Memorandum in Support

Modified Amicus Curiae NJ

James McGuire
7/19/2011

SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION / CIVIL ACTION ATLANTIC COUNTY

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4510

IN THE MATTER OF

HSBC Bank N.A. as the Indentured Trustee for the Note Holders of Renaissance Home Equity Loan Trust 2006-3

Plaintiff

vs.

Memorandum

Of

James McGuire In Support of Defendant

(In a Personal Capacity)

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July 13, 2011

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DOCKET NO: x-xxxxx-x

Judge William Todd III P.J.Ch
General Equity Civil Division

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Plaintiff

vs.

Defendant[s] Pro Se, Sui Juris

James McGuire respectfully submits this Memorandum in Support to aid in providing a clear understanding of some of the facts so elusively hidden by the financial sector.

Background

Approximately a decade and a half has passed since my first becoming involved in understanding the homeowner's Mortgage Note and Security Instrument being used in securitization governed by the Uniform Commercial Code or the states equivalence, ESIGN (Electronic Signatures in Global and National Commerce Act, 2000), UETA (Uniform Electronic Transaction Act, 1999), state recordation statutes (specifically for Texas and a general understanding in other states).

My conversations with others regarding this subject are with very learned persons in the academic area and with multiple legal counselors.

I have posted on http://www.scribd.com/alviec over a two hundred documents that explain in great detail the faults within the current securitization process. It has been stated what was "fringe"[1] only a couple of months ago are here today. Others skilled in law have commented that my writings are so far out on the front edge of the curve that only a few academics can fully comprehend them. The information presented in this Memorandum in Support is in this front edge of the curve; the "fringe" today may at first look like an iceberg, but it is more like an ice cube in a punch bowl.

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

[1] http://livinglies.wordpress.com/2010/12/19/the-pools-are-empty-and-the-sec-is-coming/

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 possessor of the note but has not become the holder 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 Indorsee's 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 "Chain**s."** 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 endorsees**,** 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 gover**n** 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 indorsee's 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-existen**t** 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 Obligee" 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 trustee**s** possibly could become the possessor 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" Indorsee's 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. Trillion Dollar FUBAR

The Trillion Dollar FUBAR Uncovered

By James McGuire

Revised June 29, 2011

What is known about the multi Trillion Dollar FUBAR reveals an extreme complex machine.

A Secured Mortgage consists of two parts, the Mortgage Note and a Security Instrument (Deed of Trust or other such Security Instrument properly perfected). Upon initial signing of the Mortgage Note and the Security Instrument, the Security Instrument attaches and is temporary perfected. Temporary perfection of the lien is converted to a permanent perfection upon the filing of the Security Instrument of record in the appropriate records office. Actions to this point would have created a "Secured Indebtedness".

In creating the secondary market Mortgage Backed Securities, where MERS is named as Mortgagee, in many instances results in a loss of perfection of the lien and thus renders the Mortgage Note "Unsecured." Where MERS is named as Nominee for Lender Successors and Assigns on the Security Instrument reflects an agent relationship with the originating lender as holder of the Mortgage Note. Whether lawful or not, MERS being named as Mortgagee for the original Noteholder notices that MERS is attempting to be an agent for same. Where the original lender endorses the Mortgage Note in blank to multiple unidentified Successors and Assigns creates and condition where MERS cannot be agent for the unidentified Successors and Assigns as "Indorsee," such as the Mortgage Note on its face does not identify any intervening Noteholder, and as such, no agency

rights exist between MERS and any unidentified intervening party.

Just like many people who purchase a home, one assumes the parties executing the paper work are watching out for your best interests and follow the written laws. At the closing everything appears to be legal and lawful. But that changes, almost immediately after closing, without your even knowing.

What we do know about mortgage notes is that many originate with an originating lender. How the Mortgage Notes lawfully ends up in the possession of a bank is no longer a mystery, it just doesn't happen. Where the GSE's are concerned, i.e.; Fannie Mae should have been the holder/owner of a secured Mortgage Note the banks claim that right. In a number of court proceedings the bank present "Lost Note Affidavits," accompanied by a "printed out digitized copy," of the mortgage note and present same to the court as "proof" of a "lawful indebtedness."

Under the Federal Rules of Evidence, a Lost Note Affidavit without personal knowledge is nothing more than hearsay and therefore inadmissible. The printed out digitized copy of the note also fails under the hearsay rule. The Uniform Commercial Code and most states' equivalent allow for Lost Note Affidavits but require supporting evidence. For cases dealing with Mortgages, records filed in Public Records Offices would support a valid Lost Note Affidavit. But a nationwide review of public records reveal many "Notices of Assignment" of lien rights to reflect a negotiation of the Mortgage Note that could allow the bank have a claim to the mortgage simply does not exist. Where a bank or trustee had no Original Mortgage Note and no filing in public records to support their Lost Note Affidavit--any claim by a bank or trustee is without merit.

In reverse engineering of the banking system for Mortgages from origination to Wall Street; excavating the Crime of the Century; knowing how it was perpetrated against investors, assurance companies, homeowners, and others and deceiving the judiciary appears to be by design and as such the world needs to know.

Now we enter the world of molecular science, eNotes and the Secondary Market

To begin understanding the fraud we must revisit the author's 2008 document entitled

“Potomac Two Step”:

In 1929 the "Great Depression" hit and 4 years later in 1933 the "Glass-Steagall Act" was enacted by Congress. The "Glass-Steagall Act" requires that holding banks and investment banks be entirely different entities.

Fast forward to approximately 1996 and Weiss of Citicorp and others had for a decade wanted the "Glass-Steagall Act" repealed. Along comes the "Gramm-Leach-Bliley Act", in part authored by Phil Graham, that was enacted by Congress in 1998 which eliminated the separate bank requirement. Electronic capabilities had increased by this point and book-entry was in the process of going to an electronic database system. During this same period of time the banking industry in whole, with the help of Mortgage Bankers Association which was also a creation of the banks, created an electronic database processing entity named "Mortgage Electronic Registration System", "MERS" for short.

It has been discovered that in 1998 in Decatur County, Georgia MERS had been registering titles with the land records office which would evidence that MERS was functioning in some manner.

In 1999 the House of Representatives held hearings that addressed the forth coming "E-Sign Act”. In one hearing it was noted that only two (2) exclusions existed. These two (2) exclusions did not mention the Uniform Commerce Code, "UCC". At present it is unknown how many hearings were held before President Clinton signed the E-Sign Act into law in 2000. The 2000 enacted version of the E-Sign Act had a third (3rd) exclusion added, Sections 1-107 and 1-206, Article 2, and Article 2A of the Uniform Commercial Code were the only sections that the E-Sign Act would not exclude. This exclusion stated that the E-Sign Act had no authority to override the Uniform Commercial Code except for the 4 exceptions. It would be interesting to learn who authored the change and for what reason. None of these four (4) exceptions were Articles that govern "Negotiability" of "Negotiable Instruments".

Mortgage Bankers Association, MERS and others began an advertising campaign to state that the E-Sign Act had now given Electronic Signatures the equal legal force of Blue Inked Paper Signatures.

The writer of this document does not argue the fact that an "Electronic Signature" has the same legal force as a "Blue Inked Paper Signature" so long as it is created electronic and complies with all laws and is never required to be negotiable. Negotiability is required to further assign the “negotiable Instrument” for use in the secondary market place. Without this negotiability the loan originator has no legal framework to execute any transfer to any buyer, whether that buyer is a bank, Fannie Mae, Freddie Mac, etc.

There are several federal agencies that have stated the creation requirement by electronic is required. Several federal agencies also state that a "Blue Inked Paper Signature" cannot be converted to

an "Electronic Signature"/"Electronic Transferable Record" after the fact.

In 2001 the "National Telecommunications Information Agency", part of the Department of Commerce, complied with the enacted E-Sign law and requested comments regarding the exclusions within the E-Sign Act. Several of the Federal Reserve banks, the National Consumer Law Center and others stated that the exclusion needed to remain. It was also mentioned that removal of the exclusion could possibly result in legal issues for items governed by the UCC.

Research has determined that beginning in 2002 the states' equivalence of the federal Uniform Commercial Code were being modified to allow for a "Lost Note Affidavit" along with a copy of the "Negotiable Instrument" to suffice to provide legal standing in a court of law at the state level. At this point the "Originator" of the "Negotiable Instrument" in many instances has already scanned the "Negotiable Instrument" into a graphic image and stored this scanned image alongside the data that was scrapped from the "Promissory Note/Negotiable Instrument". In this writing the term "Negotiable Instrument" is a representation of the "Original Blue Inked Signed Promissory Note" that for all intent was created to be used in the secondary market as a "Negotiable Instrument".

The procedure of imaging an "Original Promissory Note" into an electronic format has no legal basis for providing "Negotiability" for buying, selling or transferring to another party much less the secondary market and "Wall Street" as defined by the "Uniform Commercial Code".

Research has shown that a high probability exists that at the time of scanning the "Original Blue Inked Signed Promissory Note" the originals are destroyed. This scanned created electronic version is being referred to as an "E-Note" and has no lawful basis to exist. Forty (40) to fifty (50) million of these "E-Notes" have been registered on the "MERS" system and all claims are made on the basis that they are lawful "Negotiable Instruments"--in fact they are fraudulent/fictitious documents that are deliberately being misrepresented.

In reviewing thousands of "Notice of Trustee Sales" and other documents filed in MERS' name at local county recordation offices and with the courts, records indicate "MERS" is an "Assignee", (step into my shoes) for a "Security" that was offered for sale on the secondary market. These notices give creed that that an "E-Note" was bought and sold and used as collateral on "Wall Street". What is amazing is that in the Prospectuses themselves there is mention that the "Security/Collateral/Negotiable Instrument" can be represented by using a "Lost Note Affidavit/LNA" with a copy of the "Negotiable Instrument" as a source of validity that a true "Negotiable Instrument" had been offered up in the collateral pool and then lost. There is no lawful basis for the "Lost Note Affidavit/LNA" to exist if all reference is made to a fraudulent & fictitious document.

If the first security is sliced and diced to make many securities, how many such LNA's would be required to withdraw an item of collateral from a collateral pool? If at the conception/scan negotiability was destroyed, how could that item be offered up as collateral as if it had a legal basis of authority, if it is not legally possible under current law? How many fictitious documents have been created that possibly would fall under Title 18, Fraudulent & Fictitious Documents for legal interpretation!?!

This short story is a condensed version; the writer has not included other "Acts" such as "Check 21" that help in disguising the fraud.

Offered opinion is that the banks got too far into book-entry and discovered that the third (3rd) exclusion existed or they did not like the exclusion and had no other option but to conceal the exclusion so that the electronic book-entry system would work, regardless of whether or not legal, which allowed the massive unlawful book entry transfers to feed the appetite of Wall Street. So we have a massive smoke screen offered to the courts by the banks' legal counsels to make sure the fault is never uncovered. This document will not go into the financial fraud committed against the land records offices and other frauds.

Simple facts are that "Promissory Notes/Negotiable Instruments" for homeowners are governed by the Uniform Commercial Code, Article 3, and the Esign Act and UETA exclude items governed by Uniform Commercial Code, Article 3.

The banks and MERS operate under the false impression the Esign Act and UETA laws give them lawful status to operate using "eNotes" based on homeowners' "Promissory Notes/Negotiable Instruments" and have attempted an all out effort to cloud the issue before the courts and the banks are aiding by clouding the eyes of Congress.

It also has been uncovered that since the laws of the land will not support the non-legal book-entry system there has been an effort to modify state law, specifically in the area of "Lost Note Affidavits".

Since the law will not support the non-legal book-entry system it appears there has been a multistate endeavor to influence the courts, see Exhibit "1" below as one example. If the law does not support us then let's change the court rules so we don't have to prove anything.

In short, converting a "Paper Promissory Note/Negotiable Instrument" into electronic book-entry to create a so called "eNote" has no legal basis. Once this "eNote" has been created within the book-entry system the "eNote" is then offered up as collateral to the "Secondary Market" on Wall Street or into the Federal Reserve's BIC program (Borrower in Custody) at which time a crime has been committed as the book-entry notes are non-negotiable as defined by the Uniform Commercial Code and a fraud has been introduced into the securities market. Once negotiability has been destroyed it can never be regained and

cannot be bought/sold/transferred/assigned into the secondary market place. Issuance of a "Lost Note Affidavit" ends the negotiability of a lawful item.

The writer's comments: a paper note cannot be sliced and diced but the electronic version can be sliced and diced or duplicated, triplicated or quadricated. That is why so many different secondary market securities state we hold the same note and no true owner can be identified. One paper note for one collateral use, simple and at present that is all that is allowed by law.

An alarming issue at hand is how after the "Paper Promissory Note/Negotiable Instrument" has been converted into an unlawful eNote and a legal proceeding ensues (def: to take place afterward or as a result) which in some cases the original blue inked original "Paper Promissory Note/Negotiable Instrument" miraculously reappears or a graphic representation is offered up as "The Original". There goes the concept of "One Note" and "One Note" only. In reality there is an unlawful electronic version of the "Paper Note" being utilized in the secondary market while the "Paper Note" is in storage somewhere, or was the original destroyed when the electronic version was created? Under current laws both notes are not lawful at such time; they both exist in tandem and neither can be enforced, but it happens every day in the courts of this land.

There are many areas the Esign Act & UETA laws work well in such as transit of goods, bills of lading, warehouse receipts, etc." End of excerpt.

It was not until some years after publishing The Potomac Two Step, the author was able to prove by admission of Florida Bankers Association's filing with the Florida Supreme Court in Case no.: 09-1460[2] the scan, copy and destruction was in truth a reality by the following excerpt:

> *"In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database.*
>
> *The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file."*

What is alarming is not only does the Supreme Court Case no.: 09-1460 provide

[2] Reference 1

an admission of scan, copy and deliberate destruction, it also shows that if and when the laws cannot be complied with, the banks under attempted disguise of industry standard, attempt to change the Rules of the courts so as not to have to comply with the law.

Florida is not the only state that has issues with banks changing the rules to avoid the law; Texas also has a similar issue as noted in a certified transcript identified as "Meeting of the Task Force on Judicial Foreclosure Rules[3], November 7, 2007. The alarming fact of this transcript is the identities of several of the parties in attendance: Texas State Judge Mark Davidson, 11th District Houston; Phil Johnson, Texas Supreme Court liaison; Texas State Judge Bruce Priddy, 116th District Dallas. Also in attendance were Michael Barrett and Tommy Bastian of Barrett, Burke, Wilson, Castle, Daffin & Frappier, one of the largest foreclosure mills in Texas.

Tommy Bastian is noted to say, "In about 60 percent of all loans MERS is going to be the mortgagee of record, but all MERS is is a registration system. That's all it is."

Michael Barrett commented, *"So, finding a document that says, 'I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name' is an impossibility in 90 percent of the cases."*

An alarming statement came from Judge Bruce Priddy, *"And what the – happens is they just execute a document like Mr. Barrett says doesn't exist. They just create one for the most part sometimes, and the servicer signs it themselves saying that it's been transferred to whatever entity they name as the applicant."*

Judge Bruce Priddy is also noted to state, *"One of the other concerns I have is that most applications, the rule says it can be on information – it can be on personal knowledge or information and belief. Nearly all of the applications I see are on personal knowledge, and you can tell that there's no way that one person can have personal knowledge of everything that's in there."*

[3] Reference 2

Honorable Bruce Priddy, *"It's just – to me, I think we need to massage it a lit bit and not encourage folks who do this, because it really kind of devalues the idea of personal knowledge in my court because of what they're say they have personal knowledge to they can't possibly have personal knowledge to."*

From an exchange of comments between Judge Bruce Priddy and Mr. Bagget

Judge Priddy stated, "And so I would like to have some tweaks of that."

Mr. Bagget replied, "And we shouldn't write the rule in a way that they can't comply with. That's not very smart."
Judge Bruce Priddy responded, "Right. But they can do it if they do it on information and belief and just say that it's based on their records, but no one does."

In The Supreme Court of Texas, Misc. Docket No. 07-9160[4] provides a complete list of attendees.

One need to question changing the Rules of the Court to be in non-compliance with the Rules of Evidence, as "based on their records" would be hearsay.

In United States of America v. Hibernia[5], No. 86-3774, United States Court of Appeals, Fifth Circuit, April 5, 1988 the court commented: ***"Commercial customs does not apply where the U.C.C provides otherwise."*** One would have to conclude that "commercial customs" has the equivalent, contextual, and immediate definition and interpretation of "industry standards".

As such, it appears Florida and Texas courts do not follow all the Laws but follow Court Rules to circumnavigate certain Laws. Due Process of Law--not in Florida or Texas.

It is unknown to the author how many other states have similar scenarios.

[4] Reference 2a
[5] Reference 3

We shall address our attention to Fannie Mae's Announcement[6] 06-24 dated December 7, 2006, titled "Amends these Guides: Servicing, Process for Foreclosing on Mortgage Loans Reflecting Mortgage Electronic Registration Systems, Inc as Mortgagee. Under the sub title Servicing Guide Part VIII, Section 105, Conduct of Foreclosure Proceedings. It instructs:

"Therefore, in most jurisdictions, the servicer will need to prepare a mortgage assignment from MERS to the servicer, and then bring the foreclosure in its own name, unless the Servicing Guide requires that the foreclosure be brought in the name of Fannie Mae. In that event, the assignment will need to be from MERS to Fannie Mae."

Once the security instrument has been bifurcated from the note, rendering the indebtedness "Unsecured", any attempt to assign the security instrument back to the note as shown above will not convert an "Unsecured Indebtedness" back into a "Secured Indebtedness".

Now we turn attention to a Mortgage Bankers Association publication, Technology White Paper, "Security Interests in Transferable Records, Evidencing Residential Mortgage Lending Transactions and the Rights of Warehouse Lenders," as by, "Analysis and Proposal, MBA Residential Technology Steering Committee (ResTech) – eMortgage Adoption Task Force." Page 10, footnote 40:

"UCC Revised Article 9, 9-102(42), 9-102(47) and 9-102(61); UCC 3-104. A "payment intangible" is a general intangible that primarily evidences an obligation to repay money. A "general intangible" is any personal property that does not fall into one of the other collateral classifications in Revised Article 9. An "instrument" is a negotiable instrument or other writing customarily transferred by delivery of possession with any necessary indorsement. Therefore, a transferable record is not an "instrument" for purposes of perfection and priority, because it is not in writing."

"Therefore, a transferable record is not an "instrument" for purposes of perfection and priority, because it is not in writing." What does this statement really mean?

It means that eNotes are, in fact, a "transferable record" in the form of an electronic

[6] Reference 4

digitized graphic file which can identify an "authoritative copy" as well as the party that has control of that "authoritative copy." However, since this "transferable record" is in electronic form, negotiability is not allowed under the Uniform Commercial Code. It is this eNote/"transferable record" that is offered up into the secondary market and as it is in electronic form, transferring lien rights from the original-paper-holder-to-an-electronic-holder destroys the perfection of the Security Instrument. What was once a "Secured Indebtedness" at conception is now an "Unsecured Indebtedness" at the secondary market.

Once perfection of the "Security Instrument" is lost, the "Power of Sale" clause contained within the "Security Instrument" is forever lost. No Bank, servicer, trustee, investor, not even God could use the Power of Sale clause to "Foreclose," but the courts have allowed foreclosures to occur.

National Journal's Technology Daily[7] article dated July 3, 2003 in part reads:

"The Bush administration is calling on Congress to continue exempting an array of documents from a law that gives legal weight to e-signatures…." "…Contracts governed by state commercial law."

The American Bar Association's article "PROBATE & PROPERTY"[8] Jan/Feb 2007, Vol. 21 No. 1 states, "The eMortgage is not a scanned-in document image. Instead, it is a specific electronic file of the security instrument package that is consented to, recorded, assigned and stored electronically."

The American Bar Association did not address the negotiable instrument as to be included within the electronic scope. What is of concern is the highly respected American Bar Association also does not recognize that the "Security Instrument" as governed by Article 9 of the Uniform Commercial Code or the states equivalence is also excluded under UETA and ESIGN.

[7] Reference 5
[8] Reference 6

American Bar Association's comments to Josephine Scarlett[9], Attorney, Office of the Chief Counsel, National Telecommunications and Information Administration provides the following information:

"The Electronic Signatures in Global and National Commerce Act (codified at 15 U.S.C. § 7001 et seq) ("Esign") provides that the "provisions of Section 7001 of this title shall not apply to a contract or other record to the extent it is governed by. . . . the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A." 15 U.S.C. § 7003.

This exclusion from the provisions of Section 7001 for contracts or records subject to the Uniform Commercial Code should be maintained. The Uniform Commercial Code as in effect and as revised accommodates electronic commerce in a carefully considered manner. Section 7001 is not necessary to facilitate electronic commerce in these transactions, and would be potentially harmful to established and evolving paper-based and electronic commercial transactions which are governed by the Uniform Commercial Code."

*"**Uniform Commercial Code Article 3** governs negotiable instruments, including checks and promissory notes. Negotiable instruments must be in writing and signed. To the extent that parties want to engage in electronic payment mechanisms, Article 3 does not prevent parties from doing so. Thus parties may use funds transfer, debit cards, credit cards, ACH transactions or other forms of electronic payment mechanisms. All of those other types of payment mechanisms are governed by law other than Article 3 and Article 3 does not prevent their use."*

"The primary purpose of Article 3 is to provide for the rights of third parties who take the negotiable instrument. Article 3 is premised on a regime of possession and indorsement of an instrument and the rights and obligations that accompany that possession and indorsement. To allow for electronic negotiable instruments there must be a concept that is the functional equivalent to possession and indorsement in order to adequately protect third party rights. The difficulty in making such a wholesale change was recognized at the time that both the Uniform Electronic Transactions Act (UETA) and Esign were promulgated by setting up the concept of a "control" system to substitute for the possession and indorsement concept as it applies to electronic notes. UETA Section 16 and Esign Section 7021. Nothing has changed to make that concern less real. Adequately protecting third party rights and assuring commercial market stability cannot be done by two party contracts in the absence of a statutory scheme that is designed to accommodate electronic negotiable instruments. Applying

[9] Reference 7

Section 7001 provisions would sweep away the writing and signature barriers as applied to the creation and enforcement of a negotiable instrument. This change would create havoc as there would be substitute for the possession and indorsement concepts that currently govern the rights and obligations of third parties as to a negotiable

instrument.®"

*"**Uniform Commercial Code Article 9** governs secured transactions and was significantly revised in 1999. The revised Article 9 is in effect in all states and the District of Columbia. Revised Article 9 allows for electronic security agreements, electronic financing statements, electronic filing and electronic notices. Subjecting Article 9 to the provisions of Section 7001 designed to do away with the paper requirements is unnecessary to facilitate electronic commerce. In addition, for some collateral types, such as negotiable instruments and documents of title, the ability to perfect and enforce security interests in those items are based in part upon the concept of possession of those tangible items. For other collateral types, such as chattel paper and investment securities, parallel systems of rules have been developed for electronic forms and paper forms of that type of collateral. Applying the provisions of Section 7001 to the paper form would upset the certainty necessary for an efficient system of secured transactions and is not necessary to allow for electronic transactions."*

As can be seen from the above comments, the current exclusion for the Uniform Commercial Code from the provisions of Esign Section 7001 should be continued.(10) To subject the Uniform Commercial Code to the generalized approach of Section 7001 is in large part unnecessary given the carefully crafted accommodations to electronic commerce already in place and would create much disruption and uncertainty in the transactions governed by the Uniform Commercial Code."

Let's focus attention on a document called, "eMortgage Closing Guide, Version 1.0[10], Final Release, April 27, 2006, MISMO eMortgage Workshop," published by MISMO. The eMortgage Guide reflects that MISMO is owned by Mortgage Bankers Association as shown in this statement:

"The MISMO eMortgage Closing Guide, published by the Mortgage Industry Standards Maintenance Organization, Inc. ("MISMO®"), a wholly owned subsidiary of the Mortgage Bankers Association, is a mortgage industry reference tool - a guide to the various aspects of electronic mortgage closing technology and business."

[10] Reference 8

Introduction, more like: "Start the Illusion," Author's personal comment

Introduction

"…The closing of an electronic note (eNote), security instrument (eSecurity Instrument), and other electronic closing documents requires the use of a specialized computing platform, generally known as an electronic closing or eClosing system. An electronic closing system is typically a web-based platform that allows the lender, the closing agent and the borrower to electronically review, sign, store and transfer closing documents."

"However, the enforceability and transferability of the eNote, and the legality of other electronically signed documents depend on whether the closing process and/or system used to create, execute, and store the electronic documents complies with applicable federal and state legal requirements."

15. 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.

GOD BLESS THIS COUNTRY

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Judicial Notice: This Memorandum was provided at no cost to the defendant.