# Standing: Lien Theory States (Title Theory States)

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## 1. Texas Deed of Trust (Lien) (Secured Party of Record)

1. For a court to invoke its authority, the court must have been given jurisdiction by a party that has legal standing. *Tex. Natural Res. Conservation Comm'n v. IT–Davy*, 74 S.W.3d 849, 855 (Tex. 2002); *see Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998). Standing is a component of subject-matter jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993); *see also DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008) (A court has no jurisdiction over a claim made by a plaintiff without standing to assert it.). If a party lacks standing to bring an action, the trial court lacks subject-matter jurisdiction to hear the case. *Tex. Ass'n of Bus.*, 852 S.W.2d at 444–45.

2. The issue of Standing focuses on the question of who may bring an action. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The general test for standing is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446. ―To establish standing, a person must show a personal stake in the controversy. *In re B.I.V.*, 923 S.W.2d 573, 574 (Tex. 1996).

3. Standing to sue may be predicated upon either statutory or common law authority. *Nauslar v. Coors Brewing Co.*, 170 S.W.3d 242, 252 (Tex. App.—Dallas 2005, no pet.); *see Williams v. Lara*, 52 S.W.3d 171, 178–79 (Tex. 2001). The common law standing rules apply except when standing is

statutorily conferred. *SCI Tex. Funeral Servs., Inc. v. Hijar*, 214 S.W.3d 148, 153 (Tex. App.—El Paso 2007, pet. denied).

4. The court must look to the substance of a motion or a pleading, rather than its caption or format, to determine the nature of the filing. *See State Bar of Tex. v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980) (explaining that - we look to the substance of a plea for relief to determine the nature of the pleading, not merely at the form of title given to it).

5. During the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party seeking affirmative relief may file a lis pendens in the real property records of the county where the property is located. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004).

6. Generally speaking, the purpose of lis pendens notice is twofold: (1) to protect the filing party's alleged rights to the property that is in dispute in the lawsuit and (2) to put those interested in the property on notice of the lawsuit. *See World Sav. Bank, F.S.B. v. Gantt*, 246 S.W.3d 299, 303 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *see also Countrywide Home Loans, Inc. v. Howard*, 240 S.W.3d 1, 4 (Tex. App.—Austin 2007, pet. denied).

7. A lis pendens does not prevent conveyance; it merely puts the purchaser on notice as to the status of the land. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 418 (Tex. App.—Fort Worth 2009, no pet.) as such, Appellant did not file such.

***8. We may consider evidence that the parties have submitted and must do so when necessary to resolve the jurisdictional issues. Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 555 (Tex. 2000)***

***9. In a plea to the jurisdiction, a party may present evidence to negate the existence of a jurisdictional fact alleged in the pleadings, which we would otherwise presume to be true. Miranda, 133 S.W.3d at 227; see also Combs v. Entertainment Publ'ns, Inc., 292 S.W.3d 712, 719 (Tex. App.—Austin 2009, no pet.).***

*10.* The U.S. Constitution and the Texas Constitution require parties to have standing to bring a claim in court, and the general test is whether there is a controversy between the parties that will actually be determined by the judicial declaration sought. *Stop the Ordinances Please v. City of New Braunfels*, 306 S.W.3d 919, 925 (Tex. App.—Austin 2010, no pet.) (Citing *Texas Ass'n of Bus.*, 852 S.W.2d at 446).

11. Standing focuses on the question of who may bring an action. *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The general test for standing is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Tex. Ass'n of Bus.*, 852 S.W.2d at 446. -To establish standing, a person must show a personal stake in the controversy. *In re B.I.V.*, 923 S.W.2d 573, 574 (Tex. 1996).

12. Standard of review: A plea to the jurisdiction challenges a trial court's authority to decide a specific cause of action. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 225-26 (Tex. 2004).

## Secured Party – UCC (BCC)

13. Practice for lending monies to purchase real property requires a financial instrument (note) to be executed as a promise for the borrower to repay the Noteholder.

14. Parties to a note would be the maker (Payor, Obligor) making the instrument payable to a Payee/Obligee

15. To protect and assure the Lender (Obligee, Secured Party, SP1 when the note is secured by a lien) will be repaid, the Obligee noted on the face of the note normally requires the Obligor to offer additional collateral (security) such as attaching a Deed of Trust (lien) to the instrument thereby making the Obligee the Original Secured Party (SP1) and thus you have the creation of a Secured Note perfected in a Secured Party's name.

16. A Deed of Trust is that only of a lien providing security to a note.

17. The two principle parties appearing on a valid lien would be the Obligor as noted on the face of the note (Grantor on the lien) and the Obligee as noted on the face of the note would be the Original Secured Party [SP1} (Grantee on the lien).

18. Where the note and lien are concurrently signed at closing, the lien would attach to the note and temporary perfection of the lien would be perfected in SP1's name according to law.

19. The lien (Deed of Trust) is then required by law [Texas Local Government Code §192.001] to be filed of public record resulting in temporary perfection becoming a permanently perfected lien filed of record in Secured Party's (SP1) name.

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***CHAPTER 40***
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***Although the deed of trust reads as if it were a conveyance of the title to the mortgaged property and perhaps the collateral to the trustee "in trust," Texas law recharacterizes the transaction as creating merely a nonpossessory lien on the mortgaged property in favor of the mortgagee.*** *The mortgagee is granted a power of sale exercisable through the trustee. Neither the trustee nor the mortgagee is deemed to have any present right of possession or legal title to the mortgaged property or collateral.* Johnson v. Snell, *504 S.W.2d 397 (Tex. 1973);* Humble Oil & Refining Co. v. Atwood, *244 S.W.2d 637 (Tex. 1951). Additional authority on the nature of the deed of trust includes* Carroll v. Edmondson, *41 S.W.2d 64 (Tex. Comm'n App. 1931, judgm't adopted);* Armenta v. Nussbaum, *519 S.W.2d 673 (Tex. Civ. App.—Corpus Christi 1975, writ refd n.r.e.);* Tarrant Savings Association v. Lucky Homes, Inc., *379 S.W.2d 386 (Tex. Civ. App.—Fort Worth 1964), rev'd on other grounds, 390 S.W.2d 473 (Tex. 1965);* Pioneer Building & Loan Association v. Cowan, *123 S.W.2d 726 (Tex. Civ. App.—Waco 1938, writ dism'd judgm't cor.);* Texas Loan Agency v. Gray, *34 S.W. 650 (Tex. Civ. App. 1896, writ refd). The deed of trust is regarded as a contract binding the mortgagor, the trustee, and the mortgagee, also referred to as the beneficiary. The deed of trust usually is executed by the mortgagor only and not the trustee and the beneficiary. The deed of trust typically contains numerous covenants by the mortgagor (e.g., payment of taxes, maintenance of insurance), the*

*conditions permitting the mortgagee to cause the mortgaged property to be sold (e.g., definitions of default), and the procedures to be followed (e.g., acceleration, notices, waivers, substitutions of trustees, and advertisement of sale). Texas law does not condone extra-judicial seizure of mortgaged real property by the mortgagee, unless the property is voluntarily relinquished by the mortgagor. In other words, Texas does not recognize "self-help repossession" of real estate. The Texas Property Code instead provides an orderly means for resolving disputes. Sometimes security agreements contain provisions authorizing the secured creditor to go on to a debtor's property to take possession of personal property collateral if this can be done without a breach of the peace. In the absence of a similar provision as to real property mortgaged as collateral, absent grounds for a receivership or injunction preforeclosure, the mortgagee's remedy is to seek nonjudicial or judicial foreclosure of its mortgage lien.* Lighthouse Church of Cloverleaf v. Texas Bank, *889 S.W.2d 595 (Tex. App.—Houston [14th Dist.] 1994, writ denied). The procedures set forth in section 51.002 of the Texas Property Code are generally mandatory and nonwaivable.* See *Tex. Prop. Code Ann. § 51.002 (Vernon Supp. 2004). If the deed of trust conflicts with the statute, the statute controls. The conditions to exercising the power of sale and the manner of exercising the sale may be made more restrictive or burdensome by contract than the statute provides.* See Ford *v.* Emerich, *343 S.W.2d 527 (Tex. Civ. App.—Houston 1961, writ refd n.r.e.);* Fame v. Wilson, *192 S.W.2d 456 (Tex. Civ. App.—Galveston 1946, no writ). Foreclosure transfers title from the debtor to another party, but it does not put the new owner in possession; it gives him a right to possession. If a debtor remains on the property, most deeds of trust treat him as a tenant by sufferance. To remove a tenant at sufferance, the new owner must file a forcible detainer suit.*

20. Texas Recording Statutes do not require filing of record. Legal requirement to file are noted under other state statutes in order to preserve lien rights to a correctly named Secured Party.

21. As stated, Obligor of the note is identified within the lien as the Grantor and the Obligee is noted to be the Grantee (Secured Party – SP1).

22. To further market the Secured Note beyond origination, the Secured Note must meet the requirements of being a negotiable instrument as defined by the UCC or the states equivalence.

23. Where Secured Party (SP1) elects to negotiate the Secured Note to a subsequent Secured Party (SP2) under UCC or BCC, the Secured Party can elect to sell the Secured Negotiable Note by indorsement or in blank.

24. Where the Secured Negotiable Note is sold and negotiated by Secured Party (SP1) by indorsement, the subsequent Secured Party purchaser (SP2) takes the Secured Negotiable Note with the lien being temporary perfected in the Secured Party's (SP2) name, the Secured Party owning such Secured Negotiable Note identity would be known by completing the negotiation by identifying itself (Secured Party - SP2) as the Indorsee.

25. Thusly, the Indorsee (Secured Party - SP2) now noted on the face of the Secured Negotiable Note has also been conveyed lien rights in a temporary perfected status.

26. Indorsee (Secured Party - SP2) under the Recording Statutes then may take the legal steps to permanently perfect the liens conveyance in SP2's name by filing of record. However, other state statutes mandate the assignment of the lien must be filed of record.

27. However, if SP2 fails to timely file of record a conveyance of ownership right to the lien to convert temporary perfection into a permanent perfection, the lien would expire by operation of law. Failure to Permanently Perfect.

28. Recording of an ownership interest in real property title (Deed of Trust) is required by Texas Local Government Code §192.001.[1]

[1] *§192.001. GENERAL ITEMS. The county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded.*

29. Any change of ownership interest in real property title (legal or equitable) requires notice of change of ownership interest to be filed of record per Texas Local Government Code §192.007.[2]

30. To file an instrument of record, the instrument must be eligible for recording as per Texas Property Code § 11.001.[3]

31. Where an Indorsee (Subsequent Purchaser-Subsequent Secured Party) noted on the face of the note fails to timely perfect the conveyance of the lien into their name as a subsequent Secured Party, the lien would expire by operation of law.

32. Where there are multiple subsequent purchasers of a secured negotiable note, each subsequent purchaser in turn, as Indorsee would need to file of record, notice of conveyance of legal title to allow the secured negotiable note to remain a Secured Note and perfected in each subsequent Secured Party's (Subsequent Purchaser) name.

33. Where a party neither appears in the chain of the notes indorsements as Obligee/Indorsee nor in the chain of title as a Secured Party/Grantee filed of record, a filing of an instrument by a non Secured Party is only that of a wild deed and would not create a colorable claim to title, legal or equitable.

34. As an execution of a Deed of Trust is action taken by the Obligor/Grantor in granting collateral to a Secured Party, the Obligor/Grantor grants legal title to a

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[2] *§192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (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.*

[3] *§11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located….*

Trustee while Obligor retains equitable title to the real property. Equitable title gives the Obligor the rights to enjoyment of the property.

35. Where a Grantor grants to a Trustee legal title to real property via a lien, a Trustee is without legal capacity to act on any action affecting legal title except for that of Secured Party filed of record.

36. As there are only three parties to a Deed of Trust, 1 [Grantor under the Deed of Trust and Obligor under a Secured Note], 2 [Grantee under the Deed of Trust and Obligee under a Secured Note] and the 3 [Trustee as noted on the face of the Deed of Trust.] Therefore, names such as "Mortgagee", "MERS as Nominee for Lender and Lender's Successors and Assigns" and "Beneficiary" could only be representative of a Secured Party of a perfected lien.

37. Where a Deed of Trust is lawfully conveyed by lawful negotiation of the Secured Note, the Secured Party that was the Indorser of the Secured Note should be noted in public records Grantor/Grantee indexing as the Assignor of the lien.

38. The subsequent Indorsee which is the subsequent Secured Party would be noted in Grantor/Grantee indexing as the Assignee.

39. By reasons of logic and law, only a Secured Party being of that as the same name as the Assignee filed of record could become the owner of lien rights secured to the Secured Party if such lien is properly conveyed and subsequently timely perfected in a subsequent purchaser's (subsequent Secured Party's) name.

40. Where a note is secured by a perfected lien, such note would be considered to be a Secured Note. Regardless of possession, only the owner of the Secured

Note as Secured Party filed of record would have rights to enforce the Secured Note. For a Secured Note, a Secured Party's right would extend to the security (Deed of Trust - lien) securing the Secured Note if perfection remains valid.

41. Where a Secured Note is to be sold by the original Obligee SP1 to a subsequent purchaser Obligee SP2, the Secured Note must also meet the legal requirements of the Texas Business and Commerce Code/UCC to be that of a Negotiable Instrument.

42. A Lost Note Affidavit does not meet the legal requirements of the Uniform Commercial Code or the Texas Business and Commerce Code to be that of a Negotiable Instrument.

43. Under Texas law, to convey collateral (Deed of Trust – lien) securing a Secured Negotiable Note to a subsequent Secured Party requires perfection of the lien to be filed of record in the subsequent purchaser's name (SPx).

44. Whereas if the second Secured Party (SP2) fails to timely permanently perfect a conveyance of lien rights into the second Party's name (P2), the second Party (P2) then fails to remain a Secured Party (SP) and where such status is void, any future assignment to convey lien rights from the second Party (P2) to subsequent Purchasers 3, 4, etc would be void ab initio as the second Secured Party (SP2) failed to comply with laws governing perfection and only negotiated a unsecured note.

45. Texas Property Code only provides who as an agent can execute legal actions and when, other Texas laws proscribe that only a Secured Party filed of record has any legal authority to invoke any power contained within a valid lien.

46. In today's mortgage world, the buying and selling of Mortgage Servicing it is not uncommon, thus it would not be difficult to see a number of subsequent Mortgage Servicer's claiming to be the Mortgagee of a lien.

47. Where a Mortgagee claims to be the Mortgagee of a lien, that claim lacks sufficient legal definition to identify the Mortgagee as a Secured Party.

48. Similarly, where a claim is made by one to be that of a subsequent Beneficiary of a lien, that claim lacks sufficient legal definition to identify a claimed subsequent Beneficiary is a Secured Party.

49. Under the principles of Nemo Dat, whereas a party is not a bona fide holder of valid perfected legal title (lien holder) and not being a secured party of record would not be able to convey a greater right to a subsequent party.

## MERS AS NON AGENT OF INDORSEE IN BLANK

### 2. The Creation of the Mortgage Note and Security Instrument

*Uniform Commercial Code and state recordation requirements (More so Title Theory)*

The Homeowner (Obligor) signs a Mortgage Note and a Security Instrument. Upon signing of the Security Instrument and by operation of law, the Security Instrument is automatically attached to the Mortgage Note and temporary perfection is established. The Security Instrument when filed in public records transforms a temporary perfection into a permanent perfection and is notice to the world. Regardless of whether the Mortgage Note is sold to a subsequent purchaser, recordation of the Security Instrument is required to permanently perfect the lien. The Security Instrument affects title to Real Property, and as such, the laws of local jurisdiction govern and such requirement to comply with local laws of jurisdiction is contained within the Security Instrument itself. The filing of record serves a second and distinctive purpose: it creates the priority of perfection among subsequent purchasers of the Mortgage Note and is not addressed further in this document**.** Upon attachment and

perfection of the Security Instrument to the Mortgage Note, the Mortgage Note becomes an indebtedness that is "Secured**.**"

## 3. Tangible – Personal Property versus Real Property

*Failure to Maintain Continuous Perfection*

The Mortgage Note and the Security Instrument are Tangibles and Personal Property and we shall consider the two items in tandem to be called the "Mortgage" and such "Mortgage" is Tangible and Personal Property. One must not forget the terms contained within the Security Instrument affect an interest in Real Property and these terms require compliance with all applicable, federal, state and local laws and the language contained within the Security Instrument itself. Failure to comply with the laws governing the contents of the Security Instrument or language within the Security Instrument would render the Security Instrument a nullity. If such Security Instrument becomes a nullity, then the classification of the Mortgage Note is reduced in status from "Secured" to "Unsecured" and as a result of the Security Instrument becoming a nullity the "Power of Sale Clause" contained within the Security Instrument would also be nullity.

The Mortgage being a Payment Intangible can be negotiated by possession and the security for this Payment Intangible is the right to collect monies from the (Mortgage Note secured by the Security Instrument as collateral). Thus, the (Mortgage Note and Security Instrument as collateral) is security for the Payment Intangible and it is this security that follows the Mortgage (Payment Intangible) where the Mortgage is the owner of the Mortgage Note and what should be a valid perfected Security Instrument. Again, the Mortgage is nothing more than a Payment Intangible (Personal Property) and the security for this Payment Intangible is the right to collect monies noted in the Payment Intangible's security, the Mortgage Note. The Payment Intangible's security also consists of a valid perfected Security Instrument along with any valid Assignment of Mortgage filed of record to transfer lien rights in accordance with laws that govern the Security Instrument.

Regardless of the hierarchy of ownership of the Payment Intangible, Mortgage, Mortgage Note or Security Instrument, the terms contained within the Security Instrument must be complied with, and this author has not seen a Security Instrument that does not itself require compliance with federal, state or local laws. Failure to comply with the laws of local jurisdiction that govern the terms

within the Security Instrument would render the Security Instrument a nullity and the Mortgage Note would then be reduced to "Unsecured" and the Mortgage (Payment Intangible) would then be left without a valid perfected lien to allow foreclosure of the Real Property. Additionally, if the Security Instrument was rendered a nullity by failure to comply with the laws or the terms contained within the Security Instrument, the secondary market has not purchased a "Secured" indebtedness and any claim made by a subsequent purchaser including Trusts are without rights to enforce the "Power of Sale Clause" and no foreclosure is possible. This failure to provide a complete Mortgage to the secondary market is the real fraud that the financial institutions are trying to conceal.

Even with a nullified Security Instrument, if a valid Mortgage Note with a complete Chain of Indorsement is proved, the Holder/Owner with right as Holder in Due Course could sue for equity in a court of jurisdiction.

So when it is said the Mortgage follows the Note, one must remember that the Security for the Payment Intangible follows the Payment Intangible without filing of record**,** and therefore**,** the underlying Mortgage Note would be followed by a valid continuous perfected Security Instrument if there were compliance with applicable laws to maintain perfection of the Security Instrument.

## 4. Original Obligee (Lender) Takes Possession of the Secured Mortgage Note

*Proper Parties*

Original Obligee takes possession of the Mortgage Note and permanently perfects the Security Instrument by filing of record in the Original Obligee's name. Failure to name the correct parties could possibly be a fatal to the enforcement of the terms in the Mortgage Note or Security Instrument.

## 5. Original Obligee (Lender) Sells The Secured Mortgage Note

*Obligee Indorses Mortgage Note to "In Blank" Indorsee*

The Original Obligee sells the Mortgage to a subsequent purchaser. Proper procedure is to negotiate the Mortgage Note under cover of a Bailee's Letter to the subsequent purchaser and then transfer the rights to the Security Instrument by filing of record the name of the subsequent

purchaser who purchased the Mortgage Note and completing the Mortgage Note negotiation by noting the owner name in the blank.

Original Obligee indorses the Mortgage Note and delivers the same to the subsequent purchaser (Second Obligee). Second Obligee then completes the negotiation by filling in the blank, if negotiated in blank, then files of record an assignment of the mortgage to transfer and perfect the Security Instrument's lien into the Second Obligee's name. If the Second Obligee fails to complete the negotiation by noting ownership in the "blank," then the Second Obligee may have become the possessor of the note but has not become the holder of the note and has not achieved holder in due course with rights to enforce the Mortgage Notes terms or the terms within the Security Instrument. Additionally, failure to file of record the Assignment of the Security Instrument fails to transfer lien rights and this failure to transfer lien rights has rendered a once secured Mortgage Note to "Unsecured."

## 6. Original Obligee (Lender) Sells an Unsecured Mortgage Note

## (MERS as Nominee)

*MERS Hides the Fraud*

Where MERS is filed of record as the Mortgagee as Nominee for a lender and lender's assigns, and where the first negotiation of the Mortgage Note is executed "In Blank**,**" one has to inquire how MERS would represent an unidentified Indorsee. In most cases this unidentified Indorsee ceases to exist after the creation of the security trust and may not have existed upon the closing of the loan. This unidentified Indorsee and subsequent unidentified Indorsee's would constitute a break in the "Chains." There are two distinct Chains. One chain is that of indorsements noted on the face of the Mortgage Note and the publicly recorded chain of title that transfers lien perfection. This Paper will not dwell into to the details of the "Chain**s."** As MERS claims to be the Mortgagee of record for lender and lender's assigns and as the Mortgage Note is negotiated in blank through a number of unidentified endorsees**,** it is clearly observable from the facts that continuous perfection of the Security Instrument has not been in compliance with the laws of local jurisdiction which gover**n** the Security Instrument. The chain of indorsements use of "In Blank" is also fatal as an "IN BLANK" unidentified party cannot negotiate the Mortgage Note.

## 7. CONFUSION

*Hiding the Fraud*

Wall Street is buying a Payment Intangible (Personal Property) and as such is the owner and holder of that Payment Intangible and the laws that govern the Payment Intangible allow for negotiation by possession. The Payment Intangible's security is the Mortgages (Personal Property) contained within the collateral pool. Remember, the Mortgage actually consists of two parts, the Mortgage Note and a lawfully continuously perfected Security Instrument. So it is now safe to say the security follows the note, yep, but the security that follows the note may in fact be a nullity by the hierarchy ownership's failure to comply with laws that govern the Security Instrument. Bottom line, the Mortgage Note maybe proved up with a proper chain of indorsements years after the trust creation but loss of perfection can never be proved up once lost and therefore Wall Street may have only bought an unsecured Mortgage Note. The author will not comment on REMIC IRS tax issues. To further complicate the issue, multiple purchases by Wall Street may have not been that of the Mortgage Notes but that of a Transferable Record which is registered within the MERS system.

## 8. Why the Investor

## Does Not Own the Mortgage Note and Security Instrument

*The Mortgage Note Does Not Identify the Subsequent*
*Owner & Holder of the Mortgage Note or the Security Instrument*

As stated, the Mortgage Note and the Security Instrument is Personal Property and is commonly called the "Mortgage**.**" This Mortgage which is personal property is offered up as collateral to the Payment Intangible in the formation of the Trust. To explain, we must present the Trust in reverse order. Investors purchase a beneficial interest in Trust Certificates. The Trust owns the right to the monies collected from the Payment Intangible. The Payment Intangible owns the right to collect monies owed under the Mortgage Note(s). The Certificates and Payment Intangibles are personal property; the local laws of jurisdiction that affect real estate do not apply in a direct manner. The Trust documents provide a precise mechanism for negotiating the Mortgage Note and Security Instrument into the Mortgage (Payment Tangible) Pool. The majority of notes this author

has reviewed reflect a single indorsement in blank from the Original Obligee, which raises severe concerns that a chain of indorsements is missing from the Mortgage Note to show a complete chain of negotiation that is required by law to be within public records to show a true "Chain of Title". The "Chain of Title**,**" an Assignment of Mortgage (The Security Instrument)) that is properly filed of record would be notice of a perfected lien and the priority of those subsequent purchasers of the Mortgage Note. Filing for transferring perfection of the lien (Security Instrument) and filing for notice of priority to subsequent purchasers of the Mortgage Note to establish who has priority lien rights is not one in the same. Failure to properly negotiate does not transfer "Holder in Due Course" (ownership/status/rank/qualification/legal status etc., according to the UCC governing law) to a subsequent party not named on the Mortgage Note.

## 9. The First Negotiation in Blank

*Or How Not To*

Where the Mortgage Note was being used as collateral in a Mortgage Backed Security (MBS), and an unknown "Indorsee in Blank" would need to be the first entity in the MBS creation, thus the "In Blank" should contain the identity of that party to allow additional negotiation of the Mortgage Note to further the creation of the Trust. Additionally, we must question the means and the methods employed by MERS to be a Mortgagee of record as "Nominee" for an unidentified "In Blank" or any type of agency relationship to an unidentifiable "In Blank**.**" Currently, one example, the only means offered to identify an unidentified "In Blank" is contained within a Pooling and Servicing Agreement (PSA). The PSA identifies all the parties that would need to appear in the chain of indorsements and chain of title, this required chain of indorsement is not what is usually found on the face of the Mortgage Note. The Mortgage Note being negotiated by a single "In Blank" through multiple unidentified indorsee's is not in compliance with the PSA, the UCC or the states equivalence of the UCC, and the failure to file of record the named party Indorsee , "In Blank" party also creates a break in the chain of title in public records. The frog's bottom**:** the parties that can be identified on the face of the Mortgage Note, chain of indorsements, does not match the chain of title filed of record. "Rivet, Rivet," add an allonge and affix it.

## 10. WHY THE CHAINS DO NOT MATCH

*"MERS"*

How would one record of record an unidentified Indorsee "In Blank"? The unidentified Indorsee "In Blank" is not a real person, not a company; in fact, the unidentified Indorsee "In Blank" is a non-existen**t** party, or is it? As the author has noted, the evidence offered to identify the Indorsee "In Blank" appears in third party contracts used in the creation of the investment vehicle and this unidentified "In Blank" Indorsee by admission of MERS can be located within the MERS system and would appear in a MERS**'** Audit Trail. As it can be seen, MERS can track an unidentified Indorsee "In Blank;" but can an unidentified Indorsee "In Blank" be named as a party and filed of record? This is one reason the Chain of Indorsements on the face of the Mortgage Note does not match the Chain of Title filed in public records which filing of record would note the legal party entitled to a continuous perfected lien. The Security Instrument filed of record converts a temporary perfection and attachment into a permanent perfected lien**,** while the filing of record of an unidentified Indorsee "In Blank" transfers nothing. In the author's opinion, MERS alludes that they are the Mortgagee of Record as a means to avoid the problems with filing of record an unidentified Indorsee "In Blank." The process of indorsing in blank raises one serious question, how does an unidentified Indorsee "In Blank" indorse a note in blank to a subsequent unidentified Indorsee "In Blank" and comply with local laws of jurisdiction governing the Security Instrument that was to secure the Mortgage Note? Failure to follow the terms within the Security Instrument would breach the Security Instrument contract and render the Mortgage Note unsecured. Not only was the Mortgage Note not properly negotiated to the Wall Street trusts through multiple unidentified "In Blank" Indorsees', but there was also a failure to transfer a perfected lien to the Wall Street trust. Note: these conditions also apply to Fannie Mae, Freddie Mac and certain private investments and also affect Commercial Mortgage Backed Securities.

## 11. The Second Negotiation in Blank

## Unidentified Indorsee "In Blank" Indorses "In Blank"

*Still Using the First "In Blank" Indorsement-Failure to Negotiate*

The second negotiation in the Mortgage Note negotiation would be from the creator of the trust to the depositor of the trust, but in actuality the "First Indorsement in Blank" is utilized for this

negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation "In Blank." This negotiation is usually indorsed "In Blank" utilizing the "In Blank" from the Original Indorser and no record is filed of record to transfer lien rights to the second "In Blank" Indorsee.

## 12. MERS and Transferable Records

*15 USC 7003, Excludes Negotiable Instruments When UCC Governs*

For a moment we have to step back to the "Original Obligee" to understand the movement of the Mortgage Note. This author has noted some commentators are adamant that the Mortgage Notes are not destroyed at any step in the process and we shall follow that reasoning for the moment. In concession of conversation it is somewhat agreed that the Mortgage Notes are placed within custody of a Document Custodian. With that said, we have to address many court filings of copies of the Mortgage Notes submitted by the financial institutions where the originals cannot be found and it is common to only see an "Indorsement in Blank" from the Original Obligee. One has to ask why and how this possibly occurred. Simply, if the Original Obligee placed the Mortgage Loan package within the custody of a custodian and the MERS system tracked a "Transferable Record" alleging to be the lawful negotiation of the Mortgage Note and if a need was required for proof, the current entity claiming rights would retrieve whatever documents resided with the original custodian.

## 13. The Third and Fourth Negotiation in Blank

*Subsequent Negotiation by an Unidentified Subsequent Indorsee "In Blank" to additional Subsequent Purchasers "In Blank"*

The third step in the Mortgage Note negotiation would be from the depositor of the trust to the Trustee of the Trust, but again, in actuality the "First Indorsement in Blank" is utilized for this negotiation. Again, there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation "In Blank**.**"

The fourth step in the Mortgage Note negotiation would be from the trustee of the trust to the Trust, but again, in actuality the "First Indorsement in Blank" is utilized for this negotiation. Again,

there is an unknown party alleging to be the Holder and Owner of the Mortgage Note by a negotiation "In Blank**.**"

## 14. Holder, Owner and Holder in Due Course, Innocent Purchaser

### (A) One can be the holder of the Mortgage Note and not be the owner or have rights as holder in due course.

Servicers and trustee**s** possibly could become the possessor of the note and claim they represent the owner and the holder in due course, however, if proper negotiation of the Mortgage Note was not followed as required, the trusts that these trustees represent do not hold sufficient legal rights to enforce the terms in the Mortgage Notes, much less enforce the terms in a nullified Security Instruments.

### (B) One can be the owner of the note and not be the holder or have rights as holder in due course.

The trust may claim to own the Mortgage Note but this would be a misconception. The trust where MERS is involved owns the rights to a "Transferable Record" where that record reflects who has control over a custodian that holds the Mortgage Note, if and when a vaulted copy does exist, and control over MERS as a so called mortgagee of record.

### (C) Holder in Due Course

Holder in Due course where proper negotiation was not followed would still reside with the Original Obligee, but issues still exist as to a continuous perfected Security Instrument.

Under the Uniform Commercial Code a subsequent purchaser could not achieve "Holder In Due Course" where fraud was committed by one of the Unidentified "In Blank" Indorsee's as it affected the Mortgage Note.

### (D) Innocent Purchaser

As to an innocent purchaser, a party to the creation of the trust where MERS is involved and named in the PSA or other documents of incorporation has actual notice of MERS's involvement and therefore cannot claim to be an innocent purchaser.

## 15. Modifications & Lawsuits

Considering all the points noted in items 1 through 13 the following question presents itself:

1. How can a holder of an electronic copy of note or a note that lacks indorsement, who is without rights to enforce the note grant a modification to something they do not legally own?
2. How can a holder of an electronic copy of note or a note that lacks indorsement, who is without rights to enforce the note and standing invoke a court's jurisdiction?

Where state recordation laws have not been complied with resulting in loss of perfection presents these intelligent factors:

1. Failure to take legal actions to continuously perfect the Security securing a Note would result in the Secured Party losing the status as Secured Party rendering the Secured Indebtedness to Unsecured; therefore the Secured Party is no longer a Secured Party and as such, the holder of the indebtedness lacks rights to enforce any term contained within the now null Security.

2. As the Note has been rendered Unsecured, the holder of the indebtedness is without rights to enforce terms noted within the security and lacks standing to invoke a court's jurisdiction for any action raised dependent upon the security.

## 16. Closing Statement

One has to consider under Title 15 USC, 77nnn**,** the filing of compliance reports is not in compliance based on the procedural actions that were implemented in the creation of secondary market trusts by the financial institutions. Fannie Mae's and Freddie Mac's role in creating securitized trusts as additional fraud creation practices are not addressed in this writing.

With all the failure of compliance with law in the creation of the secondary market trusts, this writer is alarmed that the "Robo-Signing" and "Robo-Verification" will only serve the financial institutions with a diversionary method to conceal a greater fraud. The "Robo" actions and accounting for all previous failure to comply with laws of governance show proof the financial

institution will commit any number of frauds to protect their Friday Paycheck and Crystal Tower Bonuses.

It may be, just may be possible to prove up the Mortgage Note but you can "NEVER" prove up a lost "Perfection of Lien." Regardless of the number of Affidavits filed with the courts and regardless of the number of Assignment of Mortgages filed of record, none of these actions will perfect a lien once perfection has been lost.

Proper procedure for default recovery of an unsecured note--suit for monies: "but you cannot foreclose." "THEY ARE SUING UNDER A CAUSE OF ACTION THAT IS NOT AVAILABLE**,**" if filing for foreclosure. Nobody will have gotten anything for free, the home is without a lien secured to the Mortgage Note and the bank can still sue under the default on the Mortgage Note if such note has not been discharged by willful intentional act as noted in the UCC.

This paper will not address the relationship of (X) value of tangible real property and the (X*Y) value of the intangible Credit Default Market. The Credit Default Market is a monstrous nightmare fraud machine in itself.