*e*Notes are legal

except when it comes to real estate mortgage loans

I am not saying the *original* promissory Note or the original deed of trust was destroyed, but with statements like "*then destroy the paper original as part of the holder's normal business practices*", or "*because the physical document was deliberately eliminated to avoid confusion immediately upon its conversion to an electronic file"* they really should make one wonder where the actual *original* paper promissory Note may be. Since the ideal of *securitization*, real estate mortgage loan transactions are not commercially conducted as they once were. It could be quite possible to produce an *e*Note, but can the actual original paper promissory Note be produced, and not a copy? What are you going to get back when you think your debt is paid off, a paper Note?

What will be explained is simple because of "*laws that govern*". Besides other certain laws, I do know for certainty that the statute of frauds, along with the Penal Code are governing factors with these real estate transactions in Texas.

No matter how confused the masses may be with such terminology like, *electronic* mortgage, or "*e*Mortgage" let's clear the confusion up. The *e*Mortgage is a mortgage between an *account debtor* and a *Creditor*[1], where both seemingly appear to be national *e*Note registry members. Separate laws govern what these *e*Note members do and have nothing in a sense of law, to do with a *secured* residential mortgage loan itself. It is only a cross-reference type scenario *e*Note registry members use. The *e*Note registry does not track the paper promissory Note, that paper tracking task is required of any negotiating parties of a paper promissory note, if any such subsequent actions are applied, in order to prove a negotiation according to Article 3[2].

MERS is *sales* related, Article 2, where interests in the eNote are sold, assigned, or transferred, whether an interest is a servicing "interest" rights, or a beneficial "interest" rights, those rights are sold, transferred, or assigned, in an *e*Note, not a paper promissory Note, because the *e*Note is a separate obligation between the account debtor and the creditor, a.k.a. borrower and lender. The purpose of the deed of trust was for this type activity.

Here, in the real world, all the purported "*lender*"[3] needed to do was follow the existing requirements of laws already in place[4], that govern a real estate mortgage loan, instead of following policies and procedures, or making arguments for Article 9, all of which does, as this becomes understood, actually violate public policy in many ways. It is not the lawmakers fault enacting *e*Sign, as everything begins with an innocent ideal. It is those actors whom abuse a good thing, are actually the ones that make the lawmakers appear as not being trustworthy.

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[1] A.k.a. Borrower and Lender, creditor and debtor
[2] Uniform Commercial Code
[3] Party claiming debt with purported deed of trust lien
[4] Even after certain actors helped modify certain laws governing lines in Texas

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The tangible, or manual way of shuffling[5] a paper real estate mortgage are still required today, and is still a major governing factor in real estate mortgages today, no matter how many times an *e*Note is created, generated, sent, received, or stored via an electronic database, or "*clearinghouse*" as the courts seemingly call it. U.S. and state laws do not support the electronic actions against real property by simply using an electronic database alone. If so, *authenticity* is no longer of importance to the world, as it would take away from piracy laws, privacy laws, or even counterfeit laws?

What is even more catastrophic is the fact that Article 9, Uniform Commercial Code, is currently being utilized by these actors to replace Article 3, Uniform Commercial Code. Yet, Article 9 has nothing to do with a real estate mortgage loan. This type nonsense completely disrupts the law of negotiation, globally. Even more, *e*Sign excludes the UCC, which the Courts seemingly overlook and never question.

In the simplest terms: *e*Sign excludes certain *vital* Articles of the Uniform Commercial Code such as Article 3 and Article 9. The Uniform Commercial Code, Article 9, in turn, excludes liens[6]. eSign does not define *lien* or *deed of trust* or *security instrument*. In fact, the only word, term or definition search for *lien*, *deed of trust,* or *security instrument*, was the base word "*security*" which is found five (5) times in Texas Uniform Electronic Transactions Act, all of which pertain to *security procedures* employed for the purpose of verifying.

Did the GSE's not realize what they purchased? [*emphasis added*]

> *The lender makes the following representations and warranties with respect to each eMortgage delivered to and, where applicable, serviced for Fannie Mae*:
>
> > *1. Each eMortgage delivery is evidenced by an eNote that is a valid and enforceable Transferable Record pursuant to the Uniform Electronic Transactions Act ("UETA"), or the Electronic Signatures in Global and National Commerce Act ("eSIGN"), as applicable, and there is no defect with respect to the eNote that would confer upon Fannie Mae, or a subsequent transferor, less than the full rights, benefits and defenses of Control (as defined by UETA and eSIGN) of the Transferable Record*;[7]

Could an audit determine? How many Notes are actually lawful *e*Notes? How many Notes are actually lawful paper promissory Notes? How many deed of trust liens were not attached, and basically lost during previous transactions due to negligence? How many valid *e*Mortgages does a GSE or investor hold?

What is an *e*Mortgage?

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[5] Negotiations, assignments, transfers, of both paper promissory note and deed of trust, according to statutory laws which govern each.

[6] Including, the creation or transfer of an interest in or lien on real property. See § 9.109(d)(2), See § 9.109(d)(11)

[7] https://www.fanniemae.com/content/technology_requirements/emortgage-delivery-guide.pdf

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Wikipedia says it is *an electronic mortgage where the loan documentation is created, executed, transferred and stored electronically*.[8]

Fannie Mae say *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).*[9]

The Mortgage Bankers Association says an *e*Mortgage is "*A mortgage where the critical loan documentation, at a minimum the promissory note, is created, executed, transferred, and ultimately stored electronically.*"[10]

As a general consensus to the previous *e*Mortgage definitions, five things are common, the *e*Mortgage is (1)electronic, it is (2)created and (3)executed, (4)transferred and (5)stored electronically. Nevertheless, the Fannie Mae definition clearly provided an explanation of a typical *e*Mortgage, that I would think most would have caught long before now.

> *eMortgages typically consist of a paper security instrument and an electronic note (eNote).*

It is a lawful impossibility to create an *e*Mortgage by attaching a real property lien to an electronic promissory Note, simply because 15 U.S.C. 7021[11] governs *e*Notes, Article 3[12], governs negotiable instruments. In Texas, a lien is governed by the lien itself, same with a deed of trust, and chapter 51, Texas Property Code governs actions against liens. If the deed of trust were attached to a Note, it could only be attached to a paper Note simply due to Article 3 governing such purported debt instruments for enforcement.

An electronic Note[13] is not governed by Article 3, Uniform Commercial Code. For a deed of trust lien to attach to a Note, such Note would be governed by Article 3. If you do not have Article 3 to support the negotiations or enforceability of a Note how would a Note be negotiable or why would a loan be offered? More specifically, how could the real estate mortgage loan be "secured" if the deed of trust is not attached to an Article 3 Note? The creation and transfer of *e*Notes are governed by 15 U.S.C. 7021 or section § 322.016, Texas Uniform Electronic Transactions Act [UETA], and not UCC 3.

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[8] http://en.wikipedia.org/wiki/EMortgages
[9] https://www.fanniemae.com/content/faq/emortgage-faqs.pdf
[10] http://www.mbaa.org/files/Conferences/2011/Tech/Tech11eMortgage101March28.pdf
[11] See also section § 322.016
[12] Uniform Commercial Code
[13] *e*Note

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Did you know the word, term or definition of "*signature*" is found thirty (30) times in Texas Uniform Electronic Transactions Act, starting with section § 322.002(8), the definition.

Did you know that an electronic record or electronic signature is attributable to a person if it was the act of the person? The effect of an electronic record or electronic signature attributed to a person is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law. See § 322.009

Did you know that a record or signature may not be denied legal effect or enforceability solely because it is in electronic form? So, why are electronic transactions recorded in public records with physical signatures? Why were they physically notarized? Why are they physically recorded when electronic signatures or notarization can be accomplished electronically ?

Did you know why the word, term or definition of "signature" is found in the Texas Uniform Electronic Transactions Act? Do you know the difference between an electronic agent and a human agent?

Scenario,

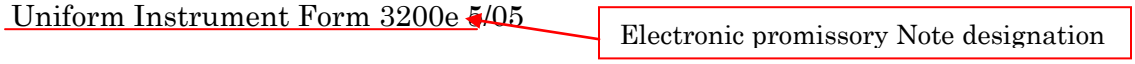
1. When you are at the grocery store and at the check-out counter. Upon completing the scanning process of your selected items, The cashier, who is a human agent, announces the grand total of your purchase amount. You, in turn, present the human agent with either a paper check, if you still use them, or you offer a debit/credit card. If it is a check, after you present the check to the human agent, it places the paper check into an electronic device, which is also an agent, except the scanning device is considered an *electronic* agent. The same principal applies to ATM machines as being the electronic agent between you and the credit/debit card company, or even an online retail website can have an electronic agent, such as a shopping cart. Hence, the agency fee, hence the Check 21 Act.
2. The scenario is practically the same except this time there is no electronic agent for the check. Whether you were paying cash, or presenting a check, the only agent you are dealing with is a human at the time of presentment.
3. By presenting a paper check, an issuer would provide a physical indorsment.
4. After presentment, the cashier, who is a human agent, would indorse the paper check for banking purposes and place in a drawer until such time.
5. By presenting a debit/credit card, a consumer provides an *electronic* signature by either use of a tablet and pen type device, to appear as they were signing there name, or a keypad type electronic device for "I accept" scenario's, both provide avenues for electronic funds transfers by electronic agents.

If you realize something with the preceding scenario's, the second scenario is better for one to understand because you were dealing with human agents at the time of closing and you

did not agree to use an electronic agent, no matter how many times a court of law wants to say you agreed to use MERS. That agreement was between an *intangible* *e*Note borrower and an *intangible* lender and apparently governed by *e*Sign, rather than the Uniform Commercial Code, because the eNote excludes the UCC. All the courts are doing is further assisting criminal activity, and they don't seemingly realize this. If you did agree to using the electronic agent, you would be required to press the "I Agree" key on a keyboard, because MERS is an electronic agent. What about *electronic* disclosures?

Did you know an electronic Note has it own type form? Although very difficult to locate, Fannie Mae provides footer information be placed into such electronic notes;

> [14]MULTISTATE FIXED RATE eNOTE–Single Family–Fannie Mae/Freddie Mac Uniform Instrument Form 3200e 5/05



If *e*Notes are being registered in the national *e*Note registry, why is it difficult to find a form 3200e? Or why do paper promissory Notes not have such information as the header (For Electronic Signature) if the alleged real estate mortgage loans are true electronic mortgages as proclaimed by national *e*Note registry, its members and their investors?

Did you know that an *e*lectronic mortgage Note requires an *e*Note clause? The *e*Note cannot be an enforceable *e*Note if disclosures were not provided at execution of the *e*Note.

Did you know an *e*Note cannot be *secured* by lawfully attaching an existing deed of trust lien? So, how does MERS "assign" or "transfer" a purported deed of trust?

Did you know the word, term or definition of "*note*" is found once(1) in Texas Uniform Electronic Transactions Act, in section 322.016(a)(1) regarding transferable records.

Did you know the word, term or definition of "*lender*" is not found(0) in Texas Uniform Electronic Transactions Act?

Did you know the word, term or definition of "*borrower*" is not found(0) in Texas Uniform Electronic Transactions Act?

Did you know the word, term or definition of "*creditor*" is not found(0) in Texas Uniform Electronic Transactions Act?

Did you know the word, term or definition of "*debtor*" is not found(0) in Texas Uniform Electronic Transactions Act?

Did you know the word, term or definition of "*account debtor*" is not found(0) in Texas Uniform Electronic Transactions Act?

Did you know the word, term or definition of "*consumer*" is found thirty-nine (39) times in *e*Sign, but none are found in Texas Uniform Electronic Transactions Act?

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[14] See 8.1. Description of eNote Header, Footer, and eNote Clause

A deed of trust lien cannot be transferred or assigned by MERS because MERS is governed by *e*Sign and UETA which does not govern liens.

Did you know the word, term or definition of "*lien*" or "*deed of trust*" is not found(0) in *e*Sign or UETA?

Did you know the word, term or definition of "*attach*" is found one(1) time in Texas Uniform Electronic Transactions Act, in section § 322.011, Notarization and Acknowledgement. Same results for *e*Sign.

Did you know the word, term or definition of "*assign*" is found two(2) time in Texas Uniform Electronic Transactions Act, once as in "*assigned*" and once as in "*assignee*"? Nevertheless, they are only related to a transferable record and not a paper document. See section § 322.016(c), and § 322.016(c)(4). There are only two in eSign also.

Did you know the word, term or definition of "*transfer*" is found twenty four (24) times? All can be found in section § 322.016, Transferable Records.

Did you know the word, term or definition of "*negotiate*" is found once in Texas Uniform Electronic Transactions Act, again in section § 322.016(d) which references negotiating a document of title.

To sum it up, the *e*Note created, generated, sent, received, or stored electronically is only governed by 15 U.S.C. 7021, and section § 322.016, Texas Uniform Electronic Transactions Act [UETA], although both those "Acts" govern all related actions to electronic transactions.

Again, (1) eSign, UETA, exclude the Uniform Commercial Code and (2) the Uniform Commercial Code excludes liens or the creation or transfer of an interest in or lien on real property.

Do you understand the importance of producing the "*original*"[15]? And, speaking of "*original*", did you know the word, term or definition of "*original*" is found three (3) times in Texas Uniform Electronic Transactions Act, which are found in section § 322.012?

Now, the tangibles are down to only the laws that govern the real estate mortgage loan.

The deed of trust was what provided the avenue to the secondary "*payment intangible*" market via MERS *e*Registry, and reasons for MERS being named in a deed of trust. But other deed of trusts also provided a different way of getting into the *payment intangible*, and another way of getting around naming MERS, simply by adding the word "or"[16] in covenant 20, recognized in a Fannie Mae uniform instrument type deed of trust. This "*or*" wording can be found currently and actually dates back into the early 1990's before anyone ever recognized what it was placed in the deed of trust for. It was placed there to slowly

[15] "wet-ink" paper promissory Note
[16] covenant number may vary

convert the tangible deed of trust into the "*payment intangible*" way of selling real estate mortgage loans on the secondary market. Today, it is a monster and completely unsustainable, even if it is lawful.

Now that the laws are being narrowed down, could it be realized that although the "*originating*" lender may "assign" or transfer" the paper promissory Note, to do such action according to the requirements of Article 3, Uniform Commercial Code would allow for future enforcement of such paper promissory Note. Although this portion of a secured real estate mortgage loan is an integral part of keeping such secured indebtedness, a "*debt*", the indebtedness alone may also be equitably enforced without a deed of trust lien.

Nevertheless, the vital portion of the "*secured*" indebtedness, is the deed of trust lien on real property used as collateral to the obligee, the lender whom provided the loan. The trustee is provided to hold title to real property until an instance occurs, which could be, either an act of default, resulting in a sale of the real property, or as a release of title to real property when the debt obligation is fulfilled. Either option is an instruction from the "lender" to the trustee named in the deed of trust, unless the lender appointed a different trustee.

To further the temporary status of perfection, the lender will cause to record, the deed of trust to provide constructive notice, the lender is a secured creditor of record. In a timely recordation, the chain of title to the deed of trust is perfected by record.

Any subsequent action relating to the originally filed deed of trust, must be recorded in the same manner as the original instrument was required to be filed. See section § 192.007[17]

The real estate mortgage loan is purportedly completed at closing?

According to MERS eRegistry procedure manuals[18], *e*Registration is an action after the closing of a real estate mortgage loan. This places an awkward position of an *e*Mortgage simply because the interest in real property was already agreed upon as recognized in the deed of trust lien. To attach a deed of trust to an *e*Note would be a double act, since the deed of trust was already supposed to be attached to an existing paper promissory Note.

Secondly, according to Fannie Mae, Freddie Mac, and the Mortgage Bankers association, the electronic promissory Note is created, signed, executed and stored electronically. Paper notes converted into electronic form do not qualify as transferable records.

The Florida Bankers Association basically stated the ideal of destroying the "*originals*", but they used the word *eliminate* instead. See pg 4 . 09-1460.

> *The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is because the physical document was deliberately*

[17] Texas Local Government Code
[18] Have you noticed how hard it is to access the manuals lately?

> *eliminated to avoid confusion immediately upon its conversion to an electronic file.*"

So, according to the Florida Bankers Association, and until it can be proven different, the only location of the "original" real estate mortgage loan may be with the "originating lender", unless someone can produce the original paperwork that was not destroyed or eliminated. So far, only copies of copies have been provided as evidence, because the courts allow MERS members to use such.

For example, in an S.E.C. filing the following information can be found regarding a "holder's" normal business practice;

> The agreement and note, as amended, is a "transferable record" as defined in applicable law relating to electronic transactions. Therefore, the holder of the agreement and note, as amended, may, on behalf of Borrower, create a microfilm or optical disk or other electronic image of the agreement and note, as amended, that is an authoritative copy as defined in such law. The holder of the agreement and note, as amended, may store the authoritative copy of such agreement and note, as amended, in its electronic form and <u>then destroy the paper original as part of the holder's normal business practices</u>. The holder, on its own behalf, may control and transfer such authoritative copy as permitted by such law. [<u>emphasis added</u>]

The Florida Bankers Association's response basically confirms the SEC filing that destroying the paper original is a *common banking practice*? In the same case number, it is also an easier way to understand about the "servicer", who somehow seems to appear on most every alleged MERS "assignment", and in short time, followed by a trustee sale in the name of a non-party to a referenced deed of trust.

> *It is a reality of commerce that virtually all paper documents related to a note and mortgage <u>are converted to electronic files almost immediately after the loan is closed</u>. 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 <u>servicing agent in an electronic database</u>.* [<u>emphasis added</u>]

No matter what the *common banking practice* is, for a Note to be negotiable, it would be governed by the requirements in Article 3, Uniform Commercial Code and not eSign or UETA.

Does one realize that, MERS and its Members can do whatever their hearts desire with the MERS eRegistry, <u>BUT</u> they are still required to meet the requirements of laws that govern negotiation of a paper promissory Note secured by a deed of trust lien. It does not matter if they are a MERS member and MERS assigned anything. MERS is not related to a real

estate mortgage loan. MERS does not track paper promissory Notes, the *obligee*[19] of the paper promissory Note tracks such Note. That is, if it intends to enforce or negotiate it, and not the MERS eRegistered *e*Note.

How long will it be before the masses really realize the non-related MERS document being recorded into public records does not belong there to begin with, much less arguing over it being eligible or not. It is not eligible. It can't be. It is criminal. If it is not, what happened to the laws of negotiation? Have the laws of negotiation all across the globe, now thrown out the window for the sake an *e*Note that has no law to support its negotiability?

How can a MERS related electronic agreement expressly agreed between the parties be eligibly recorded into public records and be lawful if it is not directly related to real property?

How can an electronic instrument be enforceable when it is physically signed and notarized, when the electronic agreement requires electronic signatures?

How does a human agent electronically sign an agreement using another party's electronic signature?

*e*Notes are legal, they just can't be used for secured residential mortgage loans.

So, if you understand this, you should be able to see that national *e*Note registry members are attempting to take the deed of trust, basically assign it to a computer system as an electronic agent for future *e*Note registry members and use an *e*Note as the subject to what the deed of trust is attached and perfected to. According to law, that is impossible. So, what about the value of the paper promissory Note being applied to the eNote? Is that possible?

Is it possible to use Article 3 to transfer the value of the paper promissory Note to the *e*Sign *e*Note? If that transfer of value could be lawfully possible, what law can be used to transfer the value of the *e*Note back to the paper promissory Note, when Article 3 is excluded from *e*Sign?

It is very safe to say, the MERS/Covenant 20 deed of trust used for this criminal activity is fraud in factum. These intangible deed of trust were used to induce an unsuspecting borrower to agree to commit a crime.

It is very safe to say, the MERS/Covenant 20 deed of trust used for this criminal activity is currently being supported by courts across the country whether the courts realize it or not.

It is also very safe to say that violations of civil rights are running rampant in this *e*Scheme. And it is safe to say that investors haven't figured this out yet, either. Else?

Peace be with you,

[19] Tangible, paper promissory Note