

What Follows What - The Text

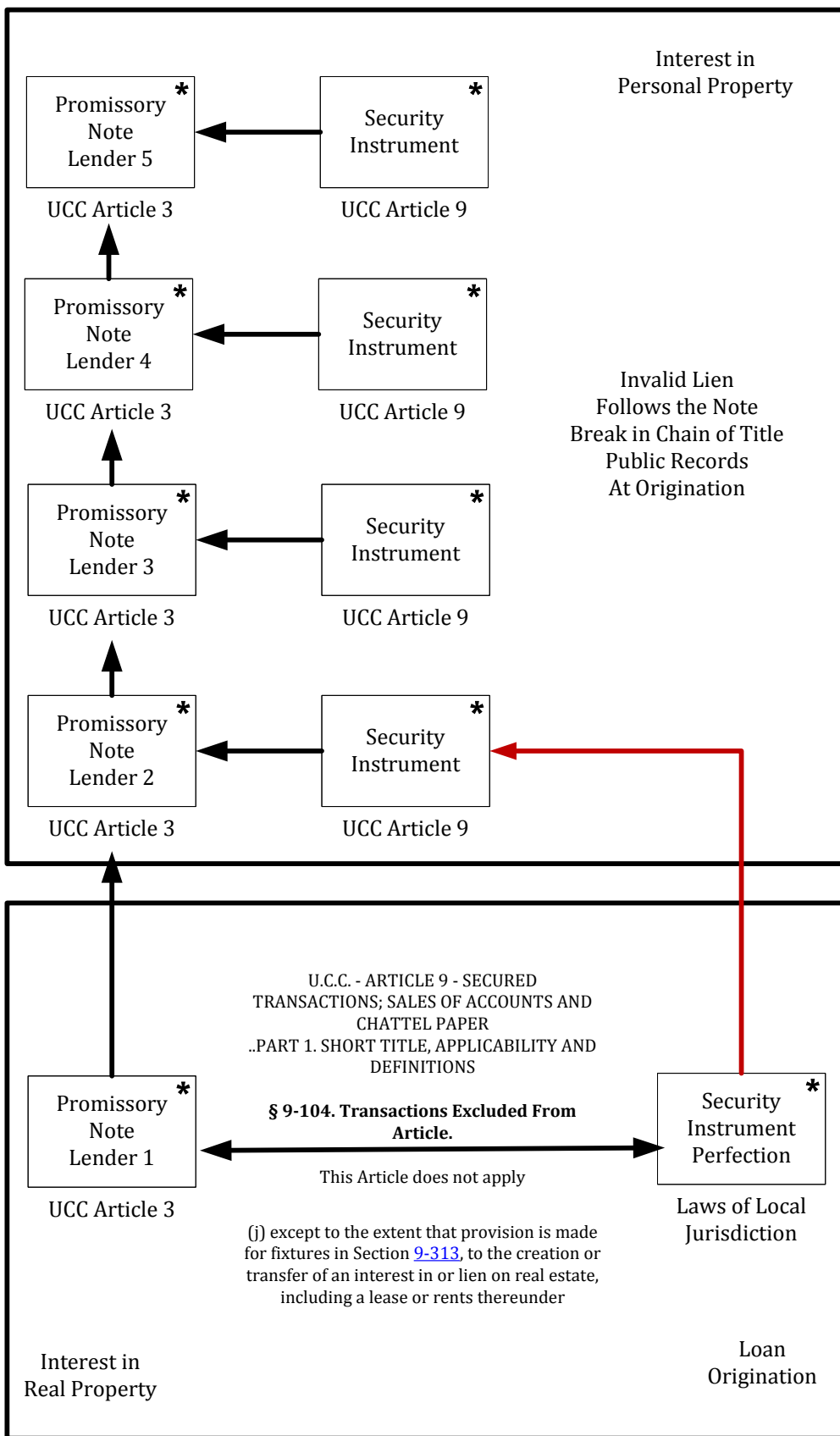
I think the analysis here relies heavily on remembering that while the collateral for the underlying promissory note is real property, the promissory note and the mortgage itself are both personal property. Students always rebel at this initially until they realize that a mortgage fails to fit the definition of real property. The buyer here is taking an interest in the mortgage.

As personal property, the mortgage is subject to Article 9 when a security interest attaches to it. Under the definition of security interest in ? 1-201(b)(35), the interest of a buyer of a promissory note is defined to be a security interest. When that security interest attaches to the note, the same security interest attaches to the mortgage pursuant to ? 9-203(g) ("(g) [Lien securing right to payment.] The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.)

This last provision seems to confirm that the drafters intended the mortgage to be subject to Article 9.

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