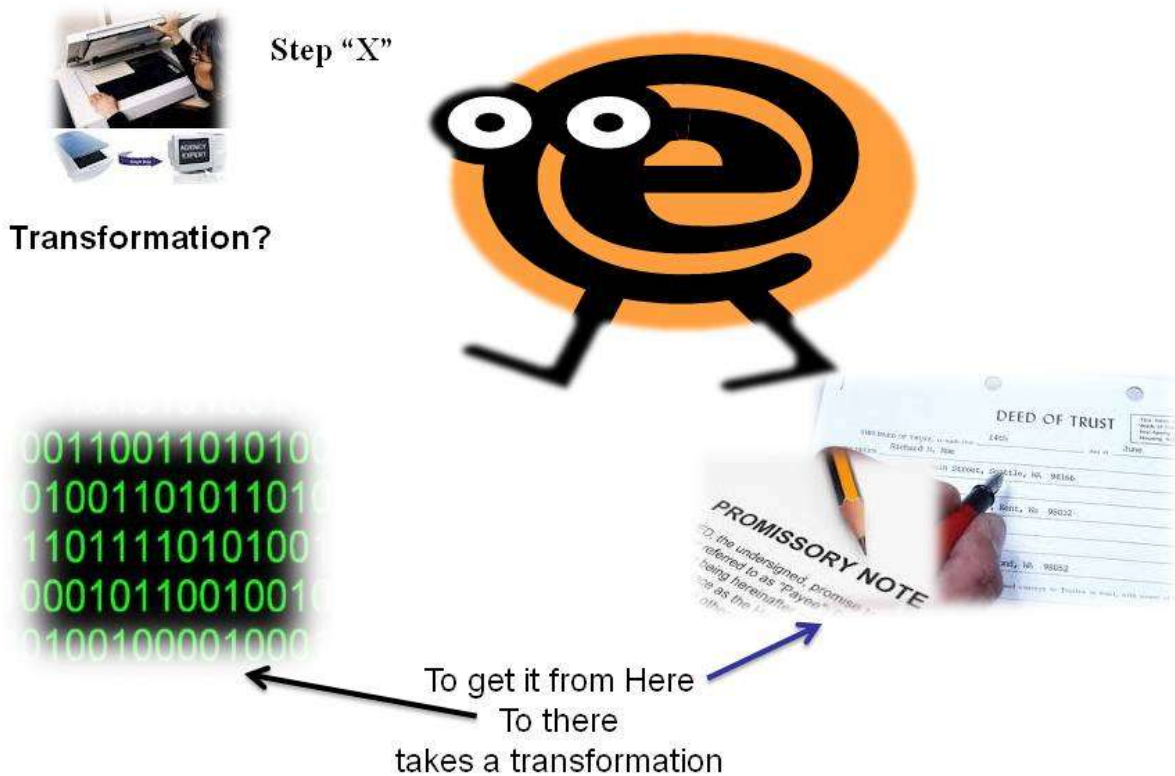
## Three strikes you're Out

# ELECTRONIC TRANSACTIONS



STEP "X"

# The Switcheroo...



## How to create a separate and different obligation

Certain laws govern a personal property obligation. Specifically "Electronic transactions".

Texas, Uniform Electronic Transactions Act -**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:**
- (1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or
  - (2) **(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).**

<http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm>

[Look at your states UCC section for Electronic Transactions Act]. However, it is noted in 15 USC 7003. Look up. Understand. There's a test.

# UCC Sections for governing electronic transactions

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

the Uniform Commercial Code, other than Sections 1.107 and 1.206

**Sec. 1.107. SECTION CAPTIONS.** Section captions are parts of this title.  
Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

**Sec. 1.206. PRESUMPTIONS.** Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

# UCC Sections for governing electronic transactions

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

and Chapter 2

Business And Commerce Code  
Title 1. Uniform Commercial Code  
**Chapter 2. Sales**

Subchapter A.

Short Title, General Construction And Subject Matter

**Sec. 2.101. Short Title.** This chapter may be cited as Uniform Commercial Code--**Sales**.  
Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

**Sec. 2.102. Scope; Certain Security And Other Transactions Excluded From This Chapter.** Unless the context otherwise requires, **this chapter applies to transactions in goods**; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

# UCC Sections for governing electronic transactions

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

and Chapter 2A

Business And Commerce Code  
Title 1. Uniform Commercial Code  
**Chapter 2a. Leases**  
Subchapter A. General Provisions

Sec. 2A.101. Short Title. This chapter shall be known and may be cited as the Uniform Commercial Code--**Leases**.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.102. Scope. **This chapter applies to any transaction**, regardless of form, **that creates a lease of goods**. This chapter does not apply to a transaction that creates an interest in or lease of real estate, except to the extent that provision is made for leases of fixtures by Section 2A.309.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

## The eNote registered with MERS

Is a completely separate "Mortgage" and not a "potential homeowner" "Real Property" mortgage. MERS does not track paper promissory Notes.

a. Electronic notes registered with the National Registry must contain language, which refers to the National Registry to identify their Controller.

*This language provides the "closed loop" of relationships and responsibility, which ensure that the eNote, Controller, eVault, and National Registry all work together to satisfy the Safe Harbor provision of UETA Section 16.*

b. All parties interacting with the National Registry must have executed membership agreements with the National Registry.

c. The authority of the National Registry would extend from specific investor requirements for its use.

e. The National Registry functionality is limited to electronic notes, and not paper notes.

*The National Registry is intended to satisfy the requirements of UETA and ESIGN for electronic notes only. Attempting to provide functionality for paper note tracking would greatly complicate the design and implementation of the National Registry.* Source: National eNote Registry Requirements Document Version 1.0 Mar 7, 2003

# They created it anyway

Nothing out of the normal there?

But the next slide shows how a paper mortgage loan ID can be duplicated to create a personal property mortgage for a money monger.

Oh, did you approve of sharing your loan documentation information with electronic strangers? You will find that, Anyone who has access to transferable records has access to your private info. Did you agree to that? Was this disclosed to you?



## Creation of an eNote [personal property]

1. In the creation of the Transferable Record, an Identical MIN number reflects a certain Security instrument, and a paper promissory note that is considered personal property under Chapter 3, UCC, but the electronic transferable record is not in writing. It is a separate agreement. It is an electronic transaction.
2. This is a secondary "payment intangible" obligation, not a paper promissory Note obligation.
3. This is actually an electronic promissory Note between a borrower and lender of a MERS/GSE membership and tracking agreement. This membership "borrower" obligation is personal property. It can be governed by E-SIGN, UETA and UCC.

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

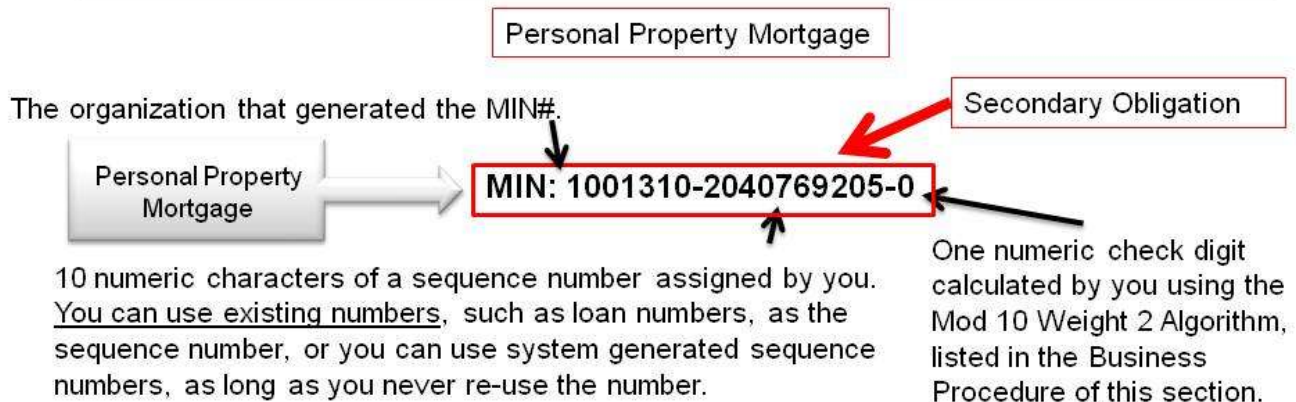


## Creation of an eNote [personal property]

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

### Definition of 'Issuer'

A legal entity that develops, registers and sells securities for the purpose of financing its operations. Issuers may be domestic or foreign governments, corporations or investment trusts. Issuers are legally responsible for the obligations of the issue and for reporting financial conditions, material developments and any other operational activities as required by the regulations of their jurisdictions. The most common types of securities issued are common and preferred stocks, bonds, notes, debentures, bills and derivatives.  
- Investopedia



## Creation of an eNote [personal property]

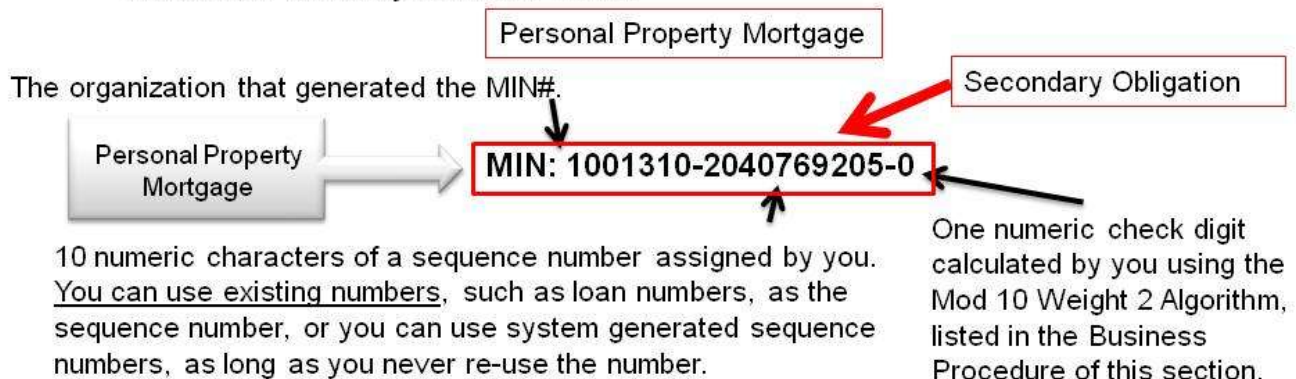
TEXAS BUSINESS AND COMMERCE CODE, Section §322

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.

Sec. 322.002. **DEFINITIONS.** In this chapter:

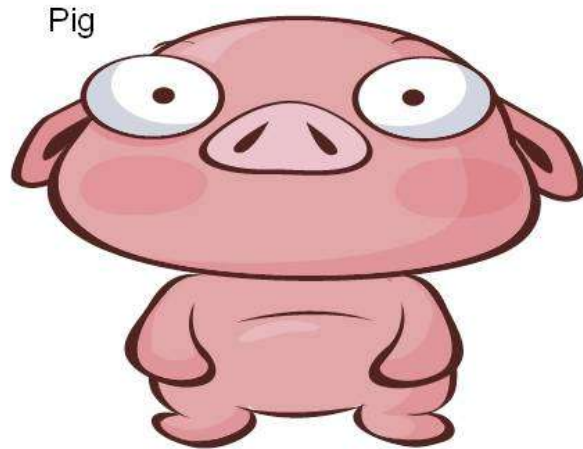
(7) "**Electronic record**" means a record created, generated, sent, communicated, received, or stored by electronic means



# Lipstick and Pigs?

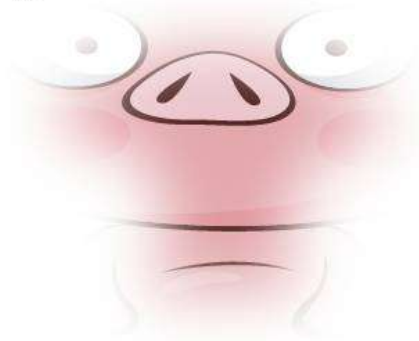


Lipstick



Pig

## a Pig



### The Pig [Personal Property]

A primary characteristic of a promissory note is its status as “negotiable” or “non-negotiable.” In order to be treated as negotiable under current law, a promissory note must satisfy a specific set of objective criteria. It must be: (i) in writing, (ii) signed, (iii) an unconditional promise to pay a specified sum of money, (iv) payable on demand or at a definite time, and (v) payable to the order of a named payee or to the person in possession of the instrument. - UCC Article 3 § 3-104(a).

A negotiable promissory note “reifies” the obligations it represents; that is, physical delivery of the note itself to the transferee, coupled with the transferor’s signed declaration of an intent to transfer (either written on the document or attached to it), constitute almost absolute proof of the transferee’s right to enforce the underlying obligation.

The Note [ a paper promissory Note obligation]

Traditionally, warehouse lenders could protect their interest in negotiable promissory notes by transferring the original notes to investors under cover of a “bailee letter”, which acted to preserve certain of the warehouse lender’s rights in the promissory note against third party claims.

# Thought it was your “mortgaged” property

The Lipstick [Personal Property]

The eNote [ an electronic promissory Note obligation]

[with a pledge of an alleged paper promissory Note and security instrument? Untrue]

An eMortgage is an electronic mortgage where the loan documentation is created, executed, transferred and stored electronically. [Sound like MERS eRegistry?]



Needs electronic signatures to be yours

This is a personal property Mortgage

The statutes approving the use of the bailee letter do not contemplate, or apply to, electronic negotiable instruments. However, it is possible for a warehouse lender to achieve the same level of protection with respect to electronic promissory notes by agreement or system rule.

Wasn't the promissory note obligation paper?

## Electronic Records are not tangible Paper

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

The borrower of a paper promissory Note obligation is not involved in this electronic scenario



[MERS members]  
Borrower  
Lender

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

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



Legal consequences are between the MERS, members and investors



## So, its shame, shame, shame on the Bankers

Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE.

(a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

The borrower of a paper promissory Note obligation is not involved in this electronic scenario



[MERS members]  
Borrower  
Lender

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

## Those who did it themselves

**The problem with the Payment Intangible [It is Personal Property, not Real Property]**<sup>[1]</sup>

Subject to the rights of a control party under UETA or ESIGN, it is still possible to obtain a perfected security interest in transferable records by filing and without control. As with all perfection and priority issues under Revised Article 9, a proper analysis begins with correct classification of the collateral.

Transferable records are personal property, NOT REAL PROPERTY, and therefore are within the general scope of Revised Article 9.-**UCC Revised Article 9 §9-109(a)**. A transferable record secured by real property is not “chattel paper,” because the collateral securing the payment obligation is not specific goods or software. - **UCC Revised Article 9 §9-102(11)**

It also is not an “account,” because accounts do not include a debt owed to repay funds advanced, or “investment property”, because it does not qualify as either a “security” or “security entitlement.” - **UCC Revised Article 9 §§9-102(a)(2) and 9-102(a)(49); UCC §§8-102(15) and 8-102(17)**.

<sup>[1]</sup> <http://www.mortgagebankers.org/files/Technology/MBAResTechWhitePaper-SecurityInterestsInTransferableRecords.pdf>

# They destroyed the loans themselves

The problem with the Payment Intangible [It is Personal Property, not Real Property]<sup>[1]</sup>

It also is not an “instrument.” Rather, under Revised Article 9 a transferable record secured by real property is a “payment intangible” - UCC Revised Article 9 §§9-102(42), 9-102(47) and 9-102(61); UCC §3-104.

A “payment intangible” is a general intangible that primarily evidences an obligation to repay money. A “general intangible” is any personal property that does not fall into one of the other collateral classifications in Revised Article 9.

An “instrument” is a negotiable instrument or other writing customarily transferred by delivery of possession with any necessary indorsement. Therefore, a transferable record is not an “instrument” for purposes of perfection and priority, because it is not in writing.

A transferable Record is not an instrument, it is an electronic record

<sup>[1]</sup> <http://www.mortgagebankers.org/files/Technology/MBAResTechWhitePaper-SecurityInterestsInTransferableRecords.pdf>

## Payment Intangibles are not Real Property

The problem with the Payment Intangible [It is Personal Property, not Real Property]<sup>[1]</sup>

Chapter 9. Secured Transactions

Subchapter A. Short Title, Definitions, And General Concepts

Sec. 9.101. Short Title. This chapter may be cited as Uniform Commercial Code--**Secured Transactions**.

Sec. 9.102. Definitions And Index Of Definitions. (a) In this chapter:

(42) “**General intangible**” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

Transferable records seemingly contain digital duplicated images of an alleged paper promissory note mortgage loan?  
There two mortgages? One is eNote mortgage. One is supposed to be a paper promissory note mortgage. Where is the latter?

# Payment Intangibles are not Real Property

Understand now why the men of Mammon mention UCC 9? It is to reflect a “payment intangible”, not a paper promissory Note.

It is Personal Property they speak of, not Real Property.

So what happened to the “real property” records, like the Note?

How do you think the transferable record came into play?

Scan, copy, eliminate? A.k.a. Step “X”



**Personal Property Mortgage?**

(Personal property collateral)

(security interest)

v.



**Real Property Mortgage?**

(Real Property Collateral)

(deed of trust, Lien)

# Payment Intangibles are not Real Property

## REAL ESTATE

Every real estate transaction involves the parties to the transaction putting their signature on at least one document and more likely several documents. While the reasons behind requiring that signature have remained the same since the first time the law required that signature, the form of that signature has evolved from pen and ink through telegraphic and facsimile transmissions until today when documents can be executed electronically.

<http://www.realtor.org/sites/default/files/handouts-and-brochures/2010/E-Signature-Whitepaper-2010-08-01.pdf>

The borrower of a paper promissory Note obligation is not involved in an electronic scenario

# Payment Intangibles are not Real Property

## REAL ESTATE

The purpose of requiring a signature in a real estate transaction has at its core the purpose of rooting out uncertainty or fraud in connection with contracts, but the traditional requirement of a "writing" also served to provide assurances that the person purporting to sign the agreement was the person whose signature appeared there, that the person signing the document intended to sign it and that both parties to the transaction were agreeing to the same transaction. It also served a psychological purpose of encouraging parties to understand that each was entering into a serious agreement whose terms each had to understand by imposing the formality of a signature.

<http://www.realtor.org/sites/default/files/handouts-and-brochures/2010/E-Signature-Whitepaper-2010-08-01.pdf>



v.

/s/ <Obligor Name>

# Payment Intangibles are not Real Property

## ELECTRONIC WORLD

Texas UETA, 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.
- (4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.
- (5) "**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (6) "**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.

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

# How many eNotes were created?

## ELECTRONIC WORLD – [MERS eRegistry PDF Guidelines]

### Registering eNote PDFs

There are two ways to register eNotes on the MERS eRegistry. One is with the presentation of a SMART Document eNote Base64 encoded inside an eMortgage Package.

The second method is by providing the required registration data without presenting the SMART Document. This method is referred to as a Data Point Registration and is how PDF eNotes can be registered on the MERS eRegistry. Please check with your investor.

```
<_DATA_INFORMATION>
<DATA_VERSION _Name="" _Number="" />
</_DATA_INFORMATION>
<MERS MERS_MINNumber="123456789012345678"/>
<LOAN_FEATURES LienPriorityType="FirstLien" />
<BORROWER BorrowerID="Borr01" NonPersonEntityIndicator="N" _FirstName="John"
  _LastName="Doe" _MiddleName="" _SSN="123456789"/>
<PROPERTY _City="Plano" _County="Collin" _PostalCode="75024" _State="TX"
  _StreetAddress="">
  <PARSED_STREET_ADDRESS _DirectionPrefix="" _HouseNumber="5400" _StreetName="Legacy"
    _StreetType="Drive"/>
</PROPERTY>
```

You can only imagine how many eNotes can be created?

# How many eNotes were created?

## ELECTRONIC WORLD – [MERS eRegistry PDF Guidelines]

### Data Section:

When an eNote registration transaction is submitted to the MERS® eRegistry, the following data points (in the XML example below) are required to register the MIN. The section presented below represents the subset of the registration request where the eNote data is populated.

```
<_DATA_INFORMATION>
<DATA_VERSION _Name="" _Number="" />
</_DATA_INFORMATION>
<MERS MERS_MINNumber="123456789012345678"/>
<LOAN_FEATURES LienPriorityType="FirstLien" />
<BORROWER BorrowerID="Borr01" NonPersonEntityIndicator="N" _FirstName="John" _LastName="Doe"
  _MiddleName="" _SSN="123456789"/>
<PROPERTY _City="Plano" _County="Collin" _PostalCode="75024" _State="TX" _StreetAddress="">
  <PARSED_STREET_ADDRESS _DirectionPrefix="" _HouseNumber="5400" _StreetName="Legacy"
    _StreetType="Drive"/>
</PROPERTY>
```

What "borrower"?  
What address?  
Where is "lot" of  
"block"?

**The above information constitutes data that was originally used to create the final eNote.**

Can you see how easy it is to create an eNote? How does one know if the information is real? Is this why there are foreclosures on homes without mortgages? Duplicate holders?

# How many eNotes were created?

## ELECTRONIC WORLD – [MERS eRegistry PDF Guidelines]

### Signature Section:

The next important section in the registration request is the Registry Signature section which looks like this:

(go look for this part yourself)

This section needs to be populated with the signature value of the PDF eNote's Tamper Evident Digital Signature. The signature value holds the Base64 encoded bytes of the actual value of the digital signature. The signature value can be extracted from the PDF with a couple of API calls.

In addition, the Registry Signature section must include the datetime stamp of when the Tamper Evident Digital Signature was applied to the eNote.

That is all of the note data that is needed to register an eNote with the MERS eRegistry. The MIN and signature value will be used to uniquely identify the negotiable instrument and to verify its integrity as it moves through its lifecycle.

It is vague wording, but it is realized that the electronic promissory Note record would be negotiated. It is a different type of negotiation. Electronic transaction.

## And the company is as well

### ELECTRONIC WORLD

#### Sec. 322.002. DEFINITIONS

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

(8) "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.

(15) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

MERS and its members track electronic promissory Notes. [eNotes]

So, who was supposed to track the paper promissory Note?

You never signed an electronic mortgage did you?  
MERS is only an eNote registration system that tracks personal property.

# The electronic record is just not the same as a paper promissory Note



MERS member



So, what happened to the lien?

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"),

MERS member "Borrower" pledges Mortgage loans?

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

Personal Property

Security Interest?

Electronic Tracking Agreement/Warehouse Lender

# The electronic record is just not the same as a paper promissory Note

Electronic "Hypothecation"

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note (together with this Security Instrument) ("added to get the message across")

or  
a partial interest in the Note (together with this Security Instrument)

Dead giveaway  
"Interest split"  
(Loan Servicer of eNote)  
eNotes are electronic.

can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.

Source: [http://banking.senate.gov/public/\\_files/ArnoldTestimonyAttachments111610.pdf](http://banking.senate.gov/public/_files/ArnoldTestimonyAttachments111610.pdf)



What Note?  
(Electronic or paper?)  
"partial interest" means there is more than one.

Personal Property

Deed of Trust?

Electronic Tracking Agreement/Warehouse Lender

# The electronic record is just not the same as a paper promissory Note

## Hypothecation

### 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,



MERS member "Borrower"

Stripped from paper promissory Note

Attached to electronic promissory Note  
Pledged to Lender



**Personal Property Mortgage?**  
(Personal property collateral)  
(security interest)

**Personal Property Foreclosure?**

MERS Deed of Trust  
A Personal Property lien for MERS members. Was a real property lien.

**Null Deed of Trust?**

Electronic Tracking Agreement/Warehouse Lender

# The electronic record is just not the same as a paper promissory Note

## Hypothecation

So, the "borrower" in the eNote obligation stripped a deed of trust lien from a tangible Note? And attached it to a different Note?  
An eNote? Is this lawful?



Stripped from paper promissory Note

Attached to electronic promissory Note  
Pledged to Lender



**Personal Property Mortgage?**  
(Personal property collateral)  
(security interest)

**Personal Property**

MERS Deed of Trust  
A Personal Property lien for MERS members. Was a real property lien.

**Deed of disTrust?**

Electronic Tracking Agreement/Warehouse Lender



# Recordation of Electronic Negotiation

Why Does MERS members record  
“Assignments” in public record?



Imminence Front?

It is an Illusion

## The electronic record is not the same as a paper promissory Note

Transferring the Transferable Record

The holder of the eNote mortgage obligation electronically negotiated the eNote to a subsequent electronic records holder  
[This is not a real property mortgage subsequent purchaser]



[Official public land records]

Stripped from electronic promissory Note

Attached back to paper promissory Note?  
Foreclose?



**Personal Property Mortgage?**  
(Personal property collateral)  
(security interest)

**Personal Property Foreclosure?**

**Null Deed of Trust?**

MERS electronic assignment  
A Personal Property assignment.  
Not a real property assignment.

# ENOTES ARE NOT PAPER PROMISSORY NOTES

## MERS eRegistry Q&A

**Q. Is using MERS® eRegistry mandatory for MERS Members?**

A. Use of the Registry is required if you want to ensure ultimate liquidity for the purchase and sale of eNotes.

[Note: A “partial interest” means there would be more than one eNote. How?

**Q. What is MERS® eRegistry?**

A. It is an industry utility that serves as the central location to identify the current **Controller (holder) and Location (custodian)** of the Authoritative Copy of an **eNote**. The Controller of an eNote has the same rights as that of a “Holder in Due Course” with a paper negotiable promissory note.

[NOTE: This is not speaking of paper, it is speaking of the eNote having qualities like the paper. For instance; negotiating the eNote to another member would be like a real lender negotiating a paper negotiable instrument, but without paper. This is a separate obligation negotiation from the paper promissory Note obligation.]

The concept of a national e-note registry was the industry’s response to the requirements imposed by the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN). It evolved out of the need to track and identify electronic promissory notes or e-notes for electronic mortgages.

IT IS PERSONAL PROPERTY – A DIFFERENT MORTGAGE

# ENOTES ARE NOT PAPER PROMISSORY NOTES

## MERS eRegistry Q&A

True: MERS and its members can make more money from items unseen (intangible) than with items seen (tangible).

**Q Why eNotes? What is the benefit?**

A. A Promissory Note in electronic form and registered with the MERS® eRegistry is saleable to all investors with membership in the Registry. Due to the lower costs of handling and greater access to information, loans backed by eNotes are more valuable to investors than the equivalent loans backed by paper notes. The MERS eRegistry enables lenders to sell these higher value eNotes on a best execution basis.

Lenders also reduce costs with eNotes by streamlining the post closing and certification process, eliminating transportation costs and reducing costs associated with lost, destroyed and missing paper notes.

Where is it written anywhere in any of these MERS/GSE manuals, that the paper promissory Note is being tracked? MERS and its members only track eNotes. Personal property. It is written that MERS is an eNote registration system in all the MERS manuals, mortgage bankers association presentations and just about anything else you read about MERS.

# ENOTES ARE NOT PAPER PROMISSORY NOTES

*"The mortgage follows the Note"*

What ever the case may be you did not sign an electronic records agreement with MERS of a MERS member did you?

Of course not, that is a separate intangible obligation between MERS members, not the real property mortgage obligor Transferable records hold digital copies of scanned images.

And it obviously appears as if they didn't track the paper obligation.

You only believe they did.

Which is it?

Is it a Personal Property Mortgage?

Is it a Real Property Mortgage?

Personal property  
Piggy bank



So just how is it they can "Produce the Note"?



It's electronic, remember?