

Fraud and Deception - Transferable Record

To move quantum volumes of mortgage loans to Wall Street at hyper speed, the stagecoach method of negotiating the paper negotiable instrument was replaced with an electronic Transferable Record to make hyper speed profits for those involved. 15 USC 7003 ¹, ESIGN excludes items governed by UCC Article 3 – Negotiable Instruments. Scanning of the paper note into a transferable record, which creates only a binary data file residing within a computer system, does not meet the UCC definition of a negotiable instrument.

Florida Bankers Association² has gone further to explain their process that after scanning, the paper note is routinely destroyed. This willful intentional destruction is alarming as under the UCC this destruction is one method for discharging the debt.

June 2001, the Federal Trade Commission (*Bureau of Consumer Protection*) and the Department of Commerce (*National Telecommunications and Information Administration*) published “Electronic Signatures in Global and National Commerce Act” ³ and warned that fraud and deception were possible and that the ESIGN Act would prevent the criminal acts. ESIGN, when misapplied, gave the banks an entirely new method to rob and steal on an unprecedented scale. Why rob a stagecoach when you can instead use a keyboard to sack the global economy?

“As enacted, ESIGN gives appropriate consideration to the threat that fraud and deception on the Internet pose to the growth and public acceptance of electronic commerce. It establishes safeguards that can avert many of the abusive practices that marked earlier technological innovations in the marketplace. Most laws protecting consumers against fraud and deception are implemented after fraud has been committed and documented. ESIGN attempts to address fraud before it occurs. Nothing is more likely to undermine consumer confidence in the electronic marketplace than exploitation by unscrupulous marketers, who would take advantage of electronic records and signatures as yet another way to deceive consumers.”

The right hand column on the chart reflects the banks’ securitization of the un-negotiable transferable record; the left column illustrates a vaulted paper note (if not destroyed) that is not negotiated, which explains why in many court cases, only the original indorsement stamp by the originating lender appears on the face of the note. Destruction also explains the many Lost Note Affidavits, which are not addressed in this writing. MERS only tracks the transferable record and who has rights to control the custodian of the vaulted records.

An Authoritative Copy of the paper note was created by scanning the paper note which contained an indorsement in blank from the originating lender appearing on the face of the paper note. The paper note is then vaulted (or destroyed) as the paper note is no longer required in the securitization process and is not further negotiated by indorsement. The authoritative copy is then compiled into a Transferable Record along with all the other scanned closing documents.

Subsequent Purchasers purchase the transferable record relying upon the authoritative copy to be the lawful negotiable instrument. The Alleged Negotiation is the purchase of the transferable record containing the authoritative copy. Again, the MERS system provides notice as to who owns the transferable record, and who has rights and control over the custodian, and reflects who owns the paper note, if such note still exists.

If legal conditions warrant, one could reach into the custodial vault and retrieve the paper note, stand in court, wave it in the air and claim to be “Holder”; one could be in physical possession of the paper note but lack rights as “Holder.”

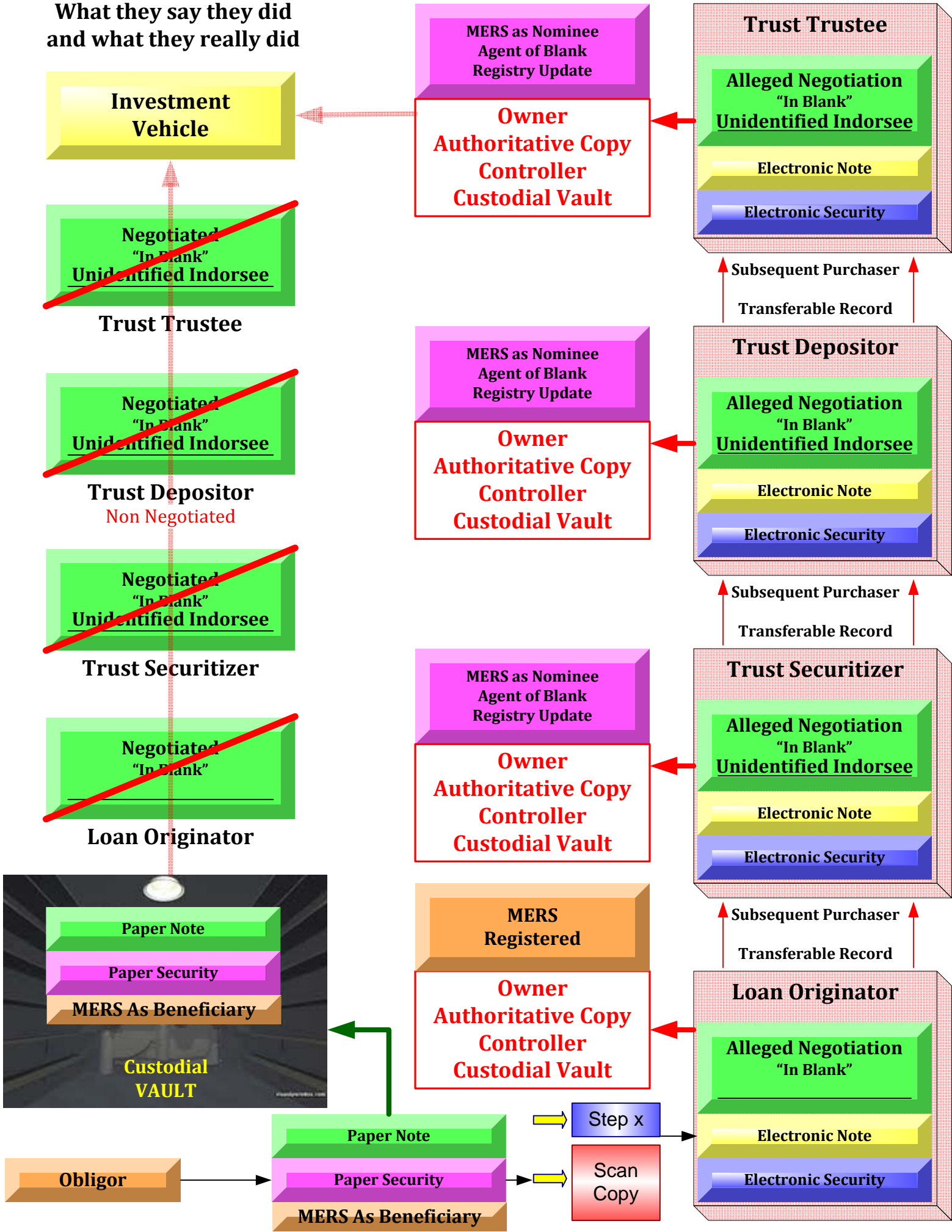
One cannot achieve Holder, or Holder in due course of a paper note utilizing a transferable record. ESIGN did not prevent crime as intended; the unscrupulous financial institutions that exploited ESIGN executed their crimes in nano seconds.

¹ <http://www.law.cornell.edu/uscode/15/7003.html>

² <http://www.scribd.com/doc/33631481/Florida-Banker-s-Association-Lost-Notes-09-1460-093009-comments-Fba-1>

³ <http://www.ftc.gov/os/2001/06/esign7.htm>

**What they say they did
and what they really did**





Transferable Record

(Electronic Digitized Graphic Image)

Scanned Digitized Copy of the Paper Note

Authoritative Copy

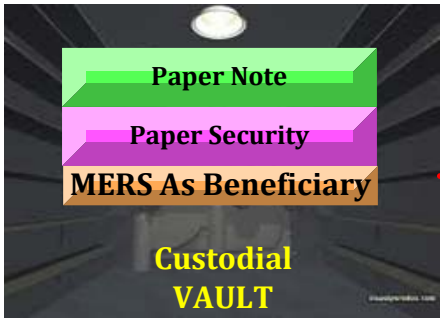
Originating Lender Indorsed "In Blank"

Alleged Negotiation

Scanned Digitized Copy of All Closing Documents

Scanned Digitized Copy of the Security Instrument

Transferable Record



"NON"

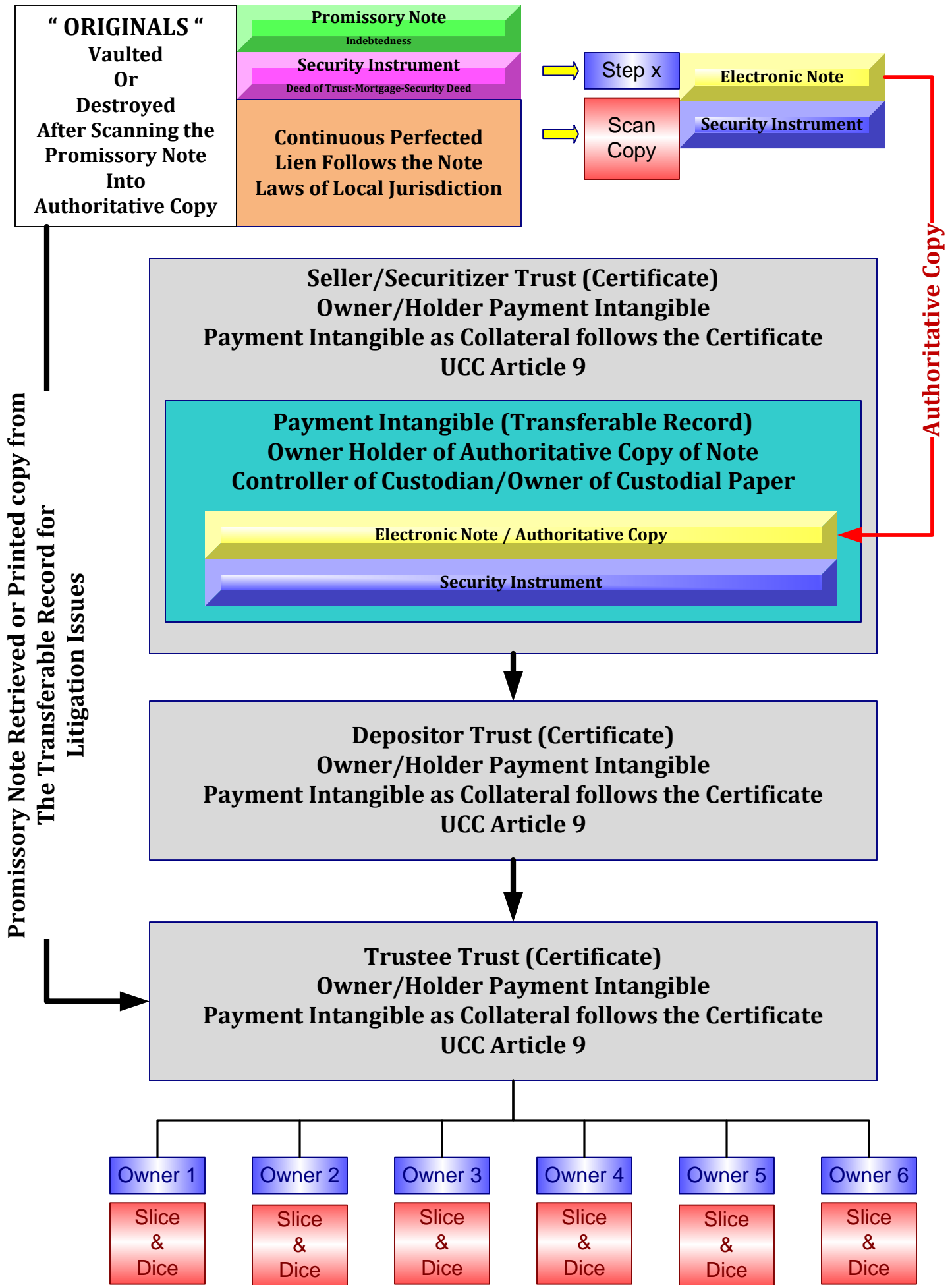

Negotiated

Subsequent Purchase 1

Subsequent Purchase 2

Subsequent Purchase 3

The Authoritative Copy of the Promissory Note-Slice & Dice



Trust Certificate

Owner/Holder of Certificate

Certificate – Owner/Holder of Payment Intangible as Collateral
Securitization - Multiple Subsequent Purchasers of the Underlying Collateral
Security Instrument



UCC Article 9 – Attachment & Perfection
Payment Intangible as Security Follows the Certificate



(Electronic Digitized Graphic Image)

Transferable Record Payment Intangible

(Rights to collect proceeds of the Tangible “Paper Note”)
(Secured by a Continuous Perfected Security Instrument)

Laws of Local Jurisdiction

Closing of Mortgage Loan - Security Instrument Attached and Temporary Perfected
Security Instrument Filed of Record – Permanent Perfection
Assignment of Mortgage (Rights to a Continuously Perfected Lien)
Recorded of Record – Perfection in Subsequent Purchasers Name
Memorialization of Paper Note Negotiation

Scanned Digitized Copy of the Paper Note

Authoritative Copy

Registered/Tracked MERS Registry

Authoritative Copy Registry

Originating Lender Indorsed “In Blank”

Alleged Negotiation

Scanned Digitized Copy
All Closing Documents

Scanned Digitized Copy
Security Instrument

Paper Note

Paper Security

MERS As Beneficiary

Subsequent Purchaser
Owner - Contents of Vault
Control over Custodian

BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING LP, its assignees and/or successors in interest, Movant,

v.

MIKE ZITTA AND IRENA ZITTA, Respondents.

No. 09-bk-19154-SSC

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

The sole issue to be addressed by the Appellate Court was whether Article Nine of the Uniform Commercial Code (as adopted in Arizona) applied to the creation and perfection of a security interest in a promissory note when the note itself was secured by a deed of trust in real property.

The Court concluded that “Arizona case law holds that a mortgage note and the debt evidenced thereby are personal property (citing to Hill v. Favour, 52 Ariz. at 571, 84 P.2d at 579). Article Nine of the UCC applies to security interests in personal property....” Id. at 437. However, Article Nine of the Uniform Commercial Code does not apply to obtaining a lien on real property.

MERS - PUBLIC RECORDS

UCC Article 9 - Laws of Local Jurisdiction

