

Comprehension – Texas Style

February 7, 2013

As case law notes a “Deed of Trust” in Texas is a lien and to be in compliance with Texas Local Government Code; (§ 192.001. *GENERAL ITEMS: The county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded.*); is required to perfect of record which provides notice of a secured creditor. Upon closing of a loan the lender by operation of law has a temporary attached perfection and where such lender willfully filed even though not legally required did perfect of record. This writing will not address if compliance with the Statutes of Fraud is required.

As an originating lender filed a Deed of Trust, any subsequent party(s) in accordance to Texas Local Government Code; (§ 192.007. *RECORDS OF RELEASES AND OTHER ACTIONS: (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded...*); must file of record a transfer even if such is just an interest in the mortgage loan notes. Such filing would provide notice of a subsequent secured creditor. Violations of Statue of Frauds is not addressed in this writing.

In reviewing the Texas (*BUSINESS AND COMMERCE CODE, TITLE 1, UNIFORM COMMERCIAL CODE, CHAPTER §3.104. NEGOTIABLE INSTRUMENT, (b) "Instrument" means a negotiable instrument.*); one must

exercise caution when the term instrument is not used in context to a negotiable instrument.

In applying (Sec. § 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.); caution is again required as if the instrument is negotiated as a bearer instrument, the identity of a subsequent payee (Indorsee) would need to be identified to suffice in compliance with Texas Local Government Code §192.007.

In accordance to (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.

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. 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 chapter and has only the rights of a partial assignee.); one has to consider subsection (b) and subsection (d).); the application of subset (b) will be applicable to the Depositor of a Private Investment Trust Vehicle where a true sale according to the Pooling and Servicing Agreement notes the stages involved in executing true sales of the instrument. There is a lack of logical order for the Sponsor/Seller/Securitizer to have been able to execute a purchase from an originating lender and then in turn execute a true sale of the instrument prior to the Depositor executing a swap of the instrument for the certificate. The Depositor in accordance to (Sec. §3.303. VALUE AND CONSIDERATION. (a) An instrument is issued or transferred for value if: (4) the instrument is issued or transferred in exchange for a negotiable instrument; or...) has not been in lawful compliance with applicable laws for the Depositor would have to have purchased from the Sponsor the instrument(s) which the Sponsor could not have given value until after the Depositor made value available by executing the swap.

Attention is now directed to the (*Texas Property Code, §51.0001. DEFINITIONS. In this chapter: (1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.); which clearly defines the book entry system as being only a registry for the tracking of the interest in (intangible obligation) the security instrument. In*

applying the principle the tangible mortgage follows the tangible note and referencing the statute it is clear to see that the tangible mortgage is to remain attached to the tangible note. As the bankruptcy courts have opined a collection action involving the security instrument is an attempt to collect a debt. As such it is only logical that an attempt to exercise a foreclosure of the security instrument is just an alternate means to collect a debt. Concern arises upon as it appears that a tangible mortgage has an equal value to the tangible note and where a foreclosure occurs without surrender of the tangible note a part could be subject to double jeopardy.

Reading further into the statute (2) (A) meaning is found which in part notes “for a debt secured by the debtor's residence,...); then attention is directed to the meaning found in subsection (3) *“Mortgage servicer” means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.*”

To this writer it is unknown why lawmakers would write into the statutes the following meanings, (4) *“Mortgagee” means: (A) the grantee, beneficiary, owner, or holder of a security instrument; (B) a book entry system; or (C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.*

Item (C) notes that it is the security interest being assigned which un accordance Texas Business and Commerce Code is in simplicity an Intangible Obligation whose maker is not that of a tangible obligor but that of an Intangible Obligor as Account Debtor. Subsection (5) *“Mortgagor”*

means the grantor of a security instrument. Subsection (5) is unambiguous and clearly defines a tangible obligor can be a grantor of a security instrument. The fact of the matter, a tangible obligor could be the grantor of both a security interest and a security instrument where such Security Instrument is defined in Subsection (6) "*Security instrument*" means a deed of trust, mortgage, or other contract lien on an interest in real property. However; an Intangible Obligor/Account Debtor with not having a perfected interest in the real property security instrument could not be defined as a grantor of a security instrument but could be defined as grantor of security interest being secured by a personal pledge of an account receivable payment stream (intangible obligation).

There are two obligors and two obligees, one each in the two worlds of tangible and intangible. Within the tangible world the obligor is commonly identified as the debtor and within the intangible world the obligor is an Account Debtor.

For the last several centuries, population rose at approximately 3% a year. A monetary law for the creation of money, (tangible), was eventually placed within the hands of the governments of the world and money was created and placed into the market place in amount equal to the population rise. With the invent of the intangible and with lacking proper oversight gross intangible wealth exceeded gross tangible wealth in a factor exceeding 10 to 1. To make matters even worse, net disposable tangible wealth reveals that even if all intangible money creation ceased this day, it would take over a decade for all tangible value to refill the intangible coffers.

Is it the banks are attempting to replace tangible wealth creation with intangible wealth creation, (digital binary bartering.) Except for those connected at the top of the food chain, all others will eventually be fish food for the sharks. Many of the people's of the world's pensions invest in the same vehicles as many judiciary members and every time judiciary rules in opposite to law the world comes a day closer to collapse of law and order.

As this writer has noted in the past, the laws are just, but it appears that laws have become so complex we have to ask why so complex.

To start, whereas law prescribes one may take an action in comparison to a corresponding contract requiring an action, many words if inappropriately applied would lead to conclusions that is in error.

Dazzle with Brilliance or Baffle with BS.

The world awaits an action.