

Without Security

There Is No Peace - There Is No Secured Party

American War of Independence (1775-1782)

American Civil War (1861-1865)

By James McGuire © 2011

The United States Supreme Court reasoned in *Carpenter v. Longan*, 83 U.S. 16 Wall. 271 (1872), the security follows the note. Unlike the current environment, In the *Carpenter v. Longan* opinion, all the secured parties were identified; in today's modern MERS world, all the "Who's" (subsequent intervening parties, subsequent purchasers) are not known.

The principles found in the 1872 *Carpenter v. Longan* Opinion that the Security-follows-the-Note remain today. However, MERS's many impossible claims have interrupted, obstructed, and prevented the Security from-following-the-Note. In MERS' model, No Security can follow the Note to a subsequent "Who" until the "Who" MERS is an agent for is first identified.

Where the identity of a Who is missing, someone needs to legally explain how a legal contract can be drawn up between MERS (to act as agent) and unknown Who's. (That's not contracting around the UCC; that's failure to follow other laws.)

The first Who is commonly identified as the originating lender who at closing has an attached and temporary perfected security instrument securing the note. Filing of the security instrument permanently perfects the lien, the Mortgage. The last Who could be the Trustee for the Trust, who may be the note holder but without a continuous perfected lien if all applicable laws were not followed. "Attachment and Perfection" are not the same as "Filing for Priority." But no third party contract can suffice in taking place of public records as required by law for perfecting an assigned lien.

The final Who claims that the intervening Who's identification is by that of third party documents: Pooling and Servicing Agreement, Private Placement Memorandum, etc. If such claim is held true, then there is admission that the lien was never perfected in the intervening Who's name.

All MERS's members have agreed that the MERS system is controlling over priority issues, so

the priority issue would not present itself in today's courts. The MERS system, however, cannot replace public records for lien perfection.

As the second, third and fourth intervening Who's are not identified, MERS could not be an agent and thus lacks authority to assign the security for an unknown Who; in addition, MERS does not have a beneficial interest in the indebtedness. So when MERS jumps in and assigns the lien from MERS to a Trustee for a Trust, that assignment is without force. Where a Trustee for a Trust claims to be the holder of the note, MERS's recording system is not legally sufficient to replace public records for assigning lien perfection to subsequent purchasers of the note.

What follows the note is either a continuously perfected lien, where recordation in public records legally transfers the lien to a subsequent identified secured party, or a lack of a continuously perfected lien where MERS is not a lawful agent for a unknown Who, which results in the lien expiring by failure to record a "unknown" (MERS as Agent for Indorsee "In Blank", as the subsequent intervening purchaser has not been identified) subsequent intervening purchaser-of-the-note as a secured party. [Failure to maintain a continuous perfected lien resulting from failure to file the assignment of lien rights to subsequent intervening purchasers of the note results in the lien expiring.]

If all the "Who's" had followed the law, the banks would be holding the notes as holder in due course with rights to enforce the notes and with rights to enforce perfected lien.

But the banks have not followed the law. Where there is failure to follow law for perfection, any (Foreclosure) Deed transferring property transfers a nullity and should be considered void ab initio.

The old adage: **The Security follows the Note** should be replaced per applicable modern day laws to: **A Continuous Perfected Security follows the Note.**

Over the centuries, basic laws of the security following the note have been sound; inserting MERS into the primary market formula has caused a fatal flaw in the secondary market model of allowing expiration of a once perfected lien that was created at closing.

Leave Violence of War to the Military, Let Justice Be Executed With the Pen!