

# **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.