TRILLION DOLLAR FUBAR

UNCOVERED

The Trillion Dollar FUBAR Uncovered

By James McGuire
Revised June 29, 2011

Dedicated to 7 year old Julia, 4 year old LG and all the other children that will inherit this Great Country. Today, they are a little older, but still require protection from evil.

What is known about the multi Trillion Dollar FUBAR reveals an extreme complex machine.

A Secured Mortgage consists of two parts, the Mortgage Note and a Security Instrument (Deed of Trust or other such Security Instrument properly perfected). Upon initial signing of the Mortgage Note and the Security Instrument, the Security Instrument attaches and is temporary perfected. Temporary perfection of the lien is converted to a permanent perfection upon the filing of the Security Instrument of record in the appropriate records office. Actions to this point would have created a "Secured Indebtedness".

In creating the secondary market Mortgage Backed Securities, where MERS is named as Mortgagee , in many instances results in a loss of perfection of the lien and thus renders the Mortgage Note "Unsecured." Where MERS is named as Nominee for Lender Successors and Assigns on the Security Instrument reflects an agent relationship with the originating lender as holder of the Mortgage Note. Whether lawful or not, MERS being named as Mortgagee for the original Noteholder notices that MERS is attempting to be an agent for same. Where the original lender endorses the Mortgage Note in blank to multiple unidentified Successors and Assigns creates and condition where MERS cannot be agent for the unidentified Successors and Assigns as "Indorsee," such as the Mortgage Note on its face does not identify any intervening Noteholder, and as such, no agency rights exist between MERS and any unidentified intervening party.

Just like many people who purchase a home, one assumes the parties executing the paper work are watching out for your best interests and follow the written laws. At the closing everything appears to be legal and lawful. But that changes, almost immediately after closing, without your even knowing.

What we do know about mortgage notes is that many originate with an originating lender. How the Mortgage Notes lawfully ends up in the possession of a bank is no longer a mystery, it just doesn't happen. Where the GSE's are concerned, i.e.; Fannie Mae should have been the holder/owner of a secured Mortgage Note the banks claim that right. In a number of court proceedings the bank present "Lost Note Affidavits," accompanied by a "printed out digitized copy," of the mortgage note and present same to the court as "proof" of a "lawful indebtedness."

Under the Federal Rules of Evidence, a Lost Note Affidavit without personal knowledge is nothing more than hearsay and therefore inadmissible. The printed out digitized copy of the note also fails under the hearsay rule. The Uniform Commercial Code and most states' equivalent allow for Lost Note Affidavits but require supporting evidence. For cases dealing with Mortgages, records filed in Public Records Offices would support a valid Lost Note Affidavit. But a nationwide review of public records reveal many "Notices of Assignment" of lien rights to reflect a negotiation of the Mortgage Note that could allow the bank have a claim to the mortgage simply does not exist. Where a bank or trustee had no Original Mortgage Note and no filing in public records to support their Lost Note Affidavit--any claim by a bank or trustee is without merit.

In reverse engineering of the banking system for Mortgages from origination to Wall Street; excavating the Crime of the Century; knowing how it was perpetrated against investors, assurance

companies, homeowners, and others and deceiving the judiciary appears to be by design and as such the world needs to know.

Now we enter the world of molecular science, uhh eNotes and the Secondary Market

To begin understanding the fraud we must revisit the author's 2008 document entitled "Potomac Two Step":

In 1929 the "Great Depression" hit and 4 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 and Weiss of Citicorp and others had for a decade wanted the "Glass-Steagall Act" repealed. Along comes the "Gramm-Leach-Bliley Act", in part authored by Phil Graham, that was enacted by Congress in 1998 which eliminated the separate bank requirement. Electronic capabilities had increased 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 in whole, with the help of Mortgage Bankers Association which was also a creation of the banks, created an electronic database processing entity named "Mortgage Electronic Registration System", "MERS" for short.

It has been discovered that in 1998 in Decatur County, Georgia MERS had been registering titles with the land records office which would evidence that MERS was functioning in some manner.

In 1999 the House of Representatives held hearings that addressed the forth coming "E-Sign Act". In one hearing it was noted that only two (2) exclusions existed. 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, 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. This exclusion stated that the E-Sign Act had no authority to override the Uniform Commercial Code except for the 4 exceptions. It would be interesting to learn who authored the change and for what reason. None of these four (4) exceptions were Articles that govern "Negotiability" of "Negotiable Instruments".

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 of Blue Inked Paper Signatures.

The writer of this document does not argue the fact that an "Electronic Signature" has the same legal force as a "Blue Inked Paper Signature" so long as it is created electronic and complies with all laws and is never required to be negotiable. Negotiability is required to further assign 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, 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 Inked Paper Signature" cannot be converted to an "Electronic Signature"/"Electronic Transferable Record" after the fact.

In 2001 the "National Telecommunications Information Agency", part of the Department of Commerce, complied with the enacted E-Sign law and 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 states' equivalence of the federal Uniform Commercial Code were being modified to allow for a "Lost Note Affidavit" along with a copy of the "Negotiable Instrument" to suffice to provide

legal standing in a court of law at the state level. 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 scrapped from the "Promissory Note/Negotiable Instrument". In this writing the term "Negotiable Instrument" is a representation of the "Original Blue Inked Signed Promissory Note" that for all intent was created to be used in the secondary market as a "Negotiable Instrument".

The procedure of imaging an "Original Promissory Note" into an electronic format has no legal basis for providing "Negotiability" for buying, selling or transferring to another party much less the secondary market and "Wall Street" as defined by the "Uniform Commercial Code".

Research has shown that a high probability exists that at the time of scanning the "Original Blue Inked Signed Promissory Note" the originals are destroyed. This scanned created electronic version is being referred to as an "E-Note" and has no lawful basis to exist. Forty (40) to fifty (50) million of these "E-Notes" have been registered on the "MERS" system and all claims are made on the basis that they are lawful "Negotiable Instruments"--in fact they are fraudulent/fictitious documents that are deliberately being misrepresented.

In reviewing thousands of "Notice of Trustee Sales" and other documents filed in MERS' name at local county recordation offices and with the courts, records indicate "MERS" is an "Assignee", (step into my shoes) for a "Security" that was offered for sale on the secondary market. These notices give creed that that an "E-Note" was bought and sold and used as collateral on "Wall Street". What is amazing is that in the Prospectuses themselves there is mention that the "Security/Collateral/Negotiable Instrument" can be represented by using a "Lost Note Affidavit/LNA" with a copy of the "Negotiable Instrument" as a source of validity 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/LNA" to exist if all reference is made to a fraudulent & fictitious document.

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 negotiability was destroyed, how could that item be offered up as collateral as if it had a legal basis of authority, if it is not legally possible under current law? 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 help in disguising the fraud.

Offered opinion is that the banks got too far into book-entry and discovered that the third (3rd) exclusion existed or they did not like the exclusion and had no other option but to conceal the exclusion so that the electronic book-entry system would work, regardless of whether or not legal, which allowed the massive unlawful book entry transfers to feed the appetite of Wall Street. So we have a massive smoke screen offered to the courts by the banks' legal counsels to make sure the fault is never uncovered. This document will 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 exclude items governed by Uniform Commercial Code, Article 3.

The banks and MERS operate under the false impression the Esign Act and UETA laws give them lawful status to operate using "eNotes" based on homeowners' "Promissory Notes/Negotiable Instruments" and have attempted an all out effort to cloud the issue before the courts and the banks are aiding by 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. 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" ends 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 we hold the same note and no true owner can be identified. One paper note for one collateral use, simple and at present that is all that is allowed by law.

An alarming issue at hand is how after the "Paper Promissory Note/Negotiable Instrument" has been converted into an unlawful eNote and a legal proceeding ensues (def: to take place afterward or as a result) 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 reality 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.

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

It was not until some years after publishing The Potomac Two Step, the author was able to prove by admission of Florida Bankers Association's filing with the Florida Supreme Court in Case no.: 09-1460[1] the scan, copy and destruction was in truth a reality by the following excerpt:

> *"In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred. It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed. Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities. The records of ownership and payment are maintained by a servicing agent in an electronic database.*
>
> *The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file."*

What is alarming is not only does the Supreme Court Case no.: 09-1460 provide an admission of scan, copy and deliberate destruction, it also shows that if and when the laws cannot be complied with, the banks under attempted disguise of industry standard, attempt to change the Rules of the courts so as not to have to comply with the law.

Florida is not the only state that has issues with banks changing the rules to avoid the law; Texas also has a similar issue as noted in a certified transcript identified as "Meeting of the Task Force on Judicial Foreclosure Rules[2], November 7, 2007. The alarming fact of this transcript is the identities of several of the parties in attendance: Texas State Judge Mark Davidson, 11th District Houston; Phil Johnson, Texas Supreme Court liaison; Texas State Judge Bruce Priddy, 116th District

[1] Reference 1
[2] Reference 2

Dallas. Also in attendance were Michael Barrett and Tommy Bastian of Barrett, Burke, Wilson, Castle, Daffin & Frappier, one of the largest foreclosure mills in Texas.

Tommy Bastian is noted to say, "*In about 60 percent of all loans MERS is going to be the mortgagee of record, but all MERS is is a registration system. That's all it is."*

Michael Barrett commented, "*So, finding a document that says, 'I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name' is an impossibility in 90 percent of the cases."*

An alarming statement came from Judge Bruce Priddy, "*And what the – happens is they just execute a document like Mr. Barrett says doesn't exist. They just create one for the most part sometimes, and the servicer signs it themselves saying that it's been transferred to whatever entity they name as the applicant."*

Judge Bruce Priddy is also noted to state, "*One of the other concerns I have is that most applications, the rule says it can be on information – it can be on personal knowledge or information and belief. Nearly all of the applications I see are on personal knowledge, and you can tell that there's no way that one person can have personal knowledge of everything that's in there*."

Honorable Bruce Priddy, "*It's just – to me, I think we need to massage it a lit bit and not encourage folks who do this, because it really kind of devalues the idea of personal knowledge in my court because of what they're say they have personal knowledge to they can't possibly have personal knowledge to."*

<u>From an exchange of comments between Judge Bruce Priddy and Mr. Bagget</u>
Judge Priddy stated, "*And so I would like to have some tweaks of that."*
Mr. Bagget replied, "*And we shouldn't write the rule in a way that they can't comply with. That's not very smart."*
Judge Bruce Priddy responded, "*Right. But they can do it if they do it on information and belief and just say that it's based on their records, but no one does."*

In The Supreme Court of Texas, Misc. Docket No. 07-9160[3] provides a complete list of attendees.

One needs to question changing the Rules of the Court to be in *non-compliance* with the *Rules of Evidence*, as "based on their records" would be hearsay.

In United States of America v. Hibernia[4], No. 86-3774, United States Court of Appeals, Fifth Circuit, April 5, 1988 the court commented: "Commercial customs does not apply where the U.C.C provides otherwise." One would have to conclude that "commercial customs" has the equivalent, contextual, and immediate definition and interpretation of "industry standards".

As such, it appears Florida and Texas courts do not follow all the Laws but follow Court Rules to circumnavigate certain Laws. Due Process of Law--not in Florida or Texas.

[3] Reference 2a
[4] Reference 3

It is unknown to the author how many other states have similar scenarios.

We shall address our attention to Fannie Mae's Announcement[5] 06-24 dated December 7, 2006, titled "Amends these Guides: Servicing, Process for Foreclosing on Mortgage Loans Reflecting Mortgage Electronic Registration Systems, Inc as Mortgagee. Under the sub title Servicing Guide Part VIII, Section 105, Conduct of Foreclosure Proceedings. It instructs, *"Therefore, in most jurisdictions, the servicer will need to prepare a mortgage assignment from MERS to the servicer, and then bring the foreclosure in its own name, unless the Servicing Guide requires that the foreclosure be brought in the name of Fannie Mae. In that event, the assignment will need to be from MERS to Fannie Mae."*

Once the security instrument has been bifurcated from the note, rendering the indebtedness "Unsecured", any attempt to assign the security instrument back to the note as shown above will not convert an "Unsecured Indebtedness" back into a "Secured Indebtedness".

Now we turn attention to a Mortgage Bankers Association publication, Technology White Paper, "Security Interests in Transferable Records, Evidencing Residential Mortgage Lending Transactions and the Rights of Warehouse Lenders," as by, "Analysis and Proposal, MBA Residential Technology Steering Committee (ResTech) – eMortgage Adoption Task Force." Page 10, footnote 40:

> *"UCC Revised Article 9, 9-102(42), 9-102(47) and 9-102(61); UCC 3-104. A "payment intangible" is a general intangible that primarily evidences an obligation to repay money. A "general intangible" is any personal property that does not fall into one of the other collateral classifications in Revised Article 9. An "instrument" is a negotiable instrument or other writing customarily transferred by delivery of possession with any necessary indorsement. Therefore, a transferable record is not an "instrument" for purposes of perfection and priority, because it is not in writing."*

"Therefore, a transferable record is not an "instrument" for purposes of perfection and priority, because it is not in writing." What does this statement really mean?

It means that eNotes are, in fact, a "transferable record" in the form of an electronic digitized graphic file which can identify an "authoritative copy" as well as the party that has control of that "authoritative copy." However, since this "transferable record" is in electronic form, negotiability is not allowed under the Uniform Commercial Code. It is this eNote/"transferable record" that is offered up into the secondary market and as it is in electronic form, transferring lien rights from the original-paper-holder-to-an-electronic-holder destroys the perfection of the Security Instrument. What was once a "Secured Indebtedness" at conception is now an "Unsecured Indebtedness" at the secondary market.

Once perfection of the "Security Instrument" is lost, the "Power of Sale" clause contained within the "Security Instrument" is forever lost. No Bank, servicer, trustee, investor, not even God could use the Power of Sale clause to "Foreclose," but the courts have allowed foreclosures to occur.

[5] Reference 4

National Journal's Technology Daily[6] article dated July 3, 2003 in part reads:

"The Bush administration is calling on Congress to continue exempting an array of documents from a law that gives legal weight to e-signatures…." "…Contracts governed by state commercial law."

The American Bar Association's article "PROBATE & PROPERTY"[7] Jan/Feb 2007, Vol. 21 No. 1 states, *"The eMortgage is not a scanned-in document image. Instead, it is a specific electronic file of the security instrument package that is consented to, recorded, assigned and stored electronically."*

The American Bar Association did not address the negotiable instrument as to be included within the electronic scope. What is of concern is the highly respected American Bar Association also does not recognize that the "Security Instrument" as governed by Article 9 of the Uniform Commercial Code or the states equivalence is also excluded under UETA and ESIGN.

American Bar Association's comments to Josephine Scarlett[8], Attorney, Office of the Chief Counsel, National Telecommunications and Information Administration provides the following information:

"The Electronic Signatures in Global and National Commerce Act (codified at 15 U.S.C. § 7001 et seq) ("Esign") 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." 15 U.S.C. § 7003.

This exclusion from the provisions of Section 7001 for contracts or records subject to the Uniform Commercial Code should be maintained. The Uniform Commercial Code as in effect and as revised accommodates electronic commerce in a carefully considered manner. Section 7001 is not necessary to facilitate electronic commerce in these transactions, and would be potentially harmful to established and evolving paper-based and electronic commercial transactions which are governed by the Uniform Commercial Code."

"Uniform Commercial Code Article 3 governs negotiable instruments, including checks and promissory notes. Negotiable instruments must be in writing and signed. To the extent that parties want to engage in electronic payment mechanisms, Article 3 does not prevent parties from doing so. Thus parties may use funds transfer, debit cards, credit cards, ACH transactions or other forms of electronic payment mechanisms. All of those other types of payment mechanisms are governed by law other than Article 3 and Article 3 does not prevent their use."

"The primary purpose of Article 3 is to provide for the rights of third parties who take the negotiable instrument. Article 3 is premised on a regime of possession and indorsement of an instrument and the rights and obligations that accompany that possession and indorsement. To allow for electronic negotiable instruments there must be a concept that is the functional equivalent to possession and indorsement in order to adequately protect third party rights. The difficulty in making such a wholesale change was recognized at the time that both the Uniform Electronic Transactions Act (UETA) and Esign were promulgated by setting up the concept of a "control" system to substitute for the possession and indorsement concept as it applies to electronic notes. UETA Section 16 and Esign Section 7021. Nothing has changed to make that concern less real. Adequately protecting third party rights and assuring commercial market stability cannot be done by two party contracts in the absence of a

[6] Reference 5
[7] Reference 6
[8] Reference 7

statutory scheme that is designed to accommodate electronic negotiable instruments. Applying Section 7001 provisions would sweep away the writing and signature barriers as applied to the creation and enforcement of a negotiable instrument. This change would create havoc as there would be substitute for the possession and indorsement concepts that currently govern the rights and obligations of third parties as to a negotiable instrument.®"

"Uniform Commercial Code Article 9 governs secured transactions and was significantly revised in 1999. The revised Article 9 is in effect in all states and the District of Columbia. Revised Article 9 allows for electronic security agreements, electronic financing statements, electronic filing and electronic notices. Subjecting Article 9 to the provisions of Section 7001 designed to do away with the paper requirements is unnecessary to facilitate electronic commerce. In addition, for some collateral types, such as negotiable instruments and documents of title, the ability to perfect and enforce security interests in those items are based in part upon the concept of possession of those tangible items. For other collateral types, such as chattel paper and investment securities, parallel systems of rules have been developed for electronic forms and paper forms of that type of collateral. Applying the provisions of Section 7001 to the paper form would upset the certainty necessary for an efficient system of secured transactions and is not necessary to allow for electronic transactions."

"As can be seen from the above comments, the current exclusion for the Uniform Commercial Code from the provisions of Esign Section 7001 should be continued.(10) To subject the Uniform Commercial Code to the generalized approach of Section 7001 is in large part unnecessary given the carefully crafted accommodations to electronic commerce already in place and would create much disruption and uncertainty in the transactions governed by the Uniform Commercial Code."

Let's focus attention on a document called, "eMortgage Closing Guide, Version 1.0[9], Final Release, April 27, 2006, MISMO eMortgage Workshop," published by MISMO. The eMortgage Guide reflects that MISMO is owned by Mortgage Bankers Association as shown in this statement, *"The MISMO eMortgage Closing Guide, published by the Mortgage Industry Standards Maintenance Organization, Inc. ("MISMO®"), a wholly owned subsidiary of the Mortgage Bankers Association, is a mortgage industry reference tool - a guide to the various aspects of electronic mortgage closing technology and business."*

Introduction, more like: "Start the Illusion," Author's personal comment

Introduction

"…The closing of an electronic note (eNote), security instrument (eSecurityInstrument), and other electronic closing documents requires the use of a specialized computing platform, generally known as an electronic closing or eClosing system. An electronic closing system is typically a web-based platform that allows the lender, the closing agent and the borrower to electronically review, sign, store and transfer closing documents."

"However, the enforceability and transferability of the eNote, and the legality of other electronically signed documents depend on whether the closing process and/or system used to create, execute, and store the electronic documents complies with applicable federal and state legal requirements."

[9] Reference 8

Back to Fannie Mae, *"eMortgage Delivery, Frequently Asked Questions[10], March 2007."*

"Q1. What is an eMortgage?

> *An eMortgage (electronic mortgage) is a mortgage for which the promissory note and possibly other documents (such as the security instrument and loan application) are created and stored electronically rather than by using traditional paper documentation that has a pen and ink signature. Because of the limited number of recording jurisdictions that accept electronic documents for recordation, most (but not all) eMortgages typically consist of a paper security instrument and an electronic note (eNote)."*

As L would say, hmmmm; Fannie Mae buys eNotes! Does Freddie Mac[11] buy them also, you betcha…

The author has noted that a number of Land Record Clerks have recently been taken legal action against fraud committed in the Deed Records. Trustee Deeds do require a payment of fees as such Trustee Deed is a sale of Real Estate, at least in Texas.

Use of this writing only requires attribution to the author.

[10] Reference 9
[11] Reference 10