

Amicus Curiae

Definitions

1-1-11 R1

Opening Statement

The definitions offered here are not substitutes for legal definitions provided by appropriate legal counsel. These definitions are provided to offer a general understanding of terms.

1. House

- The House is Real Property.
- The House is a Tangible.

2. Homeowner

- Debtor¹
 - a person having an interest, other than a security interest or other lien, in the [collateral](#), whether or not the person is an [obligor](#);
 - a seller of [accounts](#), [chattel paper](#), [payment intangibles](#), or [promissory notes](#); or
 - a [consignee](#).
- Obligor
 - a person that, with respect to an obligation secured by a security interest in or an [agricultural lien](#) on the [collateral](#), (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.²
 - "Maker" means a person who signs or is identified in a [note](#) as a person undertaking to pay.³
- Account debtor

¹ <http://www.law.cornell.edu/ucc/9/article9.htm#s9-102>

² <http://www.law.cornell.edu/ucc/9/article9.htm#s9-102>

³ <http://www.law.cornell.edu/ucc/3/article3.htm#s3-103>

3. Note (Negotiable) (Required for subsequent purchase.)

- Homeowner's Promissory Note
- Original Wet Blue Inked Signed Note
- The Note
- Indebtedness
- Debt
- Obligation
- Mortgage Note
 - The Note is Personal Property.
 - The Note is a Tangible.
 - The Note must be in writing.
 - The Note can be secured by a Security Instrument.
 - The Security Instrument attaches to the Note at closing.
 - The Security Instrument is temporarily perfected at attachment.
 - Temporary perfection is permanently perfected by filing.
 - The Note secured by a Security Instrument is a "Secured" debt.
 - The Note if not secured by a Security Instrument is an "Unsecured" debt.
 - The Note is not an interest in Real Property.
 - The Note cannot be in Electronic Form.
 - Governance - UCC Article 3 and states' equivalence.

4. Note (Non-Negotiable)

- Homeowner's Promissory Note
- Original Wet Blue Inked Signed Note
- The Note
- Indebtedness
- Debt
- Obligation
- Mortgage Note
 - The Note is Personal Property.
 - The Note is a Tangible.
 - The Note can be secured by a Security Instrument.
 - The Security Instrument attaches to the Note at closing.
 - The Security Instrument is temporarily perfected at attachment.
 - Temporary perfection is permanently perfected by filing.
 - The Note secured by a Security Instrument is a "Secured" debt.
 - The Note if not secured by a Security Instrument is an "Unsecured" debt.
 - The Note is not an interest in Real Property.
 - Governance - UCC Article 3 and states equivalence.

5. Security Instrument – (Deed of Trust, Security Deed, Mortgage, etc.)

- The Security Instrument secures Real Property to the Note as collateral against default of the Note.
- The Security Instrument is Personal Property.
- The Security Instrument is a Tangible.

- The Security Instrument is a permanent lien if filed of record.
- The Security Instrument affects Title to Real Estate.
- The attachment and perfection of the Security Instrument SECURE lien rights to the note.
- Continuous perfection of Assignment of Rights (Assignment of Mortgage) in the Security Instrument memorializes the negotiation of the Note by filing of record. (There is temporary perfection of the Security Instrument in the subsequent purchasers name, hence the security follows the Note, but temporary perfection requires filing of record to become a continuous permanently perfected in the subsequent purchaser's name.)
- The Security Instrument attaches to the Note at closing.
- The Security Instrument is temporarily perfected upon attachment.
- The Security Instrument is filed of record to permanently perfect lien rights.
- The Note holder with rights is the only party that can execute an Assignment of Mortgage memorializing a negotiation of the Note.
- Governance – Federal, State and local laws of jurisdiction
 - Security Instrument defines governance authority.
 - State laws require compliance for perfection.
 - Filing for perfection and filing for priority can be executed in the filing of single financing statement.
 - Filing for perfection perfects the lien.
 - Filing for priority determines lien position, i.e. 1st and 2nd.
- A perfected Security Instrument follows the Note.
- An unperfected Security Instrument is a nullity.
- Filing Assignment of Mortgage converts a temporary perfection of the Security Instrument into a permanent perfection (continuous) in the subsequent Indorsee's name.
- Failure to file an Assignment of Mortgage would fail to convert a temporary perfection in the subsequent Indorsee's name into a continuously perfected lien and renders the lien a nullity.

Author's opinion: if the Note holder with rights assigns the Security Instrument to a non party by intentional willful action then such Note holder with rights to the Note has reduced a "Secured" debt to an "Unsecured" debt. Hence, there is no longer a security to follow the note. (MERS as Nominee)/ (MERS as Nominee for an Unidentified "In Blank" Indorsee - MERS as Nominee for Willy the Ghost)

6. Mortgage (Terminology A)

- The Mortgage consists of both the Note and the Security Instrument in a combined document.
- The Mortgage is Personal Property.
- The Mortgage is a Tangible.
- The Mortgage can be used as collateral for a Payment Intangible.
- Security Instrument attaches and is temporarily perfected at closing.
- The Mortgage is filed of record to permanently perfect lien rights.
- The Mortgage can be used as collateral for a Payment Intangible.
 - Collateral – Rights to the account debtors (homeowner) payments of the Note.

7. Mortgage (Terminology B)

- The Mortgage is Personal Property.
- The Mortgage is a Tangible.
- The Mortgage consists of two separate contracts.
- Part One - The Note.
- Part Two - The Security Instrument.
- The Mortgage can be used as collateral for a Payment Intangible.

- Security Instrument attaches to the Note and is temporarily perfected at closing.
- The Mortgage is filed of record to permanently perfect lien rights.
- The Mortgage can be used as collateral for a Payment Intangible.
 - Collateral – Rights to the account debtors (homeowner) payments of the Note.

The author would need to stipulate the Pooling and Servicing Agreement or other such similar document is an integral factor defining Willy the Ghost and certain additional Willy Juniors as to identity. A criminal defense attorney once stated,

“NEVER ADMIT; make them prove it.”

The following has crossed into the securities arena and will not be addressed in detail in this writing.

8. Payment Intangible (Securitized) (Mortgage Pool Swap for Certificates)

- **The Payment Intangible is an Intangible.**
- **The Payment Intangible is Personal Property.**
- **The Trust Certificate owns the Payment Intangible.**
 - **The Certificate is entitled to money payments in the Payment Intangible.**
 - **The Payment Intangible is entitled to money payments in the Mortgage Pool.**
 - **The Certificates payments are collaterally secured by an interest in the Payment Intangible.**

- **The Payment Intangible payments are collaterally secured by an interest in the Mortgage Pool.**
- **Mortgage Pool, one or an assembly of more than one Mortgage.**
- **A general intangible under which the account debtor's principal obligation is a monetary obligation.**
- **The Mortgage Pool can be used as collateral for a Payment Intangible.**
 - **Collateral, Rights to the account debtors (homeowner) payments of the Note or proceeds from a sale of the assets.**
- **The Mortgage can be used as collateral for a Payment Intangible.**

9. Certificate (Trust Certificates)

- **The Certificate is an Intangible.**
- **The Certificates are Personal Property.**
- **The Certificates are collaterally secured by an interest in the Payment Intangible.**

James McGuire
P O Box 1352
Bedford, Texas 76095-1352
j.mcguire@swbell.net
817 420-4151
Hedgerow Consulting Services
Memphis, Tennessee
901 896-9989

The author wishes to thank Liese N, Alvie C and John Perseo for their comments.