

INTANGIBLE is not TANGIBLE - Unless there are Two Obligations?

Hopefully this will explain how two notes are involved with one security instrument via MERS/GSE's and clear the confusion in the courts? Law enforcement?

("Borrower"). The trustee is GEORGE M. SHANKS, JR.
1455 WEST LOOP SOUTH, SUITE 200, HOUSTON, TX 77027

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is organized and existing under the laws of Delaware and has an address and telephone number of P. O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS; and AMERICAN MORTGAGE NETWORK, INC. DBA AMNET MORTGAGE

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 01, 2024. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower

irrevocably grants and conveys to the Trustee, in trust, with power of sale, the following described property located in WILLIAMSON County, Texas:

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

How can any MERS member prove it has any legal or lawful paper promissory note or paper security instrument, trustee deed, etc. to support a MERS members claim of right to possession?

1. MERS member never was or never will be a party to an alleged tangible secured debt.
2. MERS member never has and will never be empowered with the use of an alleged lien, security instrument titled deed of trust. It is out of reach.
3. MERS member in not a mortgage servicer in the sense of Tex. Prop Code §51 definitions
4. Mortgage Electronic Registration Systems, Inc. MERS, is not in essence a "book entry system" as defined in Tex. Prop Code §51 definitions.
5. Mortgage Electronic Registration Systems, Inc. MERS, is not in essence a "mortgagee" as defined in Tex. Prop Code §51 definitions
6. MERS members are not in essence a "mortgage servicer" as defined in Tex. Prop Code §51 definitions

MERS was designed to meet the guidelines of E-SIGN and UETA. Certain states have an equivalent uniform electronic transactions act. The problem is not with MERS design but with what MERS members do electronically.

To support the words, reference MERS manuals for precisely what the concept of MERS is and what the definitions are according to MERS and in this instance not Texas property code definitions. Then look at the laws that govern real property; and laws that govern electronic property.

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First recognize and understand the meaning of a “*transferable record*”; [electronic property][intangible][obligation]

Sec. 322.016. TRANSFERABLE RECORDS. (a) In this section, "transferable record" means an electronic record that:

- (1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and
- (2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

This defines the electronic promissory note. It is an electronic record representing an electronic negotiable note. An electronic obligation. But is it possible of being also a document under chapter Chapter 7? That chapter deals with receipts?

Source: <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm>

Next, look at MERS concept;

Source: National eNote Registry, Requirements Document, Version 1.0, Mar 7, 2003

Concept Overview

a. The National eNote Registry is a compliance vehicle to satisfy certain requirements imposed by the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) so that the owner of an eNote (the Controller) would have legal rights similar to those that a “Holder in Due Course” has with a paper negotiable promissory note. An eNote issued in compliance with Section 16 of UETA or Title II of E-SIGN is called a Transferable Record (TR). Specifically, Section 16 of UETA and Title II of E-SIGN require that the party in control of the Authoritative Copy (AC) of the TR at any given point in the life cycle of an eNote can be readily identified.

b. The concept of a National eNote Registry (National Registry) has evolved out of the need to track and identify electronic promissory notes (eNotes) in an evolving industry infrastructure for electronic mortgages (eMortgages).

This concept overview explains that MERS is a “vehicle” that is compliant with E-SIGN and UETA. In Texas it is Tex. Bus. Com. Code, section §322, Uniform Electronic Transactions

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Act. It also confuses one in subsection (a) with “*so that the owner of an eNote (the Controller) would have legal rights similar to those that a “Holder in Due Course” has with a paper negotiable promissory note.*”. This is not referring to a tangible paper note, this is referring to an electronic Note that would have similar legal rights like a note, not an alleged paper note.

Key Assumptions

a. Electronic notes registered with the National Registry must contain language, which refers to the National Registry to identify their Controller.

This language provides the “closed loop” of relationships and responsibility, which ensure that the eNote, Controller, eVault, and National Registry all work together to satisfy the Safe Harbor provision of UETA Section 16.

b. All parties interacting with the National Registry must have executed membership agreements with the National Registry.

c. The authority of the National Registry would extend from specific investor requirements for its use.

d. The National Registry is expected to evolve over time to continue to meet industry needs.

e. The National Registry functionality is limited to electronic notes, and not paper notes.

The National Registry is intended to satisfy the requirements of UETA and ESIGN for electronic notes only. Attempting to provide functionality for paper note tracking would greatly complicate the design and implementation of the National Registry.

Reflect on the previous assumptions to get a better idea of what the Mortgage Banking industry said they were going to do, and did it. MERS does not track the paper note. MERS only tracks the eNote; “*Attempting to provide functionality for paper note tracking would greatly complicate the design and implementation of the National Registry.*”.

(a) a. Electronic notes registered with the National Registry must contain language, which refers to the National Registry to identify their Controller.

This assumption was to tell you MERS was going to be;

1. An electronic agent
2. An electronic bailee
3. A mortgagee of an electronic record in the registration system

(b.) All parties interacting with the National Registry must have executed membership agreements with the National Registry.

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This is a no brainer. You cannot participate unless you join the club.

(e.) The National Registry functionality is limited to electronic notes, and not paper notes. It is clearly explained in (e) that paper notes are not a part of the electronic records process.

So, why do MERS members claim they are tracking purported paper notes when MERS members only use electronic promissory notes on an electronic registration system that has no functionality to track alleged paper notes?

Why do MERS members attempt to use a security instrument that according to the instrument itself separated that security away from the paper promissory note? After reading and understanding the “transferable record” scheme MERS members call a mortgage it will become apparent about the separation claim.

Source: National eNote Registry, Requirements Document, Version 1.0, Mar 7, 2003

Authoritative Copy (AC): The unique, identifiable and mostly unalterable version of the eNote that

- (1) identifies the person asserting control as the person to which the Transferable Record was issued or most recently transferred,
- (2) ensures that “each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy” and
- (3) any revision of the AC is readily identifiable as authorized or unauthorized

Authorized Industry Participant: An entity that has signed a member agreement and has been granted security access to the National Registry eNote: The electronic promissory note. For this eNote to be negotiable and transferable, it must be clearly labeled the Authoritative Copy of the electronic promissory note.

➡ **Note Holder:** The investor or institution that is intended to be the permanent holder (i.e. controller) of the eNote

➡ **Originator/Seller:** The organization that originates an eNote and sells it to the Interim Note Holder or Note Holder

➡ **Servicer:** The party with contractual responsibility to collect payments on behalf of the Note Holder

Servicing Rights: The contractual rights that can be sold in the secondary market to collect payments on behalf of the Note Holder

➡ **Transferable Record (TR):** An eNote issued in accordance with the provisions of Section 16 of the UETA and Title II of E-SIGN

Trusted Third Party: An entity other than the Note Holder or Servicer that is in the business of providing services intended to enhance (i) the trustworthiness of the process for signing electronic records using an electronic signature, or (ii) the integrity and reliability of the signed electronic records

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According to the concept overview and the definitions, MERS members are only associated with other MERS members whom create, register, and transfer such electronic records, called transferable records allegedly governed by E-SIGN and UETA. An alleged potential homeowner does not have electronic records, alleged potential homeowner has allegedly a paper promissory note and paper security instrument.

The creation of the electronic promissory note according to MERS definitions, would be an originator of the electronic obligation loan and also the seller of the eNote to an interim note holder or not holder. We are not talking paper note here, The note holder in this electronic records registration system is an eNote holder; “**Note Holder** *The investor or institution that is intended to be the permanent holder (i.e. controller) of the eNote”.*

So the “*servicer*” will purchase and sell servicing rights.

Servicer: The party with contractual responsibility to collect payments on behalf of the Note Holder; - “*The investor or institution that is intended to be the permanent holder (i.e. controller) of the eNote*”.

⇒ **Servicing Rights:** The contractual rights that can be sold in the secondary market to collect payments on behalf of the Note Holder; - “*The investor or institution that is intended to be the permanent holder (i.e. controller) of the eNote*”.

If you read the electronic tracking agreements a “servicer” could be “seller” or “borrower” of an eNote transaction.

Although the MERS eNote registration system is designed to meet the guidelines of E-SIGN and UETA, the transferable records are not designed to function the way MERS members construe as a registration system that tracks the purported tangible mortgage medium. MERS claims it does not have the functionality to accomplish this. MERS only tracks electronic promissory notes.

MERS/GSE’s Hypothecation

Definition of HYPOTHECATE ; to pledge as security without delivery of title or possession – Source: <http://www.merriam-webster.com/dictionary/hypothecate>

MERS members hypothecated the purported potential borrower’s signed note/contract prior to closing in order to obtain funds to provide an alleged loan.

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The mortgage contract is written in such a way to appear as if the bank lent the potential borrower funds before they received their tangible promissory note / mortgage contract so that the bank can use it as a receipt which the bank can sell. The contract reads, “For a loan I have received...”, but, the potential borrower(s) haven’t received it yet. So in fact, the potential borrower signed and gave the tangible mortgage contract/note to the bank prior to their giving the potential borrower the funds. So, the application for the loan created the funds (it has the potential borrower signature’s on it) and the tangible promissory note (with the potential borrower signature’s) covered the funds to ‘repay’ the loan.

Through pre-determination [meeting of the minds] for this hypothecation process to work, a security instrument needed a process or way for the hypothecation to work, and needed to be designed and created in such a way the MERS member could hypothecate the receipt the MERS member held.

To accomplish this hypothecation process with MERS, a transferable records clearinghouse, the security instrument would need to allow MERS to hold a “security interest” in such a designed security instrument. This “security interest” wording in the security instrument allows for the creation of the transferable, using MIN:1234567-0123456789-01[example].

By using this MIN from the alleged paper security instrument, a MERS member can create an Electronic Promissory Note, allegedly equal to a paper promissory note, and register the eNote with an identical MIN: 1234567-0123456789-01 to allege the eNote is secured when the Authoritative Copy which is the eNote and the attached transferable record [the alleged paper security instrument], the two electronic records being combined with that identical MIN 1234567-0123456789-01, allegedly allows a MERS member, most likely an originator/seller of the eNote created a second and intangible obligation which is now referenced in the MERS eNote registration system and sold to investors electronically in bits and pieces.

It is not a easily identifiable in the MERS security instrument unless one realizes what to look for. But though the wording may be different in an older security instrument using MERS, it was made much easier when Fannie Mae decided not to use MERS any further and created its own FANNIE MAE/FREDDIE MAC – security instrument form #xxxx. All one is required to

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do is read a “covenant” somewhere around #20 prior or latter number and understand the following;

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower.

This covenant easily shows how the hypothecation process works with GSE’s such as Fannie Mae. Break it down to understand it.

The Note (together with this Security Instrument)

Or

a partial interest in the Note (together with this Security Instrument)

If Fannie Mae was the gal to hold on to the paper promissory Note (together with this Security Instrument), this would not be an issue, if it is properly recorded in county land records as such. However since Fannie Mae is a stock market kind of gal, Fannie may keep the Note, but will sell a partial interest in the Note (together with this security instrument) as possibly a *partial interest* to a “Principal Only” investor or *partial interest* to a “Interest Only” investor or both. With derivatives the way they are the possibilities of splitting are unrealistically unimaginable.

Anyone who realizes the (or interest in the Note) is the hypothecation process and the wording contained in the security instrument allows for the creation of the transferable record on the MERS eNote registration system with MIN: 1234567-0123456789-01. The security instrument design, is an attempt to strip the paper security instrument from the “The Note (together with this Security Instrument)” and then somehow attach the paper security instrument to the transferable record containing a eNote created with an identical MIN 1234567-0123456789-01 which both combined are the newly created transferable record [created by way of the security instrument MIN: 1234567-0123456789-01 and is thus presented to investors allegedly as a second electronic obligation for the MERS member to pay back for its request for a line-of-credit by using the receipt the purported potential borrower paid a MERS member with. while the MERS members also makes claim that there is an alleged tangible secured debt against a potential borrower and the purported lender allegedly holds a lawful security instrument with the same MIN 1234567-0123456789-01. MERS does not have the functionality to track paper mortgage notes, MERS says to itself.

“Attempting to provide functionality for paper note tracking would greatly complicate the design and implementation of the National Registry.”. Source: National eNote Registry, Requirements Document, Version 1.0, Mar 7, 2003

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A sale of the eNote “electronic mortgage” might result in a change in the entity (known as the “Loan Servicer”) that collects Periodic Payments due under the eNote and this eSecurity Instrument and performs other mortgage loan servicing obligations under the eNote, this eSecurity Instrument, and Applicable Law. However, reflecting back on the definition according to MERS a “servicer” is a party contractually responsible to the eNote holder. The eNote holder is an investor or institution intended to be the permanent holder of the eNote, This is not a paper promissory note “paper mortgage” being mentioned here. MERS own statement: *“Attempting to provide functionality for paper note tracking would greatly complicate the design and implementation of the National Registry.”*

Servicer: The party with contractual responsibility to collect payments on behalf of the Note Holder

Note Holder: The investor or institution that is intended to be the permanent holder (i.e. controller) of the eNote

There is no Tangible paper promissory Note being mentioned in the MERS system only other than some alleged electronic pledge of “mortgage loans” between the MERS members “Borrower” and the “Lender”, “Seller” and “Purchaser” in which MERS is called the “electronic agent” and functions as an “electronic bailor” for the electronic records transactions taking place in the MERS eRegistration system.

MERS member can create, register and transfer eNotes to their hearts content. That does not remove the facts and laws for tangible instruments, real property laws, local law of jurisdiction, the security instrument, local, state statutes and codes are adhered to for the benefit of being a lawfully enforceable paper instrument. If the laws were not followed, there could be serious consequences on the paper side of things.

In Texas, Texas Business and Commerce Code, section §322, *Uniform Electronic Transactions Act* is cited as UETA.

For one to become a MERS member, it would be required that the “person” apply for membership. Once accepted, the MERS member can freely create eNotes, register and transfer.

1. To create an eNote, would be the party originating an eNote.
2. To register an eNote, would possibly be the originating party and possibly a purchaser of an eNote.
3. To transfer an eNote, a “holder” of the eNote called a “Controller”, one who controls the eNote, could be an eNote “Originator”, “Seller”, “Purchaser”, or a “third party”.

To understand what was not understood takes a bit of effort upon the one seeking knowledge of how the machine works. Through definitions and the understanding of this certain chapter, it is easily demonstrated as law, that what MERS members are doing with county land

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records and court systems which is well beyond MERS members lawful means. Electronic is electronic, paper is paper.

Sec. 322.002. DEFINITIONS. In this chapter: *Source:* <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm>

(1) "**Agreement**" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(4) "**Contract**" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(6) "**Electronic agent**" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "**Electronic record**" means a record created, generated, sent, communicated, received, or stored by electronic means. (8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(11) "**Information processing system**" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "**Transaction**" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

With this section of the Texas Business and Commerce Code, MERS members fulfill the requirements to satisfy the *Uniform Electronic Transaction Act*.

1. MERS members use a contract agreement to utilize an electronic agent as an information process system.
2. MERS member sign an Electronic Tracking Agreement "ETA", aka agreement.
3. MERS members create an electronic record.
4. This electronic record is registered and transferred
5. These electronic transfers are called transactions

But the "Scope" section provides exceptions for what lawfully can be considered.

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter 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;
or
- (2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

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(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

There really is no need to go further as this “Scope” as subsection (b)(2) clearly recognizes that items governed by the Uniform Commercial Code other than 1.107 and 1.206 and Chapters 2 and 2A are excluded from this section. Subsection (c) clearly states that this chapter applies to *electronic record* or *electronic signatures* otherwise excluded from the application of this chapter under Subsection (b) *when used for a transaction subject to a law other than those specified in Subsection (b)*. Subsection (d) also clears the air that other laws are applicable to the transaction.

MERS members are bound by this chapter that the electronic transactions are only between the parties whom agreed to conduct transactions electronically, such as MERS members.

Sec. 322.005. Use Of Electronic Records And Electronic Signatures; Variation By Agreement.

(a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

The transferable record is not an alleged tangible promissory note, nor is it an alleged tangible security instrument. The electronic records are utilized in the MERS eNote registration system. MERS registration system does not have the functionality to track paper promissory notes.

Sec. 322.016. TRANSFERABLE RECORDS. (a) In this section, "transferable record" means an electronic record that:

- (1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and
- (2) the issuer of the electronic record expressly has agreed is a transferable record.

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Two requirements should be met if the electronic record is to be considered a transferable record.

1. It would be an obligation.
2. The issuer of the obligation agreed it was a transferable record.

So, when a MERS member creates an eNote with an identical MIN 1234567-0123456789-01 of a certain security instrument, the MERS member is creating a second obligation of an intangible electronic record, the MERS member agreed was a transferable record. But who is the other party, after all, it is an obligation to someone? This transferable record would contain the electronic signature(s) of the issuer of the electronic Note.

MERS claims that the creation of a security instrument designed to utilize the MERS wording allows MERS member to register with MERS an alleged mortgage and record another mortgage in county land record as an alleged security instrument in MERS name and no need for a subsequent recorded security instrument is required until at some point determined by MERS and its member that an assignment would be recorded in land records and identify the MERS member intentions.

ELECTRONIC TRACKING AGREEMENT/WAREHOUSE LENDER

THIS ELECTRONIC TRACKING AGREEMENT dated as of WHENEVER, 20?? (this "Agreement") among MERS MEMBER ("Lender"), MERSCORP Holdings, Inc. ("**Electronic Agent**"), Mortgage Electronic Registration Systems, Inc. ("MERS") and MERS MEMBER ("Borrower").

WHEREAS, the Lender has agreed to extend a line of credit to the Borrower for the purpose of the Borrower lending money to potential homeowners for mortgage loans (the "Mortgage Loans") pursuant to the terms and conditions of a Mortgage Warehouse Loan and Security Agreement dated as of (whatever date) between the Lender and Borrower, as amended from time to time (the "whatever Agreement").

WHEREAS, the Borrower is obligated to pledge the Mortgage Loans to the Lender and also to service the Mortgage Loans pursuant to the terms and conditions of the (whatever) Agreement and to complete all actions necessary to cause the issuance and delivery to the Lender of the Mortgage Notes (the "Mortgage Notes"), and

WHEREAS, the Lender and the Borrower desire to have certain Mortgage Loans registered on the MERS® System (defined below) such that the mortgage of record under each Mortgage (defined below) shall be identified as MERS;

Additionally;

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Appointment of the Electronic Agent.

(a) The Lender and the Borrower, by execution and delivery of this Agreement, each does hereby appoint MERSCORP Holdings, Inc. as the Electronic Agent, subject to the terms of this Agreement, to perform the obligations set forth herein.

(b) MERSCORP Holdings, Inc., by execution and delivery of this Agreement, does hereby

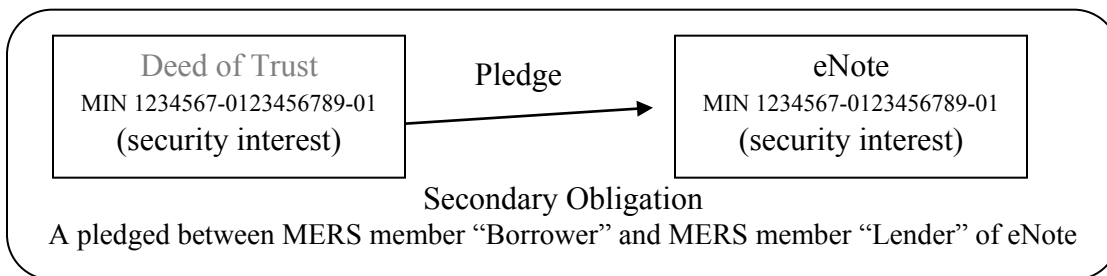
(i) agree with the Lender and the Borrower subject to the terms of this Agreement to perform the services set forth herein, and

(ii) accepts its appointment as the Electronic Agent.

MERS is the electronic bailor for the electronic transactions of the electronic records

After reading this agreement, it does not bind any paper mortgages in the MERS system, it only Binds the “Borrower” to pledge alleged potential homeowner mortgage loans, [plural] to the “Lender” of the electronic transaction. This does not mean that the alleged paper promissory note or paper security instrument went anywhere after it was allegedly signed by a purported potential homeowner. It only means there is an agreement between MERS members to use electronic records, and use those electronic records on a certain electronic transactions system, and between the parties who agreed. MERS is not functionally designed to track alleged paper promissory notes and such.

This eNote support system cannot meet the tracking requirements of a purported paper mortgage note. MERS does not have the functionality to track alleged paper promissory notes. MERS can only track transferable records. That is all it is designed for.



“The Mortgage follows the Note”

West v. First Baptist Church of Taft, (71 SW 2d 1090 – 1934), citing Carpenter v. Longan, (83 US 271 - Supreme Court 1873).

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Now that I've gone through all of this; hopefully it is simple enough to see a MERS member only has electronic transferable records and a tracking system that tracks the electronic transactions. This still has nothing to do with the alleged paper promissory Note or alleged paper security instrument. The MERS eNote registration system is a MERS members way of tracking secondary market certificates just like G. Tommy Bastian said the November 7, 2007 Meeting of the Task Force on Judicial Foreclosures. The follow are snapshots if you would like a glimpse. My point is look for these admissions and find out how the MERS members came up with the scheme. Then you can see what they have not been doing according to real property laws and other laws that pertain to an purported paper mortgage loan,

A book entry system as defined in section 51.001?.

18 MR. BASTIAN: Yeah. It is the book entry
19 that's referenced in 51.001 as the book -- the book entry
20 system. That's what MERS is.
21 HONORABLE MARK DAVIDSON: Well, all the

15 is.
16 MR. BASTIAN: Well, MERS is going to be the
17 mortgagee of record. In about 60 percent of all loans
18 MERS is going to be the mortgagee of record, but all MERS
19 is is a registration system. That's all it is. It really
20 is a piggyback on what happened in the securities market
21 back in the early Seventies when Wall Street was
22 exploding, and back in those days whenever you bought and
23 sold stocks or bonds you had to have a paper certificate.
24 Well, the back rooms couldn't keep up with it, and Wall
25 Street almost cratered, and they came up with a book entry

7 (Pages 22 to 25)

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1 system that everybody is familiar with today where loans
2 are bought and sold, and that's basically what MERS is.
3 It's just a listing of who has all the beneficial
4 ownership interest in a mortgage, and that's going to be
5 the investor, it's going to be the mortgage servicer, it's
6 going to be the subservicers. It gives you four or five,
7 six pieces of corroborating information about the borrower
8 and that particular loan. I mean, it has the detail on
9 their status sheet that says, "This is when the loan was
10 made, here is the borrower, and here's the amount of the
11 loan." I mean, all that information is right there so
12 that if the loan is registered on MERS it's real easy to
13 determine all the different parties in the transaction,
14 and that's the way the world's going, so maybe that's kind
15 of the place we need to be going.

How about affidavits?

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17 HONORABLE BRUCE PRIDDY: One of the other
18 concerns I have is that most of the applications, the rule
19 says it can be on information -- it can be on personal
20 knowledge or information and belief, if they state the
21 basis for information and belief. Nearly all of the
22 applications I see are on personal knowledge, and you can
23 tell that there's no way that one person can have personal
24 knowledge of everything that's in there.
25 MR. BAGGETT: That's true.

8 (Pages 26 to 29)

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1 MR. BARRETT: Exactly.
2 HONORABLE BRUCE PRIDDY: It's just -- to me,
3 I think we need to massage it a little bit and not
4 encourage folks who do this, because it really kind of
5 devalues the idea of personal knowledge in my court
6 because of what they're saying they have personal
7 knowledge to they can't possibly have personal knowledge
8 to.

How they come up with alleged Note or Security Instrument?

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.

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1 courts in Dallas require some sort of assignment of the
2 note to the applicant so the applicant is actually the
3 person or the entity that has the rights under the --
4 MR. BAGGETT: Judge Davidson, can you hear
5 that?
6 HONORABLE MARK DAVIDSON: Most of it.
7 MR. BAGGETT: Speak up.
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.

Go read it for yourself. <http://www.supreme.courts.state.tx.us/jfrtf/pdf/110707transcript.pdf>

What MERS Members do with an electronic "mortgage"

1. Utilizes potential homeowners purported loan documentation, especially the purported paper promissory for the purposes of hypothecating for the benefit of the alleged lender whom becomes a seller. This is purportedly the alleged tangible obligation.
2. For the purposes of hypothecation, the member creates an electronic promissory note, with an ID number easily recognized by the electronic records system, usually in the

INTANGIBLE is not TANGIBLE - Unless there are Two Obligations?

form of MIN 1234567-0123456789-01. This eNote is an electronic obligation between MERS members and separate from a purported potential homeowners loan. MERS does not have the functionality to track alleged paper promissory notes. This is an intangible obligation, separate from the purported tangible obligation.

3. By the design and creation of the MERS/GSE related security instrument, the signer(s) of such alleged security instrument agrees that the paper security instrument can be removed from the paper promissory note, and attached to an electronic promissory for other purposes in the electronic records transactions system.

4. To further the actions by MERS members hypothecation process, and by the signer(s) signature(s), which gave permission is further granted, that at upon some type of determination between the MERS members, the purported paper security instrument will be re-attached back to the alleged original paper promissory note.

Once the alleged paper security instrument was stripped from the purported paper promissory Note, the secured debt lost its status of being secured.

In Texas, “*the mortgage follows the Note.*” Not a separate MERS member intangible electronic obligation in the form of a “*transferable record*”.

Peace be with you,