

Complexity - Simplified

Unidentified Indorser

**Show Me the Note
And All Intervening Indorsements**

Fannie Mae / Freddie Mac

**Public Records - Perfection
MERS – Priority**

AMICUS CURIAE for New Jersey

Where is Indorsement (Graphic)

Assignment in Blank (Graphics)

Chains of Identity (Graphics)

Bridges (Graphics)

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Definition (Person)

Black's Law 7th Edition: *person*; 1. A human being. 2. An entity (such as a corporation) that is recognized by law as having the rights and duties of a human being. 3. The living body of a human being <contraband found on a smugglers person>

"So far as legal theory is concerned, a person is any being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be man. Persons are the substances of which rights and duties are attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition," John Salmond, Jurisprudence 318 (GlanvilleL. Williams ed. 10th ed. 1947).

Complexity

Depending upon the state, the Security Instrument may be titled “Deed of Trust,” “Mortgage,” “Mortgage Deed” or “Security Deed.” Fannie Mae and Freddie Mac list 25 states where the Security Instrument is called the “Mortgage,” so we shall call the two (2) major components of the “Mortgage Loan” the “Mortgage Note” and the “Security Instrument.”

The Mortgage Note is the indebtedness, and commonly executed with the signing of the Mortgage Note is the Security Instrument. The house is the collateral to the Security Instrument. The purpose of the collateral is to allow the collateral to be foreclosed upon under the Security Instrument by using the “Power of Sale Clause” securing the Mortgage Note if there is a default in payment of the Mortgage Note. The Mortgage Note in tandem with a valid Security Instrument is a “Secured Indebtedness.”

The Mortgage Note without a valid Security Instrument is an “Unsecured Indebtedness.”

The Uniform Commercial Code, Article 3 and the states equivalence provide the laws regarding negotiability of the Mortgage Note.

First, we will comment on the Security Instrument

The Security Instrument usually contains some form of the two (2) following notices:

(“Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, nonappealable judicial opinions.”)

(“Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to

agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.”)

We need a closer look at the paragraph titled, “*Governing Law; Severability; Rules of Construction*” where it is states, “*This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located.*”

When the Security Instrument is signed at the same time the Mortgage Note is signed, several things happen unknown to the average homeowner. The Security Instrument attaches to the Mortgage Note and is temporarily perfected. In simple English, this means the Security Instrument has identified the house as collateral to the Mortgage Note and the Security Instrument at this point establishes a temporarily perfected lien. The Security Instrument is then filed of legal record in the jurisdiction in which the property is located to permanently perfect the lien.

Okiee Dokiee, the homeowner has a financed house and owes lender payments until all monies borrowed are paid back, and if there is a default under the terms of the Mortgage Note or Security Instrument the “Power of Sale Clause” comes into play and allows the lender to foreclose on the house and sell the house.

What has been described: a scenario where a local bank made a loan to the homeowner and executed a Mortgage Note as proof of the loan. To better protect the local bank’s interest a lien was placed on the house in the form of a Security Instrument and filed of record in public records to permanently perfect the lien, which is a guarantee. If there were a default on the Mortgage Note the local bank could foreclose upon the house in lieu of payments on the Mortgage Note. Other terms may exist within the Security Instrument, such as Payment Mortgage Insurance, Hazard Insurance, etc., that requires the homeowner’s compliance,

and if not complied with could also lead to default under the Security Instrument allowing for foreclosure to happen under the Security Instrument.

It's time to Securitimize the Mortgage Loan (MERS)

Actions affecting the Mortgage Note and the Security Instrument

“must be executed in tandem”

There are a number of possible scenarios but the one described below appears to be the most common procedure.

- Given 1. The Originating Lender indorses the Mortgage Note “In Blank” and this one indorsement is the only indorsement appearing on the face of the Mortgage Note.

- Given 2. MERS is filed of record in public records to be the lien holder of the Security Instrument as nominee for the Lender and Lender’s successors and assigns.

- Given 3. The Mortgage Loan (consisting of the Mortgage Note, Security Instrument and all additional required paperwork) is registered on the MERS system by the Originating Lender.

Pre First Negotiation (Post Closing)

After closing the Security Instrument naming MERS is filed in public records to allege a permanently perfected lien (Security Instrument) in MERS’s name as “Nominee for Lender.”

Here, a question arises: Can MERS as “Nominee for Lender” be a proper Mortgagee (Owner of the Security Instrument as agent) to be in compliance with the laws of local jurisdiction?

The Originating Lender prepares the Mortgage Note for negotiation by placing an “Indorsement in Blank” on the face of the Mortgage Note. The Mortgage Loan is being purchased by a subsequent purchaser and the Originating Lender transfers possession and ownership of the Mortgage Note to the subsequent purchaser by indorsing the Mortgage Note “In Blank.” (Lawful Action)

First Purchase Has Been Executed

1. The first subsequent purchaser takes possession of the Mortgage Note as “Unidentified Indorsee In Blank #1.” As the Mortgage Note contains this indorsement “In Blank” from the Originating Lender, the actual owner/holder with rights has not been identified. Until such “Person” is identified by filling in the “Blank” there is no subsequent “Holder.”

UCC § 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.

UCC § 3-204. INDORSEMENT

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(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.

2. The MERS registry is updated to reflect transfer of possession of the Mortgage Note from the Originating Lender to “Unidentified Indorsee In Blank #1.”

3. The transfer of possession of the Mortgage Note from the Originating Lender to a subsequent purchaser only indentified as “Unidentified Indorsee In Blank #1,” with MERS acting as “Nominee for Lender’s successors and assigns,” raises a serious question.

Can MERS be an agent or nominee to any Lender successor and assign who is Unidentified?

4. The “Unidentified Indorsee In Blank #1” further sells the Mortgage Loan to a subsequent purchaser by transferring possession of the Mortgage Note utilizing the Originating Lender’s original indorsement “In Blank.” This procedure will transfer possession and ownership of the Mortgage Note to the subsequent purchaser but will not transfer holder rights to enforce the Mortgage Note to the subsequent purchaser.

5. Transferring holder rights requires an indorsement by the current holder (Person) who has rights as the holder; holder rights remain with “Unidentified Indorsee in Blank #1” with only possession and ownership transferring with any further negotiation.

6. The “Unidentified Indorsee in Blank #1” would only need to identify oneself by filling in the blank which would identify himself as a “Person” who then could further negotiate the Mortgage Note by executing an indorsement, and if the “Person” cares too, “In Blank.”

7. A side car action that needs to occur with the negotiation of the Mortgage Note, is filing in public records to notice lien rights (Security Instrument) have been transferred from the Originating Lender to an identified holder.

Second Purchase Has Been Executed

1. The second subsequent purchaser has taken possession of the Mortgage Note as “Unidentified Indorsee In Blank #2.” The Mortgage Note contains only an indorsement “In Blank” from the Originating Lender; the actual owner/holder with rights has not been identified until such “Unidentified Indorsee In Blank #2” has been identified as a “Person” by filling in the “Blank.” Until such “Person” has been identified there is no subsequent “Holder.”

(a) For the “Unidentified Indorsee In Blank #2” to achieve rights to the Mortgage Note, the previous owner/holder with rights (Person) is required to indorse the Mortgage Note. The previous indorser in this instant is only identified as “Unidentified Indorsee In Blank #1,” which fails to comply with the requirements of Uniformed Commercial Code: § 3-201, “Person.”

2. The MERS registry is again updated to reflect a transfer of possession of the Mortgage Note from the “Unidentified Indorsee In Blank #1” to “Unidentified Indorsee In Blank #2.”

3. Now we ask:

Can MERS be an agent or nominee to any “successor and assign” who is Unidentified?

4. The “Unidentified Indorsee In Blank #2” further sells the Mortgage Loan to a subsequent purchaser by transferring possession of the Mortgage Note utilizing the Originating Lender’s original indorsement “In Blank.”

Here we have all the same concerns as listed in “First Purchase Has Been Executed”

Third Purchase Has Been Executed

1. The third subsequent purchaser has taken possession of the Mortgage Note as “Unidentified Indorsee In Blank #3.” The Mortgage Note contains only an indorsement “In Blank” from the Originating Lender; the actual owner/holder with rights has not been identified until such “Unidentified Indorsee In Blank #3” has been identified as a “Person” by filling in the “Blank.” Until such “Person” has been identified there is no subsequent “Holder.”

(a) For the “Unidentified Indorsee In Blank #3” to achieve rights to the Mortgage Note, the previous owner/holder with rights was required to indorse the Mortgage Note. The previous indorser in this instance is identified only as “Unidentified Indorsee In Blank #2,” which fails to comply with the requirements of Uniformed Commercial Code: § 3-204, “Person.”

2. The MERS registry is again updated to reflect a transfer of possession of the Mortgage Note from the “Unidentified Indorsee In Blank #2” to “Unidentified Indorsee In Blank #3.”

3. Again, we ask:

Can MERS be an agent or nominee to any successor and assign who is Unidentified?

Here we have all the same concerns as listed in “First Purchase Has Been Executed”

Reach Back in Time

1. As the “Pooling and Servicing Agreement” is in compliance with the SEC Act of 1933 and is that of a 3rd party contract identifies the “Seller/Securitizer” as the “Unidentified Indorsee In Blank #1” for the Trust; the “Depositor” as the “Unidentified Indorsee In Blank #2” for the Trust; and the “Trustee” as the “Unidentified Indorsee In Blank #3” for the Trust.

2. As the “Pooling and Servicing Agreement” reaches back in time to identify the Unidentified parties, would this reach-back give MERS the authority to act as either Nominee or Agent for those Unidentified parties?

3. If by chance MERS is allowed to be named in public record as Mortgagee of record for a Lender, would such agent/contract relationship extend back to “Unidentified Parties” that can only be identified in the “Pooling and Servicing Agreement?”

A Blank Cannot Indorse a Negotiable Instrument

Correct Way (UCC Compliant)

Person Indorses in Blank (Possession/Holder) Originator
Negotiation in Blank #1 (Filed of Record)
In Blank to Person (Possession/Holder) Seller/Securitizer
Person Indorses in Blank
Negotiation in Blank #2 (Filed of Record)
In Blank to Person (Possession/Holder) Depositor
Person Indorses in Blank
Negotiation in Blank #3 (Filed of Record)
In Blank to Person (Possession/Holder) Trustee

Banks' Way (UCC Non-Complaint)

Person Indorses in Blank (Possession/Holder)
Negotiation in Blank #1 (MERS)
In Blank (Possession) Seller/Securitizer
Negotiation #2 by Originator's Indorsement (MERS)
In Blank (Possession) Depositor
Negotiation #3 by Originator's Indorsement (MERS)
In Blank (Possession) Trustee

Unidentified Indorser

Original owner/holder and possessor of the negotiable instrument negotiates the negotiable instrument "In Blank" to a first subsequent purchaser and also transfers possession of same negotiable instrument with an indorsement, which identifies the first subsequent purchaser as "In Blank," or as an "Unidentified Indorsee." This is in compliance with the Uniform Commercial Code. (The writer has no issue with this "Negotiation in Blank." The process and the procedures of further negotiating the negotiable instrument to multiple subsequent purchasers by relying upon this one and only "In Blank" are of concern.)

The subsequent negotiations that rely on the original indorsement "In Blank" are non-compliant with the Uniform Commercial Code.

As the original indorsement only identifies the first subsequent purchaser as "Unidentified Indorsee In Blank," and as there is a failure of this "Unidentified Indorsee In Blank" to identify itself as a "Person," there can be no further negotiation until such "Unidentified Indorsee In Blank" is identified so as to be able to indorse the negotiable instrument to a second subsequent purchaser.

In the securitization process, a series of negotiations is required to properly negotiate the negotiable instrument to a securitized trust. Each of these negotiations requires an indorsement of the negotiable instrument from an "Identified Indorser," "Person," to a subsequent purchaser.

The banks' claim that the original indorsement "In Blank" naming an "Unidentified Indorsee In Blank" sufficiently satisfies the Uniform Commercial Code requirements in order to negotiate the negotiable instrument through a number of subsequent purchasers to a securitized trust is incorrect: the "Unidentified Indorsee In Blank" is not an identifiable Party, under the definition of the Uniform Commercial Code, with authority to indorse a subsequent negotiation; as such, the many subsequent purchasers may have become the owners of the negotiable instrument(s) with possession of same. However, they have not obtained "Holder" or "Holder in Due Course" status as the negotiable instrument was not properly negotiated.

Portions of the Uniform Commercial Code, Article 3 are noted below.

§ 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.

§ 3-203. 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.

§ 3-204. INDORSEMENT

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(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.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

It's Not Show Me the Note

It's Show Me the Note and the Note has Rights to a Continuous Perfected Security Instrument

In most cases the subsequent purchase is a purchase of an Unsecured Note.

Counsel presenting the Note for collection in a court action may squawk like a parrot on a perch they are in possession of the Note and have rights to enforce the Note Indorsed "In Blank" through numerous "Unidentified Indorsees." The writer has numerous times before stated "if the Note could be legally proved with all legally required indorsements, the collection action upon the Note would then be justified." What counsel fails to squawk is, we have a perfected right to foreclose on the real property.

Article 3 allows "Unidentified Parties" to be in the Note's chain of ownership, but the recording statutes of the states do not allow "Unidentified Parties" to be in the chain of title.

In observation, the naming of MERS in public records was the bank's attempt to circumnavigate the missing "Unidentified Party." As public records do not allow for an "Unidentified Party" for continuous perfection; a question arises, how could MERS legally execute an agent contract with an "Unidentified Party," to allow MERS to be a nominee for this "Unidentified Party?", particularly when MERS itself has stated it has no authority to act on behalf of another party?

Portions of the Uniform Commercial Code, Article 3 are noted below and one does not need to be a rocket scientist to comprehend that Article 3 was written to solely address the Note and by addressing only the Note the lack of a Perfected Security Instrument is overlooked.

§ 3-104. NEGOTIABLE INSTRUMENT

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

§ 3-109. PAYABLE TO BEARER OR TO ORDER

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b).

§ 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.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§ 3-204. INDORSEMENT

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(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.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Fannie Mae / Freddie Mac Single Family Uniform Instruments¹

With processes and procedures defining actions required for the Mortgage Note and Security Instrument being identified in the document titled, "Amicus Curiae,"² we will now address Fannie Mae and Freddie Mac.

The writer will not YET address Fannie Mae's Principal & Interest Only Splits. This writing is limited to the MERS required changes to the Single Family Uniform Instruments (The Security Instrument) to incorporate MERS as "Nominee for Lender." Fannie Mae and Freddie Mac's Single Family Uniform Instruments in all 50 states are numbered as Forms 3001 to 3051. Additionally, the document titled "Authorized Changes to Security Instrument for MERS" can be found at:
<http://www.freddie.mac.com/uniform/doc/unifmersauth.doc>, which provides direction on how to modify Forms 3001 to 3051 to incorporate MERS as "NOMINEE."

(Alabama's MERS required modification to the Security Instrument as example)

*"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.³*

¹ <http://www.freddie.mac.com/uniform/unifsecurity.html#highlights>

² <http://www.scribd.com/doc/45894095/Amicus-Curiae-NJ-R2-Lr1>

³ <http://www.freddie.mac.com/uniform/doc/unifmersauth.doc>

We shall try to identify MERS as an agent named as “nominee” to each party claiming ownership of the Mortgage Note with rights of enforcement to the Security Instrument throughout negotiation of the Mortgage Note to subsequent purchasers. Prior to negotiation and indorsement of the Mortgage Note, MERS must have established an agent relationship as acting solely as a nominee for Lender. In replacing the statement, “Lender is the mortgagee under this Security Instrument,” with, “MERS is the mortgagee under this Security Instrument,” it appears the lender owns the Mortgage Note and MERS as an agent for the lender owns the Mortgage (Security Instrument). For the argument to proceed we shall assume that actions thus far are in compliance with all applicable laws, however unlikely. Thus we have the Lender being the Owner and Holder of the Note with rights as Holder in Due Course to enforce the Mortgage Note and the Security Instrument if perfected of record in MERS’s name as “Agent” for the Lender.

MERS claims if the lien is perfected in MERS’s name and registration is maintained on the MERS system then perfection extends by agency relationship to a subsequent purchaser of the Mortgage Note. When the Mortgage Note is indorsed “In Blank” to a subsequent purchaser and that subsequent purchaser fails to identify oneself then they are nothing more than an “Unidentified Indorsee.” Similar to MBS securitization, there is a series of purchases required of the “Mortgage Note” and each of these purchases requires indorsements upon the face of the Mortgage Note. The Uniform Commercial Code section 3-203 in part, states, “negotiation of the instrument does not occur until the indorsement is made.” Consequently, the “Unidentified Indorsee In Blank,” by remaining unidentified, has not indorsed the Mortgage Note to a subsequent purchaser, and any additional “Unidentified Indorsee In Blank” would lack any authority to indorse the Mortgage Note and the lack of these indorsements is a failure to negotiate. As such, Holder in Due Course with rights to enforce the Mortgage Note was not obtained. With an “Unidentified Indorsee In Blank” remaining unidentified, there cannot be an agent relationship between MERS and any unidentified party or any subsequent unidentified parties, and as a result the Security Instrument is rendered a “NULLITY.”

Scenario 1. As an agency relationship cannot exist between MERS and an “Unidentified Indorsee In Blank” the lien once perfected in MERS name as agent has lost perfection as MERS now represents an unknown party.

Scenario 2. As an agency relationship does not exist between MERS and an “Unidentified Indorsee In Blank” the “Unidentified Indorsee In Blank” cannot assign/transfer/etc any

type of agency relationship to a subsequent “Unidentified Indorsee In Blank” and again perfection in MERS name is lost as MERS represents an unknown party.

The Uniform Commercial Code and the states equivalence allow for proving up the Mortgage Note by adding the missing indorsement so that rights to enforce the Mortgage Note can be achieved but proving up the Mortgage Note will not repair the nullification of the Security Instrument.

**The Elevator Version:
Fannie Mae and Freddie Mac have purchased an “Unsecured
Mortgage Note” that lacks proper indorsement.**

Public Records – Perfection

(Affects Real Property – House [Tangible] - Statute)

MERS – Priority

(Affects Personal Property – General Intangible [Payment Intangible] - Statute & Contract)

UNIFORM COMMERCIAL CODE ARTICLE 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER

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National Conference of Commissioners on Uniform State Laws; reproduced, published and*

*distributed with the permission of the Permanent Editorial Board for the Uniform Commercial Code for the limited purposes of study, teaching, and academic research.*⁴

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

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies

- (a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also
- (b) to any sale of accounts or chattel paper.

(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.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

- *Note: The adoption of this Article should be accompanied by the repeal of existing statutes dealing with conditional sales, trust receipts, factor's liens where the factor is given a non-possessory lien, chattel mortgages, crop mortgages, mortgages on railroad equipment, assignment of accounts and generally statutes regulating security interests in personal property.*
- *Where the state has a retail installment selling act or small loan act, that legislation should be carefully examined to determine what changes in those acts are needed to conform them to this Article. This Article primarily sets out rules defining rights of a secured party against persons dealing with the debtor; it does not prescribe regulations and controls which may be necessary to curb abuses arising in the small loan business or in the financing of consumer*

⁴ <http://www.law.cornell.edu/ucc/9/overview.html>

purchases on credit. Accordingly there is no intention to repeal existing regulatory acts in those fields by enactment or re-enactment of Article 9. See Section 9-203(4) and the Note thereto.

§ 9-103. Perfection of Security Interest in Multiple State Transactions.

(1) Documents, instruments and ordinary goods.

- (a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).
- **(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.**
- (c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or non-perfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
- (d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,
 - (i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;
 - (ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

- (iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of Section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

- (a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
- (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
- (c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).
- (d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

- (a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods

which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

- (b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or non-perfection of the security interest.
- (c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.
- (d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.
- (e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a non-possessory

security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

§ 9-104. Transactions Excluded From Article.

This Article does not apply

- **(a) to a security interest subject to any statute of the United States, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or**
- (b) to a landlord's lien; or
- (c) to a lien given by statute or other rule of law for services or materials except as provided in Section 9-310 on priority of such liens; or
- (d) to a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) to a transfer by a government or governmental subdivision or agency; or
- (f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the

performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

- (g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312); or
- (h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (i) to any right of set-off; or
- (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
- (k) to a transfer in whole or in part of any claim arising out of tort; or
- (l) to a transfer of an interest in any deposit account (subsection (1) of Section 9-105), except as provided with respect to proceeds (Section 9-306) and priorities in proceeds (Section 9-312).

§ 9-106. Definitions: "Account"; "General Intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. **"General intangibles"** means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

(b) **"Chattel paper"** means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

§ 9-301. Persons Who Take Priority Over Unperfected Security Interests; Rights of "Lien Creditor".

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under Section 9-312;
- (b) a person who becomes a lien creditor before the security interest is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "**lien creditor**" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

§ 9-302. When Filing Is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply.

(1) A financing statement must be filed to perfect all security interests except the following:

- **(a) a security interest in collateral in possession of the secured party under Section 9-305;**
- (b) a security interest temporarily perfected in instruments or documents without delivery under Section 9-304 or in proceeds for a 10 day period under Section 9-306;
- (c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9-313;
- (e) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
- (f) a security interest of a collecting bank (Section 4-208) or in securities (Section 8-321) or arising under the Article on Sales (see Section 9-113) or covered in subsection (3) of this section;
- (g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(Author's Comment, Assignment of the Intangible's Security would not be subject to recordation reflecting a conveyance of the Intangible to a subsequent purchaser but an assignment of the "Security Instrument" contained within the Intangible's Security collateral would be required to be filed of record as this collateral is Security affecting Real Property securing the Mortgage Note and

such ownership of the Mortgage Note has been conveyed to the subsequent purchaser of the Intangible.)

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

- (a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or
- (b) the following statutes of this state; [list any certificate of title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, and any central filing statute .]; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or
- (c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of Section 9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

- Note: *It is recommended that the provisions of certificate of title acts for perfection of security interests by notation on the certificates should be amended to exclude coverage of inventory held for sale.*

§ 9-303. When Security Interest Is Perfected; Continuity of Perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in Sections 9-302, 9-304, 9-305 and 9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article.

§ 9-305. When Possession by Secured Party Perfects Security Interest Without Filing.

A security interest in letters of credit and advices of credit (subsection (2)(a) of Section 5-116), goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without a relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party.

AMICUS CURIAE⁵

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14. Closing Statement

1. The Creation of the Mortgage Note and Security Instrument

Uniform Commercial Code and state recordation requirements

The Homeowner (Obligor) signs a Mortgage Note and a Security Instrument. Upon signing of the Security Instrument and by operation of law, the Security Instrument is automatically attached to the Mortgage Note and temporary perfection is established. The Security Instrument when filed in public records transforms a temporary perfection into a permanent perfection and is notice to the world. Regardless of whether the Mortgage Note is sold to a subsequent purchaser, recordation of the Security Instrument is required to permanently perfect the lien. The Security Instrument affects title to Real Property, and as such, the laws of local jurisdiction govern and such requirement to comply with local laws of jurisdiction is contained within the Security Instrument itself. The filing of record serves a second and distinctive purpose: it creates the priority of perfection among subsequent purchasers of the Mortgage Note and is not addressed further in this document. Upon attachment and perfection of the Security Instrument to the Mortgage Note, the Mortgage Note becomes an indebtedness that is "Secured."

2. Tangible – Personal Property versus Real Property

Failure to Maintain Continuous Perfection

The Mortgage Note and the Security Instrument are Tangibles and Personal Property and we shall consider the two items in tandem to be called the "Mortgage" and such "Mortgage" is Tangible and Personal Property. One must not forget the terms contained within the Security Instrument affect an interest in Real Property and these

terms require compliance with all applicable, federal, state and local laws and the language contained within the Security Instrument itself. Failure to comply with the laws governing the contents of the Security Instrument or language within the Security Instrument would render the Security Instrument a nullity. If such Security Instrument becomes a nullity, then the classification of the Mortgage Note is reduced in status from “Secured” to “Unsecured” and as a result of the Security Instrument becoming a nullity the “Power of Sale Clause” contained within the Security Instrument would also be nullity.

The Mortgage being a Payment Intangible can be negotiated by possession and the security for this Payment Intangible is the right to collect monies from the (Mortgage Note secured by the Security Instrument as collateral). Thus, the (Mortgage Note and Security Instrument as collateral) is security for the Payment Intangible and it is this security that follows the Mortgage (Payment Intangible) where the Mortgage is the owner of the Mortgage Note and what should be a valid perfected Security Instrument. Again, the Mortgage is nothing more than a Payment Intangible (Personal Property) and the security for this Payment Intangible is the right to collect monies noted in the Payment Intangible’s security, the Mortgage Note. The Payment Intangible’s security also consists of a valid perfected Security Instrument along with any valid Assignment of Mortgage filed of record to transfer lien rights in accordance with laws that govern the Security Instrument.

Regardless of the hierarchy of ownership of the Payment Intangible, Mortgage, Mortgage Note or Security Instrument, the terms contained within the Security Instrument must be complied with, and this author has not seen a Security Instrument that does not itself require compliance with federal, state or local laws. Failure to comply with the laws of

local jurisdiction that govern the terms within the Security Instrument would render the Security Instrument a nullity and the Mortgage Note would then be reduced to “Unsecured” and the Mortgage (Payment Intangible) would then be left without a valid perfected lien to allow foreclosure of the Real Property. Additionally, if the Security Instrument was rendered a nullity by failure to comply with the laws or the terms contained within the Security Instrument, the secondary market has not purchased a “Secured” indebtedness and any claim made by a subsequent purchaser including Trusts are without rights to enforce the “Power of Sale Clause” and no foreclosure is possible. This failure to provide a complete Mortgage to the secondary market is the real fraud that the financial institutions are trying to conceal.

Even with a nullified Security Instrument, if a valid Mortgage Note with a complete Chain of Indorsement is proved, the Holder/Owner with right as Holder in Due Course could sue for equity in a court of jurisdiction.

So when it is said the Mortgage follows the Note, one must remember that the Security for the Payment Intangible follows the Payment Intangible without filing of record, and therefore, the underlying Mortgage Note would be followed by a valid continuous perfected Security Instrument if there were compliance with applicable laws to maintain perfection of the Security Instrument.

3. Original Obligee (Lender) Takes Possession of the Secured Mortgage

Note

Proper Parties

Original Obligee takes possession of the Mortgage Note and permanently perfects the Security Instrument by filing of record in the Original Obligee's name. Failure to name the correct parties could possibly be a fatal to the enforcement of the terms in the Mortgage Note or Security Instrument.

4. Original Obligee (Lender) Sells The Secured Mortgage Note

Obligee Indorses Mortgage Note to "In Blank" Indorsee

The Original Obligee sells the Mortgage to a subsequent purchaser. Proper procedure **is** to negotiate the Mortgage Note under cover of a Bailee's Letter to the subsequent purchaser and then transfer the rights to the Security Instrument by filing of record the name of the subsequent purchaser who purchased the Mortgage Note and completing the Mortgage Note negotiation by noting the owner name in the blank.

Original Obligee indorses the Mortgage Note and delivers the same to the subsequent purchaser (Second Obligee). Second Obligee then completes the negotiation by filling in the blank, if negotiated in blank, then files of record an assignment of the mortgage to transfer and perfect the Security Instrument's lien into the Second Obligee's name. If the Second Obligee fails to complete the negotiation by noting ownership in the "blank," then the Second Obligee may have become the holder of the note but has not become the owner of the note and has not achieved holder in due course with rights to enforce the Mortgage Notes terms or the terms within the Security Instrument. Additionally, failure to file of record the Assignment of the Security Instrument fails to

transfer lien rights and this failure to transfer lien rights has rendered a once secured Mortgage Note to “Unsecured.”

5. Original Obligee (Lender) Sells an Unsecured Mortgage Note

(MERS as Nominee)

MERS Hides the Fraud

Where MERS is filed of record as the Mortgagee as Nominee for a lender and lender’s assigns, and where the first negotiation of the Mortgage Note is executed “In Blank,” one has to inquire how MERS would represent an unidentified Indorsee. In most cases this unidentified Indorsee ceases to exist after the creation of the security trust and may not have existed upon the closing of the loan. This unidentified Indorsee and subsequent unidentified Indorsees would constitute a break in the “Chains.” There are two distinct Chains. One chain is that of indorsements noted on the face of the Mortgage Note and the publicly recorded chain of title that transfers lien perfection. This Paper will not dwell into to the details of the “Chains.” As MERS claims to be the Mortgagee of record for lender and lender’s assigns and as the Mortgage Note is negotiated in blank through a number of unidentified indorsees, it is clearly observable from the facts that continuous perfection of the Security Instrument has not been in compliance with the laws of local jurisdiction which govern the Security Instrument. The chain of indorsements use of “In Blank” is also fatal as an “IN BLANK” unidentified party cannot negotiate the Mortgage Note.

6. CONFUSION

Hiding the Fraud

Wall Street is buying a Payment Intangible (Personal Property) and as such is the owner and holder of that Payment Intangible and the laws that govern the Payment Intangible allow for negotiation by possession. The Payment Intangible's security is the Mortgages (Personal Property) contained within the collateral pool. Remember, the Mortgage actually consists of two parts, the Mortgage Note and a lawfully continuously perfected Security Instrument. So it is now safe to say the security follows the note, yep, but the security that follows the note may in fact be a nullity by the hierarchy ownership's failure to comply with laws that govern the Security Instrument. Bottom line, the Mortgage Note maybe proved up with a proper chain of indorsements years after the trust creation but loss of perfection can never be proved up once lost and therefore Wall Street may have only bought an unsecured Mortgage Note. The author will not comment on REMIC IRS tax issues. To further complicate the issue, multiple purchases by Wall Street may have not been that of the Mortgage Notes but that of a Transferable Record which is registered within the MERS system.

7. Why the Investor

Does Not Own the Mortgage Note and Security Instrument

*The Mortgage Note Does Not Identify the Subsequent
Owner & Holder of the Mortgage Note or the Security Instrument*

As stated, the Mortgage Note and the Security Instrument is Personal Property and is commonly called the "Mortgage." This Mortgage which is personal property is offered up as collateral to the Payment Intangible in the formation of the Trust. To explain, we must present the Trust in reverse order. Investors purchase a beneficial interest in Trust Certificates. The Trust owns the right to the monies collected from the Payment Intangible. The Payment Intangible owns the right to collect monies owed under the Mortgage Note(s). The Certificates and Payment Intangibles are personal property; the local laws of jurisdiction that affect real estate do not apply in a direct manner. The Trust documents provide a precise mechanism for negotiating the Mortgage Note and Security Instrument into the Mortgage (Payment Tangible) Pool. The majority of notes this author has reviewed reflect a single indorsement in blank from the Original Obligee, which raises severe concerns that a chain of indorsements is missing from the Mortgage Note to show a complete chain of negotiation that is required by law to be within public records to show a true "Chain of Title". The "Chain of Title," an Assignment of Mortgage (The Security Instrument)) that is properly filed of record would be notice of a perfected lien and the priority of those subsequent purchasers of the Mortgage Note. Filing for transferring perfection of the lien (Security Instrument) and filing for notice of priority to subsequent purchasers of the Mortgage Note to establish who has priority lien rights is not one in the same. Failure to properly negotiate does not transfer "Holder in Due Course" (ownership/status/rank/qualification/legal status etc., according to the UCC governing law) to a subsequent party not named on the Mortgage Note.

8. The First Negotiation in Blank

Or How Not To

Where the Mortgage Note was being used as collateral in a Mortgage Backed Security (MBS), and an unknown "Indorsee in Blank" would need to be the first entity in the MBS creation, thus the "In Blank" should contain the identity of that party to allow additional negotiation of the Mortgage Note to further the creation of the Trust. Additionally, we must question the means and the methods employed by MERS to be a Mortgagee of record as "Nominee" for an unidentified "In Blank" or any type of agency relationship to an unidentifiable "In Blank." Currently, one example, the only means offered to identify an unidentified "In Blank" is contained within a Pooling and Servicing Agreement (PSA). The PSA identifies all the parties that would need to appear in the chain of indorsements and chain of title, this required chain of indorsement is not what is usually found on the face of the Mortgage Note. The Mortgage Note being negotiated by a single "In Blank" through multiple unidentified indorsees is not in compliance with the PSA, the UCC or the states equivalence of the UCC, and the failure to file of record the named party Indorsee , "In Blank" party also creates a break in the chain of title in public records. The frog's bottom: the parties that can be identified on the face of the Mortgage Note, chain of indorsements, does not match the chain of title filed of record. "Rivet, Rivet," add an allonge and affix it.

9. WHY THE CHAINS DO NOT MATCH

"MERS"

How would one record of record an unidentified Indorsee "In Blank"? The unidentified Indorsee "In Blank" is not a real person, not a company; in fact, the unidentified Indorsee "In Blank" is a non-existent party, or is it? As the author has noted, the evidence offered to identify the Indorsee "In Blank" appears in third party contracts used in the creation of the investment vehicle and this unidentified "In Blank" Indorsee by admission of MERS can be located within the MERS system and would appear in a MERS' Audit Trail. As it can be seen, MERS can track an unidentified Indorsee "In Blank;" but can an unidentified Indorsee "In Blank" be named as a party and filed of record? This is one reason the Chain of Indorsements on the face of the Mortgage Note does not match the Chain of Title filed in public records which filing of record would note the legal party entitled to a continuous perfected lien. The Security Instrument filed of record converts a temporary perfection and attachment into a permanent perfected lien, while the filing of record of an unidentified Indorsee "In Blank" transfers nothing. In the author's opinion, MERS alludes that they are the Mortgagee of Record as a means to avoid the problems with filing of record an unidentified Indorsee "In Blank." The process of indorsing in blank raises one serious question, how does an unidentified Indorsee "In Blank" indorse a note in blank to a subsequent unidentified Indorsee "In Blank" and comply with local laws of jurisdiction governing the Security Instrument that was to secure the Mortgage Note? Failure to follow the terms within the Security Instrument would breach the Security Instrument contract and render the Mortgage Note unsecured. Not only was the Mortgage Note not properly negotiated to the Wall Street trusts through multiple unidentified "In Blank" Indorsees, but there was also a failure to transfer a perfected lien to the Wall Street trust.

Note: these conditions also apply to Fannie Mae, Freddie Mac and certain private investments and also affect Commercial Mortgage Backed Securities.

10. The Second Negotiation in Blank

Unidentified Indorsee “In Blank” Indorses “In Blank”

Still Using the First “In Blank” Indorsement-Failure to Negotiate

The second negotiation in the Mortgage Note negotiation would be from the creator of the trust to the depositor of the trust, but in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.” This negotiation is usually indorsed “In Blank” utilizing the “In Blank” from the Original Indorser and no record is filed of record to transfer lien rights to the second “In Blank” Indorsee.

11. MERS and Transferable Records

15 USC 7003, Excludes Negotiable Instruments When UCC Governs

For a moment we have to step back to the “Original Oblige” to understand the movement of the Mortgage Note. This author has noted some commentators are adamant that the Mortgage Notes are not destroyed at any step in the process and we shall follow that reasoning for the moment. In concession of conversation it is somewhat agreed that the Mortgage Notes are placed within custody of a Document Custodian. With that said, we have to address many court filings of copies of the Mortgage Notes submitted by the financial institutions where the originals cannot be found and it is common to only see

an “Indorsement in Blank” from the Original Obligee. One has to ask why and how this possibly occurred. Simply, if the Original Obligee placed the Mortgage Loan package within the custody of a custodian and the MERS system tracked a “Transferable Record” alleging to be the lawful negotiation of the Mortgage Note and if a need was required for proof, the current entity claiming rights would retrieve whatever documents resided with the original custodian.

12. The Third and Fourth Negotiation in Blank

*Subsequent Negotiation by an Unidentified Subsequent Indorsee “In Blank” to additional
Subsequent Purchasers “In Blank”*

The third step in the Mortgage Note negotiation would be from the depositor of the trust to the Trustee of the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

The fourth step in the Mortgage Note negotiation would be from the trustee of the trust to the Trust, but again, in actuality the “First Indorsement in Blank” is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation “In Blank.”

13. Holder, Owner and Holder in Due Course, Innocent Purchaser

(A) One can be the holder of the Mortgage Note

and not be the owner or have rights as holder in due course.

Servicers and trustees possibly could become the holder of the note and claim they represent the owner and the holder in due course, however, if proper negotiation of the Mortgage Note was not followed as required, the trusts that these trustees represent do not hold sufficient legal rights to enforce the terms in the Mortgage Notes, much less enforce the terms in a nullified Security Instruments.

(B) One can be the owner of the note

and not be the holder or have rights as holder in due course.

The trust may claim to own the Mortgage Note but this would be a misconception. The trust where MERS is involved owns the rights to a "Transferable Record" where that record reflects who has control over a custodian that holds the Mortgage Note, if and when a vaulted copy does exist, and control over MERS as a so called mortgagee of record.

(C) Holder in Due Course

Holder in Due course where proper negotiation was not followed would still reside with the Original Obligee, but issues still exist as to a continuous perfected Security Instrument.

Under the Uniform Commercial Code a subsequent purchaser could not achieve "Holder In Due Course" where fraud was committed by one of the Unidentified "In Blank" Indorsees as it affected the Mortgage Note.

(D) Innocent Purchaser

As to an innocent purchaser, a party to the creation of the trust where MERS is involved and named in the PSA or other documents of incorporation has actual notice of MERS's involvement and therefore cannot claim to be an innocent purchaser.

14. Closing Statement

One has to consider under Title 15 USC, 77nnn, the filing of compliance reports is not in compliance based on the procedural actions that were implemented in the creation of secondary market trusts by the financial institutions. Fannie Mae's and Freddie Mac's role in creating securitized trusts as additional fraud creation practices are not addressed in this writing.

With all the failure of compliance with law in the creation of the secondary market trusts, this writer is alarmed that the "Robo-Signing" and "Robo-Verification" will only serve the financial institutions with a diversionary method to conceal a greater fraud. The "Robo" actions and accounting for all previous failure to comply with laws of governance show proof the financial institution will commit any number of frauds to protect their Friday Paycheck and Crystal Tower Bonuses.

It may be, just may be possible to prove up the Mortgage Note but you can "NEVER" prove up a lost "Perfection of Lien." Regardless of the number of Affidavits filed with the courts and regardless of the number of Assignment of Mortgages filed of record, none of these actions will perfect a lien once perfection has been lost. Proper procedure for default recovery of an unsecured note--suit for monies: "but you cannot foreclose." "THEY ARE SUING UNDER A CAUSE OF ACTION THAT IS NOT AVAILABLE," if filing for foreclosure.

Nobody will have gotten anything for free, the home is without a lien secured to the Mortgage Note and the bank can still sue under the default on the Mortgage Note if such note has not been discharged by willful intentional act as noted in the UCC.

Over 2000 years ago, Jesus began this fight with the money changers and today, God has set forth the stampede of Pale horses to fight this evil and the riders' names are "The People."

This country is the greatest country on the planet and has laws of justice unparalleled by any other country; the financial institutions have made a mockery of America's judicial system by use of slickery trickery wording, lies, fraud and deceit and manipulation of lawmakers to create laws to help conceal the fraud. Sufficient laws do exist and they are just laws, but just not followed by the financial institutions.

Final words: the "Robo" actions are just the tip of the iceberg but the "Robo" actions allowed part of the iceberg to be seen.

Where is the Indorsement?



§ 3-203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER.

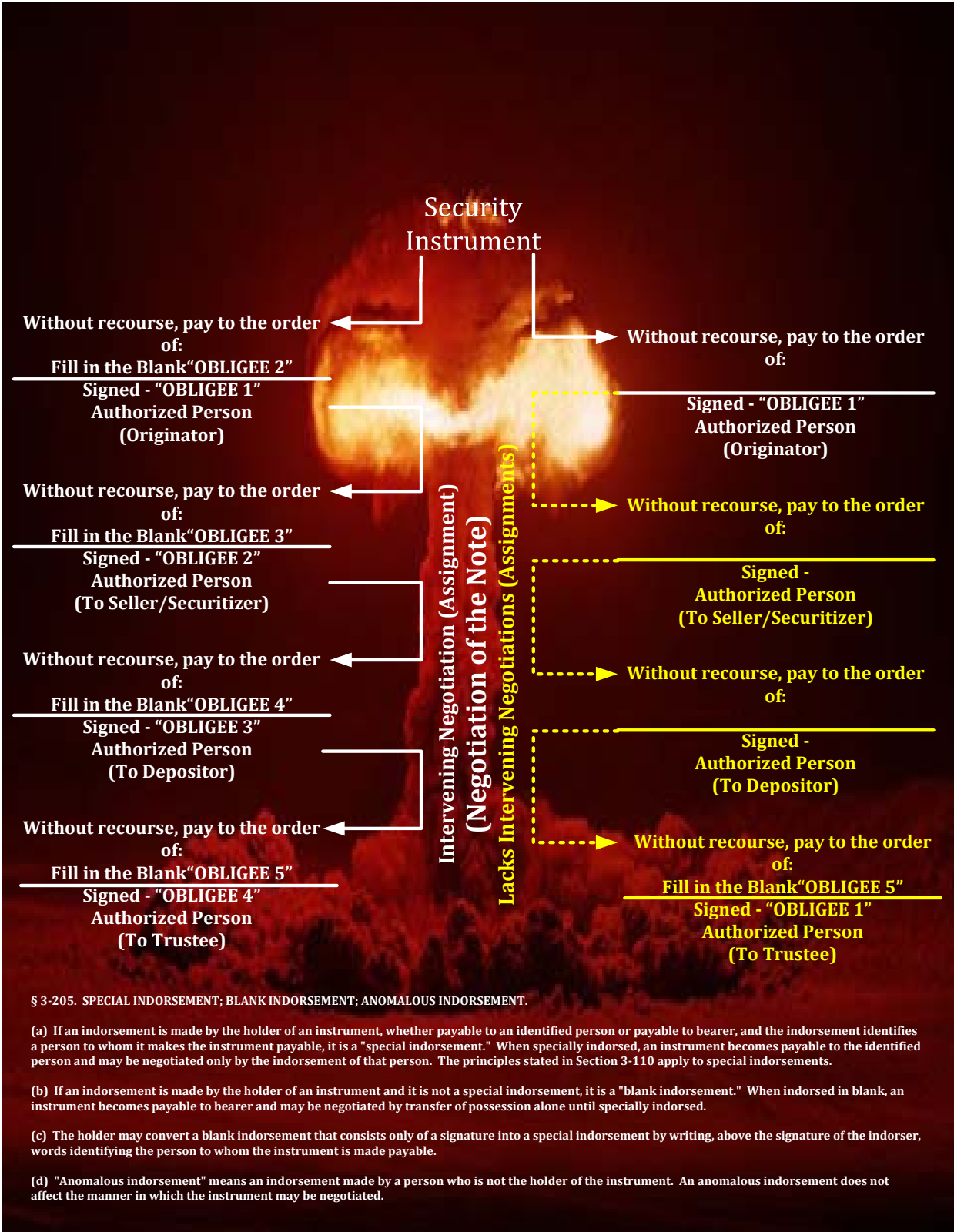
* (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

* (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.

Assignment in Blank



Chains of Identity

Agent of an Unidentified "Indorsee In Blank"

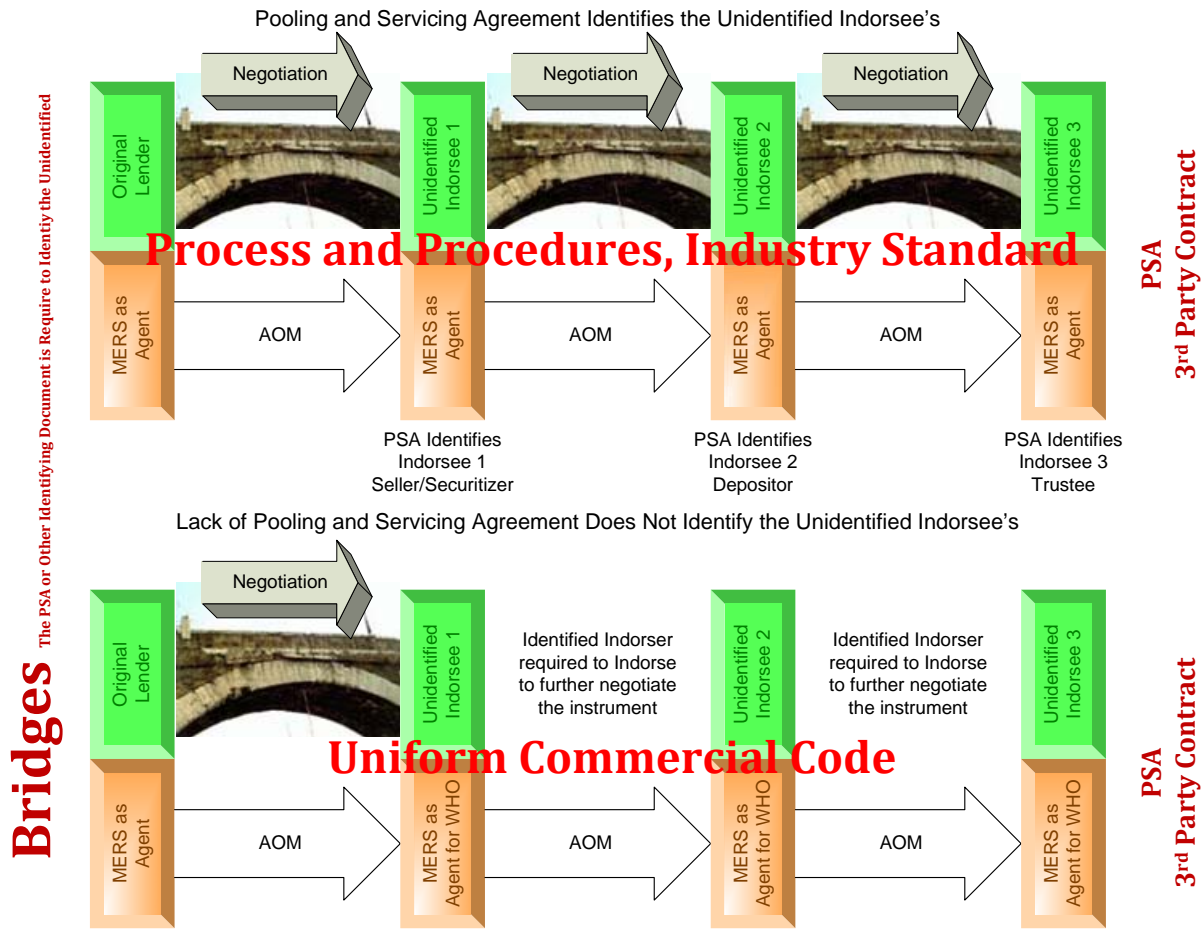


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Broken Bridge of Indorsement Identity



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AOM = Assignment of Mortgage

(Transfer of Lien Rights Filed of Public Record)