Governing Law

Let Me explain

There is no easy way to write this explanation for the ignorant. This writer can only provide another writing in regards to a certain activity taking place across the United States. Since I reside in one of the several states this writer will use the situs of the land of Texas for the reader to ponder the idea of whether a deed of trust was intended to be a mortgage in which the jury determines the question of fact. From this point on, the world is the jury because chances for a homeowner to get to trial by jury is a journey full of bias and injustice.

In 1995, the California Supreme Court described the deed of trust

> A real property loan generally involves two documents, a promissory note and a security instrument. The security instrument secures the promissory note. This instrument "entitles the lender to reach some asset of the debtor if the note is not paid. In California, the security instrument is most commonly a deed of trust (with the debtor and creditor known as trustor and beneficiary and a neutral third party known as trustee). The security instrument may also be a mortgage (with mortgagor and mortgagee, as participants). In either case, the creditor is said to have a lien on the property given as security, which is also referred to as collateral."[1]

Is it possible to easily determine if a deed of trust, or a mortgage is being used? Is it possible to determine if a deed of trust is being used as a mortgage? According to the California Supreme Court there is a *trustor*, *beneficiary*, and *trustee* related to a deed of trust, and a *mortgagor* and *mortgagee* related to a mortgage.

Federal courts have noted;

> The Texas courts have repeatedly discussed the dual nature of a note and deed of trust. "It is so well settled as not to be controverted that the right to recover a personal judgment for a debt secured by a lien on land and the right to have a foreclosure of lien are severable, and a plaintiff may elect to seek a personal judgment without foreclosing the lien, and even without a waiver of the lien." *Carter v. Gray* 125 Tex. 219, 81 S.W.2d 647, 648 (Comm'n App.1935, writ dism'd). Where a debt is "secured by a note, which is, in turn, secured by a lien,

1 Alliance Mortgage Co. v. Rothwell, 900 P. 2d 601 - Cal: Supreme Court 1995

> the lien and the note constitute separate obligations." *Aguero v. Ramirez*, 70 S.W.3d 372, 374 (Tex.App. — Corpus Christi 2002, pet. denied). The Texas courts have "rejected the argument that a note and its security are inseparable by recognizing that the note and the deed-of-trust lien afford distinct remedies on separate obligations." *Martins v. BAC Home Loans Servicing, LP*, 722 F. 3d 249 - Court of Appeals, 5th Circuit 2013

It should be noted from *Johnson v. Cherry*, 726 SW 2d 4 - Tex: Supreme Court 1987

> The question of whether an instrument written as a deed is actually a deed or is in fact a mortgage is a question of fact. *Wilbanks v. Wilbanks*, 160 Tex. 317, 330 S.W.2d 607, 608 (1960); *Wells v. Hilburn*, 129 Tex. 11, 98 S.W.2d 177, 180 (1936). The true nature of the instrument is resolved by ascertaining the intent of the parties as disclosed by the contract or attending circumstances or both. *Wilbanks*, 330 S.W.2d at 608; *Wells*, 98 S.W.2d at 180. Even when the instrument appears on its face to be a deed absolute, parol evidence is admissible to show that the parties actually intended the instrument as a mortgage. *Wilbanks; Bradshaw v. McDonald*, 147 Tex. 455, 216 S.W.2d 972, 973 (1949). When there is a fact finding that the parties intended the transaction to be a loan, and that finding is supported by probative evidence, the law will impute the existence of a debt. *Wells*, 98 S.W.2d at 180; *Brannon v. Gartman*, 288 S.W. 817, 821 (Tex. Comm'n App.1926, holding approved). A mortgage of a homestead not expressly permitted by the Constitution is invalid. TEX. CONST. art. XVI, § 50.

Question of fact in reference and evidence

The question of whether an instrument written as a deed is actually a deed or is it in fact a mortgage which is a question of fact so noted in *Johnson v. Cherry*. In law, a question of fact, also known as a point of fact, is a question that must be answered by reference to facts and evidence as well as inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact (a "finding of fact") usually depends on particular circumstances or factual situations. In law, a question of law, also known as a point of law, is a question that must be answered by applying relevant legal principles to interpretation of the law. Such a question is distinct from a question of fact, which must be answered by reference to facts and evidence as

well as inferences arising from those facts. [2] It is also noted that a question of fact is an issue to be decided by a jury.

So, how does a party to the deed of trust ever get to the jury when the man behind the alter allows summary judgment from electronic registry members by members of an agency of the State of Texas that prevent such forward movement? Do these men behind these altars only believe that the banks can do no wrong? With this type of bias by a judge with a bank, is this justice? With this type of bias by a judge who believes a homeowner is a deadbeat, is this justice? All this bias without reviewing the instrument that matters to preclude whether the jury should see the evidence?

Question of Fact in Jury Trial

So what is it the jury will determine? How would the jury know whether the instrument was intended as a deed of trust, or a mortgage? They seemingly appear to have similarities. Foreclosure is the legal process where real estate secured by a mortgage or deed of trust is sold to satisfy the underlying debt as evidenced in the promissory note. One difference is with a mortgage foreclosure is judicial, with a deed of trust foreclosure is non judicial. The mortgage or deed of trust will also state the: names of the borrowers, the property address, and a legal description of the property. The mortgage or deed of trust is recorded in the county land records, usually shortly after the borrowers sign it. Would the jury know the difference between a mortgage and a lien?

According to Investopedia a *mortgage* is a debt instrument which is either a paper or electronic obligation that enables the issuing party to raise funds by promising to repay a lender in accordance with terms of a contract.[3]

According to Investopedia a *lien* is a legal right granted by the owner of property, by a law or otherwise acquired by a creditor. A lien serves to guarantee an underlying obligation,

2 https://en.m.wikipedia.org/wiki/Question_of_law
3 https://www.investopedia.com/terms/d/debtinstrument.asp

such as the repayment of a loan. If the underlying obligation is not satisfied, the creditor may be able to seize the asset that is the subject of the lien.[4]

If the jury were to recognize the mortgage is a debt instrument and the debt instrument is not required to be recorded, and the creditor is required to foreclose judicially, why did the creditor pursue in the name of the deed of trust, and not the mortgage, a debt instrument? Was the intentions of the lender who created the deed of trust using the deed of trust as a lien for non judicial purposes when actually on its face, the deed of trust reflects the evidence that the deed of trust was intended to be a mortgage?

Why?

Why is it chapter 51, the Texas property code was changed after 15 years of law that satisfied the procedures to foreclose on real property? Were the intentions then to smooth over the seemingly unseen altering of lien theory law for title theory law in Texas? To allow the deed of trust to be used as a mortgage? Would this not make the average man wonder why Texas would do such a thing?

Maybe these learned people do not understand the workings of the securities in other areas? After all, most people cannot seem to realize there is no other security to understand other than the security being used for alleged foreclosures, a deed of trust that is a lien not a mortgage. Maybe people only look at the face instead of the intent? Isn't there an old adage about not judging the book by its cover?

I challenge you the reader to look at the deed of trust and see for yourself the deed is being used as a mortgage, a debt instrument. It takes an understanding of the basics of securities, and how it is applied after the *lien* is signed. Ponder this on what you can do, and you should start at the end result and retrace backwards to the *lien* because as you may find the deed of trust in some instances identifies four parties, *lender*, *borrower*, *trustee*, and *nominee or beneficiary*. A true deed of trust lien identifies 3 parties, a lender who is the *beneficiary*, a borrower who is the *trustor*, and a *trustee*.

4 https://www.investopedia.com/terms/l/lien.asp

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Alleged Scenario

The lender gives the borrower money. In exchange, the borrower gives the lender one or more promissory notes. As security for the promissory notes, the borrower transfers a real property interest to a third-party trustee. Although a trustee under a deed of trust lien owes neither a fiduciary duty nor a duty of good faith and fair dealing to the mortgagor, under Texas law the trustee does have "a duty to `act with absolute impartiality and fairness to the grantor in performing the powers vested in him by the deed of trust'. This duty is breached when the trustee fails to comply strictly with the terms of the deed of trust or the notice and sale provisions of § 51.002 of the Texas Property Code. Breach of the trustee's duty under a deed of trust is not itself an independent tort. Instead, "breach of this duty may be stated under Texas law as a claim for wrongful foreclosure." A claim for wrongful foreclosure requires that the property in question be sold at a foreclosure sale.[5] With what is previously stated, is it difficult to recognize the a mortgage is a *debt instrument* which is a *personal property* subject, and a deed of trust, *lien*, is a *real property* subject? "A trustee is a real party to the controversy where it 'possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others.'" "Whether the trustee possesses such powers is a question that is resolved based on the underlying trust document."[6]

Securities Trusts in the market v Deed of Trusts in real property

The Trusts in the instant action were originally securitized by residential mortgage loans, and created to facilitate the sale of those loans to investors. Such RMBS Trusts are formed according to the following process: First, institutions known as "sponsors" or "sellers" acquire and pool residential mortgage loans. Each sponsor also selects the loans' "servicer," "often an affiliate of the seller or originator, to collect payments on the loans.". "Once the loans are originated, acquired and selected for securitization, the seller, through an affiliate called the depositor, creates a trust where the loans are deposited for the benefit of the

5 Marsh v. Wells Fargo Bank, NA, 760 F. Supp. 2d 701 - Dist. Court, ND Texas 2011

6 Blackrock Allocation Target Shares v. Wells Fargo Bank, UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK Aug 18, 2017

Noteholders." Then the depositor "segments the cash flows and risks in the loan pool among different levels of investment or `tranches.'" Typically, "cash flows from the loan pool are applied in order of seniority, going first to the most senior tranches[,] [and] . . . any losses to the loan pool due to defaults, delinquencies, foreclosure or otherwise, are applied in reverse order of seniority." Next, "the depositor conveys the mortgage pool to the trust in exchange for the transfer of the RMBS to the depositor." "Finally, the depositor sells the RMBS to an underwriter, and provides the revenue from the sale to the seller. The underwriter markets and sells the RMBS to investors.".[7] This came from a federal court decision it is not this writer's conclusory allegation. Nonetheless, how many "institution" changes were reflected in the statement about securitization ie., originator, seller, depositor, servicer, sponsor, etc.? This would be important to trace the chain of title whether it is in regards to the note or the deed of trust.

What is an RBMS?

According to Investopedia residential mortgage-backed securities (RMBS) are a debt-based security (similar to a bond), backed by the interest paid on loans for residences. The interest on loans such as mortgages, home-equity loans and subprime mortgages is considered to be something with a comparatively low rate of default and a comparatively high rate of interest, since there is a high demand for the ownership of a personal or family residence. Investors are attracted this kind of security also want to be protected from the risk of default inherent with individual loans of this kind. This risk is mitigated by pooling many such loans to minimize the risk of an individual default.

So according to Investopedia the RBMS is a debt-based security backed by the payment streams known as monthly loan payments. This could only reference the promissory note due to the fact that it is considered personal property and the note is not a contract for real property, the deed of trust is the contract for the real property.

7 BLACKROCK ALLOCATION TARGET SHARES: SERIES S PORTFOLIO v. WELLS FARGO BANK, NA, United States District Court, S.D. New York. March 30, 2017

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What is a MBS?

According to Investopedia a mortgage-backed security (MBS) is a type of asset-backed security that is secured by a mortgage or collection of mortgages. This security must also be grouped in one of the top two ratings as determined by an accredited credit rating agency, and usually pays periodic payments that are similar to coupon payments. Furthermore, the mortgage must have originated from a regulated and authorized financial institution. An MBS is also known as a "mortgage-related security" or a "mortgage pass through." An MBS can be bought and sold through a broker and the minimum investment varies between issuers. It is issued by either a federal government agency company, government-sponsored enterprise (GSE), or private financial company

Again, according to Investopedia the MBS is a debt-based security backed by the payment streams known as monthly loan payments. This could only reference the promissory note due to the fact that it is considered personal property and the note is not a contract for real property, the deed of trust is the contract for the real property.

It should be questioned in the transactions of commerce “where does the law reside that governs personal property?”. Is it in the Texas Business and Commerce Code? Is it in the Texas Property Code? Is it in both? The reason for asking this is because as this writer stated, we should look at the result and step backward to where it all began, the real property loan.

If the first choice is the Texas Business and Commerce code, there may be a reason for this due to the promissory note or actions to such promissory note. Indeed the promissory note is a mortgage, a debt instrument as previously identified. So, this could also be a reason that many confuse “mortgage” with “lien”?

Next, if the lien secured the promissory note, it would be considered a “secured debt” because the lien secures the promise to pay. If any reference toward a deed of trust and a secured transaction as being one in the same, it would only be that way phonetically not in same terms or law. Secured Transactions are governed by chapter 9, Texas Business and

Commerce Code. It is fact, real estate loans are not governed by the Uniform Commercial Code.[8]

So, we should arrive at the understanding the Uniform Commercial Code has nothing to do with real property and only personal property, goods and services. Without the UCC, how did the mortgage become an RBMS, or MBS? Could it be argued that the note allows the pathway through the UCC? If this were the case, who would be the obligor? Would this be the borrower noted in the paper promissory note? If the paper mortgage is already in place, and the mortgage is not governed by the UCC, who is utilizing the UCC to get to Chapter 9, or the Securities law? We do recognize the paper promissory note is an asset for the entity whom provided the loan to the borrower because it is named in the note.

Asset Backed Security

Using Investopedia again we can see an asset-backed security (ABS) is a financial security collateralized by a pool of assets such as loans, leases, credit card debt, royalties or receivables. For investors, asset-backed securities are an alternative to investing in corporate debt. An ABS is similar to a mortgage-backed security, except that the underlying securities are not mortgage-based.

Is it this writer or can the reader recognize word play? According to Investopedia a mortgage is a debt-based instrument, and then there is also a mortgage-based instrument? So, there must be some other type of debt-based instrument being alluded to in the RMBS and MBS?

Texas Property Code

Up until 2004, there were no changes in Chapter 51 of the Texas Property Code in 1989 that reflect what is evidenced today in the same chapter. In 2004 the Texas Legislature whether it realized it or not changed the course of history in Texas known as a lien theory state to change it into Texas becoming a title theory state. Again, this would upset the

8 See 9.109(d)(2); 9.109(d)(11), Texas Business and Commerce Code

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Constitutional requirements in Article 3, section 30. It should not be difficult for the average man on the street to notice that the "holder of the debt" became the "holder of a security instrument" and everyone claiming it as a mortgage. It should not be difficult for the average man on the street to notice that real property became personal property. As noted in the new law of chapter 51, the holder of the mortgage brought on a new meaning of "subject". Such changes actually violated Chapter 1, Texas Property Code;

> Sec. 1.002. Construction of code. **The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code**, except as otherwise expressly provided by this code.

This writer will also mention these violations according to the Texas Constitution, Article 3, Legislative Department;

> Sec. 30. LAWS PASSED BY BILL; AMENDMENTS CHANGING PURPOSE PROHIBITED. **No law shall be passed**, except by bill, and no bill shall be so amended in its passage through either House, **as to change its original purpose**.
>
> Sec. 35. SUBJECTS AND TITLES OF BILLS. (a) **No bill**, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) **shall contain more than one subject.**
>
> (b) The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. **The legislature is solely responsible for determining compliance with the rule**.
>
> Sec. 43. REVISION OF LAWS. (a) The Legislature shall provide for revising, digesting and publishing the laws, civil and criminal; provided, that in the adoption of and giving effect to any such digest or revision, the Legislature shall not be limited by sections 35 and 36 of this Article.

(b) In this section, "revision" includes a revision of the statutes on a particular subject and any enactment having the purpose, declared in the enactment, of codifying without substantive change statutes that individually relate to different subjects.

This would also seemingly lead the average man to deduce that if the Texas Constitution was violated, so was the U.S. Constitution?

First Hint

The first hint of the violation comes from 51.0001(1). When understood that the “Book entry system” is governed by Texas UETA, a substantive change was made for a different subject. The subject is electronic records because the book entry system is governed by UETA and the book entry system is electronic. To further this and as explained previously, the evidence of conversion is evident in the Property Code such as 51.0001(3); 51.0001(4); 51.0001(5), which references “mortgagor” and “mortgagee”, not “trustor” or “beneficiary”.

Now let’s get back to chapter 51 enacted as of January 1, 2004.

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

(4) "Mortgagee" means:

(A) the grantee, beneficiary, owner, or holder of a security instrument;

(B) a book entry system; or

(C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.

(5) "Mortgagor" means the grantor of a security instrument.

(6) "Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.

(7) "Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.

(8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

We no longer have a holder of a debt, Texas law was changed to use the deed of trust as a mortgage as these intentions can be found not only in Chapter 51, but within the deed of trust itself in various covenants and such wording expressed by the author who created the deed of trust. This change can be recognized by the admissions of the current book entry system.

In this instance it is the lender who offered the deed of trust with its wording for the borrower to sign. The borrower did not offer a deed of trust created by the borrower. It is sad that the courts can only reflect that the “borrower” agreed to use “ book entry system” without the court knowing what jurisdiction the book entry system legally operates within. How could a court opinion based on ignorance of law be a valid opinion? Would this not reflect a court opining under the color of law? Is there a remedy?

Deed of Trust

TEXAS--Single Family--Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3044 1/01 (rev. 10/17) (page 17 of 17 pages)[9]

DEED OF TRUST

DEFINITIONS [emphasis added]

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

9 It may also be noticed the page counts of the deed of trust are out of alignment.

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() “Security Instrument” means this document, which is dated _____, _____, together with all Riders to this document.

() **“Borrower”** is _____. **Borrower is the grantor** under this Security Instrument.

() **“Lender”** is _____. Lender is a _____ organized and existing under the laws of _____. Lender’s address is _____. **Lender is the beneficiary** under this Security Instrument.

() “Trustee” is _____. Trustee’s address is _____.

() **“Note” means the promissory note signed by Borrower** and dated _____, _____. The Note states that Borrower owes Lender _____ Dollars (U.S. $_____) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____.

() “Property” means the property that is described below under the heading “Transfer of Rights in the Property.”

() **“Loan” means the debt evidenced by the Note**, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

() **“Applicable Law” means all controlling applicable federal, state and local statutes, regulations,** ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

() “Electronic Funds Transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, **and automated clearinghouse transfers**.

While the definitions in the deed of trust reflect a lien on its face, it is not until the trier of facts looks at the words in the definitions to notice the subjects of the deed of trust. For

instance Electronic Fund Transfer is not governed by the UCC. Nonetheless, an automated *clearinghouse* such as an electronic mortgage registry would be governed by Texas UETA yet the courts seemingly miss the mark in identifying governing law that would reflect the true jurisdiction of the *clearinghouse*, Uniform Electronic Transactions Act, UETA. There is no other law governing the electronic book entry system. It is noted, "This litigation concerns the MERS system, an electronic mortgage registration system and *clearinghouse* that tracks beneficial ownership interests in, and servicing rights to, mortgage loans."[10]

> Accompanying every contract is a common-law duty to perform with care, skill, reasonable expedience and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract.[11]

This statement by the courts in Southwestern Bell Tel. Co. v. DeLanney would lead us to another definition in the deed of trust, "Applicable Law" as a question of fact. According to the definition "Applicable Law" means all controlling applicable federal, state and local statutes, regulations. However, also within the four corners of the deed of trust is a certain covenant also reflecting applicable laws. A certain covenant 16, or similar will reflect **16. Governing Law**; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located.

Governing law

In Volt, the U.S. Supreme court stated the governing law as ("[T]he Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution"). The court further stated,

> Indeed, this is precisely what we said when we once previously confronted virtually the same question. In *Fidelity Federal Savings & Loan Assn. v. De la Cuesta*, 458 U. S. 141 (1982), a contract provision stated: "This Deed

10 In re: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (MERS) LITIGATION, MDL No. 2119. United States Judicial Panel on Multidistrict Litigation, December 7, 2009.

11 Southwestern Bell Tel. Co. v. DeLanney, 809 SW 2d 493 - Tex: Supreme Court 1991

> of Trust shall be governed by the law of the jurisdiction in which the Property is located." Id., at 148, n. 5. Rejecting the contention that the parties thereby had agreed to be bound solely by local law, we held: "Paragraph 15 provides that the deed is to be governed by the `law of the jurisdiction' in which the property is located; but the `law of the jurisdiction' includes federal as well as state law." Id., at 157, n. 12. We should similarly conclude here that the choice-of-law clause was not intended to make federal law inapplicable to this contract.

With this stated by the high court, it seemingly implies that there is a possibility of constitutional issues in regards to how the deed of trust is handled in order to protect either party. Of which, it is time to ponder the Constitution.

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; **and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.**

Title Theory

How did Texas become a title theory state? Its been this way for over 10 years now, it didn't happen yesterday or last year. Why is the term mortgage so easily intertwined with a lien? Is it possible that in 2004 Texas changed its position from being lien theory to becoming title theory? Was it really the intentions of the Texas Legislature to change positions? Was it really the intentions of the Texas Legislature to change the original intent of the bill? Once upon a time in this great state of Texas it was the holder of the debt, after 2004, it became the holder of a security instrument. Texas courts have stated The mortgage of the property is an incident of the debt; and as long as the debt exists, the security will follow the debt.[12] This has and always has been recognized as the mortgage follows the note as long as it exists and the power of nonjudicial foreclosure and sale must be exercised in strict compliance with the terms of the deed of trust creating that power.

12 Lawson v. Gibbs, 591 SW 2d 292 - Tex: Court of Civil Appeals 1979

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It should also be noted in Lawson as to what the court stated about how deed of trust was assigned as collateral by the holder to a third party and how negotiation of an instrument is a transfer of that instrument in such form that the transferee becomes a holder. And due to the governing law UETA which governs the electronic registry it is UETA which excludes the two governing laws the court mentioned. It was once stated “Texas follows the lien theory of mortgages. Under this theory the mortgagee is not the owner of the property and is not entitled to its possession, rentals or profits.”[13] This can be found in many other Texas court opinions and can be traced back into the 1800’s.[14] *Carpenter* is still cited in Texas as recent as 2016.[15]

Transfer of property

As noted in a certain covenant within the deed of trust;

> 18. **Transfer of the Property or a Beneficial Interest in Borrower**. As used in this Section 18, “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

According to Texas Business and Commerce Code, chapter 9, SCOPE, a lien, or the creation or transfer of an interest in or lien on real property, is excluded.[16] And again the courts have concluded that the UCC does not apply to a lien, but notes that executing a deed of trust results in the "creation or transfer of an interest in or lien on real property. However this interest seems to be intertwined with 9.102(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation. Nonetheless, a mortgage is a debt instrument, not a lien.

13 Taylor v. Brennan, 621 SW 2d 592 - Tex: Supreme Court 1981
14 Carpenter v. Longan, 83 US 271 - Supreme Court 1873
15 EVERBANK, NA v. Seedergy Ventures, Inc., 499 SW 3d 534 - Tex: Court of Appeals 2016
16 9.109(d)(2); 9.109(d)(11).

What seems to be overlooked is the wording used in section 18; “Interest in the Property” means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed. Ponder this? What does the *clearinghouse* do?

Hocus Pocus

> The big thing that's kind of the fly in the ointment of all of this is MERS because MERS is going to be the mortgagee of record, and that kind of changes things. [17]
>
> MR. BASTIAN: Well, MERS is going to be the mortgagee of record. In about 60 percent of all loans MERS is going to be the mortgagee of record, but all MERS is is a registration system.[18]
>
> MR. BASTIAN: Well, part of that in Florida, their foreclosure statute says only the owner and holder of the note can bring the foreclosure, and MERS wasn't the owner and holder of the note, and yet everybody was pleading them as the owner and holder of note. All they were was the mortgagee of record in the land title records, and it got everybody confused, and like anything new, it just created problems.
>
> MR. BARRETT: Well, MERS was at great – greatly at fault for creating all of those impressions. They may be supposed to be merely a registrant, but they haven't acted as a registrant. They have acted as a for-profit business, and they have gone out and tried to get into the default servicing business. At one point in time they considered themselves a huge competitor for doing foreclosure business, and they actually went out and marketed their services to bring foreclosures.

Though these statements may be eyebrow raising statements, this writer ponders why the judges noticed in the transcript never questioned why a mortgage was being referred to instead of a deed of trust? Or why “*mortgagor*” “*mortgagee*” replaced “*trustor*” and

17 MEETING OF THE TASK FORCE ON JUDICIAL FORECLOSURE RULES, November 7, 2007, Taken before D'Lois L. Jones, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand method, on the 7th day of November, 2007, between the hours of 9:36 a.m. and 11:46 a.m., at the Winstead, Sechrest & Minick, 401 Congress, Suite 2400, Austin, Texas 78701.

18 Same Transcript as footnote 17

"*beneficiary*"? Florida is a mortgage state, and Texas is a deed of trust state. Ignorance is no excuse for the law.

Ponder The Thought?

As in the old days of paper transactions, a financial institution may use a note which it holds in regards to a certain "borrower". For this use, the financial institution would be considered an "account debtor" which is recognized in Chapter 9, Secured Transactions, Texas Business and Commerce Code. The account debtor would seek a creditor who would be willing to provide a loan to the account debtor, and based on the collateral the account debtor had to offer for security to obtain the loan from the creditor. Again, all of this would seemingly be governed by the UCC. Nonetheless, the account debtor pledged its underlying assets such as notes, or other intangibles, to the creditor. If this underlying asset was related to real property, there would already be a deed of trust recorded in the account debtor name as the lender, a beneficiary of the deed of trust. The UCC would not apply to the underlying, but it would apply to the account debtor's transaction.

If the account debtor were to sell the underlying asset, the account debtor and the creditor would be required to follow all applicable law in order to keep the real property attached to the note as it was at origination. This would involve recording transfer of parties named in the deed of trust to reflect the new "lender". Or it could even mean the creditor could offer to refinance and attach a new deed of trust and the account debtor could release the previous deed of trust. This would all depend on the account debtor and the creditor agreements. It has nothing to do with the underlying asset except that all applicable laws must be followed. If all of the requirements for the underlying assets are taken, there would be a reflection in the chain of title of the note, and the deed of trust.

The reason for requesting that the reader ponder the thought is due to the overlooked law which book entry system members conduct their transactions in. And even though these transactions are conducted in electronic means in the book entry system, there are still laws in

which the members must adhere to which are the governing laws agreed upon in a deed of trust.

What's left?

So what is left that we haven't discussed? The mortgagee of record in a registration system? Political subdivisions have argued about the book entry system and its missing assignments, and the registration system says they are not obligated to record, yet it appears nobody got why the registry is not obligated.

In this writers opinion, the book entry system scheme has to be one of the most brilliant schemes orchestrated in a very long time. And the sad thing is, the judiciary bought right into it, hook, line, and sinker. Whether it was induced by ignorance, bribe, coercion, arrogance, or the idea the financial institutions do no wrong, it is revealed. And that judgment comes from the Judge whom men swore their oath to.

The only possible law that can be used by the book entry system is ESIGN, UETA. The book entry system itself has stated this is the laws in which it operates. This can be found latter in this paper.

In Texas, UETA preempts ESIGN. This may be the case in other states?

> Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC SIGNATURES ACT. This chapter modifies, limits, or supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002)

It should be noted that Texas UETA applies to the *book entry system* transactions, and any book entry transaction affecting the underlying transaction is governed by the deed of trust in the electronic realm of real property. In other words, if the alleged note is assigned, transferred, sold, or purchase, this must be reflected toward the deed of trust according to "governing law" in the contract for the deed of trust to be effective.

Governing Law

So now this writer has brought the reader to the law in which book entry system members use to preempt governing law. Keep in mind the word alter ego. An alter ego (Latin for "other I") means alternative self, which is believed to be distinct from a person's normal or true original personality[19]. Why? This is a corporate world. You can have a corporation that has another corporation within it. For example, MERSCORP Holdings, Inc. is a privately held corporation that owns and manages the MERS® System.[20] The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate.[21] Notice we have one corporation called MERSCORP Holdings, Inc, and another corporation called the MERS System even though it is alluded as a database. MERS is the electronic agent noted in the definitions of Texas UETA..

> 322.002(6) "**Electronic agent**" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

How is a MERS Loan created?

> At closing, the originating lender identifies MERS as the mortgagee, beneficiary or other secured party on the security instrument (Mortgage/Deed of Trust). The following is an example of the MERS verbiage on a Fannie Mae/Freddie Mac instrument:
>
> > “MERS is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for the Lender and the Lender’s successors and assigns. MERS is the beneficiary/mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

19 https://en.wikipedia.org/wiki/Alter_ego
20 What is MERCORP Holdings?
21 What is the MERS system

> ”Following closing, the security instrument is recorded in the land records. Naming MERS as mortgagee, beneficiary or other secured party eliminates the need for assignments of the security instruments when the servicing rights of the loan changes – MERS remains the mortgagee for the life of the loan.[22]

The reason for these various references is to help in locating the evidence that the deed of trust was in fact intended to be a mortgage.

> When a mortgage is executed through a MERS® System member and registered in the MERS® System, it is recorded in the real property records with MERS named on the instrument as nominee or mortgagee of record.[23]

Here is a problem. Due to the fact that ignorance runs rampant with the courts across the country, there is an enormous amount of *Stare Decisis* in favor of a system that if known, would have never made it this far. However, it is this writers opinion this evolved from a definition in the deed of trust.

> “Applicable Law” means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

With such a definition in hand of immoral lawyer’s , and the buddy system of the members of an agency of the State of Texas, it seemingly appears these men, or women have completely violated the Governing Law covenant within the four corners of a deed of trust. Through trickery and deceit not only to the people, but the State of Texas. And this is possible in all other states. Words are being used in which many never question what such word in meant in it context, and assuming is fatal in this debacle of the book entry system.

There is only one law in which the MERS system is required to use and that is ESIGN, and UETA. There are really no other governing laws for electronic transactions. However, there are a multitude of #Governing Law in which the members must abide by in order for the

22 Guide for New Patron MERS® System Members
23 KINGMAN HOLDINGS, LLC v. Mortgage Electronic Registration Systems, Inc., Tex: Court of Appeals, 5th Dist. 2016

electronic transaction to be lawful outside of ESIGN or UETA. Hitting the print key for a printout of an electronic will not suffice.

In a 2013 federal court interlocutory order the court stated “TEX. LOC. GOV'T CODE ANN. § 192.007(a). Based on the plain language of Section 192.007, the Court concludes that the statute requires the re-filing of an instrument each time there is a release, transfer, assignment, or some other action relating to an instrument filed with the county clerk. This interpretation is consistent with this Court's previous interpretation of this statute. See *Miller v.Homecomings Financial, LLC*, 881 F. Supp. 2d 825, 830 (S.D. Tex. 2012) ("Texas statute declares that any transfer or assignment of a recorded mortgage must also be recorded in the office of the county clerk"). There are no recorded cases of Texas state courts interpreting Section 192.007”.[24] Evidence, even the courts call the deed of trust a mortgage. So, as evidenced by federal court that the lien law of 192.007 applies, and book entry system members claim no need to record, you have another piece of the puzzle in determining the deed of trust was intended to be a mortgage by the author of the deed of trust.

> *If the MERS system did not exist, MERS members would re-file their deeds of trust with the proper county each time the security instruments are transferred in order to remain perfected. Furthermore, as discussed in Subsection D-1, infra, once a security instrument is recorded with the county clerk, Section 192.007 of the Texas Local Government Code requires the re-recording of the security instrument each time there is a release, transfer, assignment, or some other action related to the instrument.*[25]

Do you understand what the court stated? The beneficiary “*would re-file their deeds of trust with the proper county each time the security instruments are transferred in order to remain perfected.”*. So, according to the federal court the deed of trust would be re-filed again to correct the party’s to the deed of trust each time another action relating to the deed of trust occurred.

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24 Nueces County v. MERSCORP HOLDINGS, INC., Dist. Court, SD Texas 2013
25 Nueces County v. MERSCORP HOLDINGS, INC., Dist. Court, SD Texas 2013

Governing Law

Transactions and Hearsay

The practices associated with banking transactions can be conclusive evidence of the legal effect of those transactions. *Indianapolis Morris Plan Corp. v. Karlen*, 28 N.Y.2d 30, 36, 319 N.Y.S.2d 831, 268 N.E.2d 632 (1971); *Hanlon v. Union Bank of Medina*, 247 N.Y. 389, 391, 160 N.E. 650 (1928).[26]

Accompanying every contract is a common-law duty to perform with care, skill, reasonable expedience and faithfulness the thing agreed to be done, and a negligent failure to observe any of these conditions is a tort, as well as a breach of the contract.[27]

The acts of a party may breach duties in tort or contract alone or simultaneously in both. The nature of the injury most often determines which duty or duties are breached. When the injury is only the economic loss to the subject of a contract itself the action sounds in contract alone.[28]

Computer data as hearsay: Rule 801 2 "*Computer data that is compilation of information entered by a person is hearsay.*"[29]

Rule 901 (b) (1)

However, a bare assertion that a particular document is a specifically described item is insufficient authentication.[30]

Rule 902 (10) Business records accompanied by affidavit

The prerequisites to authentication by affidavit under Rule 902 (10) include (1) the records and the affidavit must be filed with the court clerk at least 14 days before trial, (2) notice of such filing must be given to all parties, (3) the records must be made available for inspection and copying, and (4) the affidavit must conform to the Rules 803 (6) and 803 (7).

Hibernia's reliance on commercial custom is misplaced. Commercial custom does not apply where the U.C.C. provides otherwise. See U.C.C. § 1-103; also U.C.C.

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26 Delbrueck & Co. v. Mfrs. Hanover Trust Co., 609 F. 2d 1047 - Court of Appeals, 2nd Circuit 1979

27 Southwestern Bell Tel. Co. v. DeLanney, 809 SW 2d 493 - Tex: Supreme Court 1991

28 Southwestern Bell Tel. Co. v. DeLanney, 809 SW 2d 493 - Tex: Supreme Court 1991

29 Murray, 804 S.W2d at 284 (computer printout is often simply "the feeding back of data placed into a computer by a person; although the data may be in a different form than it was when it was fed into the computer, it retains its status as the statement or statements made by a person" and thus fits the definition of hearsay).

30 Mega Child Care, 29 S.W.3d at 308 (witness's testimony that an exhibit was a copy of administrative judge's order opinion and order was insufficient authentication when "she was not the author of the opinion and order; neither did she purport to have any personal knowledge of the opinion and order by which she could confidently authenticate a copy".

§ 3-104, Official Comment 2 ("[A] writing cannot be made a negotiable instrument within this Article by contract or by conduct.") Moreover, it would be inequitable to apply the banking industry's unilateral "custom" to a maker, such as the Army, that is unaware of or may not recognize such a custom.[31]

Texas UETA

Sec. 322.001. SHORT TITLE. This chapter may be cited as the Uniform Electronic Transactions Act.

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize any activity that is prohibited by the Penal Code.

Was the deed of trust intended to be a lien, or a mortgage? There is a difference.

PURPOSE OF THE WHITE PAPER[32]

Over the past 30 years, the residential mortgage lending industry has largely transitioned to electronic systems for managing documents related to the origination and servicing of residential mortgage loans. These digitization efforts have, however, been primarily focused on using scanned images of paper documents. The mortgage industry now is poised to truly move towards the digital transformation of the full mortgage loan, including all segments of the mortgage life cycle including application and initial disclosure delivery, closing, notarization, recording and securitization.

BACKGROUND

The legality of eNotes was established with the enactment of the federal Electronic Signatures in Global and National Commerce Act (“ESIGN”) and the Uniform Electronic Transactions Act (“UETA”) over 17 years ago (collectively,“eCommerce Laws”). The eCommerce Laws create legal validity on a nationwide basis for the use of eNotes. The eCommerce Laws also establish a structure for transferring the right to enforce an eNote from the original lender to subsequent purchasers, free of intervening claims to an interest in the eNote.

31 US v. Hibernia Nat. Bank, 841 F. 2d 592 - Court of Appeals, 5th Circuit 1988

32 ENABLED BY LENDERS, EMBRACED BY BORROWERS, ENFORCED BY THECOURTS: WHAT YOU NEED TO KNOW ABOUT ENOTES

Catch that? "*The eCommerce Laws also establish a structure for transferring the right to enforce an eNote from the original lender to subsequent purchasers*,"? Let me ask you a question? What is registered in the book entry system? The following "framework" is something to be pondered because the book entry system provides many admissions as to what it does.

PRE-EXISTING LEGAL FRAMEWORK FOR PAPER NEGOTIABLE PROMISSORY NOTES

In the United States, the obligation to repay a purchase-money loan for a residence has traditionally been evidenced by a paper negotiable promissory note. This promissory note is a written document signed by the borrower and delivered to the lender. It is a common practice in the residential mortgage lending industry for the original lender to sell the debt obligation evidenced by the note to an investor. The use of negotiable promissory notes simplifies and streamlines the purchase-and-sale transaction because delivery of the original written note, together with a signed statement of transfer written or stamped on the note itself (called an "indorsement"), to a good-faith purchaser for value has been sufficient to establish the transferee's right to both:

- Enforce the note against the borrower free of most defenses arising because of the actions of prior owners of the note, and
- Take ownership of the note free of the claims of other persons to an ownership interest in the Note for one reason or another.

As the industry moved to substitute eNotes for paper promissory notes, a new process to replace the physical delivery of possession and indorsement of an "original" paper promissory note needed to be created. *Article 3 alone would not support a promissory note executed as an electronic record.*

To address this issue, the provisions of UETA and subsequently ESIGN were intentionally drafted to enable the electronic equivalent of a negotiable promissory note, substituting a process for establishing, and recording transfers of, "control" as the equivalent of possession and indorsement.

Governing Law

THE MORTGAGE INDUSTRY INFRASTRUCTURE SUPPORTING ENOTES

As a natural outgrowth of MERSCORP Holdings, Inc ("MERSCORP") services,27 MERSCORP developed the MERS® eRegistry in cooperation with a number of mortgage industry stakeholders who supported the effort. The MERS® eRegistry quickly became the industry-standard system of record for identifying the current Controller and location of the eNotes. While there is no provision in the eCommerce Laws that mandates the use of a centralized electronic registry, a registry system such as the MERS® eRegistry was expressly contemplated by the drafters of UETA and has maintained industry backing for over a decade.

The MERS® eRegistry does not store the actual eNote, but instead only stores and tracks identifying information about it, including the eNote's digital fingerprint, the name of the Controller and the location of the eNote. The authoritative copies of the eNotes themselves are stored in an eVault.

The MERS® eRegistry allows eNotes to be registered and uniquely identified for tracking and verification.

Mortgage Identification Number

As part of the closing process, the eNote will be assigned the same Mortgage Identification Number ("MIN") as used for its corresponding underlying mortgage registered on the MERS® System.

Courts of Color

Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender, including, but not limited to, releasing and canceling this Security Interest[33]

If the "governing law" of deed of trust was breached, is any action after that lawful?

33 MORLOCK, LLC v. NATIONSTAR MORTG., 447 SW 3d 42 - Tex: Court of Appeals 2014

Governing Law

You decide, but I believe you will come to notice the deed of trust was intended in fact to be a mortgage and only the note is mentioned in reference. Why else do they used the deed of trust a MERS?

Fraud in Execution; Fraud in Inducement?

Federal Reserve Bank quote

> If I were confronted with an "electronic promissory note", I would walk very slowly away and break into a run as soon as I can. They are a logical impossibility, along with electronic chattel paper and UCC 7 electronic warehouse receipts. - Joseph Sommer – NY Federal Reserve

Compare ESIGN exclusions and Texas UETA exclusions

15 USC 7003[34]

> § 7003. Specific exceptions(a) Excepted requirements The provisions of section 7001 of this titles hall not apply to a contract or other record to the extent it is governed by—(1) a statute, regulation, or other rule of law governing the creation and execution of wills,codicils, or testamentary trusts;
>
> (2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or
>
> (3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

Texas Business and Commerce Code, Uniform Electronic Transactions Act [UETA][35]

Sec. 322.001. SHORT TITLE. This chapter may be cited as the Uniform Electronic Transactions Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

34 https://www.govinfo.gov/content/pkg/USCODE-2011-title15/pdf/USCODE-2011-title15-chap96-subchapI-sec7003.pdf
35 https://statutes.capitol.texas.gov/Docs/BC/htm/BC.322.htm

Governing Law

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Things allowed according to the Scope of UETA in 322.003(b)(2)

Texas Business and Commerce Code, section 1.107[36]

Sec. 1.107. SECTION CAPTIONS. Section captions are parts of this title.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Texas Business and Commerce Code, section 1.206[37]

Sec. 1.206. PRESUMPTIONS. Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

NOTE: There are only two specific sections used in Chapter 1, General provisions. Take notice that section 1.201 is excluded from ESIGN, and UETA.

36 https://statutes.capitol.texas.gov/Docs/BC/htm/BC.1.htm#1.107
37 https://statutes.capitol.texas.gov/Docs/BC/htm/BC.1.htm#1.206

Governing Law

Texas Business and Commerce Code, Chapter 2, Sales[38]

Sec. 2.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Sales.
Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.102. SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS EXCLUDED FROM THIS CHAPTER. Unless the context otherwise requires, **this chapter applies to transactions in goods**; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.
Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967

Sec. 2.104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY". (a) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(b) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes

38 https://statutes.capitol.texas.gov/Docs/BC/htm/BC.2.htm

between persons who are in the position of seller and buyer in respect to the goods (Section 2.707).

(c) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 4, eff. September 1, 2005

Sec. 2.105. DEFINITIONS: TRANSFERABILITY; "GOODS"; "FUTURE" GOODS; "LOT"; "COMMERCIAL UNIT". (a) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2.107).

(b) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(c) There may be a sale of a part interest in existing identified goods.

(d) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(e) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(f) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.106. DEFINITIONS: "CONTRACT"; "AGREEMENT"; "CONTRACT FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING" TO CONTRACT; "TERMINATION"; "CANCELLATION". (a) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2.401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.107. GOODS TO BE SEVERED FROM REALTY: RECORDING. (a) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in Subsection (a) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1973, 63rd Leg., p. 998, ch. 400, Sec. 3, eff. Jan. 1, 1974.

Sec. 2.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(1) by course of performance, course of dealing, or usage of trade (Section 1.303); and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER D. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Sec. 2.401. PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(a) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2.501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(b) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(2) if the contract requires delivery at destination, title passes on tender there.

(c) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(1) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(2) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(d) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 6, eff. September 1, 2005.

eRegistry Admissions

Now look at the electronic registration system admissions

> "A national eNote registry is part of the industry's response to develop systems that can rely upon the Uniform Electronic Transactions Act (UETA) and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN) to establish legal effectiveness of electronic notes for mortgage loans" - Frequently Asked Questions, What is the MERS® eRegistry?[39]

> "There are two ways. In most cases, MERS becomes mortgagee or beneficiary at closing when the borrower and lender both agree to standard language in the security instrument making MERS the original mortgagee or beneficiary, with the right to act on behalf of the lender and its successors and assigns. The standard language is approved and used by Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration (FHA) and the Veterans

39 https://www.mersinc.org/products-services/mers-esuite/eregistry/faq

Administration (VA). In cases where MERS is not named as the original mortgagee on the security instrument, a lender can record an assignment of the mortgage to MERS after closing."[40]

"All MERS mortgages (or deeds of trust) registered on the MERS® System are recorded in the public land records. The MERS® System is not a system of public record, nor a replacement for the public land records. No interests in those mortgages (or deeds of trust) are transferred on the MERS® System; they are only tracked. MERS as original mortgagee eliminates breaks in the chain of title because the lien is grounded in MERS' name."[41]

Review portions of the agreement in the Deed of Trust that reflect entities bypassed all governing law by creating an eNote governed by ESIGN, UETA, to reflect an alleged deed of trust which according to MERS members is attached to the eNote of an account debt within the electronic registry as collateral for the eNote.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.
As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

40 https://www.mersinc.org/about/faq
41 https://www.mersinc.org/about/faq

Governing Law

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law.

Enote modification

Location of Electronic Modifications, Note Addenda, Note Allonges
The terms of an eNote can be changed by electronic modification agreements, addenda and allonges. When this is the case, these electronic documents must be vaulted at the same eVault as the eNote. This helps ensure the Controller meets the legal requirements for retaining Control of the modified eNote.[42]

Mortgage Bankers Association Admissions[43]

"In actual practice, confusion over who owns and holds the note stems less from the fact that the note may have been transferred multiple times than it does from the form in which the note is transferred."

"It is a reality of commerce that virtually all paper documents related to a note and mortgage are converted to electronic files almost immediately after the loan is closed."

"Individual loans, as electronic data, are compiled into portfolios which are transferred to the secondary market, frequently as mortgage-backed securities.

42 MERS® eRegistry Procedures Manual – 14.0 - https://www.mersinc.org/join-mers-docman/1502-jltebadi3uth/file
43 Source: https://www.floridasupremecourt.org/content/download/328731/2952172/09-1460_093009_Comments%20(FBA).pdf

The records of ownership and payment are maintained by a servicing agent in an electronic database."

"The reason "many firms file lost note counts as a standard alternative pleading in the complaint" is **because the physical document was deliberately eliminated** to avoid confusion **immediately upon its conversion to an electronic file.**"

"The information reviewed to verify the plaintiff's authority to commence the mortgage foreclosure action will be drawn from the same database that includes the electronic document and the record of the event of default. The verification, made "to the best of [the signing record custodian's] knowledge and belief" will not resolve the need to establish the lost document."

"The process for re-establishment of a lost or destroyed instrument by law imposes a strict burden of proof and instructs the court to protect the obligor from multiple suits on the same instrument."

"Perhaps more significant is this Court's recent (and appropriate) reaffirmation of a trial court's inherent authority to sanction litigants—specifically attorneys—who engage in bad faith and abusive practice."

"Verification of the foreclosure complaint will not relieve the plaintiff seeking to foreclose a residential mortgage of the burden of proving by competent and substantial evidence that it is the holder of the note secured by the mortgage and entitled to enforce the mortgagor's obligation."

Admissions by Wells Fargo

"The thing most borrowers fail to realize about conduit loans is that once a loan has been securitized, they are not working with a "lender" anymore. The loans are pooled into a securitization called a Real Estate Mortgage Investment Conduit (REMIC). The REMIC is a trust and it has no lenders, only fiduciaries of the "certificate holders." Once the loans have been pooled and securitized, the

players are as follows:" See Well Fargo, Conduit loan servicing: Who's who and what's what? [44]

Also See the Wells Fargo Attorney Foreclosure Manual[45]

Admissions by Attorney foreclosure mill, Addison Texas[46]

"This is Mike Barrett, and I know we've had this difficulty. There really isn't such a document, and maybe, Larry, you might explain mortgage servicing rights because the servicer usually acquired their position in
the file through the purchase of MSRs. "

"So finding a document that says, "I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name" **is an impossibility in 90 percent of the cases.**"

"HONORABLE BRUCE PRIDDY: And what the -- happens is **they just execute a document like Mr. Barrett says doesn't exist.** They just create one for the most part sometimes, and the servicer signs it themselves saying that it's been transferred to whatever entity they name as the applicant."

There are more admissions within the transcript. The question is how did they get passed 192.007? How could the electronic records be changes according to 192.007(b)? It was bypassed using ESIGN, UETA in direct violation of the deed of trust "Applicable Law" covenant.

> Sec. 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.

44 http://www.ourlemon.com/Alvie/Conduit_Loan_Servicing.pdf
45 http://www.ourlemon.com/docs/EXHIBIT%20C-WF-Attorney-Manual.pdf
46 MEETING OF THE TASK FORCE ON JUDICIAL FORECLOSURE RULES, November 7, 2007

(b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.
Added by Acts 1989, 71st Leg., ch. 1248, Sec. 53, eff. Sept. 1, 1989.[47]

As it appears, 200 years of age old law title law has been usurped by a book entry system's

I pray to Almighty God the reader understands this

Read, Learn, Understand…..

Peace be with you,

47 https://statutes.capitol.texas.gov/Docs/LG/htm/LG.192.htm#192.007