

## **Unifying Theory of the Unsecured Negotiable Instruments in Mortgages**

One only has to look at the Commercial Code – Article 9 to understand the meaning of “Perfection”.

It is commonly taught that Perfection establishes “Priority Rights” as to subsequent purchasers.

What is overlooked, Article 9 also provides the guidance on “Lien Perfection”. Article 9, itself, relinquishes authority to the local laws of jurisdiction in defining what is required for the perfection of a lien.

If perfection is not complied in accordance with the laws of the local jurisdiction then there is “No” perfected lien.

Article 3 in conjunction with Article 9 defines the legal requirements to determine what would be a “Secured Indebtedness”: without a “Valid Perfected Lien” there can be no “Secured Indebtedness”.

Failure to maintain perfection of the “Security Instrument” would render a “Secured” indebtedness to be “Unsecured”.

The author agrees that a “Valid” security instrument follows a “Valid” negotiable instrument and such understanding is embedded in the law and supported by many court opinions.

What is being presented to the courts in this day of economic disaster is a “Security Instrument” in which “Perfection” has been lost by failure to follow the Articles and the local laws of jurisdiction and claims are being made that this now “Unperfected” lien is following the “negotiable instrument” and the court is accepting these lies.

As for the “Negotiable Instrument”, the Articles only allow for a written paper instrument. Claims are being made that E-Sign (Electronic Signatures in Global Networking) and UETA (Uniform Electronic Transaction Act) allow for negotiable instrument to be in electronic form. This electronic negotiable instrument is the item that is commonly held in electronic digitized format residing in a computer and offered up to the secondary market as the “negotiable instrument”.

E-Sign and UETA only allow for “Electronic Signatures” and both Acts exclude most of the Articles including Article 3 & 9.

Therefore many of the secondary markets securities contain electronic negotiable instruments and unperfected security instruments.

Investors, you were led to believe you were buying a horse and wagon but in reality you bought a “Donkey”.