

# **“AGNON / DO-DID”**

## **From the End to the Beginning**

By J. McGuire

### **Closing**

- We begin with the loan originator immediately after closing. The loan originator has taken possession of many documents of which only three (3) are required to be followed through to the securitization process. These three (3) documents are the “Warranty Deed,” the Paper Promissory Note and the Paper Security Instrument (Mortgage, Deed of Trust, Security Deed).
- The Warranty Deed contains the information that transfers the Title of the property from the seller to the buyer (Homeowner). Title to the property is required to offer the property as security in the security instrument as collateral for the paper promissory note. The Warranty Deed is required to be filed in Public Records. The Warranty Deed is not governed under the Uniform Commercial Code or states’ equivalence and would be allowable under “eSign” to be filed in electronic form.
- The Paper Promissory Note: “a writing” in tangible form identifying an indebtedness governed by the Uniform Commercial Code or the states equivalence identifying the obligor and obligee. If the Paper Promissory Note is to be a “Secured” indebtedness, the Security Instrument is also identified within the Paper Promissory Note. The Paper Promissory Note is governed by the Uniform Commercial Code Article 3 or the states’ equivalence, and “eSign”-15 USC 7003—which clearly excludes items governed by the Uniform Commercial Code Article 3 or the states equivalence and as such the indebtedness can be only in paper tangible form.
- The Security Instrument: if to be governed by the Uniform Commercial Code or the states equivalence, the Security Instrument needs to be “a writing” in tangible form. If the Security Instrument is to be governed by the Uniform Commercial Code Article 9 or the states equivalence and “eSign”, 15 USC 7003 clearly excludes items governed by the Uniform Commercial Code Article 9 or the states equivalence then such security instrument can only be in paper tangible form.
- The Paper Promissory Note and the Security Instrument as combined and offered is a tangible interest in “Real Property.”

### **Step X – Scanning, Storage, Destruction and Filing**

- The Paper Promissory Note and the Security Instrument are scanned into an electronic digitized graphic package and at the same time the data from both sets of documents is scraped of data and this data is placed into an electronic data file and combined with the electronic version of the promissory note and security instrument along with all other closing documents which then is identified as the “Mortgage Loan Package”.
- This “Mortgage Loan Package” would be an intangible interest in “Personal Property,” if it were fully supported by law.
- As future legal actions were unanticipated, the paper documents were either placed in storage, (Custodial and Non-Custodial Custody) or deliberately destroyed.

- The “Electronic Digitized Mortgage Loan File” is now falsely represented as the legal “Mortgage Loan Package.
- The electronic version of the Warranty Deed is electronically filed in Public Records; as this Warranty Deed is allowed to be in electronic form under “eSign,” the filing in Public Records is a lawful action.
- The electronic version of the Security Instrument is electronically filed in Public Records. If the obligee attempts to apply UCC laws of perfection to support legal claims within the security instrument then this filing would be unlawful. If the obligee uses the laws of local jurisdiction to support perfection the filing would be lawful.
  - *(Reader Note: Perfection of the Lien and Perfection for Priority are “not” one in the same.)*
- If MERS is involved, registration on the MERS system is required, and when this registration occurs, an 18 digit Mortgage Identification Number “MIN” is created. The first seven (7) digits identify the registering lender and the last digit is a checksum number.

**The Paper Sale** *(In this New World of Electronic Securitization does not occur)*

- The “Loan Originator,” (Assignor), offers the paper loan package under cover of a Bailee’s Letter to a perspective buyer. The recipient, (Assignee), of the Bailee’s Letter then must either accept the offering and tender funds and takes possession of the loan package, or refuse the offering in which case the Assignor retains ownership of the loan package.

*(Note: the Assignor could make the Note payable in blank and upon the Assignee’s accepting the Note the Assignee could fill in the blank assignment on the Note which would complete the negotiation.)*

- Assignee, upon acceptance of the paper loan package, would file a “Notice of Assignment” in Public Records to show the negotiation of the Paper Promissory Note, thereby transferring perfected lien rights from the Assignor to the Assignee, and as such a continuous perfection of lien rights is maintained. Failure to file this financing statement (Notice of Assignment) would allow the perfection of the lien to expire and thus render the Security Instrument to a “Nullity.”

**The First Electronic Sale/Assignment** *(Investment Vehicle as Example, Fannie/Freddie Similar)*

- The “Loan Originator,” (Assignor), offers the electronic loan package to a perspective buyer or a prearranged line of credit lender. The Recipient, (Assignee, Seller/Securitizer of the Investment Vehicle), of the electronic loan package then must either accept the offering and tender funds and takes control of the electronic loan package, or refuse the offering in which case the Assignor retains control of the electronic loan package.
  - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*
- “Notice of Assignment” reflecting this “electronic negotiation” is not filed in Public Records as such a filing would be unlawful as there is no law that supports an electronic negotiation of an electronic promissory note (eNote).

## The Second Electronic Sale/Assignment

- The “Seller/Securitizer of the Investment Vehicle,” (Assignor), sells/assigns the electronic loan package to the buyer, (Depositor of the Investment Vehicle). The recipient, (Assignee, Depositor of the Investment Vehicle), of the electronic loan package under the terms of the trust accepts the transfer and takes control of the electronic loan package.
  - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*
- “Notice of Assignment” reflecting this “electronic negotiation” is not filed in Public Records as such a filing would be unlawful as there is no law that supports an electronic negotiation of an electronic promissory note (eNote).
  - *(The author has noted several Qui Tam suits being filed claiming the local governments have been defrauded by the failure to file these assignments and tender funds into public records. The suits making these charges are without merit.)*
  - *(It is not uncommon to find in Public Records a “Notice of Assignment” filed reflecting a transfer of lien rights from the Original Assignor to a 3<sup>rd</sup> subsequent Assignee(Trustee or Mortgage Servicer). In this scenario the perfection of lien rights “Perfected Chain of Title” does not match the match the “Chain of Negotiation” of the Paper Promissory Note, and, as such, proves the Paper Promissory Note and the Security Instrument are now bifurcated, which renders the Security Instrument a “Nullity.” These filings in public records are fraud upon public records.)*

## The Third Electronic Sale/Assignment

- The “Depositor of the Investment Vehicle,” (Assignor), sells/assigns the electronic loan package to the (Trustee of the Investment Vehicle). The recipient, (Assignee, Depositor of the Investment Vehicle), then takes control of the electronic loan package. The “Depositor of the Investment Vehicle,” in compliance with the Investment Trust’s documents, takes control of the Investment Trust’s Electronic Certificates in exchange for selling/assigning the electronic loan package to the Trustee of the Investment Vehicle for the benefit of the Certificateholders (The Swap).
  - *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*
- “Notice of Assignment” reflecting this “electronic negotiation” is not filed in Public Records as such a filing would be unlawful as there is no law that supports an electronic negotiation of an electronic promissory note (eNote).

## The Fourth Electronic Sale/Assignment

- The “Trustee of the Investment Vehicle,” (Assignor), sells/assigns the electronic loan package to the (Custodian of the Investment Vehicle for the benefit of the Certificateholders). The Recipient, (Assignee, Custodian of the Investment Vehicle for the benefit of the Certificateholders), takes control of the electronic loan package.
- The “Depositor of the Investment Vehicle,” in compliance with the Investment Trust documents, takes control of the Investment Trust’s Certificates, in exchange for selling/assigning the electronic loan package to the Trustee of the Investment Vehicle for the benefit of the Certificateholders who then are in control of the electronic mortgage package.

- *(Note: as the electronic loan package is registered in the MERS Registry, there is no physical transfer of the electronic loan package. The MERS Registry is updated as to who has control and ownership rights of the electronic digitized file of the non-lawful and intangible form of the electronic promissory note {eNote}.)*
- “Notice of Assignment” reflecting this “electronic negotiation” is not filed in Public Records as such a filing would be unlawful as there is no law that supports an electronic negotiation of an electronic promissory note (eNote).

## **Non Holder in Due Course Alleges Default (*Trustee/Mortgage Servicer*)**

- **“Trustee of the Investment Vehicle/Mortgage Servicer” declares default:**
- Numerous actions of fraud are readily identifiable.
- As noted in the four (4) electronic negotiations of the electronic loan package to securitization, there is a lack of supporting law to allow electronic negotiation. Only the Holder of the “Paper Promissory Note” entitled in the indebtedness has a right to collect payments.
- Lost Note Affidavits based on Electronic Records are Hearsay
- Introduction of fraud into the Securities Market
- Fraudulent creation of assignments in attempt to transfer lien rights from Originator to 3<sup>rd</sup> or 4<sup>th</sup> subsequent purchaser bypassing 1<sup>st</sup> and 2<sup>nd</sup> purchasers resulting in fraudulent filing in public records.
- Many more.