

# **“The \$10 Paper Note”**

**That’s the cost MERS charges to create a paper note from an eNote.**

## **MERS eRegistry Fee Schedule<sup>1</sup>, October 2009**

eNote Converted to Paper – \$10

**Better spit polish and super glue your hip waders on.  
Shinola isn’t going to work here.**

We now look at item 1 in the MERS “Addendum to MERS Membership Agreement.”

Item 1 states in part: *“The MERS® eRegistry is a registry system evidencing the transfer of interests in eNotes (transferable records) that are intended to satisfy the safe harbor provisions of Section 16 (c) of the Uniform Electronic Transaction Act (“UETA”) and Section 201 (c) of the Electronic Signatures in Global and National Commerce Act (“ESIGN”).”*

Here we see that there was no negotiation of the “Wet Ink” paper note, only a transfer of interests in an eNote (transferable records) that lacks supporting laws to exist as an electronic negotiable instrument. UETA and ESIGN both exclude UCC Article 3; therefore, UETA and ESIGN do not provide laws to govern an eNote that is required to be negotiable. UCC Article 3 also does not provide supporting laws for an eNote.

Now we dwell into the Covington and Burling letter attached to the Membership Kit.

Page 3: *“Both E-SIGN and UETA contain rules regarding so-called “transferable records.” UETA defines a “transferable record” as an electronic record that would be deemed to be a note or document for purposes of the Uniform Commercial Code (“U.C.C.”) if it were a physical “writing,” provided that the issuer of the note or document has expressly agreed that it is a transferable record. E-SIGN defines “transferable record” similarly, although it limits its application to loans secured by real property. In light of these definitions, an electronic mortgage note may qualify as a “transferable record” under either statute and therefore is valid consistently nationwide.*

*While both E-SIGN and UETA pertain to records that would be governed by the U.C.C. if they were paper instruments, the statutes also expressly state that they do not apply to records that are, in fact, governed by the U.C.C.<sup>7</sup> In addition, the requirement that the issuer of the electronic record expressly agree that the record is a “transferable record” operates “to assure that transferable records can only be created at the time of issuance by the obligor.” Thus, a paper note cannot later be converted to a “transferable record” for purposes of the statutes.*

<sup>7</sup> *“Specifically, the statutes state that they do not apply to a transaction or record to the extent it is governed by “The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2, and Article 2A.” UETA § 3(b)(2); accord 15 U.S.C. §7003(a)(3).”*

<sup>1</sup> <http://www.mersinc.us/membership/WinZip/MERSeRegistryMembershipKit.pdf>, copy attached.