

**Have a Note**

**Commercial / Residential**

**Obligors**

(Homeowners)

**Attorneys**

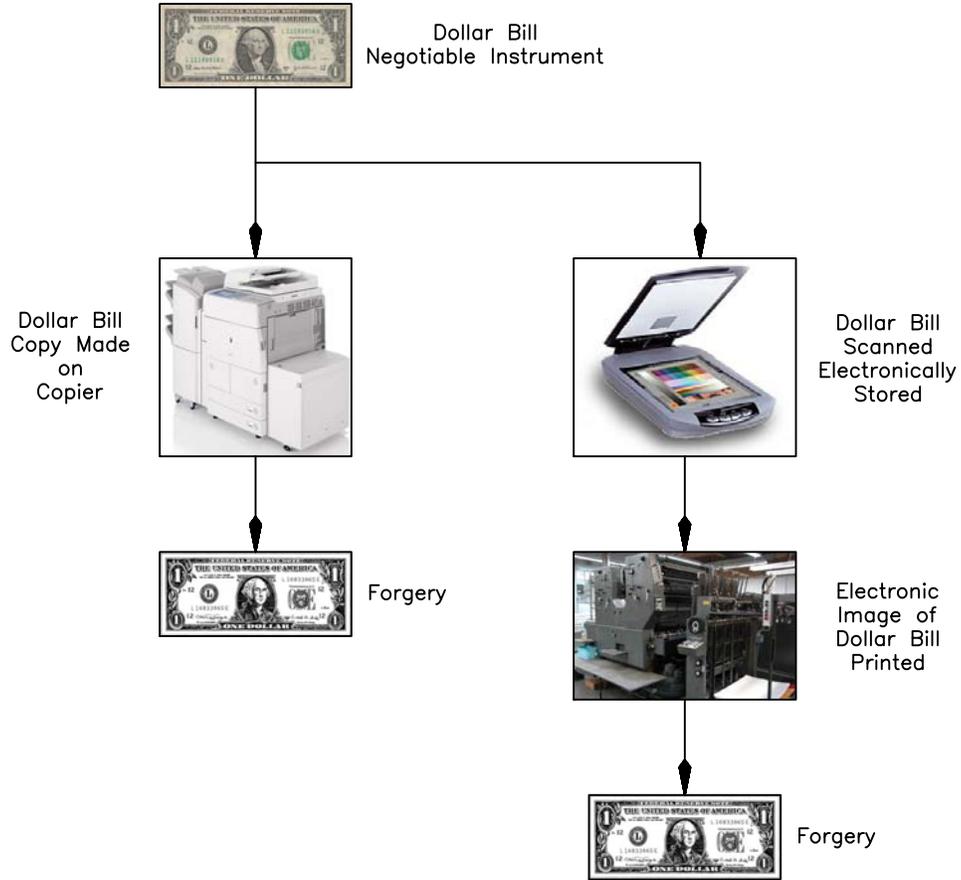
**Judges**

**Investors**

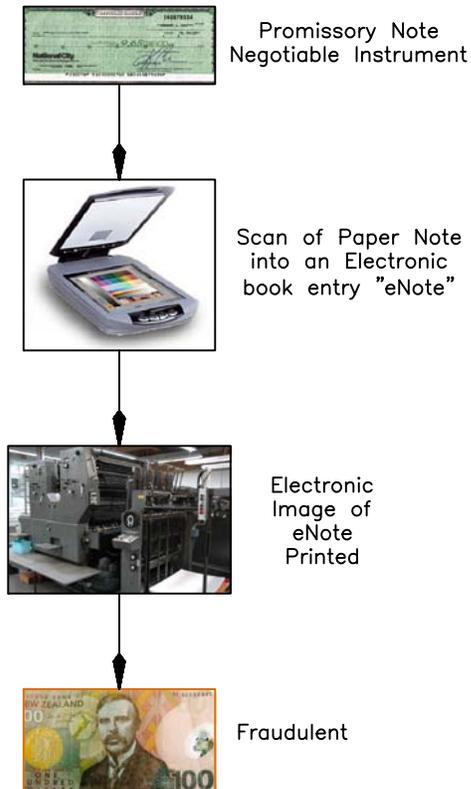
**You Need to Read**

# Forgery or Fraudulent

## United States Dollar Bill



## Negotiable Instrument UCC



# **Negotiable Instruments**

**Uniform Commercial Code**

# **Assignments of Lien**

**Texas**

**Property Code**

**Business and Commerce Code**

# **Texas Lien Theory**

**as a Guide**

# **Disclaimer**

We provide this information as information only.

Legal information is not the same as legal advice -- the application of law to an individual's specific circumstances.

Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult an attorney if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation.

Although we try to make our information accurate and useful, you should consult an attorney to interpret and apply this information to your particular situation.

We are not lawyers and we do not take any responsibility for:

**LOST PROFITS OR ANY SPECIAL, INCIDENTAL, OR  
CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN  
CONNECTION WITH THE USE OF THIS INFORMATION.**

You are solely responsible for your selection of counsel.

Use of this information does not create an attorney-client relationship between us and you.

We do not endorse any particular attorney or legal service and cannot guarantee the quality, or reliability of any legal service.

**Our Recommendation:**

**CONSULT AN ATTORNEY.**

Promissory Notes have to be a negotiable instruments under UCC Article 3 to allow for 3rd party negotiation.

Banks have been using the ESIGN Act and UETA laws to convert promissory notes into an eNote or create eNotes in electronic book entry form so they can be sliced and diced in the securities market and Fannie and Freddie.

When promissory notes are converted from paper to electronic in many cases the paper promissory note was destroyed.

Intentional voluntary act such as destruction is discharge of the debt obligation, UCC Article 3, 3-604.

Everybody is looking at the slice and dice as the problem, in reality the real problem is that the eNotes have no law to support their existence for use in the securities market as ESIGN and UETA both exclude items governed by UCC Article 3 - Negotiable Instruments.

Banks in an attempt to make sure their fraud remains concealed provide their law firms with a copy of the note and in some cases a lost note affidavit then the banks law firms use slickery trickery wording to deceive everybody in beleiving that a copy is sufficent proof and the destruction of the note remains hidden.

For some of the reasons stated above and others reason further stated in this document the presentation of the original note with all assignments is the only proof that should be allowed.

# Candy Bar

We will assume this is a Real Candy Bar and not some knock off claiming to be a candy bar.

1.

Buyer wants candy bar. Buyer goes to store and conducts a transaction that evolves giving the seller a dollar bill and in return leaves with a candy bar. Buyer leaves with candy bar and seller has the dollar bill and can do whatever he likes with the dollar bill as these actions will not affect the buyer. An action that could take place here is if the seller says he was not paid and the buyer stole the candy bar. There is no proof that the buyer gave the seller a dollar bill in the purchase of the candy bar unless the serial number was recorded by the buyer prior to the transaction. Seller in reverse cannot prove the candy bar was stolen.

Each party goes their own way.

2.

Buyer purchases a candy bar on credit and signs a slip that states he owes the seller a dollar bill. Later the buyer goes back and gives the seller a dollar bill and retrieves the slip that the seller had filed away in his till that says buyer owes the seller a dollar bill. Each party goes there on way. (My grandma used to sign slips and grandpa would pay up at the end of each month)

Without knowing the exact wording of the slip it would be impossible to determine whether the slip was a negotiable or non-negotiable instrument. In this instance there is no requirement to determine whether the slip is negotiable or non-negotiable as either condition of negotiability would be legal.

Buyer gives seller dollar and each party goes their own way.

3.

Buyer purchases a candy bar on credit and signs a slip that states he owes the seller a dollar bill. In this instant the seller had intentions to take the buyers slip and sell the enforcement and collection rights to a 3<sup>rd</sup> party. 3<sup>rd</sup> party offers the slip up for sale to a 4<sup>th</sup> party. If all assignments are attached then 4<sup>th</sup> party can go get the dollar bill from the buyer.

Buyer gives 4<sup>th</sup> party dollar bill and gets the slip back and each party goes their own way.

Now we have entered the world of negotiable instruments and the laws that govern negotiable instruments are very precise. Assignment laws as defined by the UCC result in establishing the legal recipient entitled to collect the dollar bill from the buyer. In the absence of assignments, which of the (3) parties is entitled to collect the dollar bill?

Note: There is a difference between holder and holder in due course as defined by the UCC.

4.

Buyer purchases a candy bar on credit and signs a slip that states he owes the seller a dollar bill. In this instant the seller had intentions to take the buyers slip and sell the enforcement and collection rights to a 3<sup>rd</sup> party. Seller takes the slip and makes a copy on a copy machine and sells this copy to the 3<sup>rd</sup> party. Seller and 3<sup>rd</sup> party working in tangent with each other know that the copy of the slip will be further offered up for sale to a 4<sup>th</sup> party. To aid this perpetrated fraud we create a company that will track the location of the slip and will paste notices on all the billboards that these actions are legal.

Buyer only owes a dollar bill to the one that can prove that a dollar bill is owed.

In this instance proof could never be offered as the lack of assignments cannot prove who is entitled to receive the dollar bill and fraud has been committed by the seller and 3<sup>rd</sup> party which renders the original slip nullity.

For "A" in California, even a candy bar scenario is not as simple as it seems, very few people have dwelt into the precise UCC laws governing negotiable instruments. It's not what the buyer does but it's what the seller, 3<sup>rd</sup> & 4<sup>th</sup> party does that destroys the legal enforcement rights of the instrument. This is what the judges cannot see.

# **Assignments**

**Texas Property Code**

**Florida Notary Laws**

**Pooling and Servicing  
Agreement**

Part 1

**FLORIDA NOTARY PUBLIC LAW**  
**Section 117**  
**NOTARIES PUBLIC**

*117.105 False or fraudulent acknowledgments; penalty.*

*A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*

**HEARING BEFORE THE  
SUBCOMMITTEE ON COURTS, THE INTERNET,  
AND INTELLECTUAL PROPERTY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED NINTH CONGRESS  
SECOND SESSION  
ON  
H.R. 1458  
MARCH 9, 2006  
Serial No. 109-89**

*Prepared Statement of Malcolm L. Morris*

*Malcolm L. Morris, Esq., Professor and Associate Dean, College of Law,  
Northern Illinois University*

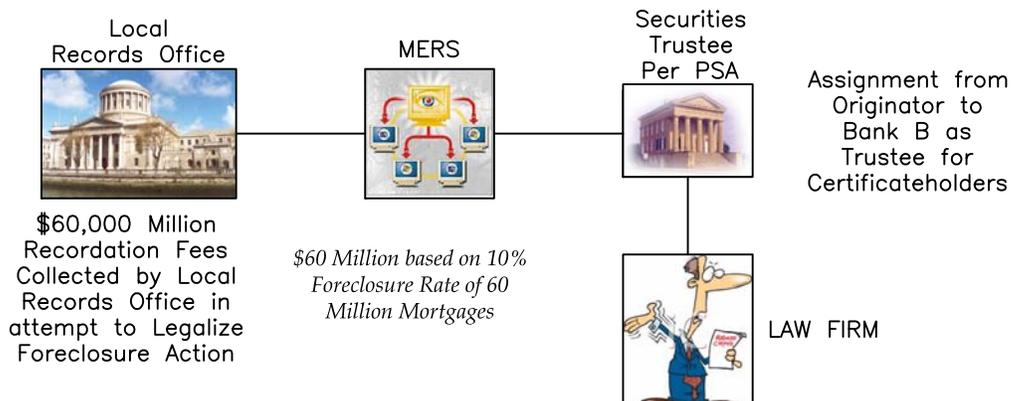
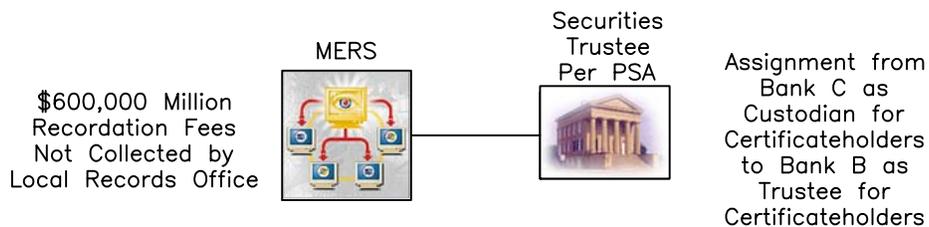
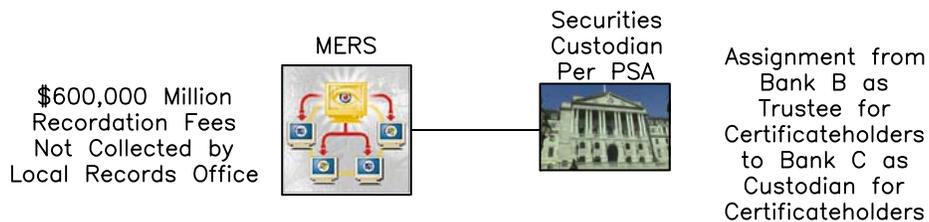
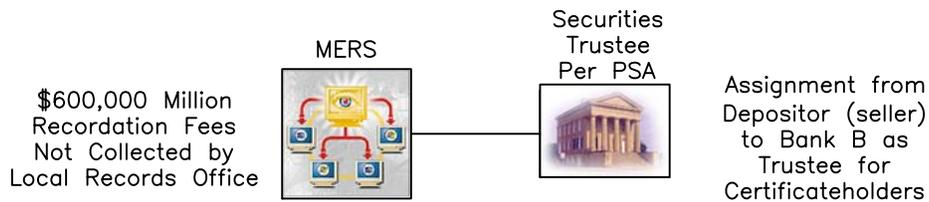
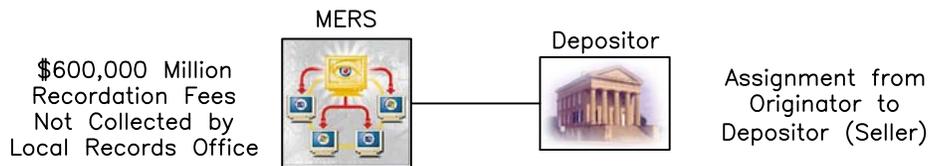
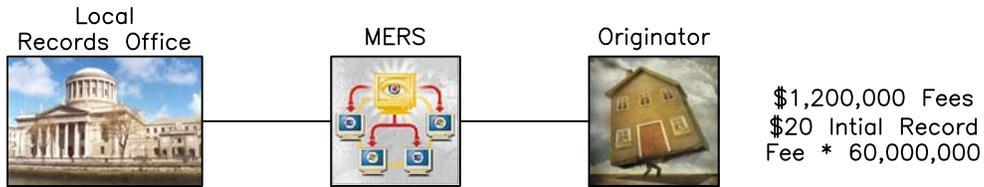
*A notarization in and of itself neither validates a document nor speaks to the truthfulness or accuracy of its contents. The notarization serves a different function, viz, verifying that a document signer is who he or she purports to be and has willingly signed the document.*

# Loss to Local County Records Offices - \$ 2.34 Billion

## Estimated Recordation Fees Land Records Office v Mers

Estimates based on approximately 60 million loans serviced by MERS as stated by MERS.

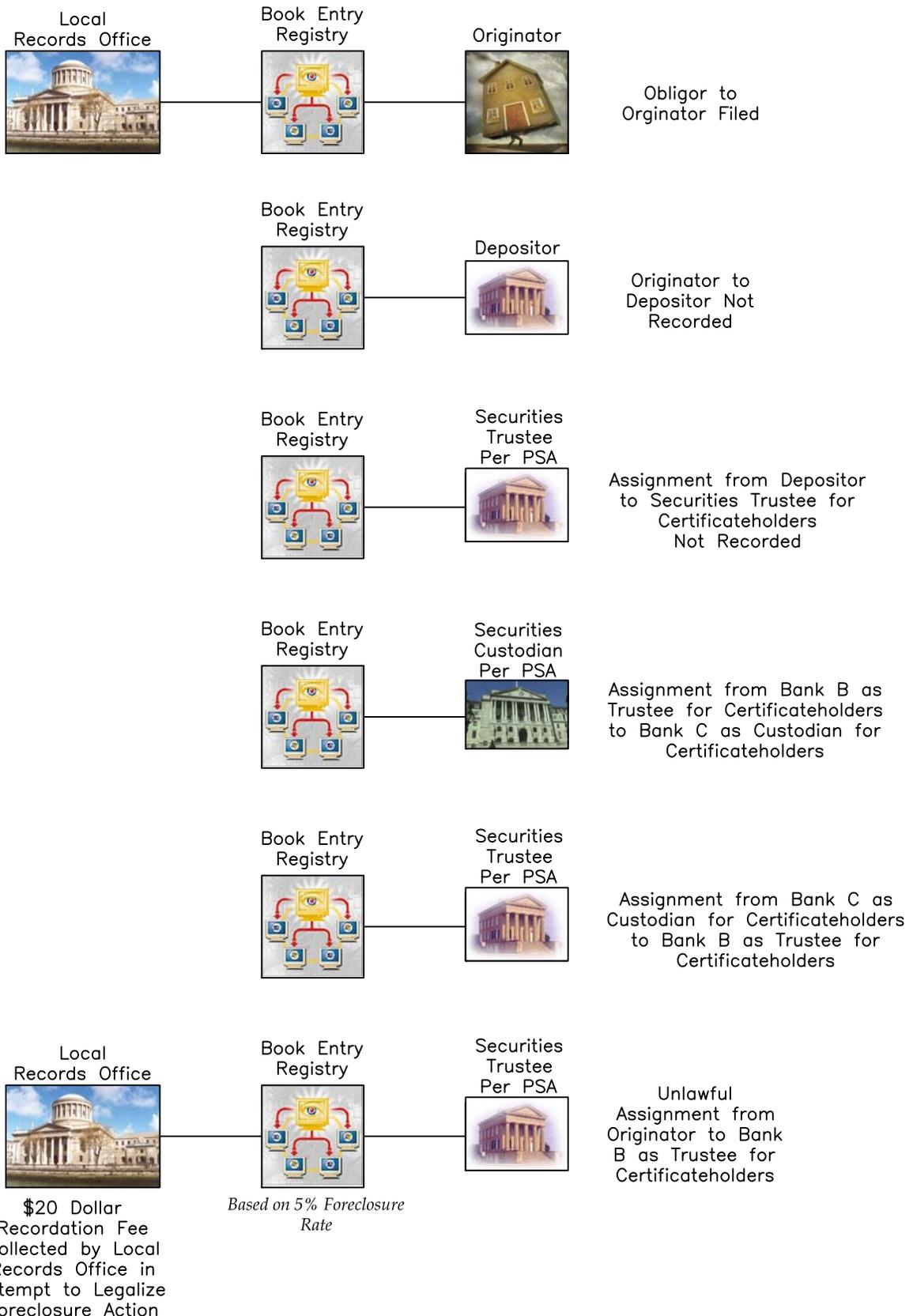
Assume 2 pages for filing assignment.



# Estimated Loss to Dallas County Records Offices \$25 Million

## Estimated Recordation Fees Not Filed But Required By Texas Law and the Pooling and Servicing Agreement

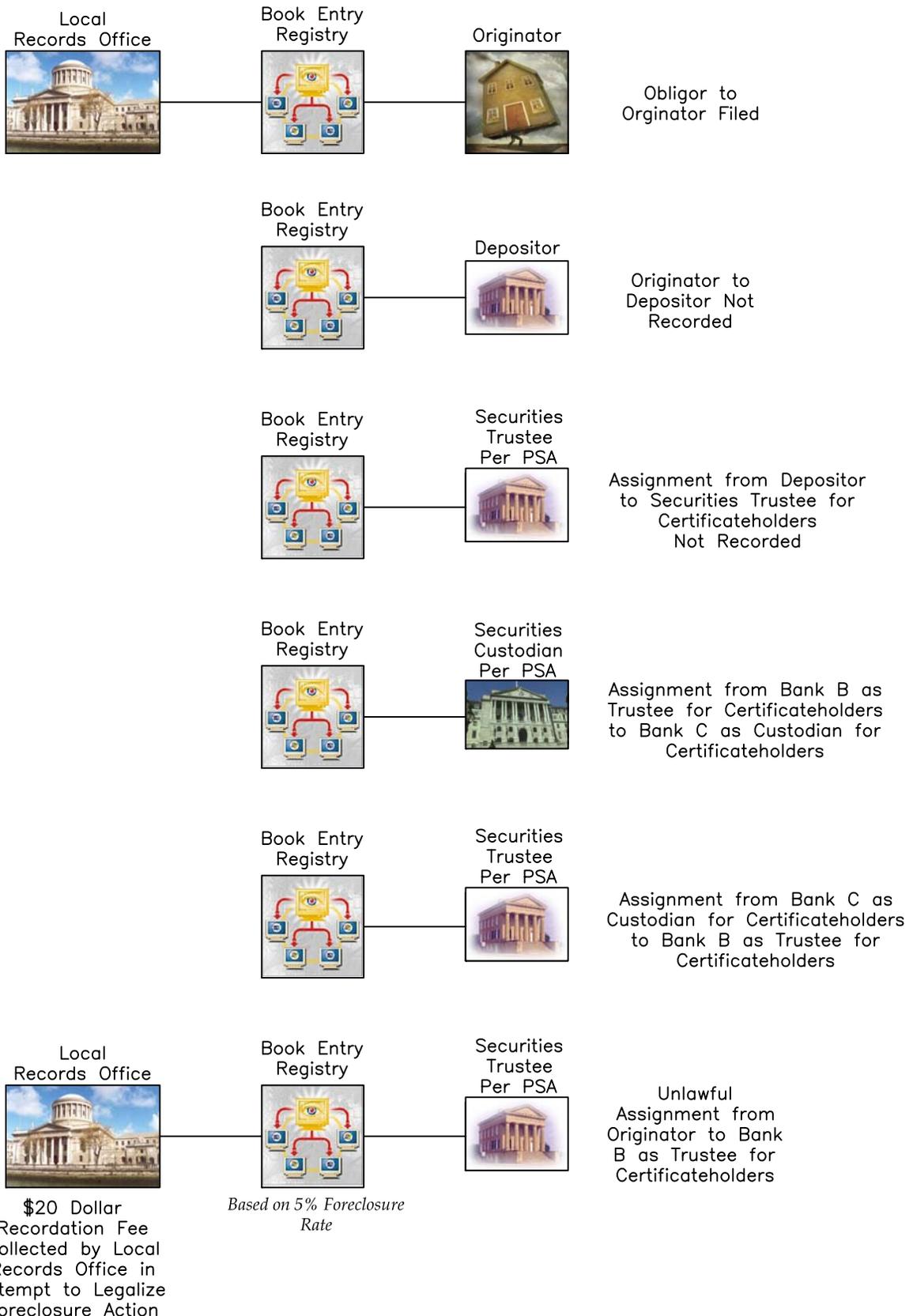
Assumption - 2 pages for filing assignment.



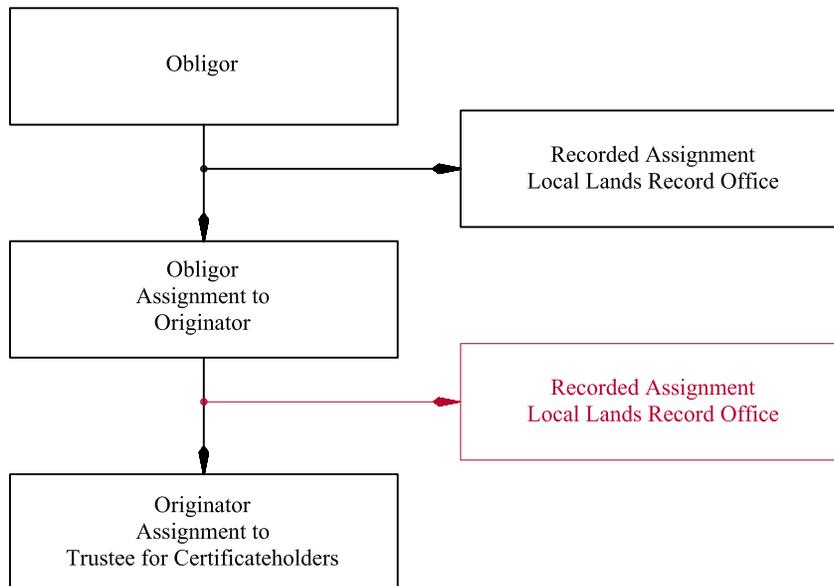
# Estimated Loss to Tarrant County Records Offices \$ 10.38 Million

## Estimated Recordation Fees Not Filed But Required By Texas Law and the Pooling and Servicing Agreement

Assumption - 2 pages for filing assignment.



**Actual Assignments  
Attempt to Justify  
Missing Assignments  
Non Compliance with  
Texas Property Code**



**Argent Securities Trust 2006-W4  
Accession Number 882377-6-1599  
Pooling and Servicing Agreement**

ARGENT SECURITIES INC.  
Depositor  
AMERIQUEST MORTGAGE COMPANY  
Master Servicer  
and  
DEUTSCHE BANK NATIONAL TRUST COMPANY  
Trustee  
POOLING AND SERVICING AGREEMENT  
Dated as of **April 1, 2006**  
ASSET-BACKED PASS-THROUGH CERTIFICATES  
SERIES 2006-W4

**SECTION 2.01. Conveyance of Mortgage Loans. excerpt (vi)**

The Master Servicer (in its capacity as Seller) shall promptly (and in no event later than thirty (30) Business Days, subject to extension upon a mutual agreement between the Master Servicer and the Trustee, following the later of (i) the Closing

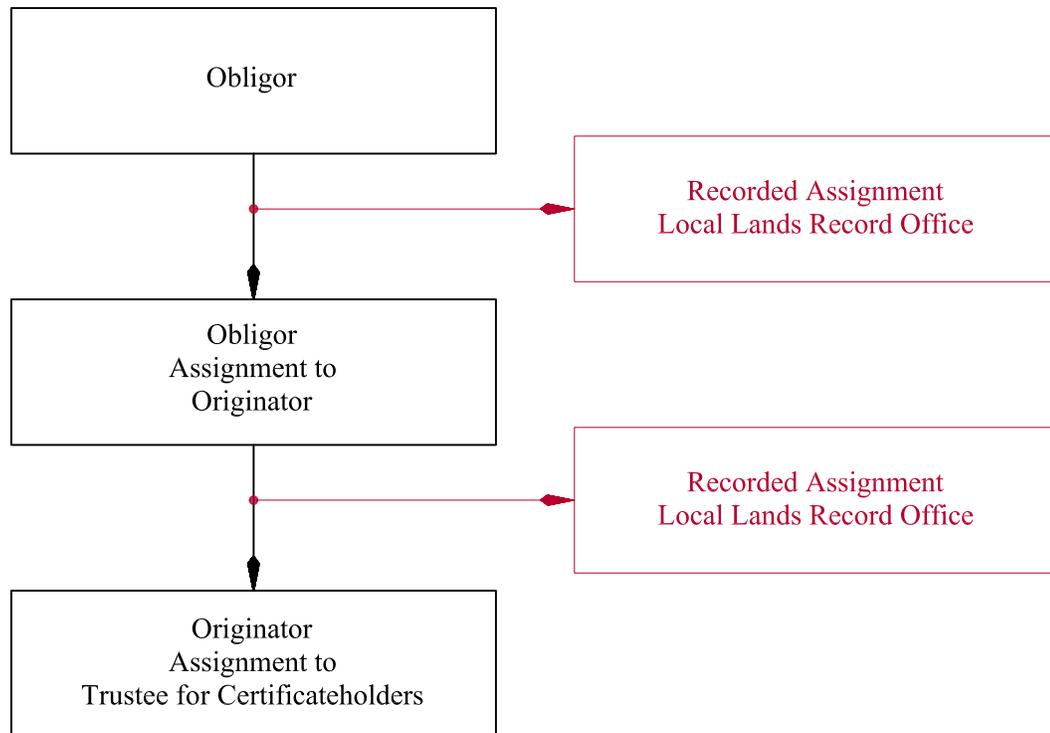
Date, (ii) the date on which the Seller receives the Assignment from the Custodian and (iii) the date of receipt by the Master Servicer of the recording information for a Mortgage) submit or cause to be submitted for recording, at no expense to the Trust Fund or the Trustee, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and shall execute each original Assignment referred to in Section 2.01(iii) above in the following form: "*Deutsche Bank National Trust Company, as Trustee under the applicable agreement.*"

**SECTION 2.01. Conveyance of Mortgage Loans. (iii) & (iv)**

(iii) an original Assignment assigned in blank, without recourse;

(iv) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;

**Actual Assignments**  
**Attempt to**  
**Justify Missing Assignments for**  
**Presentation to Courts**



**Securities Trust**  
**Pooling and Servicing Agreement**  
**Depositor**  
**Master Servicer**  
**and**  
**Trustee**  
**POOLING AND SERVICING AGREEMENT**  
**ASSET-BACKED PASS-THROUGH CERTIFICATES**

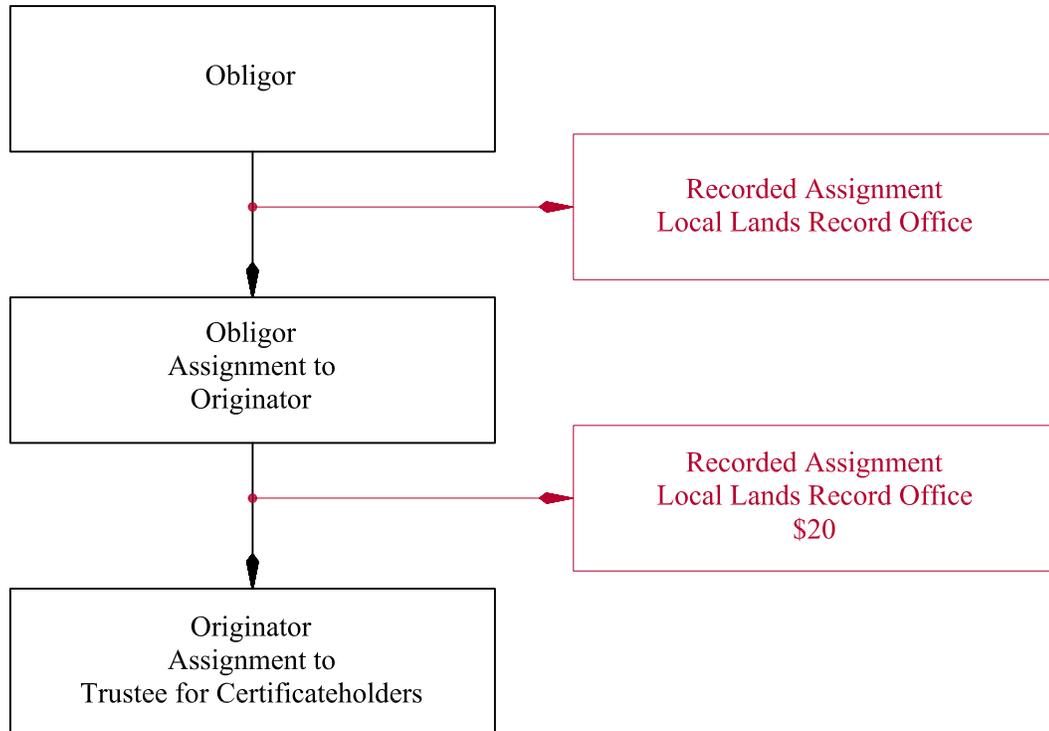
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# Actual Assignments Justify Missing Assignments



**Securities Trust  
Pooling and Servicing Agreement  
Depositor  
Master Servicer  
and  
Trustee  
POOLING AND SERVICING AGREEMENT  
ASSET-BACKED PASS-THROUGH CERTIFICATES**

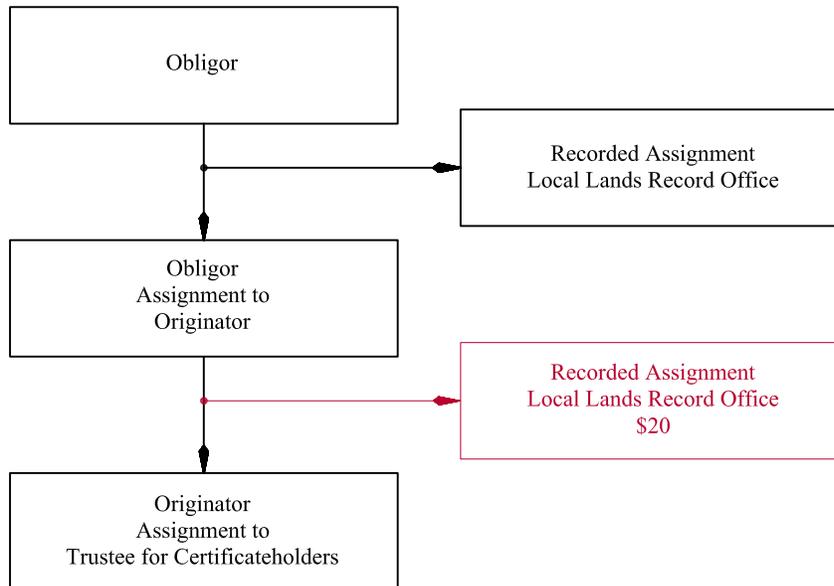
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**Actual Assignment  
to  
REMIC  
Non Compliance with  
Pooling and Servicing Agreement**



**Securities Trust**

**Pooling and Servicing Agreement**

**SECTION 2.06**

**Issuance of the REMIC I Regular Interests and the Class R-I Interest**

The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Mortgage Files, subject to the provisions of Section 2.01 and Section 2.02, together with the assignment to it of all other assets included in REMIC I, the receipt of which is hereby acknowledged.

**Argent Securities Inc  
2006-W4  
Asset-Backed  
Pass-Through  
Certificates  
Series 2006-W4**

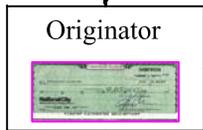
**Original Promissory Note Assignments**

**Argent Securities Trust 2006-W4**  
*Pooling and Servicing Agreement sec 2.01...*  
 (i) the original Mortgage Note, endorsed in blank... (ii) the original Mortgage, with evidence of recording thereon... (iii) an original Assignment assigned in blank... (iv) the original recorded intervening Assignment... (v) the original or copies of each assumption... (vi) the original or copy of the lender's title insurance... etc.

DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee  
 DEUTSCHE BANK NATIONAL TRUST COMPANY as Custodian  
 are separate entities.



Recorded Assignment



Argent Mortgage Company

Securitizer Depositor



Argent Securities

Missing Assignments

Trustee

DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee for the Benefit of Certificate Holders per the Pooling Service Agreement

Custodian

DEUTSCHE BANK NATIONAL TRUST COMPANY as Custodian for the Benefit of Certificate Holders per the Pooling Service Agreement  
 CERTIFICATE HOLDERS  
 Owner of the eNote  
 DOCUMENT CUSTODIAN  
 Holder of the eNote

Missing Assignments

Assignment Recorded Argent Mortgage Company to Deutsche National Bank Trust Company as Trustee for Benefit of the Certificateholders with Land Records Office in February 2009 in attempt to legalize actions



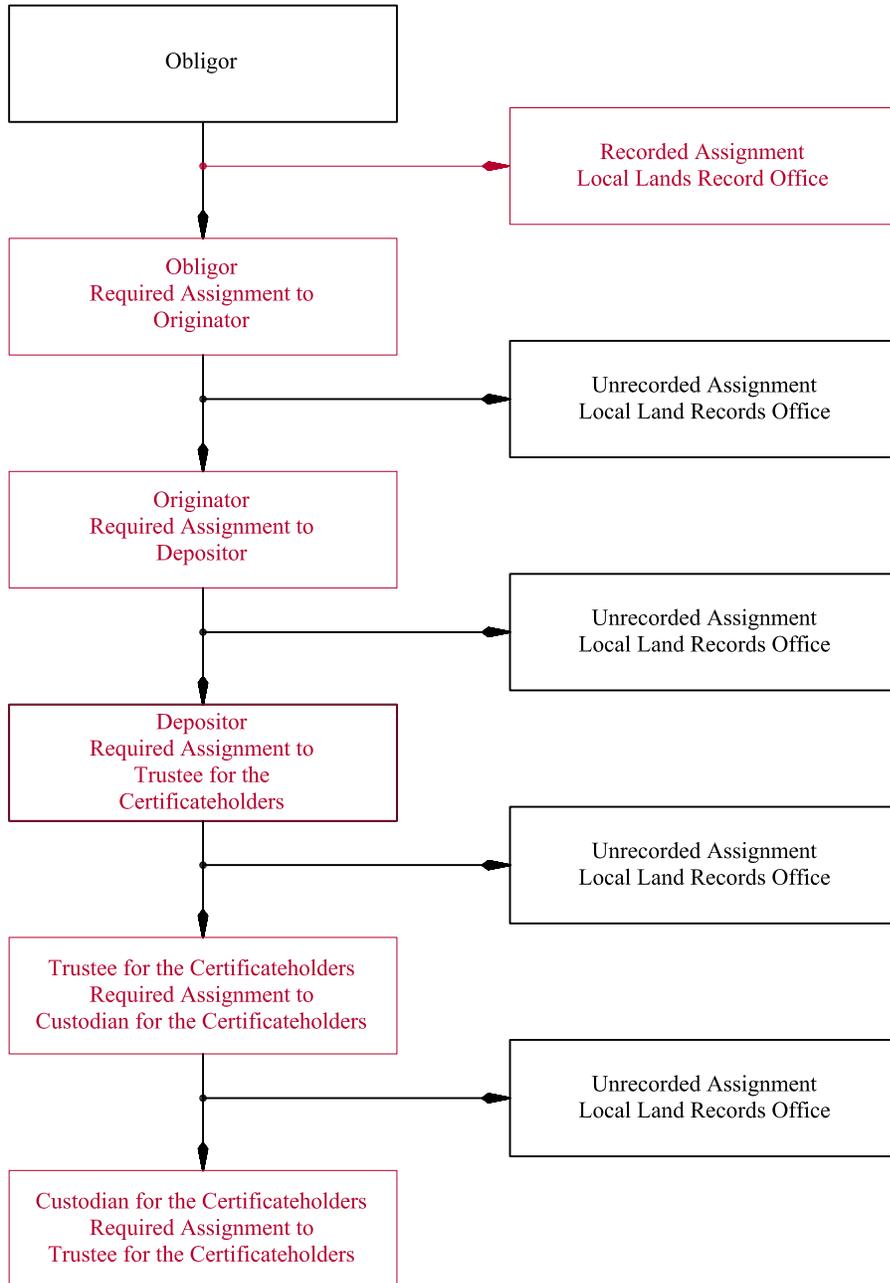
Law Firm

Broken Chain of Assignments



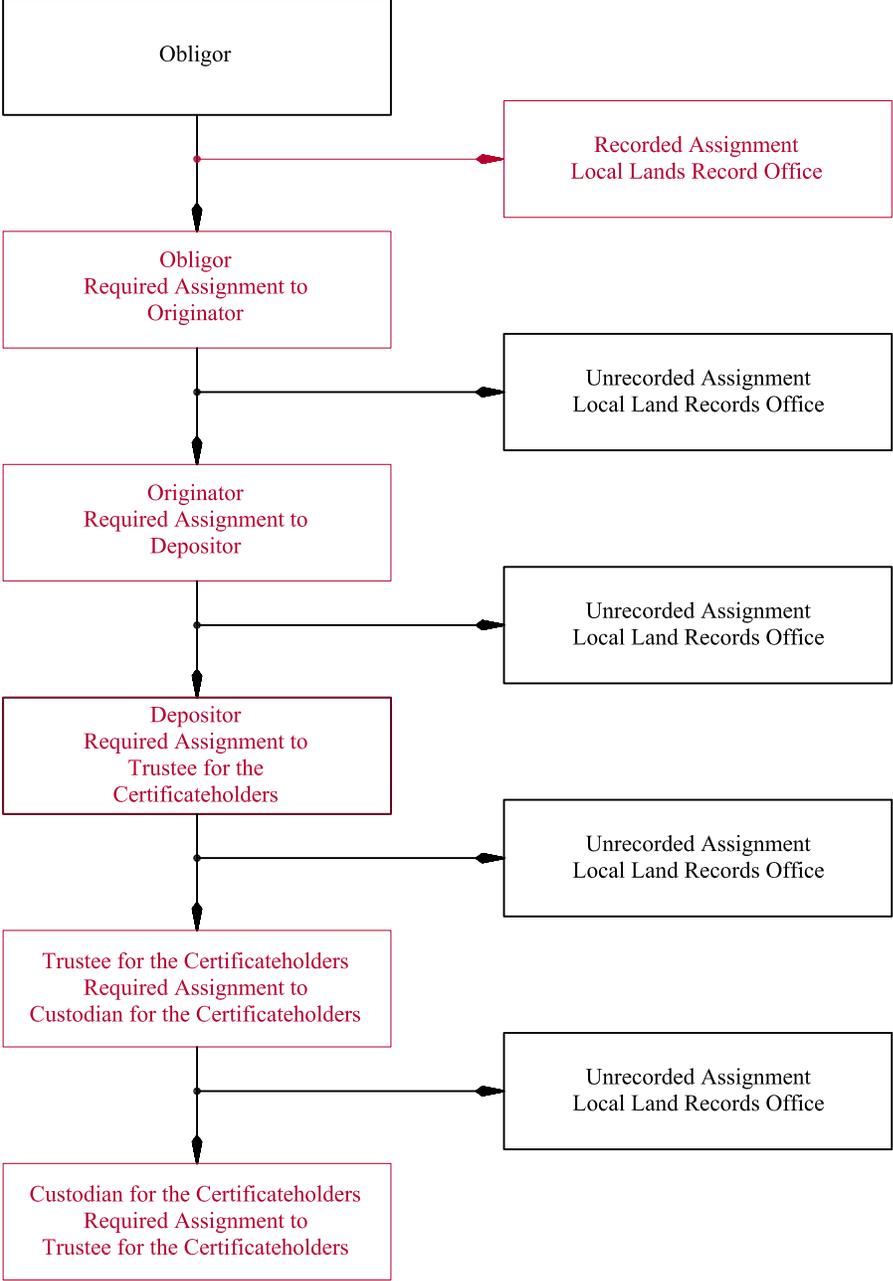
Court

# Required Assignments Texas Property Code

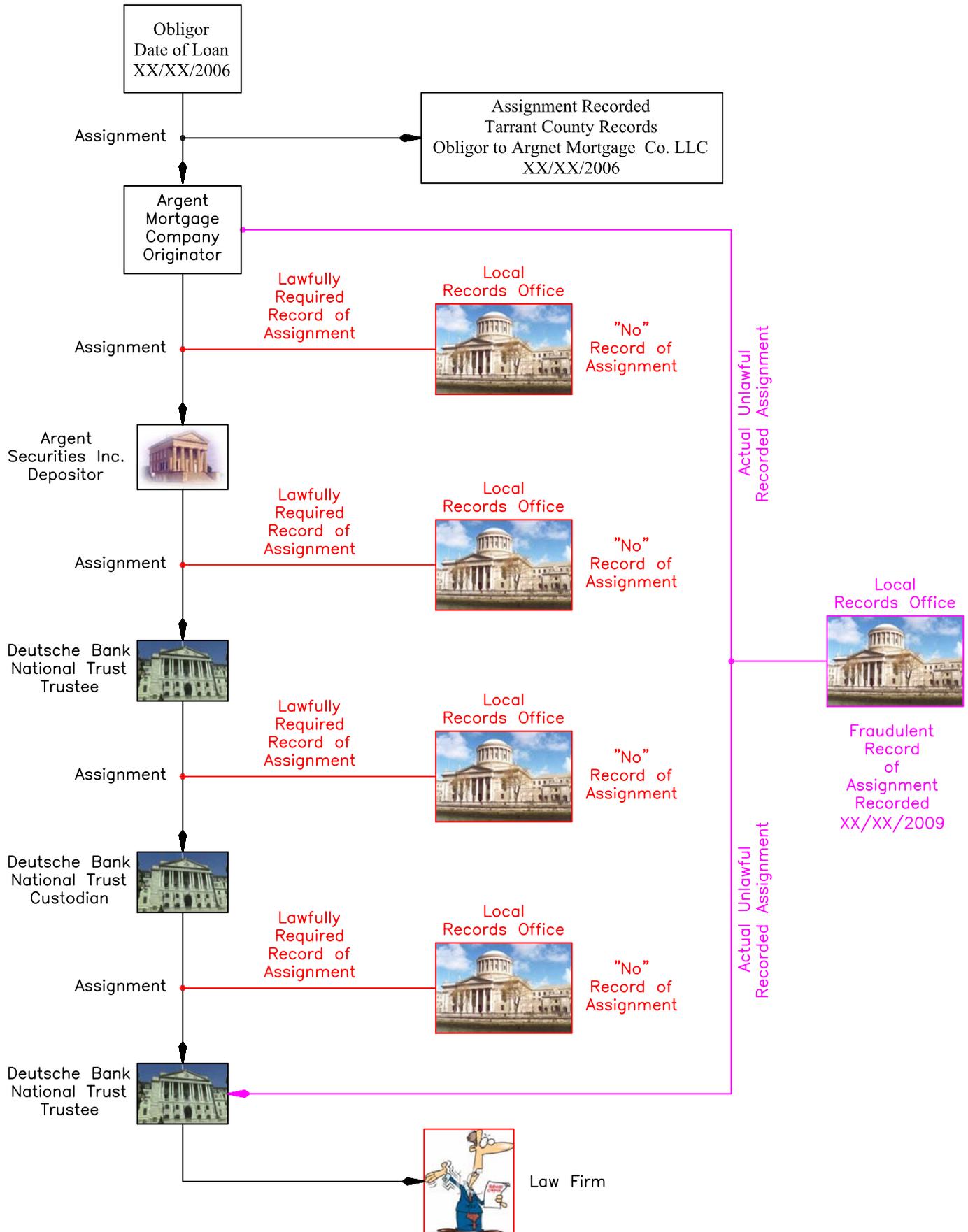


# Required Assignment to REMIC per Pooling and Servicing Agreement

(missing)



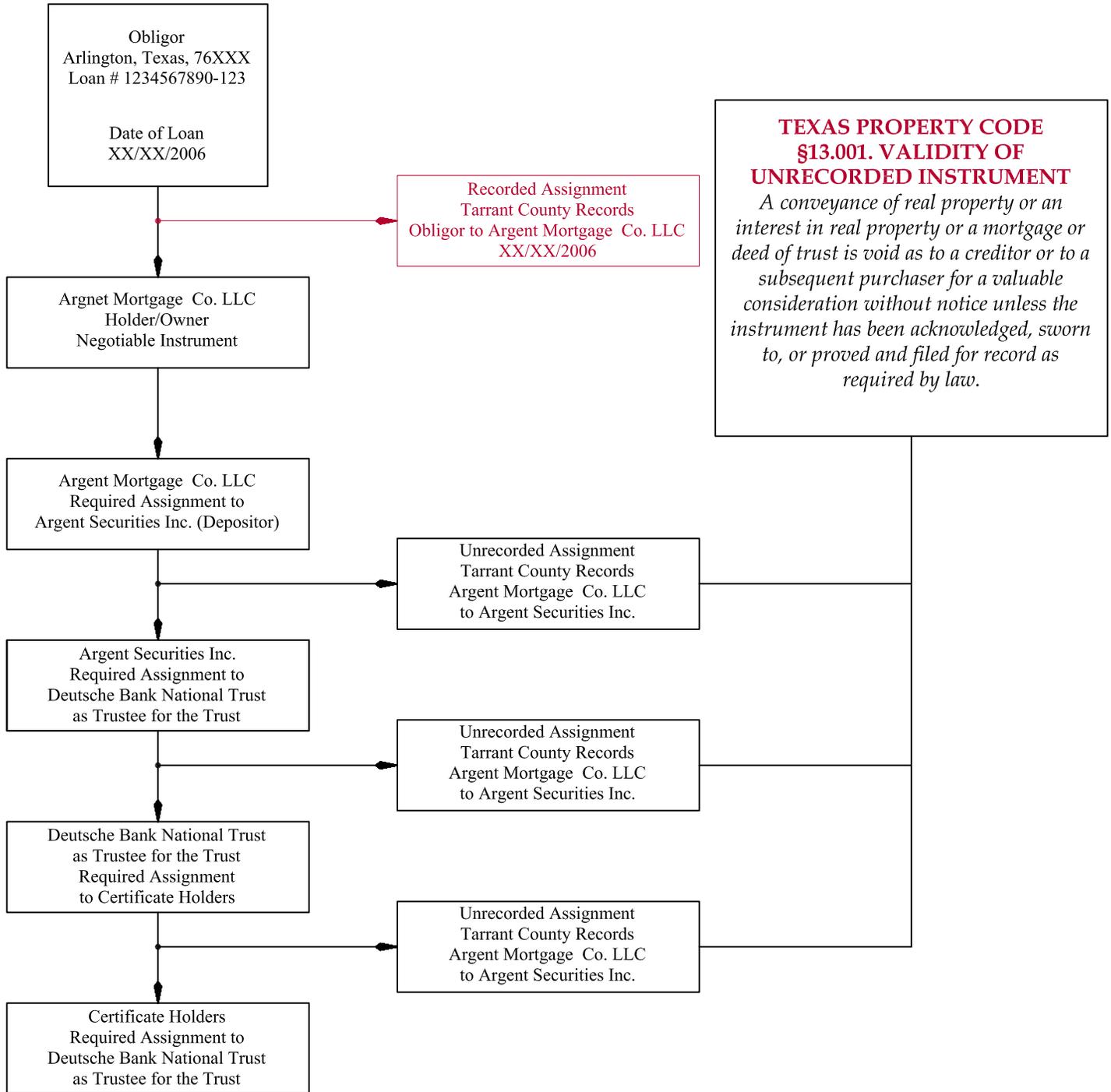
# Assignments of Negotiable Instrument Argent Securities Inc Asset-Backed Pass-Through Certificates Series 2006-W4



# Required Assignments

## Negotiable Instrument Argent Securities Inc

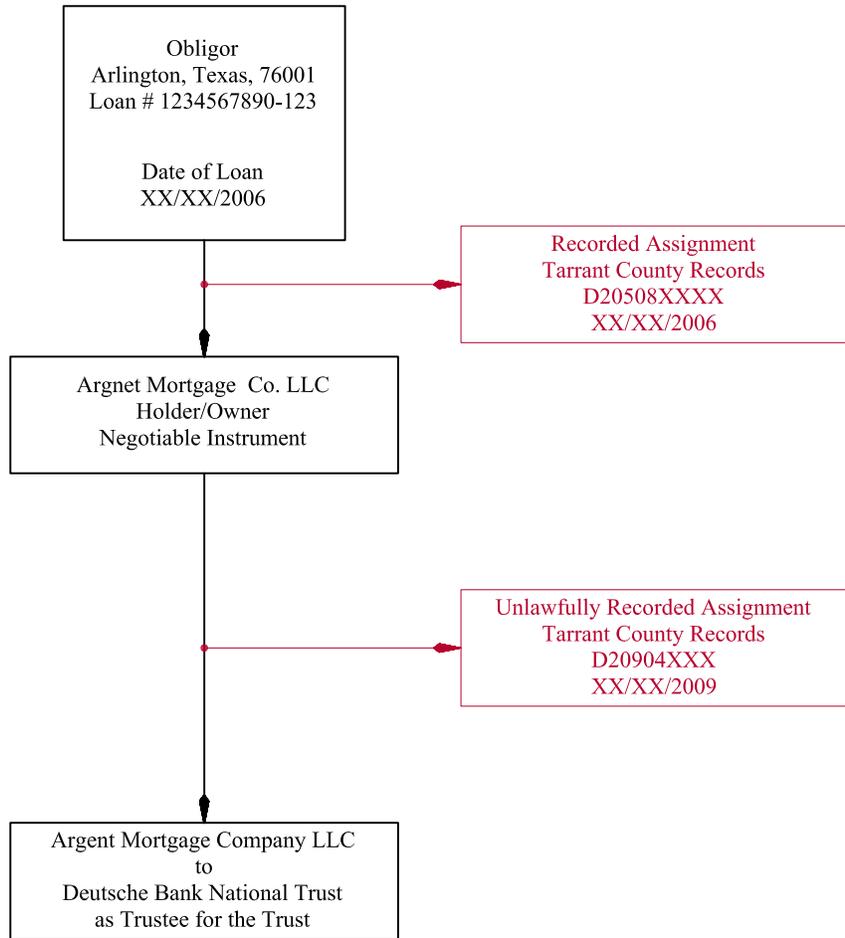
### Asset-Backed Pass-Through Certificates Series 2006-W4



# Actual Assignments

## Negotiable Instrument Argent Securities Inc

### Asset-Backed Pass-Through Certificates Series 2006-W4



<b>TEXAS PROPERTY CODE</b> <b>§11.001. PLACE OF RECORDING</b>  <i>(a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.</i>	<b>TEXAS PROPERTY CODE</b> <b>§12.001. INSTRUMENTS CONCERNING PROPERTY</b>  <i>(a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.</i>	<b>TEXAS PROPERTY CODE</b> <b>§13.001. VALIDITY OF UNRECORDED INSTRUMENT</b>  <i>A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.</i>
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#### Argent Securities Trust 2006-W4 Prospectus · Rule 424(b)(5)

The depositor will promptly cause the assignment of each related mortgage loan to be recorded in the appropriate public office for real property records, **except for Mortgages held under the MERS(R) System and except in the State of California or in other states where, in the opinion of counsel acceptable to the trustee, recording of the assignment is not required to protect the trustee's interest in the mortgage loan against the claim of any subsequent transferee or any successor to or creditor of the depositor, the master servicer, the relevant mortgage loan seller or any other prior holder of the mortgage loan.** If the depositor uses the MERS(R) System, it will deliver evidence that the Mortgage is held for the trustee through the MERS(R) System instead of an assignment of the Mortgage in recordable form.

**Argent Securities Trust 2006-W4  
Accession Number 882377-6-1599  
Pooling and Servicing Agreement**

ARGENT SECURITIES INC.  
Depositor  
AMERIQUEST MORTGAGE COMPANY  
Master Servicer  
and  
DEUTSCHE BANK NATIONAL TRUST COMPANY  
Trustee  
POOLING AND SERVICING AGREEMENT  
Dated as of April 1, 2006  
ASSET-BACKED PASS-THROUGH CERTIFICATES  
SERIES 2006-W4

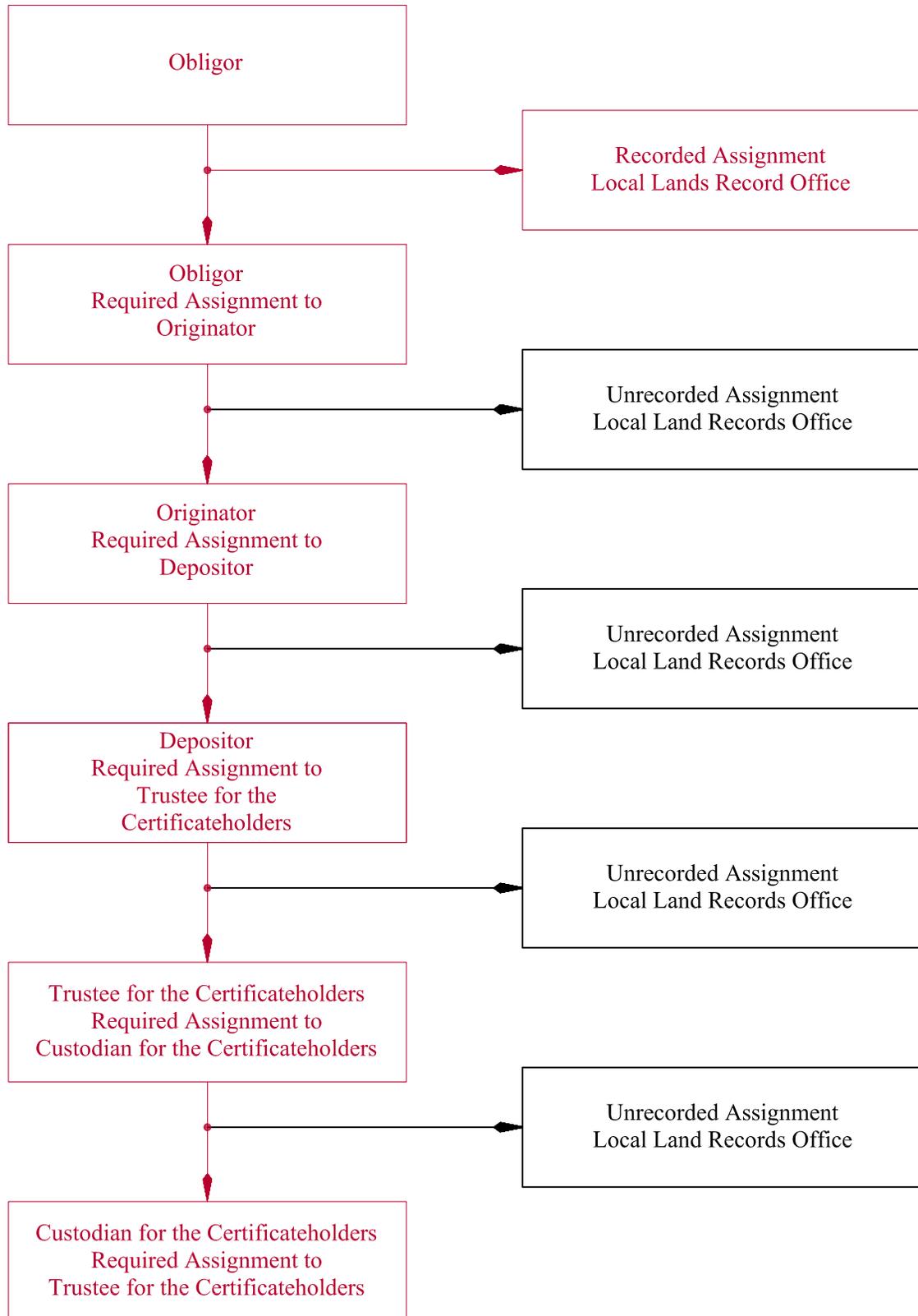
This Pooling and Servicing Agreement, is dated and effective as of April 1, 2006,  
among  
ARGENT SECURITIES INC.,  
as Depositor,  
AMERIQUEST MORTGAGE COMPANY,  
as Master Servicer,  
and  
DEUTSCHE BANK NATIONAL TRUST COMPANY,  
as Trustee.

<b>TEXAS PROPERTY CODE §11.001. PLACE OF RECORDING</b>	<b>TEXAS PROPERTY CODE §12.001. INSTRUMENTS CONCERNING PROPERTY</b>	<b>TEXAS PROPERTY CODE §13.001. VALIDITY OF UNRECORDED INSTRUMENT</b>
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**Argent Securities Trust 2006-W4  
Prospectus · Rule 424(b)(5)**

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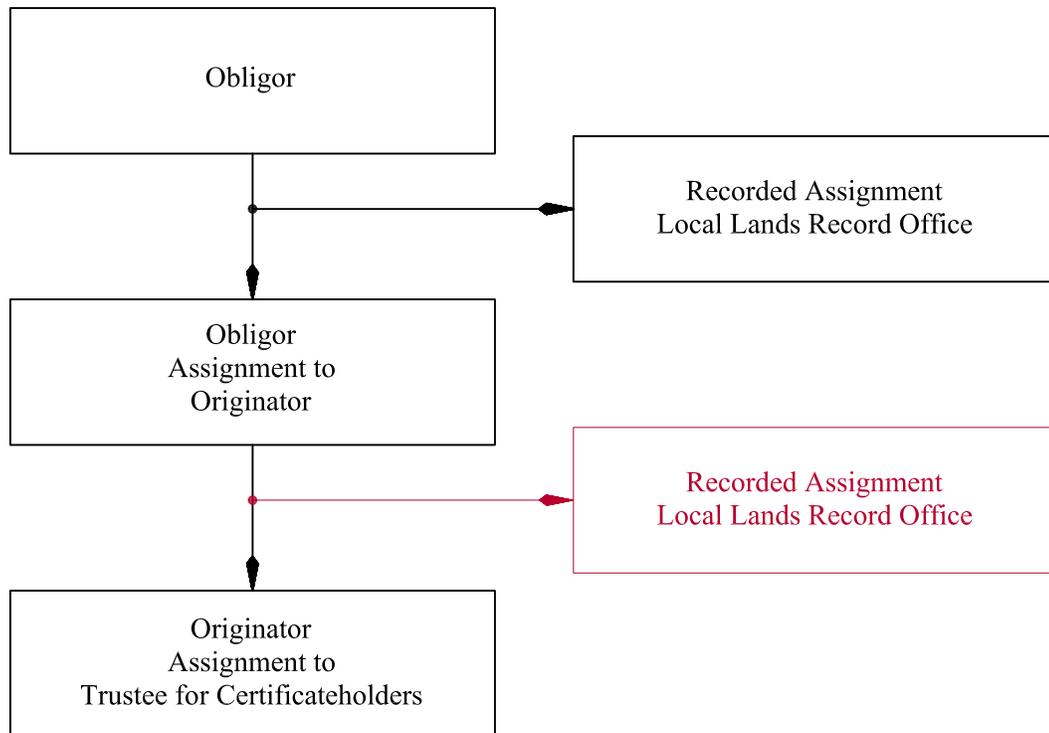
# Required Assignments TEXAS PROPERTY CODE



## TITLE 3 PUBLIC RECORDS CHAPTER 12 RECORDING OF INSTRUMENTS Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY.

- (a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.
- (b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

**Actual Assignments**  
**VIOLATION**  
**TEXAS PROPERTY CODE**  
**Pooling and Servicing Agreement**

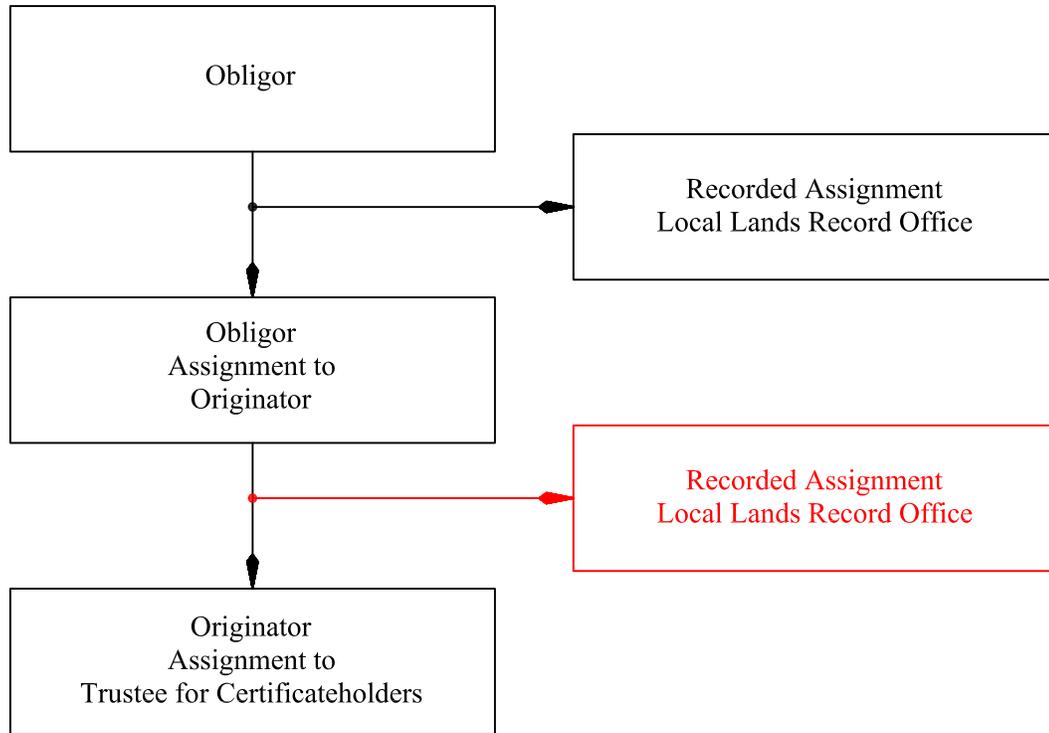


**TITLE 3 PUBLIC RECORDS CHAPTER 12**  
**RECORDING OF INSTRUMENTS**

**Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY**

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**Actual Assignments  
VIOLATION  
TEXAS PROPERTY CODE**



**TEXAS PROPERTY CODE**

**TITLE 3 PUBLIC RECORDS CHAPTER 11  
PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS**

*Sec. 11.001. PLACE OF RECORDING.*

*(a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.*

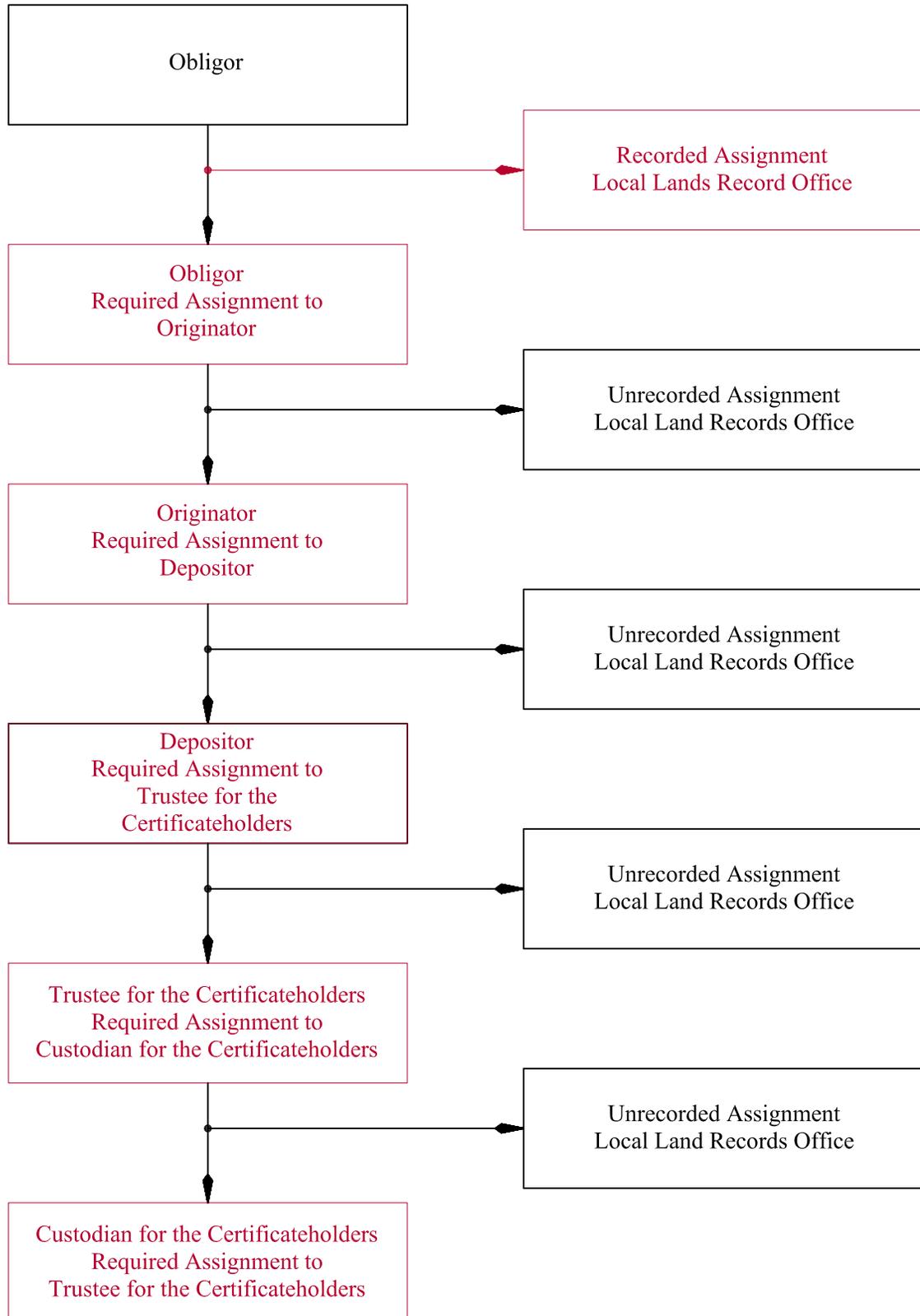
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RECORDING OF INSTRUMENTS**

*Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY*

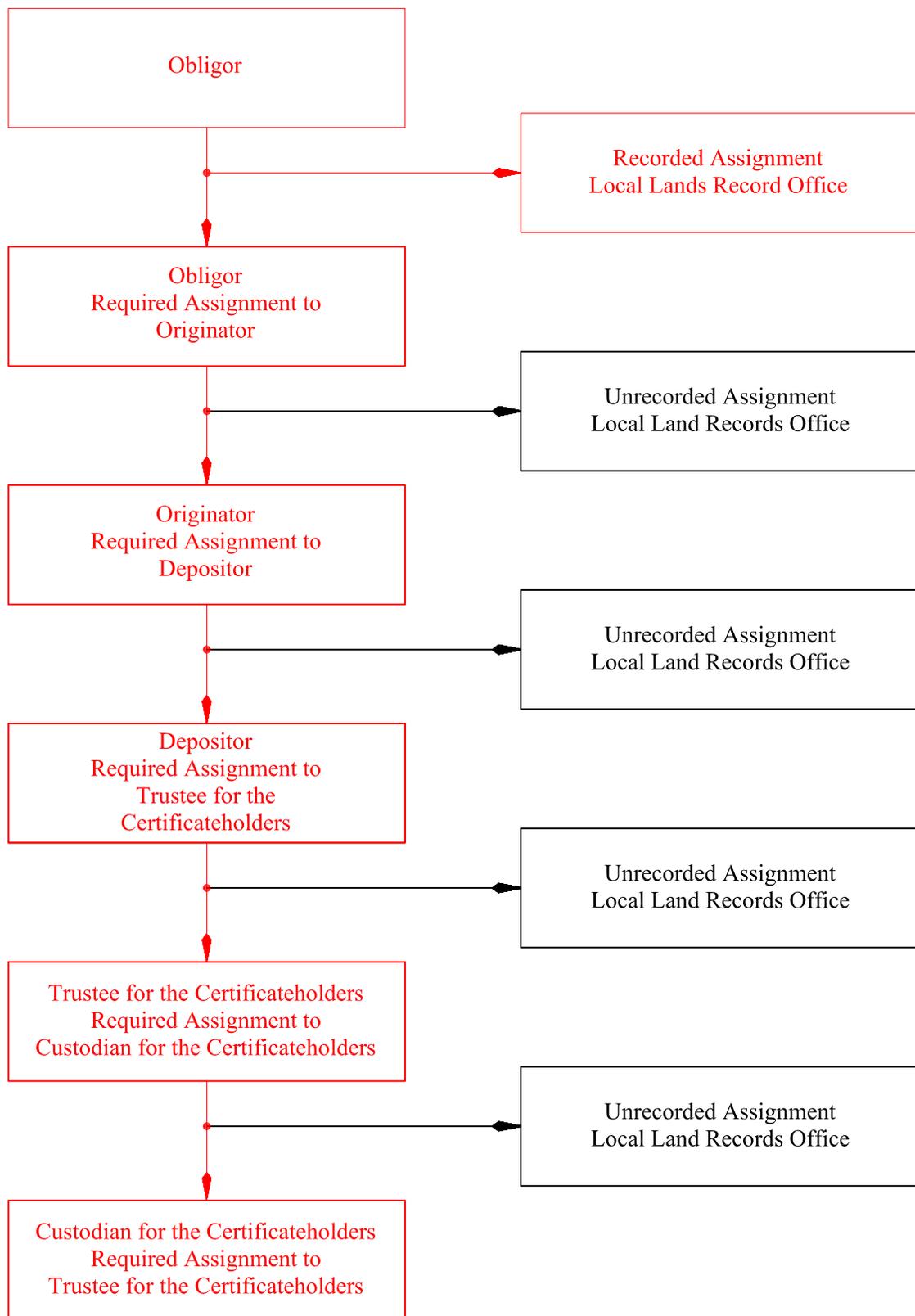
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# Required Assignments Per Pooling and Servicing Agreement



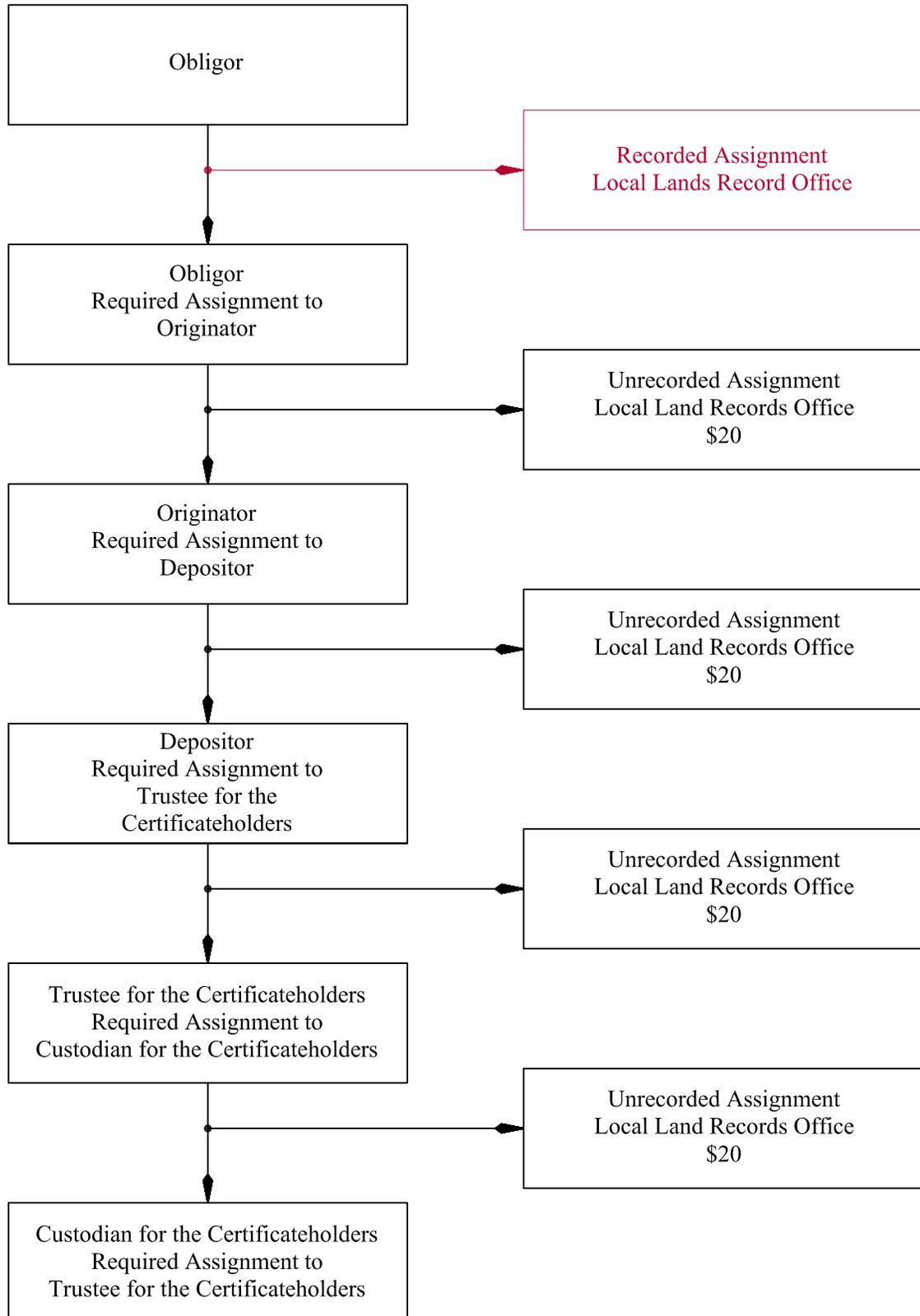
# Required Assignments TEXAS PROPERTY CODE



## TITLE 3 PUBLIC RECORDS CHAPTER 12 RECORDING OF INSTRUMENTS Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY.

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# Required Assignments Per Pooling and Servicing Agreement



# TEXAS PROPERTY CODE

**§11.001. PLACE OF RECORDING.** (a) *To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.*

**§11.004. DUTY OF RECORDER.** (a) *A county clerk shall:(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law;*

**§12.001. INSTRUMENTS CONCERNING PROPERTY.** (a) *An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.*

**§13.001. VALIDITY OF UNRECORDED INSTRUMENT.** *A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.*

## TEXAS BUSINESS AND COMMERCE CODE (UCC)

**§3.201. NEGOTIATION.** *"Negotiation" means a transfer of possession of an instrument by a person other than the issuer to a person who thereby becomes its holder. § negotiation requires transfer of possession of the instrument and its indorsement by the holder.*

**§3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER.** *right to enforce the instrument. § 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. § but negotiation of the instrument does not occur until the indorsement is made. § less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter.*

**§3.204. INDORSEMENT.** *"Indorsement" means a signature, that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument*

### **§3.301. PERSON ENTITLED TO ENFORCE INSTRUMENT**

**§3.302. HOLDER IN DUE COURSE.** *"holder in due course" means the holder of an instrument if 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*

**§3.305. DEFENSES AND CLAIMS IN RECOUPMENT.** *Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following, a defense of the obligor stated in another section of this chapter*

**§3.308. PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE.** *In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument are admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity*

**§3.309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.** *The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.*

**§3.401. SIGNATURE.** *A person is not liable on an instrument unless the person signed the instrument*

**§3.415. OBLIGATION OF INDORSER.** *If an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument according to the terms of the instrument at the time it was indorsed. If an indorsement states that it is made "without recourse" the indorser is not liable to pay the instrument.*

**§3.416. TRANSFER WARRANTIES.** *A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that the warrantor is a person entitled to enforce the instrument; all signatures on the instrument are authentic and authorized; the instrument has not been altered;*

**§3.601. DISCHARGE AND EFFECT OF DISCHARGE.** *The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party that would discharge an obligation to pay money under a simple contract.*

**§3.604. DISCHARGE BY CANCELLATION OR RENUNCIATION.** *A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge; or*

## **Pooling and Servicing Agreement**

*Argent Securities Trust 2006-W4 i.e.*

### *Prospectus*

*The depositor will promptly cause the assignment of each related mortgage loan to be recorded in the appropriate public office for real property records, except for Mortgages held under the MERS(R) System and except in the State of California or in other states where, in the opinion of counsel acceptable to the trustee, recording of the assignment is not required to protect the trustee's interest in the mortgage loan against the claim of any subsequent transferee or any successor to or creditor of the depositor, the master servicer, the relevant mortgage loan seller or any other prior holder of the mortgage loan. If the depositor uses the MERS(R) System, it will deliver evidence that the Mortgage is held for the trustee through the MERS(R) System instead of an assignment of the Mortgage in recordable form.*

**Securities Trust**  
**Pooling and Servicing Agreement**  
**Depositor - Master Servicer - Trustee**

**POOLING AND SERVICING AGREEMENT**  
**ASSET-BACKED PASS-THROUGH CERTIFICATES**

*SECTION 2.01. Conveyance of Mortgage Loans. excerpt (vi)*

*The Master Servicer (in its capacity as Seller) shall promptly (and in no event later than thirty (30) Business Days, subject to extension upon a mutual agreement between the Master Servicer and the Trustee, following the later of (i) the Closing Date, (ii) the date on which the Seller receives the Assignment from the Custodian and (iii) the date of receipt by the Master Servicer of the recording information for a Mortgage) submit or cause to be submitted for recording, at no expense to the Trust Fund or the Trustee, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and shall execute each original Assignment referred to in Section 2.01(iii) above in the following form: "Deutsche Bank National Trust Company, as Trustee under the applicable agreement."*

*SECTION 2.01. Conveyance of Mortgage Loans. (iii) & (iv)*

*(iii) an original Assignment assigned in blank, without recourse; (iv) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;*

**FLORIDA NOTARY PUBLIC LAW**

**Section 117**

**NOTARIES PUBLIC**

*117.105 False or fraudulent acknowledgments; penalty.*

*A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public or who falsely or fraudulently makes a certificate as a notary public or who falsely takes or receives an acknowledgment of the signature on a written instrument is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.*

**HEARING BEFORE THE  
SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL  
PROPERTY  
OF THE  
COMMITTEE ON THE JUDICIARY**

*HOUSE OF REPRESENTATIVES*

*ONE HUNDRED NINTH CONGRESS*

*SECOND SESSION*

*ON*

*H.R. 1458*

*MARCH 9, 2006*

*Serial No. 109-89*

*Prepared Statement of Malcolm L. Morris*

*Malcolm L. Morris, Esq., Professor and Associate Dean, College of Law, Northern Illinois University*

*A notarization in and of itself neither validates a document nor speaks to the truthfulness or accuracy of its contents. The notarization serves a different function, viz, verifying that a document signer is who he or she purports to be and has willingly signed the document*

# **Promissory Notes**

## **Negotiable Instruments**

### **Uniform Commercial Code Texas Business & Commerce Code**

**(Excerpts)**

**Part 2**

# TEXAS BUSINESS & COMMERCE CODE SIGNATURE § 3-401

***I signed a note but that's not it!***

**ORIGINATOR**




**Obligor Signs Original**

Negotiable Instrument

**BCC**

**ESIGN & UETA**



Scan of Paper Note into an Electronic book entry "eNote"



Unenforceable Instrument



Shredder

**Trustee**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement

Trustee

Intentional Voluntary Destruction

Printed out eNote

Unenforceable Instrument



Law Firm  
Legal Action

**Custodian**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement

CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote

Custodian

Unenforceable Instrument

**Signature not that of Obligor**



eVault



Not Presented

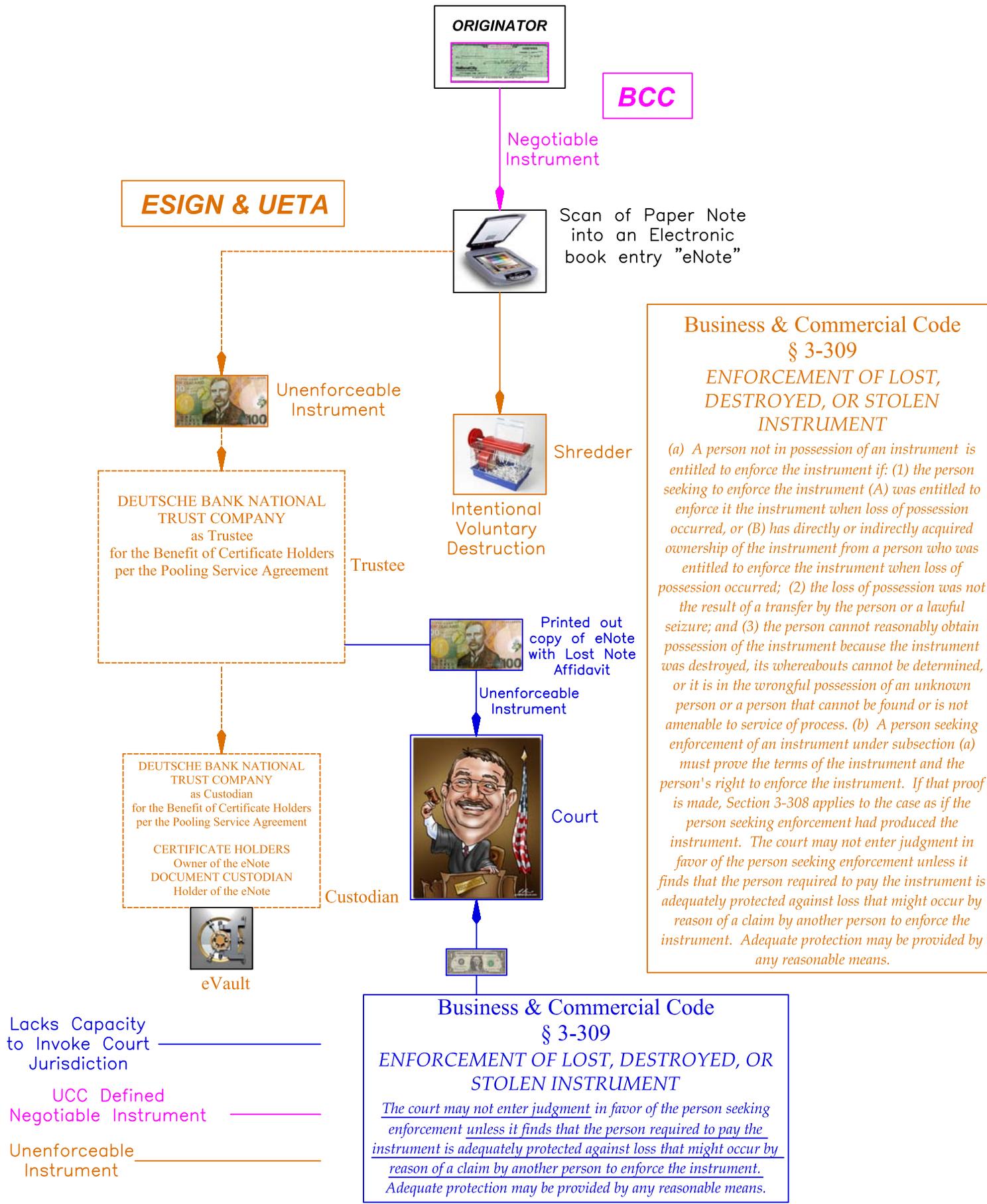
**Original only valid proof of authenticity**



Court

- Lacks Capacity to Invoke Court Jurisdiction \_\_\_\_\_
- UCC Defined Negotiable Instrument \_\_\_\_\_
- Unenforceable Instrument \_\_\_\_\_

# TEXAS BUSINESS & COMMERCE CODE ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT § 3-309



**Lacks Capacity to Invoke Court Jurisdiction** \_\_\_\_\_

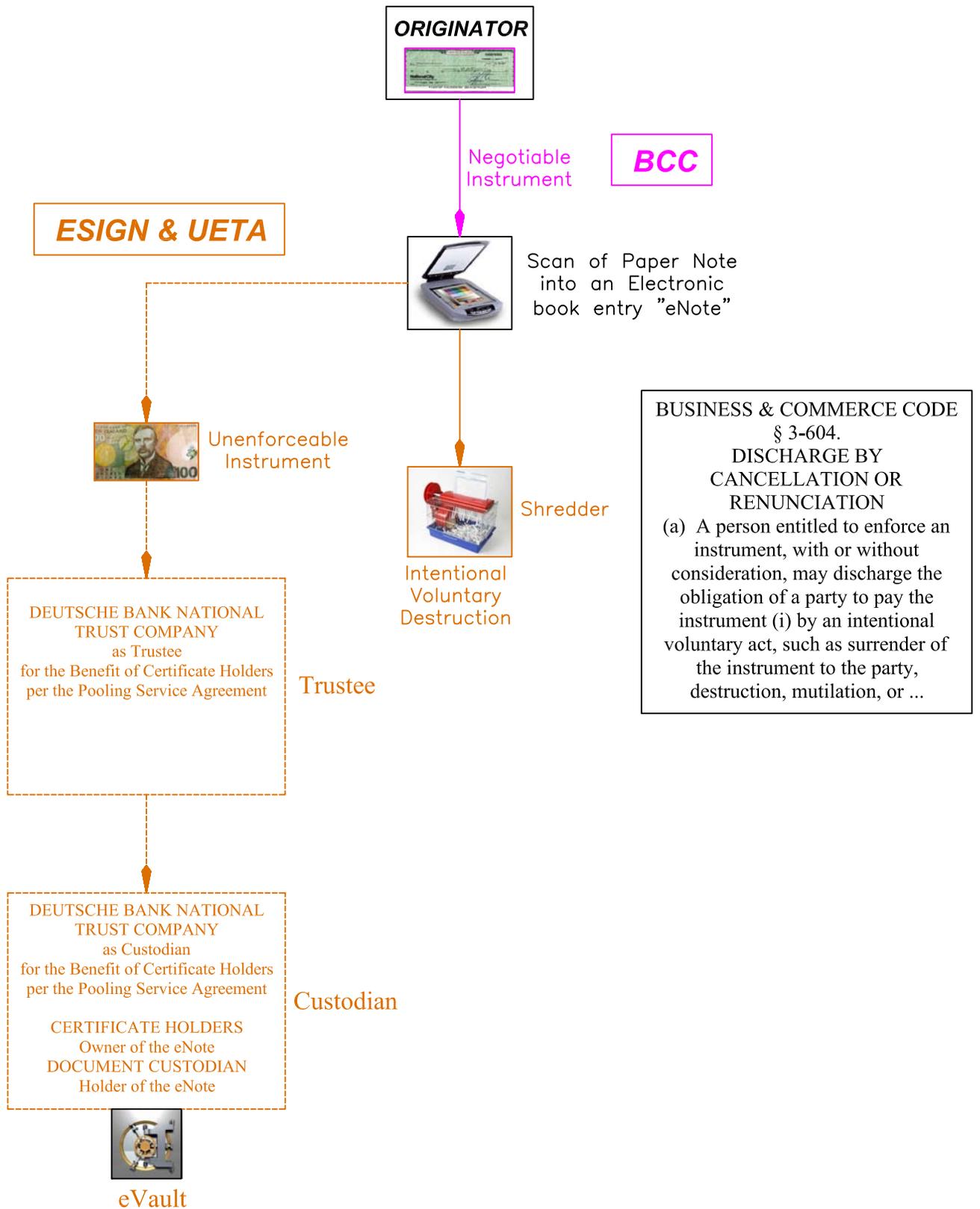
**UCC Defined Negotiable Instrument** \_\_\_\_\_

**Unenforceable Instrument** \_\_\_\_\_

**Business & Commercial Code § 3-309**  
**ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT**

The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

# TEXAS BUSINESS & COMMERCE CODE DISCHARGE BY CANCELLATION OR RENUNCIATION § 3-604



BUSINESS & COMMERCE CODE  
§ 3-604.  
DISCHARGE BY  
CANCELLATION OR  
RENUNCIATION  
(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or ...

UCC Defined  
Negotiable Instrument \_\_\_\_\_

Unenforceable  
Instrument \_\_\_\_\_

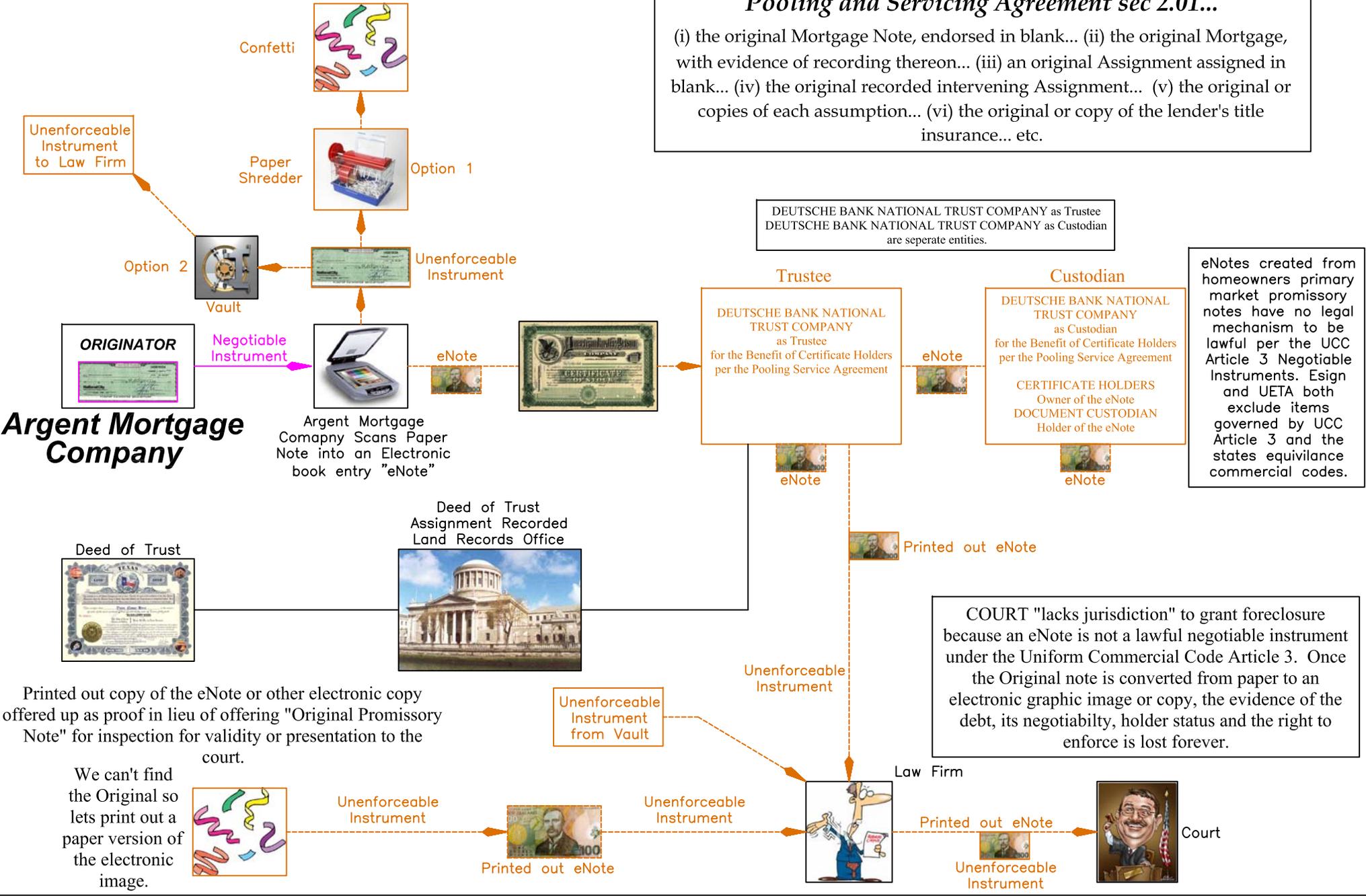
UCC Defined  
Negotiable Instrument

# Why the Original can not be presented!

Unenforceable  
Instrument

**Argent Securities Trust 2006-W4**  
**Pooling and Servicing Agreement sec 2.01...**

(i) the original Mortgage Note, endorsed in blank... (ii) the original Mortgage, with evidence of recording thereon... (iii) an original Assignment assigned in blank... (iv) the original recorded intervening Assignment... (v) the original or copies of each assumption... (vi) the original or copy of the lender's title insurance... etc.



# **Commerce and Trade**

## **15 USC Title 15**

### **15 USC Section 77nnn**

#### **Sec. 77nnn**

**Reports by obligor;  
evidence of compliance with  
indenture provisions**

# Commerce and Trade - 15 USC

## Section 4

### Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

# Commerce and Trade - 15 USC

## Section 2

### Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

# Commerce and Trade - 15 USC Sec. 77nnn

(excerpt)

Reports by obligor; evidence of compliance with indenture provisions

(b) Evidence of recording of indenture.

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee -

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and (2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and re-filing of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

# Argent Securities Trust 2006-W4

Accession Number 882377-6-1599

## Pooling and Servicing Agreement

ARGENT SECURITIES INC.

Depositor

AMERIQUEST MORTGAGE COMPANY

Master Servicer

and

DEUTSCHE BANK NATIONAL TRUST COMPANY

Trustee

POOLING AND SERVICING AGREEMENT

Dated as of [April 1, 2006](#)

ASSET-BACKED PASS-THROUGH CERTIFICATES

SERIES 2006-W4

### SECTION 2.01. Conveyance of Mortgage Loans. excerpt (vi)

The Master Servicer (in its capacity as Seller) shall promptly (and in no event later than thirty (30) Business Days, subject to extension upon a mutual agreement between the Master Servicer and the Trustee, following the later of (i) the Closing

Date, (ii) the date on which the Seller receives the Assignment from the Custodian and (iii) the date of receipt by the Master Servicer of the recording information for a Mortgage) submit or cause to be submitted for recording, at no expense to the Trust Fund or the Trustee, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and shall execute each original Assignment referred to in Section 2.01(iii) above in the following form: "*Deutsche Bank National Trust Company, as Trustee under the applicable agreement.*"

### SECTION 2.01. Conveyance of Mortgage Loans. (iii) & (iv)

(iii) an original Assignment assigned in blank, without recourse;

(iv) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;

# Commerce and Trade - 15 USC

## Sec. 77ccc

(excerpt)

### Definitions

**(7) The term "indenture" means any mortgage, deed of trust, trust or other indenture, or similar instrument or agreement (including any supplement or amendment to any of the foregoing), under which securities are outstanding or are to be issued, whether or not any property, real or personal, is, or is to be, pledged, mortgaged, assigned, or conveyed thereunder.**

# Commerce and Trade - 15 USC

## Assignments (Recording/ Opinion of Counsel)

Commerce and Trade - 15 USC Sec. 77nnn  
 Reports by obligor; evidence of compliance with indenture provisions  
 (b) Evidence of recording of indenture.

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee - (1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and (2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and refiling of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.



Obligor

Assignment

Originator

Assignment

Securitizer



Indenture Security

Title 15 USC Section 77

Title 15 USC 77nnn

Assignment

Depositor

Recording Required

Opinion of Counsel

OR

Assignment

Trustee

Texas Property Code 11.001

Texas Property Code 12.001

Texas Property Code 13.001

Assignment

Security Custodian

Texas Property Code

11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.

12.001. INSTRUMENTS CONCERNING PROPERTY. (a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

13.001. VALIDITY OF UNRECORDED INSTRUMENT. A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

**CITE**

15 USC Sec. 77nn

**EXPCITE**

TITLE 15 - COMMERCE AND TRADE

CHAPTER 2A - SECURITIES AND TRUST INDENTURES

SUBCHAPTER III - TRUST INDENTURES

**HEAD**

Sec. 77nn. Reports by obligor; evidence of compliance with indenture provisions

**STATUTE**

**(a) Periodic reports**

Each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby shall -

(1) file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78o(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c) of this section;

(3) transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mm of this title, such summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission; and

(4) furnish to the indenture trustee, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of such obligor's compliance with all conditions and covenants under the indenture. For purposes of this paragraph, such compliance shall be determined without regard to any period of grace or requirement of notice provided under the indenture. The rules and regulations prescribed under this subsection shall be such as are necessary or appropriate in the public interest or for the protection of investors, having due regard to the types of indentures, and the nature of the business of the class of obligors affected thereby, and the amount of indenture securities outstanding under such indentures, and, in the case of any such rules and regulations prescribed after the indentures to which they apply have been qualified under this subchapter, the additional expense, if any, of complying with such rules and regulations. Such rules and regulations may be prescribed either before or after qualification becomes effective as to any such indenture.

**(b) Evidence of recording of indenture**

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property, the obligor upon the indenture securities shall furnish to the indenture trustee

(1) promptly after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel the indenture has been properly recorded and filed so as to make effective the lien intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien effective; and

(2) at least annually after the execution and delivery of the indenture, an opinion of counsel (who may be of counsel for such obligor) either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording, and re-filing of the indenture as is necessary to maintain the lien of such indenture, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.

**(c) Evidence of compliance with conditions precedent**

The obligor upon the indenture securities shall furnish to the indenture trustee evidence of compliance with the conditions precedent, if any, provided for in the indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of the indenture securities, to the release or the release and substitution of property subject to the lien of the indenture, to the satisfaction and discharge of the indenture, or to any other action to be taken by the indenture trustee at the request or upon the application of such obligor. Such evidence shall consist of the following:

(1) certificates or opinions made by officers of such obligor who are specified in the indenture, stating that such conditions precedent have been complied with;

(2) an opinion of counsel (who may be of counsel for such obligor) stating that in his opinion such conditions precedent have been complied with; and

(3) in the case of conditions precedent compliance with which is subject to verification by accountants (such as conditions with respect to the preservation of specified ratios, the amount of net quick assets, negative-pledge clauses, and other similar specific conditions), a certificate or opinion of an accountant, who, in the case of any such conditions precedent to the authentication and delivery of indenture securities, and not otherwise, shall be an independent public accountant selected or approved by the indenture trustee in the exercise of reasonable care, if the aggregate principal amount of such indenture securities and of other indenture securities authenticated and delivered since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10 per centum or more of the aggregate amount of the indenture securities at the time outstanding; but no certificate or opinion need be made by any person other than an officer or employee of such obligor who is specified in the indenture, as to (A) dates or periods not covered by annual reports required to be filed by the obligor, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in paragraph (3) of subsection (d) of this section, or (C) the adequacy of depreciation, maintenance, or repairs.

**(d) Certificates of fair value**

If the indenture to be qualified is or is to be secured by the mortgage or pledge of property or securities, the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value -

(1) of any property or securities to be released from the lien of the indenture, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under such indenture in contravention of the provisions thereof, and requiring further that such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, if the fair value of such property or securities and of all other property or securities released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this paragraph is less than \$25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding;

(2) to such obligor of any securities (other than indenture securities and securities secured by a lien prior to the lien of the indenture upon property subject to the lien of the indenture), the deposit of which with the trustee is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate or the release of property or securities subject to the lien of the indenture, and requiring further that if the fair value to such obligor of such securities and of all other such securities made the basis of any such authentication and delivery, withdrawal, or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this paragraph, is 10 per centum or more of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to such obligor of all other such securities so deposited since the commencement of the current calendar year as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited, if the fair value thereof to such obligor as set forth in the certificate or opinion required by this paragraph is less than \$25,000 or less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding; and (3) to such obligor of any property the subjection of which to the lien of the indenture is to be made the basis for the authentication and delivery of indenture securities, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of the indenture, and requiring further that if (A) within six months prior to the date of acquisition thereof by such obligor, such property has been used or operated, by a person or persons other than such obligor, in a business similar to that in which it has been or is to be used or operated by such obligor, and (B) the fair value to such obligor of such property as set forth in such certificate or opinion is not less than \$25,000 and not less than 1 per centum of the aggregate principal amount of the indenture securities at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of indenture securities, shall cover the fair value to the obligor of any property so used or operated which has been so subjected to the lien of the indenture since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished. The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that any such certificate or opinion may be made by an officer or employee of the obligor upon the indenture securities who is duly authorized to make such certificate or opinion by the obligor from time to time, except in cases in which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

**(e) Recitals as to basis of certificate or opinion**

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture (other than certificates provided pursuant to subsection (a)(4) of this section) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with. (f) Parties may provide for additional evidence. Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

**Lost  
Note  
Affidavits**

# Lost Candy Bar

## (Lost Note Affidavits)

### Uniform Commercial Code

#### § 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument

(A) was entitled to enforce it the instrument when loss of possession occurred, or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

#### § 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process to or with the record with the present intent to adopt or accept the record.

#### Scenario 1

The seller takes all the slips just before Christmas and enforces the slips and collects a dollar bill from all the buyers that signed slips and buys new candy bar display. Slips can be either negotiable or non-negotiable.

#### Scenario 2

The seller takes the slips and bundles a 100 of them together and sells these slips to the bank. Banks pays the seller who then has enough money to buy a new candy bar display case so he can sell more candy bars. The slips are required to be negotiable per UCC.

#### Scenario 3

(Enter the world of emerging technology – Primary Market Book-Entry)

(Legal Authority granted by the Esign Act and UETA laws) – False

(The Uniform Commercial Code governs negotiable instruments)

Seller takes all the slips and scans the slips into a graphic image and enters all the data into a spreadsheet and saves all this newly created electronic data onto a CD-ROM. Seller then sells this CD-ROM to the bank. The seller doesn't want all the old slips sitting in his till as he has no

room so he takes them out back and destroys them. (§ 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction...) It is of no difference to the seller whether the paper exists or not for he has been paid. Where are the Candy Cops when you need them?

The bank sells this CD-ROM to Biggie Bank. Biggie Bank wants to enforce the slips and collects his dollar bill but seller says prove to me I owe you a dollar bill. Biggie Bank then has a Vice President sign an affidavit because his title sounds impressive. Teller then prints out the graphic image of the slip and attaches to the affidavit and submits to the courts as proof so biggie Bank can have a new replacement slip. Biggie Bank relies upon the UCC to support the enforcement action.

(§ 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

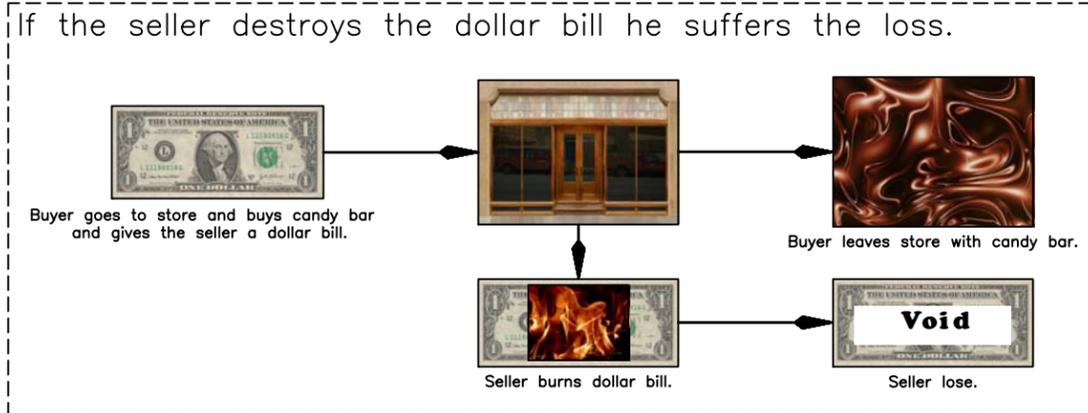
(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means. § 3-308.

PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3-402(a).

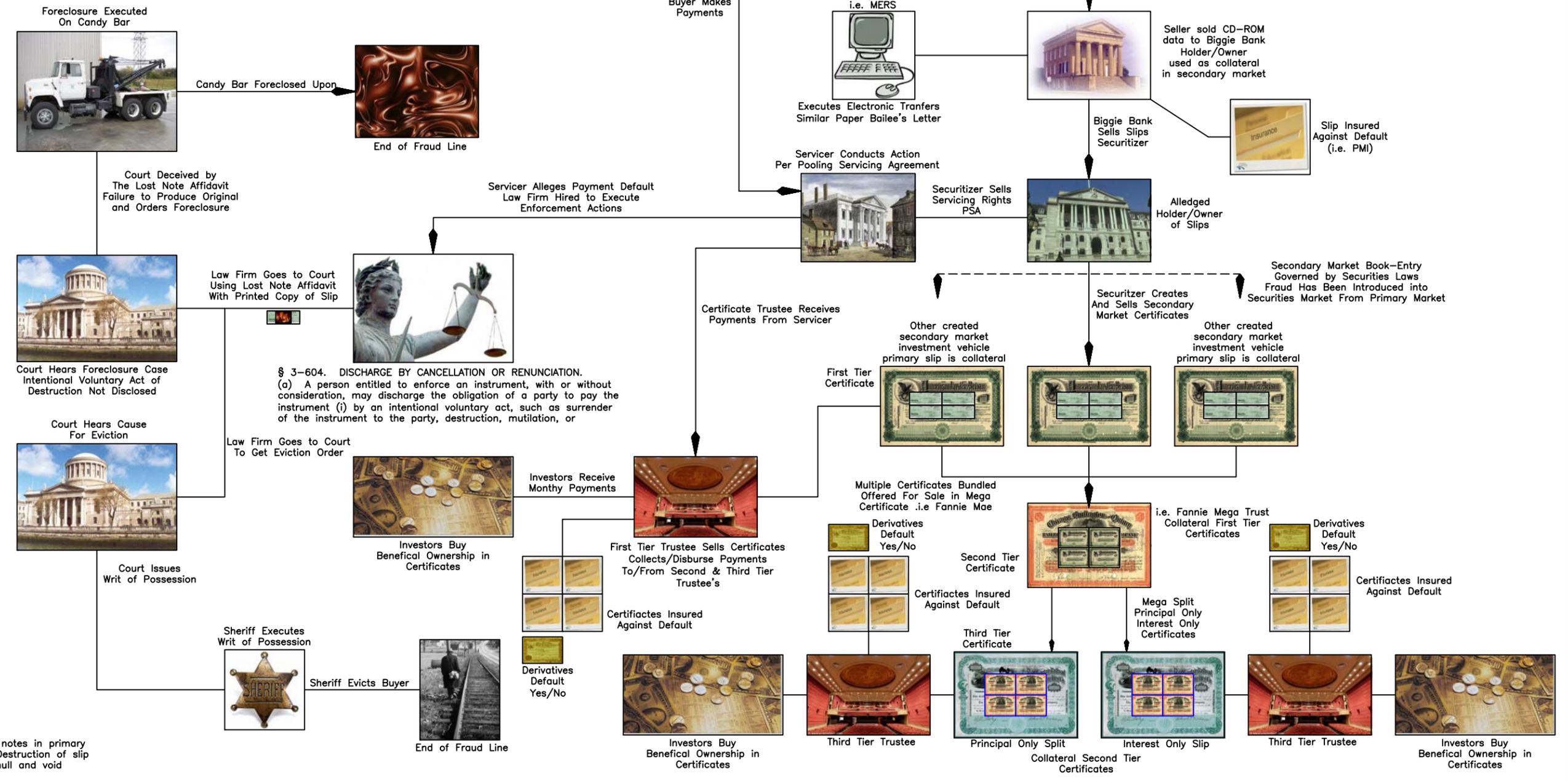
(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.)

Biggie Bank has no right to enforce the slip and go collect the dollar bill because the seller intentional and voluntarily destroyed the slip which rendered the slip null and void.

# Lost Candy Bar Lost Note Affidavits - UCC



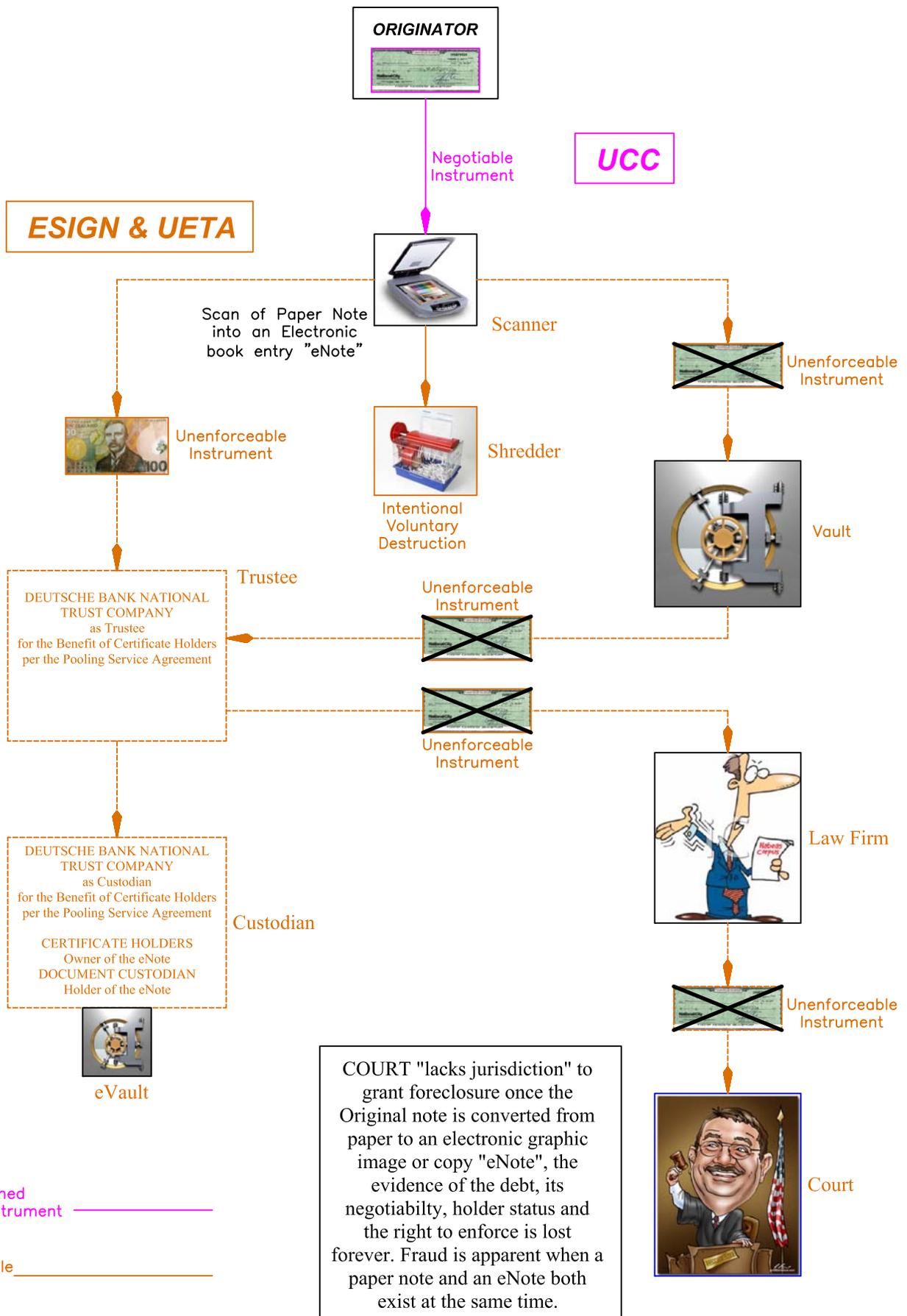
If the seller destroys the slip he does not suffer the loss due to selling the loss along the line.



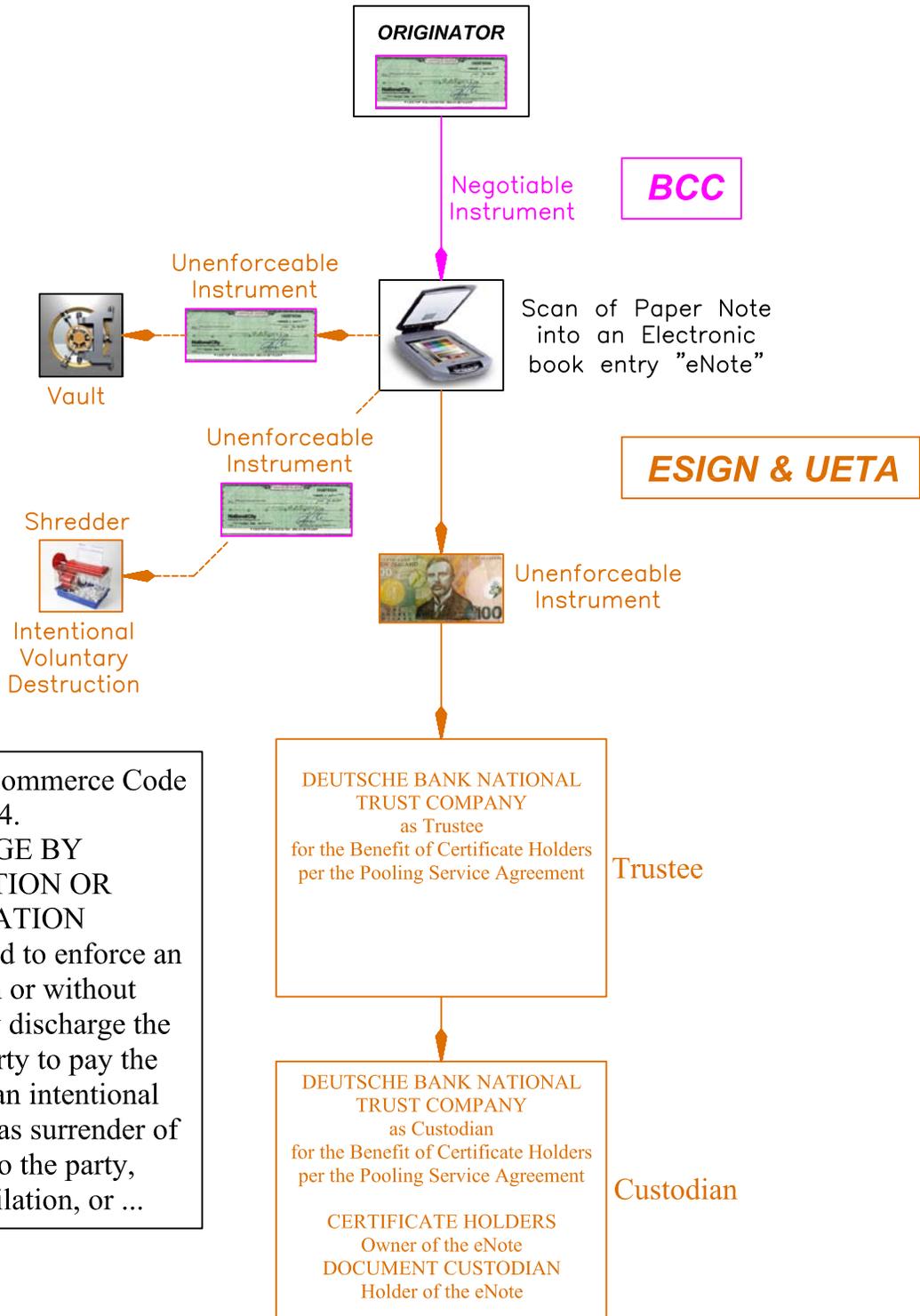
No law to support electronic notes in primary market Intentional Voluntary Destruction of slip renders debt obligation null and void

# Graphics

# UNIFORM COMMERCIAL CODE



**TEXAS BUSINESS & COMMERCE CODE  
HOLDER IN DUE COURSE  
§ 3-302**



Texas Business & Commerce Code  
§ 3-604.

**DISCHARGE BY  
CANCELLATION OR  
RENUNCIATION**

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or ...

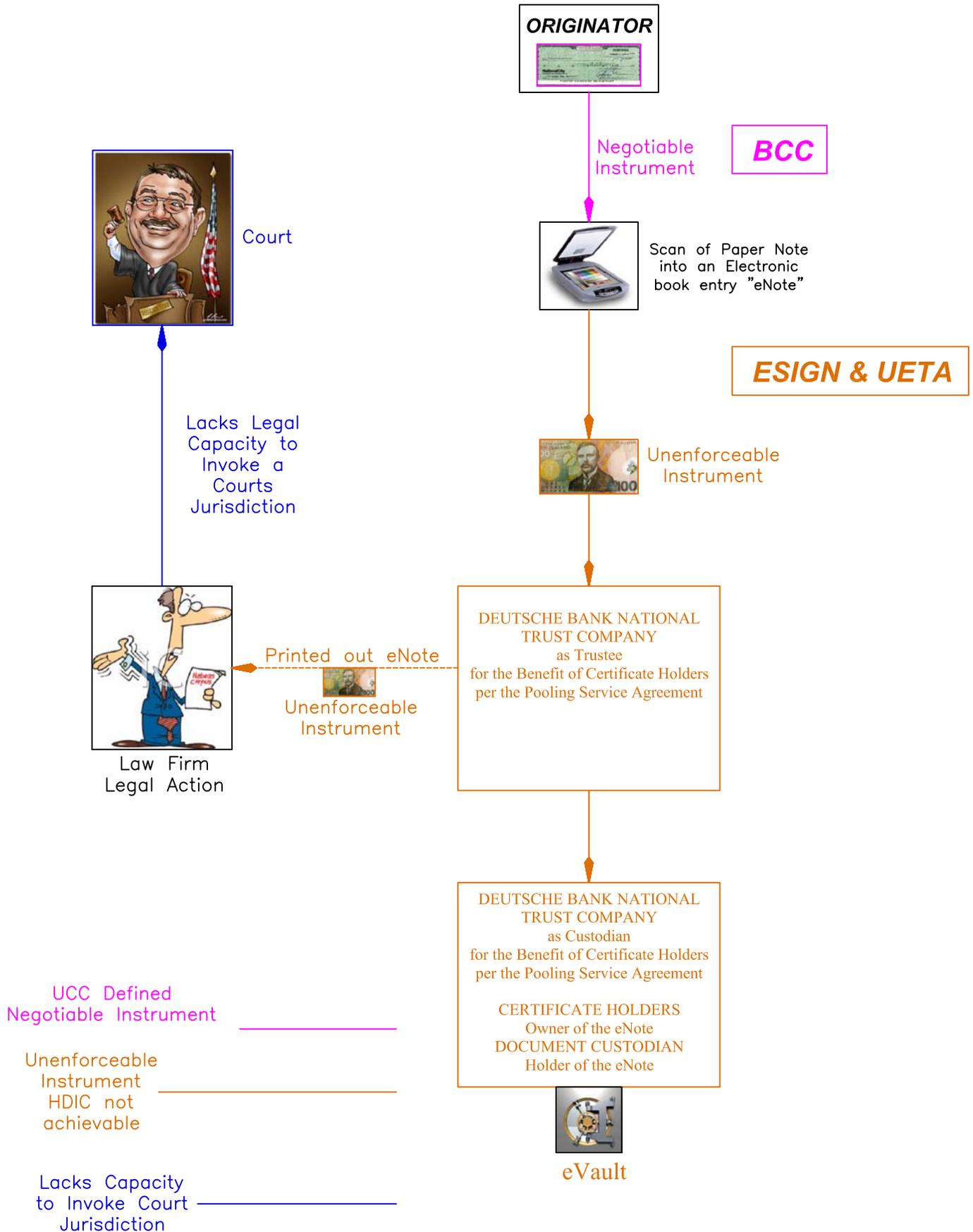
UCC Defined  
Negotiable Instrument \_\_\_\_\_

Unenforceable  
Instrument \_\_\_\_\_  
HDIC not  
achievable

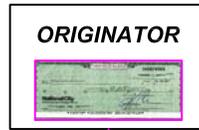


eVault

# TEXAS BUSINESS & COMMERCE CODE DEFENSES AND CLAIMS IN RECOUPMENT § 3-305



# TEXAS BUSINESS & COMMERCE CODE ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT § 3-309



**BCC**

Negotiable Instrument

**ESIGN & UETA**



Scan of Paper Note into an Electronic book entry "eNote"



Unenforceable Instrument



Shredder

Intentional Voluntary Destruction

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders per the Pooling Service Agreement

Trustee



Printed out copy of eNote with Lost Note Affidavit

Unenforceable Instrument

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders per the Pooling Service Agreement

CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote

Custodian



Court



eVault



**Business & Commercial Code  
§ 3-309  
ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT**

*The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.*

**Business & Commercial Code  
§ 3-309  
ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT**

*(a) A person not in possession of an instrument is entitled to enforce the instrument if: (1) the person seeking to enforce the instrument (A) was entitled to enforce it the instrument when loss of possession occurred, or (B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred; (2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and (3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process. (b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.*

Lacks Capacity to Invoke Court Jurisdiction \_\_\_\_\_

UCC Defined Negotiable Instrument \_\_\_\_\_

Unenforceable Instrument \_\_\_\_\_

# TEXAS BUSINESS & COMMERCE CODE SIGNATURE § 3-401

**I signed a note but that's not it!**

**ORIGINATOR**



**Obligor Signs Original**

Negotiable Instrument

**BCC**

**ESIGN & UETA**



Scan of Paper Note into an Electronic book entry "eNote"



Unenforceable Instrument



Shredder

**Trustee**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement

Trustee

Intentional Voluntary Destruction

Printed out eNote

Unenforceable Instrument



Law Firm  
Legal Action

**Custodian**

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement

CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote

Custodian

Unenforceable Instrument

**Signature not that of Obligor**



eVault



Not Presented

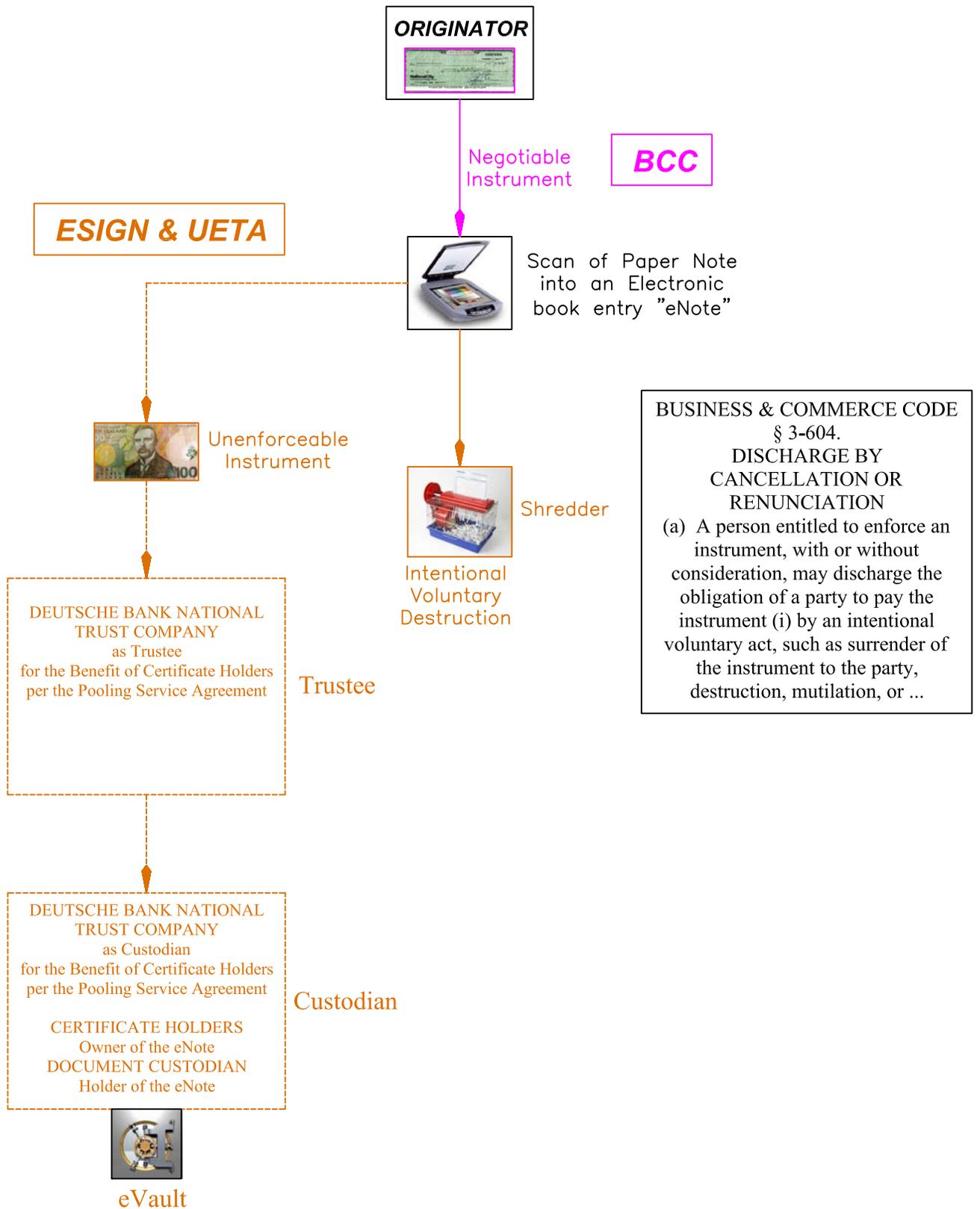
**Original only valid proof of authenticity**



Court

- Lacks Capacity to Invoke Court Jurisdiction \_\_\_\_\_
- UCC Defined Negotiable Instrument \_\_\_\_\_
- Unenforceable Instrument \_\_\_\_\_

# TEXAS BUSINESS & COMMERCE CODE DISCHARGE BY CANCELLATION OR RENUNCIATION § 3-604

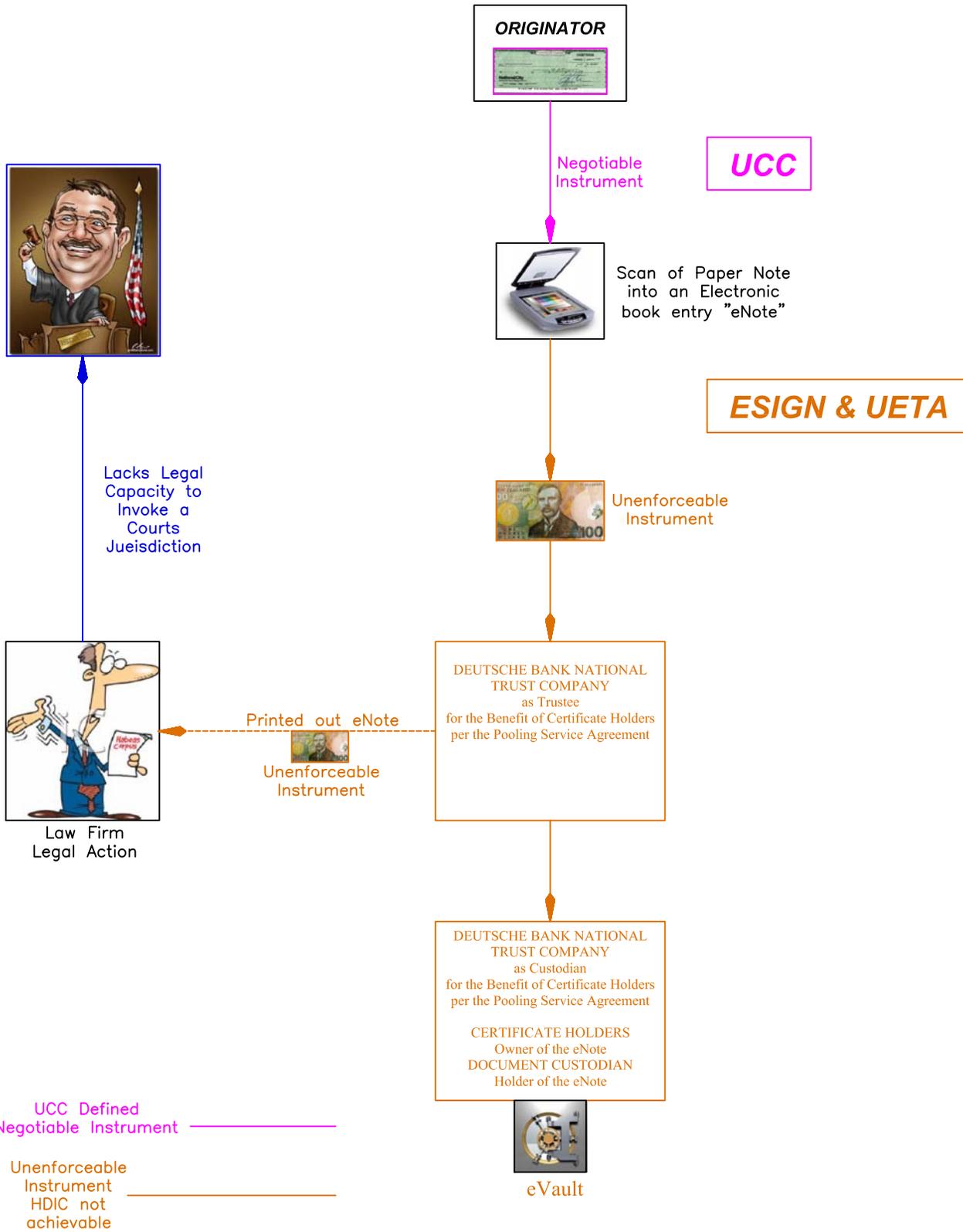


BUSINESS & COMMERCE CODE  
§ 3-604.  
DISCHARGE BY  
CANCELLATION OR  
RENUNCIATION  
(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or ...

UCC Defined  
Negotiable Instrument \_\_\_\_\_

Unenforceable  
Instrument \_\_\_\_\_

# UCC Article 3 DEFENSES AND CLAIMS IN RECOUPMENT § 3-305



UCC Defined Negotiable Instrument \_\_\_\_\_

Unenforceable Instrument \_\_\_\_\_  
 HDIC not achievable

Lacks Capacity to Invoke Court Jurisdiction \_\_\_\_\_

# UCC Article 3 ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT § 3-309



Negotiable Instrument

UCC

**ESIGN & UETA**



Scan of Paper Note into an Electronic book entry "eNote"



Unenforceable Instrument



Shredder

Intentional Voluntary Destruction

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders per the Pooling Service Agreement

Trustee

DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders per the Pooling Service Agreement  
  
CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote

Custodian



Unenforceable Instrument

Printed out copy of eNote with Lost Note Affidavit



eVault

Lacks Capacity to Invoke Court Jurisdiction

UCC Defined Negotiable Instrument

Unenforceable Instrument

Uniform Commercial Code § 3-604.  
**DISCHARGE BY CANCELLATION OR RENUNCIATION**  
(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or ...

Uniform Commercial Code § 3-309  
**ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT**  
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Uniform Commercial Code § 3-309  
**ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT**  
*The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.*



Court



# UCC Article 3 SIGNATURE § 3-401

***I signed a note but that's not it!***

**ORIGINATOR**



**Obligor Signs Original**

Negotiable Instrument

**UCC**

**ESIGN & UETA**



Scan of Paper Note into an Electronic book entry "eNote"



Unenforceable Instrument



Shredder

Intentional Voluntary Destruction

Trustee  
DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement

Printed out eNote



Unenforceable Instrument



Law Firm  
Legal Action

Custodian  
DEUTSCHE BANK NATIONAL TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement  
  
CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote

Unenforceable Instrument



**Signature not that of Obligor**



eVault

Lacks Capacity to Invoke Court Jurisdiction



Not Presented

**Original only valid proof of authenticity**

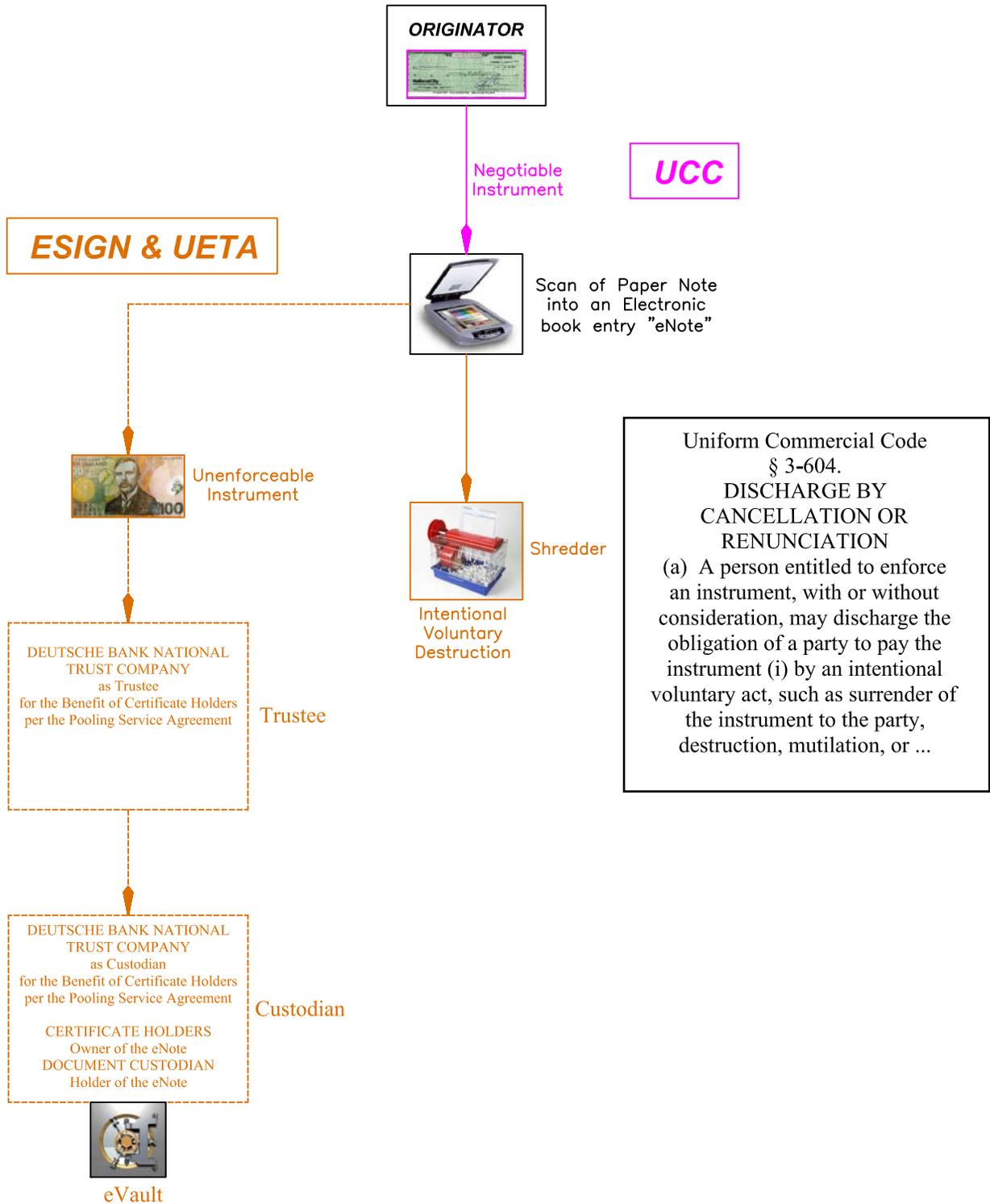


Court

UCC Defined Negotiable Instrument

Unenforceable Instrument

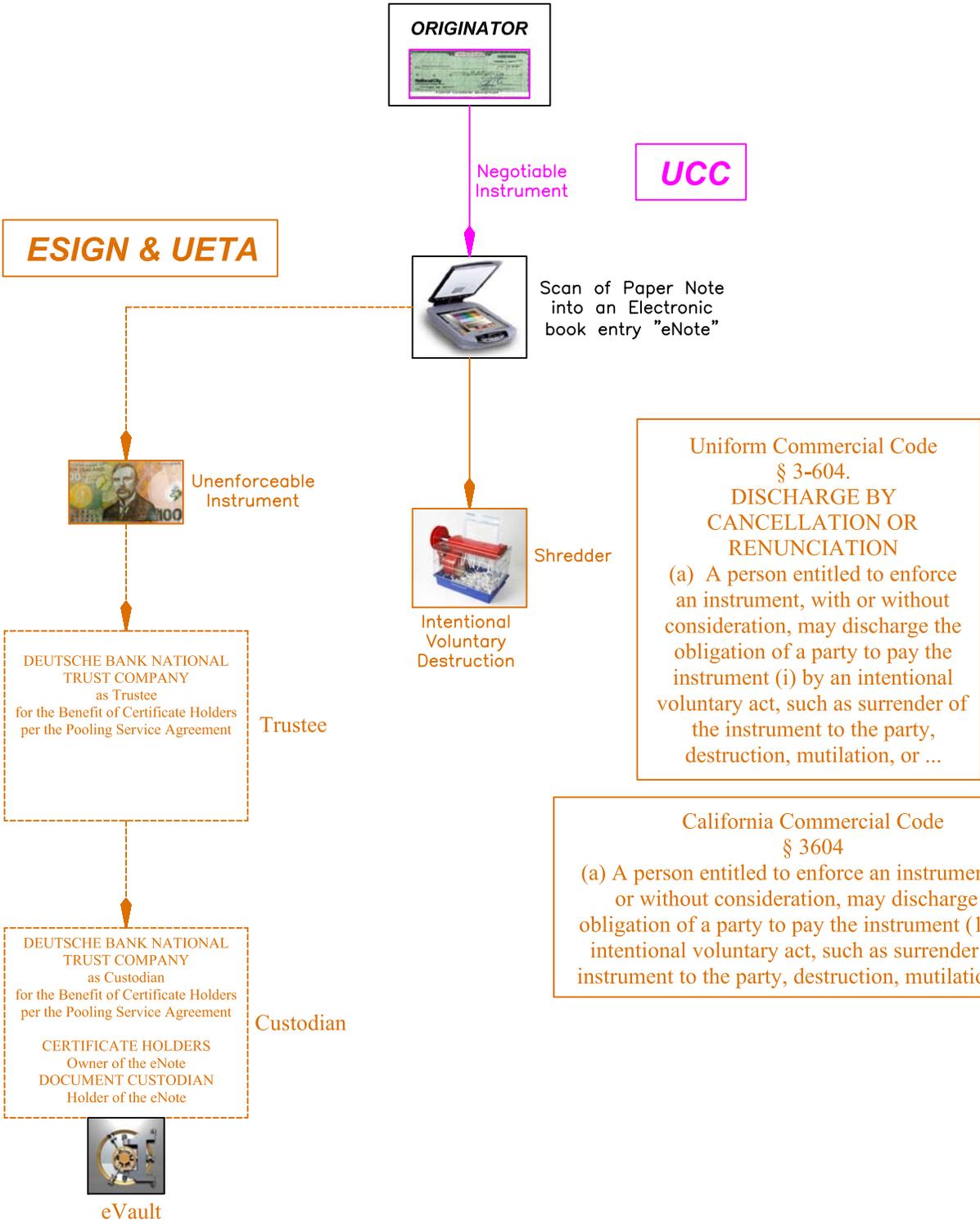
# UCC Article 3 DISCHARGE BY CANCELLATION OR RENUNCIATION § 3-604



UCC Defined Negotiable Instrument \_\_\_\_\_

Unenforceable Instrument \_\_\_\_\_

**CALIFORNIA CIVIL CODE § 2924  
CALIFORNIA COMMERCE CODE § 3604**

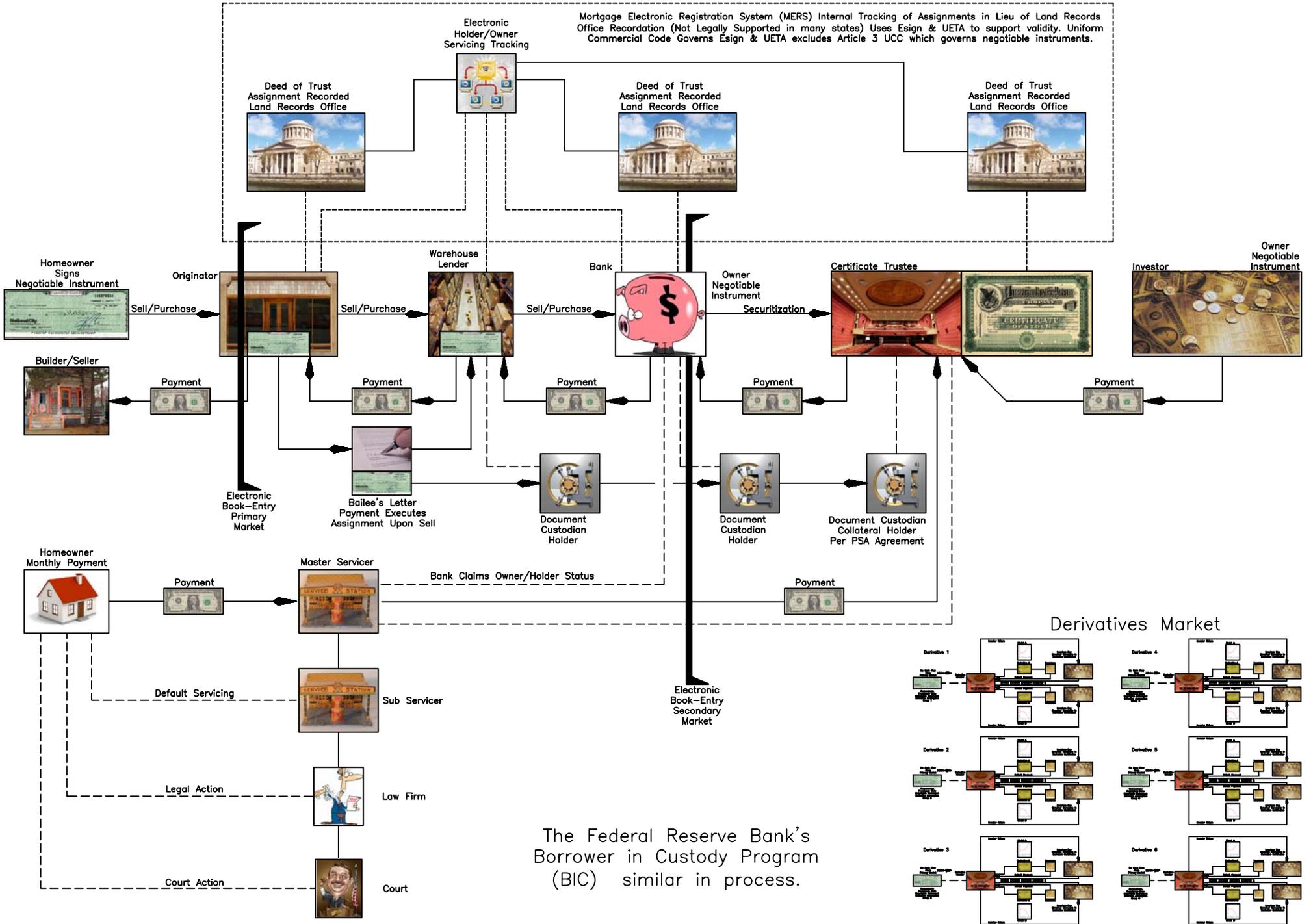


UCC Defined Negotiable Instrument \_\_\_\_\_

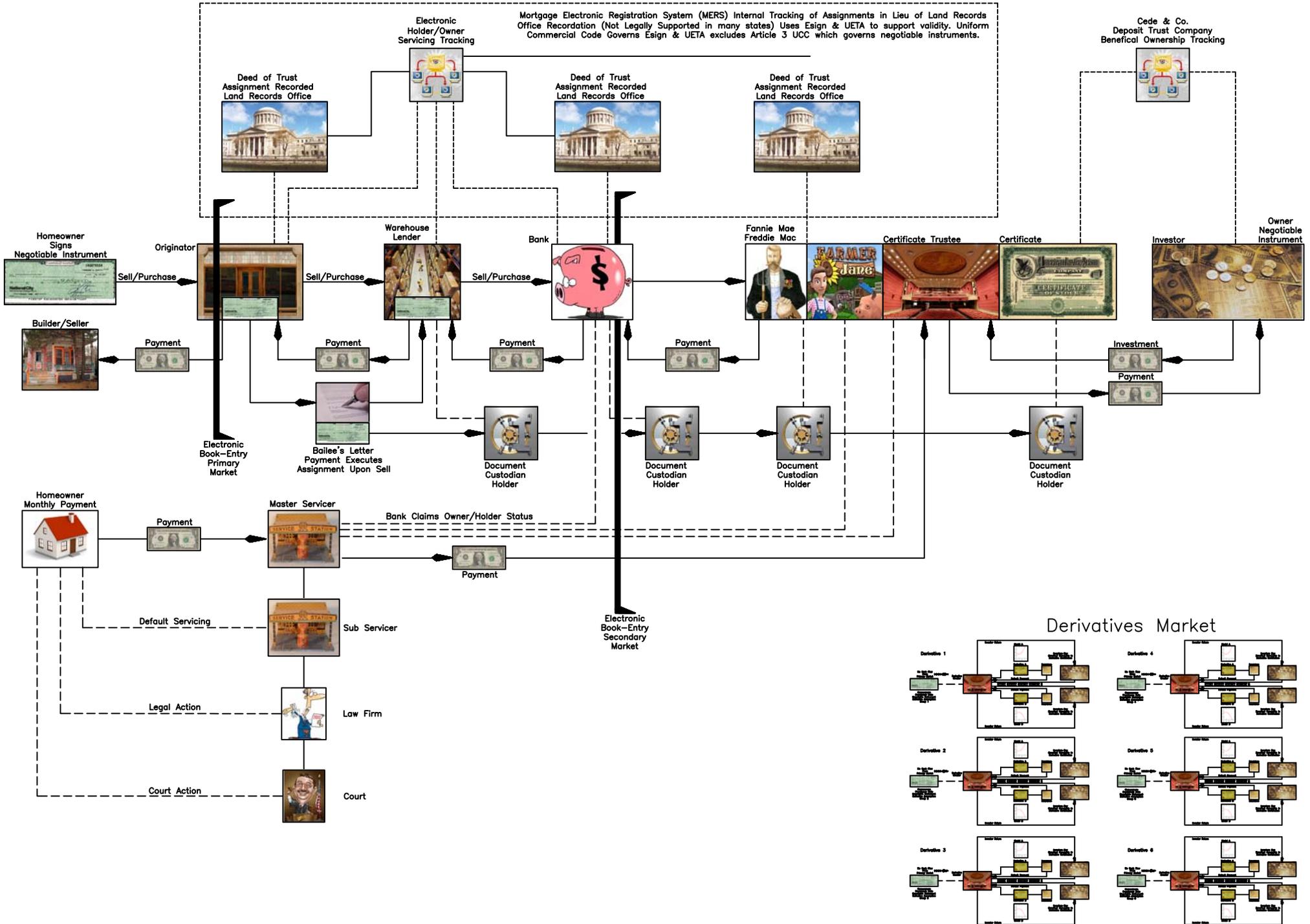
Unenforceable Instrument \_\_\_\_\_



# Follow the (NOTE) Negotiable Instrument / Deed of Trust Assignments

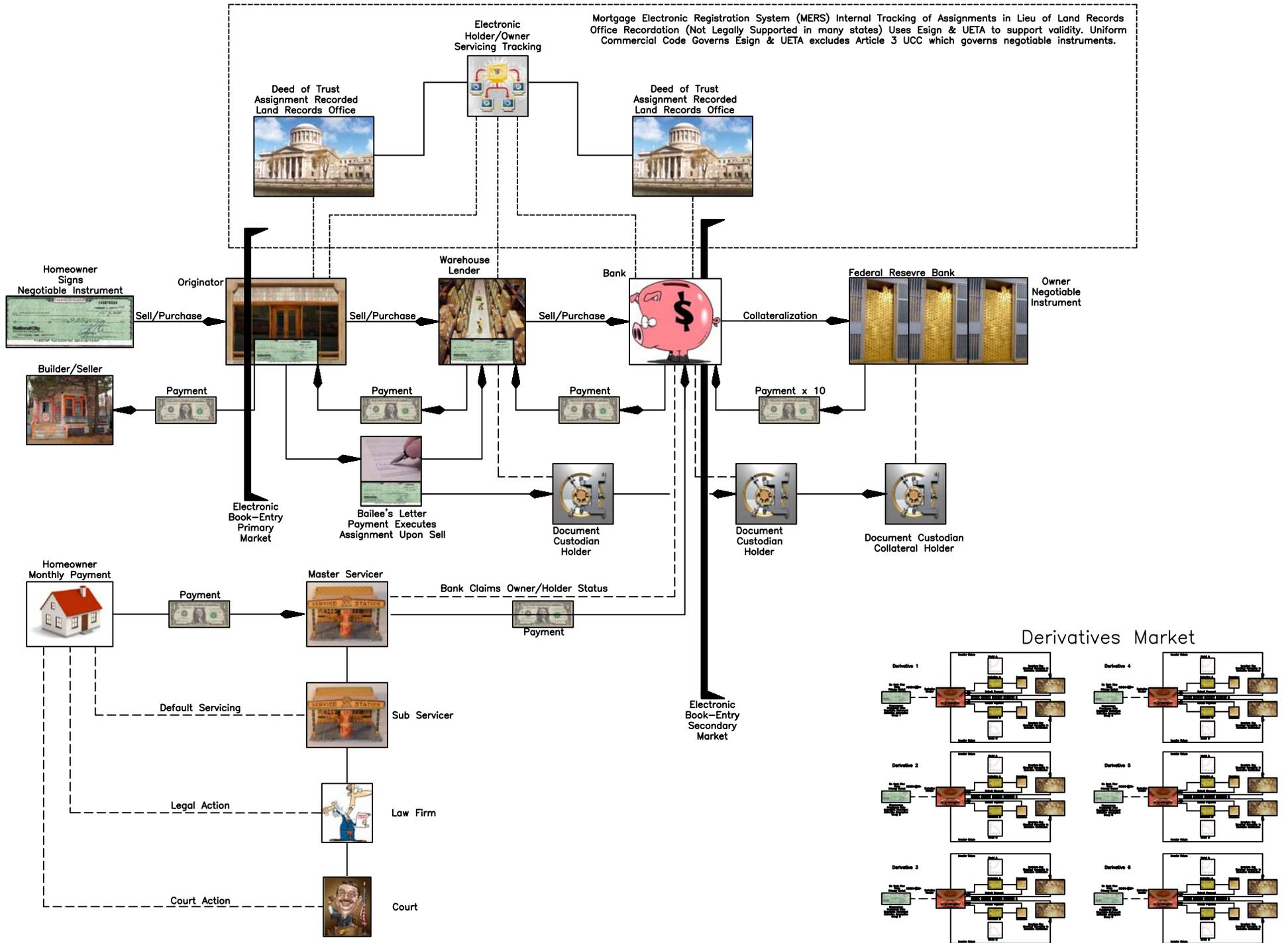


Follow the (NOTE) Negotiable Instrument / Deed of Trust Assignments / Fannie – Freddie

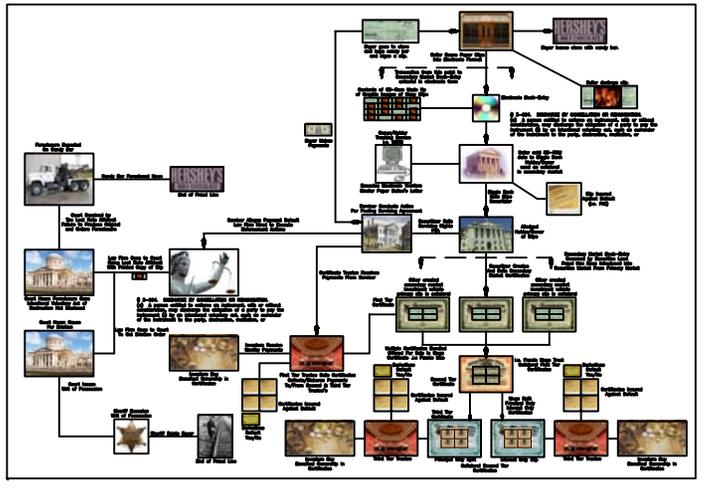
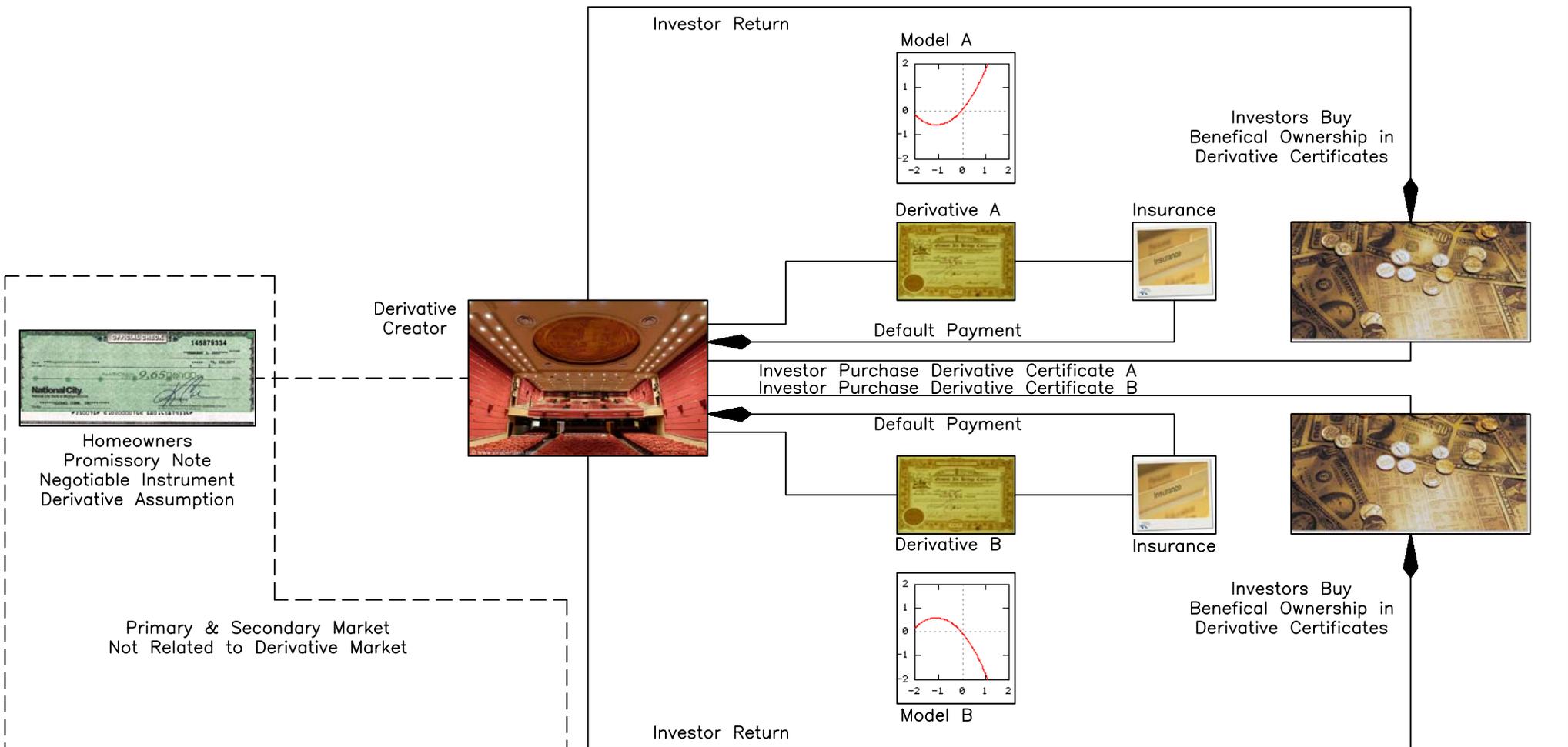


# Follow the (NOTE) Negotiable Instrument / Deed of Trust Assignments / BIC Program

Mortgage Electronic Registration System (MERS) Internal Tracking of Assignments in Lieu of Land Records Office Recordation (Not Legally Supported in many states) Uses Esign & UETA to support validity. Uniform Commercial Code Governs Esign & UETA excludes Article 3 UCC which governs negotiable instruments.

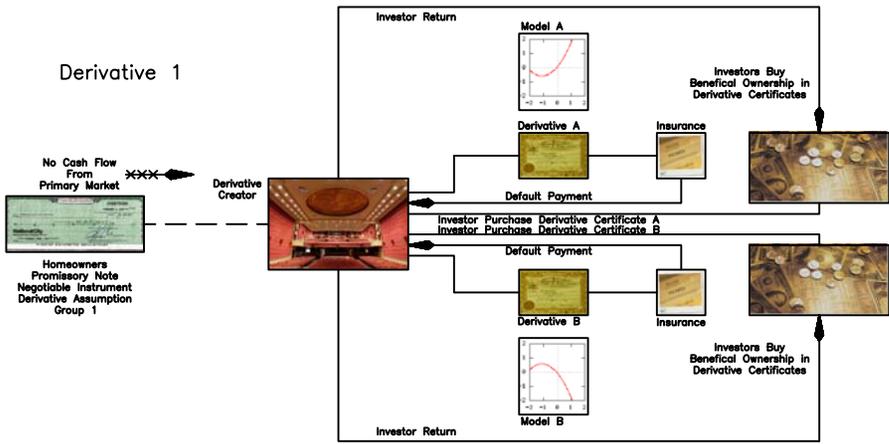


# Derivatives Market

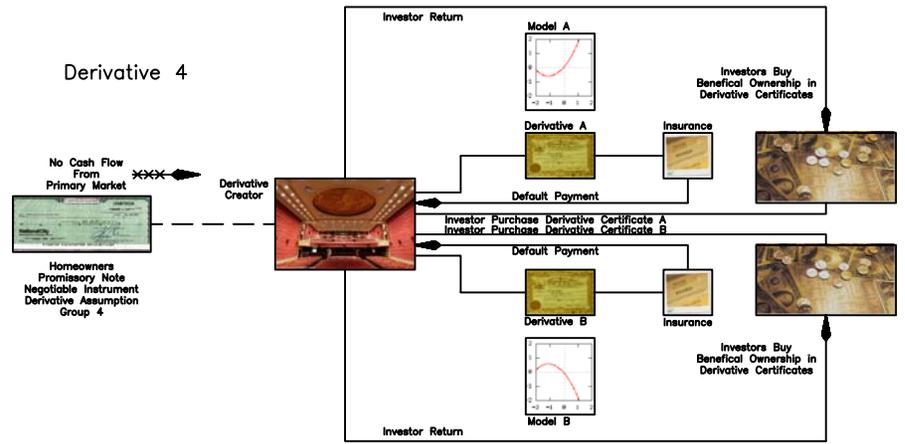


# Derivatives Market

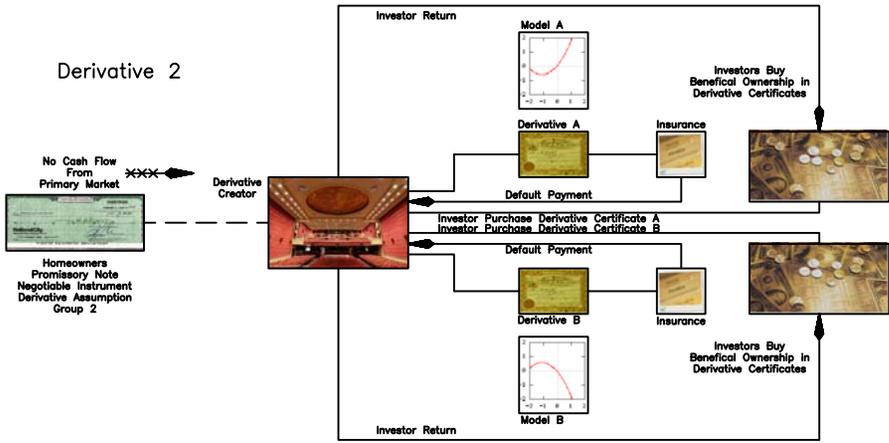
### Derivative 1



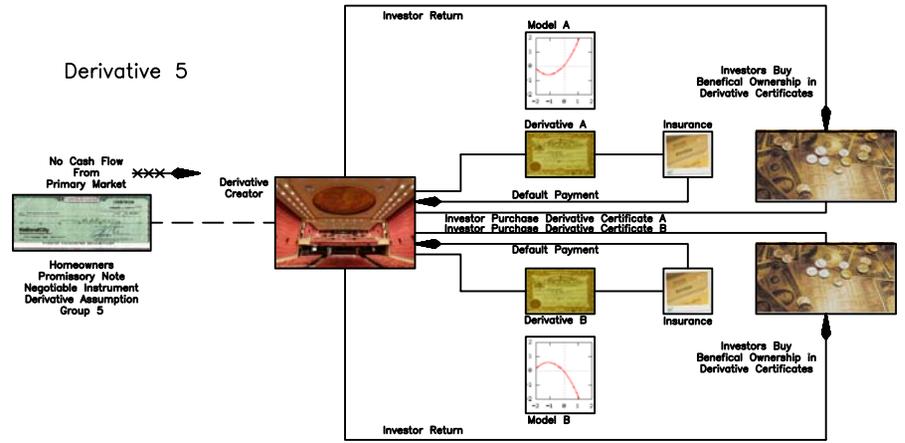
### Derivative 4



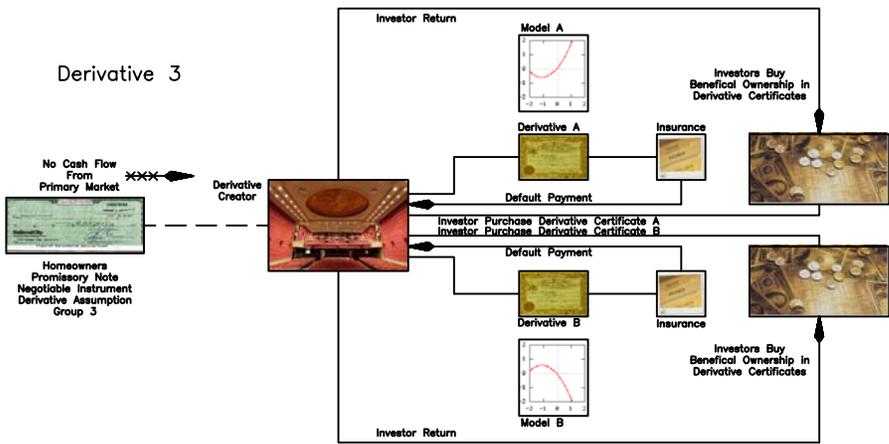
### Derivative 2



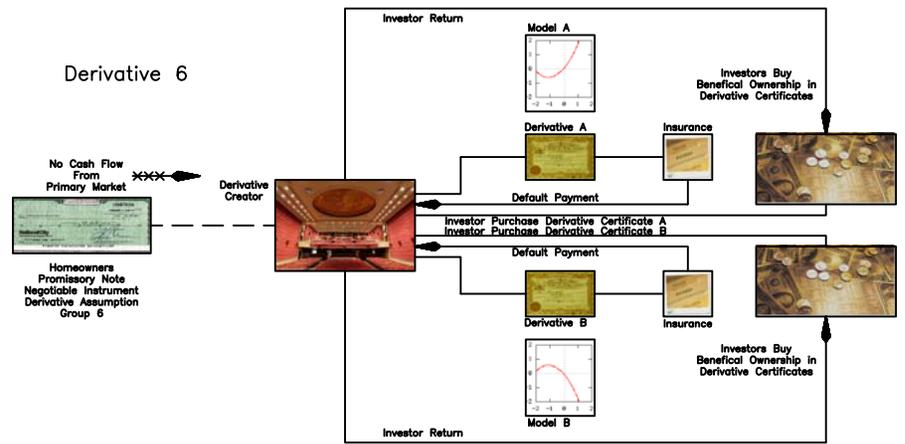
### Derivative 5



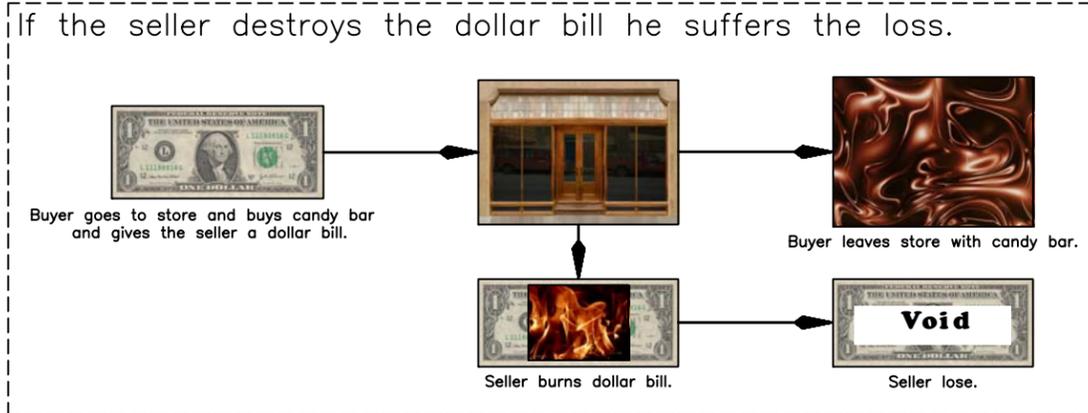
### Derivative 3



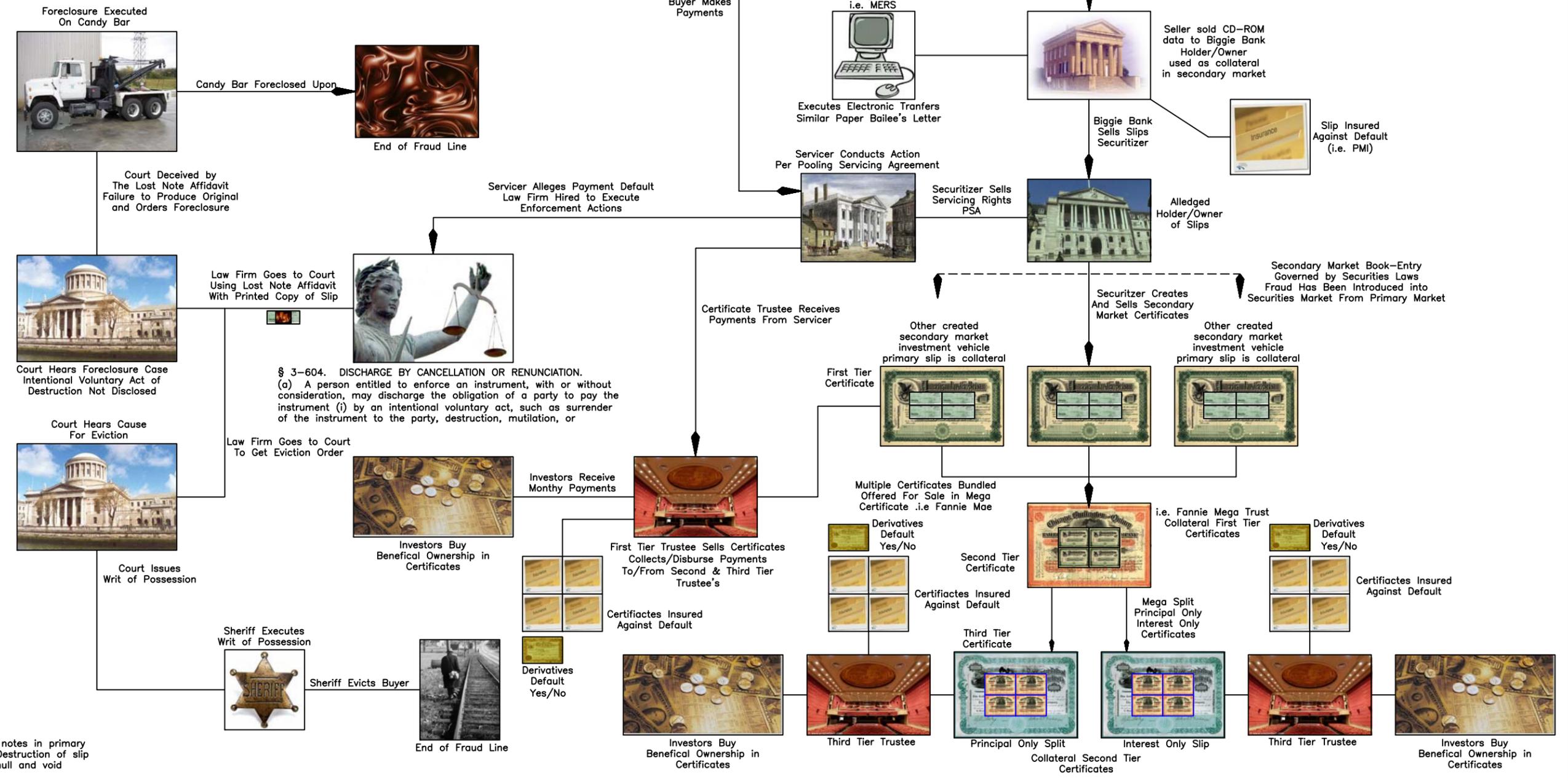
### Derivative 6



# Lost Candy Bar Lost Note Affidavits - UCC



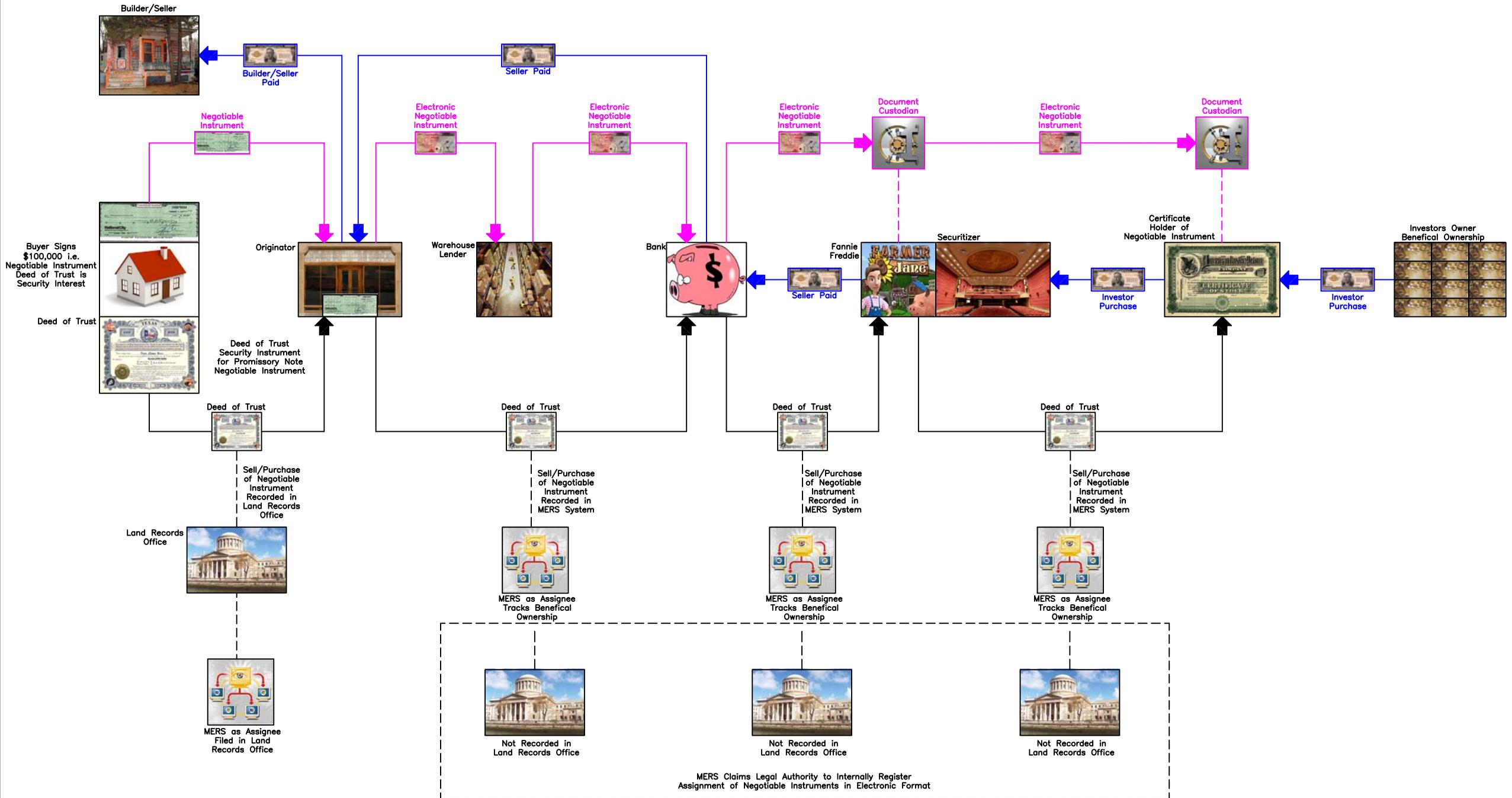
If the seller destroys the slip he does not suffer the loss due to selling the loss along the line.



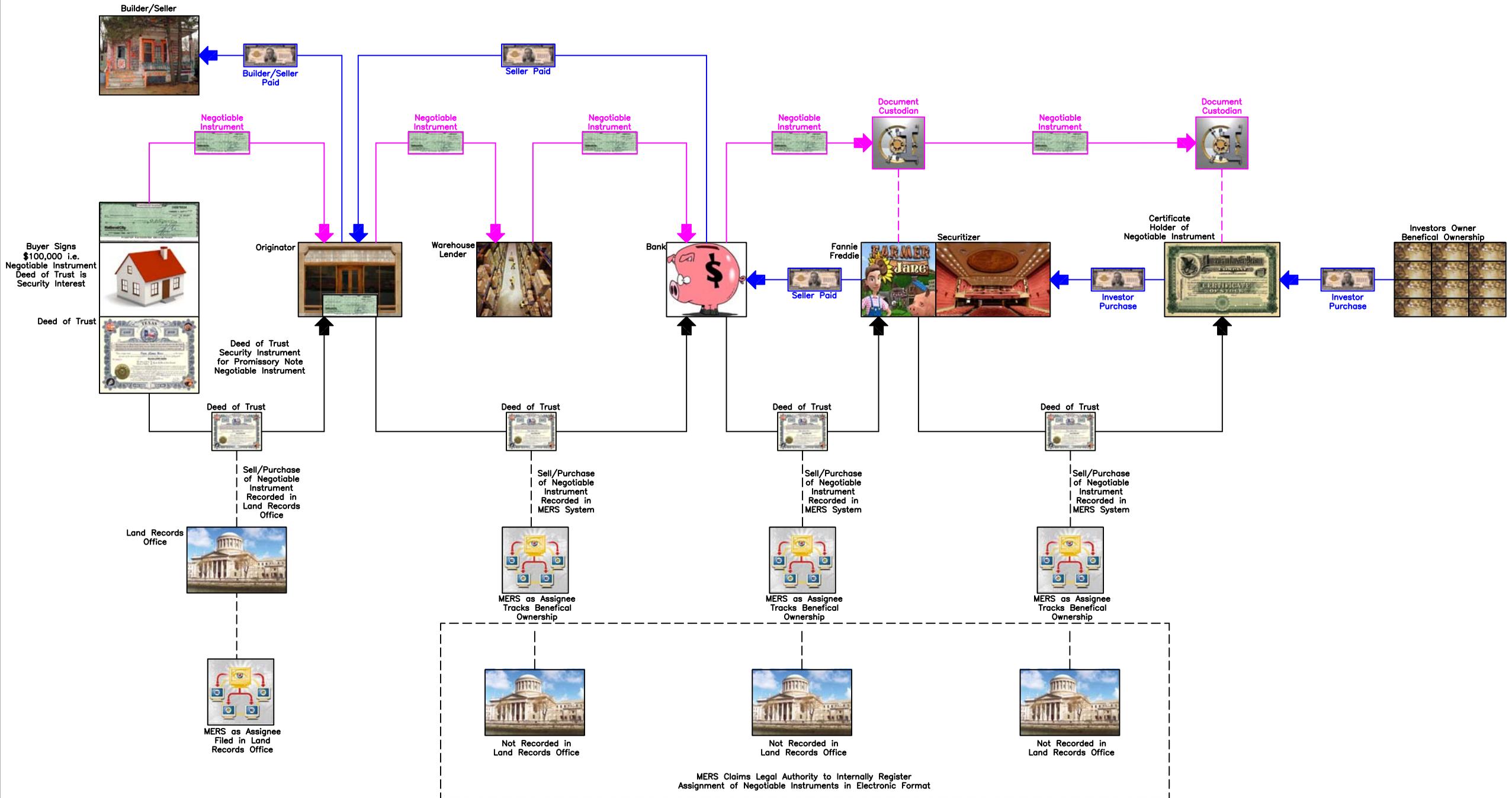
No law to support electronic notes in primary market Intentional Voluntary Destruction of slip renders debt obligation null and void



# The Negotiable Instrument / Buyer to Investor MERS Electronic System

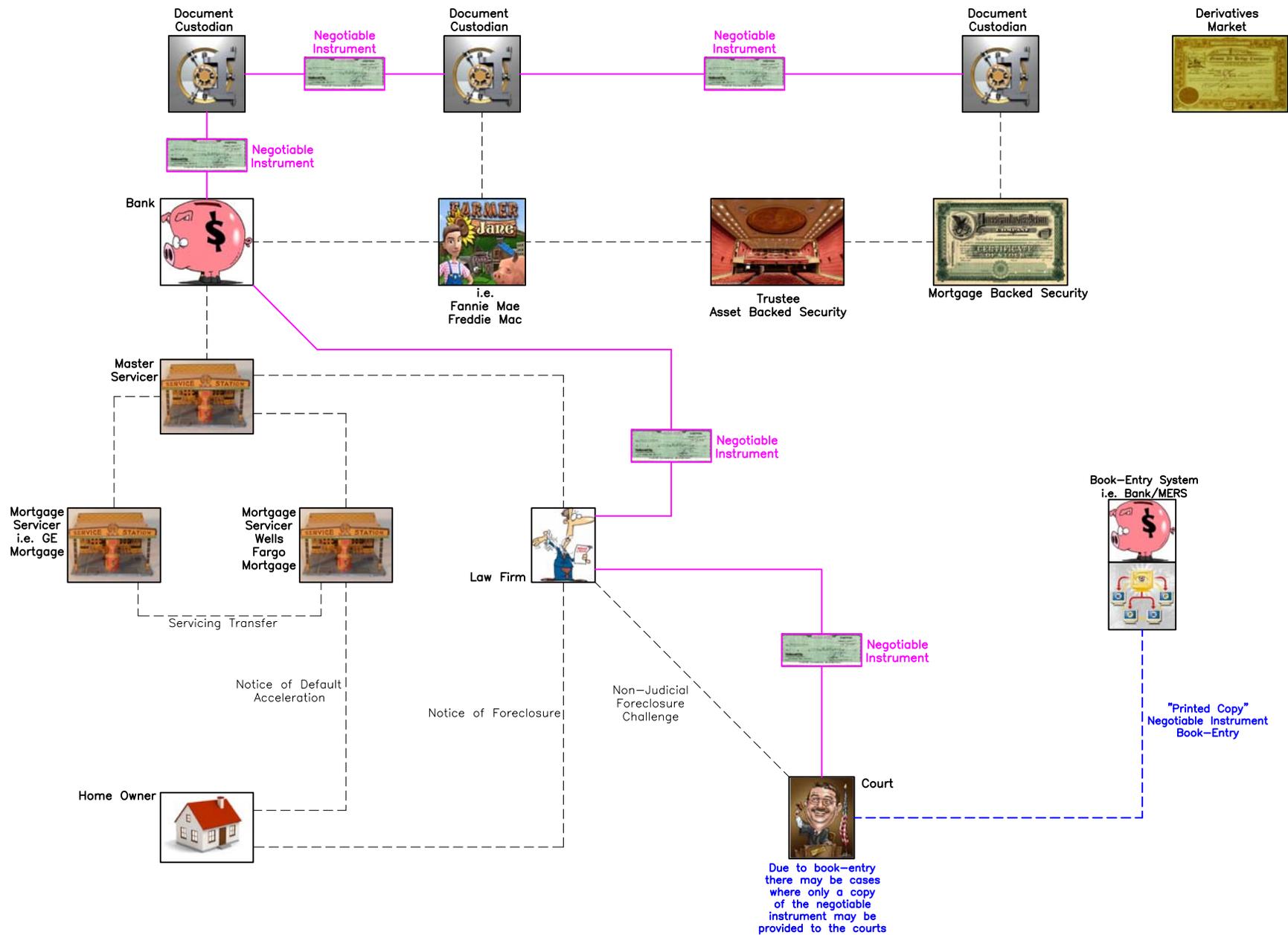


# The Negotiable Instrument / Buyer to Investor MERS System



# Non-Judicial Foreclosure i.e. Fannie Mae

Challenge of Non-Judicial Foreclosure results in Judicial Procedure



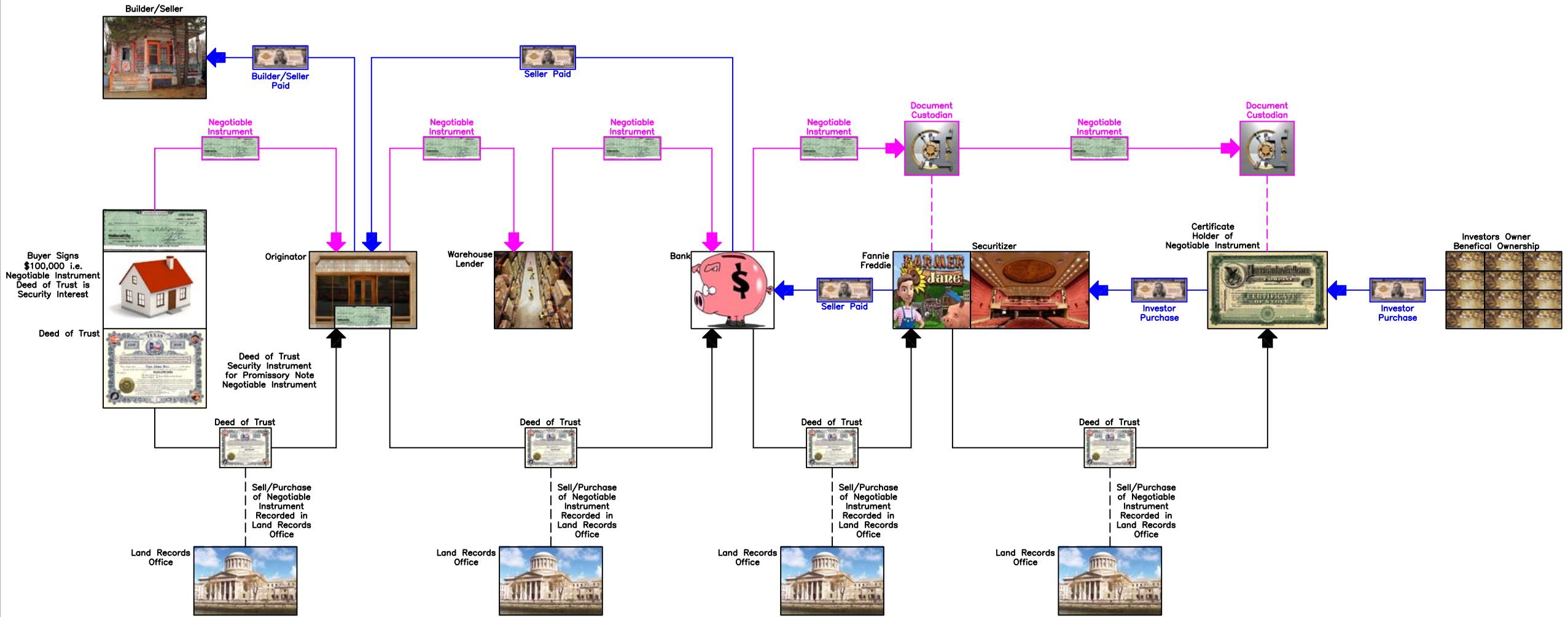
Negotiable Instrument Path

Information/Communications

Book Entry Copy

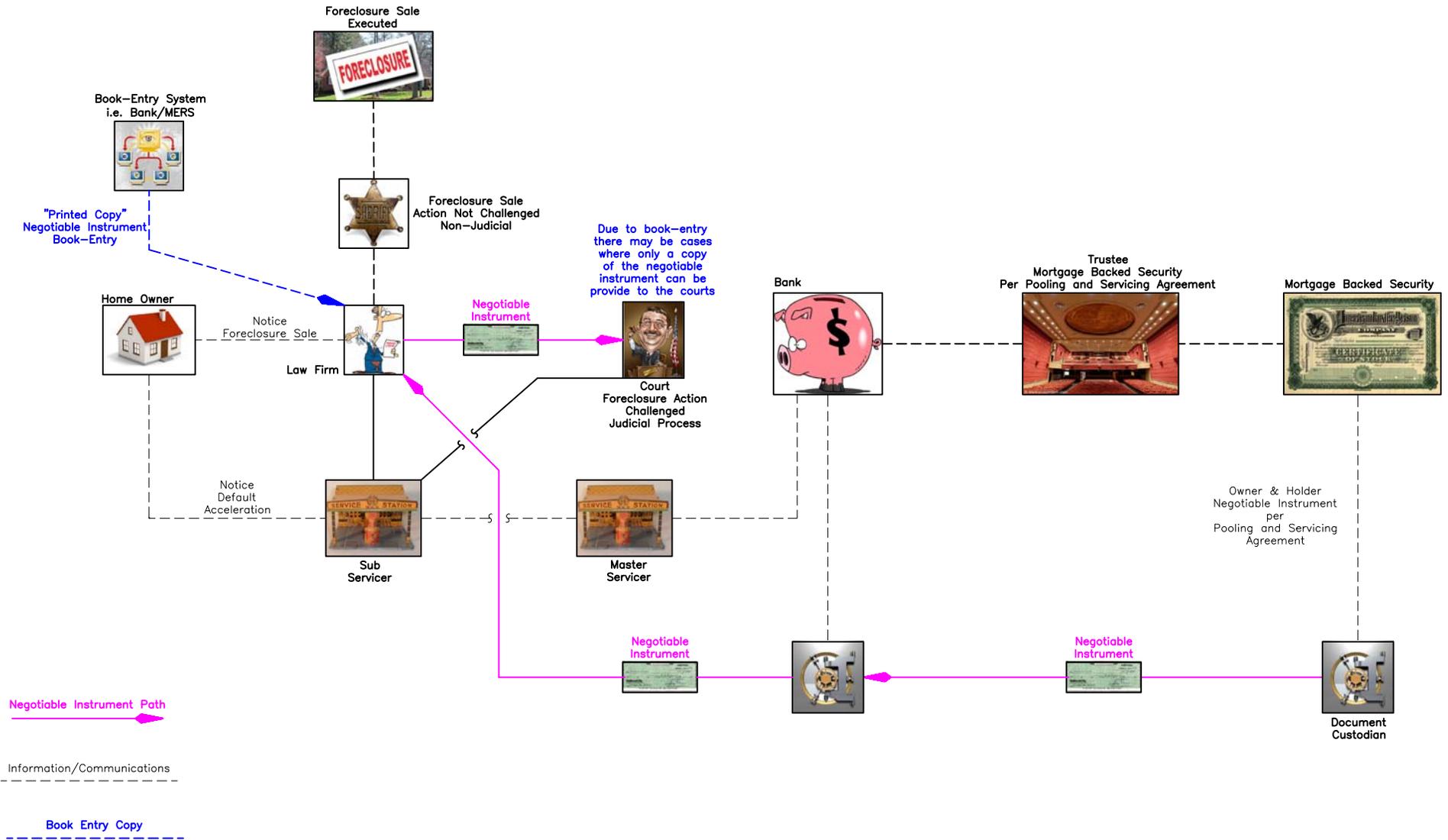
Due to book-entry there may be cases where only a copy of the negotiable instrument may be provided to the courts

# The Negotiable Instrument / Buyer to Investor

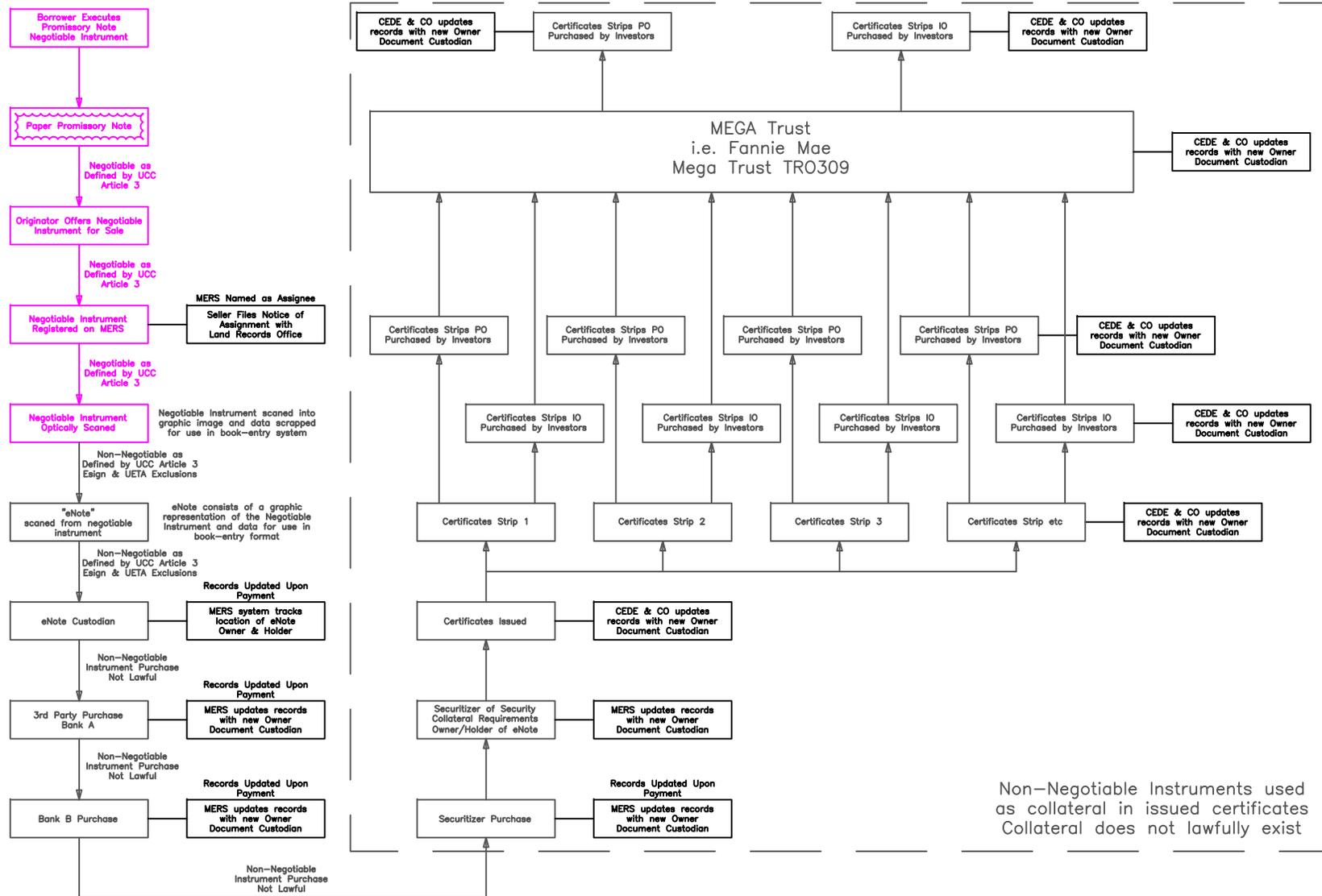


# Foreclosure/Negotiable Instrument/Non-Judicial

Challenge of Non-Judicial Foreclosure results in Judicial Procedure



# Negotiable Instrument Residential & Commercial Real Estate



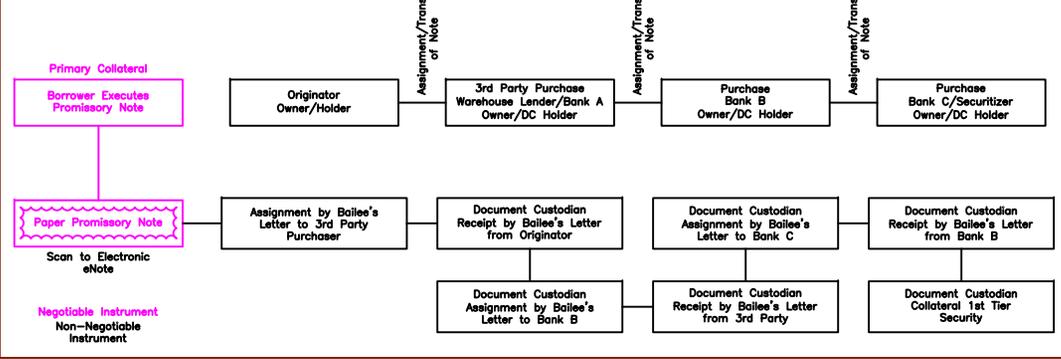
Non-Negotiable Instruments being sold and assigned to Secondary Market for collateral usage.  
Uniform Commercial Code governs negotiable instruments and there are no laws to support electronic negotiable instruments.

ESIGN/UETA other Laws allow for Land Records Offices to Record Electronic Data  
Assignments are being recorded internally within MERS  
Failure to record assignments in land records office results in broken chain of Assignments

# Paper to Electronic Promissory Note

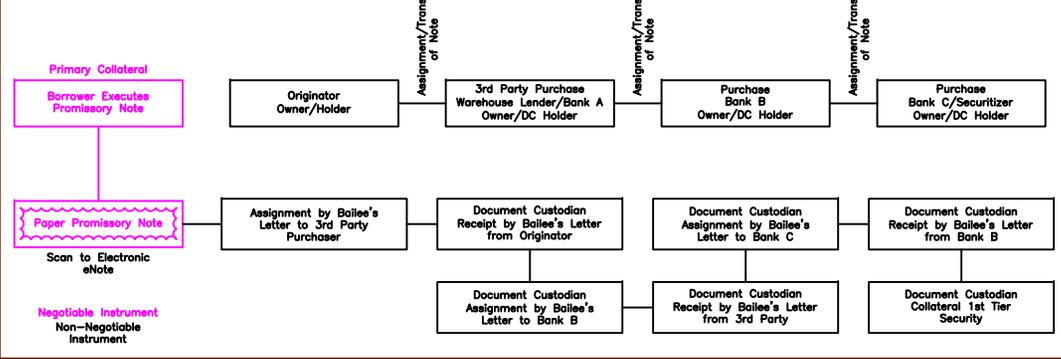
Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market – eNotes/Book Entry Unlawful

## Promissory Note 1



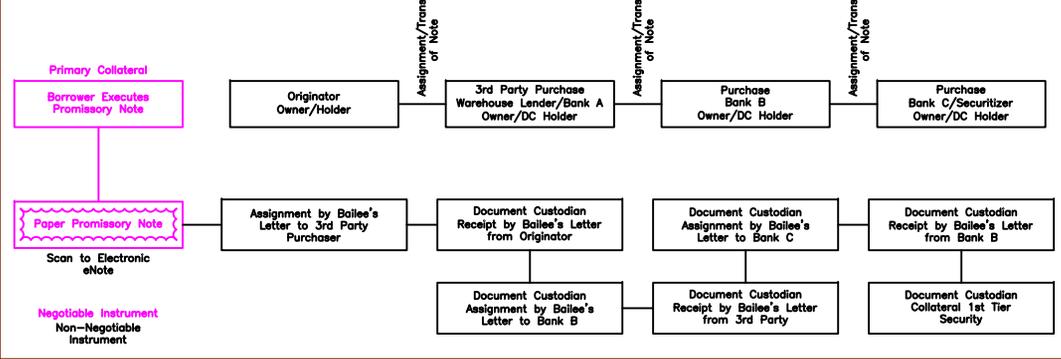
Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market

## Promissory Note 2



Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market

## Promissory Note 3



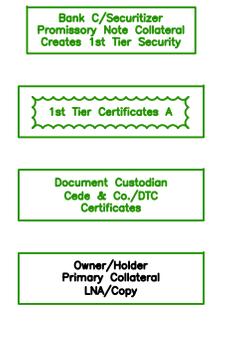
Secondary Market  
 Book-Entry Lawful

## 1st Tier Security



Secondary Market  
 Book-Entry Lawful

## 3rd Tier Security Principal Only

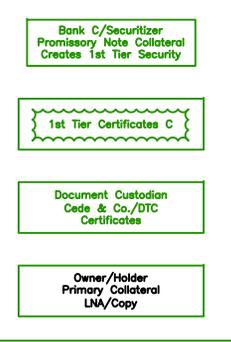


Secondary Market  
 Book-Entry Lawful

## 2nd Tier Security

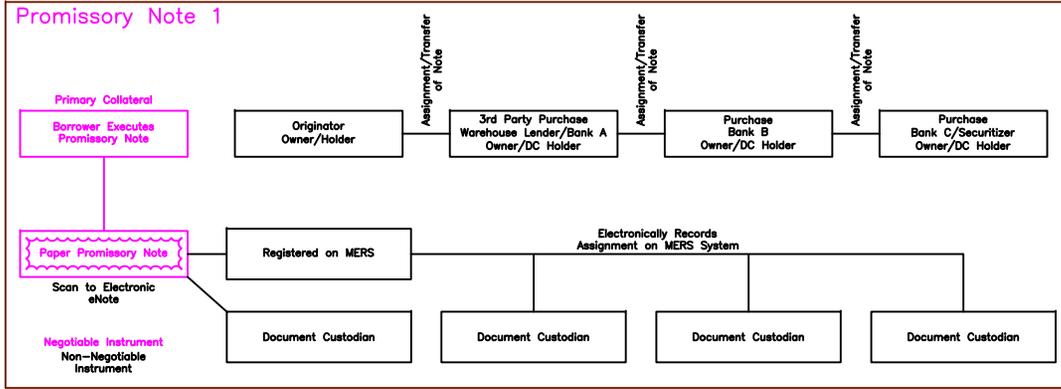


## 3rd Tier Security Interest Only

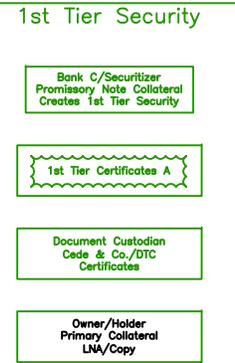


# Paper to Electronic – MERS

Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market – eNotes/Book Entry Unlawful



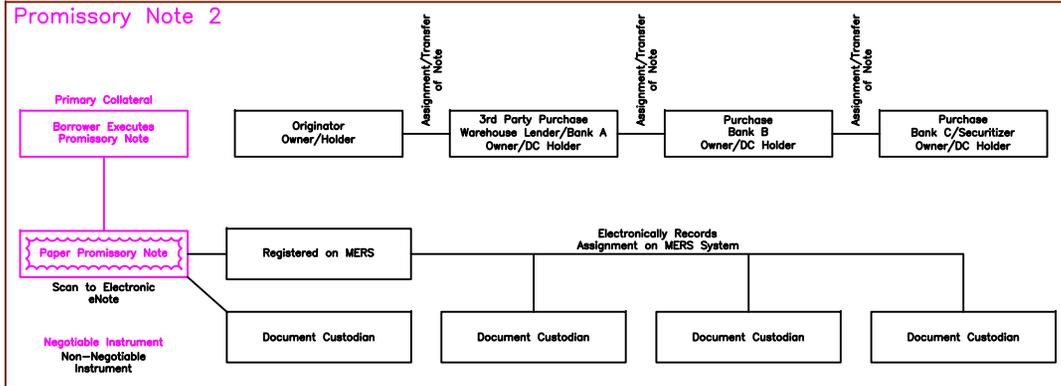
Secondary Market Book-Entry Lawful



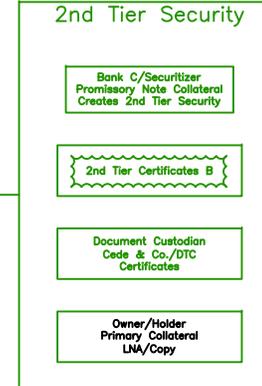
Secondary Market Book-Entry Lawful



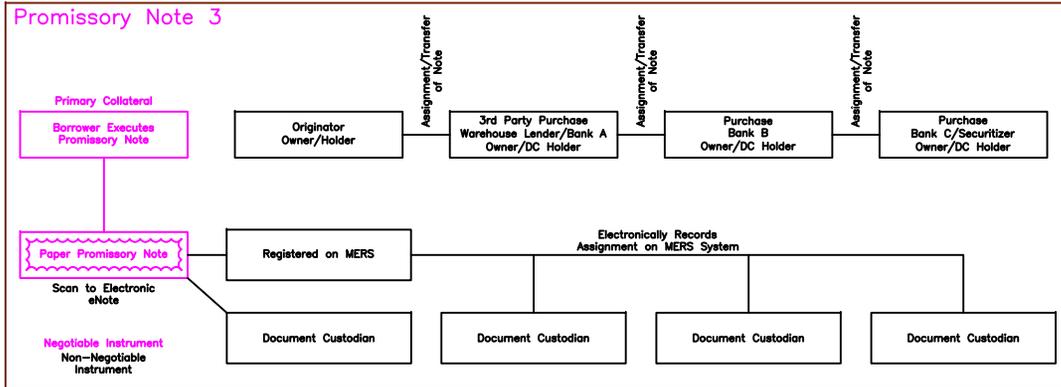
Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market



Secondary Market Book-Entry Lawful



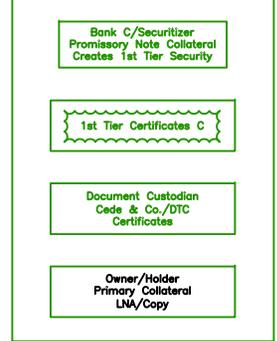
Primary Market/ESIGN & UETA Excludes UCC Article 3 – Negotiable Instruments  
 UCC Governs Negotiability in Primary Market



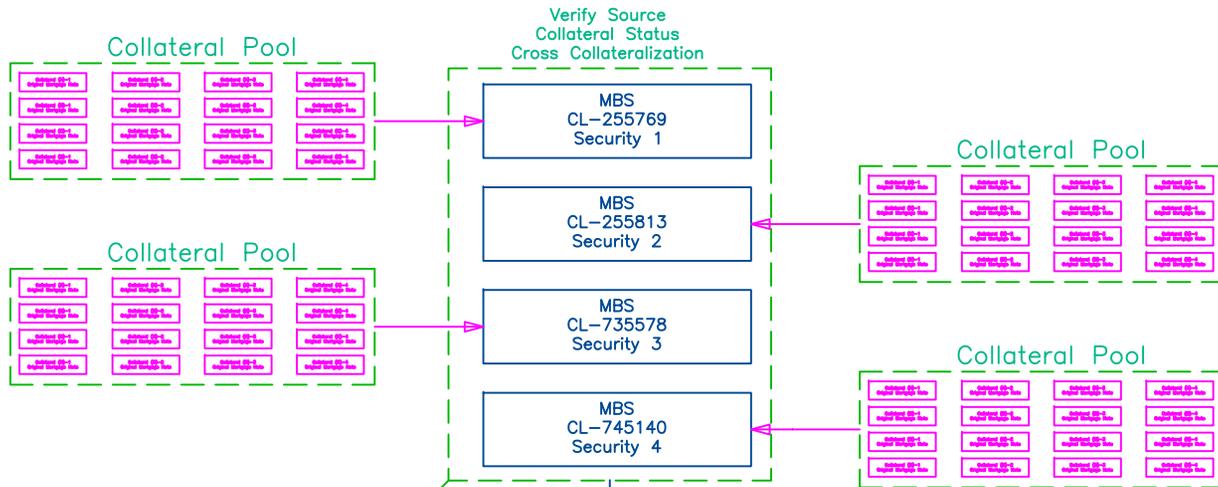
Bank C/Securitizer Promissory Note Collateral Creates 1st Tier Security



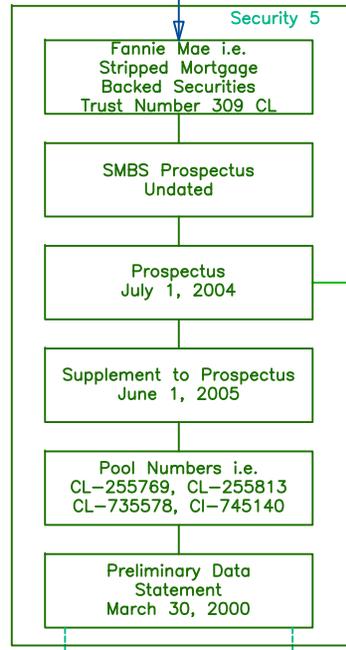
3rd Tier Security Interest Only



# Investor



Verify Source Collateral Status Cross Collateralization



Fannie Mae Mega Trust

Search Procedure Example "A"

- Security 7
- Security 5
- Security 1

Original Collateral

Search Procedure Example "B"

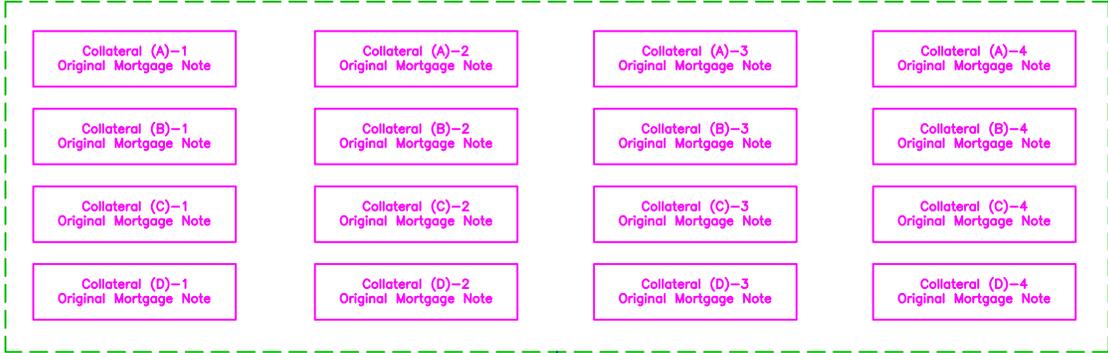
- Security 6
- Security 5
- Security 3

Original Collateral

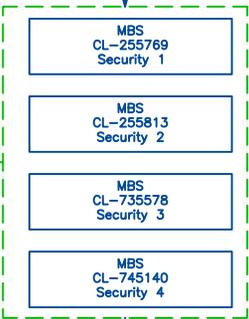


# Research Requirement

## Collateral Pool



Verify Source  
Collateral Status  
Cross Collateralization



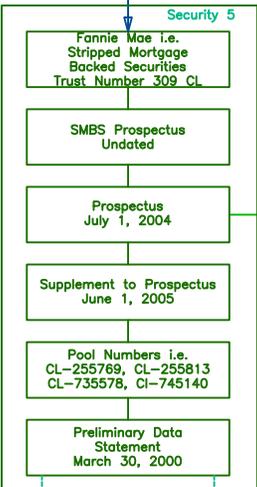
Verify Document  
Custodian Status

Document Custodian  
Certificate Holder  
Cede & Co./DTC

Search Procedure  
Example "A"  
Security 7  
Security 5  
Security 1  
Original Collateral

Search Procedure  
Example "B"  
Security 6  
Security 5  
Security 3  
Original Collateral

Verify Source  
Collateral Status  
Cross Collateralization



Document Custodian  
Certificate Holder  
Cede & Co./DTC

Verify Document  
Custodian Status

Security 6

Trust Number 309 CL  
Class 1 Pass-Through  
PO

Defaulted Security  
Requires Research  
to Source Collateral

Security 7

Trust Number 309 CL  
Class 2 Notional  
IO

Defaulted Security  
Requires Research  
to Source Collateral

Verify Document  
Custodian Status

Document Custodian  
Certificate Holder  
Cede & Co./DTC

Document Custodian  
Certificate Holder  
Cede & Co./DTC

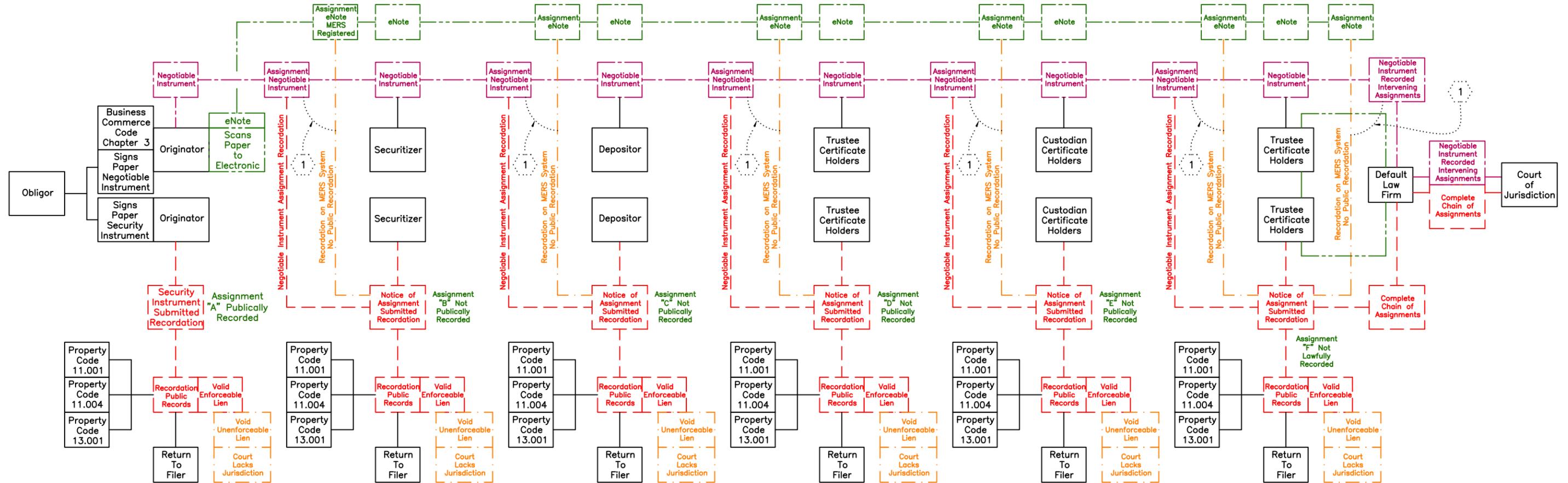
Verify Document  
Custodian Status

# **Recordation of Assignments**

## **Lien Theory**

# Negotiable Instrument / eNote / Assignment Recordation

<p>3.201. NEGOTIATION "Negotiation" means a transfer of possession of an instrument by a person other than the issuer to a person who thereby becomes its holder. 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.</p>	<p>3.203. TRANSFER OF INSTRUMENT: RIGHTS ACQUIRED BY TRANSFER. An instrument is transferred when it is delivered giving to the person receiving delivery the right to enforce the instrument. The transferee cannot acquire rights of a holder in due course by a transfer from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument. Negotiation of the instrument does not occur until the indorsement is made.</p>	<p>3.302. HOLDER IN DUE COURSE "holder in due course" means the holder of an instrument if 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.</p>	<p>3.308. PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument are admitted unless specifically denied in the pleadings.</p>	<p>3.416. TRANSFER WARRANTIES A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that the warrantor is a person entitled to enforce the instrument; all signatures on the instrument are authentic and authorized;</p>	<p>3.604. DISCHARGE BY CANCELLATION OR RENUNCIATION A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument.</p>
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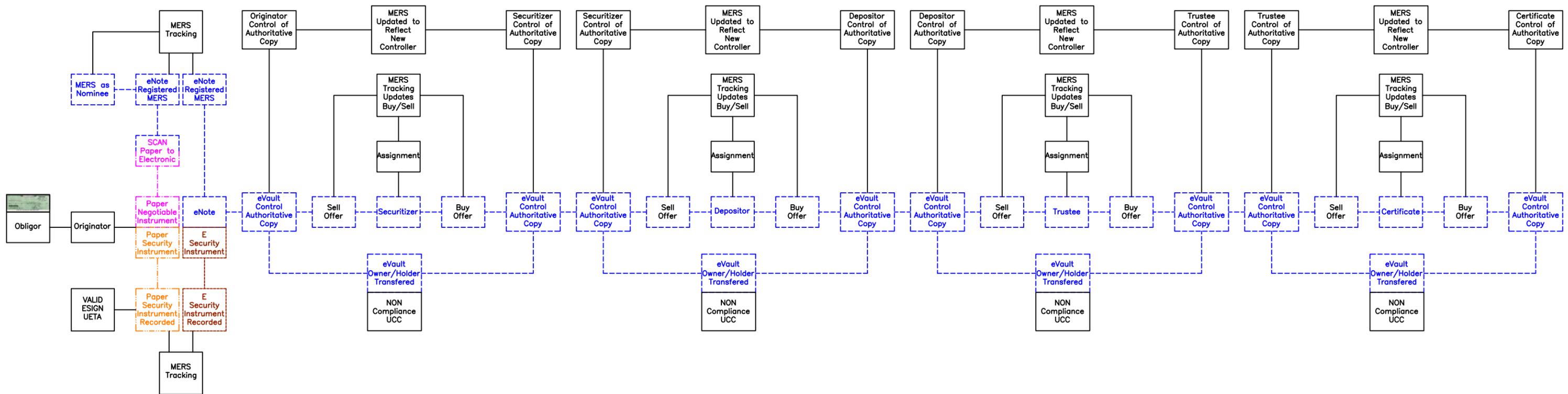


1 MERS Assumes Registration/Tracking of Paper Negotiable Instruments in Electronic Book Keeping System

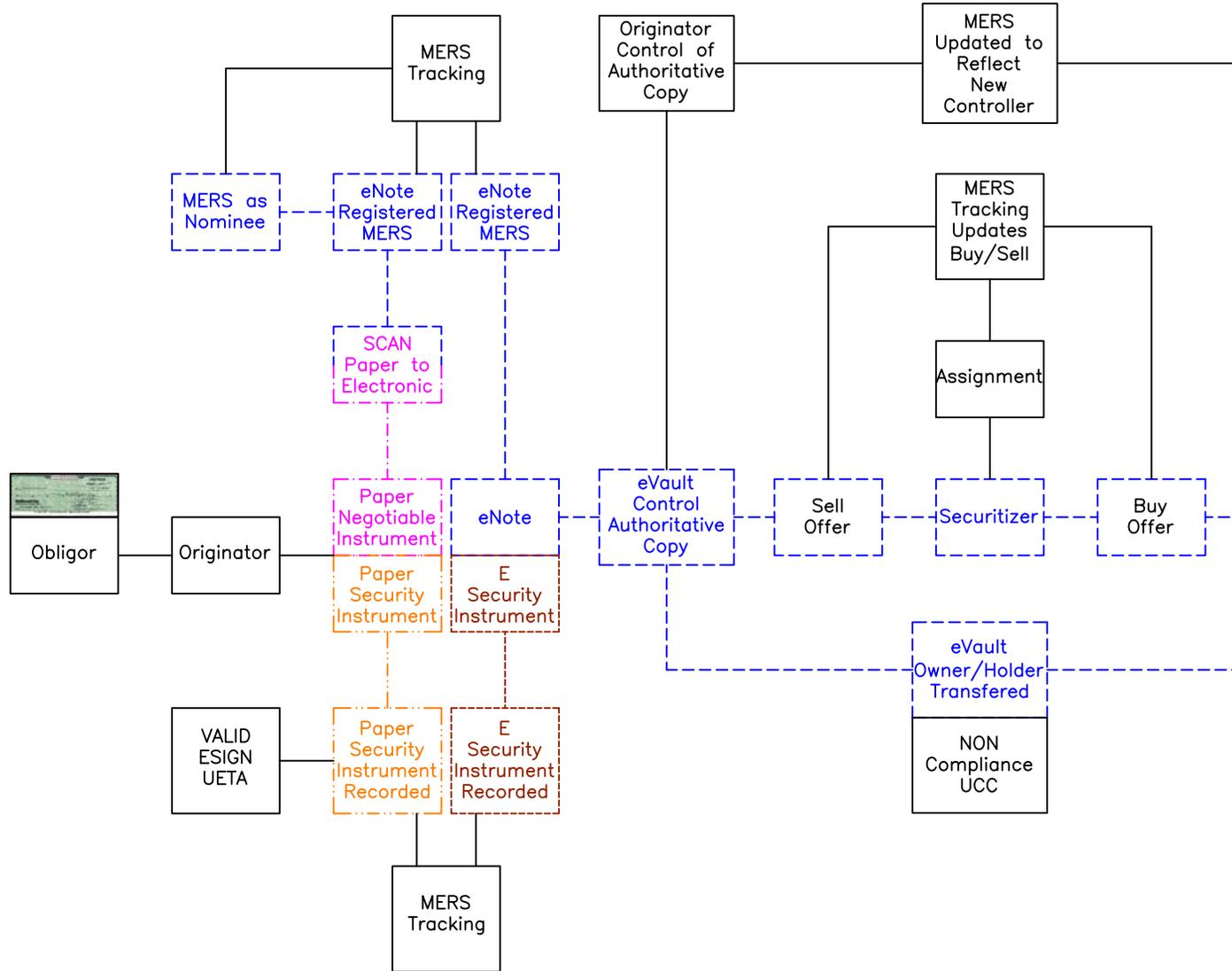
- Unenforceable Lien - Courts Lack Jurisdiction
- Electronic Negotiable Instrument - Non Lawful
- Assignment to be Recorded in Public Land Records Office
- Negotiable Instrument Uniform Commercial Code

<p>11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.</p>	<p>11.004. DUTY OF RECORDER A county clerk shall correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law.</p>	<p>13.001. VALIDITY OF UNRECORDED INSTRUMENT A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.</p>
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# MERS TRACKING



Paper Neogtioble Instrument - - - - -  
 Paper Security Instrument - - - - -  
 eNote - - - - -  
 Electronic Security Instrument - - - - -



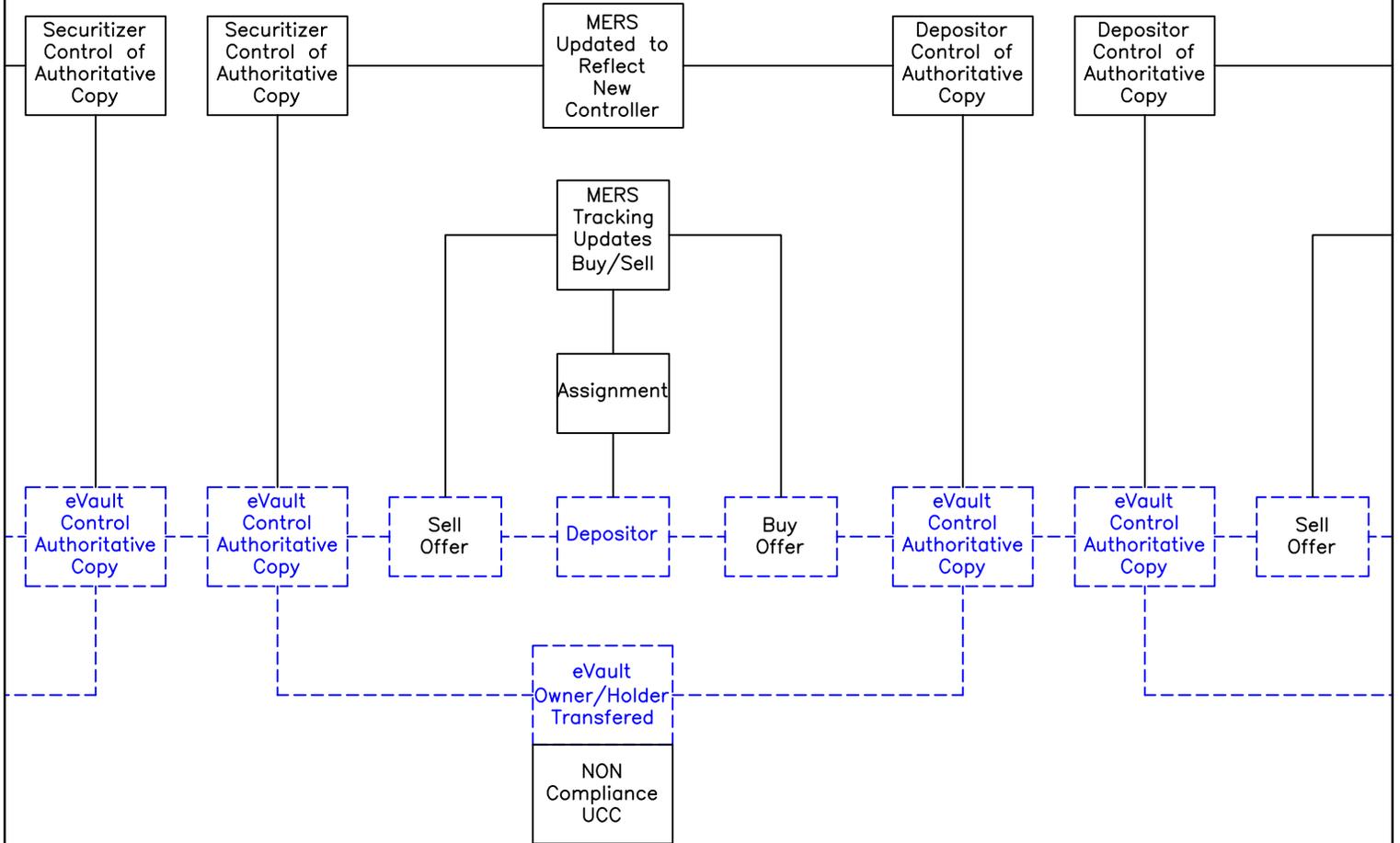
Paper Neogtiable Instrument - - - - -

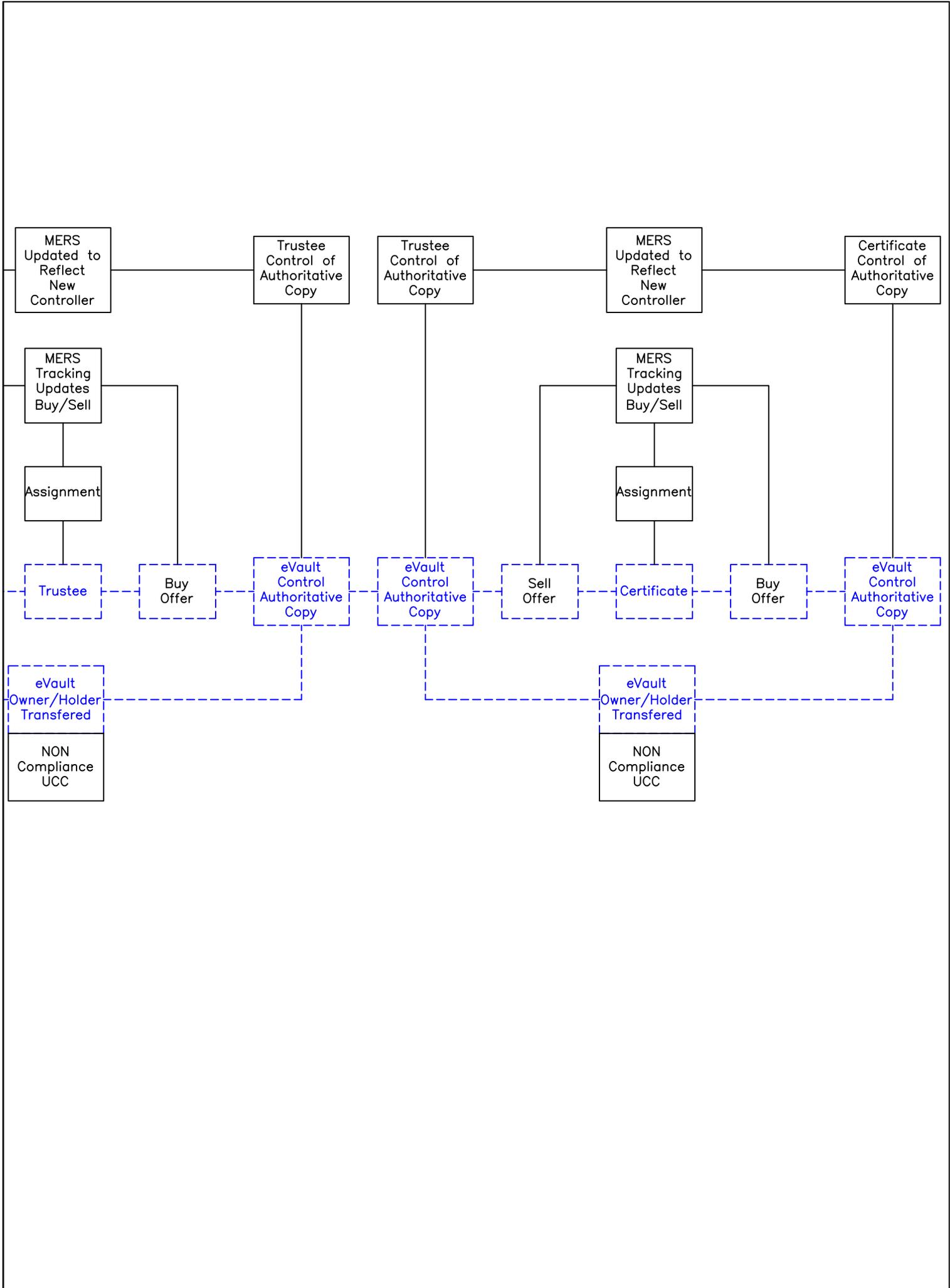
Paper Security Instrument - - - - -

eNote - - - - -

Electronic Security Instrument - - - - -

# MERS TRACKING





**Judicial**

**Non-Judicial**

**Foreclosure**

# Why the Original has to be presented!

## Without a debt obligation there can be no enforcement action.

UCC Defined  
Negotiable Instrument

Unenforceable  
Instrument

Unenforceable  
Instrument  
to Law Firm

Confetti



Paper  
Shredder



Option 1

Option 2



Unenforceable  
Instrument



Vault



ORIGINATOR

Negotiable  
Instrument



Scan of Paper Note  
into an Electronic  
book entry "eNote"



eNote

**Trustee**  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
as Trustee  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement



eNote

**Custodian**  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
as Custodian  
for the Benefit of Certificate Holders  
per the Pooling Service Agreement  
  
CERTIFICATE HOLDERS  
Owner of the eNote  
DOCUMENT CUSTODIAN  
Holder of the eNote



eNote

eNotes created from homeowners primary market promissory notes have no legal mechanism to be lawful per the UCC Article 3 Negotiable Instruments. Esign and UETA both exclude items governed by UCC Article 3 and the states equivalence commercial codes.



Deed of Trust

Deed of Trust  
Assignment Recorded  
Land Records Office

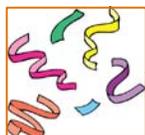


Printed out eNote

COURT "lacks jurisdiction" to grant foreclosure because an eNote is not a lawful negotiable instrument under the Uniform Commercial Code Article 3. Once the Original note is converted from paper to an electronic graphic image or copy, the evidence of the debt, its negotiability, holder status and the right to enforce is lost forever.

Printed out copy of the eNote or other electronic copy offered up as proof in lieu of offering "Original Promissory Note" for inspection for validity or presentation to the court.

We can't find the Original so lets print out a paper version of the electronic image.



Unenforceable  
Instrument



Printed out eNote

Unenforceable  
Instrument



Law Firm

Printed out eNote  
Unenforceable  
Instrument



Court

Uniform Commercial Code  
§ 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee  
DEUTSCHE BANK NATIONAL TRUST COMPANY as Custodian  
are separate entities.

Unenforceable  
Instrument  
from Vault

Unenforceable  
Instrument

Unenforceable  
Instrument

# When the Original is a Forgery.

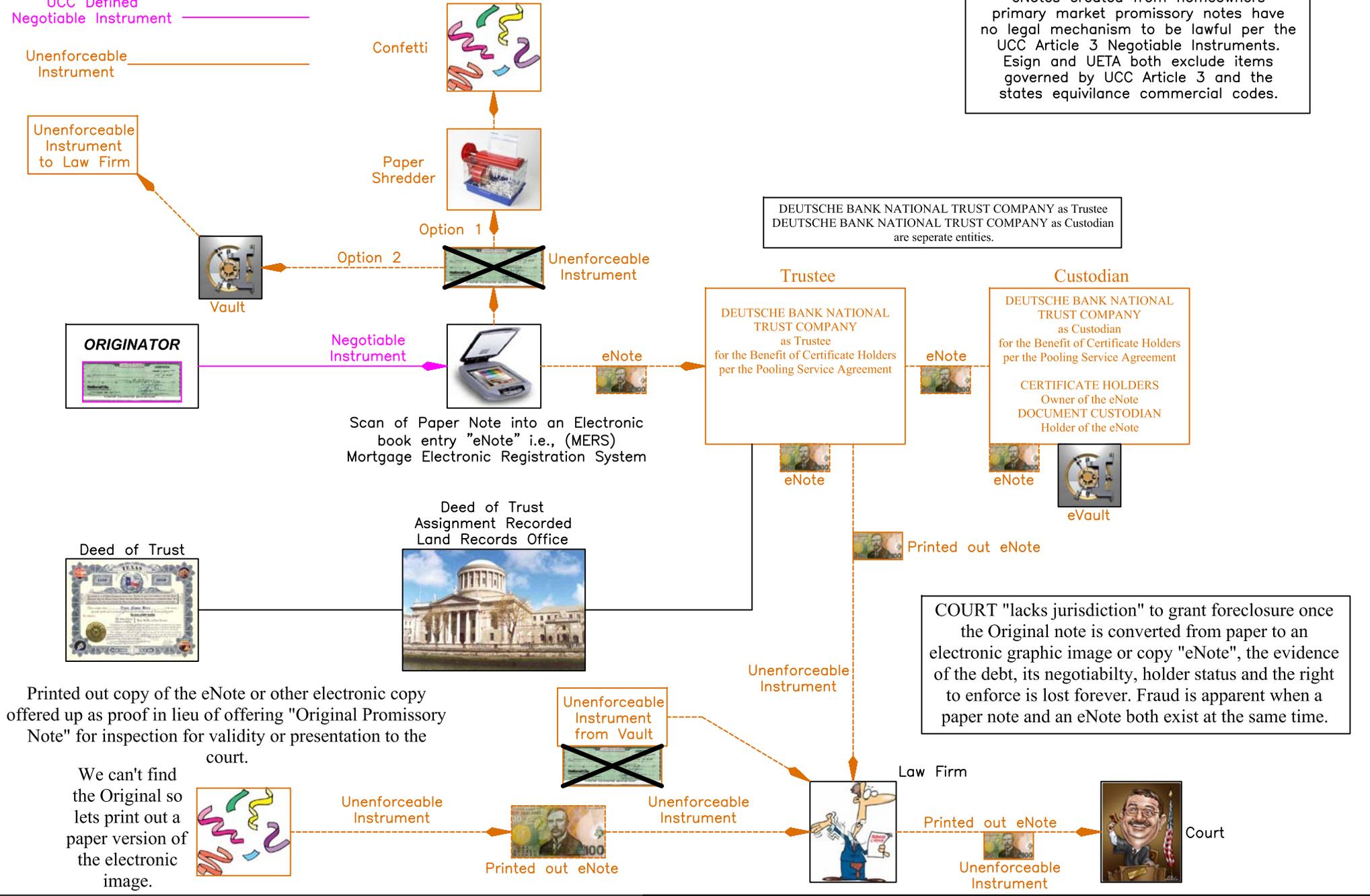
UCC Defined Negotiable Instrument

Unenforceable Instrument

Unenforceable Instrument to Law Firm

eNotes created from homeowners primary market promissory notes have no legal mechanism to be lawful per the UCC Article 3 Negotiable Instruments. Esign and UETA both exclude items governed by UCC Article 3 and the states equivlance commercial codes.

DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee  
DEUTSCHE BANK NATIONAL TRUST COMPANY as Custodian  
are separte entities.



Option 1  
Option 2

Negotiable Instrument  
Scan of Paper Note into an Electronic book entry "eNote" i.e., (MERS) Mortgage Electronic Registration System



Printed out copy of the eNote or other electronic copy offered up as proof in lieu of offering "Original Promissory Note" for inspection for validity or presentation to the court.

We can't find the Original so lets print out a paper version of the electronic image.



Unenforceable Instrument



Printed out eNote



Unenforceable Instrument



Printed out eNote

Unenforceable Instrument



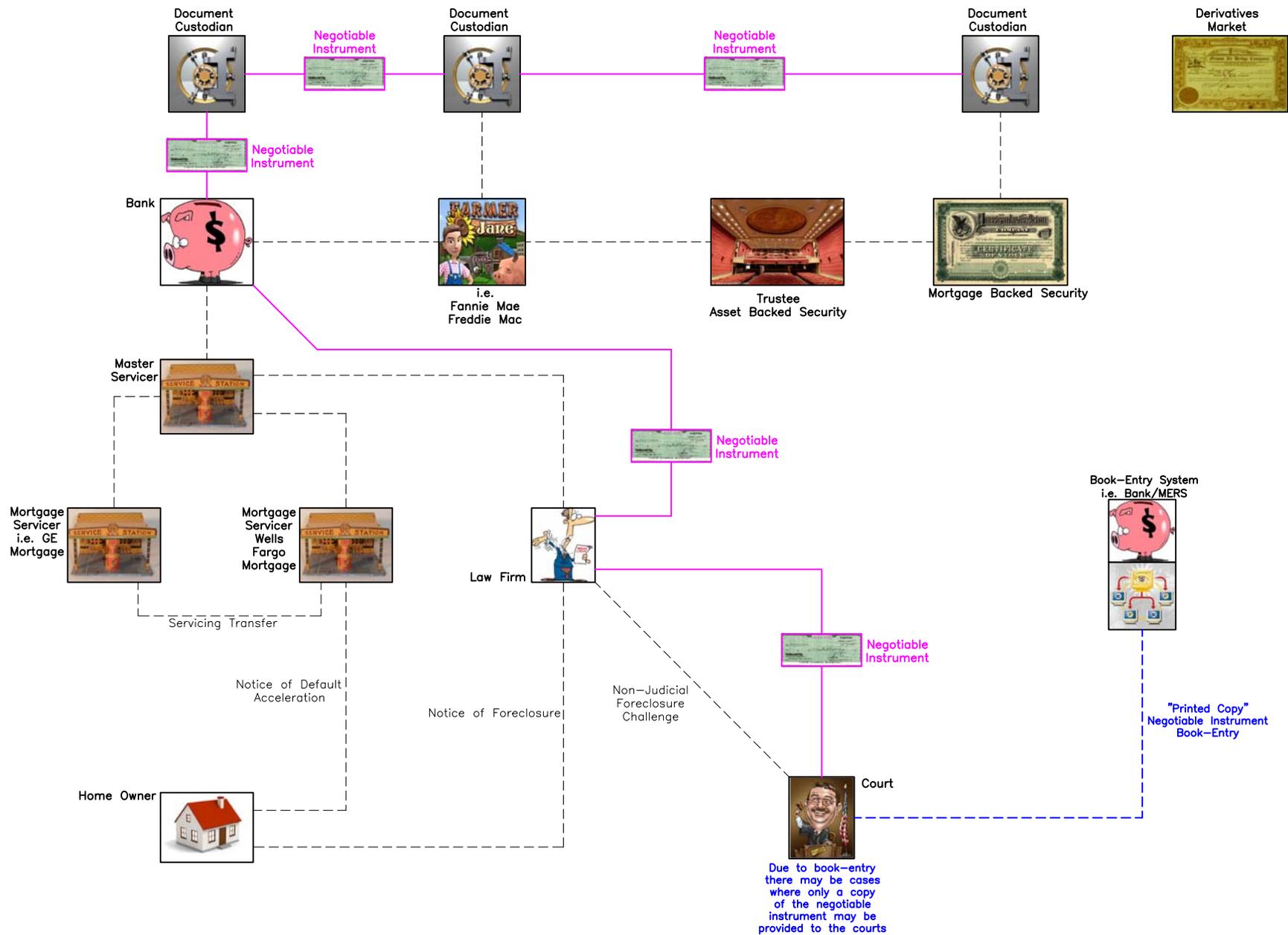
Court

COURT "lacks jurisdiction" to grant foreclosure once the Original note is converted from paper to an electronic graphic image or copy "eNote", the evidence of the debt, its negotiability, holder status and the right to enforce is lost forever. Fraud is apparent when a paper note and an eNote both exist at the same time.



# Non-Judicial Foreclosure i.e. Fannie Mae

Challenge of Non-Judicial Foreclosure results in Judicial Procedure



§ 3-104. NEGOTIABLE INSTRUMENT.

§ 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: (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

(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.

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.

§ 3-308. PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE.

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§ 3-309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument

(A) was entitled to enforce it the instrument when loss of possession occurred, or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

§ 3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process to or with the record with the present intent to adopt or accept the record.

# **The Book Entry System**

# Assumptions for eNote Process

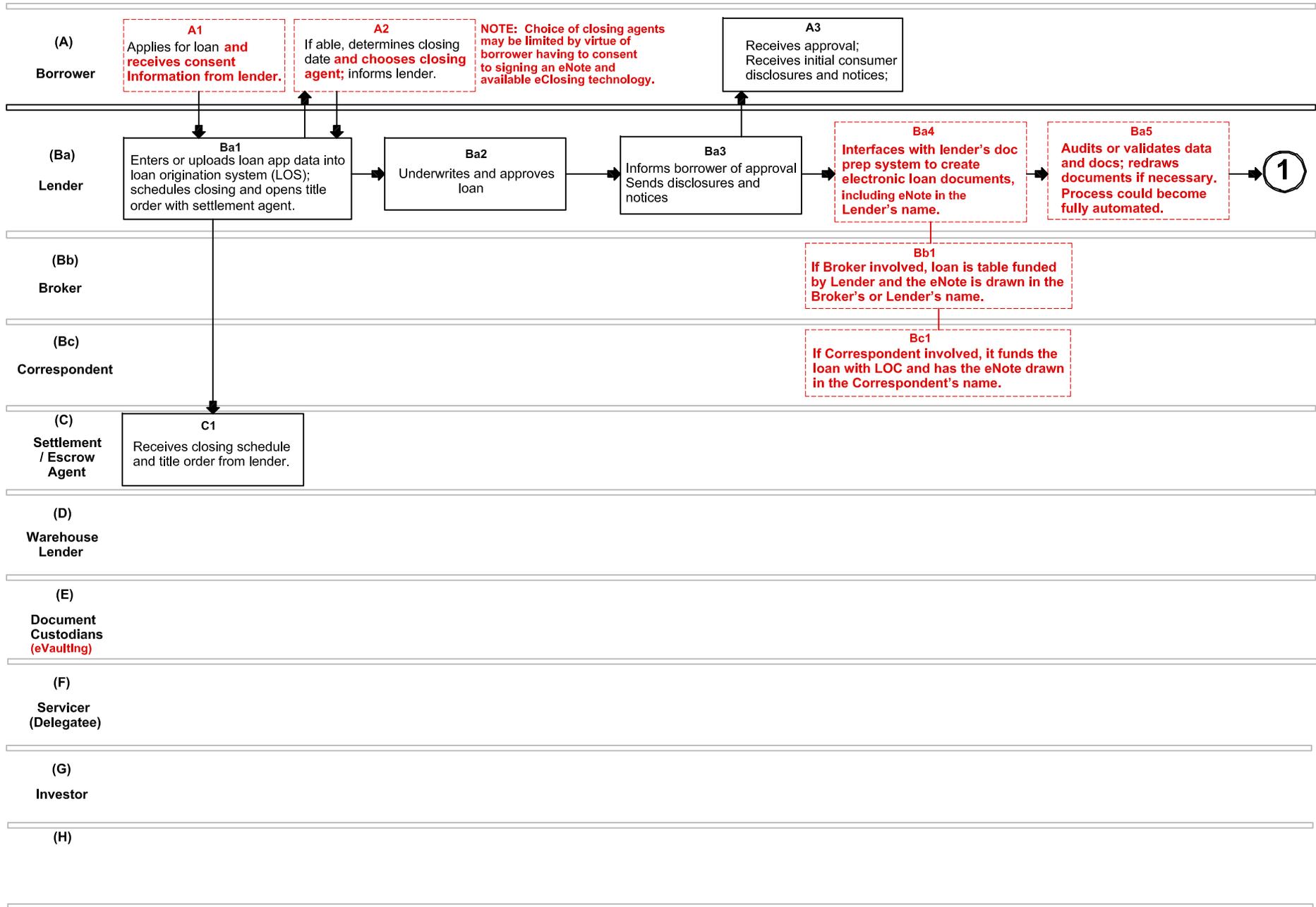
*NOTE: This analysis follows the business process path of the eNote; mortgage instrument and other documents may be in paper.*

- Borrower**
  - Borrower must consent to electronically signing an eNote.
- Lender**
  - Lender originating only an electronic note in the current MBA/MISMO SMARTDoc format specification; other parts of the mortgage process may be a combination of paper and electronic.
  - Lender will have closing platform technology to electronically sign and close eNote. Lender's closing agents will access lender's closing platform to electronically close eNotes.
- Originator (Broker)**
  - Name of the originator (broker) on the eNote is the first controller on the eRegistry.
  - Lender has e-enabled the originator (broker) to register eNote on the eRegistry.
- Correspondent**
  - Correspondent has its own warehouse line; is also e-enabled to register eNote.
- Closing Agent**
  - Closing agent may have competing technology to electronically sign and close eNotes.
  - Closing process results in an enforceable eNote.
  - If warehouse lender is part of the eRegistry, the lender will transfer control to the warehouse lender. Then, either:
    - Warehouse lender transfers control directly to the investor; OR
    - Warehouse lender transfers control back to the lender; lender would transfer control to the investor.
  - If warehouse lender is not part of the eRegistry, warehouse lender would "paper over" (through agreement with the lender) to give a security interest in the eNote to the warehouse lender.
- Warehouse Lender**
- Custodians**
  - Custodians have eVaults; have technology to automate the certification process of the eNote; and have connectivity with the eRegistry for the location of the eNote in the eVault.
- Servicer (Delegatee)**
  - Servicing system has to identify mortgage loan as having an eNote; system must also interface with the eRegistry.
  - Investor has granted "delegatee" status to the servicer to update eRegistry with certain servicing related transactions.
- Investor**
  - Investor is committed to the eRegistry for all eNotes delivered to them, i.e., all eNotes that an investor purchases or pools are registered on the MERS eRegistry.
  - Investor will allow for "hybrid" pools, i.e., commingling of paper and electronic notes in one pool.
- Trustee**
  - Trustee (of a rated security) is part of the eRegistry and will act as a controller.

PAPER vs. ELECTRONIC NOTE PROCESS

*Pre-Closing*

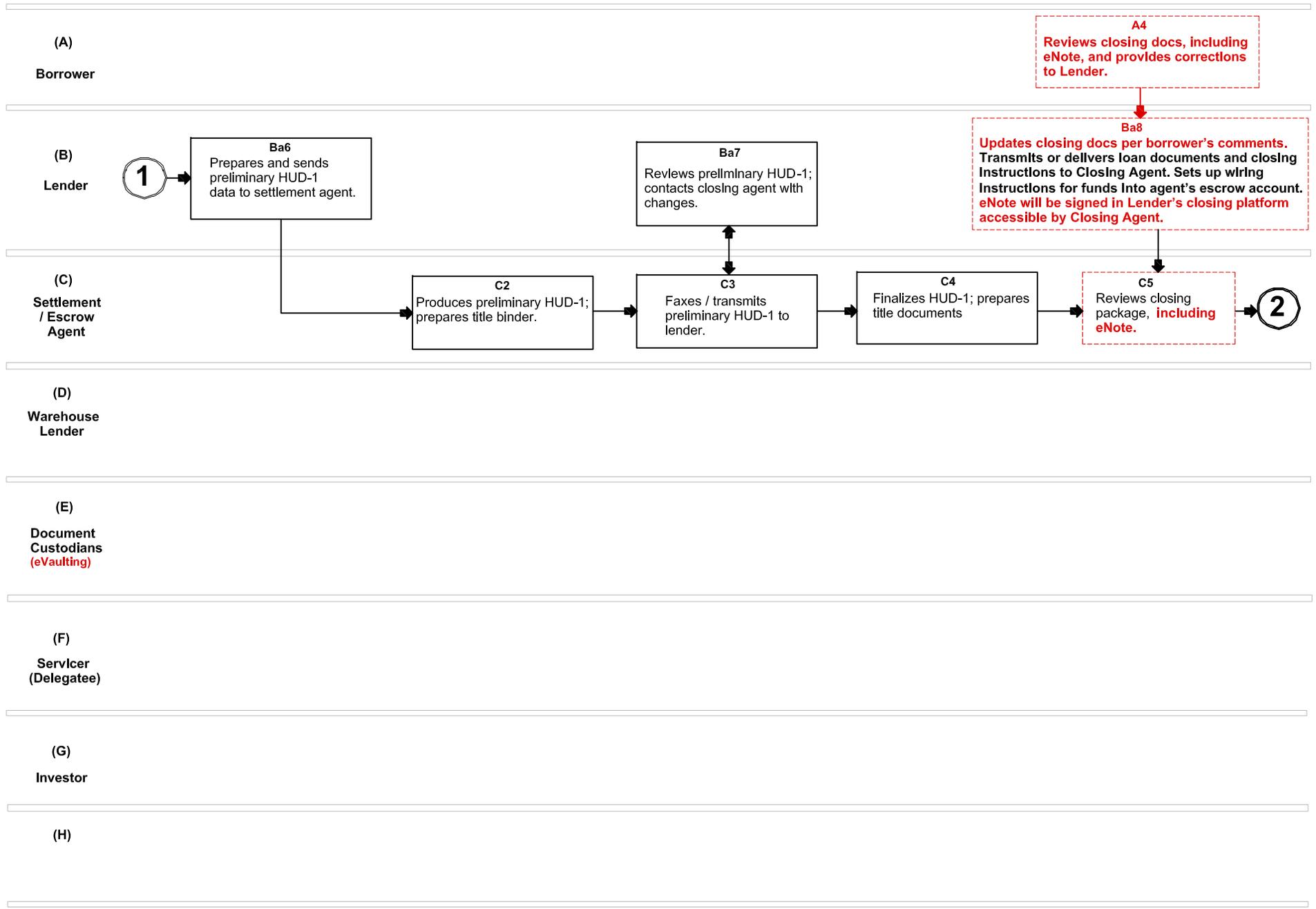
RED indicates process involving eNote.



PAPER vs. ELECTRONIC NOTE PROCESS

*Pre-Closing*

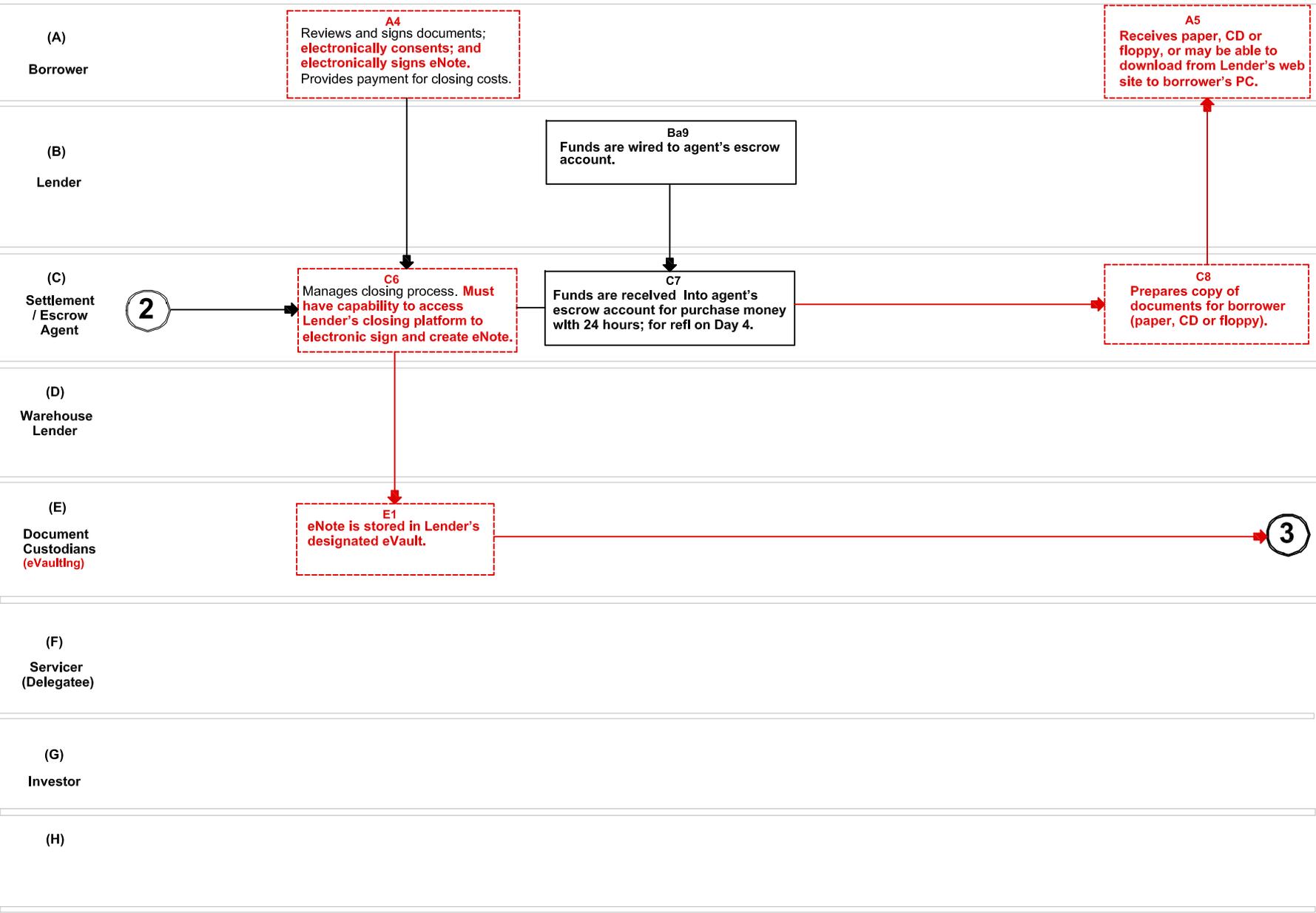
RED indicates process involving eNote.



RED indicates process involving eNote.

PAPER vs. ELECTRONIC NOTE PROCESS

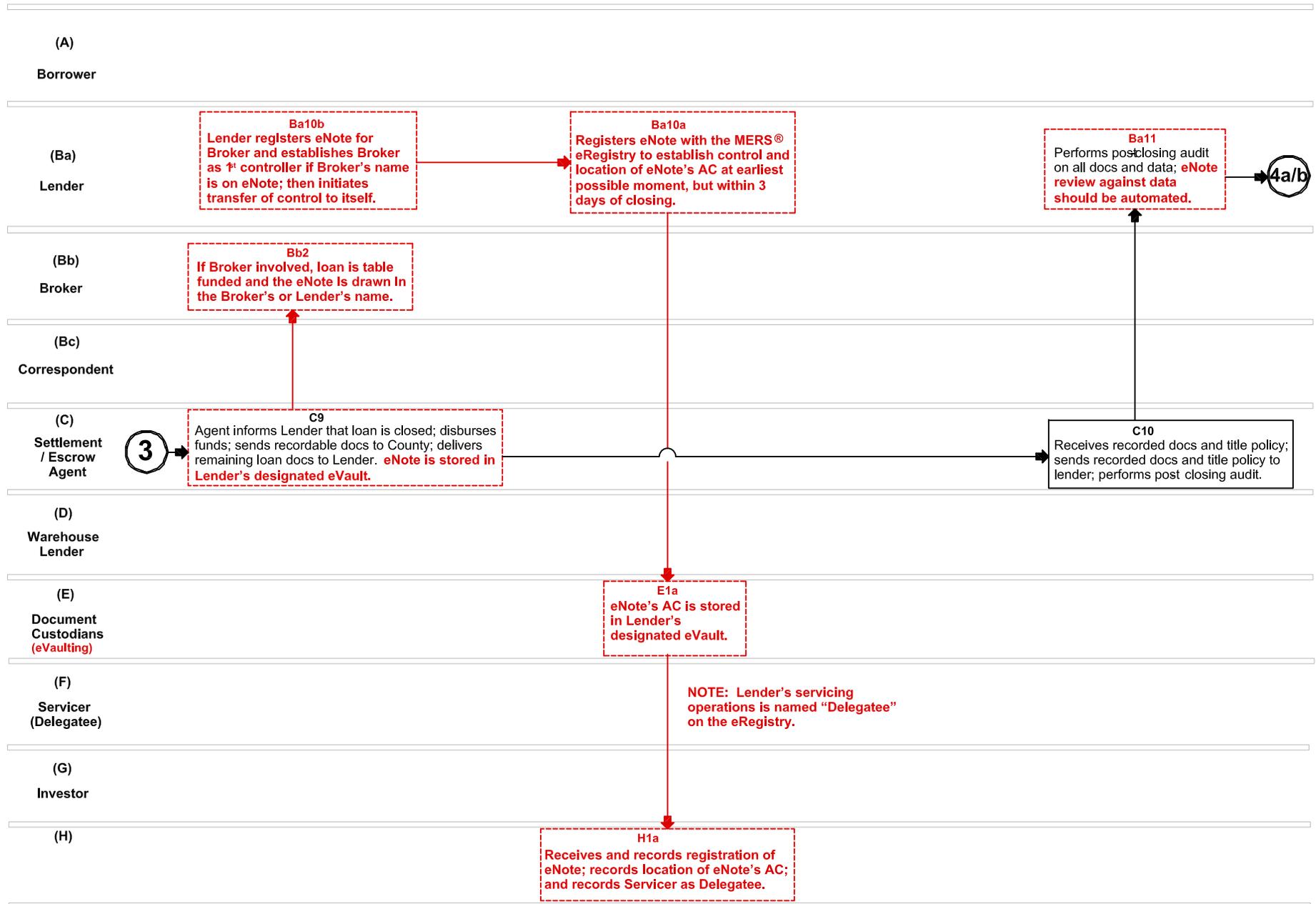
Closing



PAPER vs. ELECTRONIC NOTE PROCESS

**Post-Closing: Retail Lender (servicing retained) and Broker**

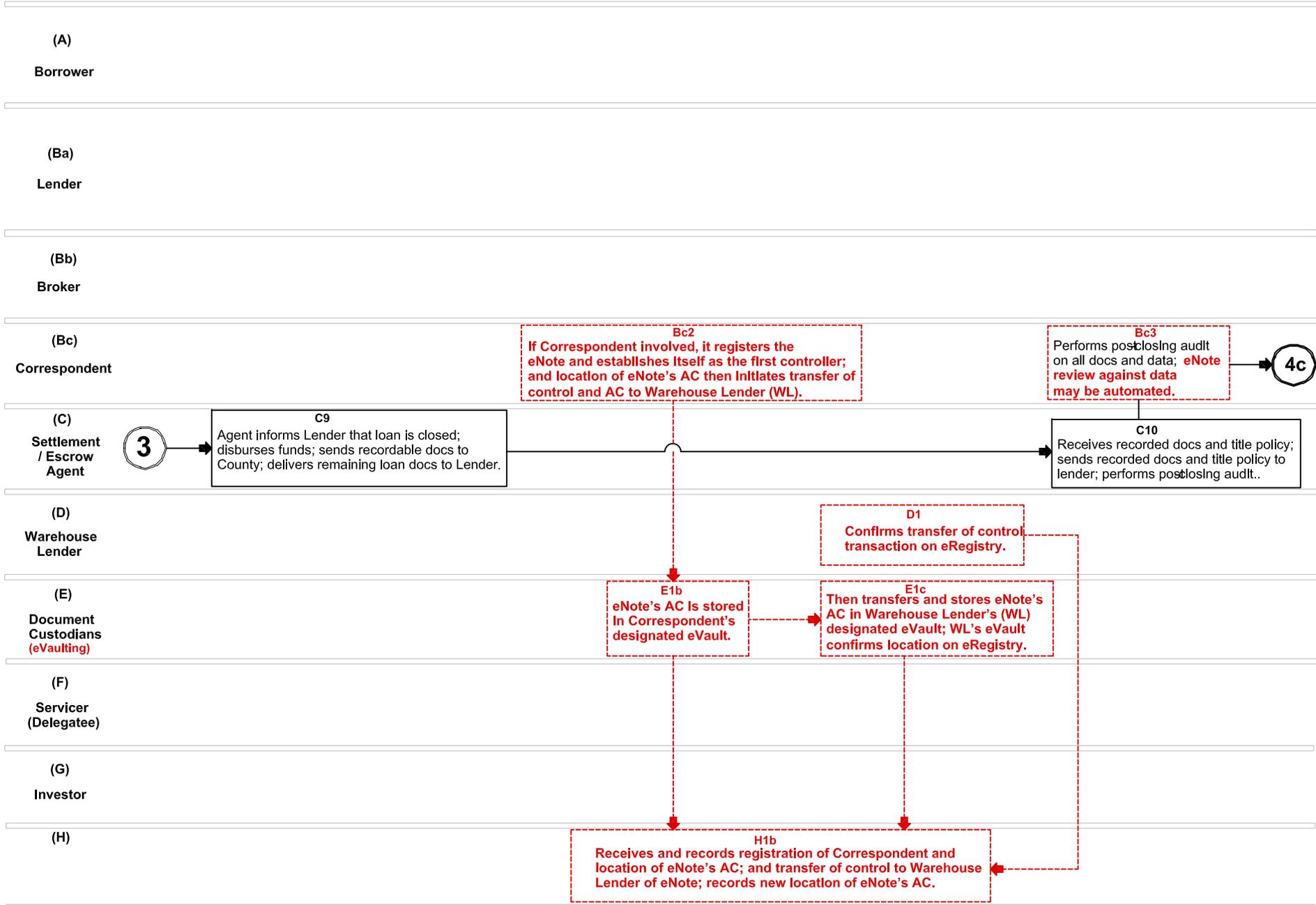
RED indicates process involving eNote.



PAPER vs. ELECTRONIC NOTE PROCESS

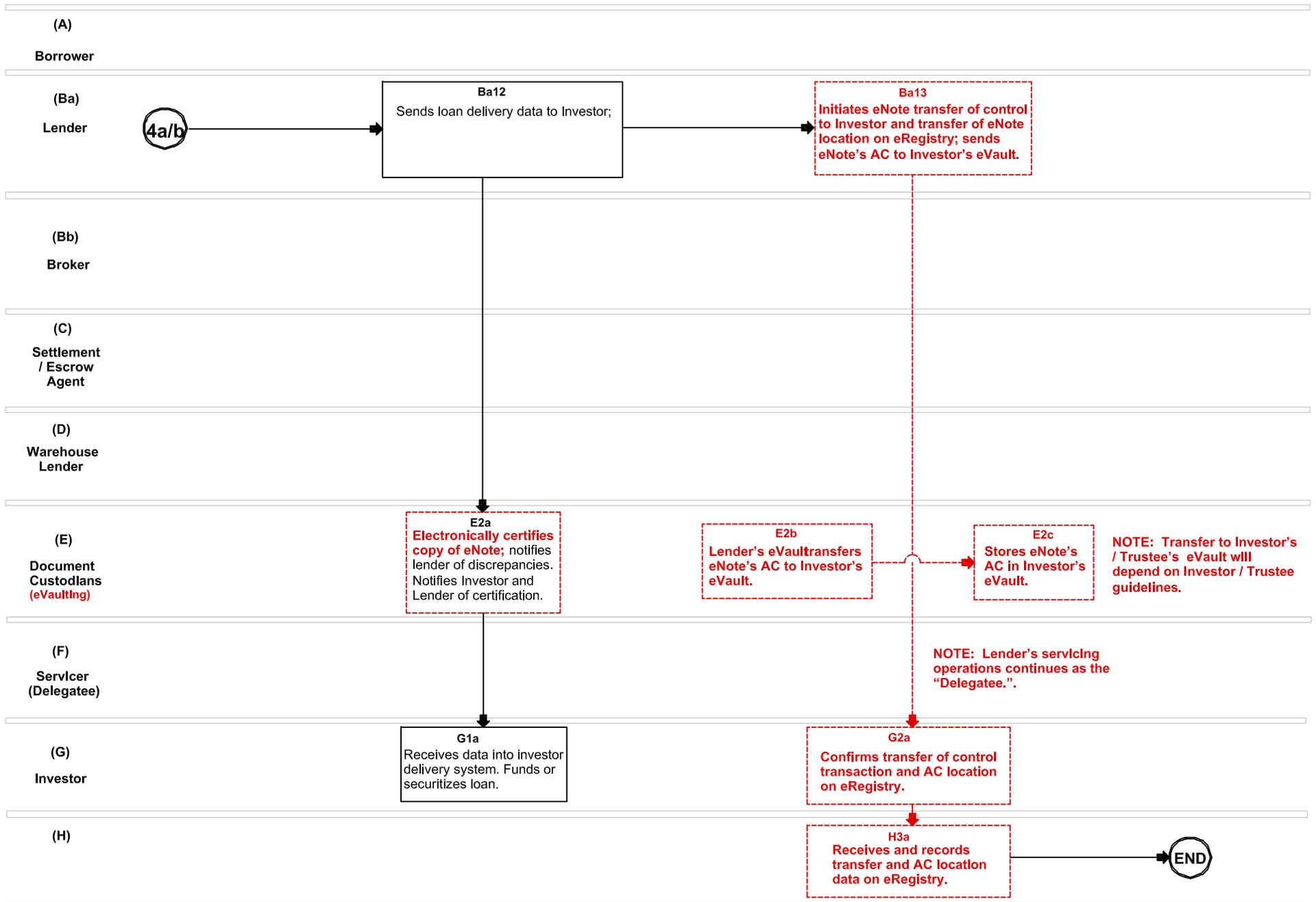
**Post-Closing: Correspondent (w/Warehouse Lender)**

RED indicates process involving eNote.



RED indicates process involving eNote.

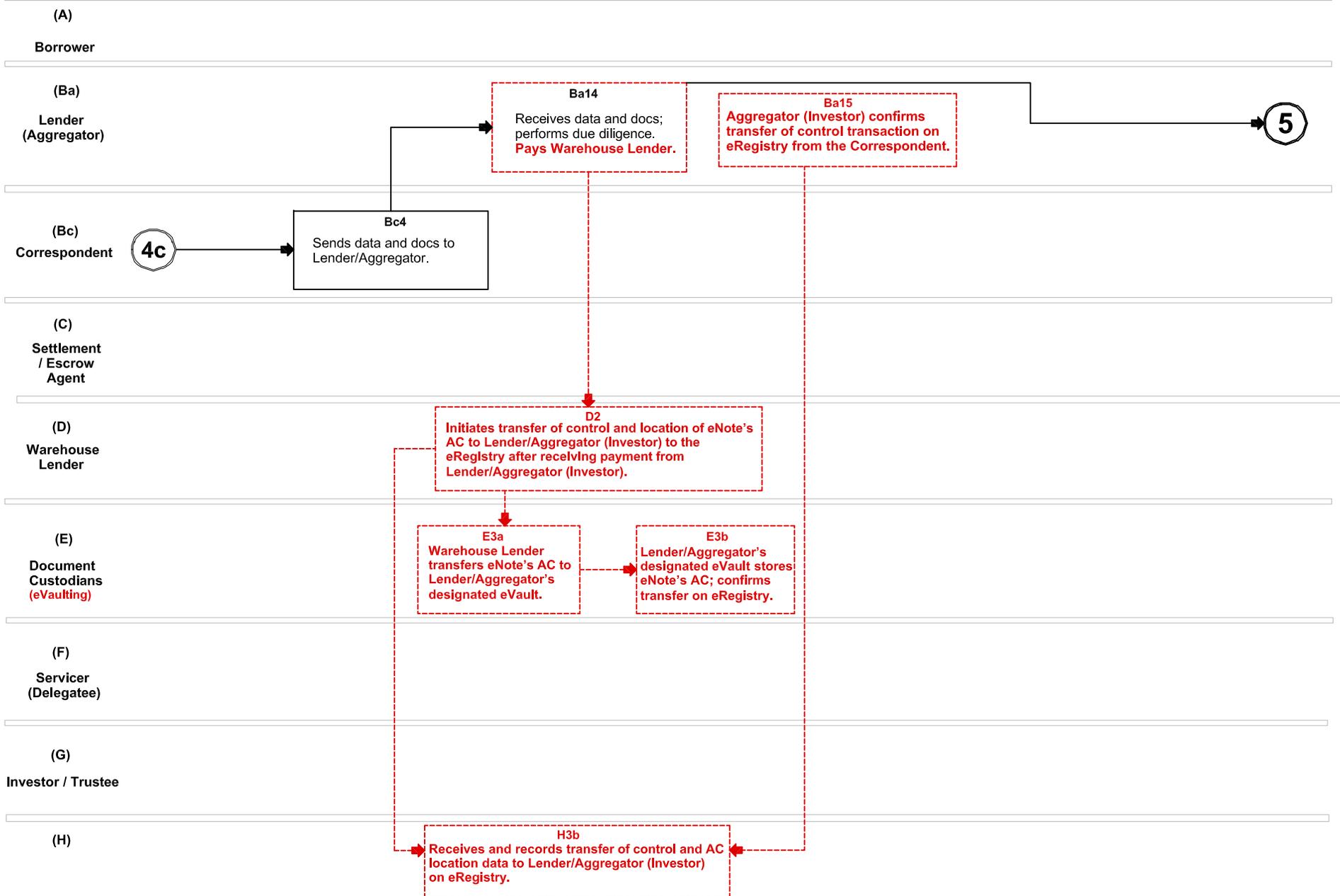
## Investor Loan Delivery – Servicing Retained; Retail Lender



RED indicates process involving eNote.

### PAPER vs. ELECTRONIC NOTE PROCESS

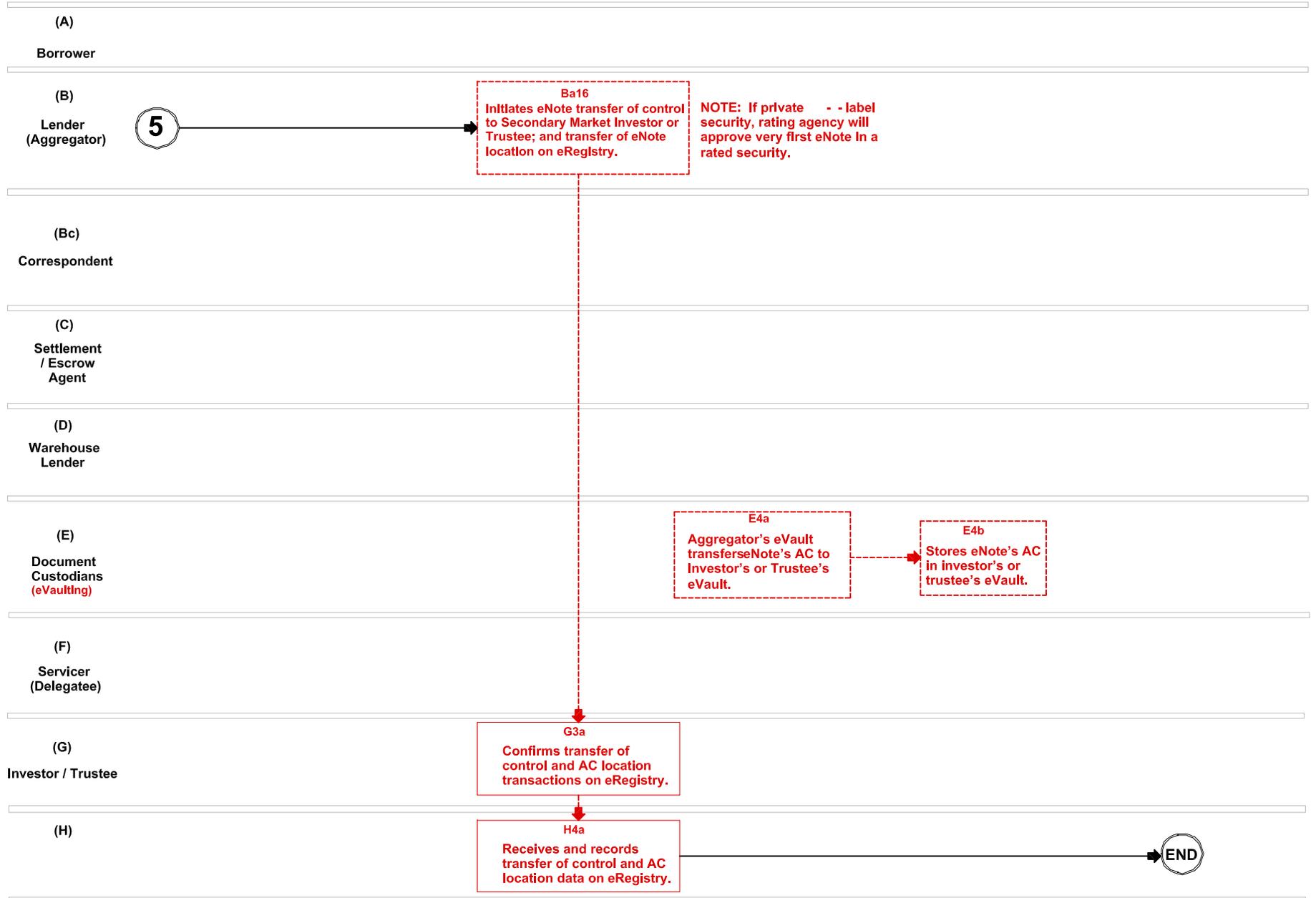
## Investor Loan Delivery – Correspondent (w/Warehouse Lender) and Lender/Aggregator as Investor



RED indicates process involving eNote.

### PAPER vs. ELECTRONIC NOTE PROCESS

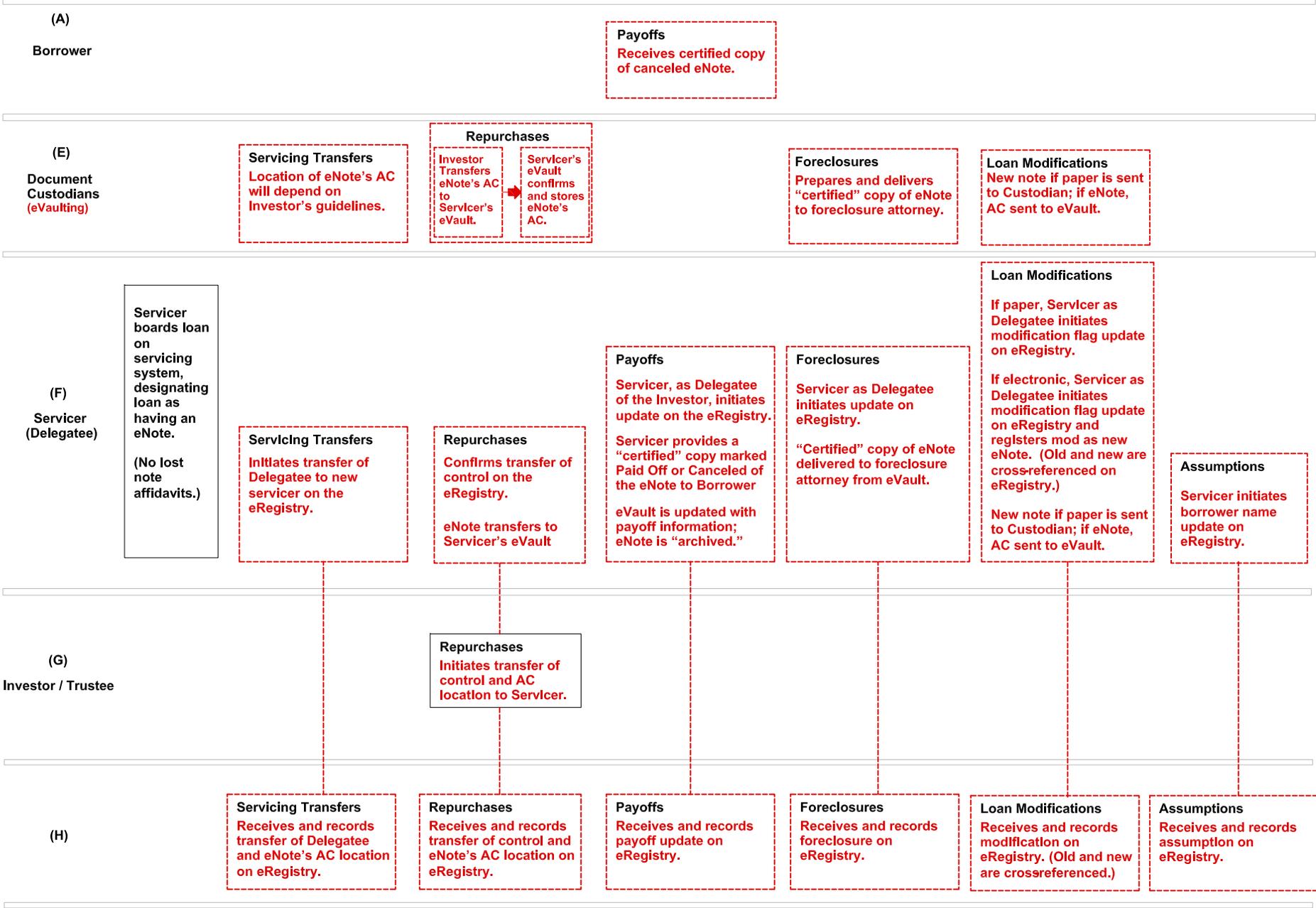
## Investor Loan Delivery – Lender (Aggregator) Sale into Secondary Mortgage Market



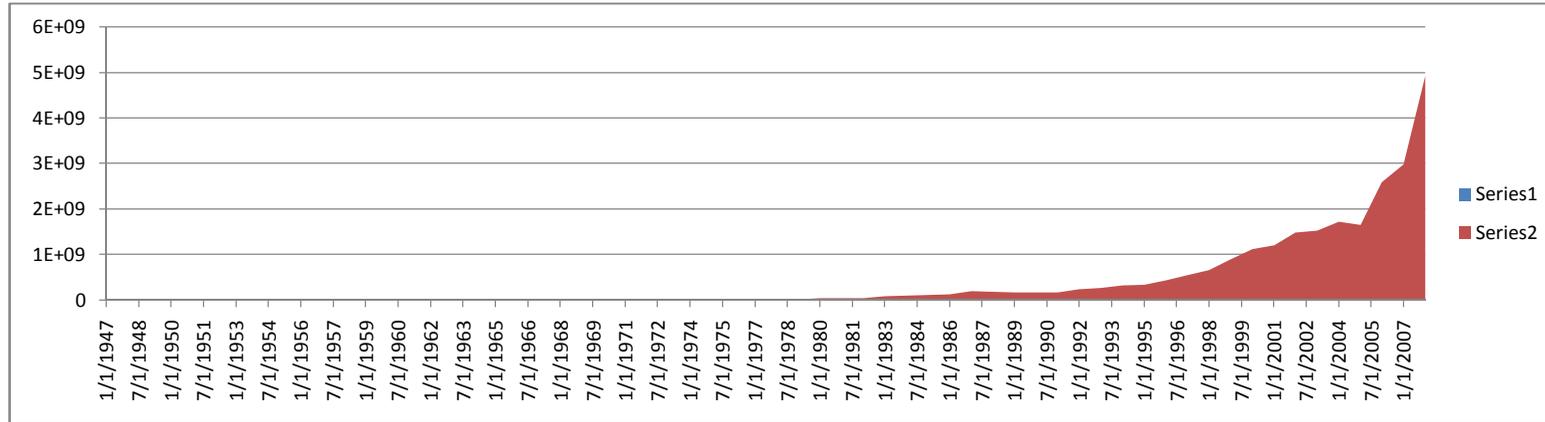
 RED indicates process involving eNote.

PAPER vs. ELECTRONIC NOTE PROCESS

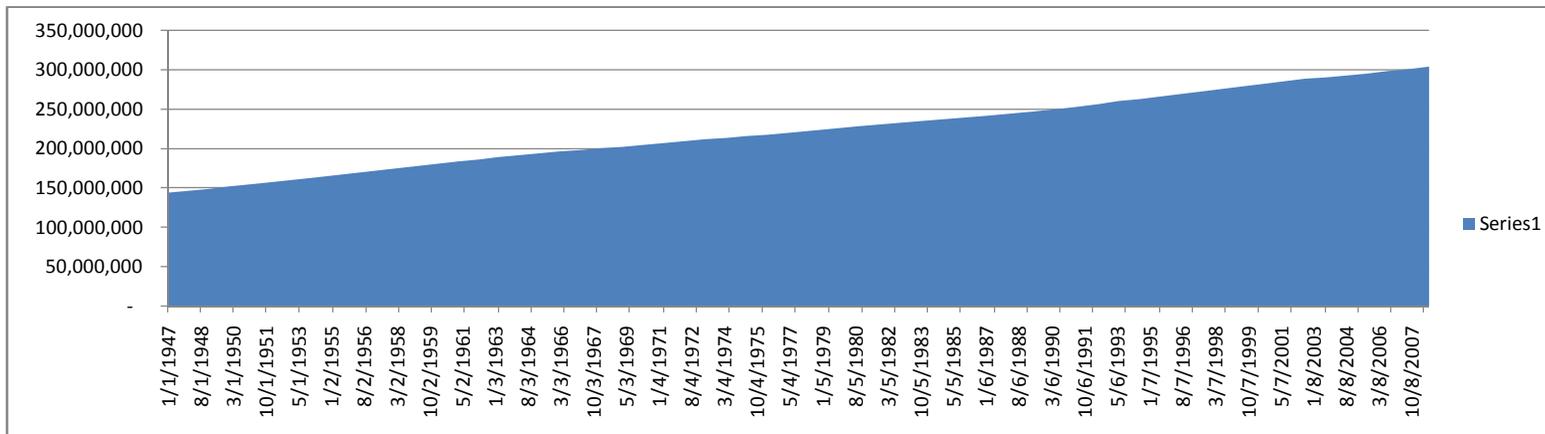
**Servicing eNote - Milestones**



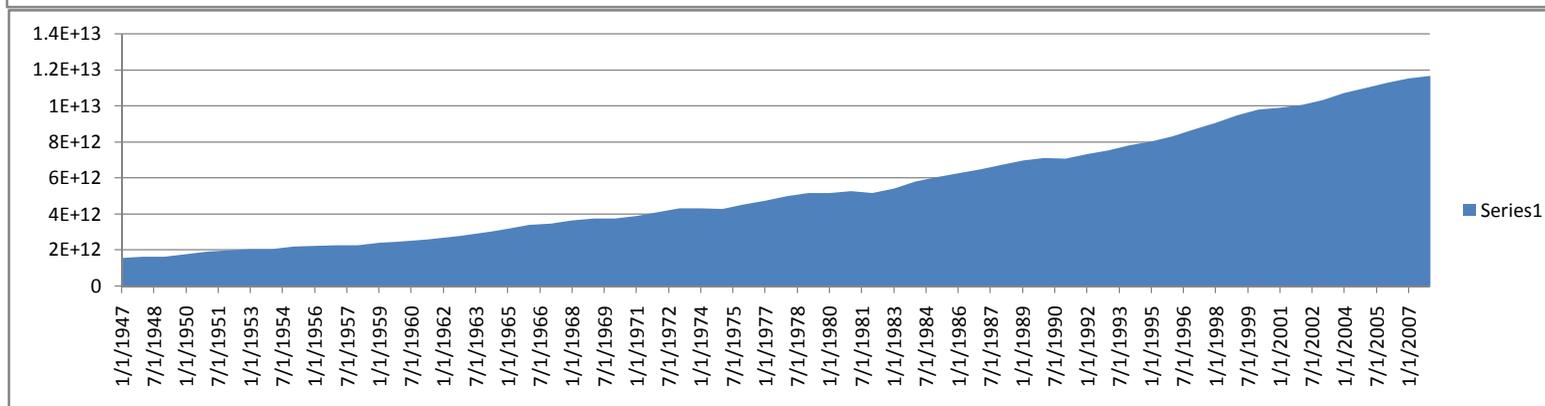
Volume



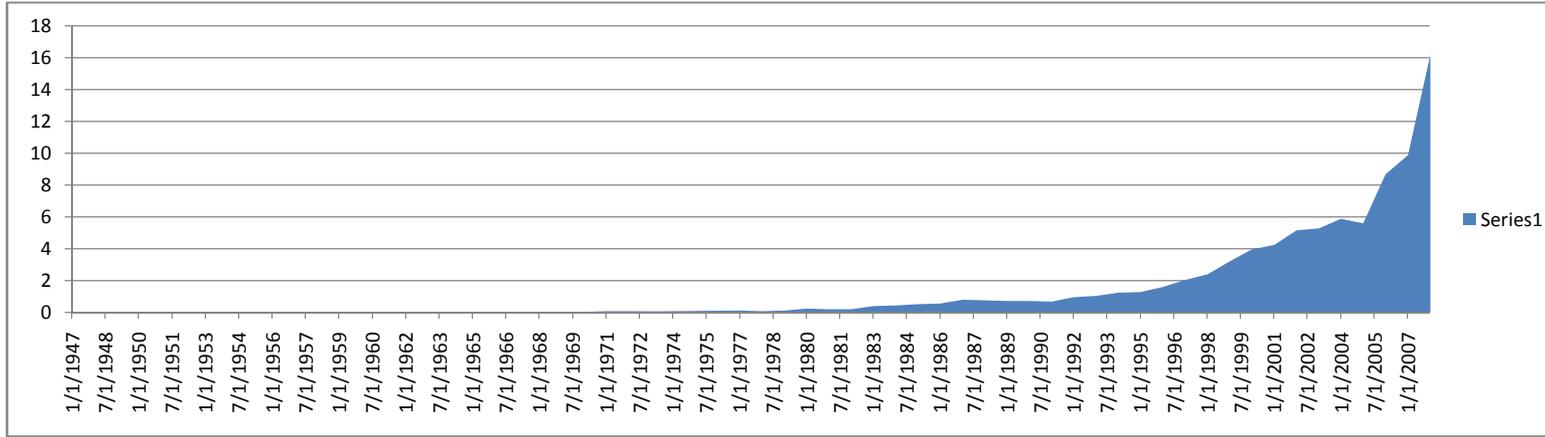
Population



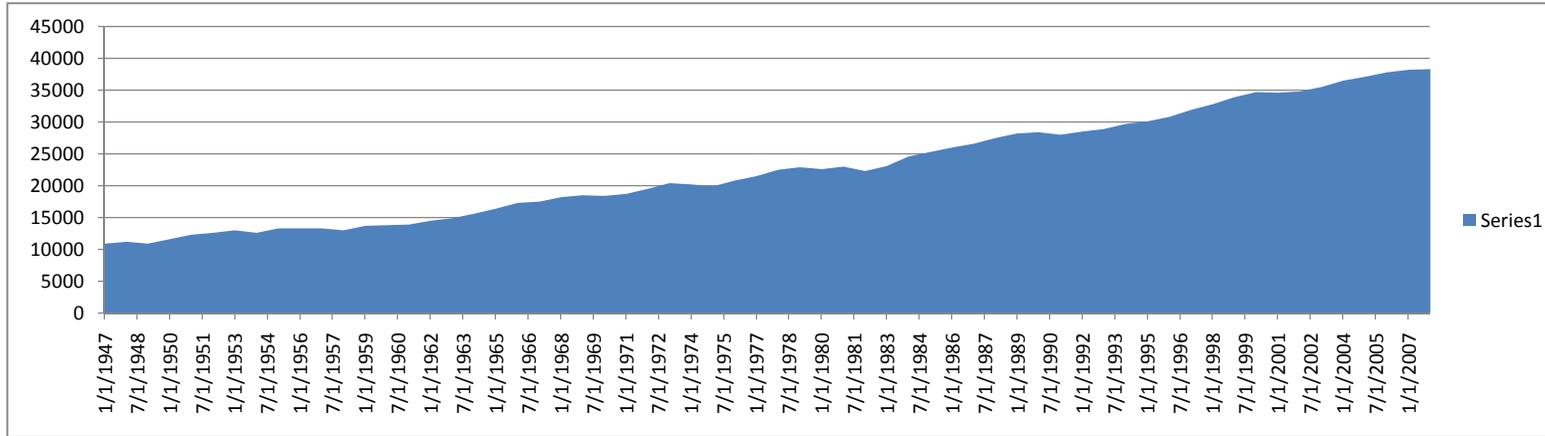
GDP



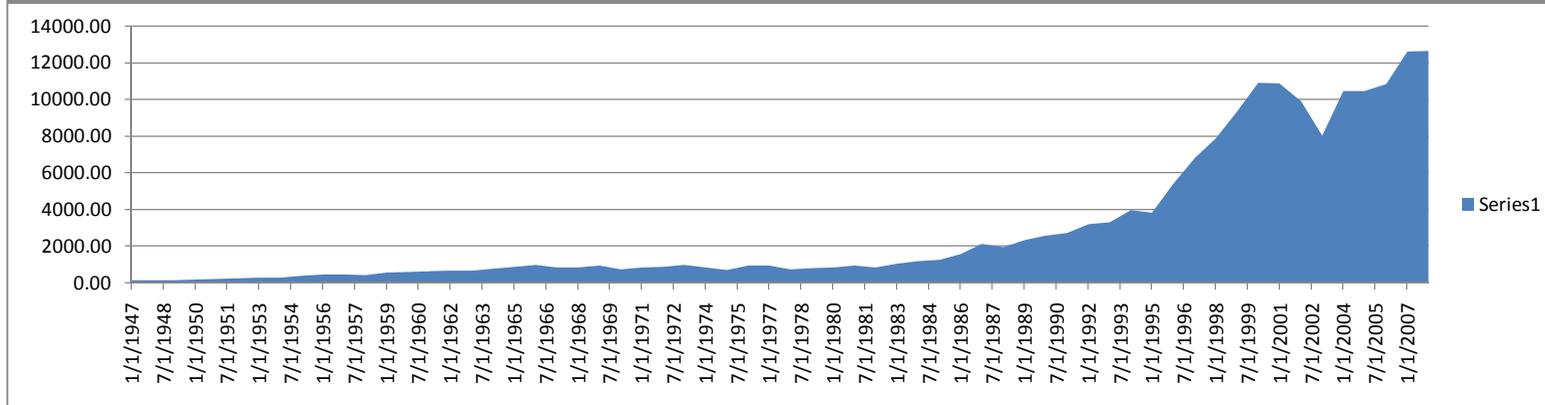
Volume/Population



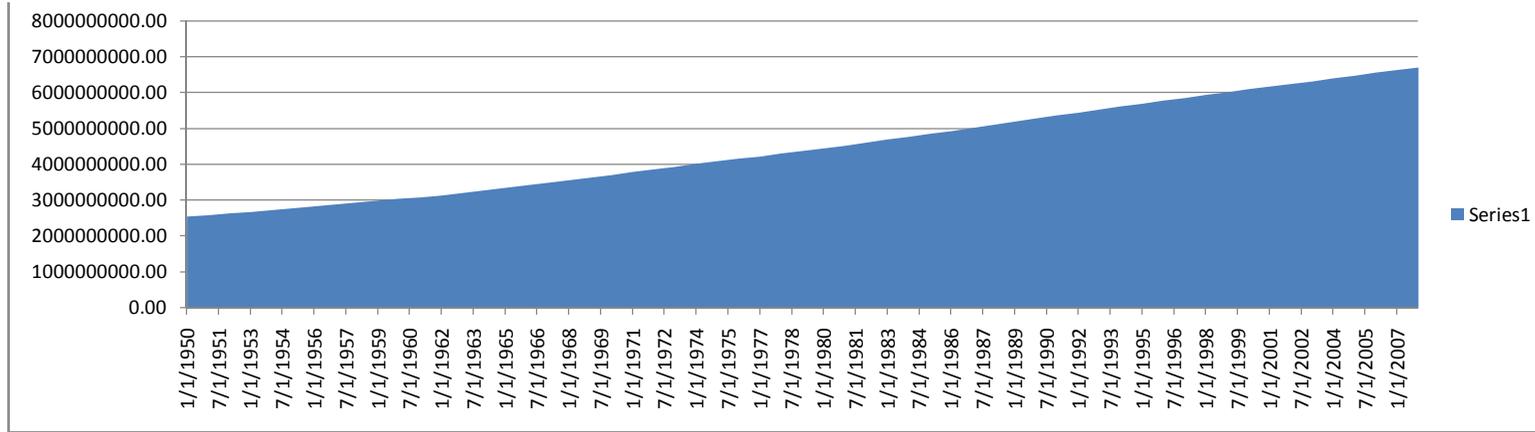
GDP/Population



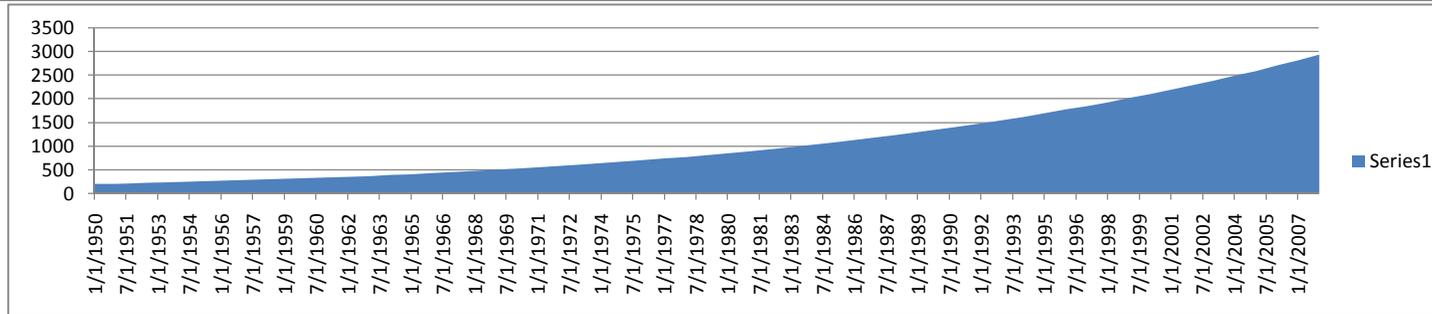
Close



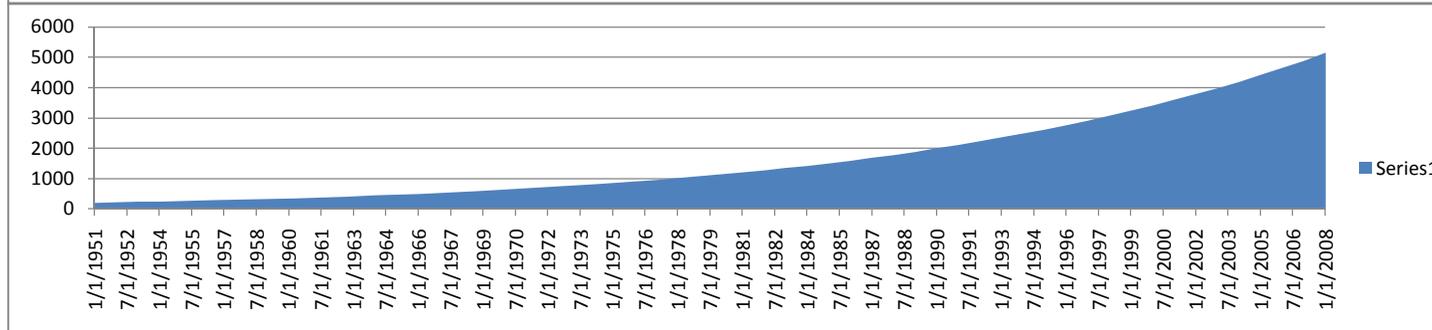
World Population



3%rise  
3064.00



"5%rise  
5419.00



# Notables

End Closing



Credit Union National Association

regulatory advocacy

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October 24, 2000

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Bingham Dana LLP  
150 Federal Street  
Boston, MA 02110

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University of Michigan Law School  
625 S. State Street  
Ann Arbor, MI 48109-1215

Fred H. Miller  
University of Oklahoma Law Center  
300 Timberdell Road  
Norman, OK 73019-5081

Re: Scope of Revisions to Articles 3, 4 and 4A

Dear Gentlemen:

The undersigned financial institution organizations are writing to you to urge that electronic negotiable instruments be included within the scope of the National Conference of Commissioners on Uniform State Laws (NCCUSL) current effort to revise UCC Articles 3 and 4. We believe this UCC Article 3 and 4 revision project represents a unique and critical opportunity for NCCUSL to provide leadership to the states and the financial institution community on the timely and important issue of electronic negotiable instruments.

We were quite surprised by the announcement this spring that it had been preliminarily decided not to include electronic negotiable instruments within the scope of the UCC Articles 3 and 4 revision project. It had been our understanding that one of the primary motivations for NCCUSL to undertake this project was to address electronic negotiable instruments under UCC Articles 3 and 4. Indeed, the exclusion of UCC Articles 3 and 4 from the Uniform Electronic Transactions Act ("UETA") and the recently enacted federal E-Sign Act were supported based on indications from NCCUSL that electronic negotiable instruments would be addressed in the upcoming revision to UCC Articles 3 and 4. As argued by representatives of the Federal Reserve and others, we thought it was agreed that the issues raised by electronic negotiable instruments should be addressed by check law experts in the context of UCC Articles 3 and 4, rather than in the more general UETA and E-Sign Act.

It is essential to address electronic negotiable instruments in this UCC Articles 3 and 4 revision project so that the developers and users of emerging electronic payment products can, if they so choose, utilize check law to support their products. Checks are the payment product of choice for consumers and businesses. According to Federal Reserve statistics, in 1999, check volume was almost five times the volume of automated clearing house payments, credit card payments, and debit card payments combined. The popularity of the check results in part from its ease of use, the ability to transfer the check to any third party without a prior agreement and without accessing a central network, and the well-established and well-understood legal structure supporting check payments.

Absent coverage of electronic negotiable instruments under UCC Articles 3 and 4, developers and users of the emerging electronic payment products will not be able to utilize check law for these products. Given the open nature of check systems – which as described above is one of the check system's great strengths relative to other payment systems – a check law-based legal foundation cannot be replicated by private agreements, because it is impossible to identify all of the parties potentially interested in each transaction. It is only the UCC (or another federal or state law) that can provide a comprehensive uniform legal framework applicable to all persons potentially interested in the electronic negotiable instrument, including the drawer, payor bank, indorsers, other third party transferees and collecting banks. One concern that we understand has been raised about including electronic negotiable instruments within the scope of the revision project is that it may be premature to do so given the degree of experience with electronic negotiable instruments. We disagree. There has been a significant amount of experimentation with electronic negotiable instruments. Attached to this letter are two recent American Banker

articles that detail certain of these programs. In the context of these programs, the UETA, the E-Sign legislation and otherwise, there has been a significant amount of consideration given to the check law rules that should apply to electronic negotiable instruments. More importantly, given the time frame for another UCC Article 3 and 4 revision initiative and the time it takes for the states to enact NCCUSL-proposed UCC amendments, as well as the pace of development of the emerging electronic payment products, it will simply be too late if electronic negotiable instruments were to be tabled until the next UCC Article 3 and 4 revision.

We also have heard concern that inclusion of electronic negotiable instruments in the UCC Article 3 and 4 revision project may complicate and slow the project. However, we believe that it will be possible to provide for electronic negotiable instruments under UCC Articles 3 and 4 without extensive revisions to these Articles, and that their inclusion will not delay the revision project.

Congress and the state legislatures, through the E-Sign Act and the UETA, respectively, have established a legal framework for check law to apply to images and other electronic representations of paper checks. It is now time for NCCUSL to complete this work by extending this legal framework to electronically-initiated checks. The failure to address electronic negotiable instruments in the UCC at this time will have the effect of precluding the use of check law for these emerging electronic payment products. We believe the choice of the legal framework for these payment products should be made by the market – the providers and users of these products – rather than by artificial legal constraints. It would be particularly tragic if these artificial legal constraints preclude the use in the virtual world of our country's most popular legal framework for payments in the physical world.

For the foregoing reasons, the undersigned organizations urge the inclusion of electronic negotiable instruments within the scope of the current UCC Articles 3 and 4 revision project. If you have any questions regarding this letter, please contact David Walker, Executive Director, the Electronic Check Clearing House Organization, at (972) 371-1444.

#### Supporting Organizations

Bank of America  
Bank of Hawaii  
Bank of New York  
Bank One, National Association  
Branch Banking & Trust Company  
BITS  
California Bankers Clearing House Association  
The Chase Manhattan Bank  
Citibank, N. A.  
Clearing House Association of the Southwest  
Comerica Bank  
Credit Union National Association  
Electronic Check Clearing House Organization  
Financial Services Roundtable  
Fleet Bank, National Association  
The Frost National Bank  
HSBC Bank USA  
KeyBank National Association  
Old Kent Bank  
Mellon Bank, N.A.  
Mid-America Payments Exchange  
National Clearing House Association  
New York Clearing House Association L.L.C.  
Payments Resource One  
Small Value Payments Company L.L.C.  
Southwest Automated Clearing House Association  
Summit Bank  
Union Bank of California, N.A.  
Wachovia Bank, National Association

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## Technology



Via e-mail [esignstudy\\_ucc@ntia.doc.gov](mailto:esignstudy_ucc@ntia.doc.gov)

February 24, 2003

Ms. Josephine Scarlett  
Senior Attorney  
National Telecommunications and Information Administration  
14<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, DC 20230

**Re: The Uniform Commercial Code Exception to the Electronic Signatures in Global and National Commerce Act (E-SIGN Act)**

Dear Ms. Scarlett:

Credit Union National Association (“CUNA”) appreciates the opportunity to comment regarding whether the Uniform Commercial Code (UCC) exceptions, in particular the check exception to the E-SIGN Act, should continue. CUNA represents more than 90 percent of the nation’s 10,000 federal and state chartered credit unions. This letter reflects the views of CUNA’s Payment Systems Subcommittee, whose chair is Terry West of VyStar Credit Union, Jacksonville, Florida.

The E-SIGN Act makes electronic records and signatures the legal equivalent of their written counterparts. As a result, it makes electronic records, signatures and contracts legally valid. One exception is that the E-SIGN Act does not apply to most sections of the UCC, including Articles 3 and 4. A study of all the exceptions is required by the E-SIGN Act, which also requires the Secretary of the Department of Commerce to issue a report on whether these exceptions to the E-SIGN Act are needed to protect consumers. In preparation for this report, which is due on June 30, 2003, CUNA provides these comments regarding the UCC exception to the E-SIGN Act.

## Summary of CUNA's Position

- CUNA believes that check truncation legislation currently being considered may facilitate the use of electronic negotiable instruments (electronic checks). As a result, the E-SIGN Act exception should be maintained for the present to see how that legislation progresses.
- If check truncation legislation is not forthcoming, then amending the E-SIGN Act may be necessary. These amendments can be done without harming consumers since there are sufficient consumer protections in other current laws. However, removing the UCC exception should be done only after adequate public hearings have been held and public comments have been received.

## UCC Check Law Covers Paper Checks Only

Section 103(a)(3) of the E-SIGN Act excludes coverage of most sections of the Uniform Commercial Code, including Articles 3 and 4. This part of the UCC establishes the basic law for checks, especially: 1) the requirements for the creation of negotiable instruments, including checks; 2) the exchange of checks among the drawer (person writing the check), the payee of the check, and other third party transferees; and 3) the collection and payment of checks by financial institutions, including credit unions. Articles 3 and 4 apply to all parties that are exchanging a check or otherwise have an interest in the check. One of the unique features of Articles 3 and 4 is that it is not necessary for the parties interested in the check to have any other prior agreement between themselves establishing their respective rights and obligations associated with the check or share draft (share draft is the term for checks drawn on a credit union). This means that a check or share draft can be exchanged between two persons that have no prior course of dealing or arrangement for payment.

Under current law, Articles 3 and 4 of the UCC do not allow for checks or other negotiable instruments to be created or transferred in electronic form. In order to qualify as a negotiable instrument under Articles 3 and 4, the check must be a "writing" that is "signed" by the drawer of the check. As a result of these requirements, it is not possible to create a check, using an electronic record and an electronic signature, which would be a negotiable instrument, governed under Articles 3 and 4.

The E-SIGN Act expressly exempts Articles 3 and 4 from its application. Therefore, the E-SIGN Act does not override Articles 3 and 4 to make electronic negotiable instruments the equivalent of their paper counterparts. If the exception were removed and the E-SIGN Act was applied to Articles 3 and 4 of the UCC, then that would allow for the recognition of electronic records and signatures to create an electronic check that could be exchanged and collected through an electronic process.

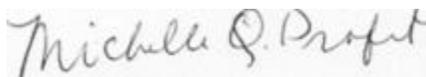
CUNA believes that the treatment of electronic negotiable instruments should be established in federal law, preferably in measures similar to the check truncation draft law that was sponsored in the 107<sup>th</sup> Congress. Our understanding is that check truncation bills also will be sponsored in the 108<sup>th</sup> Congress. Those bills, if passed, would allow credit unions to use the latest check processing technologies to electronically send check image information to financial institutions or to send "substitute" paper checks to those financial institutions that do not want to process electronic checks. Passage of this check truncation legislation would allow credit unions to take advantage of new technologies, but would not penalize those institutions that do not participate in electronic exchange.

CUNA believes that the Department of Commerce and National Telecommunications and Information Administration should monitor the progress of the check truncation bills, before Congress attempts to amend the E-SIGN Act. If passage of this legislation is not enough to encourage the full usage of electronic

negotiable instruments or if check truncation legislation is not passed, then Congress should consider amending the E-SIGN Act to remove UCC Articles 3 and 4 from its list of exceptions. However, if Congress amends the E-SIGN Act, then Congress should do so only after comprehensive hearings that solicit the views of consumer groups as well as financial institution representatives and other stakeholders.

If the E-SIGN Act were amended, there would still be protection for consumers. For example, if the exceptions were removed and electronic negotiable instruments could be created under the Articles 3 and 4 of the UCC, the consumer protections that apply under the UCC for paper checks would also apply to these electronic instruments. Furthermore, consumers would receive sufficient protection under the Electronic Fund Transfer Act (15 U.S.C. § 1693 et. seq.) and Regulation E (12 C.F.R. Part 205), because they both apply to any transfer of funds that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer account. 12 C.F.R. § 205.3(b). Although this regulation expressly excludes paper checks from coverage under the Electronic Funds Transfer Act and Regulation E, this exclusion does not extend to electronic checks.

CUNA commends the Department of Commerce and the National Telecommunications and Information Administration for seeking public comment about the E-SIGN Act exceptions. If you have any questions about these comments, please contact CUNA's Senior Vice President and Associate General Counsel Mary Dunn or me at 1-800-356-9655.



Sincerely,

Michelle Q. Profit  
Assistant General Counsel



Credit Union National Association

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## Headlines

- [CUNA urges states to address electronic checks](#)
- [More time to support 'dot co-op'](#)
- [Washington brief](#)

### CUNA urges states to address electronic checks

Revision of the states' model check law cannot continue to omit electronic payments, argues CUNA and a coalition of 29 financial services organizations.

"We believe the choice of legal framework for electronic payment products should be made by the market—the providers and users of these products—rather than by artificial legal constraints," the coalition declares in a letter to the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Contrary to previous agreements, NCCUSL is revising Articles three and four of the Uniform Commercial Code (UCC) without updating it to include electronic checks.

Yet the Federal Reserve, Congress, and state legislatures agreed that "the issues raised by electronic negotiable instruments should be addressed by check law experts in the context of UCC Articles three and four, rather than in the more general Uniform Electronic Transactions Act and E-Sign Act."

Those two acts established a state and federal legal framework for check law to apply to images and other electronic representations of paper checks.

"It is now time for NCCUSL to complete this work by extending this legal framework to electronically-initiated checks," the coalition maintains. "It is essential to address electronic negotiable instruments so that the developers and users of emerging electronic payment products can, if they so choose, utilize check law to support their products."

CUNA is the voice of credit unions on the coalition. The rest of the coalition consists of 18 banking organizations and 10 electronic payments associations.

#### Resource Link

[Electronic Check Coalition](#)

### More time to support 'dot co-op'

Credit unions and others have more time to file supporting comments on a new Internet address suffix designed exclusively for cooperatives, according to the National Cooperative Business Association (NCBA).

Comments are now due Nov. 5, to the Internet Corporation for Assigned Names and Numbers (ICANN) on the newly proposed suffix ".co-op." That's a one-week extension from the previous comment deadline (Oct. 29).

According to NCBA, ".co-op" is a proposed new Internet name suffix that will "help establish and Internet identity for co-ops worldwide, making it easier for consumers, producers, and others to find the businesses they trust in global e-commerce." NCBA also noted that all co-ops (such as credit unions) which are either active members of NCBA or who belong to NCBA members associations (such as CUNA) will be automatically eligible for the new suffix.

In order to file a favorable comment about the ".co-op" Internet suffix, credit unions should follow these instructions:

- Click on the first resource link to register. ICANN will email you your password instantly.
- Then, click on the second resource link to submit your comments. Scroll down to the .co-op section and click on .co-op, etc. Application by Cooperative League of the USA. When that page appears, scroll down to the blank message box to submit your comments. You'll have to enter your user name and password.
- When you're done, put your name and organization at the end of the letter.
- Hit the submit button.

**Resource Link**  
[ICANN registration](#)

### Washington brief

- **Deposit insurance reform is more urgent now that the economy is slowing**, stresses FDIC Chairwoman Donna Tanoue. Stock market jitters, rising consumer debt, and corporate loan defaults could trigger more bank failures, Tanoue warned America's Community Bankers. Calling for a merger of bank and thrift insurance funds, Tanoue noted one mid-sized thrift's failure could wipe out the entire \$1.5 billion in the thrift fund reserve. Tanoue believes the system's flaws should be fixed before premiums are raised (*American Banker* Oct. 31) ...

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FORM OF BAILEE LETTER (WAREHOUSE BANK)  
(MBS/DUS)

Federal National Mortgage Association  
[insert address for Fannie Mae as specified  
in Part IV, Section 301 of the DUS Guide]

Re: Fannie Mae DUS Commitment Contract No.: \_\_\_\_\_  
Borrower: \_\_\_\_\_  
Unpaid Principal Balance of Note  
as of \_\_\_\_\_, 19\_\_: \$ \_\_\_\_\_  
Date of Note: \_\_\_\_\_  
Project Location: \_\_\_\_\_

Ladies and Gentlemen:

In compliance with the requirements of the Delegated Underwriting and Servicing Guide and the above referenced loan Commitment Contract (the "Commitment"), [insert name of DUS Lender] (the "DUS Lender") has requested that [insert name of warehouse bank] (the "Bank") deliver to Federal National Mortgage Association ("Fannie Mae") the original Multifamily Note (the "Note") evidencing the captioned loan, together with originals of certain other documents indicated in the Table of Contents for Mortgage Loan Delivery Package (the "Additional Documents") with respect to such loan. By this letter the DUS Lender and the Bank advise Fannie Mae that the DUS Lender has granted a security interest in the Note and Additional Documents to the Bank.

The Bank warrants to Fannie Mae that the Bank has not (a) assigned or transferred the Note and Additional Documents to any other party or (b) recorded its security interest in such Note and Additional Documents. During the period in which Fannie Mae holds the Note and Additional Documents as bailee, as described below, the Bank will not assign or transfer the Bank's interest in such Note and Additional Documents or record such security interest.

Fannie Mae holds the Note and Additional Documents as bailee for the benefit of the Bank until (i) Fannie Mae delivers the Mortgage Backed Security (as defined below) by wire transfer in accordance with the delivery instructions specified on Form 2014, a copy of which is attached, or (ii) Fannie Mae returns to the Bank, as set forth below, the Note and any Additional Documents delivered by the Bank. The Bank agrees that the Bank's security interest in the Note and Additional Documents shall terminate and be cancelled without further action upon delivery by Fannie Mae of

the Mortgage Backed Security as described in (i) above. In the event that Fannie Mae does not issue the security in exchange for the Note, Fannie Mae will execute and deliver to the Bank an assignment, in recordable form, of the Mortgage (Deed of Trust) securing the Note and will endorse the Note in blank but without recourse (assuming the Note has been endorsed to Fannie Mae); and the Bank agrees that Fannie Mae's status as bailee for the Bank shall terminate and be cancelled without further action upon delivery to the Bank of the Note (endorsed as aforesaid) and Additional Documents, as described in (ii) above, together with such executed assignment of the Mortgage (Deed of Trust).

The "Mortgage Backed Security" means the Fannie Mae Guaranteed Mortgage Pass-Through Certificate in the amount that Fannie Mae, pursuant to the Commitment and the Delegated Underwriting and Servicing Guide, agrees to pay in consideration for the Note. The Bank and the DUS Lender recognize and agree that the amount of the Mortgage Backed Security may be less than the full principal amount of the Note, and that the DUS Lender may have paid or advanced other funds to Fannie Mae in connection with the Commitment that are not included in the Mortgage Backed Security.

The Bank and the DUS Lender agree that the standard of care to be exercised by Fannie Mae in holding the Note and Additional Documents shall be to exercise the same degree of care and skill as Fannie Mae exercises when it holds mortgage loan documents on its own behalf. The Bank and the DUS Lender understand that Fannie Mae is a bailee only and is not a representative, trustee or fiduciary or otherwise an agent, of or for the Bank or the DUS Lender with respect to the Note and the Additional Documents.

The DUS Lender has submitted Mortgage Backed Security delivery instructions to Fannie Mae on Form 2014, a copy of which is attached. No change in such instructions shall be requested by the DUS Lender, without the consent of the Bank, and no change shall be honored by Fannie Mae unless the Bank has consented to such change. Delivery of the Mortgage Backed Security by Fannie Mae pursuant to such instructions is acceptable to the Bank and will suffice to terminate the Bank's security interest as described above.

In recognition of the security interest held by the Bank in the Note and Additional Documents and Fannie Mae's status as bailee with respect thereto unless and until Fannie Mae has delivered the Mortgage Backed Security as described above, the Note and Additional Documents shall not be delivered by Fannie Mae to a third party.

In the event that Fannie Mae does not purchase the Note, the Note and Additional Documents should

be returned to the Bank no later than seventy-five (75) days after the date of delivery of the Note to Fannie Mae, to the address set forth below:

**[Insert name and address of warehouse bank]**

It is understood that delivery by the Bank to Fannie Mae (and by Fannie Mae to the Bank, if the Note and Additional Documents are not purchased) is without warranty, except as expressly stated herein, and without recourse.

If you have any questions please contact the undersigned, whose telephone number is \_\_\_\_\_.

Very truly yours,

**[Insert name of warehouse bank]**

By: \_\_\_\_\_

[name]

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment (Form 2014)

Agreed:

**[Insert name of DUS Lender]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Florida Electronic Recording Advisory Committee

Date: August 20, 2007

Time: 9 a.m. to 2-p.m.

Location: FACC Office, 3544 Maclay Blvd., Tallahassee, FL 32312

Members Present:

Hon. Martha O. Haynie

Hon. J. K. "Buddy" Irby

Hon. James Jett

Hon. R.B. "Chips" Shore

Ms. Sue Baldwin

Ms. Patricia P. Hendricks Jones

Mr. Steve T. Rumsey

Mr. Arnold "Skip" Straus

Mr. Scott Jenkins for Mr. John M. Hutchison

Members Absent:

none

Hon. Karen Rushing, President of the Florida Association of Court Clerks and Comptrollers, acting chair, opened the meeting at 9:10 a.m. Rushing addressed a variety of housekeeping issues for the meeting. She noted that the Florida Association of Court Clerks' (FACC) staff was required in the law to provide staff and technical support to this committee, that the law also required that all committee members would serve without compensation. She also clarified that part of the agreement for passage of the bill was that no state funds be expended on the administration of the committee, such as travel. As such, she informed the committee, it was agreed with the Department of State that all meetings would be held in Tallahassee.

Rushing explained further that as staff support, the FACC staff had worked with the Department of State to insure that the proper meeting notices were posted. Accordingly, the meeting was advertised in the Florida Administrative Weekly (FAW). Additionally, staff developed a button on the FACC homepage, [www.flclerks.com](http://www.flclerks.com), where meetings and associated information will be posted.

Rushing recognized the members of the committee and asked each one to introduce themselves and provide a brief explanation of their interest in the committee. Scott Jenkins, Florida Banker's Association, noted that he was just sitting in for their association appointee, John Hutchison, who would be in attendance at the next meeting.

Rushing recognized Ms. Judith Ring, the State Librarian and Director of the Division of Library and Information Services, with the Department of State (DOS). Ms. Ring introduced the following DOS attendees:

Staci Bienvenu, General Counsel

Jim Berberich, Information Resources

Kevin Gotfredson, Law Clerk

Logan Mitchell McFadden, Legislative Affairs

The chair recognized Fred Baggett, FACC General Counsel and asked him to review the Sunshine Law and its applicability to the committee. Mr. Baggett explained that the committee was formed by legislation, SB 2038, which went into effect on June 27, 2007. The committee must hold open meetings and advertise those meetings. He felt that the Attorney General opinions and case law were clear, that while this committee is one that makes recommendations, the Sunshine Law does apply to this committee. He stated that the committee members should feel free to communicate with committee staff and the public, but not with each other without proper notice. He noted that two or more members cannot meet to discuss issues that may come before the com-

mittee in the future unless notice is given. However members can meet on matters other than potential committee issues without having to give notice. In the event 2 or more members were to meet or communicate it must be advertised appropriately. Ms. Haynie asked, on the notice of written communications, if committee members write a letter or memo, can they copy everybody? Baggett responded that it would require notice as it would be deemed a meeting. Mr. Irby asked if it would be alright, if at an FACC meeting where another member or so may be present, to communicate to a group of Clerks to tell them what this committee is doing or has done. Mr. Baggett deemed it to be a report, as long as you and the other committee members weren't discussing issues together, but rather hearing the concerns of others.

Rushing presented a brief, high level review of Florida County Recorder Activities and Standards. She listed the Recorder responsibilities generally as maintaining one general series known as the Official Records which is open to the general public. On each filed instrument the recorder must enter the sequential filing number, affix time and date of recording, index the type of document, and list the parties who are affected by the instrument being filed. When a document comes into the recorder's office, a filing fee is due and the document may be subject to other required compensation, such as documentary stamps. Generally, the Clerk reviews the document for the following items: that it is an original, that it is signed, that, if it is required to be notarized or witnessed that it is, and generally, Clerks review the document to make sure that it is intended to be filed in the proper county. Once the review of the document has taken place, the information is captured in an automated system, and the fees and taxes are receipted. The fees for Clerks are generally assessed by the number of pages being filed. If there are more than a certain number of parties, there is an additional assessment. If documentary stamp taxes are collected they are sent to the Florida Department of Revenue, and any other accompanying documentation, like a DR 219, are sent to the property appraiser and department. There are a variety of instrument types in the Official Records besides deeds, such as plats, road maps, mechanics liens, bonds, homesteads, judgments or orders from the court and probate documents. Of note, the Recorder is also required to preserve the records and keep a permanent archive of those records.

Ms. Rushing recognized Mr. Baggett to review chapter 2007-233, Laws of Florida, the law creating the committee. This new law became effective June 27, 2007. He commented that prior to this bill, current law provided for electronic transactions, but did not clearly provide for electronic recording of documents that affect real property titles. This bill adopted the Uniform Real Property Electronic Recording Act as provided by the National Conference of Commissioners on Uniform State Laws, (NCCUSL), and was supported by the Clerks, Title Industry, Real Property Section of the Bar, and all other interested parties.

He noted that the act clarifies the authorization for the electronic recording of real property documents with county recorders. This bill authorizes county recorders to receive records in electronic form and store electronic records. Clerks can electronically record, there are just no uniform standards at this time. Electronic Recording would be permissive and not mandated. The bill equates electronic documents and electronic signatures to original paper documents and manual signatures, so that any requirement for originality (paper document or manual signature) is legally satisfied by the electronic document and signature. The bill provides that the standards and practices for electronic recording be promulgated by rule by the Secretary of State after consultation with the Electronic Recording Advisory Committee so as to establish uniform rules for any Clerk that implements an electronic recording system. Until these rules become promulgated, there are no uniform standards in the state.

The bill requires the committee to consider:

- Standards and practices of other jurisdictions.
- The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.
- The views of interested persons and governmental officials and entities.
- The needs of counties of varying size, population, and resources.
- Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

The Electronic Recording Advisory Committee is made up of five members appointed by the FACC, one of whom must be the Broward County Recorder, two representatives of the Florida Land Title Association, one representative from the Florida Banker's Association, and one attorney from the Real Property, Probate and Trust Law section of The Florida Bar. The committee is to dissolve in 2010. The date was set by the Legislature with the expectation that the rule promulgation process, while it should not be lengthy, the committee would have time to offer any "tweaks" needed or updating needed after the rule goes into effect.

Baggett clarified that there is no fiscal impact as the bill requires the FACC to provide administrative support and technical expertise to the Electronic Recording Committee and the Department of State. Baggett expressed appreciation to the Department of State for their willingness to allow FACC to staff the group and for the department to undertake the rulemaking process later on.

He noted that the bill equates electronic records to paper records in whatever form.

Ms. Jones asked Baggett for clarification by asking, "You made a statement that clerks were not precluded from accepting electronic recording; they are just doing so with out uniform standards." Baggett responded that the law is clear and did not prohibit the Clerks from the acceptance of electronic documents. There is acceptance for electronic signatures and electronic notarization. The bill does not require the Clerks to refrain from accepting documents in electronic form. Straus explained that the title underwriters have issued direction that until the committee issues their standards, if the document was electronically recorded, they would not make title insurance available. Mr. Baggett explained that the bill, effective in June, gave Clerks clear authority to accept electronic documents. It does not prohibit the clerks from taking electronic documents until a rule is promulgated. Haynie explained that she felt the Uniform Electronic Transactions Act (UETA) passed in 2000 gave us the authority to accept electronic documents. Baggett agreed and explained that this bill was passed to clarify that you could take recorded documents in electronic format and provided for the adoption of standards.

Ms. Judith Ring, DOS, spoke to the rulemaking process found on [www.flrules.org](http://www.flrules.org) and the general process for rulemaking. She noted that in a regular rulemaking process that there are at least two opportunities for public hearings and discussion of the proposed rules. The general timeframe for rulemaking is about 7-9 months.

Ms. Baldwin noted that adoption of standards should not be difficult as all those in Florida were already using the nationally accepted PRIA standards.

Jett felt that he had been told that he should put his efforts for electronic recording on hold and wanted to make sure he was hearing that he could move forward. Representatives from the Department of State (DOS) expressed that they would have no objection at this point. Professor Fry was recognized and she clarified that in her perspective, because of Florida's UETA law, that Florida recorders could accept electronic documents.

Straus again asked for clarification if the Clerks could accept level 1 electronic documents(starts as paper and converts to electronic). Baggett explained that this decision was outside the scope of the committee.

Shore asked if this committee provides recommendations to the DOS and they accept it, is the committee over or does it continue to 2010? Baggett responded that the requirement is to meet annually and generally noted how many more meetings could be required under the current law.

Rushing told the committee that Tim Reiniger, National Notary Association, was unable to be present at this meeting but would like to appear at a later date.

Rushing introduced Professor Pat Fry, Professor of Law Emeritus, University of Missouri-Columbia, who presented the Purpose for the Uniform Real Property Recording Act (URPERA), the role of the National Con-

ference of Commissioners on Uniform State Laws (NCCUSL) and how the UETA and Electronic Signature (E-Sign) Act work together.

Marty Haynie asked if there was a conflict between the recently passed Florida Electronic Notary Act and the bill creating the Uniform Electronic Recording Act. Mr. Baggett and Ms. Fry both commented that there was no conflict. While the bill says the notary signature must “be capable of verification,” it is not the recorder’s place to verify an electronic notarization.

Straus asked Professor Fry her comment wherein she noted it was hard to track the “original.” He queried, “Between paper and electronic – which is the original?” Professor Fry said it does not matter under either URPERA or UETA.

Carmen Bramante was recognized and noted that while all records in a closing document can get from paper to electronic and from electronic to paper, a promissory note cannot. Once it is paper it must stay paper; if it is electronic, it must stay electronic.

Straus continued, “So, if I prepare a package (electronically) and send it to the county recorder, can she accept it? Professor Fry answered, “Yes, if she agrees to it.”

Straus asked Professor Fry if the NCCUSL commissioners drafting the URPERA have an opinion as to what this committee is to do? Professor Fry explained that, while she was not on that committee, she did not believe there was any reason or attempt to interfere or disrupt the processes underway. It was to help establish a format or process under which in any state you could work towards interoperability.

Rushing introduced Ms. Carol Foglesong, Assistant Comptroller, Orange County Comptroller’s Office and President of the Property Records Industry Association (PRIA). She presented to the committee an overview of the association and what activities they have undertaken since inception in 2002.

Rushing then introduced Mr. John Jones, Arion Zoe, and Mr. Carmen Bramante, CDB Consultancy, who presented a powerpoint slideshow about an eRecording Committee and Its Responsibilities, including an overview of UETA, eSIGN and URPERA, and the purpose and organization, challenges, deliverables, producing success, ongoing responsibilities, and next steps.

They noted that Florida was far ahead of other states in that they have already undertaken a lot of the work needed to establish a framework upon which e-recording can be built. Bramante and Jones also noted that Florida chose the advisory committee model instead of passing the responsibility directly to a state agency. They urged the committee to look over what had already been done by the industry and in the other states and to carefully consider what else should be addressed. They mentioned the Kansas Electronic Recording Commission draft report as a good example of the type work this committee could review.

The chair thanked Mr. Jones and Mr. Bramante for their presentation and moved to the election of the chair.

Rushing entertained motions for committee chair nominees. Irby nominated Shore, seconded by Jett. Baldwin nominated Haynie, seconded by Rumsey. The vote was 5-3, with Haynie chosen as chair. For vice chair, Irby nominated Shore, Jett seconded. Baldwin nominated Mr. Straus who declined. Shore was elected vice chair without opposition.

A lunch break was held from 12:25 p.m. to 1:30 p.m.

Haynie, chair, called the meeting back to order at 1:30 p.m. She asked members to look at their calendars to consider a date for the next meeting. She discussed moving the meeting to Orlando. DOS members expressed

concern over their agency travel freeze. Ms. Hayne then entertained the idea that perhaps there could be one more meeting face to face then the committee could meet by conference call or at another location. Irby moved that the next meeting be held in Tallahassee and indicated that Mondays and Tuesdays were bad for Clerks. There was general discussion of potential dates, as well as the fact that the Special Session could cause a scheduling problem.

Haynie asked Baldwin to chair a subcommittee and bring back to the full committee a recommended workplan, with goals and objectives, for the committee to review at the next meeting. Others named to the subcommittee are: Rumsey, Shore, and Straus. It was noted that the subcommittee is considered to a meeting of the committee under the Florida Sunshine Statute and as such must be noticed, keep minutes, make an agenda available and meet in a venue where the public can come if they so choose.

Haynie asked if anyone in the audience wished to speak. She recognized Mr. Steve Jordan, Fidelity National Financial, who asked if the committee could help push e-recording forward and get feedback from the title community.

Irby commented that he would like to get the rules together, add anything else needed for Florida, and get this done. Paul Clifford, Simplifile, told the committee that e-recording in Florida had come to a halt with the passage of URPERA and would not resume unless underwriters got positive reassurance that it could continue. Baldwin asked that this discussion appear in the minutes. Jett asked that it be put in writing from the Secretary of State's Office that it is ok to electronically record. Judith Ring, DOS, told the group she would take it up with their General Counsel's Office. Haynie clarified that the DOS had no objection to it to recorders continuing with e-recording.

Straus made a motion to ask the Secretary of State to confirm or deny that electronic recording as it exists in Florida can continue. Shore seconded the motion for discussion. Mr. Baggett clarified that the duty of the recorder is not under the jurisdiction of the Department of State and that they have no authority to tell recorders to e-record or to stop. Irby amended the motion to clarify that the question should be asked of the Attorney General. Straus withdrew his motion. Chips seconded the withdrawal. Straus mentioned that the underwriters still have an issue. Clifford, Simplifile, explained that his company has a cease and desist order. Jett asked if Baggett could do a memo to the group. The procedure for requesting a legal opinion was discussed and the group decided to let the issue alone for now. Rushing reminded the group that this is an industry issue, not a clerk/comptroller's issue. Rumsey noted that this issue should not be considered by this committee. Chair Haynie agreed that the committee should not overstep its bounds. Rumsey suggested that the committee look at the Kansas Electronic Recording Commission's draft plan as to maximize the use of the committee's time. The members agreed. Jordan, Fidelity National Financial urged the committee to move quickly.

Haynie suggested that the next meeting be scheduled sooner rather than later, sometime with the next eight weeks, and that all would be notified.

Ms. Haynie adjourned the meeting at 2:45 p.m.

Respectfully submitted,

Beth Allman as Recording Secretary

**Excerpts**

**Pooling and Servicing  
Agreement**

**Argent Securities Trust 2006-W4**  
**Accession Number 882377-6-1556**  
**Prospectus**

## **THE MORTGAGE POOL**

The statistical information presented in this prospectus supplement relates to the Mortgage Loans as of the Cut-off Date. References to percentages of the Mortgage Loans in this prospectus supplement are based on the aggregate scheduled principal balance of such Mortgage Loans as specified in the amortization schedule at the Cut-off Date after application of all amounts allocable to unscheduled payments of principal received prior to the Cut-off Date. Prior to the issuance of the Certificates, some Mortgage Loans may be removed from the mortgage pool as a result of incomplete documentation or otherwise and any Mortgage Loans that prepay or default will be removed. Other mortgage loans may be included in the mortgage pool prior to the issuance of the Certificates. However, the removal and inclusion of such mortgage loans will not alter the aggregate principal balance of the Mortgage Loans, any statistic presented on a weighted average basis or any statistic based on a particular loan group or all of the Mortgage Loans by more than plus or minus 5%, although the range of mortgage rates, maturities or certain other characteristics of the Mortgage Loans may vary. If any material pool characteristic of the Mortgage Loans on the Closing Date differs by more than 5% from the description of the Mortgage Loans in this prospectus supplement, the Depositor will file updated pool characteristics by Form 8-K within four days following the Closing Date.

## **THE DEPOSITOR**

Argent Securities Inc., the Depositor, is a Delaware corporation incorporated in May 2003 as a wholly-owned subsidiary of Argent Mortgage Company, L.L.C. The Depositor was organized for the purpose of serving as a private secondary mortgage market conduit. The Depositor maintains its principal office at 1100 Town & Country Road, Orange, California 92868. Its telephone number is (714) 541-9960.

## **THE ORIGINATOR**

All of the Mortgage Loans were originated by Argent Mortgage Company, L.L.C. (the "*Originator*"), an affiliate of the Sponsor. The Originator provided the information in the following paragraphs. The Originator has been originating mortgage loans since January 2003. Prior to January 2003, wholesale mortgage loans were originated through the Sponsor.

The following table summarizes Argent's wholesale originated one- to four-family residential mortgage loan origination and whole loan sales and securitization activity for the periods shown below. Sales activity may include sales of mortgage loans purchased by Argent from other loan originators.

## **The Seller, SPONSOR and Master Servicer**

Ameriquest Mortgage Company provided the information set forth in the following paragraphs. Ameriquest Mortgage Company (sometimes referred to herein as "*Ameriquest*," the "*Seller*," the "*Sponsor*" or the "*Master Servicer*"), a Delaware corporation, is a specialty finance company engaged in the business of originating, purchasing and selling retail and wholesale sub-prime mortgage loans secured by one- to four-family residences. Ameriquest's mortgage business was begun in 1979 as a savings and loan association and later as a federal savings bank. In 1994 Ameriquest ceased depository operations to focus

entirely on its mortgage banking business. In May 1997, Ameriquest sold its wholesale operations and reorganized its retail lending and servicing operations under the name of "Ameriquest Mortgage Company" (the "Reorganization"). In January of 2000, Ameriquest recommenced wholesale lending as a separate division (a.k.a. Argent Mortgage Company, L.L.C.) while continuing its retail and servicing operations. As of January 1, 2003, the wholesale lending division of Ameriquest reorganized its business as a wholly owned subsidiary of Ameriquest under the name of Argent Mortgage Company, L.L.C. Argent Mortgage Company, L.L.C. is currently an affiliate of Ameriquest but is no longer a subsidiary of Ameriquest. Effective as of the close of business on December 31, 2004, the loan servicing division of Ameriquest was transferred to an affiliate, AMC Mortgage Services, Inc. (formerly known as Bedford Home Loans, Inc.). Currently, AMC Mortgage Services, Inc. acts as a sub-servicer for Ameriquest and originates retail loans. Securitization of mortgage loans originated by the Sponsor or its affiliates is an integral part of the Sponsor's management of its capital. Since August 2003, the Sponsor has engaged in securitizations of mortgage loans originated by the Sponsor or its affiliates through the Depositor. The Sponsor has been engaged in securitizations of mortgage loans through other depositors since 1996.

### *Collection Procedures; Delinquency and Loss Experience*

When a mortgagor fails to make a required payment on a residential mortgage loan, Ameriquest attempts to cause the deficiency to be cured by corresponding or making telephone contact with the mortgagor. Pursuant to Ameriquest's customary procedures for residential mortgage loans serviced by it for its own account, Ameriquest generally mails a notice of intent to foreclose to the mortgagor within ten days after the loan has become 31 days past due (two payments due but not received) and upon expiration of the notice of intent to foreclose, generally one month thereafter, if the loan remains delinquent, typically institutes appropriate legal action to foreclose on the property securing the loan. If foreclosed, the property is sold at a public or private sale. Ameriquest, in its capacity as Master Servicer, typically enters a bid based upon an analysis of the property value, estimated marketing and carrying costs and presence of junior liens, which may be equal to or less than the full amount owed. In the event the property is acquired at the foreclosure sale by Ameriquest, as Master Servicer, it is placed on the market for sale through local real estate brokers experienced in the sale of similar properties.

## **THE TRUSTEE**

### **General**

Deutsche Bank National Trust Company ("DBNTC") will act as Trustee. DBNTC is a national banking association which has an office in Santa Ana, California.

In addition, the Trustee will act as custodian for the Trust pursuant to the Pooling and Servicing Agreement. The Trustee will hold the mortgage notes, mortgages and other legal documents in the mortgage files for the benefit of the certificateholders. The Trustee will review each mortgage file and deliver a certification that each such mortgage file has been received in accordance with the criteria specified in the Pooling and Servicing Agreement.

The principal compensation to be paid to the Trustee in respect of its obligations under the Pooling and Servicing Agreement will be equal to any interest or other income earned on funds held in the distribution account as provided in the Pooling and Servicing Agreement and the Trustee Fee. The Trustee Fee is payable monthly and accrues at the Trustee Fee Rate of 0.0015% per annum on the aggregate principal balance of the Mortgage Loans.

### **The PMI Policy**

The PMI Policy generally requires that delinquencies on any mortgage loan insured thereunder must be reported to MGIC within four months of default, that reports regarding the delinquency of the mortgage loan must be submitted to MGIC on a monthly basis thereafter, and that appropriate proceedings to obtain title to the property securing such mortgage loan must be commenced within six months of default. As a condition to submitting a claim under the PMI Policy, the insured must have (i) acquired, and tendered to MGIC, good and merchantable title to the property securing the mortgage loan, free and clear of all liens and encumbrances, including, but not limited to, any right of redemption by the mortgagor unless such acquisition of good and merchantable title is excused under the terms of such PMI Policy, and (ii) if the mortgage loan is covered by a pre-existing primary mortgage insurance policy, a claim must be submitted and settled under such pre-existing primary mortgage insurance policy within the time frames specified in the PMI Policy.

The claim amount generally includes unpaid principal, accrued interest to the date of such tender to MGIC by the insured, and certain expenses (less the amount of a full claim settlement under any pre-existing primary mortgage insurance policy covering the mortgage loan). When a claim is presented, MGIC will have the option of either (i) paying the claim amount and taking title to the property securing the mortgage loan, (ii) paying the insured a percentage of the claim amount (without deduction for a claim settlement under any pre-existing primary mortgage insurance policy covering the mortgage loan) and with the insured retaining title to the property securing such mortgage loan, or (iii) if the property securing the mortgage loan has been sold to a third party with the prior approval of MGIC, paying the claim amount reduced by the net sale proceeds as described in the PMI Policy to reflect the actual loss. Claims generally must be filed within 60 days after the insured has acquired good and merchantable title to the property securing the mortgage loan or such property has been sold to a third party with the prior approval of MGIC. A claim generally must be paid within 60 days after the claim is filed by the insured. No payment for a loss will be made under the PMI Policy unless the property securing the mortgage loan is in the same physical condition as when such mortgage loan was originally insured, except for reasonable wear and tear, and unless premiums on the standard homeowners' insurance policy, real estate taxes and foreclosure protection and preservation expenses have been advanced by or on behalf of the insured.

Unless approved in writing by MGIC, no changes may be made to the terms of the mortgage loan, including the borrowed amount, interest rate, term or amortization schedule, except as specifically permitted by the terms of the mortgage loan; nor may the lender make any change in the property or other collateral securing the mortgage loan, nor may any mortgagor be released under the mortgage loan from liability. If a mortgage loan is assumed with the insured's approval, MGIC's liability for coverage of the mortgage loan under the PMI Policy generally will terminate as of the date of such assumption unless MGIC approves the assumption in writing. In addition, with respect to any mortgage loan covered by the PMI Policy, the applicable servicer must obtain the prior approval of MGIC in connection with any acceptance of a deed in lieu of foreclosure or of any sale of the property securing the mortgage loan.

## **Assignment of the Mortgage Loans**

The Depositor will deliver to the Trustee (or to a custodian on the Trustee's behalf) with respect to each Mortgage Loan (i) the mortgage note endorsed without recourse in blank to reflect the transfer of the Mortgage Loan, (ii) the original mortgage with evidence of recording indicated thereon and (iii) an assignment of the mortgage in recordable form endorsed in blank without recourse, reflecting the transfer of the Mortgage Loan. The Depositor will not cause to be recorded any assignment of mortgage which relates to a Mortgage Loan in any jurisdiction (except with respect to any Mortgage Loan located in the State of Maryland) unless such failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any class of Certificates; provided, however, upon the occurrence of

certain events set forth in the Pooling and Servicing Agreement, each such assignment of mortgage will be recorded, or submitted for recording by the Seller, at the Seller's expense (or, if the Seller is unable to pay the cost of recording the assignments of mortgage, such expense will be paid by the Trustee, which expense will be reimbursed by the Trust) as set forth in the Pooling and Servicing Agreement.

The Seller will make certain representations and warranties as of the Closing Date as to the accuracy in all material respects of certain information furnished to the Trustee with respect to each Mortgage Loan (e.g., the Principal Balance and the Mortgage Rate). In addition, the Seller will represent and warrant, among other things that at the time of transfer to the Depositor: (i) the Seller has transferred or assigned all of its right, title and interest in each Mortgage Loan and the related documents, free of any lien; (ii) each Mortgage Loan complied, at the time of origination, in all material respects with applicable local, state and/or federal laws and (iii) the Mortgage Loans are not subject to the requirements of the Homeownership Act and no Mortgage Loan is subject to, or in violation of, any applicable state or local law, ordinance or regulation similar to the Homeownership Act. Upon discovery of a breach of any such representation and warranty which materially and adversely affects the interests of the Certificateholders in the related Mortgage Loan and related documents, the Seller will have a period of 90 days after the earlier of discovery or receipt of written notice of the breach to effect a cure. If the breach cannot be cured within the 90 day period, the Seller will be obligated to repurchase or replace the affected Mortgage Loan in the manner described in the prospectus, the Pooling and Servicing Agreement and the Mortgage Loan Purchase Agreement. The same procedure and limitations that are set forth above for the substitution or repurchase of Deleted Mortgage Loans as a result of deficient documentation relating thereto will apply to the substitution or repurchase of a Deleted Mortgage Loan as a result of a breach of a representation or warranty in the Mortgage Loan Purchase Agreement that materially and adversely affects the interests of the Certificateholders.

## **Modifications to the Pooling and Servicing Agreement**

The Pooling and Servicing Agreement may be amended from time to time by the Depositor, the Master Servicer and the Trustee with the consent of the NIMS Insurer, if any, and without the consent of the Certificateholders in order to: (i) cure any ambiguity or defect, (ii) correct, modify or supplement any provisions (including to give effect to the expectations of Certificateholders) or (iii) make any other provisions with respect to matters or questions arising under the Pooling and Servicing Agreement, provided that such action will not adversely affect the interests of the Certificateholders evidenced by an opinion of counsel or confirmation from the rating agencies that such amendment will not result in the reduction or withdrawal of the rating of any outstanding Class of Certificates.

## **Underwriters**

J.P. Morgan Securities Inc.  
Banc of America Securities LLC  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

## **The Types of Mortgage Loans Included in the Trust Fund Related to Your Securities May Be Especially Prone to Defaults Which May Expose Your Securities to Greater Losses**

The securities will be directly or indirectly backed by mortgage loans, manufactured housing conditional sales contracts and installment loan agreements. The mortgage loans included in the trust fund will primarily be made to borrowers who do not qualify for loans conforming to underwriting standards of more traditional lenders and as a result of the credit quality of such borrowers, such mortgage loans may

have a greater likelihood of delinquency and foreclosure, and a greater likelihood of loss in the event of delinquency and foreclosure. You should be aware that if the mortgaged properties fail to provide adequate security for the mortgage loans included in a trust fund, any resulting losses, to the extent not covered by credit support, will be allocated to the related securities in the manner described in the related prospectus supplement and consequently would adversely affect the yield to maturity on those securities. The depositor cannot assure you that the values of the mortgaged properties have remained or will remain at the appraised values on the dates of origination of the related mortgage loans. The prospectus supplement for each series of securities will describe the mortgage loans which are to be included in the trust fund related to your security and risks associated with those mortgage loans which you should carefully consider in connection with the purchase of your security.

### **Foreclosure of Mortgage Loans May Result in Limitations or Delays in Recovery and Losses Allocated to the Related Securities**

Even assuming that the mortgaged properties provide adequate security for the mortgage loans, substantial delays can be encountered in connection with the liquidation of defaulted mortgage loans and corresponding delays in the receipt of related proceeds by the securityholders could occur. An action to foreclose on a mortgaged property securing a mortgage loan is regulated by state statutes, rules and judicial decisions and is subject to many of the delays and expenses of other lawsuits if defenses or counterclaims are interposed, sometimes requiring several years to complete. In several states an action to obtain a deficiency judgment is not permitted following a nonjudicial sale of a mortgaged property. In the event of a default by a mortgagor, these restrictions may impede the ability of the master servicer to foreclose on or sell the mortgaged property or to obtain liquidation proceeds sufficient to repay all amounts due on the related mortgage loan. The master servicer will be entitled to deduct from liquidation proceeds all expenses incurred in attempting to recover amounts due on the related liquidated mortgage loan and not yet repaid, including payments to prior lienholders, accrued servicing fees, ancillary fees, legal fees and costs of legal action, real estate taxes, maintenance and preservation expenses, monthly advances and servicing advances. If any mortgaged properties fail to provide adequate security for the mortgage loans in the trust fund related to your security and insufficient funds are available from any applicable credit support, you could experience a loss on your investment.

### **Violations of Consumer Protection Laws May Result in Losses on the Mortgage Loans and the Securities Backed by Those Mortgage Loans**

Federal and state laws, public policy and general principles of equity relating to the protection of consumers, unfair and deceptive practices and debt collection practices:

- regulate interest rates and other charges on mortgage loans;
- require specific disclosures to borrowers;
- require licensing of originators; and
- regulate generally the origination, servicing and collection process for the mortgage loans.

Depending on the specific facts and circumstances involved, violations may limit the ability of a trust fund to collect all or a part of the principal of or interest on the mortgage loans, may entitle the borrower to a refund of amounts previously paid and could result in liability for damages and administrative enforcement against the originator or an assignee of the originator, like a trust fund, or the initial servicer or a subsequent servicer, as the case may be. In particular, it is possible that mortgage loans included in a trust fund will be subject to the Home Ownership and Equity Protection Act of 1994. The Homeownership Act adds additional provisions to Regulation Z, the implementing regulation of the Federal Truth-In-Lending Act. These provisions impose additional disclosure and other requirements on

creditors with respect to non-purchase money mortgage loans with interest rates or origination costs in excess of prescribed levels.

The provisions of the Homeownership Act apply on a mandatory basis to all mortgage loans originated on or after October 1, 1995.

These provisions can impose specific statutory liabilities upon creditors who fail to comply with their provisions and may affect the enforceability of the related loans. In addition, any assignee of the creditor, like a trust fund, would generally be subject to all claims and defenses that the consumer could assert against the creditor, including the right to rescind the mortgage loan. Recently, class action lawsuits under the Homeownership Act have been brought naming as a defendant securitization trusts like the trust funds described in this prospectus with respect to the mortgage loans.

In addition, amendments to the federal bankruptcy laws have been proposed that could result in (1) the treatment of a claim secured by a junior lien in a borrower's principal residence as protected only to the extent that the claim was secured when the security interest was made and (2) the disallowance of claims based on secured debt if the creditor failed to comply with specific provisions of the Truth in Lending Act (15 U.S.C. ss.1639). These amendments could apply retroactively to secured debt incurred by the debtor prior to the date of effectiveness of the amendments.

In addition, the mortgage loans are subject to other federal laws, including the Equal Credit Opportunity Act and Regulation B promulgated thereunder, which prohibit discrimination on the basis of age, race, color, sex, religion, marital status, national origin, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act, in the extension of credit; the Fair Credit Reporting Act, which regulates the use and reporting of information related to the borrower's credit experience; the Depository Institutions Deregulation and Monetary Control Act of 1980, which preempts certain state usury laws; and the Alternative Mortgage Transaction Parity Act of 1982, which preempts certain state lending laws which regulate alternative mortgage transactions.

In addition to federal law, some states have enacted, or may enact, laws or regulations that prohibit inclusion of some provisions in mortgage loans that have interest rates or origination costs in excess of prescribed levels, and require that borrowers be given certain disclosures prior to the consummation of the mortgage loans. The originator's failure to comply with these laws could subject the related trust fund (and other assignees of the mortgage loans) to monetary penalties and could result in the borrowers rescinding the mortgage loans against the related trust fund.

Violations of certain provisions of these federal and state laws may limit the ability of the master servicer to collect all or part of the principal of or interest on the mortgage loans and in addition could subject the related trust fund to damages and administrative enforcement and could result in the mortgagors rescinding such mortgage loans whether held by the related trust fund or subsequent holders of the mortgage loans. The depositor will represent that all applicable federal and state laws were complied with in connection with the origination of the mortgage loans. If there is a material and adverse breach of a representation, the depositor will be obligated to repurchase any affected mortgage loan or to substitute a new mortgage loan into the related trust fund. If the depositor fails to repurchase or substitute, a trust fund could experience losses which, to the extent not covered by credit support, could adversely affect the yield to maturity on the related securities. See "*Legal Aspects of Mortgage Assets.*" Several capitalized terms are used in this prospectus to assist you in understanding the terms of the securities. All of the capitalized terms used in this prospectus are defined in the glossary beginning on page 152 in this prospectus.

## Assignment of Trust Fund Assets; Review of Files by Trustee

If so specified in the related prospectus supplement, and in accordance with the rules of membership of Merscorp, Inc. and/or Mortgage Electronic Registration Systems, Inc. or, MERS, assignments of the mortgages for the mortgage loans in the related trust will be registered electronically through Mortgage Electronic Registration Systems, Inc., or MERS(R) System. With respect to mortgage loans registered through the MERS(R) System, MERS shall serve as mortgagee of record solely as a nominee in an administrative capacity on behalf of the trustee and shall not have any interest in any of those mortgage loans. The depositor will, with respect to each mortgage asset, deliver or cause to be delivered to the trustee, or to the custodian hereinafter referred to:

With respect to each mortgage loan,

- (1) the mortgage note endorsed, without recourse, to the order of the trustee or in blank,
- (2) the original Mortgage with evidence of recording indicated thereon and an assignment of the Mortgage to the trustee or in blank, in recordable form. If, however, a mortgage loan has not yet been returned from the public recording office, the depositor will deliver or cause to be delivered a copy of the Mortgage together with its certificate that the original of the Mortgage was delivered to the recording office. The depositor will promptly cause the assignment of each related mortgage loan to be recorded in the appropriate public office for real property records, except for Mortgages held under the MERS(R) System and except in the State of California or in other states where, in the opinion of counsel acceptable to the trustee, recording of the assignment is not required to protect the trustee's interest in the mortgage loan against the claim of any subsequent transferee or any successor to or creditor of the depositor, the master servicer, the relevant mortgage loan seller or any other prior holder of the mortgage loan. If the depositor uses the MERS(R) System, it will deliver evidence that the Mortgage is held for the trustee through the MERS(R) System instead of an assignment of the Mortgage in recordable form.

## Book-Entry Certificates

The offered securities will be book-entry certificates. Persons acquiring beneficial ownership interests in the offered securities, or certificate owners, will hold the certificates through The Depository Trust Company or DTC in the United States, or Clearstream Banking Luxembourg, or Clearstream, formerly known as Cedelbank SA, or Euroclear in Europe, if they are participants of these systems, or indirectly through organizations which are participants in these systems. The book-entry certificates will be issued in one or more certificates which equal the aggregate Certificate Principal Balance of the certificates and will initially be registered in the name of Cede & Co., the nominee of DTC. Clearstream and Euroclear will hold omnibus positions on behalf of their participants through customers' securities accounts in Clearstream's and Euroclear's names on the books of their respective depositories which in turn will hold positions in customers' securities accounts in the depositories' names on the books of DTC. Citibank will act as depository for Clearstream and JPMorgan Chase Bank will act as depository for Euroclear. Citibank and JPMorgan Chase Bank will be referred to individually in this prospectus supplement as the "*Relevant Depository*" and will be referred to collectively in this prospectus supplement as the "*European Depositories*". Except as described in this section, no person acquiring a book-entry certificate will be entitled to receive a physical or definitive certificate representing that certificate. Unless and until definitive certificates are issued, it is anticipated that the only "*certificateholder*" of the offered securities will be Cede & Co., as nominee of DTC. Certificate owners will not be certificateholders as that term is used in the Pooling and Servicing Agreement. Certificate owners are only permitted to exercise their rights indirectly through participants and DTC.

The certificate owner's ownership of a book-entry certificate will be recorded on the records of the brokerage firm, bank, thrift institution or other financial intermediary that maintains the certificate owner's account for that purpose. In turn, the financial intermediary's ownership of the book-entry certificate will be recorded on the records of DTC or of a participating firm that acts as agent for the financial intermediary, whose interest will in turn be recorded on the records of DTC, if the certificate

owner's financial intermediary is not a DTC participant and on the records of Clearstream or Euroclear, as appropriate.

Mortgage pool insurance policies in general provide that no claim may validly be presented thereunder with respect to a mortgage loan unless:

- an acceptable primary mortgage insurance policy, if the initial loan-to-value ratio of the mortgage loan exceeded 80%, has been kept in force until the loan-to-value ratio is reduced to 80%;
- premiums on the primary hazard insurance policy have been paid by the insured and real estate taxes and foreclosure, protection and preservation expenses have been advanced by or on behalf of the insured, as approved by the insurer;
- if there has been physical loss or damage to the mortgaged property, it has been restored to its physical condition at the time the mortgage loan became insured under the mortgage pool insurance policy, subject to reasonable wear and tear; and
- the insured has acquired good and merchantable title to the mortgaged property, free and clear of all liens and encumbrances, except permitted encumbrances, including any right of redemption by or on behalf of the mortgagor, and if required by the insurer, has sold the property with the approval of the insurer.

Because each mortgage pool insurance policy will require that the property subject to a defaulted mortgage loan be restored to its original condition prior to claiming against the insurer, the policy will not provide coverage against hazard losses. As set forth in the immediately following paragraph, the primary hazard insurance policies covering the mortgage loans typically exclude from coverage physical damage resulting from a number of causes and, even when the damage is covered, may afford recoveries that are significantly less than the full replacement cost of the losses. Further, a special hazard insurance policy, or a letter of credit that covers special hazard realized losses, will not cover all risks, and the coverage thereunder will be limited in amount. These hazard risks will, as a result, be uninsured and will therefore be borne by securityholders.

## **LEGAL ASPECTS OF MORTGAGE ASSETS**

The following discussion contains general summaries of legal aspects of loans secured by residential and commercial properties. Because these legal aspects are governed in part by applicable state law, which laws may differ substantially from state to state, the summaries do not purport to be complete nor to reflect the laws of any particular state, nor to encompass the laws of all states in which the security for the mortgage assets is situated. If there is a concentration of the mortgage assets included in a trust fund in a particular state, the prospectus supplement for the related series of securities will discuss any laws of that state that could materially impact the interest of the securityholders.

### **Mortgage Loans**

The single-family loans, multifamily loans, commercial loans and mixed-use loans will be secured by either mortgages, deeds of trust, security deeds or deeds to secure debt depending upon the type of security instrument customary to grant a security interest according to the prevailing practice in the state in which the property subject to that mortgage loan is located. The filing of a mortgage or a deed of trust creates a lien upon or conveys title to the real property encumbered by that instrument and represents the security for the repayment of an obligation that is customarily evidenced by a promissory note. It is not prior to the lien for real estate taxes and assessments. Priority with respect to mortgages and deeds of trust depends on their terms and generally on the order of recording with the applicable state, county or municipal office. There are two parties to a mortgage, the mortgagor, who is the borrower/homeowner

or the land trustee, and the mortgagee, who is the lender. Under the mortgage instrument, the mortgagor delivers to the mortgagee a note or bond and the mortgage. In the case of a land trust, title to the property is held by a land trustee under a land trust agreement, while the borrower/homeowner is the beneficiary of the land trust; at origination of a mortgage loan, the borrower executes a separate undertaking to make payments on the mortgage note. Although a deed of trust is similar to a mortgage, a deed of trust normally has three parties, the trustor, similar to a mortgagor, who may or may not be the borrower, the beneficiary, similar to a mortgagee, who is the lender, and the trustee, a third-party grantee. Under a deed of trust, the trustor grants the property, irrevocably until the debt is paid, in trust, generally with a power of sale, to the trustee to secure payment of the obligation. A security deed and a deed to secure debt are special types of deeds which indicate on their face that they are granted to secure an underlying debt. By executing a security deed or deed to secure debt, the grantor conveys title to, as opposed to merely creating a lien upon, the subject property to the grantee until the time as the underlying debt is repaid. The mortgagee's authority under a mortgage and the trustee's authority under a deed of trust, security deed or deed to secure debt are governed by the law of the state in which the real property is located, the express provisions of the mortgage, deed of trust, security deed or deed to secure debt and, sometimes, the directions of the beneficiary.

## **Foreclosure on Mortgages**

Foreclosure of a deed of trust is generally accomplished by a non-judicial trustee's sale under a specific provision in the deed of trust, which authorizes the trustee to sell the property upon any default by the borrower under the terms of the note or deed of trust. In several states, the trustee must record a notice of default and send a copy to the borrower-trustor and to any person who has recorded a request for a copy of a notice of default and notice of sale. In addition, the trustee in several states must provide notice to any other individual having an interest in the real property, including any junior lienholder. The trustor, borrower, or any person having a junior encumbrance on the real estate, may, during a reinstatement period, cure the default by paying the entire amount in arrears plus the costs and expenses incurred in enforcing the obligation. Generally, state law controls the amount of foreclosure expenses and costs, including attorneys' fees, that may be recovered by a lender. If the deed of trust is not reinstated, a notice of sale must be posted in a public place and, in most states, published for a specific period of time in one or more newspapers. In addition, several state laws require that a copy of the notice of sale be posted on the property, recorded and sent to all parties having an interest in the real property.

An action to foreclose a mortgage is an action to recover the mortgage debt by enforcing the mortgagee's rights under the mortgage and in the mortgaged property. It is regulated by statutes and rules and subject throughout to the court's equitable powers. A mortgagor is usually bound by the terms of the mortgage note and the mortgage as made and cannot be relieved from its own default. However, since a foreclosure action is equitable in nature and is addressed to a court of equity, the court may relieve a mortgagor of a default and deny the mortgagee foreclosure on proof that the mortgagor's default was neither willful nor in bad faith and that the mortgagee's action established a waiver of fraud, bad faith, oppressive or unconscionable conduct warranted a court of equity to refuse affirmative relief to the mortgagee. A court of equity may relieve the mortgagor from an entirely technical default where the default was not willful.

A foreclosure action or sale in accordance with a power of sale is subject to most of the delays and expenses of other lawsuits if defenses or counterclaims are interposed, sometimes requiring up to several years to complete. Moreover, recent judicial decisions suggest that a non-collusive, regularly conducted foreclosure sale or sale in accordance with a power of sale may be challenged as a fraudulent conveyance, regardless of the parties' intent, if a court determines that the sale was for less than fair consideration and the sale occurred while the mortgagor was insolvent and within one year, or within the state statute of limitations if the trustee in bankruptcy elects to proceed under state fraudulent conveyance law, of the filing of bankruptcy. Similarly, a suit against the debtor on the mortgage note may take several years.

In case of foreclosure under either a mortgage or a deed of trust, the sale by the referee or other designated officer or by the trustee is a public sale. However, because of the difficulty potential third party purchasers at the sale have in determining the exact status of title and because the physical condition of the property may have deteriorated during

the foreclosure proceedings, it is uncommon for a third party to purchase the property at the foreclosure sale. Rather, it is common for the lender to purchase the property from the trustee or referee for an amount equal to the principal amount of the mortgage or deed of trust plus accrued and unpaid interest and the expenses of foreclosure. Thereafter, the lender will assume the burdens of ownership, including obtaining casualty insurance, paying taxes and making repairs at its own expense as are necessary to render the property suitable for sale. Depending upon market conditions, the ultimate proceeds of the sale of the property may not equal the lender's investment in the property. Any loss may be reduced by the receipt of any mortgage insurance proceeds.

A junior mortgagee may not foreclose on the property securing a junior mortgage unless it forecloses subject to the senior mortgages, in which case it must either pay the entire amount due on the senior mortgages to the senior mortgagees prior to or at the time of the foreclosure sale or undertake the obligation to make payments on the senior mortgages if the mortgagor is in default thereunder. In either event the amounts expended will be added to the balance due on the junior loan, and may be subrogated to the rights of the senior mortgagees. In addition, if the foreclosure of a junior mortgage triggers the enforcement of a due-on-sale clause in a senior mortgage, the junior mortgagee may be required to pay the full amount of the senior mortgages to the senior mortgagees. Accordingly, with respect to those mortgage loans which are junior mortgage loans, if the lender purchases the property, the lender's title will be subject to all senior liens and claims and some governmental liens. The proceeds received by the referee or trustee from the sale are applied first to the costs, fees and expenses of sale, real estate taxes and then in satisfaction of the indebtedness secured by the mortgage or deed of trust under which the sale was conducted. Any remaining proceeds are generally payable to the holders of junior mortgages or deeds of trust and other liens and claims in order of their priority, whether or not the borrower is in default. Any additional proceeds are generally payable to the mortgagor or trustor. The payment of the proceeds to the holders of junior mortgages may occur in the foreclosure action of the senior mortgagee or may require the institution of separate legal proceedings.

If the master servicer were to foreclose on any junior lien it would do so subject to any related senior lien. In order for the debt related to the junior mortgage loan to be paid in full at the sale, a bidder at the foreclosure sale of the junior mortgage loan would have to bid an amount sufficient to pay off all sums due under the junior mortgage loan and the senior lien or purchase the mortgaged property subject to the senior lien. If proceeds from a foreclosure or similar sale of the mortgaged property are insufficient to satisfy all senior liens and the junior mortgage loan in the aggregate, the trust fund as the holder of the junior lien and, accordingly, holders of one or more classes of related securities bear (1) the risk of delay in distributions while a deficiency judgment against the borrower is obtained and (2) the risk of loss if the deficiency judgment is not realized upon. Moreover, deficiency judgments may not be available in a jurisdiction. In addition, liquidation expenses with respect to defaulted junior mortgage loans do not vary directly with the outstanding principal balance of the loans at the time of default. Therefore, assuming that the master servicer took the same steps in realizing upon a defaulted junior mortgage loan having a small remaining principal balance as it would in the case of a defaulted junior mortgage loan having a large remaining principal balance, the amount realized after expenses of liquidation would be smaller as a percentage of the outstanding principal balance of the small junior mortgage loan than would be the case with the defaulted junior mortgage loan having a large remaining principal balance.

In foreclosure, courts have imposed general equitable principles. The equitable principles are generally designed to relieve the borrower from the legal effect of its defaults under the loan documents. Examples of judicial remedies that have been fashioned include judicial requirements that the lender undertake affirmative and expensive actions to determine the causes for the borrower's default and the likelihood that the borrower will be able to reinstate the loan. In a few cases, courts have substituted their judgment for the lender's judgment and have required that lenders reinstate loans or recast payment schedules in order to accommodate borrowers who are suffering from temporary financial disability. In other cases, courts have limited the right of a lender to foreclose if the default under the mortgage instrument is not monetary, for example, the borrower's failure to adequately maintain the property or the borrower's execution of a second mortgage or deed of trust affecting the property. Finally, a few courts have been faced with the issue of whether or not federal or state constitutional provisions reflecting due process concerns for adequate notice require that borrowers under deeds of trust or mortgages receive notices in addition to the statutorily-prescribed minimums. For the most part, these cases have upheld the notice provisions as being reasonable or have found that the sale by a trustee under a deed of trust, or under a mortgage having a power of sale, does not involve sufficient state action to afford constitutional protection to the borrower.

## **Anti-Deficiency Legislation and Other Limitations on Lenders**

In addition, some of the Mortgage Loans may be subject to special rules, disclosure requirements and other provisions that were added to the federal Truth-in-Lending Act by the Home Ownership and Equity Protection Act of 1994 (the “*Homeownership Act*”), if such Mortgage Loans were originated on or after **October 1, 1995**, are not loans made to finance the purchase of the mortgaged property and have mortgage rates or origination costs in excess of certain prescribed levels (the “*High Cost Loans*”). The Homeownership Act requires certain additional disclosures, specifies the timing of those disclosures and limits or prohibits inclusion of certain provisions in mortgages subject to the Homeownership Act. Purchasers or assignees of any High Cost Loan, including the trust, could be liable under federal law for all claims and subject to all defenses that the borrower could assert against the originator of the High Cost Loan, under the federal Truth-in-Lending Act or any other law, unless the purchaser or assignee did not know and could not with reasonable diligence have determined that the loan was subject to the provisions of the Homeownership Act. Remedies available to the borrower include monetary penalties, as well as rescission rights if appropriate disclosures were not given as required or if the particular mortgage includes provisions prohibited by the law. The maximum damages that may be recovered under these provisions from an assignee, including the trust, is the remaining amount of indebtedness plus the total amount paid by the borrower in connection with the Mortgage Loan.

## **Forfeitures in Drug and RICO Proceedings**

Federal law provides that property owned by persons convicted of drug-related crimes or of criminal violations of the Racketeer Influenced and Corrupt Organizations statute can be seized by the government if the property was used in or purchased with the proceeds of these crimes. Under procedures contained in the Comprehensive Crime Control Act of 1984 the government may seize the property even before conviction. The government must publish notice of the forfeiture proceeding and may give notice to all parties “*known to have an alleged interest in the property*”, including the holders of mortgage loans. A lender may avoid forfeiture of its interest in the property if it establishes that:

- (1) its mortgage was executed and recorded before its commission of the crime upon which the forfeiture is based, or
- (2) the lender was at the time of execution of the mortgage “*reasonably without cause to believe*” that the property was used in or purchased with the proceeds of illegal drug or RICO activities.

# **Argent Securities Trust 2006-W4 Accession Number 882377-6-1599 Pooling and Servicing Agreement**

ARGENT SECURITIES INC.  
Depositor  
AMERIQUEST MORTGAGE COMPANY  
Master Servicer  
and  
DEUTSCHE BANK NATIONAL TRUST COMPANY  
Trustee  
POOLING AND SERVICING AGREEMENT

Dated as of [April 1, 2006](#)  
ASSET-BACKED PASS-THROUGH CERTIFICATES  
SERIES 2006-W4

**This Pooling and Servicing Agreement, is dated and effective as of [April 1, 2006](#), among ARGENT SECURITIES INC., as Depositor, AMERIQUEST MORTGAGE COMPANY, as Master Servicer, and DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee.**

**This Pooling and Servicing Agreement, is dated and effective as of [April 1, 2006](#), among ARGENT SECURITIES INC., as Depositor, AMERIQUEST MORTGAGE COMPANY, as Master Servicer, and DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee.**

**PRELIMINARY STATEMENT:**

The Depositor intends to sell pass-through certificates (collectively, the “*Certificates*”), to be issued hereunder in multiple classes, which in the aggregate shall evidence the entire beneficial ownership interest in each REMIC (as defined herein) created hereunder. The Trust Fund shall consist of a segregated pool of assets consisting of the Mortgage Loans and certain other related assets subject to this Agreement.

*Whenever used in this Agreement, including, without limitation, in the Preliminary Statement hereto, the following words and phrases, unless the context otherwise requires, shall have the meanings specified in this Article. Unless otherwise specified, all calculations described herein shall be made on the basis of a 360-day year consisting of twelve 30-day months and all calculations on each Regular Interest shall be made on the basis of a 360-day year and the actual number of days in the month.*

**ARTICLE I  
DEFINITIONS  
SECTION 1.01 Defined Terms**

**“Assignment”:** An assignment of Mortgage, notice of transfer or equivalent instrument, in recordable form (excepting therefrom if applicable, the mortgage recordation information which has not been returned by the applicable recorder’s office and/or the assignee’s name), which is sufficient under the laws of the jurisdiction wherein the related Mortgage Property is located to reflect of record the sale of the Mortgage.

**“Closing Date”:** [April 25, 2006](#).

**“Custodian”:** A Custodian, which shall initially be Deutsche Bank National Trust Company.

**“Depositor”:** Argent Securities Inc., a Delaware corporation, or its successor in interest.

**“Final Recovery Determination”:** With respect to any defaulted Mortgage Loan or any REO Property (other than a Mortgage Loan or REO Property purchased by the Seller, the Depositor or the Master Servicer pursuant to or as contemplated by Section 2.03, Section 3.16(a) or Section 9.01), a determination made by the Master Servicer that all Insurance Proceeds, Liquidation Proceeds and other payments or recoveries which the Master Servicer, in its reasonable good faith judgment, expects to be finally recoverable in respect thereof have been so recovered. The Master Servicer shall maintain records, prepared by a Servicing Officer, of each Final Recovery Determination made thereby.

**“Lost Note Affidavit”:** With respect to any Mortgage Loan as to which the original Mortgage Note has been permanently lost, misplaced or destroyed and has not been replaced, an affidavit from the Seller certifying that the original Mortgage

Note has been lost, misplaced or destroyed (together with a copy of the related Mortgage Note) and indemnifying the Trust Fund against any loss, cost or liability resulting from the failure to deliver the original Mortgage Note, in the form of Exhibit B hereto.

**“Master Servicer”**: Ameriquest Mortgage Company or any successor master servicer appointed as herein provided, in its capacity as Master Servicer hereunder.

**“Mortgage”**: The mortgage, deed of trust or other instrument creating a first lien or second lien on a Mortgaged Property securing a Mortgage Note.

**“Mortgage File”**: The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents required to be added to the Mortgage File pursuant to this Agreement.

**“Mortgage Loan”**: Each mortgage loan transferred and assigned to the Trustee pursuant to Section 2.01 or Section 2.03(d) of this Agreement, as held from time to time as a part of REMIC I, the Mortgage Loans so held being identified in the Mortgage Loan Schedule.

**“Mortgage Loan Purchase Agreement”**: The agreement between the Seller and the Depositor, regarding the transfer of the Mortgage Loans by the Seller to or at the direction of the Depositor, substantially in the form of Exhibit D annexed hereto.

**“Mortgage Loan Schedule”**: As of any date, the list of Mortgage Loans included in REMIC I on such date, separately identifying the Group I Mortgage Loans and the Group II Mortgage Loans, attached hereto as Schedule 1. The Mortgage Loan Schedule shall set forth the following information with respect to each Mortgage Loan:

- (1) the Seller’s Mortgage Loan identifying number;
- (2) [reserved];
- (3) the state and zip code of the Mortgaged Property;
- (4) a code indicating whether the Mortgaged Property is owner-occupied;
- (5) the type of Residential Dwelling constituting the Mortgaged Property;
- (6) the original months to maturity;
- (7) the Loan-to-Value Ratio or Combined Loan-to-Value Ratio at origination;
- (8) the Mortgage Rate in effect immediately following the Cut-off Date;
- (9) the date on which the first Monthly Payment was due on the Mortgage Loan;
- (10) the stated maturity date;
- (11) the amount of the Monthly Payment due on the first Due Date after the Cut-off Date;
- (12) the last Due Date on which a Monthly Payment was actually applied to the unpaid Stated Principal Balance;
- (13) the original principal amount of the Mortgage Loan;
- (14) the Scheduled Principal Balance of the Mortgage Loan as of the close of business on the Cut-off Date;
- (15) with respect to the Adjustable-Rate Mortgage Loans, the Gross Margin;
- (16) a code indicating the purpose of the Mortgage Loan (*i.e.*, purchase, refinance debt consolidation cashout, or refinance debt consolidation no cashout);
- (17) with respect to the Adjustable-Rate Mortgage Loans, the Maximum Mortgage Rate;
- (18) with respect to the Adjustable-Rate Mortgage Loans, the Minimum Mortgage Rate;
- (19) the Mortgage Rate at origination;
- (20) with respect to the Adjustable-Rate Mortgage Loans, the Periodic Rate Cap and the maximum first Adjustment Date Mortgage Rate adjustment;
- (21) a code indicating the documentation program (*i.e.*, Full Documentation, Limited Documentation or Stated Income);
- (22) with respect to the Adjustable-Rate Mortgage Loans, the first Adjustment Date immediately following the Cut-off Date;
- (23) the risk grade;
- (24) the Value of the Mortgaged Property;
- (25) the sale price of the Mortgaged Property, if applicable;
- (26) the FICO score of the primary Mortgagor; and
- (27) whether the Mortgage Loan is covered by primary mortgage insurance.

The Mortgage Loan Schedule shall set forth the following information with respect to the Mortgage Loans by Loan Group and in the aggregate as of the Cut-off Date: (1) the number of Mortgage Loans; (2) the current Stated Principal Balance of the Mortgage Loans; (3) the weighted average Mortgage Rate of the Mortgage Loans; and (4) the weighted average maturity of the Mortgage Loans. The Mortgage Loan Schedule shall be amended from time to time by the Depositor in accordance with the provisions of this Agreement. With respect to any Qualified Substitute Mortgage Loan, the Cut-off Date shall refer to the related Cut-off Date for such Mortgage Loan, determined in accordance with the definition of Cut-off Date herein.

**“Mortgage Note”**: The original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

**“Mortgagor”**: The obligor on a Mortgage Note.

**“Opinion of Counsel”**: A written opinion of counsel, who may, without limitation, be salaried counsel for the Depositor or the Master Servicer acceptable to the Trustee, if such opinion is delivered to the Trustee, acceptable to the NIMs Insurer, if such opinion is delivered to the NIMs Insurer, except that any opinion of counsel relating to (a) the qualification of any Trust REMIC as a REMIC or (b) compliance with the REMIC Provisions must be an opinion of Independent counsel.

**“Originator”**: Argent Mortgage Company, L.L.C.

**“PMI Insurer”**: Mortgage Guaranty Insurance Corporation, a Wisconsin stock insurance corporation, or its successor in interest.

**“PMI Mortgage Loans”**: The list of Mortgage Loans insured by the PMI Insurer attached hereto as Schedule 3.

**“PMI Policy”**: The primary mortgage insurance policy (policy reference number: #71-70276 (2/05)) with respect to the related PMI Mortgage Loans, including all endorsements thereto dated the Closing Date, issued by the PMI Insurer and the Commitment Letter, dated [April 25, 2006](#), among Mortgage Guaranty Insurance Corporation, the Master Servicer and the Trustee.

**“Prospectus Supplement”**: The Prospectus Supplement, dated [April 19, 2006](#), relating to the public offering of the Offered Certificates.

**“Seller”**: Ameriquest Mortgage Company, or its successor in interest, in its capacity as seller under the Mortgage Loan Purchase Agreement.

**“Servicing Advances”**: The reasonable *“out-of-pocket”* costs and expenses incurred by the Master Servicer in connection with a default, delinquency or other unanticipated event by the Master Servicer in the performance of its servicing obligations, including, but not limited to, the cost of (i) the preservation, restoration and protection of a Mortgaged Property, (ii) any enforcement or judicial proceedings, including foreclosures, in respect of a particular Mortgage Loan, (iii) the management (including reasonable fees in connection therewith) and liquidation of any REO Property and (iv) the performance of its obligations under Section 3.01, Section 3.04(d), Section 3.08, Section 3.12 and Section 3.13. The Master Servicer shall not be required to make any Servicing Advance in respect of a Mortgage Loan or REO Property that, in the good faith business judgment of the Master Servicer, would not be ultimately recoverable from related Insurance Proceeds or Liquidation Proceeds on such Mortgage Loan or REO Property as provided herein.

**“Servicing Criteria”**: As set forth in Exhibit M hereto.

**“Servicing Fee”**: With respect to each Mortgage Loan and for any calendar month, an amount equal to one month’s interest (or in the event of any payment of interest which accompanies a Principal Prepayment in full made by the Mortgagor during such calendar month, interest for the number of days covered by such payment of interest) at the applicable Servicing Fee Rate on the same principal amount on which interest on such Mortgage Loan accrues for

such calendar month. A portion of such Servicing Fee may be retained by any Sub-Servicer as its servicing compensation.

**“Servicing Fee Rate”**: 0.50% per annum.

**“Servicing Officer”**: Any employee of the Master Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans, whose name and specimen signature appear on a list of Servicing Officers furnished by the Master Servicer to the Trustee and the Depositor on the Closing Date, as such list may from time to time be amended.

**“Servicing Standard”**: The standards set forth in the first paragraph of Section 3.01.

**“Sub-Servicer”**: Any Person with which the Master Servicer has entered into a Sub-Servicing Agreement and which meets the qualifications of a Sub-Servicer pursuant to Section 6.06.

**“Sub-Servicing Account”**: An account established by a Sub-Servicer which meets the requirements set forth in Section 6.11 and is otherwise acceptable to the Master Servicer.

**“Sub-Servicing Agreement”**: The written [contract](#) between the Master Servicer and a Sub-Servicer relating to servicing and administration of certain Mortgage Loans as provided in Section 6.06.

**“Swap Administrator”**: Deutsche Bank National Trust Company, a national banking association, or its successor in interest, or any successor Swap Administrator appointed pursuant to the Swap Administration Agreement.

**“Trust Fund”**: Collectively, all of the assets of each Trust REMIC, any Master Servicer Prepayment Charge Payment Amounts, the Net WAC Rate Carryover Reserve Account, distributions made to the Trustee by the Swap Administrator under the Swap Administration Agreement and the Swap Account.

**“Trust REMIC”**: Each of REMIC I, REMIC II, REMIC III, REMIC IV, REMIC V and REMIC VI.

**“Trustee”**: Deutsche Bank National Trust Company, a national banking association, or its successor in interest, or any successor Trustee appointed as herein provided.

**“Trustee Fee”**: The amount payable to the Trustee on each Distribution Date pursuant to Section 8.05 as compensation for all services rendered by it and in the exercise and performance of any of the powers and duties of the Trustee hereunder, which amount shall equal the Trustee Fee Rate accrued for one month multiplied by the aggregate Scheduled Principal Balance of the Mortgage Loans and any REO Properties as of the Due Date in the prior month (or, in the case of the initial Distribution Date, as of the Cut-off Date), calculated on the basis of a 360-day year consisting of twelve 30-day months.

**“Trustee Fee Rate”**: 0.0015% per annum.

**“Underwriters”**: Each of J.P. Morgan Securities Inc., Banc of America Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

## **SECTION 1.03 Rights of the NIMS Insurer**

Each of the rights of the NIMS Insurer set forth in this Agreement shall exist so long as (i) the NIMS Insurer has undertaken to guarantee certain payments of notes issued pursuant to an [Indenture](#) and (ii) any series of notes issued pursuant to one or more [Indentures](#) remain outstanding or the NIMS Insurer is owed amounts in respect of its guarantee of payment on such notes; provided, however, the NIMS Insurer shall not have any rights hereunder (except pursuant to Section 11.01 in the case of clause (ii) below) during the period of time, if any, that (i) the NIMS Insurer has not undertaken to guarantee certain payments of notes issued pursuant to the [Indenture](#) or (ii) any default has occurred and is continuing under the insurance policy issued by the NIMS Insurer with respect to such notes.

## ARTICLE II CONVEYANCE OF MORTGAGE LOANS; ORIGINAL ISSUANCE OF CERTIFICATES

### SECTION 2.01 Conveyance of Mortgage Loans

The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificateholders all the right, title and interest of the Depositor, including any security interest therein for the benefit of the Depositor, in and to the Mortgage Loans identified on the Mortgage Loan Schedule, the rights of the Depositor under the Mortgage Loan Purchase Agreement, all other assets included or to be included in REMIC I, payments made to the Trustee by the Swap Administrator under the Swap Administration Agreement and the Swap Account. Such assignment includes all interest and principal received by the Depositor or the Master Servicer on or with respect to the Mortgage Loans (other than payments of principal and interest due on such Mortgage Loans on or before the Cut-off Date). The Depositor herewith delivers to the Trustee an executed copy of the Mortgage Loan Purchase Agreement and the PMI Policy, and the Trustee, on behalf of the Certificateholders, acknowledges receipt of the same. In connection with such transfer and assignment, the Depositor does hereby deliver to, and deposit with, the Trustee the following documents or instruments with respect to each Mortgage Loan so transferred and assigned, and the Depositor shall deliver or cause to be delivered to the Custodian the following documents or instruments (a "Mortgage File"):

(i) the original Mortgage Note, endorsed in blank, without recourse, or in the following form: "*Pay to the order of Deutsche Bank National Trust Company, as Trustee under the applicable agreement, without recourse,*" with all prior and intervening endorsements showing a complete chain of endorsement from the originator to the Person so endorsing to the Trustee, or with respect to any lost Mortgage Note, an original Lost Note Affidavit; provided however, that such substitutions of Lost Note Affidavits for original Mortgage Notes may occur only with respect to Mortgage Loans, the aggregate Cut-off Date Principal Balance of which is less than or equal to 2.00% of the Pool Balance as of the Cut-off Date;

(ii) the original Mortgage, with evidence of recording thereon, and a copy, certified by the appropriate recording office, of the recorded [power of attorney](#), if the Mortgage was executed pursuant to a [power of attorney](#), with evidence of recording thereon;

(iii) an original Assignment assigned in blank, without recourse;

(iv) the original recorded intervening Assignment or Assignments showing a complete chain of assignment from the originator to the Person assigning the Mortgage to the Trustee as contemplated by the immediately preceding clause (iii) or the original unrecorded intervening Assignments;

(v) the original or copies of each assumption, modification, written assurance or substitution agreement, if any; and

(vi) the original or copy of the lender's title insurance policy or an attorney's opinion of title or similar guarantee of title acceptable to mortgage lenders generally in the jurisdiction where the Mortgaged Property is located, together with the original or copies of all endorsements or riders which were issued with or subsequent to the issuance of such policy, or in the event such original or copy of the title policy is unavailable, a written commitment or uniform binder or preliminary report of title issued by the title insurance or escrow company.

If any of the documents referred to in Sections 2.01(ii), (iii) or (iv) above has as of the Closing Date been submitted for recording but either (x) has not been returned from the applicable public recording office or (y) has been lost or such public recording office has retained the original of such document, the obligations of the Depositor to deliver such documents shall be deemed to be satisfied upon (1) delivery to the Trustee, or to the appropriate Custodian on behalf of the Trustee, of a copy of each such document certified by the Originator in the case of (x) above or the applicable public recording office in the case of (y) above to be a true and complete copy of the original that was submitted for recording and (2) if such copy is certified by the Originator, delivery to the Trustee, or to the appropriate Custodian on behalf of the Trustee, promptly upon receipt thereof of either the original or a copy of such

document certified by the applicable public recording office to be a true and complete copy of the original. The Depositor shall deliver or cause to be delivered to the Trustee, or to the appropriate Custodian on behalf of the Trustee, promptly upon receipt thereof any other original documents constituting a part of a Mortgage File received with respect to any Mortgage Loan, including, but not limited to, any original documents evidencing an assumption or modification of any Mortgage Loan.

The Master Servicer (in its capacity as Seller) shall promptly (and in no event later than thirty (30) Business Days, subject to extension upon a mutual agreement between the Master Servicer and the Trustee, following the later of (i) the Closing Date, (ii) the date on which the Seller receives the Assignment from the Custodian and (iii) the date of receipt by the Master Servicer of the recording information for a Mortgage) submit or cause to be submitted for recording, at no expense to the Trust Fund or the Trustee, in the appropriate public office for real property records, each Assignment referred to in Sections 2.01(iii) and (iv) above and shall execute each original Assignment referred to in Section 2.01(iii) above in the following form: “*Deutsche Bank National Trust Company, as Trustee under the applicable agreement.*” In the event that any such Assignment is lost or returned unrecorded because of a defect therein, the Master Servicer (in its capacity as Seller) shall promptly prepare or cause to be prepared a substitute Assignment or cure or cause to be cured such defect, as the case may be, and thereafter cause each such Assignment to be duly recorded.

Notwithstanding the foregoing, however, for administrative convenience and facilitation of servicing and to reduce closing costs, the Assignments shall not be required to be submitted for recording (except with respect to any Mortgage Loan located in Maryland) unless such failure to record would result in a withdrawal or a downgrading by any Rating Agency of the rating on any Class of Certificates; provided further, however, each Assignment shall be submitted for recording by the Seller in the manner described above, at no expense to the Trust Fund or the Trustee, upon the earliest to occur of: (i) reasonable direction by Holders of Certificates entitled to at least 25% of the Voting Rights or the NIMS Insurer, (ii) failure of the Master Servicer Termination Test, (iii) the occurrence of a bankruptcy or insolvency relating to the Seller, (iv) the occurrence of a servicing transfer as described in Section 7.02 hereof and (v) if the Seller is not the Master Servicer and with respect to any one Assignment or Mortgage, the occurrence of a bankruptcy, insolvency or foreclosure relating to the Mortgagor under the related Mortgage. Notwithstanding the foregoing, if the Master Servicer is unable to pay the cost of recording the Assignments, such expense shall be paid by the Trustee and shall be reimbursable to the Trustee as an Extraordinary Trust Fund Expense.

All original documents relating to the Mortgage Loans that are not delivered to the Trustee, or to the appropriate Custodian on behalf of the Trustee, are and shall be held by or on behalf of the Seller, the Depositor or the Master Servicer, as the case may be, in trust for the benefit of the Trustee on behalf of the Certificateholders. In the event that any such original document is required pursuant to the terms of this Section to be a part of a Mortgage File, such document shall be delivered promptly to the Trustee, or to the appropriate Custodian on behalf of the Trustee. Any such original document delivered to or held by the Depositor that is not required pursuant to the terms of this Section to be a part of a Mortgage File, shall be delivered promptly to the Master Servicer.

The parties hereto understand and agree that it is not intended that any mortgage loan be included in the Trust that is a “*High-Cost Home Loan*” as defined by HOEPA or any other applicable predatory or abusive lending laws.

## **SECTION 2.02 Acceptance of REMIC I by the Trustee**

Subject to the provisions of Section 2.01 and subject to any exceptions noted on the exception report described in the next paragraph below, the Trustee acknowledges receipt (or, with respect to Mortgage Loans subject to a Custodial Agreement, receipt by the respective Custodian as the duly appointed agent of the Trustee) of the documents referred to in Section 2.01 (other than such documents described in Section 2.01(v)) above and all interests and all other assets included in the definition of “*REMIC I*” under clauses (i), (iii), (iv) and (v) (to the extent of amounts deposited into the Distribution Account) and declares that it, or such Custodian as its agent, holds and shall hold such documents and the other documents delivered to it constituting a Mortgage File, and that it holds or shall hold all such assets and such other assets included in the definition of “*REMIC I*” in trust for the exclusive use and benefit of all present and future Certificateholders.

On or prior to the Closing Date, the Trustee agrees, for the benefit of the Certificateholders, to execute and deliver (or cause the Custodian to execute and deliver) to the Depositor and the NIMS Insurer an acknowledgment of receipt of the Mortgage Note (with any exceptions noted), substantially in the form attached as Exhibit C-3 hereto.

The Trustee agrees, for the benefit of the Certificateholders, to review (or cause a Custodian on its behalf to review) each Mortgage Note within 45 days of the Closing Date and to certify in substantially the form attached hereto as Exhibit C-1 (or cause the Custodian to certify in the form of the Initial Certification attached to the Custodial Agreement) that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or any Mortgage Loan specifically identified in the exception report annexed thereto as not being covered by such certification), (i) all documents constituting part of such Mortgage File (other than such documents described in Section 2.01(v)) required to be delivered to it pursuant to this Agreement are in its possession, (ii) such documents have been reviewed by it or such Custodian and are not mutilated, torn or defaced unless initialed by the related borrower and relate to such Mortgage Loan, (iii) based on its or the Custodian's examination and only as to the foregoing, the information set forth in the Mortgage Loan Schedule that corresponds to items (1) through (3), (6), (9), (10), (13), (15) and (19) of the definition of "*Mortgage Loan Schedule*" accurately reflects information set forth in the Mortgage File. It is herein acknowledged that, in conducting such review, the Trustee or such Custodian was under no duty or obligation (i) to inspect, review or examine any such documents, instruments, certificates or other papers to determine whether they are genuine, enforceable, or appropriate for the represented purpose or whether they have actually been recorded or that they are other than what they purport to be on their face or (ii) to determine whether any Mortgage File should include any of the documents specified in clause (v) of Section 2.01.

Prior to the first anniversary date of this Agreement the Trustee shall deliver to the Depositor, the Master Servicer and the NIMS Insurer a final certification in the form annexed hereto as Exhibit C-2 (or shall cause the Custodian to deliver to the Trustee, the Depositor, the Master Servicer and the NIMS Insurer a final certification in the form attached to the Custodial Agreement) evidencing the completeness of the Mortgage Files, with any applicable exceptions noted thereon, with respect to all of the Mortgage Loans. Upon the request of the Master Servicer, any exception report related to the final certification shall be provided in an electronic computer readable format as mutually agreed upon by the Master Servicer and the Trustee.

If in the process of reviewing the Mortgage Files and making or preparing, as the case may be, the certifications referred to above, the Trustee or any Custodian finds any document or documents constituting a part of a Mortgage File to be missing, mutilated, torn or defaced or does not conform to the requirements identified above, at the conclusion of its review the Trustee (or a Custodian on behalf of the Trustee) shall so notify the Depositor, the NIMS Insurer and the Master Servicer. In addition, upon the discovery by the Depositor, the NIMS Insurer, the Master Servicer or the Trustee of a breach of any of the representations and warranties made by the Seller in the Mortgage Loan Purchase Agreement in respect of any Mortgage Loan which materially adversely affects such Mortgage Loan or the interests of the related Certificateholders in such Mortgage Loan, the party discovering such breach shall give prompt written notice to the other parties.

The Trustee (or a Custodian on behalf of the Trustee) shall, at the written request and expense of any Certificateholder, Certificate Owner, provide a written report to such Certificateholder, Certificate Owner, of all Mortgage Files released to the Master Servicer for servicing purposes.

## **SECTION 2.06 Issuance of the REMIC I Regular Interests and the Class R-I Interest**

The Trustee acknowledges the assignment to it of the Mortgage Loans and the delivery to it of the Mortgage Files, subject to the provisions of Section 2.01 and Section 2.02, together with the assignment to it of all other assets included in REMIC I, the receipt of which is hereby acknowledged. Concurrently with such assignment and delivery and in exchange therefor, the Trustee, pursuant to the written request of the Depositor executed by an officer of the Depositor, has executed, authenticated and delivered to or upon the order of the Depositor, the Class R-I Interest in authorized denominations. The interests evidenced by the Class R-I Interest, together with the REMIC I Regular Interests, constitute the entire beneficial ownership interest in REMIC I. The rights of the Class R Certificateholders

and REMIC II (as holder of the REMIC I Regular Interests) to receive distributions from the proceeds of REMIC I in respect of the Class R-I Interest and the REMIC I Regular Interests, respectively, and all ownership interests evidenced or constituted by the Class R-I Interest and the REMIC I Regular Interests, shall be as set forth in this Agreement.

### **SECTION 3.17 Trustee to Cooperate; Release of Mortgage Files**

(b) From time to time and as appropriate for the servicing or foreclosure of any Mortgage Loan, including, for this purpose, collection under any insurance policy relating to the Mortgage Loans, the Trustee and any related Custodian shall, upon request of the Master Servicer and delivery to the Trustee or such Custodian, as the case may be, of a Request for Release in the form of Exhibit E or such other form supplied by the Master Servicer provided that it does not differ from the substantive content of Exhibit E, release the related Mortgage File to the Master Servicer, and the Trustee shall, at the direction of the Master Servicer, execute such documents as shall be necessary to the prosecution of any such proceedings and the Master Servicer shall retain such Mortgage File in trust for the benefit of the Certificateholders. Such Request for Release shall obligate the Master Servicer to return each and every document previously requested from the Mortgage File to the Trustee or to such Custodian when the need therefor by the Master Servicer no longer exists, unless the Mortgage Loan has been liquidated and the Liquidation Proceeds relating to the Mortgage Loan have been deposited in the Collection Account or the Mortgage File or such document has been delivered to an attorney, or to a public trustee or other public official as required by law, for purposes of initiating or pursuing legal action or other proceedings for the foreclosure of the Mortgaged Property either judicially or non-judicially, and the Master Servicer has delivered to the Trustee a certificate of a Servicing Officer certifying as to the name and address of the Person to which such Mortgage File or such document was delivered and the purpose or purposes of such delivery. Upon receipt of a certificate of a Servicing Officer stating that such Mortgage Loan was liquidated and that all amounts received or to be received in connection with such liquidation that are required to be deposited into the Collection Account have been so deposited, or that such Mortgage Loan has become an REO Property, upon request, a copy of the Request for Release shall be released by the Trustee or such Custodian to the Master Servicer.

(c) Upon written certification of a Servicing Officer, the Trustee shall execute and deliver to the Master Servicer any court pleadings, requests for trustee's sale or other documents reasonably necessary to the foreclosure or trustee's sale in respect of a Mortgaged Property or to any legal action brought to obtain judgment against any Mortgagor on the Mortgage Note or Mortgage or to obtain a deficiency judgment, or to enforce any other remedies or rights provided by the Mortgage Note or Mortgage or otherwise available at law or in equity. Each such certification shall include a request that such pleadings or documents be executed by the Trustee and a statement as to the reason such documents or pleadings are required and that the execution and delivery thereof by the Trustee shall not invalidate or otherwise affect the lien of the Mortgage, except for the termination of such a lien upon completion of the foreclosure or trustee's sale.

**(d) The Trustee and the Master Servicer may mutually agree on policies and procedures (commercially reasonable in nature) to allow the submission of any and all requests for the release of a Mortgage File electronically with a digital signature or other identifier to designate the Servicing Officer of the Master Servicer requesting such collateral.**

### **SECTION 3.21 Access to Certain Documentation**

The Master Servicer shall provide to the Office of Thrift Supervision, the FDIC, and any other federal or state banking or insurance regulatory authority that may exercise authority over any Certificateholder or Certificate Owner, access to the documentation regarding the Mortgage Loans required by applicable laws and regulations. Such access shall be afforded without charge, but only upon reasonable request and during normal business hours at the offices of the Master Servicer designated by it. In addition, access to the documentation regarding the Mortgage Loans shall be provided to any Certificateholder or Certificate Owner, the Trustee, the NIMS Insurer and to any Person identified to the Master Servicer as a prospective transferee of a Certificate, upon reasonable request during normal business hours at the offices of the Master Servicer designated by it at the expense of the Person requesting such access. In each case, access to any documentation regarding the Mortgage Loans may be conditioned upon the

requesting party's acknowledgment in writing of a confidentiality agreement regarding any information that is required to remain confidential under the Gramm-Leach-Bliley Act of 1999.

### **SECTION 8.11 Appointment of Custodians**

The Trustee may, with the consent of the Depositor and the Master Servicer appoint one or more Custodians to hold all or a portion of the Mortgage Files as agent for the Trustee, by entering into a Custodial Agreement.

### **SECTION 11.02 Recordation of Agreement; Counterparts**

To the extent permitted by applicable law, this Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Master Servicer at the expense of the Certificateholders, but only upon direction of the Trustee accompanied by an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interests of the Certificateholders.

### **SECTION 11.09 Grant of Security Interest**

It is the express intent of the parties hereto that the conveyance of the Mortgage Loans by the Depositor to the Trustee be, and be construed as, a sale of the Mortgage Loans by the Depositor and not a pledge of the Mortgage Loans by the Depositor to secure a debt or other obligation of the Depositor or the Seller. However, in the event that, notwithstanding the aforementioned intent of the parties, the Mortgage Loans are held to be property of the depositor or the Seller, then, (a) it is the express intent of the parties that such conveyance be deemed a pledge of the Mortgage Loans by the Depositor to the Trustee to secure a debt or other obligation of the Depositor or the Seller and (b)(1) this Agreement shall also be deemed to be a security agreement within the meaning of Articles 8 and 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; (2) the conveyance provided for in Section 2.01 hereof shall be deemed to be a grant by the Seller and the Depositor to the Trustee of a security interest in all of the Seller's and the Depositor's right, title and interest in and to the Mortgage Loans and all amounts payable to the Holders of the Mortgage Loans in accordance with the terms thereof and all proceeds of the conversion, voluntary or involuntary, of the foregoing into cash, instruments, securities or other property, including without limitation all amounts, other than investment earnings, from time to time held or invested in the Collection Account and the Distribution Account, whether in the form of cash, instruments, securities or other property; (3) the obligations secured by such security agreement shall be deemed to be all of the Depositor's obligations under this Agreement, including the obligation to provide to the Certificateholders the benefits of this Agreement relating to the Mortgage Loans and the Trust Fund; and (4) notifications to persons holding such property, and acknowledgments, receipts or confirmations from persons holding such property, shall be deemed notifications to, or acknowledgments, receipts or confirmations from, financial intermediaries, bailees or agents (as applicable) of the Trustee for the purpose of perfecting such security interest under applicable law. Accordingly, the Depositor hereby grants to the Trustee a security interest in the Mortgage Loans and all other property described in clause (2) of the preceding sentence, for the purpose of securing to the Trustee on behalf of the Certificateholders the performance by the Depositor of the obligations described in clause (3) of the preceding sentence. Notwithstanding the foregoing, the parties hereto intend the conveyance pursuant to Section 2.01 and the transfer pursuant to the Mortgage Loan Purchase Agreement to be a true, absolute and unconditional sale of the Mortgage Loans and assets constituting the Trust Fund by the Depositor to the Trustee.

# Questions

# Questions that could be asked!!!

If the same question is asked of the Bank, GSE, Originator, Fannie/Freddie in a snapshot time you may find that the answers are different!

MERS - Mortgage Electronic Registration System

UETA - Uniform Electronic Transactions Act

Esign - Electronic Signatures in Global and Commerce Act

MISMO - Mortgage Industry Standards Maintenance Organization

UCC - Uniform Commercial Code

MIN number - 18-digit Mortgage Identification Number

Derivatives Market i.e. AIG - Separate Market, Personal Opinion not much more than getting insurance on a horse racing bet, as long as you are winning you don't need the insurance, hello housing meltdown! HELP ME AIG, I lost my bet!

Is the "Original Promissory Note" a negotiable instrument?

(a) Has the note ever been assigned/transferred/sold.

Is the "Original Promissory Note" a non-negotiable instrument?

(a) Has the note ever been assigned/transferred/sold.

Are negotiable instruments allowed to be assigned/bought/sold/transferred?

Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?

Who is responsible party for the creation of the "Original Promissory Note"?

Was the "Original Promissory Note" created on paper or in electronic?

If the "Original Promissory Note" was created electronically was it introduced into Electronic Book Entry?

Was the paper "Original Promissory Note" converted into electronic form?

In converting from paper to electronic was the paper note scanned into a graphic image and this graphic stored electronically?

In the conversion process, was the data contained on the promissory note scrapped and then this scrapped data stored in some type of electronic database?

Was the Deed of Trust and other documents also scanned and stored electronically?

Was the scanning process used to create a so called enote from the paper note?

What was the purpose for creating an enote?

If after scanning the paper note into an enote was the paper note destroyed?

If the paper note was not destroyed after scanning state the location where this paper notes resides.

Was the created enote intended to be offered up for sale in the secondary market via book entry system?

Was the enote note intended to be sold to a third party?

What is a eSignature?

What is a "Authoritative Copy" of the note?

Is the Authoritative Copy a unique controlling copy of a Transferable Record?

Is the Transferable Record a eNote?

Is a electronic transferable promissory note an eNote?

Is this electronic version of the note equivalent to the paper note?

Is the Transferable Record a negotiable instrument?

Is the Transferable Record in compliance with the Esign Act?

Is the transferable Record in compliance with UETA laws?

Is the Transferable Record in compliance with UCC laws?

Does the Esign Act allow for electronic negotiable instruments to exist?

Does UETA laws allow for electronic negotiable instruments to exist?

Does the UCC all for electronic negotiable instruments to exists?

Do you have an eVault?

Who is the eCustodian of this eVault?

How may eVaults contain the one and only eNote?

Does the eVault contain the paper note?

Can eSignatures be used on electronic negotiable instruments?

Was the enote registered on the MERS system? (Mortgage Electronic Registration)

Was the enote assigned a MIN number?

If the enote was sold provide the names of the seller and purchaser.  
Was the enote's negotiation executed in electronic book entry?  
Was the sell in compliance with the Uniform Commercial Code?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?  
Would this sell be classified as an sell/purchase/negotiation/assignment of the note?  
Are all sell/purchase/negotiations/assignments recorded in local county records offices?  
Was this assignment recorded within the MERS system?  
Does the MERS system identify the seller and purchaser?  
How much on average does it cost to record an assignment in local land records offices?  
How much does it cost to record the assignment in the MERS system?  
How does MERS confirm the buy/sell transaction took place?  
What process is used in updating the MERS system by the seller that a sell was executed?  
Provide the name of the seller.  
What process is used in updating the MERS system by the purchaser that a purchase was executed?  
Provide the name of the purchaser.  
How many times has the note been bought and sold and registered on the MERS System.  
Have any of these MERS recorded transaction been recorded in local county records offices?  
How is MERS associated with the notes?  
Does MERS own the note?  
Does MERS have any financial interests in the note?  
Is MERS listed on any documents?  
If MERS is listed on mortgage documents then explain in what capacity?  
Has the note been used as collateral in a secondary market investment vehicle?  
Has the note been used in a Hedge Fund?  
Provide the Private Place Memorandum and all other documents creating the fund.  
Provide a copy of the collateral pool schedule.  
Has the note been used as collateral in any interest/principal split investment vehicles?  
Provide the name of the interest investment vehicle.  
Provide the name of the principal investment vehicle.  
Has the note been offered up to a GSE such as Fannie Mae, Freddie Mac?  
Has the note been offered up as collateral in the Borrower in Custody Program? (Federal Reserve Bank)  
Provide the name of the "eCustodian" that has control of the enote.  
Provide the name of the custodian that has possession of the paper note.  
How many backup copies of the enote exist?  
Was the paper note offered as collateral in any GSE?  
Was the enote offered as collateral in any GSE?  
Provide copies of all "pooling and Servicing Agreements.  
Provide all Exhibits for the investment vehicles that describes the collateral pool that contain notes/enotes.  
Provide the name of the current servicer of the note payments.  
Provide the names of all past servicers.  
Provide all servicing contracts of servicers with the owner/holder of the note.  
Provide all servicing contracts with servicers and the trustee for the owner/holder of the note.  
Was mortgage payment insurance required?  
Provide the name of the mortgage insurance carrier.  
Provide a copy of the mortgage insurance carrier's procedure guideline.  
Prior to default and acceleration notice who was the owner of the note?  
Prior to default and acceleration notice who was the holder of the note?  
Have all assignments been recorded from closing to current owner?  
Is the note in its current form in paper or electronic?  
Provide the name of the document custodian in possession of the paper note.  
Provide the name of the ecustodian in control of the enote.  
Provide copy of the default and acceleration letter.  
Provide copy of notice to mortgage insurance carrier that note is in default and acceleration.  
Provide copy of notice to the GSE's that the note is in default and acceleration.

Provide copy of notice by servicing agent to mortgage insurance carrier that the note is in foreclosure.  
Provide copy of notice by servicing agent to GSE's that note is in foreclosure.  
Provide copy of withdrawal request from GSE collateral pool of note in foreclosure.  
Provide copy of transmittal of note from GSE collateral pool to bank.  
Provide copy of withdrawal request from private investment vehicle collateral pool of note in foreclosure.  
Provide copy of transmittal of note from public investment vehicle collateral pool of note in foreclosure.  
Provide copy of notice to law firm that note is in foreclosure and authorization to execute action.  
Was notice to law firm in paper form?  
Was notice to law firm in electronic form?  
Was foreclosure information sent to law firm in a electronic batch procedure.  
Was the bank in possession of the "Original Promissory Note" when law firm executed foreclosure action.  
Was the "Original Promissory Note" transmitted to the law firm?  
Was a paper copy of the note sent to the law firm?  
Was an electronic copy of the enote sent to the law firm?  
Was the law firm ever in possession of the "Original Promissory Note"?  
Was a lost note affidavit created?  
Was the note lost?  
Was the note destroyed?  
How was the note destroyed?  
Was the note destroyed when it was scanned into electronic eNote?  
Who destroyed the note?  
How was the note destroyed?  
Who signed the lost note affidavit?  
Did a document custodian sign a lost note affidavit?  
When was the note lost?  
Who was the owner of the lost note?  
Who lost the note?  
When did the loss occur?  
Where there any assignments of the note after the loss occurred.  
Identify these assignments.  
Where there any assignments of the note before the loss occurred.  
Identify these assignments.  
Was loss of note due to bank failure?  
Was loss of note due to a castrastophe?  
Are there any fire/police reports?  
Was insurance in place to protect against loss?  
Was a claim made with insurance carrier for loss?  
Who is alleged to be the owner at time of loss?  
Who was the servicer at the time of loss?  
Who was the master servicer?  
Who was the sub-servicer?  
Was a copy of the note attached to the lost note affidavit?  
Who was in possession of this copy prior to being attached to the lost note affidavit?  
Who had custody of the copy of the note?  
Was this copy attached to the lost note affidavit created by printing out the graphic image of the note?  
Was this copy attached to the lost note affidavit created by copying a copy of the note on a copy machine?  
What was the date the date of notice of default and acceleration?  
On the date of notice of default and acceleration who was the owner of the note?  
On the date of notice of default and acceleration who was the holder of the note?  
On the date of notice of default and acceleration was the note an enote or paper note?  
On what date was direction sent to the law firm to execute foreclosure action?  
On what date did the investment vehicle take owner/holder status of the note?  
If investment vehicle use a document custodian for the note provide the name.  
If the bank uses a document custodian for the note provide the name.  
What is the receiving date the document custodian took possession of the note for the investment vehicle?  
What is the transmitting date the document custodian released the note for the investment vehicle?

Receiving date for the banks custodian.

Release date for the banks custodian.

## Borrower

Who is the borrower?

Did the borrower sign a paper note?

Did the borrower sign an eNote?

What was the date the note or eNote was signed on?

Was the note negotiable or non-negotiable at closing?

Who took possession of the note?

Was the note copied?

Was the note scanned?

Who took possession of the scanned file?

What was the purpose of the scanned file?

Was the scanned file to be used as an eNote?

Was this eNote done under guise of eSign and UETA laws?

Was this eNote in compliance with the Uniform Commercial Code?

Was the note in compliance with the Uniform Commercial Code?

Are negotiable instruments allowed to be assigned/bought/sold/transferred?

Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?

Was the note intended to be sold after closing?

Who was the closing agent?

Who was the Title Company?

Was mortgage protection insurance required?

Who is the mortgage protection insurance carrier?

Did the borrower receive all other documentation required?

Was a transfer of lien form filled out?

Was the transfer of lien filed with local land records office?

Was the transfer of lien recorded on the MERS system?

## Originator

Who originated the note?

Was this note to be a negotiable or non-negotiable instrument?

Who took custody of the note?

Did the borrower sign a paper note?

Did the borrower sign an eNote on a computer terminal?

What size paper was the note on, i.e. letter/legal?

Was the note electronically scanned?

Was the scanning of the paper note done in the presence of the borrower?

Was the borrower given Esign disclosure notices?

Did the borrower agree to the Esign disclosures?

Was the note converted into an eNote?

Was the data on the note assembled into an electronic database?

Was the eNote registered on MERS?

Does the Esign Act allow for electronic negotiable instruments to exist?

Does UETA laws allow for electronic negotiable instruments to exist?

Does the UCC all for electronic negotiable instruments to exists?

What date did the closing take place on?

What date was the electronic conversion done on?

Did the homeowners execute an eClosing?

Where the homeowners present during electronic conversion?

Where the homeowners given a copy machine copy of the note?

Where the homeowners given a copy of the eNote after conversion?

Was the note sold?

Are negotiable instruments allowed to be assigned/bought/sold/transferred?

Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?

Who was it sold too?  
Was there a document custodian?  
Was the buy/sell to 3rd party executed in paper?  
Was the buy/sell to 3rd party executed electronically?  
Was the buy/sell to 3rd party done in electronic batch?  
Was an eNote transferred in the batch process?  
Where all other documents (i.e., deed of trust, disclosures) transferred in this batch?  
In what format was this electronic file? (i.e., XML, PDF)  
Where all security items attached to the electronic file?  
Was the note registered on MERS?  
What is the MIN number?  
Was a warehouse lender or equal used?  
Was a Bailee letter used in the selling of the note?  
Was the paper note converted into an eNote?  
Was the paper note destroyed after converting to an eNote?  
Who did the conversion of paper note to an eNote?  
Who destroyed the paper note?  
When what was the date of conversion?  
Who executed the conversion process?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?  
Have you executed closings that used eNotes?  
Have you executed closings that used paper notes?

## Warehouse Lender

Who originated the note?  
Was this note to be a negotiable or non-negotiable instrument?  
Who took custody of the note?  
Are negotiable instruments allowed to be assigned/bought/sold/transferred?  
Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?  
Was the note electronically scanned?  
Was the note converted into an eNote?  
Does the Esign Act allow for electronic negotiable instruments to exist?  
Does UETA laws allow for electronic negotiable instruments to exist?  
Does the UCC all for electronic negotiable instruments to exist?  
Was the data on the note assembled into an electronic database?  
Was the eNote registered on MERS?  
What date did the closing take place on?  
What date was the electronic conversion done on?  
Did the homeowners execute an eClosing?  
Where the homeowners present during electronic conversion?  
Where the homeowners given a copy machine copy of the note?  
Where the homeowners given a copy of the eNote after conversion?  
Was the note sold?  
Who was it sold too?  
Was there a document custodian?  
Was the buy/sell to 3rd party executed in paper?  
Was the buy/sell to 3rd party executed electronically?  
Was the buy/sell to 3rd party done in electronic batch?  
Was an eNote transferred in the batch process?  
Where all other documents (i.e., deed of trust, disclosures) transferred in this batch?  
In what format was this electronic file? (i.e., XML, PDF)  
Where all security items attached to the electronic file?  
Was the note registered on MERS?  
What is the MIN number?

Was a warehouse lender or equal used?  
Was a Bailee letter used?  
Who was the originator?  
Was the note purchased?  
Who purchased the note from the originator?  
Was the purchase in paper form?  
Was the purchase in electronic form?  
Was the purchase in a batch process?  
Was the note transferred into your possession?  
Was an eNote transferred into your possession?  
Did you receive a complete mortgage file containing all documentation?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?

## Bank

Who is the borrower?  
Who originated the note?  
Was this note to be a negotiable or non-negotiable instrument?  
Are negotiable instruments allowed to be assigned/bought/sold/transferred?  
Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?  
Who took custody of the note?  
What date did the closing take place on?  
Did you purchase the note?  
On what date did you purchase the note?  
Was the purchase part of a batch purchase?  
Was this batch purchase in electronic form?  
Was this batch process in paper form?  
Is there a document custodian?  
Is the note registered on the MERS system?  
Is the eNote registered on the MERS system?  
Was the purchase based on a paper note?  
Was the purchase based on a eNote?  
Does the Esign Act allow for electronic negotiable instruments to exist?  
Does UETA laws allow for electronic negotiable instruments to exist?  
Does the UCC all for electronic negotiable instruments to exists?  
Are all assignments noted on the note?  
Are all assignments noted on the eNote?  
Have all assignments been recorded in land records office?  
Have the assignments been recorded with the MERS system?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?  
Is there a servicer of the mortgage?  
Who is the servicer?  
Is there a servicing contract with the bank and servicer?  
Provide a copy of this servicing contract.  
Is there a sub servicer for the servicer?  
Identify the sub servicer?  
Did you receive in the purchase a paper note?  
Did you receive in the purchase an eNote?  
Was the note used as collateral in the Borrower in Custody (BIC) program with the Federal Reserve Bank?  
Who is the document custodian of the note for the BIC program?  
Is the document custodian for the BIC program yearly status current?  
Is the note used as collateral in the BIC program an eNote?  
Is the note uses as collateral in the BIC program a paper note?

Was the note used as collateral in a investment vehicle?  
What is the name of the investment vehicle?  
Is the note used as collateral in the investment vehicle an eNote?  
Is the note uses as collateral in the investment vehicle a paper note?  
Is there a Pooling and Servicing Agreement?  
Who is the trustee for the investment vehicle?  
Does the investment vehicle use a document custodian?  
Who is the document custodian for the investment vehicle?  
Does the document custodian have the paper note?  
Does the document custodian have an eNote?  
Is the investment vehicle the owner of the note?  
Is the investment vehicle the holder of the note?  
Is the document custodian for the investment vehicle holder of the note?  
How did the document custodian for the investment vehicle take possession of the note?  
Was possession taken by physical transfer of the paper note?  
Were all assignments current at the time of taking possession?  
Were all the assignments to this date recorded in land records offices?  
Was there a pool of mortgage exhibit for this investment vehicle?  
How many investment splits were made?  
At the time of securization were the investment vehicles created based on interest only/principal only split?  
Did the interest only investment vehicle become the owner of the note?  
Did the interest only investment vehicle become the holder of the note?  
Did the interest only investment vehicle use a document custodian?  
Did the principal only investment vehicle become the owner of the note?  
Did the principal only investment vehicle become the holder of the note?  
Did the principal only investment vehicle use a document custodian?  
Was the note offered for sale to a GSE such as Fannie Mae or Freddie Mac?  
Was the note sold to a GSE?  
Was the note sold in book-entry form?  
Was a paper note assigned to the GSE?  
Was an eNote assigned to the GSE?  
Were these assignments recorded in the land records offices?  
Were the note transferred in a bulk transaction?  
Was this bulk transaction based on book-entry?  
Was a lost note affidavit used?  
Who issued the lost note affidavit?  
When was the lost note affidavit made?  
Was the note lost?  
Was the note destroyed?  
How was the note destroyed?  
When was the note destroyed?  
Was a graphic image contained in book entry printed out and attached to the lost note affidavit?  
Was the graphic image being used as an eNote for book entry?  
Are you in possession of the original paper note?  
Have you ever been in possession of the original paper note?  
Was the original paper note being held by a document custodian?  
Do you have the document custodian withdrawal of collateral forms for the note?  
Does the document custodian have transmittal receipts for the original paper note?  
Does the eCustodian have control over the eNote?  
How many persons have access to the eNote?  
Was servicing of mortgage contracted out?  
Is there a contract with the servicer?  
Who is the servicer?

## Failed Institution

Were paper notes involved in the failure?

Were these paper notes located?  
Was the paper notes owned by other 3rd partys?  
Were there any eNotes?  
Who the eNotes owned by other 3rd parties?  
Were there any paper notes that could not be located or retrieved?  
Were there any eNotes that could not be located or retrieved?  
Was a lost note affidavit executed?  
Was a copy of the note or the terms of the lost note attached to the lost note affidavit?  
Who signed the lost note affidavit?  
When was the date of discovery of the loss?  
When was the lost note affidavit signed?  
Was a lost note affidavit with attachments used to create a new note?  
When was it sold?  
Who was it sold too?  
Was this new note sold and further assigned?  
What date was this new note was sold?  
Was the new note converted into an eNote?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?

## GSE (Fannie-Freddie) MERS

Does Fannie Mae require the original note?  
Does Fannie Mae require the eNote?  
Does the Esign Act allow for electronic negotiable instruments to exist?  
Does UETA laws allow for electronic negotiable instruments to exist?  
Does the UCC all for electronic negotiable instruments to exists?  
Does Fannie Mae require the note to be endorsed to Fannie Mae  
Does Fannie Mae require the eNote to be endorsed to Fannie Mae?  
Does Fannie Mae require the note to be assigned?  
Does Fannie Mae require the eNote to be assigned?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?  
Does Fannie Mae require the purchase of the note to be recorded in land records offices?  
Does Fannie Mae require the purchase of the eNote to be recorded in land records offices?  
Does Fannie Mae require the original Security Instrument?  
Does Fannie Mae require the Security Instrument to be recorded in land records offices?  
Is a eClosing guide published by you?  
Is a eMortgage guide published by you?  
Is an eNote and eMortgage the same thing?  
What is the difference between an eNote and eMortgage?  
Is the eMortgage in compliance with the Esign Act?  
Is the eMortgage in compliance with UETA laws?  
Is the eMortgage in compliance with the UCC?  
Is a Document Custodian Guide published by you? (Fannie Mae Form  
Is there a Master Custodian Agreement published by you? (Fannie Mae Form 2003)  
Is there a Request for Release/Return of Documents form? (Fannie Mae Form 2009)  
Is there a Custody Document Transmittal form? (Fannie Mae Form 276)  
Is there a Schedule of Mortgages? (Fannie Mae Form 2005)  
Is there a Servicer File Retention Requirements guide? (Fannie Mae Form 4360)  
It there a Document Certification and Custody Announcement? (Fannie Mae Announcement 06-19 Nov 8, 06)  
Is there a Annual Statement of Eligibility for Document Custodians form? (Fannie Mae Form 2001)  
Is there a Selling and Servicing Guide?  
Is there a Requirements for Document Custodians guide?  
Are all you enotes registered on the MERS system?

Is there a Annual Statement of Eligibility for Document Custodians? (Fannie Mae Form 2001)

Are the eNotes in compliance with eSign Act?

Are the eNotes in compliance with the UETA laws?

Are the eNotes in compliance with the UCC?

Do you take notes and create interest only splits?

Do you take notes and create principal only splits?

Do you take a number of other interest only splits and combine them to create an investment vehicle for a separate interest only investment vehicle?

Does the interest only split become the holder of the note?

Does the interest only split become the owner of the note?

In the interest only split do many become the owner of the note by beneficial ownership?

Does a document custodian for the interest only split become holder of the note?

Do you take a number of other principal only splits and combine them to create an investment vehicle for a separate principal only investment vehicle?

Does the principal only split become the holder of the note?

Does the principal only split become the owner of the note?

In the principal only split do many investors become the owner of the note by beneficial ownership?

Does a document custodian for the principal only split become holder of the note?

Who is the trustee for the interest only split investment vehicle?

Who is the trustee for the principal only split investment vehicle?

Is the note a paper note?

Is the note an eNote?

Was the note purchased?

What date was the purchase made on?

Was the purchase a paper note?

Was the purchase a eNote?

Was the purchase a new note?

Was a transfer of lien form filled out?

Was the transfer of lien filed with local land records office?

Was the transfer of lien recorded on the MERS system?

Do the guidelines allow for electronic transfer of the eNote?

Do the guidelines allow for transfer of paper notes?

Fannie Mae Custodial Agreement Form 2003

Does Fannie Mae require the Original Note evidencing the indebtedness?

Does Fannie Mae require the original mortgage, deed of trust or other security instrument?

Does this assignment need to be recorded in land records offices?

Does Fannie Mae require the mortgage to be registered with MERS?

Does Fannie Mae require the loan to have a Mortgage Identification Number (MIN) number?

Does Fannie Mae require an assignment of the note to Fannie Mae if the loan is registered on MERS?

Is an eNote an original note?

Can you create a new note from an eNote?

Are eMortgages in compliance with the Esign Act?

Are eMortgages in compliance with UETA laws?

Are eMortgages in compliance with the UCC?

Does Fannie Mae purchase eMortgages?

Has Fannie Mae published guidelines for eMortgages?

Are eNotes created to MISMO standards?

Are eNotes in Smart Doc format?

Are eNotes in PDF format?

Are eNotes in any other format?

Who owns MISMO? (MERS)

What does MISMO stand for?

Who created MISMO?

Who created MERS?

Has is Mortgage Bankers Association related to MISMO?

How is Mortgage Bankers Association related to MERS?

Are eNotes required to have been digitally signed by the borrower?  
Are paper notes registered on the MERS system?  
Are paper scanned created eNotes registered on the MERS system?  
Are there standards for the eNote?  
Who wrote the standards?  
Does MISMO have standards for an eNote?  
Is an eNote an original?  
Is an eNote a electronically stored graphic representation of the paper note?  
Is an eNote created at a computer terminal with security standards applied to the eNote at time of closing?  
Are eNotes created with the borrower executing the closing/signing action at the same time?  
Are eNotes created without borrower knowledge?  
How are eNotes assigned from the bank to Fannie Mae?  
Was a transfer of lien form filled out?  
Was the transfer of lien filed with local land records office?  
Was the transfer of lien recorded on the MERS system?  
Does Fannie Mae use servicers?  
Does the servicer have access to the MERS system?  
Can the servicer update MERS records?  
Can Fannie Mae access the MERS system?  
Can Fannie Mae update MERS records?  
Is MERS the holder of the note?  
Is MERS the holder of the eNote?  
Is MERS the owner of the note?  
Is MERS the owner of the eNote?  
Does the MERS system identify the owner of the note?  
Does the MERS system identify the holder of the note?  
Does the MERS system identify the owner of the eNote?  
Does the MERS system identify the holder of the eNote?  
Can the MERS system determine whether the note has been bought or sold?  
Can the MERS system determine whether the eNote has been bought or sold?  
Are these buy/sells recorded in the local land records offices?  
Are these buy/sells recorded in the MERS systems?  
What is the legal basis for the legal existence of eMortgages?  
What is a "transferable eMortgage"?  
Are eNotes used as collateral in investment vehicles created for the securities market?  
Are eMortgages used as collateral in investment vehicles created for the securities market?  
Are notes used as collateral in investment vehicles created for the securities market?  
Is the collateral put within custody of a document custodian?  
Who is the owner of the collateral in the investment vehicles?  
Is this collateral part of a larger collateral pool?  
Are there schedules reflecting what is in the collateral pool?  
Who is the holder of the collateral in the investment vehicles?  
Can information regarding Fannie eMortgages be found at  
<http://www.efanniemae.com/sf/guides/ssg/relatedsellinginfo/emtg/>?  
What is an "electronic promissory note"?  
Is a eNote a negotiable instrument?  
Is a eMortgage a negotiable instrument?  
Is a electronic promissory note a negotiable instrument?  
Is a eNote a non-negotiable instrument?  
Is a eMortgage a non-negotiable instrument?  
Is a electronic promissory non-note a negotiable instrument?  
Are negotiable instruments allowed to be assigned/bought/sold/transferred?  
Are non-negotiable instruments allowed to be assigned/bought/sold/transferred?  
Is this electronic procedure part of the book entry system?  
Is the following the Fannie Mae procedure for the allowing Fannie Mae to buy the "eMortgages"?

**(eMortgage Delivery, Frequently Asked Questions, March 2007)(Fannie Mae)**

### **III. EMORTGAGE DELIVERY PROCESS**

#### **Q16. What are the steps in the eMortgage Delivery process?**

Although process details may vary, a high-level overview of the process for a lender delivering an eMortgage to Fannie Mae includes the following steps:

eNote and possibly other documents are eSigned by the borrower and notary through the use of an eClosing system

The eClosing system tamperseals the documents

eNote is registered on MERS eRegistry within one business day

Lender transmits eNote and other investor documents to Fannie Mae using MERS eDelivery

Lender transfers control of eNote to Fannie Mae via MERS eRegistry

Lender submits delivery data to Fannie Mae, including Special Feature Code 508 to identify the loan as an eMortgage

Loan is certified and funded, assuming all requirements are met

Non GSE public and private investment vehicles questions similar to GSE questions!

### **Default - Law Firms**

This area is for law attorneys to fill in.

### **Default - Court**

This area is for law attorneys to fill in.