The Condensed Potomac Two Step

In 1929 the "Great Depression" hit. Four years later in 1933 the "Glass-Steagall Act" was enacted by Congress. The "Glass-Steagall Act" requires that holding banks and investment banks be entirely different entities.

Fast forward to approximately 1996 when Mr. Weiss of Citicorp and others, who for a decade, had wanted the "Glass-Steagall Act" repealed. In 1998, the "Gramm-Leach-Bliley Act", authored in part by Phil Gramm, effectively eliminated the separate bank requirement. Electronic capabilities had increase by this point and book-entry was in the process of going to an electronic database system. During this same period of time, the banking industry, with the help of Mortgage Bankers Association (also created by the banks), created an electronic database processing entity named "Mortgage Electronic Registration System" or "MERS" for short.

It was discovered in Decatur County, Georgia, that MERS had been registering titles with the land records office as far back as 1998.

In 1999 the House of Representatives held hearings that addressed the forthcoming "E-Sign Act. At one hearing it was noted that only two (2) exclusions existed.

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) a statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law.

These two (2) exclusions did not mention the Uniform Commerce Code ("UCC"). At present it is unknown how many hearings were held before President Clinton signed the E-Sign Act into law in 2000. The 2000 enacted version of the E-Sign Act had a third (3rd) exclusion added:

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

Sections 1-107 and 1-206, Article 2, and Article 2A of the Uniform Commercial Code were the only sections that the E-Sign Act would not exclude. These exclusions stated that the E-Sign Act had no authority to override the Uniform Commercial Code, except for the named exceptions. In reviewing Senate Committee Hearings it becomes apparent that the Federal Reserve Board requested that the UCC exclusion had to be added and that would match the UETA UCC exclusion. None of the exceptions were Articles that govern the "Negotiability" of "Negotiable Instruments[1]".

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[1] In this writing the term "Negotiable Instrument" represents the "Original Promissory Note signed in blue ink" that was to be used in the secondary market as a lawful "Negotiable Instrument".

Sections 1-107 and 1-206, Article 2, and Article 2A of the Uniform Commercial Code were the only sections that the E-Sign Act would not exclude.

Mortgage Bankers Association, MERS and others began an advertising campaign to state that the E-Sign Act had now given Electronic Signatures the equal legal force as that of Blue-Ink Paper Signatures.

The writer of this document does not argue the fact that an "Electronic Signature" has the same legal force as a "Blue-Ink Paper Signature" – as long as it is created in electronic form and complies with all laws and is never required to be negotiable. Negotiability is required to further assign/transfer the "negotiable Instrument" for use in the secondary market place. Without this negotiability, the loan originator has no legal framework to execute any transfer to any buyer, whether that buyer is a bank, Fannie Mae, or Freddie Mac, etc.

There are several federal agencies that have stated the "creation requirement" by electronic is required. Several federal agencies also state that a "Blue-Ink Paper Signature" cannot be converted to an "Electronic Signature"/"Electronic Transferable Record" – <u>after the fact</u>. Commercial custom does not apply where the U.C.C. provides otherwise.

In (*UNITED STATES of America, v. Hibernia Bank* 841 F.2d 592 96 A.L.R.Fed. 895, 5 UCC Rep.Serv.2d 1392) Official Comment 2 ("[A] writing cannot be made a negotiable instrument within this Article by contract or by conduct." *Also see* U.C.C. Sec. 1-103; also U.C.C. Sec. 3-104. It is blatantly obvious that the banks are making false representations to Congress and the courts by stating that their process and procedural "conduct" is legal, when in fact, it is not; it is deceptive.

In 2001, the "National Telecommunications Information Agency", part of the Department of Commerce, requested comments regarding the exclusions within the E-Sign Act. Several of the Federal Reserve banks; the National Consumer Law Center and others stated that the exclusion needed to remain. It was also mentioned that removal of the exclusion could possibly result in legal issues for items governed by the UCC.

Research has determined that beginning in 2002, the state equivalent of the Uniform Commercial Code[2] was being modified to permit the creation of a "Lost Note Affidavit", allowing only a <u>copy</u> of the "Negotiable Instrument" to mislead the courts to believe it is sufficient evidence to prove legal standing in a court of law. However, this does meet the requirements of the Uniform Commercial Code.

At this point the "Originator" of the "Negotiable Instrument" in many instances, has already scanned the "Negotiable Instrument" into a graphic image and stored this scanned image alongside the data that was scraped from the "Promissory Note/Negotiable Instrument". The procedure of imaging an "Original Promissory Note" into an electronic format is <u>not</u> in compliance with the UCC and therefore the newly created "E-Note" has no lawful "Negotiability" for buying, selling or transferring to another party, much less being offered up to the secondary market and Wall Street.

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[2] In Texas, the Business and Commerce Code is the UCC equivalent.

(Research has shown that a high probability exists, that at the time of scanning, the "Original Blue-Ink Signed Promissory Note" - the original – is destroyed. This scan-created electronic version; referred to as an "E-Note", has no lawful basis to exist. According to MERS, forty to fifty million of these "E-Notes" have been registered on the "MERS" system, and are claimed to be lawful "Negotiable Instruments", when in fact - they are fraudulent/fictitious documents that are deliberately being misrepresented.

(December 2009 Update) **almost 2 years later**

Referencing the "Have a Note" and the "Shan-1" graphical version, a fact was not included within this document at the time of its authorship. Beside the scan/copy/destruction of the paper negotiable instrument the process after scan/copy would be to secure the original paper negotiable instrument within the custody of the servicing agent for retrieval at some later date. This stored original paper promissory note is then later offered up as the original paper negotiable instrument, which in fact it is, in legal action but lacks legal authority due to facts surrounding the negotiation of the instruments as "holder in due course" with rights have not transferred per the Uniform Commercial Code. As the original paper negotiable instrument has been destroyed or shelved with a named lender and the security instrument has been assigned "to/from" MERS as "nominee for lender" has in fact separated the negotiable instrument from its security instrument. Therefore the negotiable instrument no longer has a valid enforceable security instrument and the negotiable instrument cannot be used to trigger the foreclosure clause contained within the security instrument.

As a result of the actions taking with the negotiable instrument and the security instrument at the beginning of the process of securitization what has in essence been offered as collateral to investors is worthless.

In reviewing the news of December 28, 2009 it was noted that Fannie Mae's financial cap was being lifted by the Treasury and now appears that Fannie Mae has access to unlimited funds to continue purchasing so called toxic mortgages. As the banks have failed to properly execute paperwork as required by federal and state laws one has to question the reason surrounding the purchases of negotiable instruments from the banks by Fannie Mae.

Note that Fannie Mae was one of the original parties involved in the creation of MERS and the book-entry system for the primary market.

We now have fraud upon the taxpayer as it is most likely that Fannie Mae after purchasing all the toxic mortgages will use the "Federal Holder in Due Course" to eliminate all defenses against foreclosure. The author's opinion is that many of these so called toxic mortgages should not have been created in the first place.

In reviewing thousands of "Notice of Trustee Sales" and other documents filed in MERS name at local county records offices and with the courts, indicate "MERS" is an "Assignee" (step into my shoes) for a "Security" that was offered for sale on the secondary market. These notices prove that an "E-Note" was bought and sold and used as collateral on "Wall Street". What is amazing is that in the Prospectus itself. it mentions that the "Security/Collateral/Negotiable Instrument" can be represented by using a "Lost Note Affidavit ("LNA"), and only a copy of the "Negotiable Instrument" is used to validate that a true "Negotiable Instrument" had been offered up in the collateral pool and then lost. There is no lawful basis for the "Lost Note Affidavit" to exist, if all references are made to a fraudulent and fictitious document such as an "E-Note" to prove validity. It is also noted that many courts rule in favor of the banks in total disregard of the UCC requirement for "Lost Note Affidavits/LNA's":

Uniform Commercial Code

§ 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. **The court may not enter judgment in favor of the person seeking enforcement** unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Upon the completion of the contract whether by paying the "Note" in full or by "Foreclosure" the contract has been fulfilled and the "Original Blue Inked Signed Promissory Note" is to be returned.

If the first security is sliced and diced to make many securities, how many such LNA's would be required to withdraw an item of collateral from a collateral pool? If at the conception/scan the negotiability was destroyed, under current law, it would not have any legal basis or authority to be offered up as collateral. How many fictitious documents have been created, that possibly would fall under Title 18, Fraudulent & Fictitious Documents for legal interpretation?

This short story is a condensed version; the writer has not included other "Acts" such as "Check 21" that helped in disguising the fraud.

Offered opinion is that the banks got too far into book-entry and discovered that the (3rd) exclusion existed, or did not like the exclusion, and had no other option but to conceal the exclusion so the electronic book-entry system would work regardless of whether legal or not, which allowed the massive unlawful book entry transfers to feed the insatiable appetite of Wall Street. This massive smoke screen was willfully brought into the courts by the bank's legal counsels to make sure the fault or fraud is never uncovered. This document does not go into the financial fraud committed against the land records offices and other frauds.

Simple facts are that "Promissory Notes/Negotiable Instruments" for homeowners are governed by the Uniform Commercial Code, Article 3 and the Esign Act and UETA excludes items governed by Uniform Commercial Code, Article 3.

The banks and MERS operate under the false impression the Esign Act and UETA laws gives them lawful status to operate using "eNotes" based on homeowners "Promissory Notes/Negotiable Instrument", and have attempted and all out effort to cloud the issue before the courts and the banks are also clouding the eyes of Congress.

It also has been uncovered that since the laws of the land will not support the non-legal book-entry system, there has been an effort to modify state law, specifically in the area of "Lost Note Affidavits".

Since the law will not support the non-legal book-entry system it appears there has been a multistate endeavor to influence the courts, see exhibit "1" below as one example. The bank's attitude is; If the law does not support us, then let's change the court rules so we don't have to prove anything.

In short, converting a "Paper Promissory Note/Negotiable Instrument" into electronic book-entry to create a so called "eNote" has no legal basis. Once this "eNote" has been created within the book-entry system, the "eNote" is then offered up as collateral to the "Secondary Market" on Wall Street or into the Federal Reserve's BIC program (Borrower in Custody,) at which time a crime has been committed, as the book-entry notes are non-negotiable as defined by the Uniform Commercial Code, and a fraud has been introduced into the securities market. Once negotiability has been destroyed – it can never be regained, and cannot be bought/sold/transferred/assigned into the secondary market place. Issuance of a "Lost Note Affidavit" removes the negotiability of a lawful item.

The writer's comments: A paper note cannot be sliced and diced, but the electronic version can be sliced and diced or duplicated, triplicated or quadricated. That is why so many different secondary market securities state they hold the same note and no true owner can be identified. One paper note for one collateral. It is simple, and at present, that is all that is allowed by law.

There are many areas the Esign Act & UETA laws work well such as in transit of goods, bills of lading, warehouse receipts, etc.

Below are just a couple of notable items.

Exhibit "1"

http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf

Task Force on Judicial Foreclosure Rules November 7, 2007

(Excerpt)

Page 27

6 MR. BARRETT: Judge, I think that's a very

7 good point. This is Mike Barrett, and I know we've had

8 this difficulty. There really isn't such a document, and

9 maybe, Larry, you might explain mortgage servicing rights

10 because the servicer usually acquired their position in

11 the file through the purchase of MSRs. There is an

12 organized market in MSRs that really makes up maybe as

13 much as 40 to 50 percent of any mortgage company's assets,

14 and they acquired this -- their status of being a servicer

15 through the purchase of an MSR most of the time, or they

16 did it themselves, they created their own loan. So

17 finding a document that says, "I am the owner and holder,

18 and I hereby grant to the servicer the right to foreclose

19 in my name" is an impossibility in 90 percent of the

20 cases. So we're going to have to deal with that

21 particular issue, and an understanding of who the servicer

22 is and what an MSR is may be important to the transaction.

Page 28

8 HONORABLE BRUCE PRIDDY: And what the --

9 happens is they just execute a document like Mr. Barrett

10 says doesn't exist. They just create one for the most

11 part sometimes, and the servicer signs it themselves

12 saying that it's been transferred to whatever entity they

13 name as the applicant. I think we can avoid a lot of

14 problems if we specifically allow the servicer standing

15 under Rule 736, because I think it's -- we don't

16 specifically allow the servicer to proceed, and I think if

17 we tie in with the Property Code provision that the

18 servicer can proceed with foreclosure if certain

19 circumstances are met, if we tie into that in the rule I

20 think we'll avoid a lot of these problems.

Exhibit "2"

http://www.freddiemac.com/singlefamily/elm/pdf/efsc_trans.pdf

Freddie Mac

Conversation with Freddie Mac

November 16, 2000

Featuring Jerry Buckley And David Whitaker

David Whitaker is an assistant general counsel at Freddie Mac in McLean, Virginia.

Mr. Buckley is executive director of the EFSC and a partner in the Goodwin, Proctor, and Hoar Law Firm in Washington, DC.

(Excerpt)

One thing that’s very important I want to point out to you is at the end of Section 6.4 you will notice that despite the fact that we contemplate that most documents that begin on paper might eventually end up being electronic, that we don’t mean it with respect to the written promissory note. If there is anything in the world clear under the UETA and ESIGN is that once a promissory note is executed on paper it stays on paper. And if you were to digitize it and then shred it there’s a very good chance you’ve forgiven the debt. So for heaven’s sakes whatever else we might do let’s not start talking about shredding paper promissory notes.

(Exhibit 3)

http://www.law.upenn.edu/bll/archives/ulc/fnact99/1990s/ueta99.pdf

UNIFORM ELECTRONIC TRANSACTIONS ACT (1999)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT IN ALL THE STATES

at its ANNUAL CONFERENCE MEETING IN ITS ONE-HUNDRED-AND-EIGHTH YEAR

IN DENVER, COLORADO

JULY 23 – 30, 1999

(Excerpt)

SECTION 3. SCOPE.

(a) Except as otherwise provided in subsection (b), this [Act] applies to electronic records and electronic signatures relating to a transaction.

(b) This [Act] does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) [The Uniform Commercial Code other than Sections 1-107 and 1-206, Article 2, and Article 2A];

(3) [the Uniform Computer Information Transactions Act]; and

(4) [other laws, if any, identified by State].

(Exhibit 4)

http://www.ntia.doc.gov/ntiahome/frnotices/2002/esign/report2003/coverack.htm

http://www.ntia.doc.gov/ntiahome/frnotices/2002/esign/report2003/partc.htm

National Telecommunications and Information Administration

U.S. DEPARTMENT OF COMMERCE

1401 Constitution Avenue, N.W.

Washington, D.C. 20230

(202) 482-7002

www.ntia.doc.gov

ELECTRONIC SIGNATURES:

A Review of the Exceptions to the Electronic Signatures in Global and National Commerce Act

National Telecommunications and Information Administration

Nancy J. Victory

Assistant Secretary for Communications and Information

Kathy D. Smith, Chief Counsel

Milton Brown, Deputy Chief Counsel

Josephine Scarlett, Senior Attorney-Adviser

Jeffrey Joyner, Senior Attorney-Adviser

Stacy Cheney, Attorney-Adviser

Derrick Owens, Special Assistant to the Associate Administrator

Office of Spectrum Management

(Excerpt)

The ESIGN Act provides that the "provisions of Section 7001 of this title shall not apply to a contract or other record to the extent it is governed by . . . the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A."(73) This provision establishes that transactions, contracts, and records subject to the identified sections may rely upon ESIGN, as applicable, for validity. Those governed by one of the remaining Articles of the UCC -- Article 3 (Negotiable Instruments), Article 4 (Bank Deposits and Collections), Article 4A (Funds Transfers), Article 5 (Letters of Credit), Article 6 (Bulk Sales), Article 7 (Documents of Title), Article 8 (Investment Securities), and Article 9 (Secured transactions) -- may not rely on ESIGN for validity, but must instead look to other laws, including the Articles themselves, for validity.(74)

(Exhibit 5)

http://edocket.access.gpo.gov/2002/pdf/02-32303.pdf

Federal Register / Vol. 67, No. 247 / Tuesday, December 24, 2002 / Notices

(Excerpt)

Sec. 103. [15 U.S.C. 7003] Specific Exceptions.

(a) Excepted Requirements. — The provisions of section 101 shall not apply to a contract or other record to the extent it is governed by—

* * * *

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(Exhibit 6)

http://uscode.house.gov/download/pls/15C96.txt

(Excerpt)

-CITE-

15 USC Sec. 7003 01/03/2007

-EXPCITE-

TITLE 15 - COMMERCE AND TRADE

CHAPTER 96 - ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

SUBCHAPTER I - ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

-HEAD-

Sec. 7003. Specific exceptions

-STATUTE-

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by -

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1-107 and 1-206 and Articles 2 and 2A.

An alarming issue at hand is how after the "Paper Promissory Note/Negotiable Instrument" has been converted into an unlawful eNote a legal proceeding instills which in some cases the original blue inked original "Paper Promissory Note/Negotiable Instrument" miraculously reappears or a graphic representation is offered up as “The Original”. There goes the concept of "One Note" and "One Note" only. In real there is an unlawful electronic version of the "Paper Note" being utilized in the secondary market while the "Paper Note" is in storage somewhere or was the original destroyed when the electronic version was created? Under current laws both notes are not lawful at such time they both exist in tandem and neither can be enforced but it happens every day in the courts of this land.

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