

# The Two Student Notes

By James McGuire 8-10-2011

## ***Referencing the chart titled: “Student Loans – The Two Notes”***

*Creating a student’s Electronic Master Promissory Note for resale might have looked a lot like Christmas, but once the ribbons and wrappings are removed, you find an empty box. How did it happen?*

Let’s start at the signing of the Electronic Master Promissory Note (Student Note). In ole grand pappy’s day, the student would have signed a paper loan with an ink pen. Today, the signing of a student’s Electronic Master Promissory Note is accomplished by signing with an electronic signature. Under 15 USC 7001, E-SIGN Act, the signature could have been done in several ways. The most common method of electronic signing is by using a confidential Personal Identification Number (PIN).

Uniform Commercial Code Article 3 does not allow for instruments to be in any form other than writing, therefore Uniform Commercial Code Article 3 does not provide governing law for any Electronic Master Promissory Note to be a negotiable instrument.

Many are led to believe that Uniform Commercial Code Article 9 governs Electronic Master Promissory Note(s). That simply is not true.

### ***§ 9-102. Policy and Subject Matter of Article.***

(1) Except as otherwise provided in Section 9-104 on excluded transactions, this Article applies

- (a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including

goods, documents, instruments, general intangibles, chattel paper or accounts; and also

**§ 9-105. Definitions and Index of Definitions.**

(1) In this Article unless the context otherwise requires:

- (i) "**Instrument**" means a negotiable instrument (defined in Section 3-104), or a certificated security (defined in Section 8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

Uniform Commercial Code Article § 9-102 notices that a security interest in Electronic Master Promissory Note (s) is governed by Uniform Commercial Code Article 9. Here we need to understand, what is a security interest in an Electronic Master Promissory Note(s)?

E-SIGN, UETA and Uniform Commercial Code Article 9 do provide the laws required for secondary markets securities to be in electronic form. The collateral for a newly created Student Loan Security is the security interest in the Electronic Master Promissory Note. The security interest is the right to collect the payments (Payment Intangible) made on the Electronic Master Promissory Note.

As Uniform Commercial Code Article(s) 3 & 9 neither provides laws to support the lawful existence of an Electronic Master Promissory Note, one would have to ask, what kind of contract was signed? Is it legally enforceable?

Assigning, conveying, transferring the Electronic Master Promissory Note to investors or a trustee offers no advancement in legal status. Ain't got none.

*Why is it called a Master Promissory Note, simple answer, student signs the Master Note and throughout the school course any additional funding is added to the Master Promissory Note.*

# Student Loans

## The Two Notes

Uniform Commercial Code Article 9 Securities Certificate (Note)

Uniform Commercial Code Article 3 Electronic Master Promissory Note

### UCC Article 9 Secured Note (Promissory Note)-Electronic Intangible Security Certificate

*UCC Article 3 Negotiable Instrument - Security to a UCC Article 9 Secured Note  
Attaches, Perfects and Assigns per UCC Article 9*

**Electronic Master Student Promissory Note**  
**Non-Uniform Commercial Code Article 3 (Negotiable Instrument)**  
**Non-Paper Tangible Mortgage Note**  
**Negotiable Instrument governed by UCC Article 3**  
**Excluded from ESIGN Act; 15 USC 7003**

*Electronic Master Promissory Student Notes  
Lack Supporting Law  
Therefore, Electronic Master Student Promissory Notes are a Nullity*

Investors as Secured Party to the UCC Article 9 Note are without notice the Electronic Master Student Promissory Notes lacked supporting laws.