



Precision & Detail

The Author has received a number of questions regarding “Collete McDonald’s” June 28, 2010 “Without Recourse: Hangman’s Noose” as posted by Neil Garfield.

McDonald’s writing is correct. The author shall make comments to relevant paragraphs to add clarity.

Because most of the “notes” (assuming they were the real notes and were timely indorsed and not back-dated) are presented as having been indorsed “without recourse.” Your opposition is counting on the fact that you don’t know the UCC, and you don’t know anything about indorsements.

The real note indorsements do not require a date. What does require an establishment of date is the transfer of the Security Instrument that is attached to the real note and the rights to enforce that lien must be updated in public records when the real note is negotiated to maintain a continuous perfected lien. One point that is absolutely correct is that very few people understand and comprehend the Uniform Commercial Code. Here in this one paragraph McDonald has touched on both Article 3 & Article 9 and the states’ equivalence.

All one must do with a “blank indorsement” is enter the proper name in the “blank” to complete the negotiation. Does this entry of a name guarantee that “Holder in Due Course” of the real note has been achieved? YES!

The bottom Line: Most, if not all, “assignments” or “indorsements” are without effect, which means that the party having legal title to the instrument is the party named on it. And THAT means that each time the opposition attempts to establish authority under the chain of securitization, they are actually making the case that they have no such authority. You can’t come to court and say, “I am the Trustee for asset backed Pool XYZ which has ownership of this loan,” and then turn around and say you also have authority (legal authority supporting the power of sale in non-judicial states and the standing to foreclose in judicial states) to represent the “lender.” Not if the “lender” is named on the note as payee and on the mortgage or deed of trust as the lender.

If they want to establish some equitable right to enforce the note, they MUST file a judicial action.

What McDonald has actually brought to light in a roundabout way is the Bifurcation of the Security Instrument from the real note. As noted by my “YES” answer above, the UCC allows for the real note to be proved up with proper indorsements to preserve the integrity of the real note. What the UCC does **not** allow for is the after the fact of proving up “Continuous Perfected Lien Rights”. Once the real note is proved up with proper indorsements there can be a legal action filed in a court of equity to enforce the terms of the real note. But, the “Power of Sale Clause” contained within the Security Instrument is out of reach by any subsequent purchaser of the “real note”.

McDonald’s comments regarding violations of the PSA are between the Certificateholders and the Trustee, who might prove up the indorsements on the real note but have failed to maintain a continuous perfected lien”. In short, the investor may eventually get the “Holder in Due Course” status for the real note but that investor can never regain the rights contained within the Security Instrument as such Security Instrument is a “NULLITY”.

However, the Note that was sold to the Trust was not a real note but an “eNote”.

E-Notes are “Not Legal”

Under the E-Sign Act or the Uniform Commercial Code

E-Sign 15 USC 7003 excludes the Uniform Commercial Code Article 3

Negotiable Instruments

(Article 9 is also excluded)

(Laws of Local Jurisdiction Govern Security Instrument Perfection)