

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.

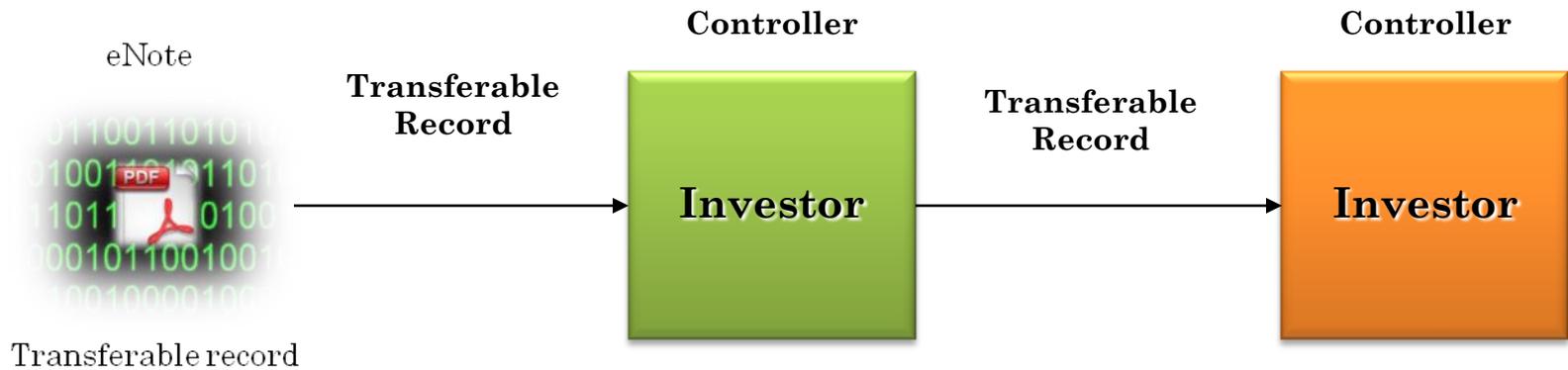




To qualify as an HDC, the transferee must meet the requirements established by the UCC.

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



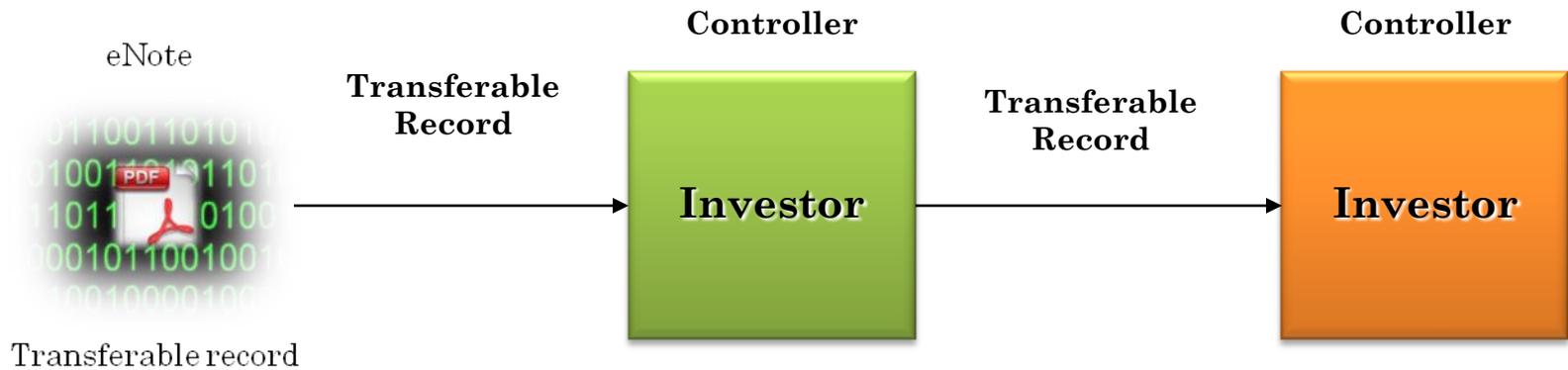


Control: With eNotes, control over the Transferable Record replaces the notion of possession and endorsement in the paper analog for purposes of establishing the “holder in due course” status.

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



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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.



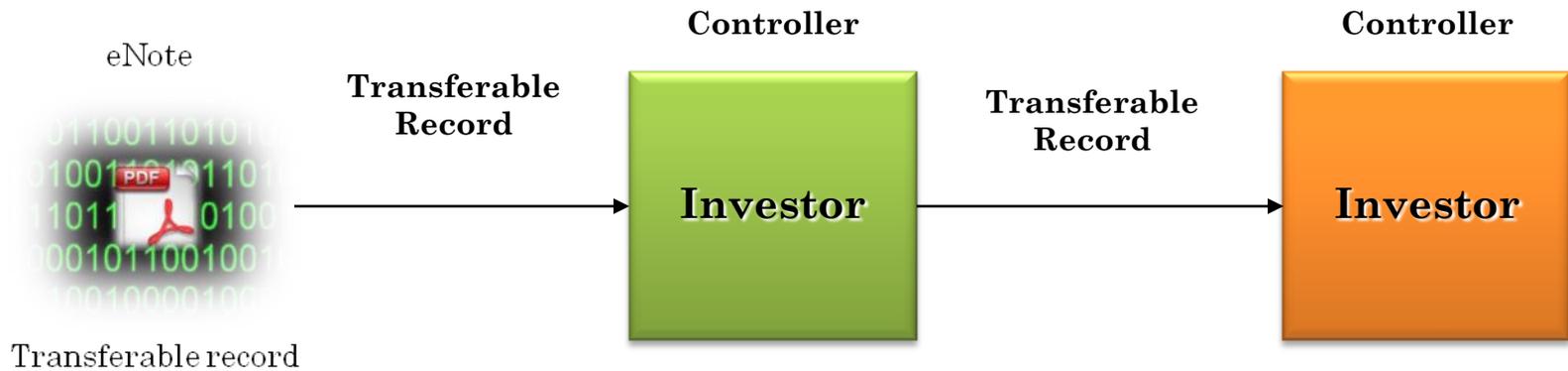


A person cannot be held contractually liable on a negotiable instrument unless his or her signature appears on the instrument.

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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.





Transferable record

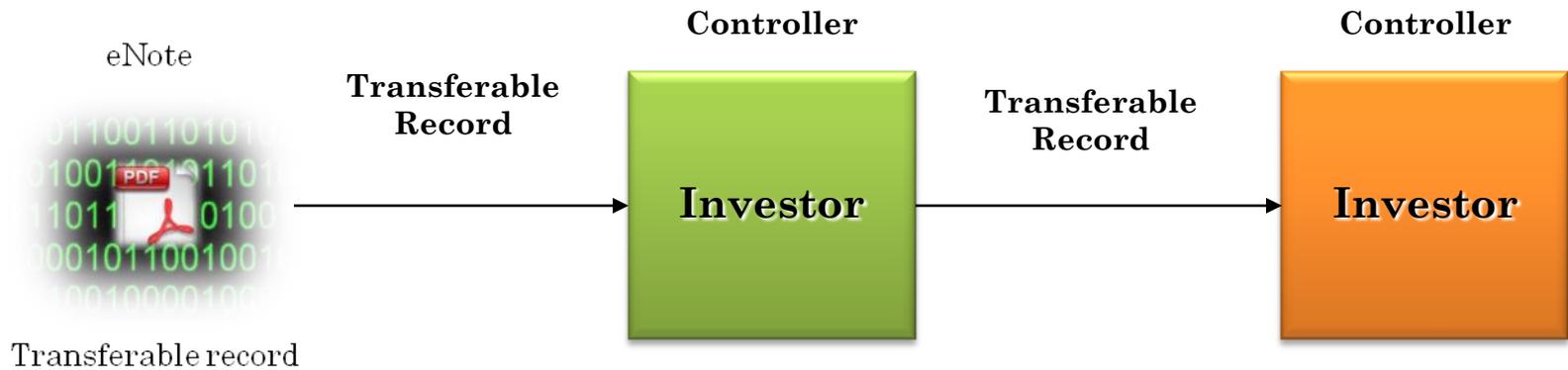
So, you see? The signatures on a negotiable instrument identify those who are obligated to pay it.



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Transferable record

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.



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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

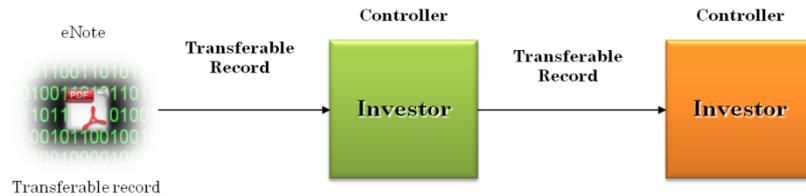
Any name, word, or mark used in lieu of a written signature.

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.



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

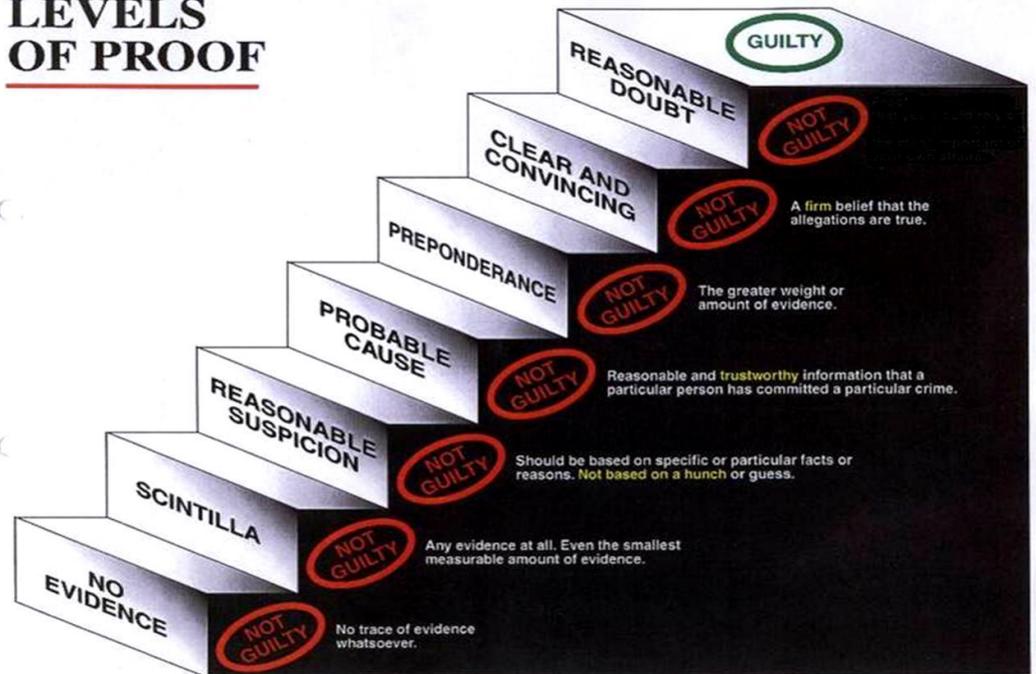
Also, the Uniform
Commercial Code
does not govern the
creation or transfer
of an interest in or
lien on real
property.



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



LEVELS OF PROOF



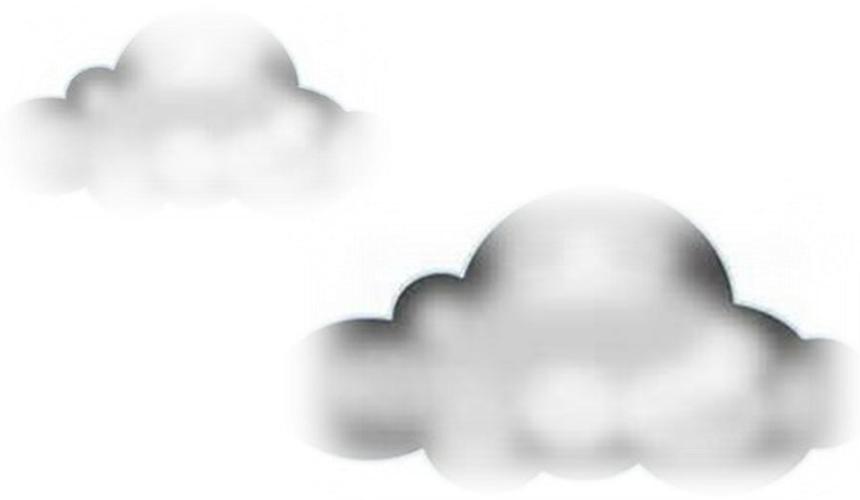
Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(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?

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.

Shhhhhh!



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)

Navigation icons: Home, New Search, Refine Search, View Detail, View Image, View Basket, Print Results, Print Detail, Print Image, Save Image, First Item, Prev Item, Next Item, Last Item, Page 1

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	
2008071379			09/18/2008	APPOINTMENT	R CAMPBELL ALVIE (+)	E LATHAM JOHN (+)	2004086763	Perm	
2008075222			09/30/2008	ASSIGNMENT/TR	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	
2010084570			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?



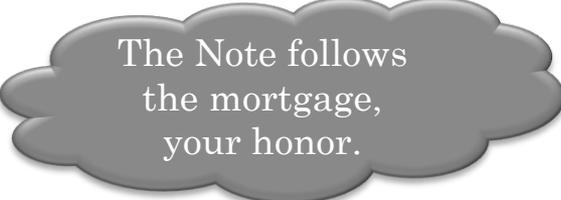
Trustee



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



I am making a
record, your
Honor.



The Note follows
the mortgage,
your honor.



Counsel



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

