

# Franklin's UCC §9-203 Gizmo

Dr. Benjamin Franklin (January 17, 1706 – April 17, 1790) was one of the founding fathers of the United States of America. Franklin was a notable scientist and inventor as well a leading author, printer, political theorist, politician, postmaster, musician, satirist, civic activist, statesman, and diplomat.<sup>1</sup>

Like Franklin, our other founding fathers were steeped in education having studied religion, law, Latin, Greek, romance languages, history, sciences, medicine, education, the ancients, politics, poetry, the arts, oration, the classics and fields of learning so that their educations represented the knowledge of learned men of their day. In the two hundred and twenty two (222 or CCXXII) years between 1776 and 1998, the year when sections of the Glass-Steagall Act were repealed, there was an exponential increase of information across and beyond the spectrum of knowledge known to our Founding Fathers. So great has been this spectacular growth in almost all areas that sub-specializations and compartmentalization to help accommodate the well-spring of information has grown. It is arguable if any area has proliferated as greatly, however, as Law since the founding of the United States. Fact: The repeal of the Glass-Steagall Act did occur. Fact: The word “Wisdom” appears 222 times in the King James Version of the Bible. Coincidence? Where God is involved, anything is possible.

In the years following 1998, industry applied advances in science, and as a secondary result the internet expanded beyond business and into the homes of millions. No longer are the American people dependent upon mainstream media or governments for obtaining truth and fact as the business world’s veil of compartmentalization has been pierced by their own obstinacies.

**“Government implies the power of making laws. It is essential to the idea of a law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will, in fact, amount to nothing more than advice or recommendation.”<sup>2</sup>**

---

<sup>1</sup> [http://en.wikipedia.org/wiki/Benjamin\\_Franklin](http://en.wikipedia.org/wiki/Benjamin_Franklin)

<sup>2</sup> <http://www.constitution.org/fed/federa15.htm>

# **UCC §9-203 Gizmo**

## **UNIFORM COMMERCIAL CODE - ARTICLE 9 SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER**

(Selected Excerpts)

### **§ 9-104. Transactions Excluded From Article.**

This Article does not apply

- (j) except to the extent that provision is made for fixtures in Section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

### **§ 9-102. Policy and Subject Matter of Article.**

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in Section 9-310.

Yeow Gizmo! There is difference between a real property lien securing a note and a security securing a Security Interest!

Will have to appreciate those lien theory states that use a Deed of Trust (lien) which also usually are the non-judicial foreclosure states and this writing does not address Mortgages used in title theory states.

To answer the question we first must understand that a lien applied to real property in lien theory states is normally governed by state lien laws. The paper lien document itself is a tangible as is the paper indebtedness to which the lien attaches and together they thusly create a secured indebtedness. In the parlance of the mortgage industry, the secured indebtedness would be considered the Mortgage; in lien theory states this Mortgage would be considered the tangible personal property of an alleged secured party. It is this tangible personal property that is used as collateral for the securitized secondary market securities.

As the paper tangibles of the Mortgage are not under governance of the Uniform Commercial Code Article 9: SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL

PAPER we must determine what parts of a Mortgage fall under Article 9. In listening to oral argument before the Arizona Supreme Court, counsel for Saxon Mortgage claimed a Deed of Trust automatically follows the Note when negotiated per Revised Article 9. As Saxon Mortgage's Counsel's stated; a Deed of Trust automatically follows a note, but Bank's Counsel fails to identify what Note, (The Tangible Note or the Intangible Securities Certificate), and as such created a paradox, and in next few paragraphs I shall attempt explain why.

Uniform Commercial Code Article 9 only addresses an Intangible Security Interest in the Intangible Payment Stream as collected from payments on the Mortgage(s). Perfection of the collateral securing the payment stream must be in accordance with most Securitization Agreements, if not, a possible IRS violation may exist, as the underlying Mortgage should be in compliance with state laws and the securities Securitization Agreements. Within many of these Securitization Agreements, Section II, Conveyances of Mortgage Loans, there is requirement that the Mortgage's underlying notes' negotiations are to be True Sales and all intervening assignments are to be timely recorded in the proper jurisdiction reflecting these negotiations and these actions are for the swapping/exchange of the Security Certificates which represent a True Sale of the Mortgage(s).

Article 9 of the Uniform Commercial Code can be applied to the selling of the Security Certificates and applying Article 9 to the Intangible Payment Stream's collateral would be perfected in the Intangible Security Certificate's purchaser's name or in any subsequent purchaser's name without filing of record, but we cannot apply Article 9 to the true sales of the Mortgage(s)'s underlying Note and the assignment of its Security. Additionally, most all Deeds of Trust have verbiage that claims the laws of local jurisdiction will be governing law; therefore the Deed of Trust itself notices the Uniform Commercial Code Article 9 does not apply to a Deed of Trust.

The author has already addressed in another writing<sup>3</sup> why negotiating a note "in blank" will not sustain a MERS agency relationship in regards to a Deed of Trust.

**Many of the author's additional writings can be found at:**

**<http://www.scribd.com/Alviec>**

---

<sup>3</sup> <http://www.scribd.com/doc/45894095/Amicus-Curiae-NJ-R2-Lr1>