

Is There a Way to Prove a Note's Negotiation

Where a Trustee holds in Trust, "Title to Real Property" as collateral for a Secured Note owned by a Secured Party in Title Theory states, where such Trustee will convey such "Title to Real Property" in accordance to terms defined in the Security Instrument in comparison to a Trustee being granted rights to convey "Title to Real Property" to a Secured Party in Lien Theory states in accordance to the terms defined in the Security Instrument is part of the difference.

The finance industry rightfully claims a Note's negotiation does not have to be recorded of record. In decades past, the mortgage package had the Note and the Security Interest written within the same document. As a byproduct of filing of record the Security Instrument side of the mortgage package the Note was also filed of record. Hence, timely filing the Security Instrument of record and timely filing of subsequent assignments of the Security Instrument to a subsequent purchaser of the Note is prima facie confirmatory evidence of the identity of the Secured Party who has rights to enforce the Note and rights to enforce the terms within the Security Instrument. Where there is a failure to timely file the Security Instrument to perfect rights in the lien or failure to timely file a transfer of perfected lien rights would result in a party not being that of a Secured Party, where such party has lost status as a Secured Party

would be left with only rights to enforce the note for non-payment of tangible principle and interest payments if such payment default exists, but as no longer being a Secured Party of record, such party has no rights to enforce any term contained within the Security Instrument including the “power of sale.”

Lest assume in year 2004, intentions were to sale a Tangible Secured Note for inclusion into a year 2004 created Intangible Securities would require the Tangible Notes along with a perfected Tangible Security Instrument to be sold to a Intangible Secondary Market Security in or near year 2004 per the terms of the securitization documents. Where MERS and others create and file of record an alleged assignment of lien rights to the Intangible Security Trust in year 2009 would allude to the parties not being in compliance with timely filing of assignment of lien rights or the Note was negotiated to the Intangible Security in year 2009. With not addressing as to whether MERS can be the Beneficiary to rights belonging to a Secured Party, the above reflects that the Intangible Secondary Security could not be a Secured Party of Record.

In the elevator version, where timely filing of assignment of perfection of the Tangible Security Instrument is required by local laws of jurisdiction, such filing would possible provide a timeline of when the Tangible Note was allegedly negotiated. Whether such Tangible Note negotiation took place based upon information filed of record and in comparison to the creation dates

of the Intangible Security would raise serious concerns. The creation of a confirmatory assignment allegedly assigning lien rights after the limited filing time limitation has expired, no such document is sufficient to correct lost lien rights.

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