

An Industry Standard

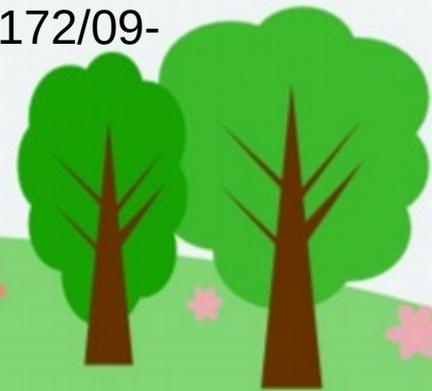
ESIGN

Electronic Records

eCommerce

Source:

[https://www.floridasupremecourt.org/content/download/328731/2952172/09-1460_093009_Comments%20\(FBA\).pdf](https://www.floridasupremecourt.org/content/download/328731/2952172/09-1460_093009_Comments%20(FBA).pdf)



IN THE SUPREME COURT OF FLORIDA CASE NO.: 09-1460

- Respectfully submitted, Florida Bankers Association

“In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the **form** in which the note is transferred.”

eNote Creation

“It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed.”



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- Respectfully submitted, Mortgage Electronic Registrations Systems, Inc.

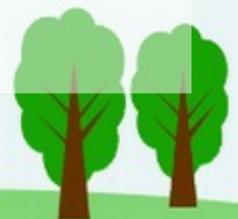
eNote Deception

The legality of eNotes was established with the enactment of the federal Electronic Signatures in Global and National Commerce Act (“ESIGN”) and the Uniform Electronic Transactions Act (“UETA”) over 17 years ago (collectively, “eCommerce Laws”). The eCommerce Laws create legal validity on a nationwide basis for the use of eNotes.

The eCommerce Laws also establish a structure for transferring the right to enforce an eNote from the original lender to subsequent purchasers, free of intervening claims to an interest in the eNote.

The eCommerce Laws accomplish this by replacing the requirements for “possession” and “indorsement” of a written or paper promissory note with the concepts of “control” and “transfer of control” for an eNote.

<https://mersinc.org/media-room-docman/1419-enote-white-paper-final-09062017/file>



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- Respectfully submitted, Florida Bankers Association

“Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database.”

“The reason “many firms file lost note counts as a standard alternative pleading in the complaint” is because **the physical document was deliberately eliminated** to avoid confusion immediately upon its conversion to an electronic file.”



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“The information reviewed to verify the plaintiff’s authority to commence the mortgage foreclosure action **will be drawn from the same database that includes the electronic document and the record** of the event of default. The verification, made “to the best of [the signing record custodian's] knowledge and belief” will not resolve the need to establish the lost document.”

“The process for re-establishment of a lost or destroyed instrument by law imposes a strict burden of proof and instructs the court to protect the obligor from multiple suits on the same instrument.”



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“Any party seeking to foreclose a mortgage without a good faith belief—based on investigation reasonable under the circumstances--in the facts giving rise to the asserted claim may be sanctioned "upon the court's initiative.””

“ This statute, though somewhat underused by our courts, affords judges the authority to immediately impose significant penalties for bringing unfounded litigation.”



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“Perhaps more significant is this Court's recent (and appropriate) reaffirmation of a trial court's inherent authority to sanction litigants—specifically attorneys—who engage in bad faith and abusive practice.”

“The rationale for requiring verification there is clear: The petition itself and any supporting affidavits constitute the evidence supporting the requested temporary injunction. The court's decision is made solely on the evidentiary quality of the documents before it.”



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- Respectfully submitted, Florida Bankers Association

“Verification of the foreclosure complaint will not relieve the plaintiff seeking to foreclose a residential mortgage of the burden of proving by competent and substantial evidence that it is the holder of the note secured by the mortgage and entitled to enforce the mortgagor's obligation.”

“The Florida Bankers Association recognized the hard work and the laudable goals of the Supreme Court Task Force on Residential Mortgage Foreclosure Cases. However, it appears that in the urge to find new ways to address the crisis facing mortgagors and mortgagees as well as the court system, the Task Force fashioned a new and ineffectual rule while ignoring the panoply of significant and substantive weapons already provided by Florida law.”



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- Respectfully submitted,

You've just witnessed the explanation of how the tangibles were converted into the ***intangibles***. However, these intangibles are not intangibles recognized in the Uniform Commerce Code.

15 USC § 7003. Specific exceptions(a) Excepted requirements
The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A



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- Respectfully submitted,

ESIGN

If 15 USC 7003 **EXCLUDES** the Uniform Commercial Code, How can a destroyed paper note be re-established?

ESIGN

15 USC § 7003. Specific exceptions

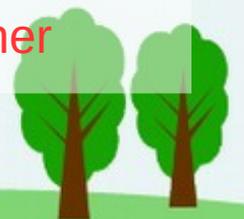
(a) Excepted requirements

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(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

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Fraud

Theft

- Respectfully submitted,

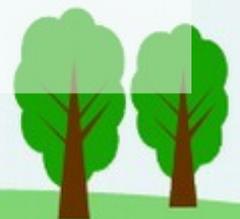
ESIGN

15 USC § 7003(a)(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A

TEXAS BUSINESS AND COMMERCE CODE, UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize any activity that is prohibited by the Penal Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.



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- Respectfully submitted,

If the deed of trust was filed in public land records, and with the Uniform Commerce Code excluded from ESIGN, or UETA, how could the promises in the deed of trust by the “lender” be fulfilled?

If ESIGN excludes Negotiable Instruments in the Uniform Commerce Code, how is the note legally or lawfully transferred, assigned, or sold?

If the “lender” failed to follow all applicable law, did the lender breach the contract?

Are the business records hearsay?

“Therefore, contrary to a note, a mortgage can be challenged by a quiet title action.” - *Lister v. Bank of America, NA*, 8 F. Supp. 3d 74 - Dist. Court, D. Rhode Island 2014



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- Respectfully submitted,

Computer data as hearsay: Rule 8012 “Computer data that is compilation of information entered by a person is hearsay.” 1

1. *Murray*, 804 S.W.2d at 284 (computer printout is often simply “the feeding back of data placed into a computer by a person; although the data may be in a different form than it was when it was fed into the computer, it retains its status as the statement or statements made by a person” and thus fits the definition of hearsay).

A business record may nonetheless be ruled inadmissible if “the source of information or the method or circumstances of preparation indicate lack of Trustworthiness.”⁶

6. *Crane v. State*, 786 S.W.2d 338, 353-54 (Tex. Crim App. 1990); *Philpot v. State*, 897 S.W.2d 848, 852 (Tex App. Dallas 1995, pet. Ref'd); *Porter v. State*, 578 S.W.2d 742, 746 (Tex. Crim. App. 1979)



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- Respectfully submitted,

US v. Hibernia Nat. Bank, 841 F. 2d 592 - Court of Appeals, 5th Circuit 1988

Hibernia's reliance on commercial custom is misplaced. Commercial custom does not apply where the U.C.C. provides otherwise. See U.C.C. § 1-103; also U.C.C. § 3-104, Official Comment 2 ("[A] writing cannot be made a negotiable instrument within this Article by contract or by conduct.") Moreover, it would be inequitable to apply the banking industry's unilateral "custom" to a maker, such as the Army, that is unaware of or may not recognize such a custom

15 USC § 7003

