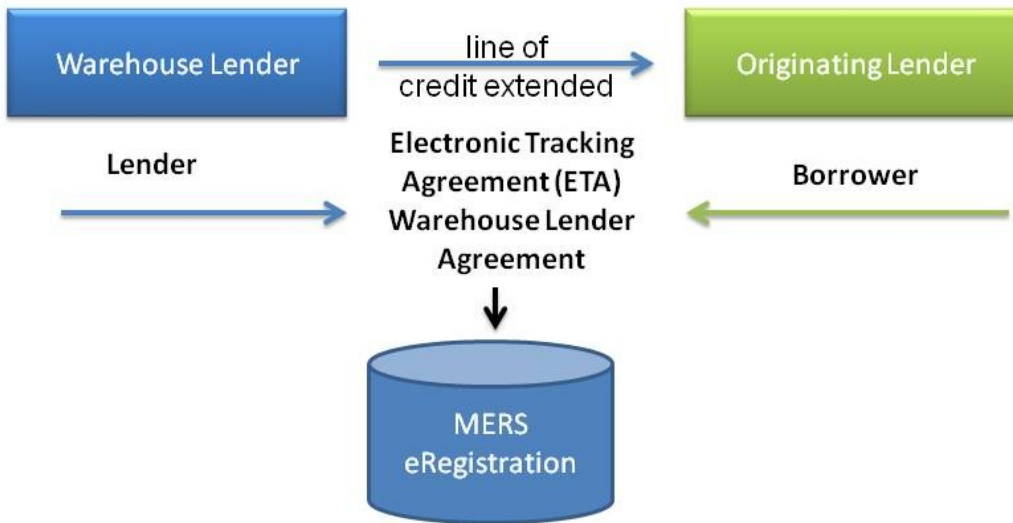
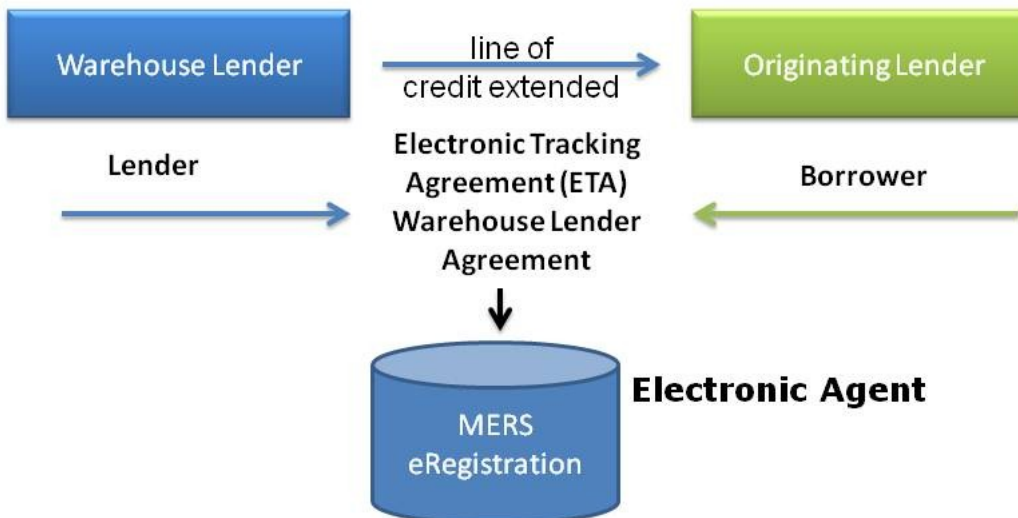


Borrower and Lender



Borrower and Lender



ELECTRONIC TRACKING AGREEMENT WAREHOUSE LENDER

Lender Org ID _____
 Borrower Org ID _____

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

Borrower and Lender

ELECTRONIC TRACKING AGREEMENT WAREHOUSE LENDER

2. Appointment of the Electronic Agent.

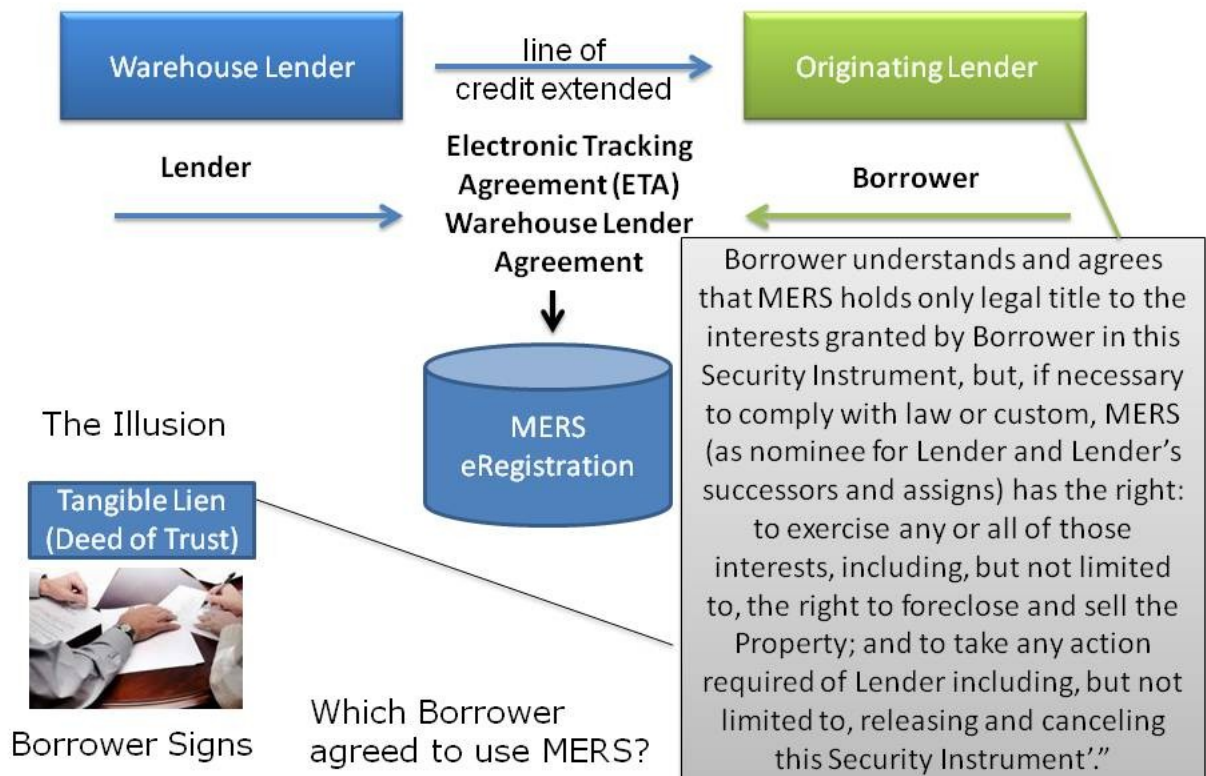
(a) **The Lender and the Borrower**, by execution and delivery of this Agreement, each **does hereby appoint MERSCORP Holdings, Inc. as the Electronic Agent**, subject to the terms of this Agreement, to perform the obligations set forth herein.

(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.

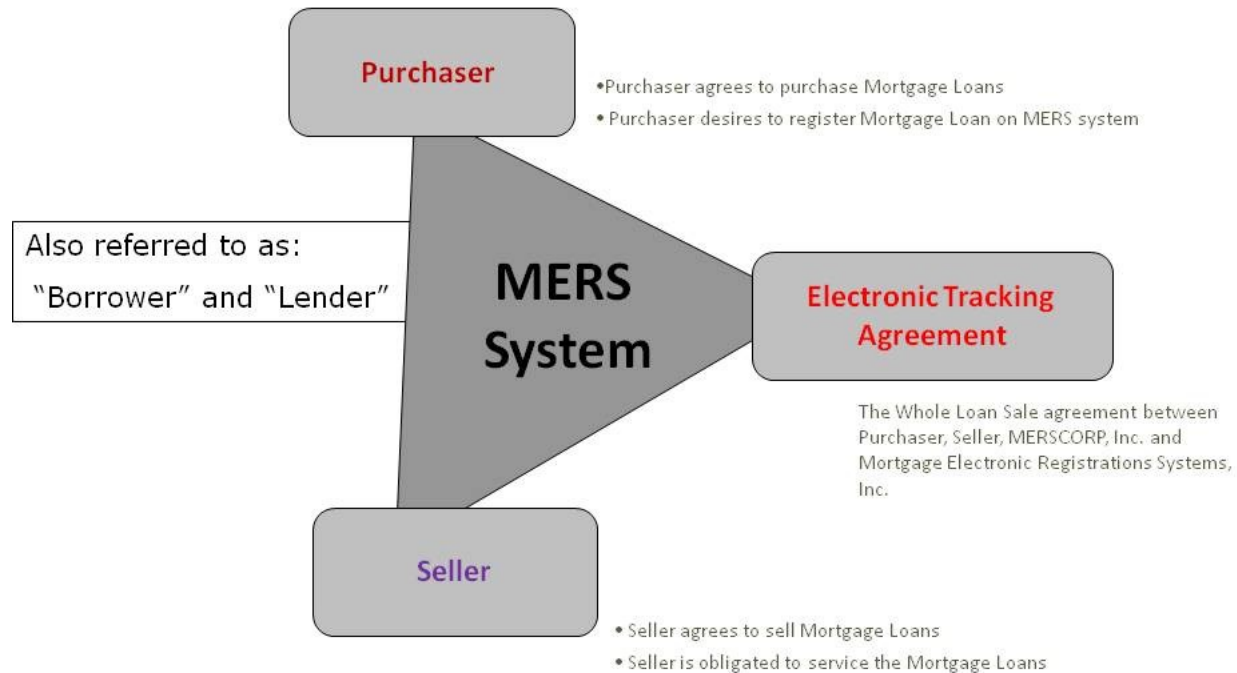
3. Designation of MERS as Mortgagee of Record; Designation of Investor and Servicer of Record in MERS.

"The Borrower represents and warrants that (a) it has designated or shall designate MERS as, and has taken or will take such action as is necessary to cause MERS to be, the mortgagee of record, as nominee for the Borrower,..."

Borrower and Lender



The Borrower, the Lender & eNotes



Source: [MERS Electronic Tracking Agreement](#)

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The Borrower, the Lender & eNotes

MERS Membership?

Addendum to MERS Membership Agreement:

"1. The MERS eRegistry is a registry system evidencing the transfer of interests in eNotes (transferable records) that are intended to satisfy the safe harbor provisions of Section 16 (c) of the Uniform Electronic Transaction Act ("UETA") and Section 201 (c) of the Electronic Signatures in Global and National Commerce Act ("ESIGN"). The MERS eRegistry is owned and operated by MERSCORP, Inc., which also owns and operates Mortgage Electronic Registration Systems, Inc. (collectively, MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. are referred to as "MERS")."

"2. Each Member that accesses, uses or integrates with the MERS eRegistry shall execute this Addendum by an authorized officer, and in doing so, agrees to be bound by the terms and conditions set forth in this Addendum, and such other Rules and Procedures that govern the access and use of, or the integration with, the MERS eRegistry."

Are you beginning to realize "we are not in Kansas anymore"?

MERS – Old World/New World IDEAS?

NEW WORLD / NEW LANGUAGE

Paper World

Negotiable Instrument
 Original Note
 Possession
 Investor/Holder
 Custodian
 Endorsement
 Chain of Endorsements and
 Delivery
 Wet Signature

Electronic World

~~Transferable Record ("eNote")
 Authoritative Copy of eNote
 Control
 Controller
 Location (electronic vault)
 Transfer of Control
 Transferable Record Audit Trail
 Electronic Signature~~

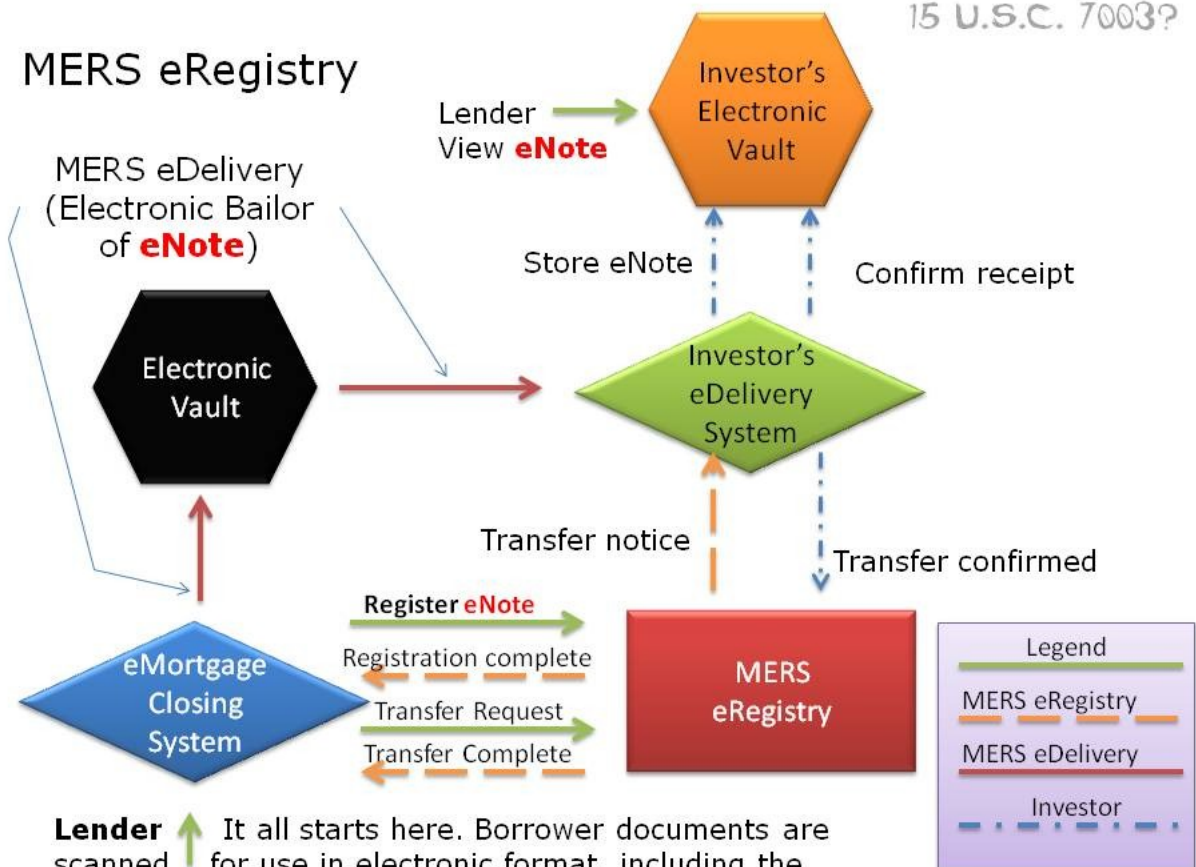
Tangible is not Intangible. Tangible can be touched.

Tangible Laws did not change.
 eNotes are not legal.
 See 15 USC 7003.

7

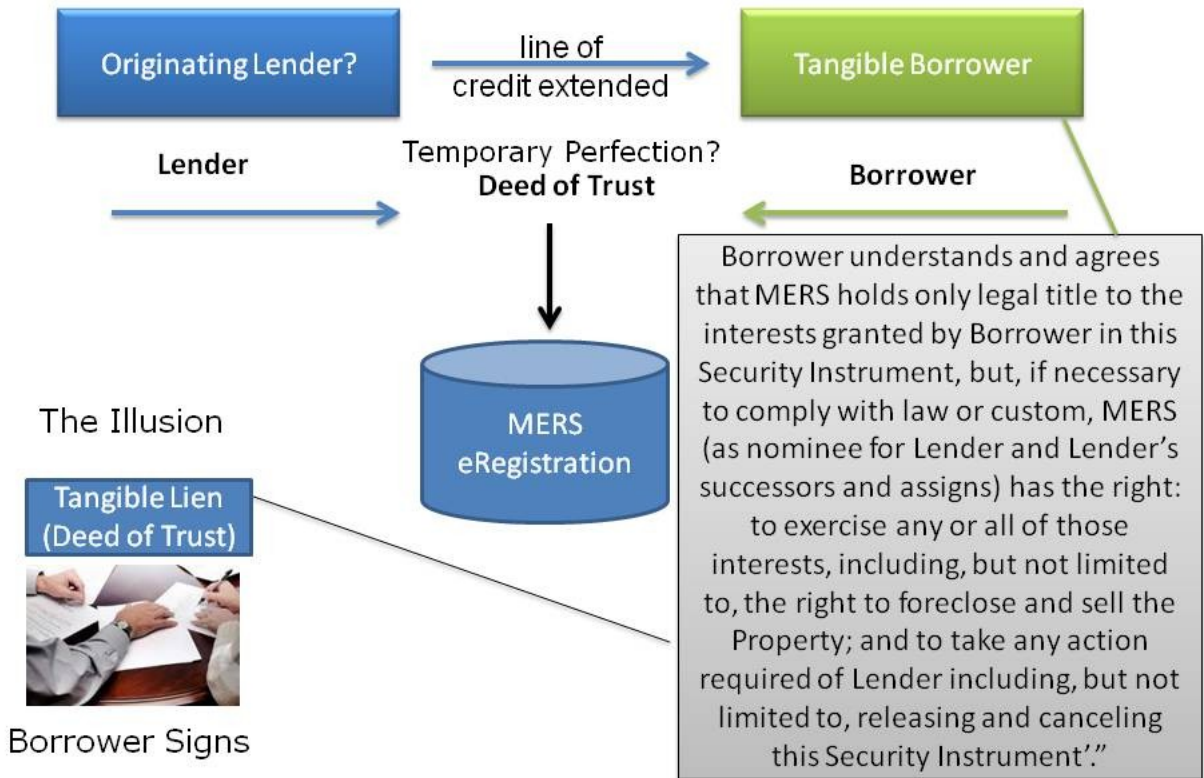
15 U.S.C. 7003?

MERS eRegistry

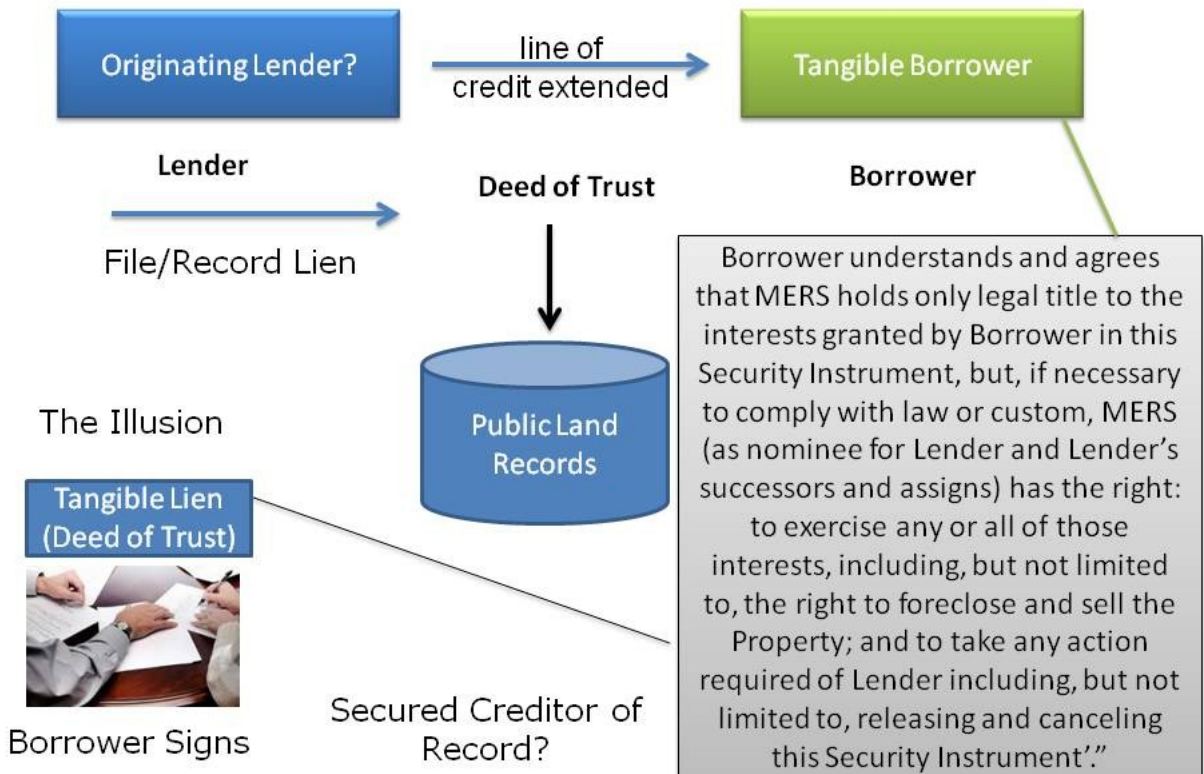


Lender ↑ It all starts here. Borrower documents are scanned for use in electronic format, including the alleged tangible Note and Deed of Trust, lien.

Borrower and Lender



Borrower and Lender



Borrower and Lender

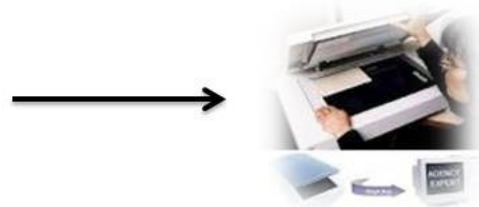


MERS does not create an eNote. MERS only utilizes registration and transfer of an eNote.

A MERS Member creates the eNote, then registers it within one day of creation on the MERS system.



Borrower and Lender



See Florida Bankers Association Case #09-1460

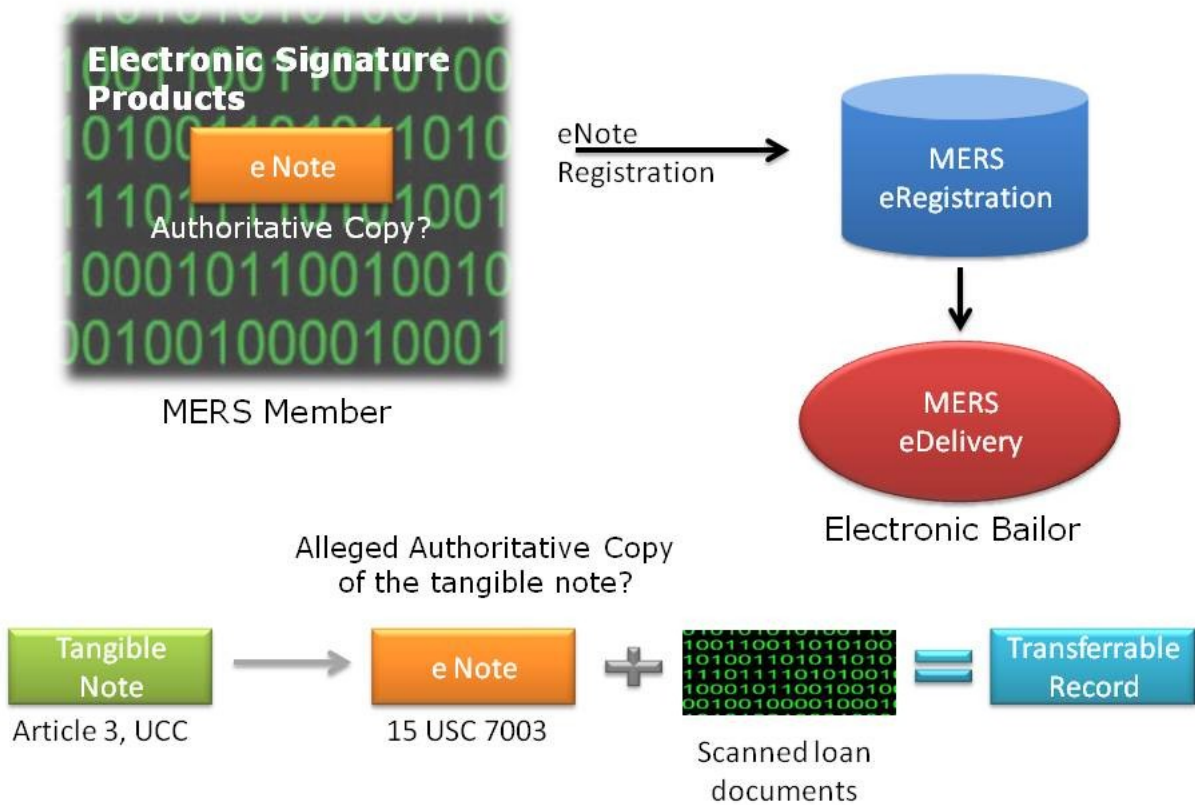
A MERS Member creates the eNote, then registers it within one day of creation.

The negotiability of eNotes is addressed in E-SIGN and UETA through the concepts of "transferable records" and "control."

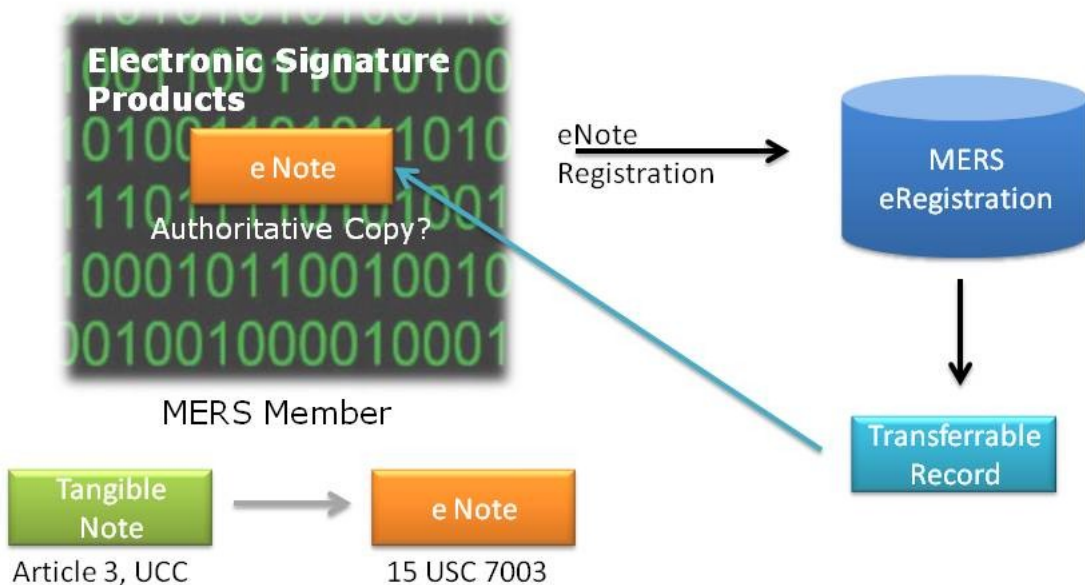
See 15 USC 7003



Borrower and Lender



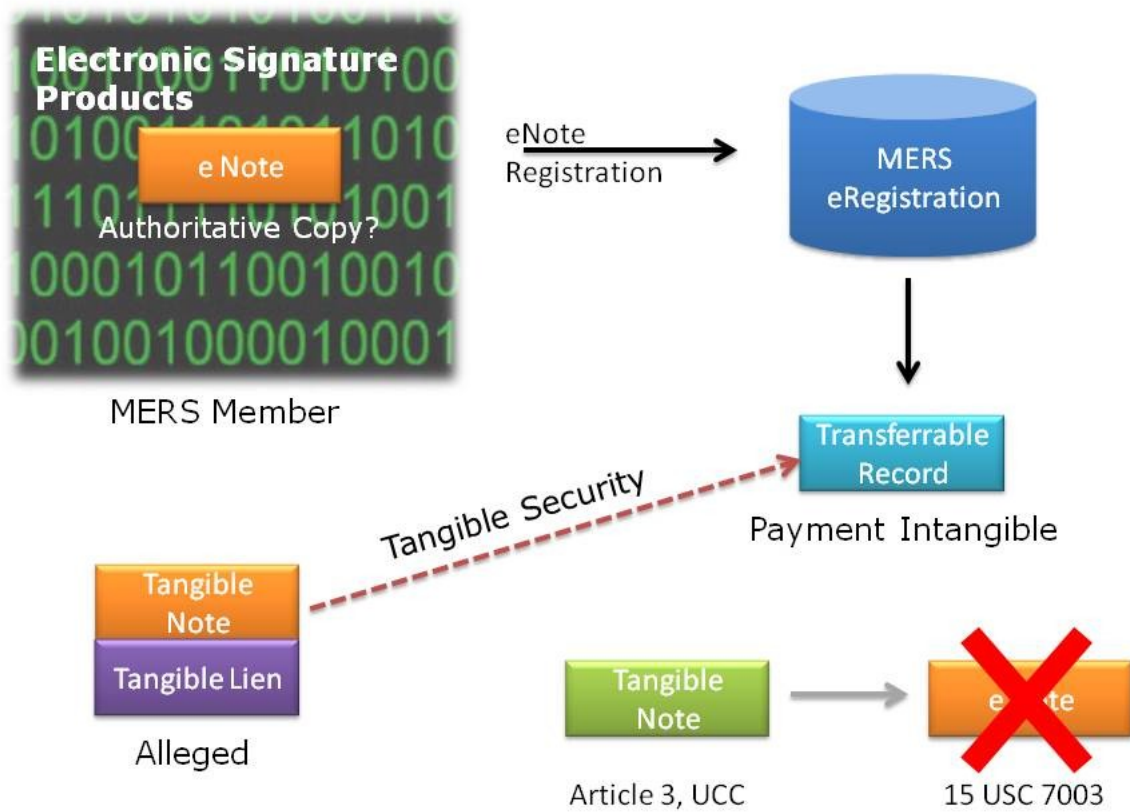
Borrower and Lender



A "transferable record" is defined as an electronic record that (i) would be a note under Article 3 of the UCC if the electronic record were in writing and (ii) the issuer of the electronic record expressly has agreed that it is a transferable record. ESIGN additionally requires that the record must relate to a loan secured by real property. MERS eRegistry PDF Guidelines

(But the Tangible Note is not a Transferable Record)

Borrower and Lender



Borrower and Lender

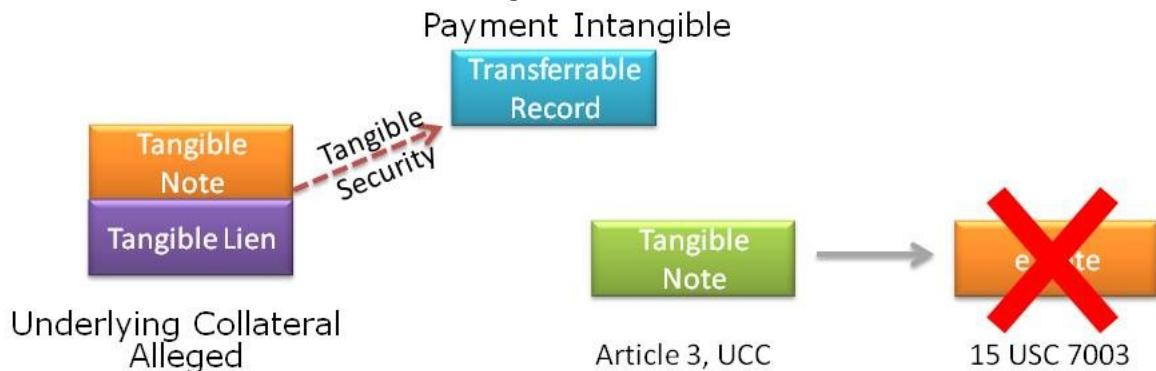
Negotiation of eNote



Actual Notice

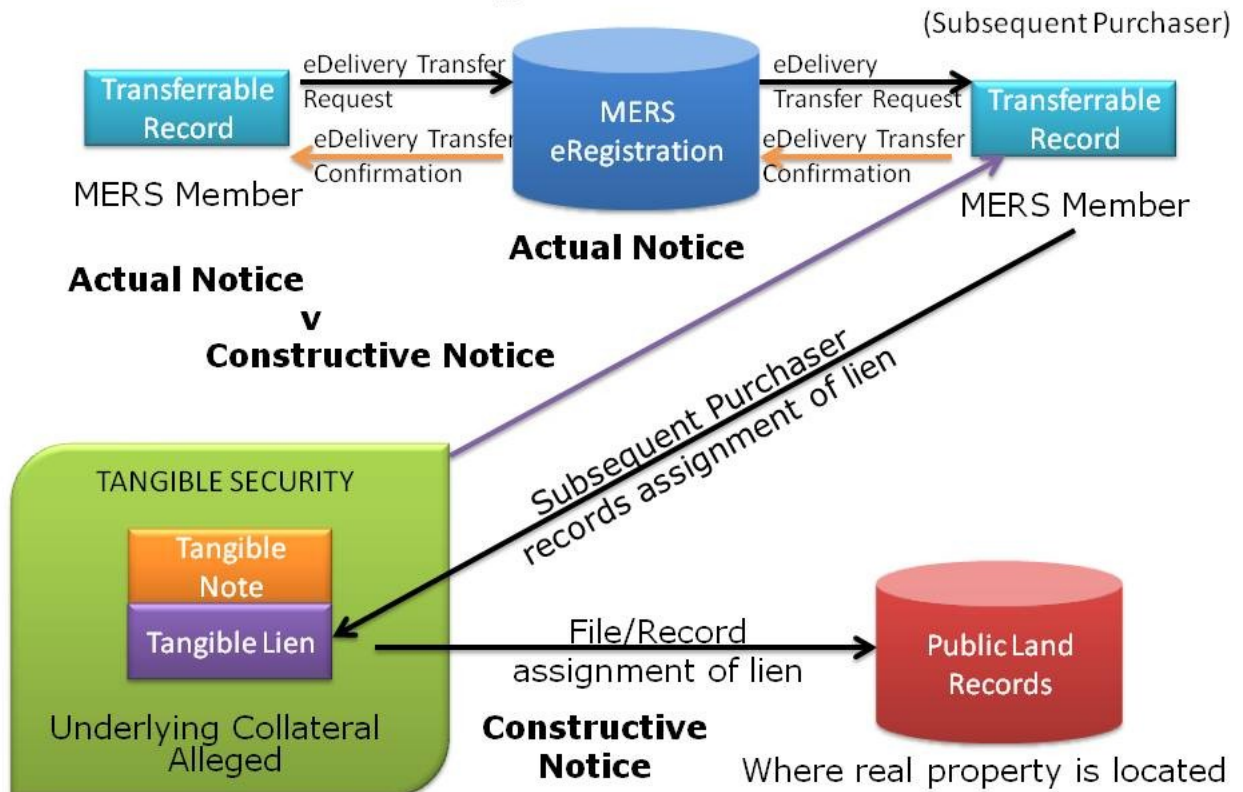
The Mortgage Banking Industry only designed the MERS eRegistry system to meet "Control" requirements to satisfy ESIGN and UETA.

The Payment Stream



Borrower and Lender

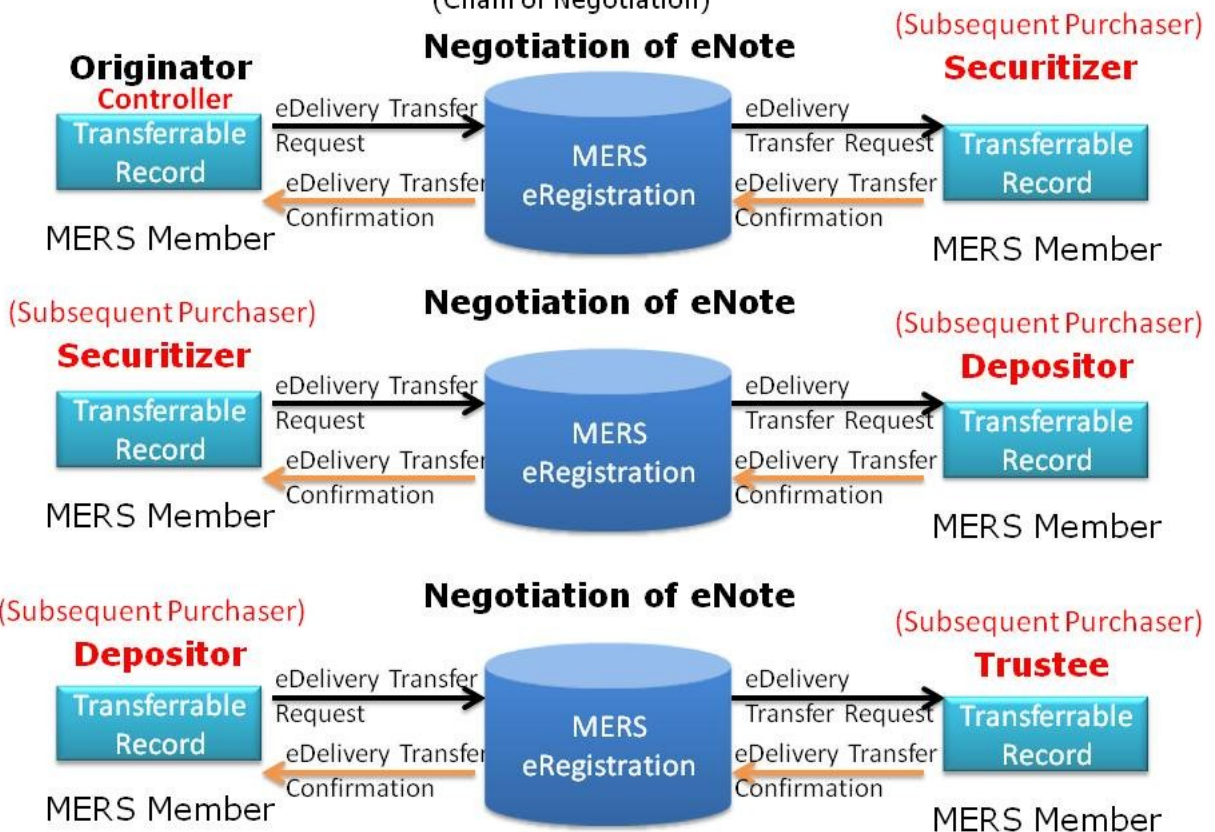
Negotiation of eNote



Borrower and Lender

(Chain of Negotiation)

Negotiation of eNote



Borrower and Lender

(Chain of Negotiation)

(Subsequent Purchaser)

Negotiation of eNote



(Subsequent Purchaser)

Negotiation of eNote



No matter how many times the Transferable Record is delivered via the electronic bailor, the alleged tangible lien contained as an underlying collateral for the payment stream is governed by the lien itself and laws of local jurisdiction.

Borrower and Lender

Negotiation of eNote



Actual Notice

Constructive Notice



Actual Notice

File/Record assignment of lien

Constructive Notice

Where real property is located



Subsequent Purchaser records assignment of lien

Borrower and Lender

Then you have this type of mentality from the Courts and the Banks attorneys? Source: [here](#)

*"The Court's ruling is consistent with many other courts' rejection of the argument that the note and the mortgage are separated just because MERS is the mortgagee," said Janis Smith, MERSCORP's Vice President for Corporate Communications. "When MERS is the mortgagee, the mortgage is enforceable and secures the repayment of the debt. **The borrower and the lender agreed to designate MERS as the mortgagee as nominee for the lender**, and this does not invalidate the mortgage security instrument."*

They just didn't clarify what "Borrower" they were speaking of.

"The Borrower represents and warrants that (a) it has designated or shall designate MERS as, and has taken or will take such action as is necessary to cause MERS to be, the mortgagee of record,"

Source: ELECTRONIC TRACKING AGREEMENT - WAREHOUSE LENDER

And YES the Tangible Note was separated from the Lien.

Borrower and Lender

Did MERS provide an agreement with you to designate MERS as a nominee or Mortgagee?

Did MERS sign your Deed of Trust?