*e*Notes are Legal

(a follow up)

After recently publishing "*e*Notes are Legal", many may consider the lender's were following the laws and using Article 9, of the Uniform Commercial Code for conducting actions with real estate mortgage loans. If so, how would a real estate mortgage loan be governed by the Uniform Commercial Code? At best, a lender, after conducting a real estate mortgage loan, would have an *asset*, such as a real estate mortgage loan borrower's "promise to pay", which also provided a *security* attached to the "promise to pay" until that "promise to pay" is completed or if there is a failure to fulfill that "promise to pay". This explanation is to focus on the "promise to pay", to assist in understanding the importance of how actors are committing a crime by claiming title to real property, unlawfully. [1]

Assuming after a real estate mortgage loan closing

The "promise to pay", can be used as a *security* for the lender because the lender has an *interest* in the "promise to pay". If the lender were to apply for a "promise to pay", an offer of collateral, such as a real estate mortgage loan borrower's "promise to pay" could be offered as a *security* for the lender's "promise to pay", if so, the lender would be creating an *interest* in a real estate mortgage loan borrower's "promise to pay". Hence an offer of a security agreement to attach to the lender's "promise to pay".

The *interest* is not created in real property, the interest is created in a real estate mortgage loan borrower's "promise to pay", a paper promissory Note. Even though an interest in a lien cannot be created according to the Uniform Commercial Code, an *interest* in a "promise to pay" can be because a previous revision of Article 9 provided for "*payment intangibles*"[2].

The lender in the previous scenario would be considered an account debtor when the lender applied for a "promise to pay", and provided a security agreement to secure the lender's "promise to pay". When the creditor accepted the lenders offer, the party's were recognized as creditor and debtor. The lender is an *account debtor* as defined in the Uniform Commercial Code. The lender's lender is a "*creditor*" as defined in the Uniform Commercial Code.

For the creditor to perfect its *interest* in the *security* of the account debtors "promise to pay", the creditor would be required to file a UCC-1 financing statement with the Secretary of State. Because "*payment intangibles*" are governed by Article 9 of the Uniform Commercial

[1] This paper does not delve into covenant 20 of a Fannie Mae Uniform Instrument.
[2] See Chart

Code, regarding secured transactions. This perfection of interest is regarding the account debtor's *security*, and not regarding the underlying *security* provided for a real estate mortgage loan borrower's "promise to pay".

The real estate mortgage loan borrower's "promise to pay" is secured by collateral, a deed of trust lien, which is title to real property[3]. Such collateral is not governed by the Uniform Commercial Code. The deed of trust, Texas Property code govern the lien, and Texas Local Government Code, chapter 192, section 007 governs perfection of a lien.

For the account debtor to pledge a real estate mortgage loan borrower's "promise to pay", the account debtor would provide the stream of monthly payments of a real estate mortgage loan borrower's "promise to pay", from the account debtor to the creditor to fulfill the account debtors obligation as noted in the account debtors "promise to pay". Should the account debtor fail its "promise to pay", the creditor may seek to foreclose on the account debtors "promise to pay" which, according to the account debtors security agreement, such collateral would be listed.

According to the filed UCC-1 financing statement, the creditor would have the evidence of the listed collateral; most likely, certain Article 3 "promise to pay" obligations, or other listed assets.

For the creditor to take possession of the underlying "promise to pay" obligations of the account debtor, the creditor would be required to either take possession of a "promise to pay" alone or take possession of an underlying "promise to pay" secured by real estate, and continue perfection of an underlying security. To continue such perfection, the creditor would ensure the account debtor endorsed the underlying "promise to pay" to the creditor, then the account debtor would provide an "assignment of lien" regarding the underlying security, so the creditor may record with a clerk of county records to continue a lawful chain of title, reflecting back to the originally recorded lien.

For the account debtor to sell, assign, or transfer a real estate mortgage loan borrower's "promise to pay", such negotiation would be governed by Article 3, and such requirements for such true sale would be governed by Article 2, Uniform Commercial Code.

[3] See illustration

Assuming a true sale were completed according to the Uniform Commercial Code. A real estate mortgage loan borrower's "promise to pay" consists of another document, a lien attached as a security. To further perfection of a chain of title to the lien, the purchaser in the true sale would be required by Texas statute to record to perfect, because any subsequent action relating to a deed of trust originally recorded, another eligible document must be recorded in the same manner as the originally filed deed of trust.

Adding MERS to the Mix

Assuming the "lender"[4] had followed the requirements of the Uniform Commercial Code, why was MERS involved? A real estate mortgage loan is not governed by the UCC. If MERS is an *e*Sign system, how could MERS be in any form or fashion, involved with Uniform Commercial Code or secured transactions? *e*Sign excludes Article 9, of the Uniform Commercial Code. Article 9, of the Uniform Commercial Code excludes liens and the creation or transfer of an interest in or lien on real property.

MERS was designed to make *things* easier to sell in the secondary market. MERS is not related to real estate mortgage loans as depicted. MERS does not even track the "*interest*" the account debtor offered, which was purportedly the underlying "promise to pay" of a real estate mortgage loan borrower. MERS does not track paper promissory Notes. And *e*Sign excludes Article 3 of the Uniform Commercial Code.

MERS does track *e*Notes, a.k.a. electronic promissory Notes. Such *e*Notes are governed by 15 U.S.C. 7021. In Texas, these transferable records are governed by section § 322.016. Either of such laws contain the operations of Article 3 and Article 9 of the Uniform Commercial Code, because neither of those Article, 3, nor 9, are governing laws when it come to *e*Notes. So everything needed to support the transfers of an *e*Note are in *e*Sign.

MERS member get around a lot of laws by simply selling "*interests*" in transferable records via national eNote registry and UCC 2[5]. There is no need to file a UCC-1 statement, and there is no law to support the recordation of a deed of trust lien that does not apply to an electronic transaction. Recordation is only to provide an illusion of legality. However, when the laws are closely reviewed, it is apparent the recordation is fraudulent.

[4] Could be a national bank, broker, sponsor, etc.
[5] Article 2, Uniform Commercial Code

Even if the national *e*Note registry members claimed their wooden nickels as *electronic chattel paper*, to use "*control*" instead of "*possession*" for perfection purposes, Article 9 of the Uniform Commercial Code does not require filing, but control of the Authoritative copy. The Authoritative copy is governed by 15 U.S.C. 7021, and section § 322.016, Texas UETA.

The national *e*Note registry and its members are correct when they make many claims, but that does not mean any one of their claims are correct. With the use of *word art*. the world is blinded to the true facts before them.

All that is needed to realize this is reviewing the *laws that govern*. It does not matter whether or not a group of individuals in a foreclosure mill in Addison Texas worked diligently to modify Texas laws to fit the needs of the national *e*Note registry. It does matter that they "*just make documents up*".

Besides being criminal[6], it does not matter how many fraudulent documents the actors have recorded, it does not matter how many fraudulent documents the actors didn't record, because the original deed of trust itself prevented any subsequent document to be eligibly recorded by the national *e*Note registry or its members, no matter how many times MERS is or is not named in a deed of trust or whether a *covenant 20* exists. With this understanding, it is certain the criminal acts reveal themselves, huh?

It can be proven, according to public records, many national *e*Note registry "records" were successfully recorded into public records. This revelation does not mean they are eligible or valid to be recorded. It appears that according to law, they must be challenged? According to many court opinions, it appears they were challenged, but the courts failed to understand.

In addition, it can be proven by the same method for many *appointment of substitute trustee*. It seems crime paid for a while because of ignorance of the governing laws. A question one may ask, is how much longer do these criminal actors get away with the crimes, after all, these criminal actors are making crime pay, all the while being called names like "*super lawyers*" or "*rising stars*". Nevertheless, there is a hefty penalty for the fraudulent documents, and even greater penalties for the actors of the crimes.

[6] Difference between civil versus criminal

It is apparent that according to the "*e*Mortgage" guides, the original paper promissory note was purportedly indorsed "in blank" by the originating lender. Whether anyone knows if the paper promissory Note ever left the originating lenders possession, only the originating lender would know. After the originating lender obtained the wet-ink, the lender scanned all that real estate mortgage loan information and merged the scanned images into an electronic record, the lender compiled for its *e*Note. Everything that happens after the lender registers the *e*Note with the national *e*Note registry is electronic. Nothing regarding paper can be produced from electronic images because *e*Sign does not support such images, and eSign excludes Article 3 and Article 9 of the Uniform Commercial Code. And, Article 9 excludes liens and the creation or transfer of an interest in or lien on real property.

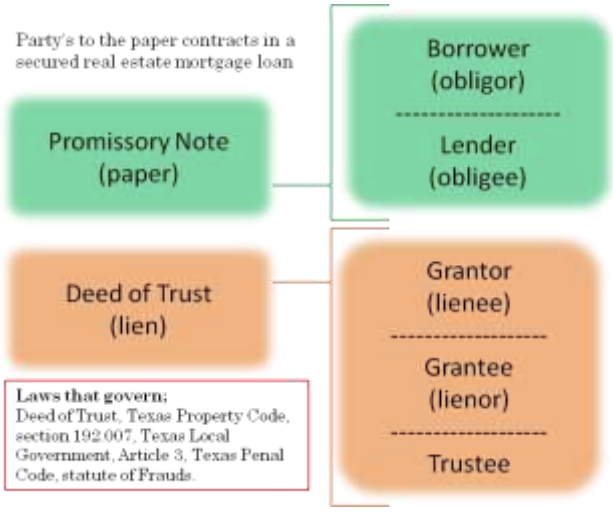
Now, it is back to the original wet-ink paper promissory Note and an originally recorded deed of trust lien. Who has what? A paper promissory Note may be proven, but can a lawful chain of title be traced to the *person* claiming both a paper promissory Note and a deed of trust lien? The county records of the Clerk seemingly prove different. So, how can a home equity loan be sold at the steps of a county courthouse on "sale" day? It has happened.[7]

*e*Sign and UETA were designed with a good concept to provide availibilty for the enforcement of electronic contracts. But, like all good things, someone has to come along and screw it up for everybody. As it appears, the banks may have provided a bit too much leverage to its counsels, and those counsels seeing bling in their eyes lost their upright ways. One of the largest foreclosure mills in the state of Texas, or its associates, members names etc. can be found in many public records files, while others from the Houston area are just about a frequently found, such a Juanita Strickland and others. However, G. Tommy Bastian cannot be overlooked for his efforts in this fiasco, since he, according to evidence, provided a portion of the national *e*Note registry education in Texas. I can only imagine how many public figures were misled with Bastian's MERS educational material.

All that was required was to adhere to laws governing non-UCC real estate mortgage loans.

[7] §192.007 (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.(b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.

Real estate mortgage loan components [non-UCC]



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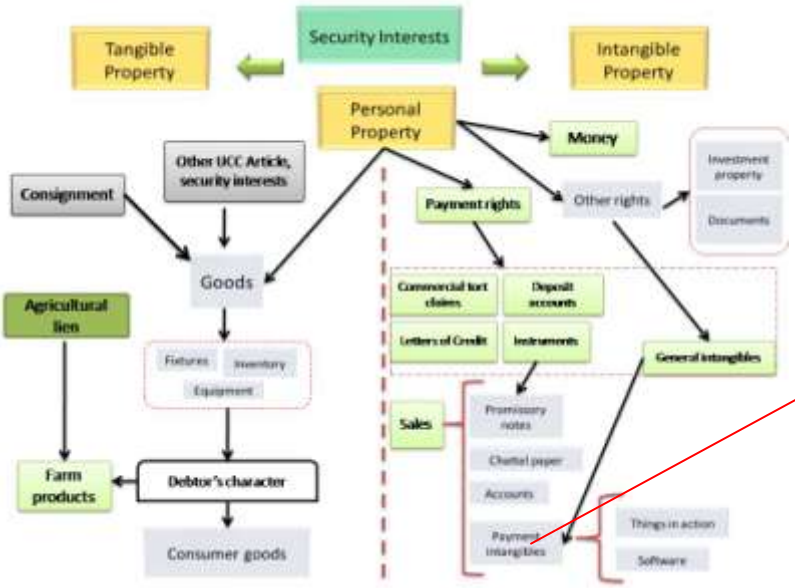
Property covered by Article 9



Payment Intangible

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