

eNotes are legal. . .



. . But the payment intangible market is not sustainable

Have you heard the latest
word about *eNotes* and real
estate mortgages?



It is not a
foreclosure. It is
theft.

Yes, I heard the
different banks are
using eNotes to
foreclose on real estate
mortgages.



Not only that, but I also heard the people working for the banks that do the dirty work, are filing gazillions of documents in public records all across the country that aren't even related to the real property they are making a claim to.



I've wondered for a long time, how they were making claims to a real estate borrower's mortgage loan.



It was easy. Everybody is confused with that registration system they call MERS. Funny, the courts called it a clearinghouse and didn't even think there may be different laws for how that clearinghouse operated. Man, I imagine they are going to feel pretty bad when they realize how they were helping.



Can you imagine how
many innocent people
lost their homes in this
eNote scam?



It started a long time ago, it is not a new problem. If you research back when the ideal of the MERS system, you can realize it is not a replacement for public records, or a real estate borrower mortgage loan. It was once called a national eNote registration system by the promoters of the system.



It has been around for a
long time?



It is actually a good law for electronic transactions, but it does not work for a real estate mortgage loan.

Well, in 2000, the eSign Act, Bill Clinton signed into law for the idea of using electronic contracts. That would allow electronic contracts to be enforceable against either parties to the electronic contracts.



He is right!



Let's double check



The *eNote* is not a
Negotiable
instrument governed
by Article 3?



He is right because
the *eNote* is electronic
and real property is
not governed by
eSign.



Nope, its
governed by
eSign.



*e*Notes are governed by
*e*Sign and UETA. *e*Sign for
the *e*Signature, and
UETA for *e*Transfer.



The original promissory
Note signed by the real
estate mortgage loan
borrower, is governed most
likely by Article 3 of the
Uniform Commercial Code.



The original promissory Note signed by
the real estate mortgage loan borrower is
at best governed by Article 3 of the
Uniform Commercial Code.



What that would mean is Article 3
of the Uniform Commercial Code
would govern enforcement for the
promissory Note.



And If payment is not made by the borrower on a negotiable instrument when it is due, the holder can use the court system to enforce the instrument.

But that is only for the Note. Because it is a debt contract.



The deed of trust on the other hand, is
title to real property. A lien.

And that lien is governed
by real property laws.



So, you are actually saying that no matter what happens with the eNote, it actually has nothing to do with the real estate mortgage loan the eNote members are claiming?

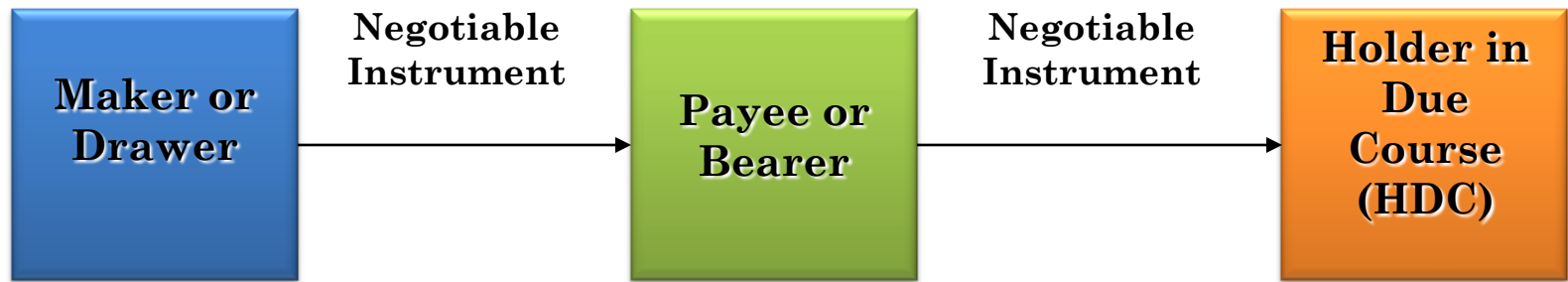


That's right, and that is why they argue to the courts that a real estate mortgage loan borrower has no right to bring up the PSA.



Not only that, but that is also
why they argue that they don't
need to record anything with
the county clerks.

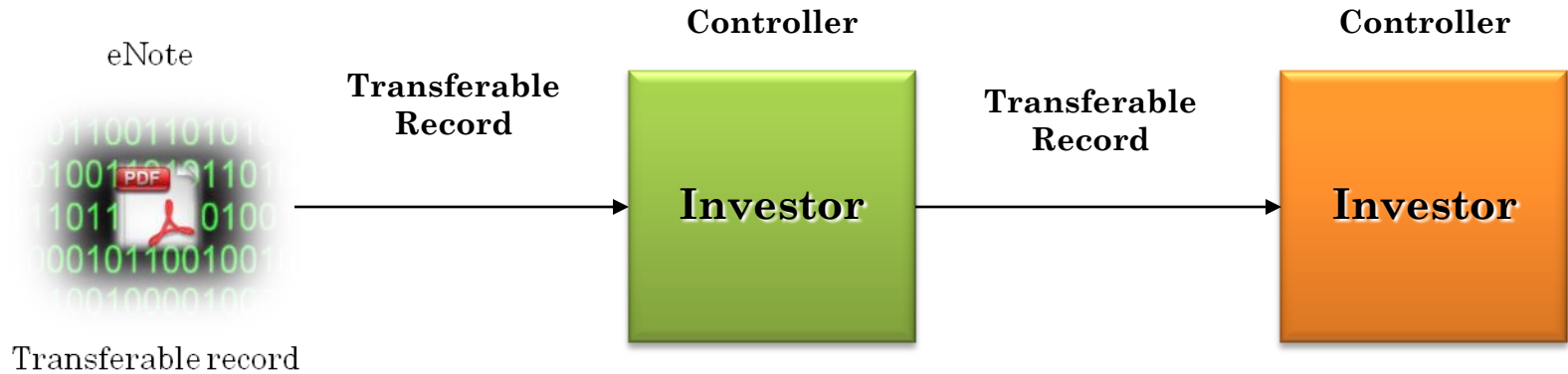




To qualify as an HDC,
the transferee must
meet the requirements
established by the UCC.

1. Holder
2. Takes a negotiable instrument
3. For value
4. In good faith
5. Without notice of defect
6. The instrument bears no apparent evidence of forgery, alterations, or irregularity





Transferable record

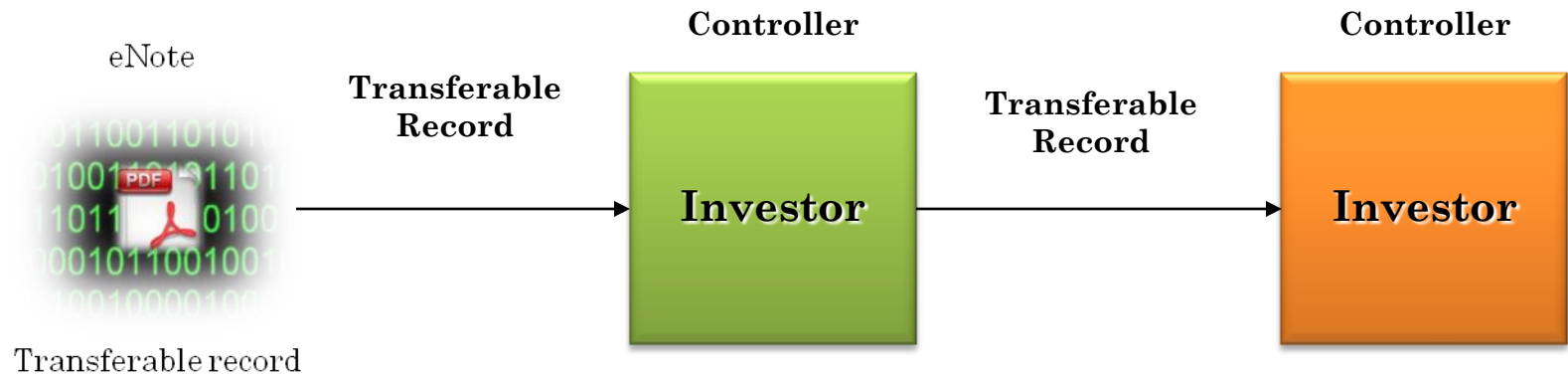


Control: With eNotes, control over the Transferable Record replaces the notion of possession and endorsement in the paper analog for purposes of establishing the “holder in due course” status.

Source: *National eNote Registry Requirements Document, Version 1.0*
Mar 7, 2003

An HDC in eSign is a Controller of a transferable record





So, you see? The *eNote* transfers in nanoseconds from controller to controller.



eNote: The electronic promissory note. For this *eNote* to be negotiable and transferable, it must be clearly labeled the Authoritative Copy of the electronic promissory note.

Interim Note Holder: The investor or institution that holds (i.e. controls) the *eNote* for a temporary time period pending its transfer to the final Note Holder. An example might be in a loan closing where the originator has made a forward sale to an investor (GSE, large bank, etc.) but involves a warehouse lender to fund the closing. A warehouse lender could be the Interim Note Holder until the investor purchases the loan and releases the funds.

Source: National eNote Registry Requirements Document, Version 1.0 Mar 7, 2003



1. Holder
2. Takes a negotiable instrument
3. For value
4. In good faith
5. Without notice of defect
6. The instrument bears no apparent evidence of forgery, alterations, or irregularity

And an Article 3 Note transfer has different requirements according to Article 3.





A holder who does not qualify as a holder in due course in his or her own right becomes a holder in due course if he or she acquires the instrument through a holder in due course.

To qualify as an HDC under the shelter principle, the following rules apply:

1. The holder does not have to qualify as an HDC in his or her own right.
2. The holder must acquire the instrument from an HDC or be able to trace his or her title back to an HDC.
3. The holder must not have been a party to a fraud or illegality affecting the instrument.
4. The holder cannot have notice of a defense or claim against the payment of the instrument.



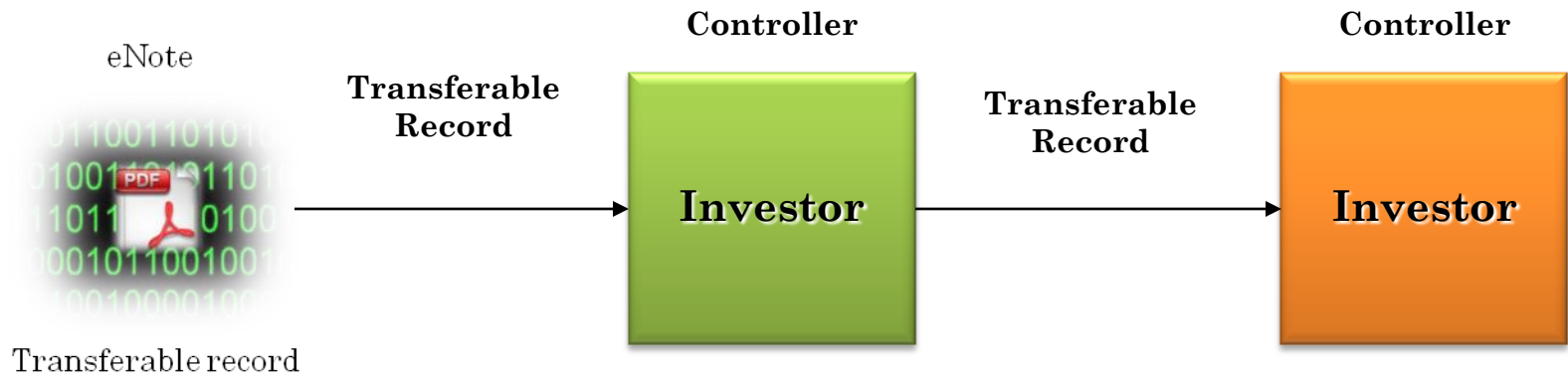


A person cannot be held contractually liable on a negotiable instrument unless his or her signature appears on the instrument.

To qualify as an HDC under the shelter principle, the following rules apply:

1. The holder does not have to qualify as an HDC in his or her own right.
2. The holder must acquire the instrument from an HDC or be able to trace his or her title back to an HDC.
3. The holder must not have been a party to a fraud or illegality affecting the instrument.
4. The holder cannot have notice of a defense or claim against the payment of the instrument.





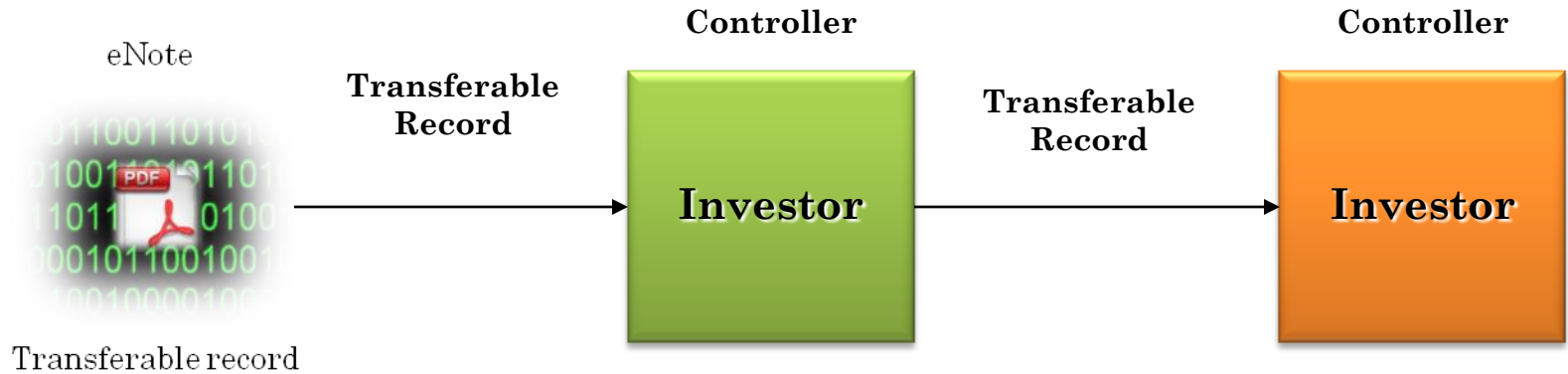
So, you see? The signatures on a negotiable instrument identify those who are obligated to pay it.



eNote: The electronic promissory note. For this *eNote* to be negotiable and transferable, it must be clearly labeled the Authoritative Copy of the electronic promissory note.

Interim Note Holder: The investor or institution that holds (i.e. controls) the *eNote* for a temporary time period pending its transfer to the final Note Holder. An example might be in a loan closing where the originator has made a forward sale to an investor (GSE, large bank, etc.) but involves a warehouse lender to fund the closing. A warehouse lender could be the Interim Note Holder until the investor purchases the loan and releases the funds.

Source: National eNote Registry Requirements Document, Version 1.0
Mar 7, 2003



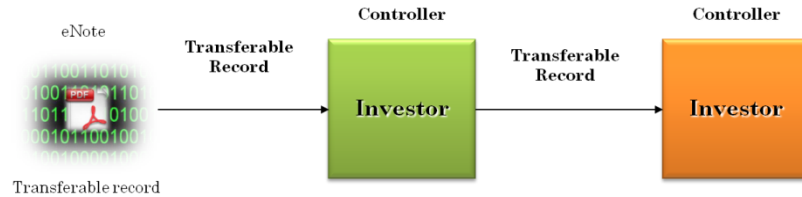
And the image used in the eNote may be sufficient to identify someone obligated to pay, but the eNote cannot be used to prove HDC.



eNote: The electronic promissory note. For this *eNote* to be negotiable and transferable, it must be clearly labeled the Authoritative Copy of the electronic promissory note.

Interim Note Holder: The investor or institution that holds (i.e. controls) the *eNote* for a temporary time period pending its transfer to the final Note Holder. An example might be in a loan closing where the originator has made a forward sale to an investor (GSE, large bank, etc.) but involves a warehouse lender to fund the closing. A warehouse lender could be the *Interim Note Holder* until the investor purchases the loan and releases the funds.

Source: *National eNote Registry Requirements Document, Version 1.0*
Mar 7, 2003



According to eSign, an electronic signature, or e-signature, is any electronic means that indicates either that a person adopts the contents of an electronic message, or more broadly that the person who claims to have written a message is the one who wrote it (and that the message received is the one that was sent).

Determining a signature is easy because there is a huge difference between a hand written signature and an eSignature.



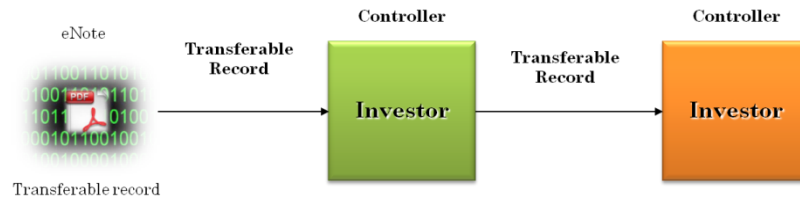
According to law, a signature is defined as

Any name, word, or mark used in lieu of a written signature.

Any symbol that is:

Handwritten, typed, printed, stamped, or made in almost any other manner, and

Executed or adopted by a party to authenticate a writing



According to eSign, an electronic signature, or e-signature, is any electronic means that indicates either that a person adopts the contents of an electronic message, or more broadly that the person who claims to have written a message is the one who wrote it (and that the message received is the one that was sent).

And this is only a portion of the eNote problem. The real problem with the eNote is that a lien cannot be attached to the eNote.



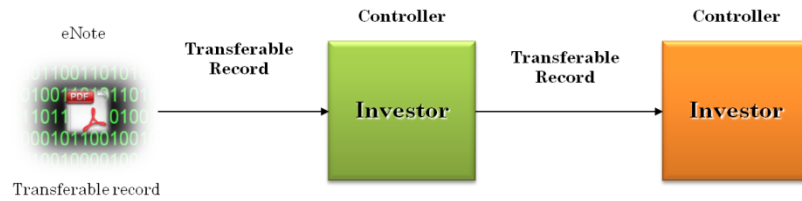
According to law, a signature is defined as

Any name, word, or mark used in lieu of a written signature.

Any symbol that is:

Handwritten, typed, printed, stamped, or made in almost any other manner, and

Executed or adopted by a party to authenticate a writing



Why?

Because neither eSign or UETA govern liens.





And the Uniform
Commercial Code does
not govern the lien
either.

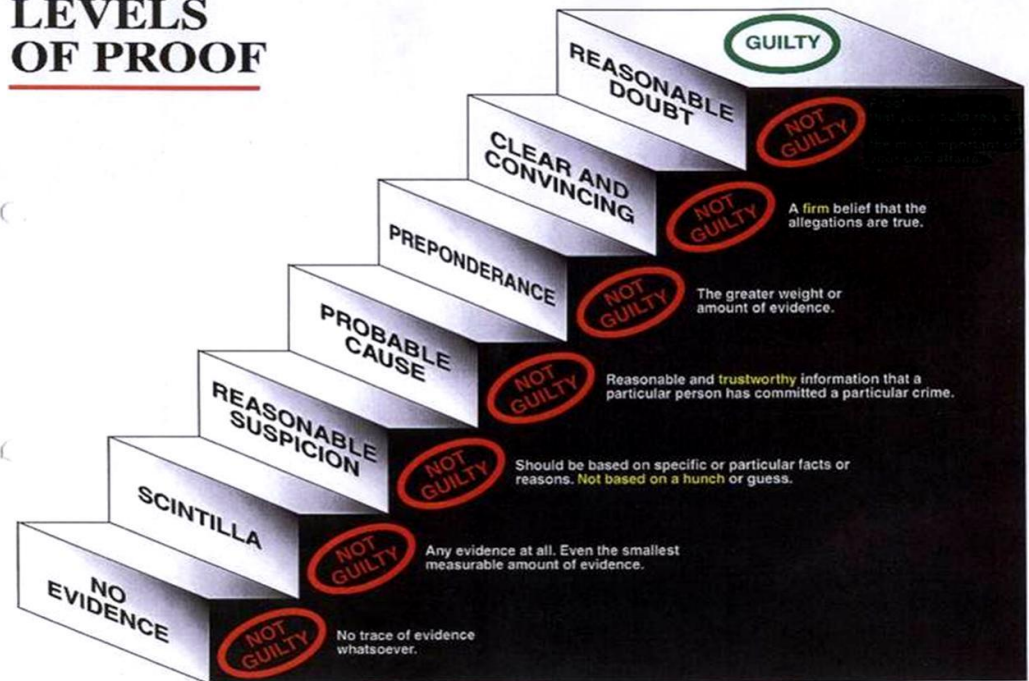
Also, the Uniform
Commercial Code
does not govern the
creation or transfer
of an interest in or
lien on real
property.



So, that means there is enough proof in public records to determine an actor guilty of a crime.



LEVELS OF PROOF




Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

So how did these guys transfer the value of the real estate borrower's debt Note to an electronic Note?

Shhh!





And they tried to create an
interest in an existing lien
too?

Shhhhhhh!



The Uniform Commercial Code
does not govern the creation or
transfer of an interest in or lien
on real property.
See § 9.109(d)(11)

eSign does not govern real
property liens.



Certificate of Title Act



There is not much difference between the way a title is perfected for an automobile and the way title to real property is perfected. Just a different set of laws.

§ 192.007 Texas Local Government Code



We make up documents



I wonder if these documents are eligible for filing?



Vice President
Assistant Secretary



Williamson County Clerk Public Access

Search Real Estate Index

Criteria: Grantor Begins with CAMPBELL ALVIE

Showing Records 1 through 7 (7 records found as of 12/29/2011 12:39:28 PM)

Instrument #	Book	Page	Date filed	Document Type	Grantor	Grantee	Legal Description	Status	Image
2004086763			11/05/2004	DEED OF TRUST	R CAMPBELL ALVIE (+)	E AMERICAN MORTGAGE NETWORK INCORPORATED (+)	LT 3 DOVE MEADOW NORTH	Perm	
2004086764			11/05/2004	AFFIDAVIT	R CAMPBELL ALVIE (+)	E PUBLIC	LT 3 DOVE MEADOW NORTH	Perm	
2004086765			11/05/2004	AFFIDAVIT	R CAMPBELL ALVIE (+)	E PUBLIC	LT 3 DOVE MEADOW NORTH	Perm	
2008071378			09/18/2008	APPOINTMENT	R CAMPBELL ALVIE (+)	E LATHAM JOHN (+)	2004086763	Perm	
2008075222			09/30/2008	ASSIGNMENT/TR4	R CAMPBELL ALVIE (+)	E WELLS FARGO BANK NA	LOT 3 DOVE MEADOW NORTH	Perm	
2010082035			09/18/2010	TRUSTEE DEED	R CAMPBELL ALVIE (+)	E WELLS FARGO BANK NA	LOT 3 DOVE MEADOW NORTH	Perm	
2010054570			09/27/2010	LIS PENDENS	R CAMPBELL ALVIE (+)	E MORTGAGE ELECTRONIC REGISTRATION	LOT 3 DOVE MEADOW NORTH	Perm	

We make documents up.

If these documents
are not eligible for
filing, how do homes
get sold at the
courthouse?



Trustee

If these documents
are not eligible for
filing, how do bank
reps get free homes
in the courthouse?



The Note follows
the mortgage,
your honor.



Counsel

I am making a
record, your
Honor.



INTANGIBLE LOANS



So far, crime has paid?

INTANGIBLE



Maybe now you can
see how the payment
intangible debt is
unsustainable?



Crim-i-nal

Maybe now you can
see crimes are being
committed all across
America?



A person who has committed a crime

Their intent is obvious

