

# rabbit hole

This author is surprised as to how many lay people portray to the world they comprehend. Once you enter the world of the courts learning needs to be an absolute and not by preponderance.

To partially explain attention is directed to a United States Supreme Court opinion in the case of 134 S.Ct. 2175 (2014) CTS CORPORATION, Petitioner v. Peter WALDBURGER et al., where it is found the verbiage;

*“A divided panel of the Court of Appeals for the Fourth Circuit held that § 9658 does pre-empt statutes of repose.”*

One has to inquire as to why the Texas Supreme Court denied a Petition for Review to Nationstar Mortgage in case number 15-0390. Verbiage from the SCOTX (Texas Supreme Court) case 15-0390 reads:

“05/27/2016      Petition for Review      Indicates filing of Petition      Denied”  
   disposed    for Review

Can the statute of repose be tolled as the statute of limitations can be tolled? The rabbit has to answer “NO”, not on your carrot(s) can there be a tolling of the statute of repose.

Let’s turn attention to 15 USC 7003, a court recently opined that an instrument that is electronically signed should be considered valid, the rabbit does not disagree with this conclusion, however regardless of whether a contract is signed by wet ink or by electronic signature will not render an unconscionable contract conscionable and enforceable, appearing on this website is an explanation of why a mortgage could be considered unconscionable.

The Uniform Commercial Code and the states adopted equivalence hold keys to understanding, true that a check is a negotiable instrument, true that a promissory note given by a maker is

also a negotiable instrument, whereas a check and a promissory note can both be given as a promise to support an obligation, the obligation is routinely secured by a perfected and attached mortgage. However the laws applicable for a note to be considered secured requires one to understand and comprehend that the laws (statutorily and by common law) are different when the obligation is for the purchase of personal property or the obligation is for real property.

Granted, that a negotiable instrument can be in blank to create a bearer instrument, such negotiable instrument could potential use Uniform Commercial Code Article 9's Secured Transaction Registry to provide the evidence required to show a perfected and attached right to personal property (goods, etc), but a states real property laws require compliance for the negotiable instrument to be secured by real property (land).

This rabbit would suggest a reader to visit UCC 9-109;

*(d) [Inapplicability of article.]*

*This article does not apply to:*

- (1) a landlord's lien, other than an agricultural lien;*
- (2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9-333 applies with respect to priority of the lien;*
- (3) an assignment of a claim for wages, salary, or other compensation of an employee;*
- (4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;*
- (5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;*
- (6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;*

- (7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;*
- (8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;*
- (9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;*
- (10) a right of recoupment or set-off, but:*
- (A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and*
  - (B) Section 9-404 applies with respect to defenses or claims of an account debtor;*
- (11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:*

If a reader has further confusion and clarity is needed, drop an email to [j.mcguire@trilliondollarfubar](mailto:j.mcguire@trilliondollarfubar) and it will be seen that a responsible party will hopefully answer with an appropriate answer.

Forget not, I, we are not attorneys and this writing is for educational factors only.