

UCC Gizmo § 3-203

TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER

- *(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.*
- *(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.*
- *(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.*
- *(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this Article and has only the rights of a partial assignee.*

Dissecting the UCC § 3-203 Gizmo Transfer (Investor POV)

- (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

PART 2. NEGOTIATION, TRANSFER, AND INDORSEMENT

§ 3-201. *NEGOTIATION.*

(a) *"Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.*

(b) *Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.*

§ 3-204. *INDORSEMENT.*

(b) *"Indorser" means a person who makes an indorsement.*

(c) *For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.*

§ 3-205. *SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT.*

(a) *If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 apply to special indorsements.*

(b) *If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.*

(c) *The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.*

- (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

§ 3-416. *TRANSFER WARRANTIES.*

(a) *A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:*

(1) *the warrantor is a person entitled to enforce the instrument;*

(2) *all signatures on the instrument are authentic and authorized;*

(3) *the instrument has not been altered;*

(4) *the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and*

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A [cause of action] for breach of warranty under this section accrues when the claimant has reason to know of the breach.

In the ring of Mortgage Backed Securities, Negotiable Instruments were to be created as being a Secured Instrument secured by a perfected lien. Perfection of Security Interest in a Secured Indebtedness would be under governance of Uniform Commercial Code Article 9. However, the Security securing the supposed Secured Indebtedness would have been under governance of each state's lien laws. As such, several potential legal arguments arise in regards to MERS and the negotiation of the Negotiable Instrument (Note) and the security.

1. Can MERS be named as Beneficiary and Nominee on the Secured Indebtedness's security instrument? The courts will need to sort this matter out according to each state's law that governs liens.
2. For liens requiring perfection to be filed of notice in a secured party's name or by agency relationship along with Notes indorsed "in blank," there is a failure to identify any party other than the original payee. Therefore, MERS being named of record for subsequent unidentified

alleged subsequent purchaser of a Note does not transfer an agency relationship from MERS to any unknown party.

3. As the industry claims a standard to indorse the Notes in blank and with referencing UCC §3-416 we find a false impression that Note negotiation in blank would be excluded: (*UCC § 3-416. TRANSFER WARRANTIES, (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:..*) such indorsements in blank would not be in compliance with most securitization procedures requiring true sales of the Note.
4. To facilitate alleged defaults in the primary markets, many allonges have been added to the Note attempting to prove up an incomplete chain of indorsements. Upon the missing indorsements being added to the Note to prove up a collection action, section §3-416 again becomes of force. Many securitized trusts or the agent are not the legal owner/holder/possessor of a properly negotiated Note, which in many cases is unsecured by operation of law with such failure of assigning perfection belonging to those that created the Trusts.

fraud or illegality affecting the instrument?

NOTICE – This writing is not legal advice nor is it a substitute for legal advice. Seek competent legal advice from a licensed practicing attorney in the appropriate jurisdiction. This writing is the author’s personal comments and should not be misconstrued as legal advice; as such the author or Hedgerow Consulting is not responsible for any loss of any tangible or intangible property.