

Where is the Paper Note

(Custody, the Electronic Process)



In the electronic world of securitization of investment vehicles in the secondary market the actual physical possession of the underlying collateral (paper note in the primary market) may have never left the custody of the original custodian. The electronic process after scanning is the same for a vaulted or destroyed paper note. Maybe in some cases the paper note was destroyed after being scanned into an electronic package, the writer will not dwell into “destroyed” in this paper.

Herein lies an issue. You can scan and convert a paper note into an electronic note (eNote). But it is only that. A scanned image. Negotiable Instruments are governed by Article 3 of the Uniform Commercial Code and the states adopted equivalence which in most states is nearly identical wording. “Transferable Records” cannot take the place of a “Negotiable Instrument”.

UETA (Uniform Electronic Transaction Act) in 1999 and codified in the “E-Sign Act”, 15, USC, 7001 allowed for “transferable records”, UETA excluded items governed by Article 3 (Negotiable Instruments) of the Uniform Commercial Code, and codified in the “E-Sign Act”, 15, USC, 7003 also excluded items governed by Article 3 (Negotiable Instruments) of the Uniform Commercial Code.

The mortgage industries’ book-entry system tracks the ownership changes of the eNote and book-entry records are updated, reflecting the change in ownership and custodial rights to the collateral. Negotiation of the paper note under the Uniform Commercial Code has not been accomplished and this would not allow Holder in Due Course to be transferred to a subsequent purchaser.

- 1. Electronic Negotiable Instruments cannot lawfully exist.**
- 2. Continuous perfection has been lost.**
- 3. Holder in Due Course has not been achieved by using an electronic negotiation.**