Part I – How to Execute a Financial Fraud

This writing cannot be done in an elevator version, as an elevator version is one of the methods I see can that is used in the courts to limit the fact and evade truth. Elevator versions, if they do deliver entire truth and fact do have their place in the world, but many have become so busy they depend on elevator versions to educate. This method of education could be of grave error if all facts are not presented.

There is only a couple of thing I can imagine that is more complicated to design that is similar to what the financial system designed, "a combination, high, medium and low pressure closed loop steam system" or a trip to Pluto. If one attempted to design a steam system by compartmentalization as the financial industry has designed their system, one would most likely design a system that would eventually fail and possibly result in loss of life. Likewise, the financial designed system is doomed to failure, just a matter of time.

In a closed loop steam system; the steam system has to have a constant source of water to replace losses resulting from daily use. It can be contemplated that payments made on the indebtedness in the financial market would be equal to that of replacement water needed in a steam system. Regardless, in either system, losses of a source of replenishment and if emergency reserves become depleted or do not exist, failure is imminent… Such failure in reserves can be seen in the events surrounding Japan's nuclear power plant meltdown[1]. The meltdown did require a trigger event, in Japan's case, it was an earthquake, the triggers of failure to the financial system model may or may have not been part of the design, but such flaw existed. Was the MERS flaw by design or by accident?

[1] http://www.bbc.co.uk/news/world-asia-pacific-12720219

Where a steam system replacement water requires a 2 inch pipe to deliver the amount of water needed to maintain operation, a 1 inch garden hose would not suffice. Golf balls will flow thru a 2 inch pipe but not thru a 1 inch garden hose. There is an additional cost to maintaining a steam system, fuel to heat the water.

This fuel cost could be seen as being equivalent to a payment stream to servicers to feed the boilers of the investors who bought the MBS's; therefore it is imperative that a payment stream be maintained or there will be failure. Similar, in the financial boiler, the lack of a payment stream or access to an external payment stream (insurance, swaps, i.e.) would result in the financial boiler experiencing a failure.

Somewhat like Greece, belief is we need to finance a bigger boiler, maybe if the world sees a bigger boiler then they will believe the boiler can be filled!!! As previously stated, a payment stream limited to X would not replace the requirement that a payment stream of $X\text{^}N^{th}$ is required; it will only move the time of failure into the future.

The financial boiler as currently designed is similar to a faulty steam system design, and yes, the financial system's MBS system has serious design flaws and failure is imminent and such failure should have been apparent at design. Where a major loss might result from a financial MBS failure, such failure would affect many areas of inflated imaginary value and would touch the lives of all humanity.

So bear with me while I try to explain a very complicated system.

Nearly everybody sees a Mortgage as two parts, the Note and Security. That is insufficient definition to explain the failure. Where it is stated to be a Mortgage, one must first determine if the Note being referenced is secured by a mortgage

(security instrument, lien, Deed of Trust, i.e.) or is unsecured. So long as the term "mortgage" references itself, confusion will abound.

In this last week of February 2012 in a Colorado courtroom a judge commented he did not care who the owner of the Note was, but relied upon the fact that once in the past, a lien was filed in another parties name but under the current environment, the holder of the note will prevail. The name currently in the record as to who is the Secured Party filed of record did not match the name of the party coming into court claiming to hold the note. Here there appears to be a breakdown in applying basic principles of law. Is it ignorance, stupidity or I just don't give a damn, or does a Saturday golf game come into the equation?

Is lack of proper in-depth definition of terms a means that has allowed evil acts to be committed upon humanity? Writers opinion, you betcha!

Opening Statement

A Mortgage Note to be Negotiable must contain and define several facts, two of the facts, the principle amount and the interest that will be due and owing as of a definite fixed period of time and the Mortgage Note must be in writing. In this writing we shall apply the fixed period of time as being 30 years. Above is describing an Unsecured Mortgage Note, for the Mortgage Note to be a Secured Mortgage Note secured by a Security Instrument, such owner/payee (OP1) of the Secured Mortgage Note would also be identified in the Security Instrument and most commonly, closing agents do follow law and permanently perfect the Lender of a Secured Mortgage Note as a Secured Party of record to the Security Instrument which provide Constructive Notice to the world as to who is the owner//payee of the Secured Mortgage Note. Here, the chain of indorsements on the Secured Mortgage Note matches the Chain of Title (Chain of Secured Party

filed of record as required by most state laws). But where one inquires, there "are no endorsement(s)" on the face of the Secured Mortgage Note at origination, so, what is the relevance?

The origination of the Mortgage Note if to be a Secured Mortgage Note as required by most state laws requires the owner/payee (OP1) of Secured Mortgage Note to permanently perfect, file of record, the Security Instrument which identifies the Secured Party in the Chain of Title. If such Secured Mortgage Note is intended to be negotiated and then such filing is constructive notice as to who is the first link in the Chain of Secured Parties (title) which would need to match the Chain of Endorsements on the face of the Mortgage Note or on a timely executed allonge firmly affixed to the Secured Mortgage Note.

Being the original in either of the chains, where there is no intention to further assign the loan package, no Endorsements would need to appear on the face of a Secured Mortgage Note and as such would be a party of record to the Chain of Title if such Security Instrument was filed of record. Of course, only a fool would place an endorsement "in blank" upon the face of the instrument and risk, if such instrument was taken from custody, a legal battle with a thief in the night who holds the instrument. Accordingly, a thief in the night might also wish to create a fraudulent allonge so as not to tamper with the instrument. But a thief in the night would be the fool to file an assignment of the lien of record.

Failure to file the original Security Instrument of record under many state laws would render the Security Instrument a nullity. Thus, in the beginning, it may have been true that the original owner/payee (OP1) of a Mortgage Note possessed and was the owner/payee (OP1) of a Secured Mortgage Note but if the original owner/payee (OP1) fails by they on lacking to take actions to protect themselves

by filing as required by law to file of record and failing to follow strict real estate laws, those inactions potentially could be fatal to perfection.

Similar inactions of subsequent owner/payee's (OP2+)'s, in regards to the Security Instrument, who fail to follow strict real estate laws not only results in being in possession of only a Mortgage Note but may have committed violations of law by assigning rights to title, via the Security Instrument, lien rights greater than those legal rights they believe they possessed. As all members of MERS have actual notice by virtue of the MERS Registry, the subsequent parties had actual knowledge they were not in possession of a lawfully perfected of record lien, where a subsequent party strictly relied upon the MERS Registry for perfection is knowledge that the lien was never perfected in a subsequent predecessor name and thus the current owner/payee of the Mortgage Note was not in compliance with applicable law in regards to the Security Instrument. Where the subsequent owner/payee's (OP2+) fail as a result of their own inaction would not need constructive notice as they were an actual party to the failure by being that of a MERS member with access to the MERS registry.

Where the Uniform Commercial Code allows for the Mortgage Note's endorsements to be made available to prove up the Mortgage Note as to who is the current owner/payee with rights to enforce the Mortgage Note, no such remedy to prove up perfection of the Security Instrument to subsequent owner/payee's is available under most if not all states laws. Is it a perfected Security Instrument or an unperfected Security Instrument that follows the Mortgage Note? Notice, the writer noted "Mortgage Note" not a "Secured Mortgage Note".

A valid perfected Security Instrument would remain attached and perfected to a Secured Mortgage Note giving the owner/payee of the Secure Mortgage Note

rights to enforce the terms of both the Secured Mortgage Note and the Security Instrument if all applicable laws are followed.

The writer will use time limits of Texas of 21 days as a guideline for filing of record to provide constructive notice as required by law. The writer will not write or comment as to whether constructive notice is deterrence to Secret Contracts and Fraud. The writer shall leave this area to the criminal experts.

OK, 21 days in Texas, what happens in these 21 days? A lot.

Pre-Closing

This writer shall not comment on TILA, RESPRA, Reg Z. i.e. and all other legal requirements involving pre-closing.

Closing

Originator closes the loan where the originator defines the owner/payee's (lender) name (OP1) on the Mortgage Note whereas the closing provided for attachment of a Security Instrument to a Mortgage Note and as where concurrently with signing the Mortgage Note the obligor would concurrently be the Grantor of the Security Instrument and such action would temporary perfected the owner/payee (OP1-lender) as being a Secured Party who has rights as being the owner/payee (OP1) of the Secured Mortgage Note and as being the Secured Party under the Security Instrument can upon conditions exercise collection rights contained in either the Secured Mortgage Note (payment stream) or the Security Instrument (foreclose to supplement the payment stream). In nearly all cases immediately after closing, the Security Instrument is filed of record thereby, the Security Instrument which upon filing converts a temporary perfection of the Security Instrument into a permanent

perfection in the name of the owner/payee (OP1-lender) and establishes the owner/payee (OP1-lender) and holder of the Secured Mortgage Note.

Reference "Flawed MERS Process subsection a)" as to one reason why MERS has to appear on the face of the Security Instrument as the "beneficiary" of the Security Instrument.

Post Closing

Owner/payee (OP1) of the Secured Mortgage Note executes a true sale of the Secured Mortgage Note to an i.e. aggregator to be offered up as collateral to a Trust.

a) Owner/payee (OP1-lender) who is also the holder of the Secured Mortgage Note prepares a negotiation of the Secured Mortgage Note by indorsing the note as Indorser "in blank" as commonly done or by "special endorsement" to be delivered to subsequent owner/payee (OP2-lender) who upon identifying themselves upon the face of the Secured Mortgage Note would be the Indorsee.
b) Where (OP2-lender) does upon taking delivery of the Secured Mortgage Note and completes negotiation by identifying themselves as Indorsee has in essence assured the Secured Mortgage Note was negotiated by "special endorsement."
c) Where (OP2-lender) does NOT upon taking delivery of the Secured Mortgage Note identify themselves as the Indorsee then such party is only possessing the note as a holder and not that as owner/payee (lender) and so long as such "in blank" exist under basic principles of contract law, MERS could not be an agent of an unidentified.
d) Additionally and concurrently with preparing the Secured Mortgage Note for negotiation, owner/payee (OP1-lender) prepares an Assignment of the Security Instrument "in blank" and leaves the subsequent party's "in blank" and **delivers**

both the Secured Mortgage Note indorsed “in blank” where no “Indorsee” is identified, and an assignment of lien form “in blank” which does not identify a intended subsequent grantee which if filed of record would assign lien rights to the subsequent lender as grantee if identified, whereas, a subsequent lender would need to file of record to provide constructive notice that the subsequent lender is now the Secured Party to which the Secured Mortgage Note was negotiated too.

e) The above worked well when the Secured Mortgage Notes traveled under cover of a Bailee’s letter. Under cover of a Bailee’s letter, many potential subsequent purchaser would have had an opportunity to purchase and if one subsequent party did purchase the Secured Mortgage Note they would have been assured in accordance with all applicable laws, that upon tendering payment, the purchaser would receive the Tangible Secured Mortgage Note endorsed “in blank” and a Tangible but “in blank” assignment of the lien. *Where upon the purchaser has now obtained custody and ownership of the tangible documents, the purchaser would then identify themselves upon the face the Secured Mortgage Note by becoming the Indorsee and then identify themselves as Grantee of the Security Instrument and perfect such right by filing of record. Use of the MERS registry bypassed these basic principles.*

f) OP1 could have delivered the original tangible papers to a subsequent identified lender who may also have been an Aggregator for a SEC or Private Trust offering or one of the GSE’s under the Bailee principle, but where the Indebtedness and security rights are registered with the MERS registry, such use of the Bailee principle highly doubtful.

Flawed MERS Process

a) Where MERS is involved, there would need to be proof that MERS is acting as an agent for the unidentified "Indorsee". MERS claims the MERS Membership agreement satisfies this requirement. But such agency relationship would not be possible for an "in blank" party as that party is unidentified on both the Tangible Mortgage Note and of public record.

i. Probable: Original Paper Tangible Note's (Secured or Unsecured) along with the Original Paper Tangible Security Instrument's whether or not such Original Paper Tangible Security Instrument has been returned from public recordation was scanned into an electronic digitized graphic image.
ii. Upon the scanning of the Original Paper Tangibles, the Original Paper Tangibles were then delivered to a custodian for preservation and not under cover of a Bailee's letter. This is done concurrently with procedures outlined in "viii".
iii. Where the Original Paper Tangible Security Instrument returns late from public recordation the same would be forwarded to the custodian.
iv. Where Florida is concerned, Florida Mortgage Bankers in notice to the Florida Supreme Court noted the Original Paper Tangible was destroyed as the electronic copies were considered more secure. Maybe more secure but not in compliance with the Uniform Commercial Code.
v. ESIGN and UETA both allow for Transferable Records to be in electronic form, but both ESIGN and UETA exclude UCC Article 3 & 9 and as such a Paper Tangible Secured Mortgage Note as being a negotiable instrument could not exist in electronic form.
vi. Where financial institutions elected to utilize the MERS systems they were also imperiled to follows the instructions of MERS for registration.
vii. Many of these same large financial institutions are also stockholders of MERS.
viii. The MERS guidelines provide that a loan is to immediately be registered on the MERS Registry.
ix. Covington and Burlington in 2004 issued an opinion that MERS as originally designed was in compliance with all applicable laws. As originally designed MERS was to track the whereabouts not to replace the whereabouts. Maybe the actual question that should

have been asked, “Is MERS as currently being operated in compliance with all applicable laws?”

x. MERS in directing MISMO created the guidelines for establishing Electronic Vaults to store Electronic Notes (E-Notes).

xi. E-Notes as not being a negotiable instrument would be able to exist in the electronic world as a Transferable Record and have supporting governance of law.

xii. The GSE’s in their almighty wisdom elected to accept electronic copies (E-Notes) as proof that the GSE’s were the lawful owner as a subsequent party to negotiation of the Original Paper Tangible Mortgage Note even though the Original Paper Tangible Mortgage Note resides with a custodian indorsed “in blank” and lacked a completion of negotiation. The GSE’s were not a bona fide purchaser of the Tangible instruments much less have a perfected interest as not being filed of record.

xiii. In order to complete negotiation of a lawful secured instrument, the GSE’s would have to become the identifiable owner/payee of the secured instrument and when such identification was evident, recordation of the assignment of the lien, if the chain of title has not been interrupted by predecessor’s failure to record the intervening assignments, would need to be filed of record to provide constructive notice to the world.

xiv. Recordation of the GSE’s perfected rights into public records in this current MERS timeline is few and far between at best.

xv. While it may be true that the parties involved in the negotiation of the note , via the MERS Registry, subsequently perfecting ones rights to a security by attempting to update the MERS registry is insufficient to meet all laws that are applicable to the Security Instrument for providing constructive notice to non parties to the transaction that had NO actual notice.

xvi. Actual notice may resolve an issue between subsequent parties with actual notices for priority if perfection remains valid but does not satisfy the legal requirements of constructive notice for perfection.

xvii. Constructive notice for perfection can only under present law be accomplished by filing of record.

xviii. Uniform Commercial Code Article 9 itself along with the Security Instrument provides the laws of local jurisdiction will govern perfection. Uniform Commercial Code Article 9

does not provide for perfection of the Security Instrument when such instrument affects title to real property.

xix. Uniform Commercial Code Article 9 does apply to perfection of collateral securing a transferable record. (i.e., Intangible Payment Stream whose source is derived from an external source, such as from a Security Instrument that should be perfected to a Secured Mortgage Note.)

Why did the author purposely define Principal and Interest separately, the writer will explain in Part II how it applies to a secondary market trust and the reasoning will become clear.

MERS as Beneficiary

As how MERS is designed, MERS would/could never appear on the face of the Mortgage Note as the owner/payee as MERS never provided funding only the lender if identified.

1. For the financial institutions to defraud all parties including investors and perpetuate the crime by illusion, MERS as "beneficiary" had to appear somewhere. On the face of the Mortgage Note was impossible as most understood the preciseness of notes and what was allowable.
2. Few outside of the financial institutions had any understanding how and why MERS had to be named as a "beneficiary" on a Security Instrument.
3. In applying the old cardinal adage of the mortgage follows the note; there has been not coordinated effort until recently as to why the old adage does not apply to today's contracts procedures.
4. Where the Mortgage Note allows for collection of principal and interest to be payable to the lender over time, MERS could not lawfully be the beneficiary under the Mortgage Note.

5. Where the collection of future principal and interest as evidenced by the promises to pay (Mortgage Note(s) is aggregated and securitized for sale to investors, MERS would again have no legal right to receive any monies collected. Here investors would be entitled to receive the return of the principal and the investors profit would be that of interest collected. See subsection h) below.
6. Where one reviews many of the securitized trust documents, collectable servicing fees are usually calculated upon the principal balance value of the trust.
7. In the trust reviewed, it was not uncommon determine that the payment stream to fund repayment of the trust was dependent upon both principal and interest payment stream.
8. Where an investors was under belief that principal investment was readably safe, entwining the interest payment stream result in principal being just as at risk as the interest.
9. Here, the investors as lenders would be under impression that actions utilizing the Power of Sale clause in a Security Instrument would at least provide some solace that at least some of their principal investment would be recovered.
10. Where the financial institutions took short cuts and failed to perfect of record the Investors as the lender, such investors are at risk of losing their principal investment.
11. The financial institutions instead of insuring that investors were perfected of record, they created the magical tools of the MERS registry and inappropriately tried to apply perfection as found in the Uniform Commercial Code Article 9.

12. One plausible reason for attempting to apply Uniform Commercial Code Article 9 perfection process to the Security Instruments that was to provide a alternate source of repayment funds to investors upon payment default would have allowed the trust creators to pocket the difference between what public records would charge for perfection and the cost charged by MERS.
13. Lest not forget, MERS has few employees but a lot of computing power as EDS was the initial company that provide database services to MERS.
14. Applying a logical approach to the fees charged by MERS, it would seem to appear as the fees charged by MERS would be funneled through MERS to support the database. (Cost of doing business.)
15. As MERS being named "beneficiary" on the Mortgage Note can been eliminated, we ask why does MERS appears as the "beneficiary" on the face of the Security Instrument.
    a. If perfection of the Security Instrument is valid of record, then only the lender could be the "beneficiary" of an enforceable Security Instrument.
        i. Black's Law (8th edition, 2004, pg. 468) defines beneficiary:

        A person for whose benefit property is held in trust; esp., ***one designated to benefit from an appointment, disposition, or assignment*** *(as in a will, insurance policy, etc.),* ***or to receive something as a result of a legal arrangement or instrument.*** *2. A person to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust. 3. A person who is initially entitled to enforce a promise, whether that person is the promisee or a third party. — beneficiary,adj.*

    b. Cleary, from the definition found in Black's law, MERS could not be named as "beneficiary" to the Security Instrument. As MERS would not be entitled to receive any monies if the Power of Sale was executed only the lender.
    c. To address if MERS can be a "nominee" for the lender or the lenders successors and assigns, we turn attention back to the Mortgage Note that was purported assigned from an identified Indorser to an unidentified Indorsee.

MERS as Nominee

i. Black's Law (8th edition, 2004, pg. 3325) defines nominee:

> *1. A person who is proposed for an office, membership, award, or like title or status. • An individual seeking nomination, election, or appointment is a candidate. A candidate for election becomes a nominee after being formally nominated. See CANDIDATE.* ***2. A person designated to act in place of another, usu. in a very limited way. 3. A party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others.***

d. To address if MERS can be a "nominee" for the lender or the lenders successors and assigns, we have to turn attention back to the Mortgage Note that purportedly assigned the Mortgage Note from an identified Indorser to an unidentified Indorsee.

e. The Security Instrument relies upon the Mortgage Note to define who is *"in place of another – benefit of others"* so as MERS can be an agent for.

f. Where the Mortgage Notes are endorsed "in blank," no such "other" can be identified therefore it is a virtually impossibility to have a lawful agency relationship with an unknown party much less subsequent unidentified parties as this statement found on most Security Instruments additional fails to identify "successors and assigns."

Conclusion Part I

One could only be left as to wonder if the "in blanks" was a means to increase profits at the expense to homeowners, investors, and local governments.