

ODE TO THE WISE

1 The following “Mortgage Note” information are not my words. And such information belongs to
2 a man of education. The purpose for this article is for educational purposes of the yet to be
3 learned, and hopefully the reader can understand a difference between “*intangible*” and
4 “*tangible*”? The referenced [article](#) is found at the american bar website. The authors comments
5 follow afterwards. **Emphasis** is also added to the *Wise* article for reference purposes. Also note, no
6 disrespect is intended toward the author, a Wise man of the article.

Setting the UCC Record Straight on Mortgage Notes

8 The press is full of articles concerning residential real estate foreclosures.
9 Sometimes questions arise in these judicial and non-judicial proceedings
10 concerning ownership and enforcement of the notes and related mortgages.
11 Uniform Commercial Code Articles 3 and 9 (and related definitions in Article 1)
12 address some of the issues that have come up in these proceedings. The litigants
13 and the courts considering these matters sometimes do not recognize the
14 applicability of the UCC or may have difficulty applying the rules of the UCC.
15 *See, e.g., U.S. Bank v. Ibanez*, 458 Mass. 637, 941 N.E.2d 40 (2011).

16 The Permanent Editorial Board for the Uniform Commercial Code has just issued
17 a report (Report) to explain the application of UCC provisions that govern selected
18 aspects of these matters and how those provisions apply to common fact patterns
19 in this area. The PEB Report addresses how the UCC governs the following
20 matters:

- 21 • Who is the person entitled to enforce a mortgage note?
- 22 • How is the transfer of a property interest (ownership or a security interest
23 to secure an obligation) in a mortgage note accomplished?
- 24 • What effect does the transfer of a mortgage note have on the related
25 mortgage?
- 26 • How can a person enforce a mortgage note by foreclosing non-judicially if
27 the person does not have a recordable assignment of the mortgage?

Procedure

29 The PEB prepared and issued a draft Report for public comment in March 2011.
30 The PEB received comments and prepared revisions to the Report. The final
31 Report was issued in mid-November. It is available on the webpages of the two
32 sponsors of the UCC, the American Law Institute (www.ali.org) and the Uniform
33 Law Commission (www.uniformlaws.org).

34 During the course of the comment period, at least two courts cited the draft Report
35 when considering issues addressed by the Report. *See In re Jackson*, 451 B.R. 24
36 (Bankr. E.D. Calif. 2011) and *In re Veal*, 449 B.R. 542 (9th Cir. BAP 2011). **In**
37 **each case the court held for the homeowner, concluding that the person seeking to**
38 **enforce the particular mortgage note had not satisfied the relevant requirements of**
39 **the UCC, as explained in the (draft) PEB Report.**

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1 **What the Report Does Not Cover**

2 The Report limits its discussion to selected UCC issues:

- 3 • The Report states several times that the UCC governs the issues that it
4 governs, but does not address issues of real property law.
- 5 • The Report sometimes refers to the UCC's use of other law in connection
6 with the application of the UCC's rules, for example agency law. In those
7 circumstances, the Report notes the applicability of the other law (such as
8 agency law) but does not discuss the content of the other law. In particular,
9 where the UCC requires "possession" of a note to create certain rights, the
10 Report observes that both Article 3 and Article 9 (with an assist from UCC
11 § 1-103(b)) recognize that possession of the note can occur through an
12 agent.
- 13 • The Report's discussion of Article 3 recognizes that Article 3 applies
14 only to "negotiable instruments" as that term is defined in Article 3;
15 the Report observes that if a mortgage note is not a "negotiable instrument,"
16 the Report's discussion of Article 3 issues does not apply to that mortgage
17 note.
- 18 • The Report's discussion of Article 9 issues notes that Article 9 applies to all
19 instruments, i.e., both negotiable and non-negotiable notes.
- 20 • The Report does not address all issues that might arise under the UCC in
21 this context, such as the possible status of a holder of a mortgage note as a
22 holder in due course of the mortgage note and the effect that that status
23 might have on possible defenses that the maker might be able to assert.

24 **Who is Entitled to Enforce a Mortgage Note?**

25 Article 3 employs the concept of a "person entitled to enforce" a note to determine
26 the person to whom the maker of the note owes its payment obligation. UCC § 3-
27 301. That person might or might not be the owner of the note (UCC § 3-203,
28 Comment 1), but payment to that person discharges the maker's obligation under
29 the note. UCC §§ 3-412 and 3-602.

30 A person is the person entitled to enforce the note if *any* of the following is true:

- 31 1. The person is the "holder" of the note,
- 32 2. The person is in possession of the note, which was "transferred" to that
33 person, but the person is not a "holder" of the note, and
- 34 3. The note has been lost or destroyed (or is unavailable for other reasons) and
35 the person who had been in possession was a person entitled to enforce the
36 note

37 These alternatives for becoming the person entitled to enforce the mortgage note
38 are satisfied (or not) as follows:

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- 1 • The first alternative is satisfied only if the person (or its agent) has
2 possession of the mortgage note and the mortgage note is payable or
3 endorsed to that person or endorsed in blank.
- 4 • The second approach also requires that the person (or its agent) has
5 possession of the mortgage note. If the mortgage note is not payable to the
6 person in possession or to bearer, then the person is not a "holder."
7 However, if the mortgage note was "delivered" to the person in possession
8 "for the purpose of giving" that person the right to enforce the instrument,
9 the second alternative applies.
- 10 • The third alternative requires proof of the elements noted above, along with
11 the terms of the mortgage note.

12 **Transfer of Ownership**

13 Unlike Article 3, Article 9 applies to interests in both negotiable and non-
14 negotiable instruments. UCC § 9-102(a)(47). Article 9 applies to both a security
15 interest in a mortgage note to secure an obligation and to the rights of a buyer of a
16 mortgage note. UCC § 9-109(a)(1) and (3). Article 9 thus determines the
17 requirements for an "effective" transfer of rights in those two situations. UCC § 9-
18 203.

19 The requirements for an effective transfer of ownership (in the case of a sale) or a
20 security interest to secure an obligation (in the case of a loan secured by the
21 mortgage note) are straightforward:

- 22 1. Value must be given--this is typically satisfied by the payment of the
23 purchase price in the case of a sale of a mortgage note and the promise to
24 make a loan or the advance of the loan amount in the case of a security
25 interest to secure an obligation. UCC § 1-204.
- 26 2. The seller or person creating the security interest to secure an obligation
27 must have "rights" in the mortgage note--this too is usually easy to satisfy.
- 28 3. Generally, the seller or person creating a security interest to secure an
29 obligation must "authenticate" a security agreement describing the
30 mortgage note. UCC § 9-203(b)(3)(A). Whether the agreement covers the
31 sale of the mortgage note or a security interest to secure an obligation, the
32 agreement sufficiently describes the mortgage note if the agreement
33 "reasonably identifies" the mortgage note. UCC § 9-108(a). For example, a
34 description of mortgage notes by "category" or "type" is sufficient. UCC §
35 9-108(b)(2) and (3). (An oral (or other unauthenticated) security agreement
36 is also possible in some circumstances. UCC § 9-203(b)(3)(B)).

37 If these requirements are satisfied, the buyer or lender with a security interest in a
38 mortgage note to secure an obligation obtains a property interest in the note as
39 owner or holder of the security interest to secure an obligation.

40 **The Mortgage Follows the Note**

41 The law in the United States has long followed the *Mary's Little Lamb* rule--
42 wherever the mortgage note goes the related mortgage is sure to follow.

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1 *Restatement (Third) of Property (Mortgages) § 5.4.* UCC § 9-203(g) codifies this
2 rule for both sales of a mortgage note and a security interest in a mortgage note to
3 secure an obligation. Further, perfection of a security interest in the mortgage note
4 (whether in favor of a buyer or a lender with a security interest to secure an
5 obligation) also perfects the security interest in the buyer's or lender's security
6 interest in the seller's or borrower's rights in the mortgage. References to a
7 "mortgage" in UCC § 9-203(g) include other types of consensual rights in real
8 property to secure an obligation, such as a deed of trust. UCC § 9-102(a)(55).

9 **Getting the Mortgage in the Secured Party's Name**

10 To save effort and money for all concerned, often a buyer of a mortgage note or a
11 lender with a security interest in the mortgage note to secure an obligation will not
12 record an assignment of the mortgage in the real estate records. As Article 9 makes
13 clear, recording an assignment is not necessary for the buyer or lender to perfect its
14 rights in the seller's or borrower's rights in the mortgage.

15 However, if the buyer or lender wants to foreclose, it may not have and may not be
16 able to obtain the documents necessary to record the assignment in the real estate
17 records, which may be necessary under local real estate law. Article 9 provides a
18 procedure for the buyer or lender to record a document in the real estate records to
19 reflect that assignment. UCC § 9-607(b).

20 **Conclusion**

21 The PEB Report describes the application of selected provisions of UCC Articles 3
22 and 9 to several key issues that may come up in connection with mortgage notes.
23 There may well be additional UCC issues or issues arising under other law that
24 also must be resolved, but the Report should help both practitioners and courts
25 understand many of the issues that the UCC addresses in this area.

26 **LAW, COMMENTS, AND SUCH**

27 The referenced law in the article, also provided referenced case law links only;

28 **PAGE 1 - Setting the UCC Record Straight on Mortgage Notes**

29 [*US Bank National Association v. Ibanez*](#), 458 Mass. 637 - Mass: Supreme Judicial Court
30 2011

31 **PAGE 1 – Procedure**

32 [*In Re Jackson*](#), 451 B.R. 24 (Bankr. E.D. Cal. 2011)

33 [*IN RE VEAL*](#), Bankr. Appellate Panel, 9th Circuit 2011

34 **PAGE 2 - What the Report Does Not Cover**

35 **Sec. 1.103. CONSTRUCTION OF TITLE TO PROMOTE ITS PURPOSES AND**
36 **POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**

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1 (b) Unless displaced by the particular provisions of this title, the principles of law and
2 equity, including the law merchant and the law relative to capacity to contract, principal
3 and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or
4 other validating or invalidating cause shall supplement its provisions.

5 PAGE 2 - Who is Entitled to Enforce a Mortgage Note?

6 **Sec. 3.301. PERSON ENTITLED TO ENFORCE INSTRUMENT.** "Person entitled to
7 enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in
8 possession of the instrument who has the rights of a holder, or (iii) a person not in
9 possession of the instrument who is entitled to enforce the instrument pursuant to Section
10 3.309 or 3.418(d). A person may be a person entitled to enforce the instrument even
11 though the person is not the owner of the instrument or is in wrongful possession of the
12 instrument.

13 **Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY**

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

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

22 (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee
23 does not become a holder because of lack of indorsement by the transferor, the transferee
24 has a specifically enforceable right to the unqualified indorsement of the transferor, but
25 negotiation of the instrument does not occur until the indorsement is made.

26 (d) If a transferor purports to transfer less than the entire instrument, negotiation of the
27 instrument does not occur. The transferee obtains no rights under this chapter and has
28 only the rights of a partial assignee.

29 **UCC OFFICIAL COMMENT:**

30 [http://www.uniformlaws.org/Shared/Committees_Materials/PEBUCC/PEB_Report_11141](http://www.uniformlaws.org/Shared/Committees_Materials/PEBUCC/PEB_Report_11141.pdf)
31 [1.pdf](http://www.uniformlaws.org/Shared/Committees_Materials/PEBUCC/PEB_Report_11141.pdf)

32 **Sec. 3.412. OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK.** The
33 issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the
34 instrument (i) according to its terms at the time it was issued or, if not issued, at the time it
35 first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument,
36 according to its terms when completed, to the extent stated in Sections 3.115 and 3.407.
37 The obligation is owed to a person entitled to enforce the instrument or to an indorser who
38 paid the instrument under Section 3.415.

39 **Sec. 3.602. PAYMENT.** (a) Subject to Subsection (e), an instrument is paid to the extent
40 payment is made by or on behalf of a party obliged to pay the instrument, and to a person
41 entitled to enforce the instrument.

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1 (b) Subject to Subsection (e), a note is paid to the extent payment is made by or on behalf
2 of a party obliged to pay the note to a person that formerly was entitled to enforce the note
3 only if at the time of the payment the party obliged to pay has not received adequate
4 notification that the note has been transferred and that payment is to be made to the
5 transferee. A notification is adequate only if it is signed by the transferor or the transferee,
6 reasonably identifies the transferred note, and provides an address at which payments
7 subsequently are to be made. Upon request, a transferee shall seasonably furnish
8 reasonable proof that the note has been transferred. Unless the transferee complies with
9 the request, a payment to the person that formerly was entitled to enforce the note is
10 effective for purposes of Subsection (c) even if the party obliged to pay the note has
11 received a notification under this subsection.

12 (c) Subject to Subsection (e), to the extent of a payment under Subsections (a) and (b), the
13 obligation of the party obliged to pay the instrument is discharged even though payment is
14 made with knowledge of a claim to the instrument under Section 3.306 by another person.

15 (d) Subject to Subsection (e), a transferee, or any party that has acquired rights in the
16 instrument directly or indirectly from a transferee, including any such party that has rights
17 as a holder in due course, is deemed to have notice of any payment that is made under
18 Subsection (b) after the date that the note is transferred to the transferee but before the
19 party obliged to pay the note receives adequate notification of the transfer.

20 (e) The obligation of a party to pay the instrument is not discharged under Subsections (a)
21 through (d) if:

22 (1) a claim to the instrument under Section 3.306 is enforceable against the party
23 receiving payment and:

24 (A) payment is made with knowledge by the payor that payment is
25 prohibited by injunction or similar process of a court of competent
26 jurisdiction; or

27 (B) in the case of an instrument other than a cashier's check, teller's check,
28 or certified check, the party making payment accepted, from the person
29 having a claim to the instrument, indemnity against loss resulting from
30 refusal to pay the person entitled to enforce the instrument; or

31 (2) the person making payment knows that the instrument is a stolen instrument
32 and pays a person it knows is in wrongful possession of the instrument.

33 (f) As used in this section, "signed," with respect to a record that is not a writing, includes
34 the attachment to or logical association with the record of an electronic symbol, sound, or
35 process with the present intent to adopt or accept the record.

36 **PAGE 3 - Transfer of Ownership**

37 **Sec. 9.102. DEFINITIONS AND INDEX OF DEFINITIONS.** (a) In this chapter:

38 (47) "Instrument" means a negotiable instrument or any other writing that evidences a
39 right to the payment of a monetary obligation, is not itself a security agreement or lease,
40 and is of a type that in ordinary course of business is transferred by delivery with any

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1 necessary indorsement or assignment. The term does not include (i) investment property,
2 (ii) letters of credit, (iii) writings that evidence a right to payment arising out of the use of
3 a credit or charge card or information contained on or for use with the card, or (iv)
4 nonnegotiable certificates of deposit.

5 **Sec. 9.109. SCOPE.** (a) Except as otherwise provided in Subsections (c), (d), and (e),
6 this chapter applies to:

7 (1) a transaction, regardless of its form, that creates a security interest in personal
8 property or fixtures by contract;

9 (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

10 **Sec. 9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;
11 PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.** (a) A
12 security interest attaches to collateral when it becomes enforceable against the debtor with
13 respect to the collateral, unless an agreement expressly postpones the time of attachment.

14 (b) Except as otherwise provided in Subsections (c)-(j), a security interest is enforceable
15 against the debtor and third parties with respect to the collateral only if:

16 (1) value has been given;

17 (2) the debtor has rights in the collateral or the power to transfer rights in the
18 collateral to a secured party; and

19 (3) one of the following conditions is met:

20 (A) the debtor has authenticated a security agreement that provides a
21 description of the collateral and, if the security interest covers timber to be
22 cut, a description of the land concerned;

23 (B) the collateral is not a certificated security and is in the possession of
24 the secured party under Section 9.313 pursuant to the debtor's security
25 agreement;

26 (C) the collateral is a certificated security in registered form and the
27 security certificate has been delivered to the secured party under Section
28 8.301 pursuant to the debtor's security agreement; or

29 (D) the collateral is deposit accounts, electronic chattel paper, investment
30 property, letter-of-credit rights, or electronic documents, and the secured
31 party has control under Section 7.106, 9.104, 9.105, 9.106, or 9.107
32 pursuant to the debtor's security agreement.

33 (c) Subsection (b) is subject to Section 4.210 on the security interest of a collecting bank,
34 Section 5.118 on the security interest of a letter-of-credit issuer or nominated person,
35 Section 9.110 on a security interest arising under Chapter 2 or 2A, and Section 9.206 on
36 security interests in investment property.

37 (d) A person becomes bound as debtor by a security agreement entered into by another
38 person if, by operation of law other than this chapter or by contract:

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1 (1) the security agreement becomes effective to create a security interest in the
2 person's property; or

3 (2) the person becomes generally obligated for the obligations of the other person,
4 including the obligation secured under the security agreement, and acquires or
5 succeeds to all or substantially all of the assets of the other person.

6 (e) If a new debtor becomes bound as debtor by a security agreement entered into by
7 another person:

8 (1) the agreement satisfies Subsection (b)(3) with respect to existing or after-
9 acquired property of the new debtor to the extent the property is described in the
10 agreement; and

11 (2) another agreement is not necessary to make a security interest in the property
12 enforceable.

13 (f) The attachment of a security interest in collateral gives the secured party the rights to
14 proceeds provided by Section 9.315 and is also attachment of a security interest in a
15 supporting obligation for the collateral.

16 (g) The attachment of a security interest in a right to payment or performance secured by
17 a security interest or other lien on personal or real property is also attachment of a security
18 interest in the security interest, mortgage, or other lien.

19 (h) The attachment of a security interest in a securities account is also attachment of a
20 security interest in the security entitlements carried in the securities account.

21 (i) The attachment of a security interest in a commodity account is also attachment of a
22 security interest in the commodity contracts carried in the commodity account.

23 (j) If a secured party holds a security interest that applies under this chapter to minerals,
24 including oil and gas, upon their extraction and the security interest also qualifies under
25 applicable law as a lien on those minerals before their extraction, the security interest
26 before and after production is a single continuous and uninterrupted lien on the property.
27 This subsection is a statement of the law of this state as it existed before the effective date
28 of this subsection and applies with respect to minerals, including oil and gas, regardless of
29 when the minerals were extracted.

30 **Sec. 1.204. VALUE.** Except as otherwise provided in Chapters 3, 4, and 5, a person gives
31 value for rights if the person acquires them:

32 (1) in return for a binding commitment to extend credit or for the extension of
33 immediately available credit, whether or not drawn upon and whether or not a
34 charge-back is provided for in the event of difficulties in collection;

35 (2) as security for, or in total or partial satisfaction of, a preexisting claim;

36 (3) by accepting delivery under a preexisting contract for purchase; or

37 (4) in return for any consideration sufficient to support a simple contract.

38 **Sec. 9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;
39 PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

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1 (b) Except as otherwise provided in Subsections (c)-(j), a security interest is
2 enforceable against the debtor and third parties with respect to the collateral only
3 if:

4 (3) one of the following conditions is met:

5 (A) the debtor has authenticated a security agreement that provides
6 a description of the collateral and, if the security interest covers
7 timber to be cut, a description of the land concerned;

8 **Sec. 9.108. SUFFICIENCY OF DESCRIPTION.** (a) Except as otherwise provided in
9 Subsections (c), (d), and (e), a description of personal or real property is sufficient,
10 whether or not it is specific, if it reasonably identifies what is described.

11 **Sec. 9.108. SUFFICIENCY OF DESCRIPTION.**(b) Except as otherwise provided in
12 Subsection (d), a description of collateral reasonably identifies the collateral if it identifies
13 the collateral by:

14 (2) category;

15 (3) except as otherwise provided in Subsection (e), a type of collateral defined in
16 this title;

17 **Sec. 9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;
18 PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

19 (b) Except as otherwise provided in Subsections (c)-(j), a security interest is enforceable
20 against the debtor and third parties with respect to the collateral only if:

21 (A) the debtor has authenticated a security agreement that provides a description
22 of the collateral and, if the security interest covers timber to be cut, a description of
23 the land concerned;

24 (B) the collateral is not a certificated security and is in the possession of the
25 secured party under Section 9.313 pursuant to the debtor's security agreement;

26 (C) the collateral is a certificated security in registered form and the security
27 certificate has been delivered to the secured party under Section 8.301 pursuant to
28 the debtor's security agreement; or

29 (D) the collateral is deposit accounts, electronic chattel paper, investment property,
30 letter-of-credit rights, or electronic documents, and the secured party has control
31 under Section 7.106, 9.104, 9.105, 9.106, or 9.107 pursuant to the debtor's security
32 agreement.

33 **PAGE 4 - The Mortgage Follows the Note**

34 **Sec. 9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST;
35 PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES.**

36 (g) The attachment of a security interest in a right to payment or performance secured by
37 a security interest or other lien on personal or real property is also attachment of a security
38 interest in the security interest, mortgage, or other lien.

39 **Sec. 9.102. DEFINITIONS AND INDEX OF DEFINITIONS.** (a) In this chapter:

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1 (55) "Mortgage" means a consensual interest in real property, including fixtures, that
2 secures payment or performance of an obligation.

3 **Sec. 9.607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.**

4 (b) If necessary to enable a secured party to exercise under Subsection (a)(3) the right of a
5 debtor to enforce a mortgage nonjudicially, the secured party may record in the office in
6 which a record of the mortgage is recorded:

7 (1) a copy of the security agreement that creates or provides for a security interest
8 in the obligation secured by the mortgage; and

9 (2) the secured party's sworn affidavit in recordable form stating that:

10 (A) a default has occurred with respect to the obligation secured by the
11 mortgage; and

12 (B) the secured party is entitled to enforce the mortgage nonjudicially.

13 **Author's Comments;**

14 Whew, that was a lot of gibberish to run through just to find out something is missing? Well,
15 actually two "something's" in UCC 9, or possibly 3 "something's"?

16 **Sec. 9.109. SCOPE.** (a) Except as otherwise provided in Subsections (c), (d), and (e),
17 this chapter applies to:

18 (d) This chapter does not apply to:

19 **(2) a lien.**

20 **(11) the creation or transfer of an interest in or lien on real property.**

21 What about 9.109(5)?

22 **Sec. 9.109. SCOPE.** (a) Except as otherwise provided in Subsections (c), (d), and (e),
23 this chapter applies to:

24 (d) This chapter does not apply to:

25 **(5) an assignment of accounts, chattel paper, payment intangibles, or**
26 **promissory notes that is for the purpose of collection only;**

27 Wait a minute, let's back up the wagon and think about what is "covered" in the article,
28 and in UCC § 9.109(3) says "(3) a sale of accounts, chattel paper, payment intangibles, or
29 promissory notes;"; but § 9.109(a) also contains the special word "except", and (a) comes before
30 (3); "**Sec. 9.109. SCOPE.** (a) *Except as otherwise provided in Subsections (c), (d), and (e), this*
31 *chapter applies to:*"; then you will read (3) as stated above "a sale of accounts...".

32 So, how is it determined as to whether the scope of things are proper? According to the
33 word *scope*, it can mean "the extent of the area or subject matter that something deals with or to
34 which it is relevant", or "the opportunity or possibility to do or deal with something", or "assess
35 or investigate (something)", or "look at carefully; scan". It can even mean a device used for
36 viewing whether it be "micro", or "tele". But that is not what we are "viewing". We are discussing

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1 subject matter, the possibility to do or deal with something, to investigate, or look at carefully.
2 That is the scope.

3 So, millions of mortgage loans were bundled up in various “Trusts” to sell “*payment*
4 *streams*” to investors, and such investments are in “*payment intangibles*”, or “*promissory notes*”
5 used for the collection of millions of debts.

6 And if you look at the lien, the wording asserts the intent of selling *partial interests* in the
7 note. Does such selling of *partial interests* meet the requirements of § 3.203(d)?

8 Where does it end? It is unsustainable, and many men in robes seem to be trying to protect
9 their pension, or “accountability”, rather than provide justice according to law.

10 In Texas, section 51.0001(4)(C) provides an avenue which the courts seem to ignore? How
11 is it legally possible to automatically create rights for an unknown person, and also provide
12 instant “standing” in a court of law before the merits of the case is determined? Article 9 has
13 nothing to do with real property and many courts and law professors have stated such. Why do the
14 courts allow impersonator’s to introduce hearsay evidence into their records without actually
15 providing proof there was every an agency relationship? Mortgage servicers, according to G.
16 Tommy Bastian have the pooling and servicing agreement to prove agency relationship, yet the
17 courts discriminate against the alleged borrower as a dead beat who is trying to get out of their
18 obligation. Yet, allow perpetrators to enter the court room and lie like hell.

19 It has to dawn on the people at some point in time that the U.S. Constitution is being
20 concealed to allow for criminal activity to take place. This activity will not stop until the violation
21 is recognized. What do I need to do to get this across to people? A video?

22 **Texas, dear Texas, from Tyrant grip now Free....**

23 Texas is about to be introduced to a constitutional challenge of a statute. This is
24 accomplished via Declaratory Judgment Act. The declaratory judgment [DJ] does not request any
25 relief other than the court determining whether the statute is constitutional, or not constitutional,
26 nothing else.

27 The question to be presented to the court will be “Is section § 51.0001(4)(C)
28 constitutional, or not constitutional”. Of course the DJ will provide the explanation of why it is
29 believed that section of the Texas Property code is unconstitutional, which will include the
30 various laws being overshadowed by section 51.0001(4)(C), such as the federal constitution,
31 Texas constitution, bankruptcy law, tax law, business organization law, finance law, and local
32 jurisdictional law.

33 **Sec. 51.0001. DEFINITIONS.** In this chapter:

34 (4) "**Mortgagee**" means: (C) if the security interest has been assigned of record,
35 the last person to whom the security interest has been assigned of record.

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1 Out of the eight (8) definitions provided in section § 51.0001, none define “security
2 interest”, “assigned of record”, or “last person”. Of course, “debtor” is not defined either. What is
3 more curious is section § 51.0001(1), which creates a definition for an entity defined by an
4 undefined, unidentified entity? Most all the sections within 51 are very questionable as to the
5 constitutional validity of Chapter 51, Texas property code. In other words, those words contained
6 within (78R) H.B. 1493 should have never been added to the Texas property code, as such
7 amendment contains evidence of constitutional violations. Impairment of contract obligations is
8 evidenced.

9 Rights created by the requirements of the UCC are not rights created by real estate
10 contracts. Rights created using the UCC are not rights created by the two contracts of the tangible
11 borrower.

12 It is also important for the Secretary of State to recognize its authority over the States
13 equivalent of the Uniform Commerce Code? Lost revenue? Circumnavigate the Secretary of State
14 by using section 51.0001(4)(C), Texas Property code to evade fees? As it appears, section
15 51.0001(4)(C) seemingly created rights that would jeopardize both the Secretary of State, and the
16 county clerk’s sovereign rights.

17 This amended chapter 51 seemingly appears to be “*creating rights*”, “*private rights*”. This
18 also seemingly creates “*standing*” on-the-fly for any unknown private party attempting to claim a
19 deed of trust without their name within the four corners, or proof of lawful assignment of both
20 chain of titles, note and deed of trust, together, as one secured chain of title. Secured debts
21 regarding real estate are usually recognized with the help of public records such as the filed
22 records of the clerk of the county. In Texas, local jurisdictional law provides the requirements
23 related to subsequent actions regarding a deed of trust.

24 Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To
25 release, transfer, assign, or take another action relating to an instrument that is
26 filed, registered, or recorded in the office of the county clerk, a person must file,
27 register, or record another instrument relating to the action in the same manner as
28 the original instrument was required to be filed, registered, or recorded.

29 So, there is only one “Ibanez” incident that has taken place across the U.S.? Only one
30 “Veal”, only one “Jackson” when it seems proven the claimants to a deed of trust are not very
31 well organized, and cannot seem to follow policies and procedures any more than they follow the
32 law they claim to follow.

33 So, what is the title of Chapter 51, Texas Property Code? Hint; CHAPTER 51.
34 PROVISIONS GENERALLY APPLICABLE TO LIENS

35 Why was the deed of trust defined as a “*security instrument*” when the deed of trust is
36 considered a consensual lien? Think about this; the title in the property code; “PROPERTY
37 CODE TITLE 5, EXEMPT PROPERTY AND LIENS, SUBTITLE B, LIENS” Hello? Lien!

ODE TO THE WISE

1 Now, is the lien a “*purchase-money security interest lien*”, or a “*non-purchase-money*
2 *security interest lien*”? There is a difference? Yep. What’s the difference? Easiest way to
3 recognize the difference is a “*non-purchase-money security interest lien*” usually consists of a
4 warranty type deed being recorded.

5 [Types of Consensual Liens](#) [Source]

6 *There are two main types of consensual liens. The first is known as a purchase-*
7 *money security interest lien. Under this type of lien, a creditor lends money to the*
8 *debtor for the specific purchase of buying the property which will secure the debt.*
9 *An example of a purchase-money security interest lien is a mortgage on a home.*

10 *The second main type of consensual lien is the non-purchase-money security*
11 *interest lien. Under this type of lien the debtor puts up property that he or she*
12 *already owns to secure the debt. The debtor can then use the loan to pay for*
13 *whatever he or she needs. An example of a non-purchase-money security interest*
14 *lien would be a second mortgage on a home owned by the debtor.*

15 It is a bit confusing that during the beginning of purchase of real property, sometimes a
16 “vendor” grants the potential homeowner a conveyance of the real property, then, in turn, the
17 potential homeowner grants a conveyance to a potential lender via a deed of trust lien claiming
18 they are the owners of the land? It seemingly mixes the two types of consensual liens, doesn’t it?
19 Isn’t this considered more like purchase money v. conventional? Nonetheless, UCC 9 has nothing
20 to do with it.

21 Nonetheless, even a thief can collect on a promise to pay, but how does the thief prove it is
22 a lawful owner of a *secured* debt, lawfully proving a bona fide chain of title of the note and the
23 lien which secured it. It would be only the “promise to pay” which the thief could prevail and
24 collect, but that does not provide additional legal support for enforcement a lien which the thief
25 cannot claim.