

Unidentified Indorser

In the document, "Show Me the Note and the Security Instrument," located at <http://www.scribd.com/doc/46556445/Show-me-the-Note-and-the-Security-Instrument>, we addressed the naming of MERS in public records as the banks' attempt to circumnavigate complying with laws for filing in public records. Now we need to understand the term "Indorser" as defined by the Uniform Commercial Code: § 3-204. INDORSEMENT, (b) "Indorser" means a person who makes an "indorsement."

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.

(Excerpts From Show me the Note and the Security Instrument)

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

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(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.*