How Constitutional is unconstitutional?

Have you ever noticed the “arrow” in the FedEx logo? It is there when you see it, but just maybe, you probably never noticed it until someone pointed it out? Hence, section § 51.0001(4)(C) is similar to the FedEx “arrow”, and you probably haven’t notice the “constitutional” issues created by the Act. As a speculation, it is imagined that the problem is not noticed simply because of the distraction with the private mortgage registry. Hence, a portion of the problem.

It is “stare decisis”clear that the court haven’t figured it out yet, even when they recite the law. Look at the flailing opinions between the courts, both state and federal. Of course the state courts pass the buck off on the federal courts to interpret state law, yet the state courts seemingly fail to listen to the federal courts. What’s up with that? Yet, a lot of laws are being bypassed simply because § 51.0001(4)(C) allows for the apparent criminal conduct.

Thus explained, “security Interest” in real property is not the same as a “security interest” in personal property. Security interest in real property is is created by contract, and so is a *security interest* in personal property created by contract. Most security interests created for real property is contained within a deed of trust, or mortgage contract. Security interests in personal property are created, and agreed upon by a security agreement contract, and not a deed of trust, unless, real property is involved in the same commercial transaction. Security agreements are usually governed by Article 9, Uniform Commercial Code [UCC 9]. Real estate contracts are not governed by UCC 9 as many courts have stated. Commercial contracts are governed by UCC 9. Could this be a big mistake by many who do not realize a private registry, and its members, are conducting *electronic* commercial transactions, not real estate transactions. Private registry members conduct asset transactions, and service transactions in the private registry. Hence account debtors’ transacting with creditors’ while servicers’ electronically service the account debtors electronic obligations.

Security Interest

> A security interest is a property interest created by agreement or by operation of law over assets to secure the performance of an obligation. The obligation in question is usually the obligation to make payment on a debt. With respect to real property (as opposed to the other main type of property – personal property), there are four main security interests. Those security interests are: (i) mortgages, (ii) deeds of trust, (iii) installment land contracts, and (iv) sale-leasebacks. In this article, we’ll discuss each one of those security interests, with real world examples.

Mortgage

> The mortgage is probably the most well-known, and the most significant in the everday lives of people. A mortage is a transfer of an interest in real property to a lender as security for a debt. The most obvious example of a mortgage is when a debtor transfers his or her interest in a home to a lender, usually a bank, as security for getting the money to be able to purchase that same

home. It is not uncommon to hear people talk about their mortgage payment, as most people cannot purchase their home without borrowing money from a bank to do so.

If the debtor defaults, or fails to make his or her monthly mortgage payment, the lender can assert his or her security interest in the real property by having a judicial foreclosure sale. A judicial foreclosure sale is usually conducted by the sheriff. – Source: LegalFlip

Deed of Trust

A deed of trust is a document that reflects a specific financial interest in the title to a piece of real property. That specific financial interest is transferred to a trustee, who is a holder of property on behalf of a person who is entitled to the benefits of the trust (i.e. the beneficiary). The trustee then holds the deed of trust as security for a loan executed between two other people.

If the debtor defaults on his or her required payment, the lender can instruct the trustee, or the holder of the property, to foreclose the deed of trust by sale. This is different from mortgages, where the sheriff is required to conduct a judicial foreclosure sale. If the debtor fulfills his obligation and repays the loan, the obligation is released – Source: LegalFlip

Pre-ESIGN
Deed of Trust protects the real property

Texas courts have consistently held that the terms set out in a **deed** of **trust** must be strictly followed. *Slaughter v. Qualls*, 139 Tex. 340, 162 S.W.2d 671 (1942); *Michael v. Crawford*, 108 Tex. 352, 193 S.W. 1070 (1917). As this Court has stated, "[a] **trustee** has no **power** to sell the debtor's property, except such as may be found in the **deed** of **trust**." *Slaughter v. Qualls, supra* at 675. Thus, when a foreclosure sale is held pursuant to the **power** granted in the **deed** of **trust**, the **power** of sale can only be exercised by those authorized in the instrument. *Michael v. Crawford, supra*. The reason that "strictness" is required in following the terms of the **power** granted by the **deed** of **trust** is to protect the property of the debtor. *Walker v. Taylor*, 142 S.W. 31, 33 (Tex.Civ.App.—San Antonio 1911, writ ref'd). Failure to follow the terms of the **deed** of **trust** will give rise to a cause of action to set aside the **trustee's deed**. *Slaughter v. Qualls, supra*.

Post-ESIGN
Deed of Trust protects the personal property

Univ. Sav. Ass'n v. Springwoods Shopping Ctr., 644 S.W.2d 705, 706 (Tex. 1982) (“Texas courts have consistently held that the terms set out in a deed of trust must be strictly followed.”) See- LSR LLC v. Wells Fargo Bank, N.A.

Question to ponder

In 1982, there were clear indications of whom the parties to the real estate contracts were because most Lenders conducted their own real estate mortgage loan transactions. Most lenders designated their Trustee for the real estate contract, and if needed, would re-designate a Trustee. Most lenders contained their own “loan servicing” department.

How Constitutional is unconstitutional?

1982 – Deed of Trust [Source: Univ. Sav. Ass'n v. Springwoods Shopping Ctr.]

> *Successor or substitute trustees may be named, constituted and appointed without procuring resignation of the former trustee and without other formality than the execution and acknowledgement by Beneficiary of a written instrument . . . appointing and designating such successor or substitute and filing the same for record in the county where the premises are to be sold, whereupon such successor or substitute trustee shall become vested with and succeed to all of the rights, titles, privileges, [**2] powers and duties of the trustee named herein . . . .*

2001 – Deed of Trust [Fannie Mae Uniform Security instrument - Form 3044w]

> **Substitute Trustee; Trustee Liability.** All rights, remedies and duties of Trustee under this Security Instrument may be exercised or performed by one or more trustees acting alone or together. Lender, at its option and with or without cause, may from time to time, by power of attorney or otherwise, remove or substitute any trustee, add one or more trustees, or appoint a successor trustee to any Trustee without the necessity of any formality other than a designation by Lender in writing. Without any further act or conveyance of the Property the substitute, additional or successor trustee shall become vested with the title, rights, remedies, powers and duties conferred upon Trustee herein and by Applicable Law.
> Trustee shall not be liable if acting upon any notice, request, consent, demand, statement or other document believed by Trustee to be correct. Trustee shall not be liable for any act or omission unless such act or omission is willful.

Re-Iterate

> "Texas courts have consistently held that the terms set out in a **deed** of **trust** must be strictly followed." [emphasis added]

Judicial Notice?

So, how did the deed of trust become an item for private registry members to judicial notice the courts of Texas of that deed of trust? Because it is in public land records with their name not noticed anywhere within the four corners of that contract? Are private registry members flaunting fraud before the eyes of the court to intimidate the homeowner, or is representative? Do they do this to show the ignorance of the court? Do they do this to show the court turns a blind eye to the judicially noticed contract the party is claiming they hold according to law? Take for instance, a "borrower", the party to the contract, cannot challenge the UCC 9 assignment of a security interest because real estate is not governed by UCC 9. Whether the interest in was sold or not, that does not create an interest already existing and evidenced by the deed of trust.

Example; [Melendez v. CITIMORTGAGE, INC., Tex: Court of Appeals, 3rd Dist. 2015]

> *Citi attached evidence of the mortgage-servicing-rights transfer and the deed assignment to its summary-judgment motion. Amtrust's letter to the Melendezes informed them that Amtrust had*

transferred the servicing rights to Citi and instructed the Melendezes to make future payments to Citi. Accordingly, in September 2005, Citi became the mortgage servicer as defined by the Property Code, regardless of whether it later became the mortgagee. Id. § 51.0001(3) ("`Mortgage servicer' means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument."). Citi also submitted the deed assignment as summary-judgment evidence, which established it as the mortgagee. Id. § 51.0001(4)(C) ("[I]f the security interest has been assigned of record, the last person to whom the security interest has been assigned of record" is the mortgagee.).

Footnote 3; [**emphasis** added]

*[3] Even if the Melendezes had submitted summary-judgment evidence raising a fact issue about the validity of the assignment, t**hey do not have standing to challenge the assignment**. **They did not allege any grounds that would render the assignment void**, **which is the only circumstance in which mortgagors who are not a party to a deed-of-trust assignment have standing to challenge that assignment.** Tri-Cities Constr., Inc. v. American Nat'l Ins. Co., 523 S.W.2d 426, 430 (Tex. App.-Houston [1st Dist.] 1975, no writ) ("The law is settled that the obligors of a claim may defend the suit brought thereon on any ground which renders the assignment void, but may not defend on any ground which renders the assignment voidable only, because the only interest or right which an obligor of a claim has in the instrument of assignment is to insure himself that he will not have to pay the same claim twice."). The Melendezes contended the assignment was defective because (1) Amtrust had forfeited its corporate privileges in Texas before the assignment, rendering MERS incapable of assigning the deed as Amtrust's nominee or agent, (2) MERS lacked authority to assign the deed because it had no interest in the note, and (3) the assistant secretary who signed the assignment lacked authority. All of these arguments would render the assignment merely voidable, not void. See Hinkle v. Adams, 74 S.W.3d 189, 193 (Tex. App.-Texarkana 2002, no pet.) (forfeiture of corporate privileges does not extinguish corporation as entity); Bierwirth v. BAC Home Loans Servicing, L.P., No. 03-11-00644-CV, 2012 WL 3793190, at *3-4 (Tex. App.-Austin Aug. 30, 2012, pet. denied) (mem. op.) (nominee under deed of trust can assign deed of trust separately from note); Morlock, L.L.C. v. Bank of New York, 448 S.W.3d 514, 517 (Tex. App.-Houston [1st Dist.] 2014, pet. filed) ("When someone without authorization signs a conveyance on behalf of a grantor corporation, the cause of action for fraud to set aside the assignment belongs to the grantor. A third party lacks standing to challenge this voidable defect in the assignment." (citations omitted)). As a result, the Melendezes lack standing to challenge the assignment.*

Contract Impairment

Has the thought of "impairment" crossed anybody's mind? According to Dictionary.com "impairment" means "*the state of being diminished, weakened, or damaged, especially mentally or physically*". According to FreeDictionary.com's financial dictionary, "impairment" means "*Reduction in the value of an asset because the asset no longer generates the benefits expected earlier as determined by the company through periodic assessments. This could happen because of changes in market value of the asset, business environment, government regulations, etc* ".

How Constitutional is unconstitutional?

The reason for the understanding of "impairment" is because you must understand that because of a certain section in the Texas property code, a law was written to impair contracts. How can this be?

The deed of trust is a contract. He contract provides for security to the "borrower's" obligation, which is evidenced by the promise to pay which according to the evidence recorded in public records, was signed at the same time as the deed of trust. This should be recognized in the "definitions" section of the deed of trust;

> "**(G) "Loan"** means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest."
>
> This can also be found in the "Uniform Covenants" portion of the deed of trust;
>
> UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:
>
> **1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note.
>
> **28. Loan Not a Home Equity Loan.** The Loan evidenced by the Note is not an extension of credit as defined by Section 50(a)(6) or Section 50(a)(7), Article XVI, of the Texas Constitution.

BORROWER COVENANTS

Now that the contract has shown two contracts [note-deed of trust] to be construed as "one" contract, it is necessary that the *grantor* named within the deed of trust to understand they too have rights within the four corners. [**emphasis** added]

> **BORROWER COVENANTS** that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. **Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.**

Seize the moment

With such strange wording as "seised" it becomes clear that if "seized" were used, it would have meant that the borrower suddenly took possession of the land forcibly from the grantor named in the warranty deed the borrower used to convey the land to the grantee, the lender, named in the note and deed of trust. In other words, the covenant above reflects the simple fee deed used to convey the land, whether it was a warranty deed, special warranty deed, general warranty deed. The warranty deed is actually the only instrument to argue a colorable claim. It may not appear that way now, but once light bulb goes off in the minds of many, it will become clear.

ALL APPLICABLE LAW

How Constitutional is unconstitutional?

Also noted within the four corners of a deed of trust is the agreement that "all applicable laws" will be the focus of enforcing the contract. His can be found in the "Definitions" section, and within the covenants, after the first covenant and before the twenty eight covenant.

Definitions

> **(I) "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, non-appealable judicial opinions.

Uniform Covenants

16. 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

How do they do it?

I recently had conversation with a man who could not figure out why so many different persons were trying to make claim to the same property he had purchased. When he mentioned Fannie Mae, I asked him if he knew about "covenant 20"? Of course, this was something he was not aware of. I explained to him that because of the wording in covenant 20, this was the reason for so many different persons attempting to acquire his real property. I explained to him that covenant 20 says a *partial interest* in note can be sold one or more times, and the deed of trust goes with each partial interest that is sold one or more times without notification to him. Covenant 20 states; [***emphasis*** added]

> **20. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note ***or a partial interest in the Note (together with this Security Instrument)*** can be sold one or more times without prior notice to Borrower.

I also explained that there was a problem with that covenant. I explained that the note and deed of trust could be sold one or more times, but the "partial interest" portion of the covenant could not pass the Article 3 section regarding transfers of the note. That can be found in § 3.203(d). But the bigger problem would be transferring partial interests in the deed of trust, or security instrument as they like to call it.

> Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER.
>
> (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 chapter and has only the rights of a partial assignee.

So, where is the problem?

How Constitutional is unconstitutional?

The problem exists in both law and contract. Thus explained.

The problem with "law" is section § 51.0001(4)(C). This section is so vague that it allows for fraudulent filings, and "invented" "instruments" to be given the full force of law. According to, and apparently the elephant in the room nobody can see, says "*if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record*." In essence, the law says "Hey, it doesn't matter if the "interest" is legal or not, just be the last person assigned of record". Le me ask this? Last person assigned of what record? We do realize that the private registry claims to be a record keeping registry, or clearinghouse for its members? So, the Texas property code allows for secret transactions, and the secret shopper gets the property if they go to court, or commit non-judicial foreclosure acts. The Texas Property code is so biased, it allows the courts to conduct unconstitutional proceedings in favor of the private registry, and its members. So, who defined MERS as the "book entry system" in section §51.0001(1)? How did MERS become something it is not? If the Texas Legislature did not define MERS, why do the Texas courts assume MERS is the book entry system? Nowhere in the house bill was MERS mentioned. Yet, somehow, MERS became a "nominee", "beneficiary", "mortgagee", and "trustee" of a deed of trust; and a "mortgagee", and "book entry system" in Texas law.

This rambling reflects what the citizens are up against, and does not get into the "person" in the political subdivision. This rambling does not delve into the other laws of Texas affected by section 51.0001(4)(C) because there are many affected. This rambling also does not delve into the many U.S. laws affected by the certain section of the Texas Property code, chapter 51.

Article I, section 16;

> Sec. 16. BILLS OF ATTAINDER; EX POST FACTO OR RETROACTIVE LAWS; **IMPAIRING OBLIGATION OF CONTRACTS**. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

By the enactment of H.B. 1493, section 51.0001(4)(C) allows the actors to bypass the contract, and use 51.0001(4)(C) as a lawful statute to bypass the signed contract agreements. This impairs contracts.

But wait, there is more to come…….

Peace be with you,