

# **Fraud or Illegality Defense to the Note**

## **§ 3-203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER.**

but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument

§ 3-105. ISSUE OF INSTRUMENT

- \* (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.
- \* (b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.
- \* (c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.



# Original Paper Negotiable Instrument

## Pay: Lender #1

§ 3-109. PAYABLE TO BEARER OR TO ORDER

- \* (a) A promise or order is payable to bearer if it:
  - o (1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
  - o (2) does not state a payee; or
  - o (3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
- \* (b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.
- \* (c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3-205(b).



ASSIGNMENT OF NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of  
 a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
 \_\_\_\_\_, hereby assigns my right, title and  
 interest in said note to "\_\_\_\_\_"

Dated: \_\_\_\_\_

Without Recourse

## Lender #1

Assigned In Blank

An assignment that does not contain the name of the transferee.  
(Assignment requires notice to be filed to maintain lien perfection)

Without Recourse

A phrase used on an instrument or endorsement to indicate that the drawer or endorser is not liable to subsequent holders or the institution has financed the instrument, if the instrument is not honored when due.



# **Original Paper Negotiable Instrument**

**Pay: Lender #1**

**Lender #1 - Step X  
Scan-Copy-Vault/Destroy**



# **Original Electronic Negotiable Instrument**

**Pay: Lender #1**



# Original Electronic Negotiable Instrument

Lender #1

**Assignment/Transfer  
Electronic Promissory Note**



ASSIGNMENT OF ELECTRONIC NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of

a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to "\_\_\_\_\_"

Date \_\_\_\_\_

Who Recourse \_\_\_\_\_

Assigned In Blank

An assignment that does not contain the name of the transferee.  
(Assignment requires notice to be filed to maintain lien perfection)

Without Recourse

A phrase used on an instrument or endorsement to indicate that the drawer or endorser is not liable to subsequent holders or the institution  
has financed the instrument, if the instrument is not honored when due.

# Does Not Exist



# Electronic Negotiable Instrument Bearer #1 (Seller/Securitizer)

§ 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.



# Electronic Negotiable Instrument

**Bearer #1** (Seller Securitizer)

**Assignment/Transfer  
Electronic Promissory Note**



ASSIGNMENT OF ELECTRONIC NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of

a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to "\_\_\_\_\_"

Date \_\_\_\_\_  
Holder \_\_\_\_\_  
Recorder \_\_\_\_\_

# Does Not Exist

**Electronically  
Assigned In Blank**



# Electronic Negotiable Instrument

**Bearer #2** (Depositor)

§ 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.



# Electronic Negotiable Instrument

**Bearer #2** (Depositor)

**Assignment/Transfer  
Electronic Promissory Note**



ASSIGNMENT OF ELECTRONIC NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of  
a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to "\_\_\_\_\_"

Date \_\_\_\_\_  
Holder \_\_\_\_\_  
Recorder \_\_\_\_\_

**Does Not Exist**  
Electronically  
Assigned In Blank



# Electronic Negotiable Instrument

**Bearer #3** (Trustee)

§ 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.



# Electronic Negotiable Instrument

**Bearer #3** (Trustee)

**Assignment/Transfer  
Electronic Promissory Note**



ASSIGNMENT OF ELECTRONIC NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of  
a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to "\_\_\_\_\_"

Date \_\_\_\_\_  
Holder \_\_\_\_\_  
Recorder \_\_\_\_\_

**Does Not Exist**  
Electronically  
Assigned In Blank



# Electronic Negotiable Instrument

**Bearer #4** (Custodian for Benefit of Trust)

§ 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.



# Electronic Negotiable Instrument

**Bearer #4** (Custodian for Benefit of Trust)

**Assignment/Transfer  
Electronic Promissory Note**



ASSIGNMENT OF ELECTRONIC NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of  
a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to "\_\_\_\_\_"

Date \_\_\_\_\_  
Holder \_\_\_\_\_  
Recorder \_\_\_\_\_

**Does Not Exist**  
Electronically  
Assigned In Blank



# Electronic Negotiable Instrument

**Bearer #3** (Trustee)

§ 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.



# Original Paper Negotiable Instrument

Pay: Lender #1  
(Step #4 of Investment Trust)



Failure to Notice Public Records of Assignment of Lien Rights  
From Lender #1 to Bearer #1 to Bearer #2 to Bearer #3 to Bearer #4  
Chain of Indorsements does not match Chain of Title  
Failure to maintain continuous perfection



## ASSIGNMENT OF NOTE

FOR VALUE RECEIVED, **Lender #1**, as holder of  
a certain promissory note dated \_\_\_\_\_, 20\_\_ made by  
\_\_\_\_\_, hereby assigns my right, title and

interest in said note to **“Bearer #4”**

Dated: \_\_\_\_\_  
Without Recourse

**Signed Lender #1**

Assigned In Blank

### § 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.

# UCC Article 3

## § 3-201. NEGOTIATION.

- \* (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.
- \* (b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

## § 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.
- \* (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.
- \* (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
- \* (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 Article and has only the rights of a partial assignee.

## § 3-204. INDORSEMENT.

- \* (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
  - \* (b) "Indorser" means a person who makes an indorsement.
- \* (c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.
- \* (d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

## § 3-205. SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT.

- \* (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3-110 apply to special indorsements.
- \* (b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.
- \* (c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.
- \* (d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

# UCC Article 3

## § 3-301. PERSON ENTITLED TO ENFORCE INSTRUMENT.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

## § 3-302. HOLDER IN DUE COURSE.

\* (a) Subject to subsection (c) and Section 3-106(d), "holder in due course" means the holder of an instrument if:

o (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

o (2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a).

\* (b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

\* (c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

\* (d) If, under Section 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

\* (e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

\* (f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

\* (g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

## § 3-305. DEFENSES AND CLAIMS IN RECOUPMENT.

\* (a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

o (1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

o (2) a defense of the obligor stated in another section of this Article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

o (3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

\* (b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

\* (c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

\* (d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

## § 3-306. CLAIMS TO AN INSTRUMENT.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.