

362

The relevance of how the bankruptcy code section 362 (a) (4) and section 3301 (d) apply to the civilian world as to affecting filing of so called corrective assignments of record.

11 USC Section 362 subsection (a) subsection (4) provides that an action of creating or perfecting a lien is stayed:

TITLE 11 - BANKRUPTCY
CHAPTER 3 - CASE ADMINISTRATION
SUBCHAPTER IV - ADMINISTRATIVE POWERS

Section 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of -

(4) any act to create, perfect, or enforce any lien against property of the estate;

SENATE REPORT NO. 95-989

Paragraph (4) stays lien creation against property of the estate. Thus, taking possession to perfect a lien or obtaining court process is prohibited. To permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured.

This correlates to the bankruptcy rule 3001 (d):

Federal Rules of Bankruptcy Procedure
PART III—CLAIMS AND DISTRIBUTION TO
CREDITORS AND EQUITY INTEREST HOLDERS;
PLANS: Rule 3001. Proof of Claim

***(d) Evidence of perfection of security interest.
If a security interest in property of the debtor is
claimed, the proof of claim shall be accompanied by
evidence that the security interest has been perfected.***

1) Creation of the Secured Indebtedness

- a. Maker of the Note (Obligor) makes the Note payable to Payee (1) [Obligee 1]
- b. Obligor as Grantor executes a Security Interest to secure the Note to Payee (1)
- c. The Security attaches to the Note and is temporarily perfected making Payee (1) Secured Payee (1).
- d. Secured Payee (1) [Obligee 1] files of record in accordance with the local laws of jurisdiction the Security Instrument permanently perfecting the Security to Secured Payee (1) [Obligee 1]
- e. The Security Instrument allows for a 3rd Party Trustee to step into the shoes of the Obligor if there is a default of the Secured Indebtedness for the benefit of the Secured Party.
- f. As such, the three parties to the Security Instrument required by law and in accordance to law are the Obligor, Obligee and the Trustee; any other 3rd parties claiming a role are irrelevant.

2) MERS and the Security Interest

- a. MERS claims on the face of the Security Instrument to be Nominee for Lender and Lenders Successors and Assigns may be that of a lawful possibility where MERS is acting as agent for the Note

Owner affecting only the Note. However, MERS, never have being the owner of the indebtedness could never be a Secured Party of record and whereas MERS claiming to be a Mortgagee of Record as agent for the Secured Payee and subsequent Payees, if at all lawful, would require the Indebtedness to remain a Secured Indebtedness in accordance to local laws of jurisdiction.

- b. Regarding MERS claims to be the Beneficiary under the Security Instrument, is contrary to law as only the Secured Payee (1) would be the Beneficiary of a perfected Security Instrument securing a Secured Indebtedness.
- c. Most if not all Security Instruments filed of record identify the Secured Payee (1), the Obligor and the Trustee and where it is a MERS instrument and noting MERS as Nominee or Beneficiary are of no relevance for perfecting the lien. MERS should be considered nothing more than Captain Dunsel.

3) Loss of Secured Status via MERS Registry

- a. Secured Payee (1) [Obligee 1] allegedly negotiates the Secured Indebtedness to Payee (2) [Obligee 2].
- b. Secured Payee (1) [Obligee 1] as Indorser (1) indorses the Secured Indebtedness “in blank” in preparation for delivery to Payee (2).
- c. Secured Payee (1) [Obligee 1] updates the MERS registry by noting that Secured Payee (1) [Obligee 1] has negotiated the note to Payee (2).
- d. Whereby, Payee (2) [Obligee 2] upon completing the indorsement by identifying themselves as Indorsee, Payee (2) would have had a temporary status as being a Secured Payee and to permanently perfect this Secured status would have to have filed of record to

achieve permanent perfection in accordance to local laws of jurisdiction.

- e. Where the Note indorsed “in blank” has never been delivered from Secured Payee (1) to Payee 2, Payee (2) never achieved a temporary status as being a Secured Payee (2) and would never be able to perfect of record a Secured status.
- f. Whether Payee (2) was an aggregator of private or public securities or that of one of the GSE’s, the fact remains the loss of Secured status.

4) **The Illegal Corrective Assignment**

- a. As subsequent Payees or without a Secured status there is an obvious attempt by these unsecured parties to create the illusion that they are a Secured Party.
- b. Where there is a subsequent Payee (3,4,5) to Payee (2) and where Payee (2) failed to timely perfect their interest securing to the Note, there would be no obvious legal mechanism available for the subsequent Payee’s to perfect their interest in the Security Instrument.
- c. MERS as having never been a Secured Party of record and whereas the Notes are indorsed “in blank”, MERS lacks a party to be an agent of, therefore, even if MERS is named Mortgagee of Record, MERS would not be able by the record prove who MERS was an agent for and thus could not assign the Security Interest as such Security Interest expired by operation of law.
- d. Where MERS attempts to create an untimely assignment of rights should only be observed as trying to recreate a perfection that was lost.

- e. If such creation is after the date of any legal action being filed of the bankruptcy court, such might be considered to be in violation of the automatic stay.
- f. For non-legal actions, the lack of being a party with rights in attempting to foreclose upon an expired lien could be possible seen as theft.

**Humpity Dumpity had an illegal fall,
Once scrambled, always scrambled, no more sunny side up.**

That's how one 3 year old learned Humpty Dumpty.