The Secured Debt

Know what things mean:

Provided, are “words” to understand. These words may be different from what you think they mean. Learn the “words” in your paperwork, contracts, documents, etc. It will help you better understand what it happening around you.

Definition sources are from Wikipedia.

SECURED DEBT = PAPER NOTE + PAPER DEED OF TRUST

The Negotiable Instrument: (a.k.a. the “Note”)

1. *Transferable document (e.g., a bank note, check, or draft) containing an unconditional promise or order to pay a specified amount to its holder upon demand or at a specified time. In the U.S., the Uniform Commercial Code governs negotiable instruments.*
2. *A commercial paper, such as a check or promissory note, that contains the signature of the maker or drawer; an unconditional promise or order to pay a certain sum in cash that is payable either upon demand or at a specifically designated time to the order of a designated person or to its bearer.* (**keyword; Paper**)

Promissory Note: (a.k.a. the “Note”)

n. (Abbr. p.n. or P/N)
A written promise to pay or repay a specified sum of money at a stated time or on demand. Also called note of hand.

The Security Instrument: (a.k.a. “Deed of Trust”, “Mortgage”)

An interest in real estate that allows the property to be sold upon a Default on the obligation for which the Security Interest was created. The security instrument is more specifically described as a security Deed a Mortgage or a Trust Deed.

Deed of Trust:

*A paper document that embodies the agreement between a ”**Lender**” and a “**borrower**”, to transfer an interest in the borrower's land to a neutral third party, a **trustee**, to secure the payment of a debt by the borrower.* (**keyword; Paper**)

*A deed of trust, also called a trust deed or a Potomac Mortgage, is used in some states in place of a mortgage, a transfer of interest in land by a “**mortgagor/borrower**” to a”*

***mortgagee/lender**", to secure the payment of the borrower's debt. Although a deed of trust serves the same purpose as a type of **security**, it differs from a mortgage.*

*A deed of trust is an arrangement among three parties: the **borrower**, the **lender**, and an impartial **trustee**. In exchange for a loan of money from the lender, the borrower places legal title to real property in the hands of the "trustee" who holds it for the benefit of the"Lender", named in the deed as the beneficiary. The "borrower" retains equitable title to, and possession of, the property.*

The terms of the deed provide that the transfer of legal title to the trustee will be void on the timely payment of the debt. If the borrower defaults in the payment of the debt, the trustee is empowered by the deed to sell the property and pay the lender the proceeds to satisfy the debt. Any surplus will be returned to the borrower.

*The **right of the trustee** to sell the premises is called foreclosure by **power of sale**.*

A foreclosure by power of sale is neither supervised nor confirmed by a court, unlike a judicial foreclosure. Texas for instance, is a non-judicial foreclosure state.

While the rights received by a purchaser at a foreclosure by power of sale are the same as those obtained at a judicial foreclosure, there is a practical difference. Since the sale has not been judicially approved, there is a greater possibility of litigation over title, thereby making title to the purchased premises less secure than one purchased at a judicial foreclosure. In addition, the lender may purchase the property for sale under the provisions of a deed of trust, since the neutral trustee conducts the sale. This is not the case in a foreclosure, unless contract or statute provides otherwise, since the mortgagee must act impartially in selling the property to satisfy the debt. Some mortgages may, however, provide for foreclosure by power of sale.

The procedure for a foreclosure by power of sale is regulated by statute, a characteristic shared by a judicial foreclosure. All interested parties must be given notice of the sale, which may be published in local newspapers, usually in the public notice columns, for a certain period of time as required by statute, if one applies. The sale is usually open to the public to ensure that the property will be sold at its fair market value.

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Secured Debt:

> ***Debt*** *backed or* ***secured by collateral*** *to reduce the risk associated* ***with lending****. An example would be a mortgage, your house is considered collateral towards the debt. If you default on repayment, the bank seizes your house, sells it and uses the proceeds to pay back the debt.*

Is it a secured debt?

A negotiable instrument, can be secured or non-secured. Either way, the negotiable instrument is good, if it has not been altered since its original negotiation.

And According to the Uniform Commercial Code, it is paper.

To make a Secured Debt;

The beginning

Without going into detail of the process in which the borrower and lender negotiate a mortgage loan, a warranty deed is provided by the grantor or seller that guarantees that he or she holds clear title to a piece of real estate and has a right to sell it to the grantee or buyer. This guarantee is not limited to just the time in which the seller owned the property, but goes back to the origin of the property itself. This warranty deed conveys the title to real property from the seller to the buyer to use as collateral.

The combination of instruments

The borrower will use the authority of title to property, the deed of trust; offering up the property as collateral, to negotiate an amount of money, and terms, with a lender to obtain financing. If the agreement is mutual, the collateral is now the security instrument, being combined with the negotiable instrument, makes this a **secured debt**. The security instrument is then recorded into public records to let everyone know the existence of the lien and the primary purpose of perfecting the lien.

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Using my situation, I came into agreement with American Mortgage Network, by using a Deed of trust, as collateral for my loan. The loan was for “x” amount of dollars. In the agreement, I promised to pay American Mortgage Network, “x” amount of dollars, with interest, to the order of the lender, in monthly payments, until the loan was paid in full. Or, if I default, the “trustee” will convey the collateral to the Lender.

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The Deed of Trust(DOT) reflects the note. The DOT references the amount for the loan agreed by both the "borrower" and "Lender", parties to the instrument. It contains the Power of Sale clause. The negotiable instruments does not contain this clause.

Together, the **Paper Note and the Paper Deed of Trust**, make the **Secured debt**. They are inseparable.

The **secured debt** can be sold, and probably was. If it is paper, that would be true to the laws that govern.

Paper or Electronic

But was it sold Electronically?

This appears to be the trend now days. It seems to be right, and it is happening quite frequently. But I see a lot of problems with it. Others either do not understand this electronic conversion, or they are ignoring the problem with it. Maybe they are hoping it will go away or nobody would notice? A lot of people are catching on.

The problem with selling these electronic bits and pieces of the **secured debt**, started from the beginning, I suppose nobody realized that the **secured debt** was destroyed with the conversion from paper to electronic. The use of an electronic negotiable instrument has no lawful support. (See e-notes are not legal).

For the Note to be chopped up into little pieces it would only be possible by an electronic process so the lender could sell them off in a pool, piece by piece. It would also mean the Deed of Trust would be chopped up into little pieces, so it could follow the note, in its pieces.

What this electronic chopping of the instruments into pieces means, is the "perfection" of the chain of title was lost and the security instrument is nullity in public records.

A valid Deed follows a valid Note.

Legally? Only on paper.

If the "Lender" negotiated the note, the transfer of rights to the deed of trust must reflect the proper party and this new proper party, must perfect lien rights in public records.

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It should be, the paper Deed of Trust that was used as collateral, to secure the paper Note. That simple.

The negotiable instrument only identifies the parties involved in the note. If the debt is a **secured debt** the negotiable instrument will also identify the security instrument.

Loss of Perfection

Bifurcation and the loss of perfection takes place when the Note and the Deed of Trust are separated. This destroys the **secured debt**. It cannot be fixed, repaired, or put back together. Death of a **secured debt**.

But, if both parties agree to a loan modification or refinance, that is considered a new **secured debt**. If a new note and security instrument were executed then bifurcation was possibly covered up.

After the loss of perfection or bifurcation the only valid instrument left is the un-secured negotiable instrument held by a holder in due course of note. It could be questionable. Depends on what is presented. And it better be the original paper.

Now, that the loss of perfection or bifurcation of the **secured debt** has occurred, the Deed of Trust, is no longer valid. The Power of Sale clause, in the Deed of Trust is no longer enforceable. It cannot be used to foreclose on the home legally. It is not a valid security instrument. There is no longer a valid perfected paper security instrument securing the paper Note.

“MERS” records a “Transfer/Assignment”, in public records.

Mortgage **Electronic** Registration Systems, Inc, a.k.a MERS, the “*innovative process that simplifies the way mortgage ownership and servicing rights are originated, sold and tracked*”, was created by the real estate finance industry, or better known as the mortgage banking industry, with the idea to eliminate the need to prepare and record assignments when trading residential and commercial mortgage loans.

With this “*innovative process*”, the mortgage banking industry appears to believe that Mortgage **Electronic** Registration Systems, Inc. (“MERS”) is a proper party that can lawfully foreclose as the mortgagee and note-holder of a mortgage loan. Many will find this to be untrue, should they take the time research.

What is MERS?

As mentioned previously, MERS was created by the mortgage banking industry to streamline the mortgage process by using **electronic** commerce to eliminate paper. MERS mission is to register every mortgage loan in the United States on the MERS® System. (keyword: **Electronic**)

MERS is an **electronic** database and nothing more than that. It is a registry.

MERS has beneficiaries?

As stated on MERS website;

> *"Beneficiaries of MERS include mortgage originators, servicers, warehouse lenders, wholesale lenders, retail lenders, document custodians, settlement agents, title companies, insurers, investors, county recorders and consumers."*

MERS a Nominee? A nominee of what?

As stated on MERS website;

> *"MERS acts as nominee in the county land records for the lender and servicer. Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded. MERS as original mortgagee (MOM) is approved by Fannie Mae, Freddie Mac, Ginnie Mae, FHA and VA, California and Utah Housing Finance Agencies, as well as all of the major Wall Street rating agencies."*

BAM! As the Deed of Trust identifies the Lender, Trustee and the Borrower, and as such only the holder in due course (lender) is the beneficiary under the Deed of Trust, then to attempt to perfect the security instrument in **MERS** name is a nullity.

The Trustee is a non relevant party under the Deed of Trust until there is a default and the Trustee's only duty is that of selling the property. So for **MERS** to act as a nominee, mortgagee, or beneficiary in the public records is without merit.

It is an **electronic** database that does not contain paper documents. The MERS system has also been defined as an "**electronic** agent".

How does an "**electronic** agent" posses the paper negotiable note or paper security instrument?

Foreclosure on an unsecured debt?

From MERS website;

FORECLOSURES

> *Mortgage* **Electronic** *Registration Systems, Inc. ("MERS") is a proper party that can lawfully foreclose as the mortgagee and note-holder of a mortgage loan. MERS* ***Membership Rule 8*** *provides required guidelines that must be followed when MERS is the foreclosing entity. Please click here to access the Rules of Membership, and reference the Rule 8 requirements.*
>
> *In mortgage foreclosure cases, the plaintiff has standing as the holder of the note and the mortgage. When MERS forecloses, MERS is the mortgagee and it is the holder of the note because a MERS officer will be in possession of the original note endorsed in blank, which makes MERS a holder of the bearer paper. MERS will not foreclose unless the note is endorsed in blank and held by MERS.*
>
> *The MERS Legal Primer provides a sampling of cases that address the standing of MERS to foreclose its mortgages. These cases are not meant to be an exhaustive list involving MERS but are merely to serve as a primer for the legal arguments.*

In MERS dreams. Oh, computers don't dream. They only have a sleep mode.

MERS is not the proper party. MERS is not the holder in due course. MERS nor any other party in this crime has lawful authority to force sale a real property under a null deed of trust.

The security instrument lost its perfection. The **secured debt** was bifurcated.

BANKRUPTCY

> *MERS may file Motions for Relief from Stay and Proofs of Claim related to mortgages that it holds. Each MERS member, through its duly appointed MERS officer(s), is responsible to ensure that pleadings on behalf of MERS in bankruptcy court properly describe MERS. The MERS officer(s) must also ensure that all necessary proof is attached to the pleadings to show MERS has standing at the time the pleading is filed. Please click here to reference MERS requirements.*

Let me repeat this;

MERS is not the proper party. MERS is not the holder in due course. MERS nor any other party in this crime has the lawful authority to force sale a real property under the deed of trust.

The security instrument lost its perfection. The **secured debt** was bifurcated.

> **There are many suits across the United States, like Nebraska and Vermont cases that state MERS cannot prove MERS has the authority to conduct business as a mortgagee.**

Assigned in blank? “The defense”, another story for another day.

15 USC 7003

(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—

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

Read e-notes are not legal by James McGuire

If you live in Texas and read “Foreclosure in Texas” and “Affidavits Texas Rules of Evidence”, and the judges adhere to their oaths, you stand a good chance of beating the snot out of the banks.