

# Legally Not Likely

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Revision 1

**James McGuire**

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A Series of Endorsements "In Blank" from A to B to C to D would satisfy legal requirements under the Uniform Commercial Code – Article 3. An Endorsement "In Blank" from A to D would also satisfy legal requirements under the Uniform Commercial Code - Article 3. A single Endorsement "In Blank" from A to D would fail to identify a intervening party's (B & C) and thus Mortgage Electronic Registration System, MERS would not be able to prove an agency relationship, this is a fault that cannot be corrected.

# Legally Not Likely

Original Lender A indorses the paper note "in blank" and under cover of some form of a Bailee's letter offers the paper note to a subsequent party B who either accepts or returns it. Upon acceptance, B completes the negotiation by filling in the "In Blank" left by A.

B has now become the 1<sup>st</sup> Subsequent Lender (after the Original Lender) with rights to enforce the paper note. If B wishes to sell the paper note to C, B indorses the paper note "in blank" and it travels to C who accepts it and completes the negotiation by filling in the "in blank" left by B, making C the 2<sup>nd</sup> Subsequent Lender (after the original Lender) with rights to enforce the paper note.

Should C wish to sell the paper note to D, C indorses the paper note "in blank" and it travels to D who accepts it and completes the negotiation by filling in the "in blank" left by C, making D the 3<sup>rd</sup> Subsequent Lender (after the Original Lender) with rights to enforce the paper note.

**But as the facts are now being revealed in case law<sup>1</sup>, the movement of the paper note reflects "A" indorses the paper note "in blank" and sells the paper note to "B" who then sells the paper note to "C" who then sells the paper note to "D" with only an "A" providing an endorsement on the face of the paper note.**

The intervening e[i]ndorsers' (B & C) and e[i]ndorsee's (B & C) names are not identified.

On a paper note alone, under UCC Article 3, this would not be an issue, as all the missing intervening endorsements could be applied to the paper note to show a complete chain of negotiation to "D" who would then have rights to enforce the paper note.

The Security Instrument, whether that be a Mortgage, Deed of Trust or Security Deed as affecting "Real Property," is excluded from UCC Article 9 as the laws of local jurisdiction apply to those instruments.

When you apply MERS to the equation, things get even worse. Where MERS is named as an agent for "A" on the original security instrument may or may not be legal; the courts of each state will have to determine the legality of these MERS agency relationships with "A."

A legal fault does become very apparent when MERS cannot show they represent "B" or "C" as an agent. As "B" & "C" are not identified anywhere on the face of the paper note or of record, caution needs to be applied to bringing outside contracts into the equation, such as Pooling and Servicing Agreements, Private Place Memorandums of any other secondary market

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<sup>1</sup> [Leyva v. National Default Servicing Corp.](#), No. 55216, 27 Nev. Adv. Op. No. 40 (Nev. 2011)

collateralization documents. Recording laws in some states require the identities of all parties to be known, the chain of negotiation of the note would need to match the chain of record of the security instrument.

*“But as the facts are now being revealed in case law, the movement of the paper note reflects "A" indorses the paper note "in blank" and sells the paper note to "B" who then sells the paper note to "C" who then sells the paper note to "D" with only an "A" providing an endorsement on the face of the paper note.”* Even this perception is in error. “A” indorses the paper note “In blank,” scans all the paper documents into an electronic digitized graphic file (EDGF).

## **Now enter the World of E-SIGN and UETA**

### **15 USC 7001, Exclusions 15 USC 7003-UCC Article 3 & 9**

The EDGF is a Payment Intangible governed by UCC Article 9. The collateral (security) for the EDGF is the payment stream coming from payments upon the paper note. The indorsed “A” “in blank” paper note is either vaulted or destroyed. (Not relevant as to which.)

The EDGF is then electronically transmitted to an aggregator (seller/secritizer “B”) who assembles many EDGF’s into a securitization package (SP), which by the securitization documents is required to be a true sale of the paper note to “B.”

The SP is then swapped for Certificates to the depositor “C” which should have represented another true sale of the paper note.

The final true sale of the paper note would have been to the Security Trust “D,” but the Trust only received the EDGF’s. Herein, the Securitization Documents is the only place the identity of “B” & “C” can be obtained, but the paper note and the security securing the paper note cannot be in electronic format as many try to mislead the world to believe. So as not shown on the face of the paper note and not filed of record in public records are the identities of “B” & “C.”

As such, “D” has not legally become the holder in due course of the paper note or owner of the security for the paper note. Whether or not the security is perfected in “D” depends upon each state law.