

# Elevator Ghosts

A lien attaches and temporary perfects at closing. Partially correct is the lien is perfected of record by filing; actually, filing of record provides the transformation of temporary perfection upon closing to a permanent perfection filed of record. This perfection of the Deed of Trust record would note the Identity of the Closing Secured Party (SP1-A) and would match a concurrent party identified upon the face of the Secured Negotiable Instrument (SP1-A), where a Secured Negotiable Instrument is sold by the Closing Secured Party (SP1-A) immediately after closing to a subsequent Party (P2-B) by virtue of Special Indorsement noted on the face of the Secured Negotiable Instrument, the subsequent Indorsee (P2-B) also would have been assigned a temporary perfection interest in the Deed of Trust and would need to file of record the assignment of the Deed of Trust to provide notice that Party (P2-B) is the Secured Party (SP2-B) of record to permanently perfect SP2-B's interest.

Negotiation of a Secured Note by Special Endorsement and subsequent filing of record, the identity of each subsequent Secured Party noted by Special Endorsement would provide notice of the current Secured Party if filed record.

Where the Secured Negotiable Instrument is negotiated/sold by SP1-A, via "indorsement in blank" to P2-B is absolutely acceptable. However, if SP2-B elects to not file of record an assignment of Deed of Trust, which may not under state law be required, the lack of this filing reflects that SP2-B is not Secured Party of record nor can Party 2-B ever be able to prove Party 2-B was the owner or holder/holder in due course of the negotiable instrument. Where P2-B elects to sell the note by indorsement in blank to P3-C, P2-B without filing of record P2-B's right to be a Secured Party or identifying P2-B as the Indorsee of the note and under principle of Nemo Dat could not assign a Secured Party status to P3 and so forth on up the chain nor further negotiate the note without first identifying P2-B is the Indorsee. As such, reliance upon trust documents most likely would be deficient to identify the purported Indorsers and Indorsees as the UCC's requirement for negotiation would require such parties to be identified. For one to claim a chain of negotiation of the negotiable instrument was in accordance with the UCC where ghosts names do not appear on the negotiable instrument is absurd.

Were there appears no intervening chain of subsequent Obligee's/Indorser/Indorsee/Payee's (B & C) appearing on the face of the negotiable instrument, then public records also would not be able to reflect B & C is a Secured Party of record, much less D.

Where a note is to be securitized, the required Secured Negotiable Instruments chain of Indorser/Indorsee names can be found in the documents creating the trust. In many cases, these ghost names do not appear on the face of the Negotiable Instrument nor and could not appears the Secured Party filed of record. Hence MERS registry is required to operate in replacement mode for public records. This writing will not go into MERS claims that MERS only tracks and is not a replacement/substitute for public records.

If A were to attempt to assign the Deed of Trust to D, which would memorialize a negotiation of the Secured Negotiable Instrument, would be impossibility, as A is no longer owner or holder of the Secured Negotiable Instrument as the trust is the purported owner of the Negotiable Instrument. Additionally, B and C as never having never been identified as Indorser/Indorsee, B & C's identity can only determined from documents relating to the creation of the trust, this manner of identification is insufficient to meet the requirements to negotiate a negotiable instrument under UCC Article 3 nor does the trust documents offer a substitution for perfecting a lien of record.

Therefore by reason of logic, only D as purported owner and holder of the negotiable instrument could possible file of record an assignment from C to D, if such negotiation actually occurred from C to D, which by the lack of identify upon the face of the negotiable instrument appears to not have been the case, would be impossible. As such, there is no action D can undertake to be a perfected party of record as a Secured Party.

When D attempts to correct the deficiency by filing an assignment of the Deed of Trust of record from A to D is also not possible as there was never a negotiation of the Secured Negotiable Instrument from A to D. MERS claims of being nominee of record would not suffice to show that MERS as nominee was the ghost names missing from the face of the negotiable instrument.