

What Happened?

Introduction

This is a paper on what happened to real property mortgages all across the United States. This paper will also help in understanding how a certain commercial practice in the mortgage banking industry came to reveal itself according to the mortgage banking associations admission to what they did. This paper should also help the reader to understand how civil actions by those members of the mortgage bankers association became criminal to the extent that it invokes certain Texas penal code sections including title 2. General principles of criminal responsibility due to certain corporations working in connection with other commercial corporations to carry out seemingly innocent yet criminal acts to accomplish the commercial practice by the industry.

Actors and Agents

In Roman law, an actor is one who acted for another; one who attended to another's business; a manager or agent. (See Black's Law). According to Texas Penal Code, Chapter 1, Section 1.07(a)(2), defines an actor; "Actor" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" is used in this code, it means "actor." and 1.107(a)(13) defines a corporation ; "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies. Attorney offices are usually associated with other professional associations. Nonetheless these actors are alleged agents for some alleged principal which most believe their legality by assumption or presumption instead of challenging their capacity or relationship to be true.

Jurisdiction

It is said that jurisdiction is the power or authority in which one may act according to law. It is also said to be the power and authority constitutionally conferred upon (or constitutionally recognized as existing in) a court or judge to pronounce the sentence of the law, or to award the remedies provided by law. As for the prior jurisdiction in which an actor may conduct business according to law, the actor will have such law for his support. However, if the actor is silent on the law which governs, and a court with general jurisdiction assumes that because the actor is from a commercial industry is it possible the court can make a fatal flaw in its assumption? The answer can be deduced by the word "*intangible*".

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In commercial law the word *intangible* recognized as a debt which a person is entitled to collect as being recognized within the Texas Business and Commerce Code, and also stated by the court system. However, in commercial law the word *intangible* also applies to electronic records which are governed by Texas Uniform Electronic Transactions Act also located within the Texas Business and Commerce Code. With both *intangibles* now recognized, which governing law will provide the power or authority for one to act upon with an electronic record? In other words, what jurisdiction is a play when an actor pursues litigation within a court of law? To shorten the determination of jurisdiction the answer may be found in two sections of the Texas Uniform Electronic Transactions Act, in sections §322.003(b)(2); and §322.019.

When read, the Texas Uniform Electronic Transactions Act excludes Chapters 3 through 9 so the Texas Business and Commerce Code does not apply except for Sections 1.107 and 1.206 and Chapters 2 and 2A. This is clearly the intent of the Texas Legislators to exclude Chapter 3 through 9. There really is no other way to interpret the single subject of *intangible* electronics due to Texas Constitution, Article 3, Sec. 35. Subjects and titles of bills.¹

To further support the evidence of admission by the mortgage banking industry in Florida² which stated, “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.” Seemingly the industry standard is to convert the paper to electronic. The bankers association furthered their practice because “Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities.” The bankers association stated that they deliberately destroyed the paper so there is evidence about these actors knowingly committing an act of conversion and destruction, “because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file.”

To compound the conversion, the only reference to the original paper now seemingly originates from hearsay as the banking association admitted that “The records of ownership and payment are maintained by a servicing agent in an electronic database.”. According to the courts, the only

1 <https://statutes.capitol.texas.gov/Docs/CN/htm/CN.3.htm#3.35>

2 [https://www.floridasupremecourt.org/content/download/328731/2952172/09-1460_093009_Comments%20\(FBA\).pdf](https://www.floridasupremecourt.org/content/download/328731/2952172/09-1460_093009_Comments%20(FBA).pdf)

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admissible computer evidence would be from an automated software used for computer system diagnostics because there is no interaction with the information being obtained by such software program. Database are considered hearsay without the metadata to support the evidence of the electronic record. Indeed there are many corporate individuals who access, alter, or modify the information within a database and this causes rise to the accuracy of such database. Nonetheless, it should help the reader to understand all that is referenced here is in regards to electronic information whether it is a database, or an electronic record.

The Florida Court of Appeals stated “To maintain a mortgage foreclosure, the plaintiff must either present the original promissory note or give a satisfactory explanation for its failure to do so.” According to what is stated In The Supreme Court Of Florida, Case No.: 09-1460, this writer does not believe that the courts would believe that deliberately destroying the note and deed of trust is a satisfactory explanation to legally maintain a mortgage foreclosure. How could it be legal if the existence of the alleged debt is only evidenced by an electronic record?

Conversion

For the sake of argument, let us look at the law which governs the electronic record which the mortgage bankers association alludes to. The Electronic Signatures in Global and National Commerce Act (E-Sign Act), was signed into law on June 30, 2000, provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce.³ Each state in the United States may have its own version of ESIGN as does Texas. In Texas the electronic law is called Texas Uniform Electronic Transactions Act, a.k.a. UETA⁴. Within this paper the writer will use Texas UETA to reflect the seemingly unseen habits used by actors attempting to gain possession of real property in an immoral manor.

Electronic records do carry a legal effect and cannot be denied that effect. This is noted in §322.007. However, for the electronic record to have legal affect, the electronic must by definition be an electronic record. According to §322.002(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means. Indeed the UETA is a limited procedural act in which only electronic contracts can be legally created through electronic means. Texas UETA does not proffer the idea that paper can be scanned, destroyed, and a newly created obligation from the destroyed obligation can carry a lawful legal

3 [Electronic Signatures in Global and National Commerce Act](#)

4 <https://statutes.capitol.texas.gov/Docs/BC/htm/BC.322.htm>

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affect as the paper obligation once did. UETA is a limited use procedure for electronic contracts only. UETA does not allow for the creation of an electronic promissory note, nor the use of one. It may not be rocket science but the average man should come to understand that an indented signature is totally different from an electronic signature. Man can't bite down on an electronic record to leave his indenture, the electronic record is invisible. The electronic record is *intangible*, but not an *intangible* recognized in the Business and Commerce Code. UETA clearly states Chapters 3 through 9 are excluded from UETA and *intangibles* are recognized in Chapter 9. So, what is it they have? These actors hold evidence that something foreign is being utilized to preempt all other laws, an electronic record governed by UETA/ESIGN.

Section §322.002(4) clarifies the electronic contract which is created in electronic form, "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law. This legal affect works well with emails, insurance, and many other contracts which may be made according to UETA, but the creation of an electronic promissory note by the way of conversion of paper is not applicable in UETA and the courts have so stated that such an act is an act of conversion.

Section §322.02(6) clarifies the confusion for those investigating the mortgage registration system, (6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual. According to the MERS website, The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate.⁵ The servicing rights are servicing rights of the electronic record and who the beneficial owner of that electronic record is. Of course, "Servicer" is assumed by many to be something it is not. It has nothing to do with the tangible paperwork because this was admittedly destroyed. And according to UETA, the homeowner would have to be a party to the electronic contract for such contract to be legally enforceable. This is noticeable in 322.002(8), (8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. To compound that UETA clearly states in 322.016(2) the issuer of the electronic record expressly has agreed is a transferable record. The issuer of an electronic record is not identical to a maker of a paper promissory note. Nonetheless, Chapter 3, Negotiable Instruments, Texas Business and Commerce Code does not apply because it is excluded from UETA.

Section §322.019 provides for the jurisdiction of the court;

5 [What is the MERS system?](#)

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Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC SIGNATURES ACT. This chapter modifies, limits, or supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

Section 322.020 provides for the penalties to those whom use electronic records without legal authority,

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize **any activity that is prohibited by the Penal Code.**

This writer will not provide all such applicable sections in the Texas Penal Code, but there are numerous violations within it, and there are violations in the Texas Finance Code, Property Code, Probate Code, Securities Code, Tax Code, and many others. This writer is only attempting to help the reader understand the jurisdiction of the intangible electronic records being used by the mortgage banking industry versus the jurisdiction these actors do not have.

When these actors initiate suit in a Texas court claiming they are a party to them, this is misrepresentation, and a convoluted scheme of word crafting in an attempt to cover up their crimes and gain favor from a court to take possession of something they can not prove to be theirs.

If there is still misunderstanding about the applicability for these laws, it may be helpful for the reader to read the “constructions acts” in the Texas Government Code because entities become blurred without this understanding. Also, I am available to provide a one-on-one, or group explanation of what seems to be overlooked in the mortgage foreclosure debacle. The laws are clear, and concise and all it takes is understanding of the important law being used to preempt all other laws. This alone is a breach of covenant 16, or similar which the mortgage bankers association agreed to follow all applicable law. And due to this, there is a loss of an equitable argument by the one claiming an alleged debt.