



19 **JUDICIAL NOTICE**

20 Pursuant to Texas Rules of Evidence, 201, plaintiff requests the court take judicial notice of  
21 Texas Local Government Code Chapter 192, section 007, subsection (a), § 192.007(a). Pursuant to  
22 Texas Rules of Evidence, 201, plaintiff requests the court take judicial notice of recorded deed of trusts  
23 in the State of Texas. Pursuant to Texas Rules of Evidence, 201, plaintiff requests the court take  
24 judicial notice of Article 3, section 30, Texas Constitution. Pursuant to Texas Rules of Evidence, 201,  
25 plaintiff requests the court take judicial notice of sections § 9.109(d)(2) & § 9.109(d)(11), Texas  
26 Business and Commerce Code. Pursuant to Texas Rules of Evidence, 201, plaintiff requests the court  
27 take judicial notice of sections § 3.203(d), Chapter 3, Texas Business and Commerce Code. Pursuant to  
28 Texas Rules of Evidence, 201, plaintiff requests the court take judicial notice of section § 751.151  
29 Chapter 751, Texas Estates Code.

30 Chapter 192, Texas Local Government Code

31 Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To  
32 release, transfer, assign, or take another action relating to an instrument that is  
33 filed, registered, or recorded in the office of the county clerk, a person must file,  
34 register, or record another instrument relating to the action in the same manner as  
35 the original instrument was required to be filed, registered, or recorded.

36 (b) An entry, including a marginal entry, may not be made on a previously made  
37 record or index to indicate the new action

38 Article 3, Texas Constitution

39 Sec. 30. LAWS PASSED BY BILL; AMENDMENTS CHANGING PURPOSE.  
40 No law shall be passed, except by bill, and no bill shall be so amended in its  
41 passage through either House, as to change its original purpose.

42 Recorded Deed of Trust

43 The court may choose from any county in Texas. Travis County would suit this  
44 instant case because this is the county where House Bill 1493 was enacted.

45 Sec. 9.109. SCOPE.

- 46 (a) Except as otherwise provided in Subsections (c), (d), and (e), this chapter applies to:
  - 47 (d) This chapter does not apply to:
    - 48 (2) a lien
    - 49 (11) the creation or transfer of an interest in or lien on real property, including a
    - 50 lease or rents
    - 51

52 Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An  
53 instrument is transferred when it is delivered by a person other than its issuer for the purpose of  
54 giving to the person receiving delivery the right to enforce the instrument.

55 (d) If a transferor purports to transfer less than the entire instrument, negotiation of the  
56 instrument does not occur. The transferee obtains no rights under this chapter and has  
57 only the rights of a partial assignee.

58 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS REQUIRING  
59 EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power of attorney for a real  
60 property transaction requiring the execution and delivery of an instrument that is to be recorded,  
61 including a release, assignment, satisfaction, mortgage, security agreement, deed of trust,  
62 encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease,  
63 lien, or other claim or right to real property, must be recorded in the office of the county clerk of  
64 the county in which the property is located not later than the 30th day after the date the  
65 instrument is filed for recording.

## 66 INTRODUCTION

67 The purpose of this memorandum is to assist in recognizing the internal governing law parts  
68 within the Texas Property Code causing apparent unrecognized and severe constitutional violations;  
69 and to advocate to the courts to recognize the multitude of Texas law, and U.S. law affected by one  
70 certain section of law which on its face, invites fraudulent activity, fraudulent filings, and deprivation to  
71 persons, unequal simply because section § 51.0001(4)(C) invites such activity. Such certain section  
72 inherently bypasses the law of negotiation to allow an alleged claimant to assert it is a holder of a  
73 security instrument when the claimant probably could not prove up a bona fide chain of title to both  
74 note and lien except § 51.0001(4)(C) seemingly provides a get out of jail free pass.

75 It would not be prudent for one to overlook such violations of Texas law, and by not  
76 overlooking the violation it can be deduced to recognize many U.S. laws like U.S. Tax, U.S.  
77 Bankruptcy, and U.S. Securities laws are affects also, but not limited the few named, including the  
78 federal constitution.

79 To recognize why section § 51.0001(4)(C) is unconstitutional, the courts would be required to  
80 recognize section § 51.0001(4)(B) as such definition of “mortgagee” in § 51.0001(4) can be referenced  
81 as another definition in § 51.0001(1) as § 51.0001(4)(B). This particular definition in § 51.0001(1)  
82 alone raises a question of ambiguity, as “*national book entry system*” was never defined, clarified, nor  
83 mentioned within the Texas Legislatures public website regarding the history of (78R) H.B. 1493.

84 According to the Federal Reserve definition of “*national book entry system*” this meaning could  
85 not equate to a book entry system defined in § 51.0001(1), because the “national book entry system”  
86 conducts commercial business in the securities market, personal property, not real property. Section §  
87 51.0001(4)(B) is not the focus of this challenge. In part, the confusion also seems to side with the  
88 definition in § 51.0001(6) because a lien is not an “instrument”<sup>1</sup>, yet it is redefined as an “instrument”  
89 in § 51.0001(6). Section § 51.0001(6) is not the focus of this challenge. Plaintiff stresses to the court  
90 that such overbroad meaning in section § 51.0001(4)(C) would allow for personal property, such as  
91 documents of title, warehouse receipts, electronic notes, to replace real property, which is private  
92 property of the people of Texas.

93 According to the Federal Reserve Bank of New York website<sup>2</sup>, the site provides clues to  
94 understanding what § 51.0001(1) accomplishes similarly. The following are excerpts from that web  
95 page [emphasis added];

96 *A book-entry program has largely replaced paper U.S. Government and agency securities with*  
97 *computer entries at Reserve Banks.*

98 *Book entry offers both security and efficiency advantages over paper certificates.*

99 *The Treasury offers new bills, notes and bonds only in book-entry form.*

100 *Securities in book-entry form are less vulnerable to theft and loss, can't be counterfeited*  
101 *and don't require counting or recording by certificate number. In addition, owners do not*  
102 *submit coupons to obtain interest payments or present certificates to redeem securities*

103 *In addition to the U.S. Treasury, several government sponsored agencies have issued*  
104 *book-entry regulations and many of their securities have been available in book-entry form*  
105 *since the 1970s. Beginning in late 1983, short-term agency discount notes also became eligible*  
106 *for book entry.*

107 *Finally, mortgage-backed securities issued by the Federal Home Loan Mortgage*  
108 *Corporation and the Federal National Mortgage Corporation were issued in book-entry form*  
109 *beginning in 1985.*

110 *As part of the program to expand the use of book entry, the Treasury began offering new*  
111 *bills exclusively in book-entry form in 1979. In August 1986, with the introduction of a program*  
112 *named Treasury Direct, the Treasury began marketing all new notes and bonds only in book-*  
113 *entry form.*

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1 <sup>1</sup> *Max Duncan Family Investments, Ltd. v. NTFN INC.*, 267 SW 3d 447 - Tex: Court of Appeals

2 <sup>2</sup> <https://www.newyorkfed.org/aboutthefed/fedpoint/fed05.html>

114 **CONCEIVABLE VS PLAUSIBLE**

115 Is it conceivable and plausible that the Deed of Truct being a contract was breached as all  
116 applicable laws were not followed as per a covenant of the contract. Only in the mind of the sponsor is  
117 there conceivable intent of (78R) H.B. 1493. As it appears the sponsor conceived or imagined, the  
118 mortgage servicer was possible; and could be credible; thinkable in a sense of real estate transactions  
119 and satisfactory to a lender.

120 As for plausible, the intentions of (78R)H.B. 1493 appeared acceptable, seemingly valid, and  
121 likely to be acceptable. However the plausibility of section § 51.0001(4)(C) has shown Texas courts to  
122 be divided in opinion, and local governments reduction in revenue can be observed. If this were  
123 viewed upon the criminal aspect, fraud and deception would be a factor.

124 In 2004, “book entry system”<sup>3</sup> was added to chapter 51, Texas Property Code. This book entry  
125 system is well known in Texas Courts, and counties. It is fact that this book entry system uses “new  
126 notes”, called eNotes<sup>4</sup>. And as the *national book entry system* notes need not be recorded, such eNotes  
127 according to § 51.0001(4)(C) are not required to be recorded.

128 **Tax code**

129 To make a determination of what is what, the tax code assessment procedures provides two  
130 basic types of property, personal, and real property. The two basic types of property are assessed  
131 differently because the tax rate would vary between personal property and real property. The tax code  
132 does not describe personal property as real property.

133 The tax code does divide the *things* that you can touch and feel, from the things you cannot  
134 touch or feel. “*Personal property is divided into "tangible" and "intangible" forms. Tangible personal  
135 property is just that: it has a physical form. It can be seen, touched, and moved. Examples of tangible  
136 personal property include clothing, books, and computers. On the other hand, the notion of intangible  
137 personal property is an abstraction. They do not usually have physical forms (other than certificates or  
138 accompanying records). These include assets such as patents, trademarks, stocks, and bonds*”.<sup>5</sup>

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3 Section § 51.0001(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

4 Good v. WELLS FARGO BANK, NA, 18 NE 3d 618 - Ind: Court of Appeals 2014

5 <http://realestate.findlaw.com/owning-a-home/types-of-property-for-tax-purposes.html>

139 It would be important to not overlook the personal property simply because a borrower  
140 physically signs a promissory note, which then becomes an *intangible* asset for the holder in due  
141 course. Should the holder in due course assign the note to a bona fide receiver of the lawfully  
142 transferred note, there would be no requirement to record the interest in the lawfully assigned note. But  
143 this is only in regards to a note. If the borrower physically signs the note, and a lien as security, the  
144 holder in due course of the note is a secured lien creditor. To prove such, the lien creditor would file  
145 record with the county clerk to provide constructive notice.

146 Texas is well aware of the issues before their courts in regards to taking of real property by  
147 parties defined by chapter 51. Section § 192.007 would require the bona fide lien creditor to re-file to  
148 perfect its security. This would be deed of trust. It is the only way to create an interest in a lien as the  
149 lien secures a note.

### 150 DOCTRINE OF STARE DECISIS

151 Located in the American Law Register, December 1886, an article was titled THE PRINCIPLE  
152 OF STARE DECISIS<sup>6</sup>. Within the article the following can be found on or about page 745;

153 *"A solemn decision upon a point of law, arising in any given case, becomes an authority*  
154 *in a like case, because it is the highest evidence which we can have of the law applicable*  
155 *to the subject, and the judges are bound to follow that decision so long as it stands*  
156 *unreversed, unless it can be shown that the law was misunderstood or misapplied in that*  
157 *particular case. If a decision has been made upon solemn argument and mature*  
158 *deliberation, the presumption is in favor of its correctness; and the community have a*  
159 *right to regard it as a just declaration or exposition of the law, and to regulate their*  
160 *actions and contracts by it. It would, therefore, be extremely inconvenient to the public, if*  
161 *precedents were not duly regarded and implicitly followed."*

162 It was also stated in that article; "What the doctrine of precedent declares is that cases  
163 must be decided the same way when their material facts are the same. Obviously it does not  
164 require that all the facts should be the same. We know that in the flux of life all the facts of a  
165 case will never recur, but the legally material facts may recur and it is with these that the doctrine  
166 is concerned."

167 Centuries ago, Texas, as a lien theory state, continued such theory, as today, except stare  
168 decisis changed after 2004, or possibly prior to 2004, due to House Bill 1493. Long held Texas

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6 [http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4147&context=penn\\_law\\_review](http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4147&context=penn_law_review)

169 Supreme Court cases such as *West v. First Baptist Church of Taft*, 71 SW 2d 1090; *Pope v.*  
170 *Beauchamp* 219 SW 447 – 1920; *Kirby Lumber Corporation v. Williams*, 230 F. 2d 330 - Court  
171 of Appeals, 5th Circuit 1956; *Moran v. Wheeler*, 87 Tex. 179 – 1894, has lost their position to a  
172 simple material fact that changed Texas case law for the benefit of impostor actors. This change  
173 in stare decisis has come with consequences unprecedented. Old previous real property case law  
174 became overshadowed by an un-described and un-known party with the full force of law enacted  
175 by chapter 51 of the Texas Property code. Section § 51.0001 in essence, forced stare decisis to  
176 change according to a misguided House Bill 1493.

177         What happens when there is no stare decisis? Take for instance a certain litigation in  
178 2013 where a court made the statement in its opinion claiming; “*Admittedly, the Texas Local*  
179 *Government Code declares that the assignment of a recorded instrument must itself be recorded.*  
180 *See TEX. LOCAL GOVT CODE § 192.007(a). However, this obscure provision has never been*  
181 *cited in a state court decision and is best read as a procedural directive to county clerks, not as*  
182 *a prerequisite to the validity of assignments.*”. Plaintiff provides this statement because of the  
183 words “*is best read as a procedural directive*” as this statement appears to be incorrect according  
184 to law. Article 3, Section 29, states “*The enacting clause of all laws shall be: "Be it enacted by*  
185 *the Legislature of the State of Texas."*”. In 1987 Senate Bill 896, in the 70th Regular Session was  
186 enacted on 9/1/1987 “*Relating to the adoption of nonsubstantive revision of the statutes relating*  
187 *to local government, including conforming amendments, repeals, and penalties.*” as an act.  
188 According to the Texas House of Representatives “About Us” web page which provides “Capitol  
189 Information”. Under such heading the website reader will find “How A Bill Becomes a Law”  
190 which explains the bill process all the way to “*Upon receiving a bill, the governor has 10 days in*  
191 *which to sign the bill, veto it, or allow it to become law without a signature.*”. According to the  
192 Texas Legislature website regarding SB 896, the Governor signed off on 5/21/87<sup>7</sup>. In  
193 understanding SB 896 which contained section § 192.007 would become law on 9/1/87 and does  
194 not constitute a procedural directive to the county clerk but rather constitutes a law containing a  
195 statute to be enforced.

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7 <http://www.lrl.state.tx.us/legis/billsearch/actions.cfm?legSession=70-0&billtypeDetail=SB&billNumberDetail=896&billSuffixDetail=&startRow=1&IDlist=&unClicklist=&number=100>

196 Furthermore, not only has this portion of chapter § 51 allowed for unknown variables in  
197 the Texas Property Code, courts continue to misapply law. Take for instance, in 2014 an article  
198 titled THE RECORDING STATUTE IN TEXAS (AND THE INNOCENT PURCHASER  
199 DOCTRINE)<sup>8</sup>, contains within the introduction and in section “A” A. Registration Generally  
200 Permissive, the author states "*However, recordation is the prudent course*", and provides  
201 footnote #2 as supporting case law from *Richard v. CIT GROUP*, Dist. Court, SD Texas 2012<sup>9</sup>  
202 stating “*While it is customary and prudent to record land-title documents — deeds, liens,*  
203 *mineral leases — promissory notes are not.*” In reviewing *Richard v. CIT GROUP*, such  
204 statement is evident. However, to show how the definition in § 51.0001(1) seemingly became  
205 empowered with more than just being an alleged *mortgagee, beneficiary, or nominee*, the federal  
206 court seemingly designated § 51.0001(1) as “Trustee”. The court stated in that opinion; “*The*  
207 *Mortgage Registration System is a private tool of the house financing business. It holds as a*  
208 *trustee title to mortgages.*” So, what is § 51.0001(1) a trustee for, Intangible Stock Certificates?  
209 According to any deed of trust lien in Texas where the person defined as § 51.0001(1) is  
210 recognized, the trustee named within the deed of trust is not the person defined as § 51.0001(1).  
211 The federal court clearly states the use of the person defined as § 51.0001(1), “*a private tool*”.  
212 *Id.* At some point the State of Texas has to realize a mistake has happened whether it was  
213 knowingly, or unknowingly, the mistake happened.

## 214 **Bankruptcy**

215 Furthermore, the court should take into consideration U.S. Bankruptcy law in this  
216 seemingly new stare decisis practice as it seemingly up heaves the issues of jurisdictional  
217 standing, law of negotiability, and agency relationship to name a few. Take for instance, in 2008,  
218 United Bankruptcy Court, District of Nevada<sup>10</sup> [herein “BK”] addressed such person known in  
219 Texas as § 51.0001(1), and those associated with such person, and the affects of jurisdiction,  
220 standing, law of negotiability, along with agency relationship, all of which and according to the  
221 federal opinion, the person failed to prove standing. Thus the person appealed the BK decision to  
222 U.S. District Court in Nevada<sup>11</sup>, The district court upheld the BK decision.

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8 [24TH ANNUAL ROBERT C. SNEED TEXAS LAND TITLE INSTITUTE](#) December 4-5, 2014  
San Antonio

9 It matters not what the litigants allege it matters what the court states

10 [In re JOSHUA & STEPHANIE MITCHELL](#) Case No. BK-S-07-16226-LBR

11 [In re Mitchell](#), 423 BR 914 - Dist. Court, D. Nevada 2009



223 Indeed section §51.0001 has seemingly caused confusion in courts across Texas. Section  
224 §51.0001 has seemingly changed the process of stare decisis from determining paper rights  
225 according to law to allowing abstract rights according to section §51.0001(4)(C) to prevail  
226 whether such abstract rights legal, or not legal.

## 227 COMMERCIAL CUSTOMS vs ENACTED LAW

228 In a federal court opinion, it was stated “*Commercial custom does not apply where the*  
229 *U.C.C. provides otherwise. See U.C.C. Sec. 1 103; also U.C.C. Sec. 3 104, Official Comment 2 (“[A]*  
230 *writing cannot be made a negotiable instrument within this Article by contract or by conduct”*. - *US v.*  
231 *Hibernia Nat. Bank*, 841 F. 2d 592 - Court of Appeals, 5th Circuit 1988. Would this federal court  
232 statement apply to Section § 51.0001(4)(C)? Does the U.C.C. not provide otherwise for personal  
233 property mortgages held by creditors and account debtors, not lien creditors and debtors?

234 Did the sponsor of (78R) H.B. 1493 take into account the simple fact of what the federal court  
235 stated in *US v. Hibernia Nat. Bank*? The U.C.C. provides the avenue for “*intangibles*”, as such personal  
236 property is usually held by “U.C.C. creditors” conducting commercial transactions with an account  
237 debtor<sup>12</sup>, which is not the same transaction as “Lien creditors” real property transactions with a  
238 borrower as both are different in law.

239 In a 2013 federal court opinion, the infamous words “*Where a debt is "secured by a note, which*  
240 *is, in turn, secured by a lien, the lien and the note constitute separate obligations.*”<sup>13</sup> Prior to that  
241 statement, the court gave the path to the “*two obligations*”;

242 “*The Texas courts have repeatedly discussed the dual nature of a note and deed of trust. "It*  
243 *is so well settled as not to be controverted that the right to recover a personal judgment for*  
244 *a debt secured by a lien on land and the right to have a foreclosure of lien are severable,*  
245 *and a plaintiff may elect to seek a personal judgment without foreclosing the lien, and even*  
246 *without a waiver of the lien.”*

247 According to public records on the Texas Legislatures website regarding (78R) H.B. 1493, and  
248 in reviewing the “Analysis”<sup>14</sup> for House Committee Report the analysis states: “*Chapter 51, Property*

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12 Section § 9.102(3) - "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

13 *Martins v. BAC Home Loans Servicing, LP*, 722 F. 3d 249 - Court of Appeals, 5th Circuit 2013

14 <http://www.legis.state.tx.us/tlodocs/78R/analysis/pdf/HB01493H.pdf#navpanes=0>

249 *Code governs the foreclosure process. Over the years, practices have been developed to manage the*  
250 *foreclosure process, many of which, though not inconsistent with Chapter 51, are not expressly*  
251 *authorized by it. For example, it is common practice for lenders to rely upon mortgage servicers to*  
252 *accept loan payments on behalf of the lender; but current law does not address the role of mortgage*  
253 *servicers in the foreclosure process. Current practice is for the mortgage servicer to administer this*  
254 *process on behalf of the lender. A recent appeals court ruling has cast doubt as to whether a mortgage*  
255 *servicer may administer the foreclosure process because the law does not specifically authorize it.*  
256 *Further uncertainty exists in the foreclosure process because key terms, such as “debtor’s last known*  
257 *address,” are not defined in law and other common practices, such as appointing substitute trustees,*  
258 *are not included in law.”.*

259 H.B. 1493 analysis would have been stated by the legislators according to the HB01493.PDF on  
260 the Texas Legislature website.

261 As far back as 1995, in a federal court opinion<sup>15</sup> recognized a lienholder such as Federal  
262 National Mortgage Association through its loan servicer would notify a “borrower” in regards to  
263 discrepancies with a loan obligation. The Real Estate Settlement Procedures Act of 1974 (RESPA) (12  
264 U.S.C. 2601 et seq.) (the act) became effective on June 20, 1975, in which the term “mortgage  
265 servicer” was recognized in 12 U.S. Code § 2605 - Servicing of mortgage loans and administration of  
266 escrow accounts. The question at hand should be whether the intent for “mortgage servicer” to be  
267 added into House Bill 1493 was to vaguely provide an open opportunity for an unsuspecting personal  
268 property mortgage servicer, rather than a loan servicer for a lienholder?

269 Was clarity provided to the extent that the “mortgage servicer” meant an entity in the position of  
270 servicing lien loans, or was the door left open for such entities as “master servicer” which could  
271 possibly be the servicer of a master trust which holds multiple loan secured by real property liens in  
272 various pools, or could the mortgage servicer possibly be an entity such as a “sub servicer” which  
273 services private intangible assets, or could the mortgage servicer possibly be an entity such as a “sub  
274 servicer” which services electronic chattel, or could the “sub servicer” mortgage servicer possibly be  
275 an entity which services warehouse receipts, or could the “sub servicer” mortgage servicer possibly be  
276 an entity which services documents of title? All of which may possible lead back to “master servicer”.  
277 If this were the case, did the Texas Legislature take into account the durable power of attorney act?

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15 *Dupuis v. Federal Home Loan Mortg. Corp.*, 879 F. Supp. 139 - Dist. Court, D. Maine 1995

278 Section § 51.0001(4)(C) deprives Texas Estates Code statutory law?

279 Due to section § 51.0001(4)(C) allowing “*if the security interest has been assigned of record,*  
280 *the last person to whom the security interest has been assigned of record*” as such, the section allows  
281 parties to violate the certain section “D” in Texas Estates Code, chapter 751. As section § 751.151  
282 states;

283 SUBCHAPTER D. RECORDING DURABLE POWER OF ATTORNEY FOR  
284 CERTAIN REAL PROPERTY TRANSACTIONS

285 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS  
286 REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable  
287 power of attorney for a real property transaction requiring the execution and  
288 delivery of an instrument that is to be recorded, including a release, assignment,  
289 satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of  
290 conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other  
291 claim or right to real property, must be recorded in the office of the county clerk of  
292 the county in which the property is located not later than the 30th day after the date  
293 the instrument is filed for recording.

294 The wording in § 751.151 clearly reflects the echos the statutory law of section §  
295 192.007(a), Texas Local Government Code. Is it lawful to violate two statutes in order to legally  
296 conduct commercial transactions under one section of chapter 51, Texas Property Code?

297 Could the confusion of Texas courts be resolved easily? Yes. Remove the unconstitutional  
298 portions of section § 51.0001 which cause the constitutional violations.

299 Plaintiff requests the court should consider the lien which makes section § 51.0001 plausible for  
300 illegally committing criminal acts while given the full force of law. Section § 51.0001 seemingly  
301 allows the contractual obligation to be impaired, as this section overshadows covenants within the lien  
302 contract, and section § 51.0001 seemingly provides that referenced supported law in the contract is not  
303 necessary. Take for instance, a definition can be found within the lien contract; “*Applicable Law*”  
304 *means all controlling applicable federal, state and local statutes, regulations, ordinances and*  
305 *administrative rules and orders (that have the effect of law) as well as all applicable final, non-*  
306 *appealable judicial opinions.* And certain wording can also be found in a covenant within the lien  
307 contract; “**16. Governing Law; Severability; Rules of Construction.** *This Security Instrument shall be*  
308 *governed by federal law and the law of the jurisdiction in which the Property is located.*”. Such

309 covenant may vary by number, yet this covenant is in many deed of trust, FHA, Fannie Mae, Freddie  
310 Mac, etc.

311 Is it possible “lender” and mortgagee” were one-in-the-same, or was this assumption left that  
312 way for a reason? The fact is the issue with section § 51.0001 continues to provide uncertainty with  
313 undefined entities still existing, such as “*national book entry system*” was never defined. According to  
314 such section, a “book entry system” means a “national book entry system”. What is a “national book  
315 entry system”? Why was the clarity of a vital part of such definition omitted? It was not clarified.

316 According to section § 9.102(28), there is a conflict also with the key term “debtor” which is  
317 undefined in the chapter 51, Texas property code. It is assumed that debtor is a borrower, or the term  
318 may have derived from 11 USC 101(13)<sup>16</sup> which would make sense since a borrower could possibly file  
319 bankruptcy. However, because of the problems with § 51.0001(4)(C) , the definition of “debtor” is  
320 defined within chapter 9, in section § 9.102(28)<sup>17</sup> Nonetheless, that definition is not proper in real  
321 property because the U.C.C. deals with personal property. The U.C.C. does not apply to liens. See §  
322 9.109(d)(2); See See § 9.109(d)(11)

323 Did one enacted law in Texas invite unsuspecting fraud? Did one law in Texas allow crimes to  
324 be committed lawfully? As assumed, the intent of the Texas Legislature was to allow a foreclosure to  
325 be conducted by a “mortgage servicer” on behalf of a lender, as noticed in the House Committee  
326 Report. Usually, this may not seem out of the ordinary, but when the House Bill was enacted, an  
327 unrecognized personal property actor originated in 2004 as a mortgagee” to replace the lender in real  
328 property transactions, as a conceivable means as the “intent”, “as applied”, points to personal property  
329 rather than real property, and was this “personal property” activity disclosed to the lawmakers?

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16 U.S. Bankruptcy code

17 "Debtor" means: (A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor; (B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or (C) a consignee.

330

## LAW SIMILARITY

331 To use another state holding values of lien perfection, the State of Oregon can be used with  
332 Texas to see the similarities between each law, and how it was enforced by the Oregon Supreme Court.  
333 Although Oregon contains is act for deed of trusts in one act called Oregon Trust Deed Act, OTDA,  
334 Texas trust deed is divided into to two different codes, Texas Property Code, and Texas Local  
335 Government Code. Nonetheless, the similarities can be provided.

336 In *Niday v. GMAC Mortgage, LLC*,<sup>18</sup> a case before the Oregon Supreme Court in 2013, the  
337 courts cited the following portion of the OTDA; *Id* at page 4

338 “the trust deed, any assignments of the trust deed by the trustee or the beneficiary  
339 and any appointment of a successor trustee [be] recorded in the mortgage  
340 records in the counties in which the property described in the deed is situated[.]”

341 There is a similarity to the OTDA with Sec. § 192.007.

342 Sec. 192.007. “To release, transfer, assign, or take another action relating to an  
343 instrument that is filed, registered, or recorded in the office of the county clerk, a  
344 person must file, register, or record another instrument relating to the action in the  
345 same manner as the original instrument was required to be filed, registered, or  
346 recorded”

347 The Oregon Supreme court tackled the “beneficiary” in the trust deed in that case;

348 *Defendants contend that the phrase “named or otherwise designated” shows that the*  
349 *legislature intended that the parties to a trust deed have the ability to contractually identify the*  
350 *“beneficiary” without regard to whom the trust deed actually benefits. Defendants posit that the*  
351 *definition must be read consistently with “long established Oregon statutory and common law*  
352 *principles authorizing agents \* \* \* to act as beneficiary and hold legal and record title to*  
353 *interests in real estate.” In other words, defendants argue, the “named or otherwise*  
354 *designated” wording shows that the legislature intended to permit the lender (who usually is*  
355 *“the person for whose benefit the trust deed is given”) to designate its agent or nominee as the*  
356 *trust deed’s beneficiary.*

357

358 *In the trust deed at issue here, MERS is “named” as the beneficiary (“The beneficiary of the*  
359 *Security Instrument is MERS (solely as nominee for Lender and Lender’s successors and*  
360 *assigns and the successors and assigns of MERS)[.]”). But MERS is not “the person for*  
361 *whose benefit the trust deed is given.” Rather, the terms of the trust deed “designate” the*  
362 *“Lender” (Greenpoint) as that person (“This Security Instrument secures to Lender: (i) the*  
363 *repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the*  
364 *performance of Borrower’s covenants and agreements under this security Instrument and*  
365 *the Note.”). Thus, for purposes of the requirement for nonjudicial foreclosure that “any*

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18 <http://www.publications.ojd.state.or.us/docs/S060655.pdf>

366 *assignments of the trust deed by the \* \* \* beneficiary” be recorded, the “beneficiary” of*  
367 *the trust deed is Greenpoint or its successors, and not MERS.*

368 The Oregon Supreme Court opinion is well worth the reading for many.

369 Nonetheless, section § 51.0001(4)(A), Texas Property Code clearly defines the lien creditor, as  
370 this can be observed in public records of a county clerk in Texas because the deed of trust was filed of  
371 record to provide constructive notice of a secured lien creditor. The secured lien creditor was the  
372 grantee, the beneficiary, the owner, the holder of a deed of trust lien. When the secured lien creditor  
373 filed the deed of trust with the county clerk, the secured lien creditor invoked section § 192.007.

### 374 THEORY- LIEN VS. TITLE

375 In 2015, the Supreme court of Virginia<sup>19</sup> explained the “deed of trust”;

376 *“First, “the essence of a mortgage or deed of trust is that it creates a lien on property*  
377 *to secure a debt.” [Interstate R.R. Co. v. Roberts, 127 Va. 688, 692, 105 S.E. 463, 464](#)*  
378 *[\(1920\)](#); see [High Knob Assocs. v. Douglas, 249 Va. 478, 484 n. 4, 457 S.E.2d 349, 352](#)*  
379 *[n. 4 \(1995\)](#) (“A deed of trust merely creates a lien on property to secure a debt.”).*  
380 *Although the Code does not define “lien creditor” for purposes of Code § 55-96(A), the*  
381 *term is not ambiguous. See Black’s Law Dictionary, supra, at 450 (defining “lien*  
382 *creditor” as “[a] creditor whose claim is secured by a lien on the debtor’s property;*  
383 *specif., someone who is (1) a creditor that has acquired a lien by attachment, levy, or*  
384 *the like. . . .”). To rule that Arrington is not a lien creditor would require us to ignore*  
385 *the fundamental nature of a deed of trust and the plain meaning of “lien creditor.”*

386 *“As explained above, her deed of trust is a lien on the Property” See [Interstate R.R. Co., 127](#)*  
387 *Va. at 692, 105 S.E. at 464.”*

388 It is possible Texas has not recognized that long held Texas *lien theory* was converted to *title*  
389 *theory* in 2004? Better yet, has anyone realized these two “theories” were inter-mixed for unjust gains,  
390 or enrichment? Even though state courts speak of lien theory; *“Texas has always followed this lien*  
391 *theory of mortgages”* - See *Green v. McKay, 376 SW 3d 891 - Tex: Court of Appeals, 5th Dist.* Federal  
392 courts speak of lien theory; *“It is important to note, however, that Texas is a lien theory state, rather*

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19 *DEUTSCHE BANK NAT. TRUST CO. v. Arrington, 772 SE 2d 571 - Va: Supreme Court 2015*

393 *than a title theory state.*" - See *DTND Sierra Investments v. Bank Of NY Mellon Trust*, 958 F. Supp. 2d  
394 738 - Dist. Court (2013)

395 The fast track world of securitization, and investments seemingly outran the requirements of the  
396 U.C.C. and the requirements of § 192.007(a). Plaintiff contends why the word "mortgage" would blow  
397 whirlwinds of confusion within the mind? A deed of trust is a lien. It is not an instrument according to  
398 Texas courts.

399 **Lien Theory states**

400 *Mortgages are between purported borrower and a purported lender, but a deed of trust adds a*  
401 *third party to the process. Besides the secured party [alleged originating lender] and the*  
402 *[physical] borrower, a deed of trust also involves a trustee [3<sup>rd</sup> party]. The trustee holds legal*  
403 *title to the pledged property until the debt is paid in full.*

404 **Legal vs Equitable**

405 **Legal Title**

406 *Legal title is a perfected ownership interest that's enforceable by law. In other words,*  
407 *property owners with legal title to a given parcel can take legal action against parties*  
408 *that attempt to infringe upon their ownership rights.*

409 **Equitable Title**

410 *Equitable title effectively confers a financial or "equitable" interest in a specific*  
411 *property. In other words, equitable titleholders derive indirect benefit from the*  
412 *property's appreciation in value.*

413 *"When a mortgagor executes a deed of trust the legal and equitable estates in the*  
414 *property are severed. The mortgagor retains the legal title and the mortgagee holds the*  
415 *equitable title." See *DTND Sierra Investments v. Bank Of NY Mellon TRUST*, 958 F. Supp. 2d*  
416 *738 - Dist. Court (2013)*

417 Federal courts have stated; *"Under this theory, the mortgagee is not the owner of the*  
418 *property and is not entitled to its possession, rents, or profits. Therefore, mortgagees often*  
419 *assign to themselves the mortgagor's interest in all rents falling due after the date of the*  
420 *mortgage. In construing assignment of rents clauses, Texas follows the common law rule that an*  
421 *assignment of rents does not become operative until the mortgagee obtains possession of the*  
422 *property, impounds the rents, secures the appointment of a receiver, or takes some other similar*

423 *action.*” See *Oryx Energy Co. v. Union Nat. Bank of Texas*, 895 SW 2d 409 - Tex: Court of  
424 Appeals, 4th Dist.(1995)

425 **Mortgage Theory states**

426 *As a general rule, states using mortgages require lenders to file a court action to obtain a*  
427 *judgment allowing them to force a sale of the property to satisfy the debt. Twenty-two states*  
428 *require judicial proceedings to foreclose on the pledged property.*

429 “The mortgage is the *security instrument in title theory*”. Sound familiar? § 51.0001(6)? If this  
430 were the case that Texas was converted to title theory, there would be a very big problem with all non-  
431 judicial foreclosure actions since January 1, 2004. And possibly a larger problem with home equity  
432 loans protected by the Texas Constitution.

433 **PRIVATE vs PUBLIC INTERESTS**

434 Currently in Texas, section § 51.0001(4)(C) allows for unknown “private” parties to conduct  
435 alleged foreclosure as non-judicial in the various counties, then conduct alleged judicial foreclosure  
436 under Article 16, section 50, Texas Constitution in the same various counties. Currently in Texas,  
437 section § 51.0001(4)(C) allows unknown “private” parties to conduct alleged litigation before a non-  
438 attorney required position in the lowest court of the state for real property valued over \$10,000. This is  
439 why justice court is the avenue for unknown parties alleging “possession”, You are not required to be  
440 an attorney to be a JP. This appears to be a very dangerous court for legitimate homeowners.

441 Since (78R) H.B. 1493 was enacted in 2004, lien theory is in a state of suspension as section §  
442 51.0001(1) seemingly replaced the 3<sup>rd</sup> party holding legal title, a “trustee”, and allowed a private person  
443 to become the new 3<sup>rd</sup> party within the property code, thus allowing personal property to become  
444 superior private rights over the public protections of real property rights in Texas.

445 Somehow the section § 51.0001(1) scenario for registered “*beneficial interest*” is misconceived,  
446 or possibly misrepresented? Based upon the facts of what a beneficial interest is; “*A beneficial interest*  
447 *is "that right which a person has in a contract made with another" (third) person.*<sup>20</sup> *The typical*  
448 *example is "if A makes a contract with B that A will pay C a certain sum of money, B has the legal*  
449 *interest in the contract, and C the beneficial interest.*”<sup>21</sup>

20 The 'Lectric Law Library's Lexicon

21 The 'Lectric Law Library's Lexicon



450 The aforementioned meaning of “beneficial interest” does not mesh with a deed of trust lien for  
451 purpose of section § 51.0001(1) other than to allude to private members conducting personal property  
452 transactions where member “A” made a contract with member “B”, that member “A” would pay  
453 member “C” a certain sum of money, meaning member “B” would have a *legal interest* in the contract,  
454 and member “C” has the *beneficial interest* in the contract. Due to section § 51.0001(4)(C) either  
455 member “B”, or member “C” can lawfully advance upon real property using the contract agreed upon  
456 by member “A” and member “B” with member “C” claiming a beneficial interest.

457 For what ever the reasoning was, Texas legislatures have attempted to regulate this new way of  
458 doing business, and have continued to violate constitutions of Texas and Federal, and have basically  
459 rewritten law to violate commercial law across the globe.

460 As this memorandum analyzes the obscure development of Constitutional violations caused by  
461 this new set of rules apparently obscure from the courts of Texas. The crime began when the house bill  
462 was enacted in 2004, and the crime has continued as a supported enactment all the way through the  
463 current Texas Legislature in 2016. That time frame from Jan, 2004 through November, 2016 provides  
464 an estimated amount of time for fraudulent acts to take place in Texas, whether those acts are  
465 conducted by filing fraudulent instruments, or filing fraudulent documents within a court of law to gain  
466 an unfair advantage in a court of law.

467 Due to section § 51.0001(4)(C) many other Texas laws are affected, such as the Tax code,  
468 Bankruptcy code, Chapter 24, Texas Property Code, Chapters 3, 5, 7,8,& 9, Texas Business and  
469 Commerce Code, Texas Uniform Electronic Transactions act, Home Equity law, to name a few.

470 Thus § 51.0001(1) provides the evidence that electronic *intangible* commerce may be defined as  
471 the ability to conduct private business via electronic network and to use the internet as a commercial  
472 medium.<sup>22</sup> Such electronic activity cannot be overlooked when determining the validity of a statute  
473 governing real property liens, not chapter 9 instruments, nor personal property. Clarity was never  
474 provided as promised within the sponsors bill. Section 51.0001 provides for ambiguity within the  
475 statute, else as applied, such certain section has continually violated the constitutions since January 1,  
476 2004, and all perpetrators are in violation of the various penal codes of Texas.

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2 22 Electronic commerce: structures and Issues (1996), by Vladimir Zwass, International Journal of  
3 Electronic Commerce

477 **CONSTITUTIONAL ISSUE**

478 Plaintiffs' believe the Texas Legislature's intent was to protect property rights across Texas, and  
479 similar statutes have been enacted in most of the United States to ensure this protection. The Texas  
480 Legislature's apparent intent in 2003 to amend Chapter 51, Texas Property Code was purportedly  
481 intended to allow a mortgage servicer to administer foreclosure of property on behalf of a mortgagee.

482 Plaintiff does not believe the Legislature's intent was to create a constitutional violation against  
483 the citizens, or the political subdivisions of Texas by depriving such citizens a right to confrontation, a  
484 right to discover, or a right to protect real property from invading foreign entities use of § 51.0001(4)  
485 (C).

486 Plaintiff does not believe the courts in Texas are corrupt, just seemingly misled, and faithfully  
487 following the law the Texas Legislature enacted. The Eleventh Amendment does not protect state  
488 officials from claims for prospective relief when it is alleged that state officials acted in violation of  
489 federal law. *Warnock v. Pecos County, Texas.*, 88 F3d 341 (5<sup>th</sup> Cir. 1996)

490 The additional importance of this matter also regards the overbroad use of § 51.0001(4)(C) by  
491 various parties who are seemingly in contempt of court by obstructing the proper administration of  
492 justice, and committing crimes by creating fraudulent records and fraud upon the courts. The essence of  
493 contempt is that the conduct obstructs, or tends to obstruct, the proper administration of justice, *Ex*  
494 *parte Salfen*, 618 SW 2d 766 - Tex: Court of Criminal Appeals 1981 at 770.

495 The State of Texas must realize the magnitude of what a simple change to chapter 51 in essence  
496 violated any litigants ability to utilize the Texas court system in a fair manor, and obtaining justice  
497 deserved.

498 In 1968 the U.S. Supreme Court stated; "*There can be no sanction or penalty imposed upon one*  
499 *because of his exercise of constitutional rights.*" *Sherar v. Cullen*, 481 F. 2d 946 (1973). "*The claim*  
500 *and exercise of a Constitution right cannot be converted into a crime*"... "*a denial of them would be a*  
501 *denial of due process of law*". *Simmons v. United States*, 390 U.S. 377 (1968)

502 In *Boyd v. United*, 116 U.S. 616 at 635 (1886), Justice Bradley, stated "*It may be that it is the*  
503 *obnoxious thing in its mildest form; but illegitimate and unconstitutional practices get their first*  
504 *footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure.*  
505 *This can only be obviated by adhering to the rule that constitutional provisions for the security of*

506 *persons and property should be liberally construed. A close and literal construction deprives them of*  
507 *half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than*  
508 *in substance. It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens,*  
509 *and against any stealthy encroachments thereon. Their motto should be Obsta Principiis."*

510 The importance of this matter regards conflicting opinions in various courts, conflicting  
511 opinions of laws, regarding statutes, codes, and the Texas Constitution which these entities by failing to  
512 comply with Texas Property Code and relative statutes are creating confusion in Texas courts.

513 *"It will be an evil day for American Liberty if the theory of a government outside supreme law*  
514 *finds lodgement in our constitutional jurisprudence. No higher duty rests upon this Court than to exert*  
515 *its full authority to prevent all violations of the principles of the Constitution." Downs v. Bidwell, 182*  
516 *U.S. 244 (1901)*

517 The purpose of the Statute of Frauds is to remove uncertainty, prevent fraudulent claims, and  
518 reduce litigation. *Givens v. Dougherty, 671 SW 2d 877 - Tex: Supreme Court 1984*

## 519 CONSTITUTIONAL PROTECTION

520 It has been so stated that an application of a state statute that would abridge the Texas  
521 Constitution, that statute must yield. *"The constitution of Texas is the fundamental law of the state;*  
522 *'the supreme law of the law.'"* *Byers v. Patterson, 219 S.W.3d 514, 521 (Tex. App.—Tyler 2007, no pet.)*  
523 *(quoting Oakley v. State, 830 S.W.2d 107, 109 (Tex. Crim. App. 1992)). We must presume the*  
524 *constitutionality of an act of the Legislature. Texas Pub. Bldg. Auth. v. Mattox, 686 S.W.2d 924, 927*  
525 *(Tex. 1985); Salomon v. Lesay, 369 S.W.3d 540, 556–57 (Tex. App.—Houston [1st Dist.] 2012, no pet.).*  
526 *However, when the proposed application of a state statute would abridge the Texas Constitution, the*  
527 *statute must yield. See Weiner v. Wasson, 900 S.W.2d 316, 318–19 (Tex.1995); Salomon, 369 S.W.3d at*  
528 *556–57". "In enacting a statute, it is presumed that compliance with the constitutions of this state and*  
529 *the United States is intended." TEX.GOV'T CODE § 311.021(1) (West 2013)." "The Code*  
530 *Construction Act also requires that we consider the public interest over any private interest. See TEX.*  
531 *GOV'T CODE § 311.021(5) ("In enacting a statute, it is presumed that . . . public interest is favored*  
532 *over any private interest." ). See IN RE EXPUNCTION, Court of Appeals, The First District of Texas,*  
533 *NO. 01-15-00164-CV*

534 According to a Texas Supreme Court opinion, “*The legislature itself has commanded that, “[i]n*  
535 *interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider*  
536 *at all times the old law, the evil, and the remedy.” Tex.Gov’t Code Ann. § 312.005 (Vernon 1988)... We*  
537 *conclude instead that the purpose of recording statutes is to protect”*. See *Ojeda de Toca v. Wise*, 748  
538 SW 2d 449 - Tex: Supreme Court 1988. Plaintiff notices the court that the Texas Local Government  
539 Code, chapter 192 should be a recording statute to protect a remedy according to the Texas Supreme  
540 Court.

541 Pursuant to a supreme court opinion, would the courts be in violation of the law if the court fail  
542 to follow such law as 51.0001(4)(C), though the very same law allows for fraudulent activity. "*When*  
543 *violations of law slip uncorrected through the cracks of judicial review (as when a case is dismissed as*  
544 *moot), it may seem that the beneficiaries of such violations receive a free pass... "The pass is not free. It*  
545 *comes at the expense of the Rule of Law. Here, the Legislature’s notice mandate is unsubtle and*  
546 *unequivocal, as was the trial court’s failure to follow it”*. See - Supreme Court of Texas No. [15-0139](#) *In*  
547 *Re STATE OF TEXAS*, Relator

548 According to the supreme courts opinion, and in this instant case, what slips uncorrected, the  
549 invited fraudulent activity, or the courts following a law which invites fraudulent activity?

550 In essence, 51.0001(4)(C) seemingly created a bill of attainder which allows private parties to  
551 gain unjust enrichment, while the homeowner is discriminated in a Texas court as being a dead beat  
552 homeowner who failed to pay an obligation and is trying to get avoid paying their debt. This is an  
553 inequality to allow one person such as § 51.0001(1) to obstruct justice while another person such as a  
554 homeowner is left bare and unprotected by the laws of the state simply due to 51.0001(4)(C).

## 555 **DUTY TO DEFEND**

556 The Attorney General’s role dates back to England and has progressively continued to this day.  
557 The Attorney General has a duty to defend the statutes of the state. The Attorney General has a duty to  
558 defend the statutes of the state he believes is constitutional. However, does the Attorney General have a  
559 duty to defend the statutes of the state he believes is unconstitutional?

560 **SOVEREIGN IMMUNITY**

561 Although state officers typically act on the state’s authority while carrying out their official  
562 duties, private individuals can sue state officers to stop them from violating federal law. In *Ex parte*  
563 *Young*, the U.S. Supreme Court held that the Eleventh Amendment did not bar suits alleging that a state  
564 official’s actions to enforce state law violated the U.S. Constitution, because such suits are against the  
565 officer rather than the state. [209 U.S. 123, 159-60 (1908).] The Court reasoned that an unconstitutional  
566 state statute is void, and therefore a state officer enforcing an unconstitutional act “comes into conflict  
567 with the superiority of the [U.S.] Constitution, and is in that case stripped of his official or  
568 representative character and is subjected . . . to the consequences of his individual conduct.” [Id.]<sup>23</sup>

569 **NO IMMUNITY**

570 "No man [or woman] in this country is so high that he is above the law. No officer of the  
571 law may set that law at defiance with impunity. All the officers of the government from the highest to  
572 the lowest, are creatures of the law, and are bound to obey it." *Butz v. Economou*, 98 S. Ct. 2894  
573 (1978); *United States v. Lee*, 106 U.S. at 220, 1 S. Ct. at 261 (1882). Acts in excess of judicial authority  
574 constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness  
575 and due process. *Cannon v. Commission on Judicial Qualifications*, (1975) 14 Cal. 3D 678, 694 "Crime  
576 is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every  
577 man to become a law unto himself; it invites anarchy." *Olmstad v. United States*, (1928) 277 U.S. 438

578 **CORPORATIONS ARE PERSONS**

579 The Fourteenth Amendment Due Process Clause guarantees that states shall not deprive a "person"<sup>[2]</sup>  
580 of "life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. The  
581 Fourteenth Amendment Due Process Clause does not, however, specify what process is "due" to a  
582 person by a state under any given circumstance. [Morrissey v. Brewer, 408 U.S. 471, 481 \(1972\)](#). That  
583 depends on "the precise nature of the government function involved as well as of the private interest  
584 that has been affected by governmental action." [Cafeteria & Rest. Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895 \(1961\)](#). Footnote; <sup>[2]</sup> The Texas Constitution, in contrast to the United  
585 States Constitution, guarantees "due course of law." TEX. CONST. Art. 1, § 19."...""...""and thus like  
586

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23 Law of Sovereign Immunity, WISCONSIN LEGISLATIVE COUNCIL INFORMATION  
MEMORANDUM

587 corporations are treated as "persons" for purposes of the Fourteenth Amendment Due Process Clause.”  
588 See [IN RE MILLC](#), Tex: Supreme Court 2016

589 As a general rule, the actions of a corporate agent on behalf of the corporation are deemed the  
590 corporation's acts. *Holloway v. Skinner* 898 SW 2d 793 - Tex Supreme Court 1995

591 To allow section § 51.0001(4)(C) to continue the court should ponder the *person* problem at  
592 hand. Is it constitutional to allow one *person* to deprive another *person* of its guaranteed rights? For  
593 instance, as the code is written, and as recently reflected in various political subdivisions, certain  
594 challenges were laid bare to determine possible fraudulent filings, or missing, intervening assignments.

595 Because of a seemingly unconstitutional law, the political subdivisions are burdened with trying  
596 to defend the constitutional law for that local government only to be defeated with the unconstitutional  
597 law which prevails for undeserving parties. In essence, a free pass to commit a crime. This inequality  
598 seemingly violates the 14<sup>th</sup> Amendment.

599 Hypothetically speaking, is it advantageous to allow for an unconstitutional law that allows a  
600 foreign person, such as a foreign corporation, to use fraudulent acts to prevail over a local political  
601 subdivision, a corporation of the state, a person? Is it constitutional to allow a foreign corporation to  
602 deprive a local political subdivision of revenue because of an unconstitutional statute that allows for  
603 fraudulent acts, such as provided for in § 51.0001(4)(C) to bypass such enacted law as § 192.007(a)  
604 Tex. Loc. Govt. Code?

605 The false claims act provides liability for any person (i) who “knowingly presents, or cause to  
606 be presented, a false or fraudulent claim for payment or approval”, or (ii) who “knowingly make, uses,  
607 or causes to be made or used, a false record or statement material to a false or fraudulent claim”. 31  
608 U.S.C. § 3729(a)(1)(A)-(B).

609 Generally, an act is false, misleading, or deceptive if it has the capacity to deceive an "ignorant,  
610 unthinking, or credulous person." *Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 SW 2d 472 - Tex:  
611 Supreme Court 1995; citing *Spradling v. Williams*, 566 SW 2d 561 - Tex: Supreme Court 1978

612

## INTERNATIONAL PRINCIPALS

### 613 **United Nations Commission on International Trade Law**

614 It would be most important that this statute not be construed as constitutional as such  
615 misconception could upset the balance of commercial trade across the globe as the United Nations  
616 Commission on International Trade Law has defined the UNCITRAL Model Law on Secured  
617 Transactions (the "Model Law") which deals with "security interests" in all types of tangible and  
618 intangible movable property, such as goods, receivables, bank accounts, negotiable instruments,  
619 negotiable documents, non-intermediated securities and intellectual property with few exceptions, such  
620 as intermediated securities. Converting real property to personal property as section §51.0001 reflects  
621 a "taking of power" from the world of commercial transactions and places the penal code into  
622 hibernation while criminal activity takes place. Real property is not movable.

623 This court should take into consideration that the existing principles used by the courts provide  
624 an inappropriate legal framework for utilizing chapter 51, Tex. Prop. Code, while purported parties are  
625 attempting to claim real property with personal property via Chapter 2, or via Chapter 9, Texas  
626 Business and Commerce code, because as applied the current practice seemingly appears  
627 unconstitutional, if not criminal.

628 The forgotten item appears to be "holder of the debt", the note holder as once known, and as of  
629 2004, seemingly appeared more focused on the "holder of the security instrument". Whether E-SIGN,  
630 Texas UETA , or Chapter 9, Secured Transactions apply, these type transactions are being conducted in  
631 commerce as transactions of personal property mortgages, not real estate mortgages. Chapter 9 does not  
632 govern security interests in liens. See section § 9.109(d)(2); § 9.109(d)(11); also See *Wesley Eugene*  
633 *Perkins v. Chase Manhattan Mortgage Corporation*--Appeal from 261st District Court of Travis  
634 County16 (2006). Nonetheless, section § 51.0001(4)(C) is allegedly allowing personal property to be  
635 considered as real property. From this sections scenario, the UCC 9 creditor is bypassing the account  
636 debtor and attempting threat on a real property borrower.

### 637 **PROPERTY INTERESTS ARE PROTECTED BY STATE LAW**

638 Since the enactment of (78R) HB 1493 enacted in 2004, age old real property case law after real  
639 property case law regarding liens are being overturned to accommodate the illegal conduct allowed by  
640 § 51.0001(4)(C) simply because it is considered law. And because of such law the courts are bound,

641 else failure to follow the law. Plaintiff provides only a few past cases regarding paper rights, personal  
642 property rights, liens, and security interests. There are many, but these are a few.

### 643 **Property Interest in General**

644 Property interests are created and defined by state law. See *Butner v. United States* at 55, 440  
645 US 48 - Supreme Court 1979

### 646 **Debt Secured by a Lien**

647 A lien is not an instrument. *Max Duncan Family Investments, Ltd. v. NTFN INC.*, 267  
648 SW 3d 447 - Tex: Court of Appeals, 5<sup>th</sup> Chapter 9 of the UCC does not apply to creation or  
649 transfer or interest in or lien on real property. See 9.109(d)(11), See *Wesley Eugene Perkins v.*  
650 *Chase Manhattan Mortgage Corporation*--Appeal from 261st District Court of Travis County  
651 Conversion is the wrongful exercise of dominion and control over another's property in denial  
652 of or inconsistent with the property owner's rights. *Edlund v. Bounds*, 842 SW 2d 719 - Tex:  
653 Court of Appeals, 5th Dist. 1992, citing *Tripp Village Joint Venture v. MBank Lincoln Centre,*  
654 NA, 774 SW 2d 746 - Tex: Court of Appeals

655 The existence of the collateral would be immaterial to a suit for judgment on the debt.  
656 *Garza v. Allied Finance Co.*, 566 S.W.2d 57, 62 (Tex.Civ.App.-Corpus Christi 1978, no writ).  
657 Texas follows the lien theory of mortgages. Under this theory the mortgagee is not the owner of  
658 the property and is not entitled to its possession, rentals or profits. See *Taylor v. Brennan*, 621  
659 SW 2d 592 - Tex: Supreme Court 1981

660 A mortgage is governed by the same rules of interpretation which apply to contracts. See  
661 generally *55 Am.Jur.2d Mortgages* § 175 (1971). Thus, the issue of the validity of the clause  
662 before the court should be resolved by an application of contract principles. Such an approach  
663 recognizes the parties' right to contract with regard to their property as they see fit, so long as  
664 the contract does not offend public policy and is not illegal. *Sonny Arnold, Inc. v. Sentry Sav.*  
665 *Ass'n*, 633 SW 2d 811 - Tex: Supreme Court 1982 citing; *Curlee v. Walker*, 244 SW 497 –  
666 (1922)

667 Where there is a debt secured by a note, in turn secured by a lien, the note and the lien  
668 constitute separate obligations so that suit may be had on the note to obtain a personal



669 judgment, and later suit may be had on the lien if the personal judgment is not satisfied. *Taylor*  
670 *v. Rigby*, 574 S.W.2d 833 (Tex.Civ.App.-Tyler 1978, writ ref'd n.r.e.).

671 "It is well established in Texas that the rules of construction governing contracts are  
672 applicable to notes, and a note must be constructed as a whole.", *Mathis v. DCR MORTG. III*  
673 *SUB I, LLC*, 389 SW 3d 494 - Tex: Court of Appeals, 8th Dist. 2012, citing *Edlund v. Bounds*,  
674 842 SW 2d 719 - Tex: Court of Appeals, 5th Dist. 1992, citing *Coker v. Coker*, 650 SW 2d 391 -  
675 Tex: Supreme Court 1983

676 Real estate contracts are not governed by the UCC. See *Wesley Eugene Perkins v. Chase*  
677 *Manhattan Mortgage Corporation*--Appeal from 261st District Court of Travis County16  
678 (2006). The security no longer existed would be no defense to the note.

679 In *Komet v. Graves*, the court cited "*And, courts will not enforce an illegal contract,*  
680 *even if the parties don't object. Id. Enforcement of an illegal contract violates public policy*".  
681 *Komet v. Graves*, 40 SW 3d 596 - Tex: Court of Appeals, 4th Dist. 2001.

### 682 **Creation of Security Interest in personal property**

683 Generally, the test for creation of a security interest is whether the transaction was  
684 intended to have the effect as security, because parties must have intended that their transaction  
685 fall within the scope of article 9 of the UCC. See *Superior Packing, Inc. v. Worldwide Leasing*  
686 *& Financing, Inc.*, 880 SW 2d 67 - Tex: Court of Appeals (1994)

687 A "security interest" in personal property means an interest which secures payment or  
688 performance of an obligation. Sec. 1.201(37). "Security Agreement" is defined in Section  
689 9.105(a)(8) as being the bargain of the parties in fact. The requirement that there must be an  
690 agreement, not only in connection with Sec. 1.201(3), but also in connection with Sec. 9.203(a)  
691 (2) which requires that security agreements be written. See *Mosley v. Dallas Entertainment*  
692 *Company, Inc.*, 496 SW 2d 237 - Tex: Court of Civil Appeals, 12th (1973)

693 "The code makes no provision for a naked financing statement to be enforced as a  
694 security agreement. It merely gives notice of the existence of a security interest but in itself  
695 does not create a security interest". *Anderson, Uniform Commercial Code, 2d Ed. sec. 9-402:4.*

696 See *Mosley v. Dallas Entertainment Company, Inc.*, 496 SW 2d 237 - Tex: Court of Civil  
697 Appeals, 12th (1973)

698 **FORGOTTEN KEY**

699 Section § 51.0001(4)(C) “(4)"Mortgage” means (C) *if the security interest has been assigned*  
700 *of record, the last person to whom the security interest has been assigned of record*”. For the court to  
701 overlook the reason for the lien would be like overlooking the reason why the Sun rises in the East.

702 Section § 51.0001(4)(C) allows for fraudulent conduct, such as allowing for documents  
703 seemingly created when such documents could not be found, of which can be supported on record at  
704 the Texas Supreme Court regarding the Meeting of the Task Force on Judicial Foreclosure Rules,  
705 November 7, 2007. The court cannot turn a blind eye to what was declared in that public meeting. It  
706 was admitted in the meeting that 97% of the documents proving the owner and holder of the note was  
707 an impossibility, and that documents were made up. Judges were in attendance of that meeting as noted  
708 in the court reporters record of, D'Lois L. Jones, CSR, (512) 751-2618, dee2jones@hwtx.com. For  
709 Texas to allow unconstitutional law to allow documents to be made up is a disaster to the economy of  
710 Texas. Texas has seemingly allowed private rights to be superior to public rights by providing section §  
711 51.0001(4)(C) in the Texas Property Code. In this instant suit, the contract is not illegal but dead. §  
712 51.0001(4)(C) as written raises the dead.

713 To allow Section § 51.0001(4)(C) to continue it unconstitutional path, age old law regarding the  
714 note which is supposed to be involved in foreclosure actions, to simply fade away with the new an  
715 improved way to evade criminal law by using the Texas Property Code, by simply making claim to a  
716 deed of trust while multiple mystery parties involved are conducting hidden transactions unrecorded  
717 and against statutory law of the local jurisdiction requiring each intervention to be recorded.

718 In 2004, in *Leaving v Mills*, the court sad; “*In this case, to prove his entitlement to summary*  
719 *judgment as the holder of the Leavings' note, Mills had the burden of proving, as a matter of law, that*  
720 *the retail installment contract executed by the Leavings was the "note" referenced in each step of the*  
721 *chain of title, that the note was a negotiable instrument made payable to Solar Marketing, and that, by*  
722 *successive transfers of possession and indorsement, he became the holder of the note and was entitled*  
723 *to enforce it. To prove his right to foreclose on collateral and obtain a deficiency judgment as the*  
724 *owner of the note, Mills was required to prove the note and an unbroken chain of assignments*



752 Such actions related to the secured real estate mortgage failed to take place for the secured debt  
753 to meet those strict requirements for perfection of the paper promissory note and the subsequent  
754 eligible recordation to meet the strict requirements of section § 192.007(a).

755 Any action to enforce an indebtedness is an action in equity, as any action to enforce a deed of  
756 trust is an action in law. An action to enforce the note without proof a claimant met burden for the  
757 requirements for perfection of the deed of trust, the claimant cannot use a court of equity.

758 **THE QUESTION BEFORE THE COURT**

759 Can one section of Texas law such as section § 51.0001(4)(C)<sup>24</sup> deprive another law of Texas its  
760 right to be enforced as a constitutionally established law within its political subdivision, such as section  
761 § 192.007<sup>25</sup>; or deprive any other person; human, or corporation, of equally protected rights guaranteed  
762 by the Texas Constitution, or the Federal Constitution, or any other U.S. law?

763 **CONCLUSION**

764 In conclusion and for the above stated reasons, the Court should grant Plaintiffs' Petition for  
765 Declaratory Judgment and declare section § 51.0001(4)(C) unconstitutional as applied.

766 Respectfully submitted By: /S/James A McGuire

767 James A McGuire  
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769 Fort Worth, Texas 76177 tel:817-704-8961  
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773 **CERTIFICATE OF SERVICE**

774 I hereby certify that on February 8, 2017 a true and correct copy of Plaintiffs' Petition for Declaratory  
775 Judgment was delivered via efile and the information below is informational as if the old laws were  
776 still applicable, parties of this case are listed below via Service of Process, Secretary of State.  
777 Gregory Wayne "Greg" Abbott in his official capacity as Governor of Texas – U.S. Mail Defendant  
778 may be served at Office of the Governor  
779 State Insurance Building

24 Texas Property Code  
25 Texas Local Government Code

780 1100 San Jacinto  
781 Austin, Texas 78701  
782 c/o Service of Process, Secretary of State  
783 P.O. Box 12079  
784 Austin, Texas 78711-2079

785  
786 Attorney General is being serviced pursuant to Tex. Civ. Prac. & Rem. Code §37.006(b)  
787 Ken Paxton in his official capacity as Attorney General of Texas – U.S. Mail  
788 300 W. 15<sup>th</sup> Street, Austin, TX 78701  
789 c/o Service of Process, Secretary of State  
790 P.O. Box 12079  
791 Austin, Texas 78711-2079

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Respectfully submitted By: /S/James A McGuire  
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Fort Worth, Texas 76177  
817-704-8961 Pro Se

797 **CERTIFICATE OF COMPLIANCE**

798 I hereby certify that according to the word-count feature of the Openoffice Writer, which has been  
799 applied specifically to include all text, including headings, footnotes, and quotations, the Plaintiffs'  
800 Memorandum in Support of Plaintiffs Petition for Declaratory Judgment consists of a cumulative total  
801 of 10,786 words. The document(s) are written utilizing 12 point Times New Roman for the body and  
802 12 Point Times New Roman for footnotes and encompasses a total of 29 pages.

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808 **UNSWORN DECLARATION**

809 Pursuant to chapter 132(d), Texas Civil Remedies and Practices, I, James A McGuire provides this  
810 unsworn declaration. "My name is James A McGuire, my date of birth is November 10,1952 , and my  
811 address is 1717 Grassy View Drive Fort Worth, Texas 76177 and United States.

812 I declare under penalty of perjury that the foregoing is true and correct. executed in Tarrant County,  
813 State of Texas, on this February 8<sup>th</sup> of the year 2017.

814  
Declarant /S/James A McGuire