# ABSTRACT: How Your Mortgage Became a Wall Street Security Without Your Knowledge

By William Paatalo, Oregon Private Investigator OR PSID #49411
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**IN MEMORIAM**
This article is dedicated to the late **Neil Garfield, Esq.**, a pioneer and leading voice in exposing the securitization scheme and advocating for consumer protection in the mortgage industry. Neil was one of the original educators in this movement, whose tireless efforts helped illuminate the deceptive practices underlying modern foreclosure and lending systems. His work continues to resonate across legal and investigative circles.

As Neil famously declared, *"No one should be allowed to invent a debt and then enforce it."* We honor his legacy, his wisdom, and his unwavering commitment to truth and justice. We miss you, Neil.

**DEDICATIONS**: This work is dedicated first and foremost to my Lord and Savior, Jesus Christ—who has given me the strength, the skills, and the gifts to pursue this path. It is only by His grace that I have come this far. *"With God, all things are possible"* (Matthew 19:26), and I acknowledge fully that **I am nothing without Him**.

This article is also dedicated to the thousands of families and individuals whose lives have been devastated by the unchecked fraud, negligence, and misconduct described herein. This includes the countless homeowners who have lost their homes, faced financial ruin, endured forced displacement, suffered divorce, depression, and in too many cases, suicide. Their suffering and stories are often invisible in the public narrative but are the true legacy of this systemic abuse. May this work serve as a voice for the voiceless and a step toward justice for those harmed.

**TRIBUTES**: I also pay tribute with deep love and gratitude to the three people in my life who have stood by me with unwavering love, faith, and support—my belated mother and father, **John and Dolores**, and my beloved wife, **Jenny**. You are the only ones who have ever truly believed in me unconditionally and loved me without reservation. Your steadfast trust in me and my journey has been my foundation. Everything I have achieved has been made possible because you never stopped believing.

I also wish to pay tribute to the people of my youth who were so instrumental in creating the character and the person and the man who I am today. Those specifically—and there are too many to name—but my youth baseball coaches **Mike Meyers** and **Dennis Denning**; **John Walsh**, my high school English teacher; and so many others whose names may not appear in this article but whose impact remains deeply felt. I am grateful to all of them—those who dedicated their time, resources, and energy to building up the next generation. I remain thankful for their wisdom, their discipline, and their faith in me. Even today, I strive to live up to the expectations they set and the values they instilled.

**IN GRATITUDE:** Over the years, my professional journey has taken a path that could best be described as unorthodox—peculiar, even. I often joke that if someone had told me 20 years ago I'd spend my life deconstructing mortgage securitization fraud, I would've asked what language they were speaking. But somehow, this winding road—with all its courtrooms, audit trails, and forensic puzzles—has brought me exactly where I needed to be. What began as a curiosity has turned into a calling.

I would like to express my heartfelt gratitude for the many meaningful relationships that have come into my life throughout this journey. Over the past 15 years, I've been fortunate to work with clients whose strength, kindness, and resilience have deeply touched me. Many have become lifelong friends. I am also thankful for the national network of professionals, advocates, and everyday people who have supported this work, shared their stories, and sustained my purpose. Amid the ashes of so much financial destruction and personal hardship, I have found enduring love, generosity, and shared commitment to justice. Thank you for keeping me going. And finally,

**DISCLAIMER:** This article is for informational purposes only and does not constitute legal advice. Readers are strongly encouraged to seek independent legal counsel regarding any claims or defenses discussed herein.

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## Topics Covered in This Article

## Part 1: Introduction and The Foundation of the Scheme

This article may appear daunting to those without a legal or financial background. The concepts discussed—though grounded in law, accounting standards, and real-world transactions—often seem deliberately undecipherable. That's no accident. The securitization scheme exposed herein was built on **contrived complexity**: a calculated design of layered legal and financial abstractions meant to obscure the true nature of the transactions. Even highly educated professionals struggle to make sense of it. This was not a flaw—it was a feature, engineered to ensure that only a handful of experts in law, accounting, and structured finance could untangle it. But with the right framework and evidence, as this article will provide, the curtain can be pulled back and the architecture of the scheme revealed.

This article is the product of more than 15 years of investigative research, sworn testimony, and forensic analysis across thousands of mortgage transactions. Its purpose is not only to expose the structural defects, legal inconsistencies, and deceptive practices embedded in mortgage securitization, but to equip homeowners and their advocates with actionable strategies to challenge these abuses.

By understanding the true mechanics of this scheme and invoking the proper discovery tools and administrative processes, borrowers can shift the burden of proof back to those asserting fraudulent claims. The information presented here reflects what I now know—with a high degree of certainty—to be the operational reality of securitized lending. It is my hope that this roadmap will help break through the legal presumptions that have too often shielded financial institutions from scrutiny.

What most homeowners believed they were receiving was a traditional mortgage loan. In reality, the entire transaction was structured around securitization from the outset. The promissory notes were never intended to remain in a simple lending relationship between borrower and lender. Instead, they were destined for monetization through securitization and financial trading platforms that the borrower was never informed about. This disconnect represents one of the most pervasive deceptions in modern finance history.

## Part 2: Turning Notes Into Securities & Violating REMIC Rules

A "repo" (short for repurchase) trade is a short-term financing arrangement in which a party sells an asset—such as a mortgage note—with a simultaneous agreement to repurchase it at a later date, often within 24 to 48 hours. These transactions allowed institutions to temporarily monetize promissory notes as if they were liquid securities, effectively removing them from the lending system and turning them into short-term instruments used in rapid, high-frequency profit strategies, also known as "flash trading." This practice violated the intended function of the notes and undermined their legal enforceability as stable loan instruments.

Rather than being securely placed in tax-exempt REMIC trusts, as represented to global investors, many mortgage notes were diverted for use as collateral in short-term repo trades. These trades treated the notes as if they were marketable securities—meaning your mortgage

could have been, and still may be, part of a Wall Street trading scheme without your consent or knowledge.

Pooling and Servicing Agreements (PSAs) require mortgage notes to be transferred into REMIC trusts within strict timeframes, which is essential to maintain tax-exempt status under IRS Code § 860G. However, widespread evidence shows this requirement was often ignored in favor of more profitable repo activity. Subsequent efforts to "transfer" notes into REMICs after the closing date are void ab initio under both trust law and federal tax law.

Public filings, including SEC prospectus supplements, confirmed that many REMICs never physically received or endorsed the mortgage notes. For example, in the **WaMu Mortgage Pass-Through Certificates Series 2007-OA5 Trust**, the 424B5 prospectus filed with the SEC explicitly disclosed that mortgage notes would not be endorsed or marked to reflect transfer to the trust, and that assignments of mortgages would not be prepared or recorded. Even more alarming, the prospectus warned that Washington Mutual Bank, acting as servicer, would commingle borrower payments with its own funds, and that the trust might not have a perfected interest in those collections. If WMB became insolvent or entered receivership—as it ultimately did—distributions to investors could be delayed or reduced, and the trust's interest in the loans could be defeated altogether. Source: SEC EDGAR – WaMu 2007-OA5, 424B5 Prospectus. Additional confirmation comes from the Final Report of the Bankruptcy Examiner in the Washington Mutual (WaMu) case, where JPMorgan Chase (JPMC), during its due diligence process in acquiring WaMu, expressed serious concerns that many of the mortgage loan assets had not actually been transferred into the REMIC or REIT structures. Internal JPMC emails cited in the report bluntly stated,

*"we are concerned that nothing was put in the trusts,"* and,
*"the assets are not in the REITs."*

JPMC identified this failure to transfer and perfect interests as a material liability. The examiner's report explicitly confirmed these internal concerns, stating that assets were not conveyed as required, leaving the trusts exposed and unsecured. Source: Final Report of the Examiner, In re Washington Mutual, Inc., Case No. 08-12229 (Bankr. D. Del.), Dkt. No. 5735. These filings preemptively admitted legal deficiencies, effectively shielding parties from liability while keeping investors and borrowers in the dark.

## Part 3: MERS – From Registry to Syndicate Clearinghouse

To the average homeowner, MERS—short for Mortgage Electronic Registration Systems—may seem like a routine name on their mortgage or deed of trust. But its role in the mortgage system is far from simple. MERS was created in the 1990s by a consortium of major banks and mortgage industry players with the stated purpose of streamlining the mortgage recording process. Its intent was to eliminate the need to publicly record every assignment of a mortgage when loans were sold or transferred, supposedly reducing costs and simplifying servicing.

Today, MERS appears on more than 100 million mortgages and deeds of trust in the United States. In most cases, MERS is named in the security instrument as the "nominee" for the lender

and the lender's successors and assigns. However, despite its frequent presence in public records, MERS itself claims to have no financial interest in the loan and no servicing or enforcement authority.

This duality—appearing as a legal agent with no liability or actual ownership—has made MERS a central tool in the mortgage securitization scheme. It allows rapid, opaque transfers of mortgage rights between parties, often without the borrower's knowledge or any official recording. What was framed as a convenience has evolved into a legal shield used to obscure ownership, bypass land recording statutes, and facilitate unauthorized assignments.

Originally framed as a utility to streamline the mortgage recording process, MERS (Mortgage Electronic Registration Systems) evolved into a shadowy digital custodian for trillions of dollars in mortgage-related transactions. Over time, it operated as an unregulated clearinghouse and securities intermediary under UCC § 8-102(a)(14), tracking mortgage notes electronically while enabling their use in financial markets.

Sworn testimony by MERSCORP's former CEO, R.K. Arnold, revealed inconsistencies. He admitted:

- *"It's a logical assumption that if we're tracking the servicing rights and we're tracking the mortgage, that we're tracking the note."*
- *"MERS can hold legal title to the note if it is transferred to MERS."*
- *"The note only transfers by possession."*

This testimony raises a fatal legal issue: if notes were digitized and atomized into fractional interests for trading—without physical possession ever changing hands—no party could validly claim to be the holder entitled to enforce. MERS functioned like a securities intermediary, allowing widespread trading of loan instruments without lawful transfer under UCC Article 3.

**Atomization and Destruction of the Original Note**

As further corroborated by R.K. Arnold, former CEO of MERSCORP, in sworn testimony, MERS enabled the "atomization" of mortgage loans. This process did not simply digitize documents—it obliterated their legal coherence. Notes were fragmented, digitized, pooled, and traded in fractions—far removed from their lawful origins. These atomized instruments, by their very nature, defied possession and thus undermined enforcement under Article 3 of the UCC.

This was echoed by the Texas Foreclosure Task Force, which described the loan instruments as having been "atomized" ("blown to smithereens.") No longer unitary legal obligations, these notes were converted into disjointed derivatives, impeding both borrower defenses and judicial scrutiny. The result was a marketplace awash in phantom paper and shadow claimants, where no party could lawfully verify actual ownership of the debt.

Even more troubling is the discovery of a 1998 Security Agreement between MERS and NationsBank (now Bank of America), pledging all MERS assets—including rights used in servicing, foreclosure, and data systems—as collateral. This directly undermines MERS' claim

of neutrality and suggests its agency rights may have been encumbered by banking interests with a financial stake in foreclosures. The Security Agreement was executed on June 30, 1998 and filed with the U.S. Patent and Trademark Office on August 10, 1998 under Trademark Reel Number 1773, Frame 0950. In it, MERS pledged its servicing rights, databases, and other assets as collateral for a credit facility from NationsBank, N.A. (now Bank of America). This document demonstrates that MERS' operations and purported agency functions may have been contractually compromised and encumbered by a national bank with vested interests in securitized mortgage enforcement.

Additionally, affidavits and depositions—including that of Karyn Armstrong, submitted in a federal bankruptcy case in Northern California in 2013—reveal that Chase Executive Office representatives admitted all original Washington Mutual loan documents had been destroyed after being scanned into MERS**.** Armstrong testified that Ashley Curry of Chase confirmed there was no way to retrieve original collateral files because they had been permanently destroyed. This directly contradicts industry claims that valid endorsements and transfers could be verified, and it demonstrates a systemic practice of document destruction designed to circumvent enforceability and borrower rights**.**

This revelation also casts new light on the **$25 billion National Mortgage Settlement** reached in 2012 between the nation's five largest mortgage servicers and the attorneys general of all 50 states. While the public narrative focused on "robo-signing" and administrative backlogs, the far more plausible—and disturbing—truth is that these practices were a direct result of the intentional destruction of original loan documentation, as outlined throughout this article. The term *robo-signing* was merely a euphemism for the perverse practice of forgery and document fabrication**,** carried out by these entities for no other purpose than to steal properties through the enforcement of fake debts and to displace people from their homes for sheer profit and greed**.** The scandal that momentarily captured national attention was not about clerical errors; it was about concealing the collapse of legal standing and covering up a widespread and deliberate fraud upon the courts and the public.

The Florida Bankers Association similarly confirmed that destruction of notes after digitization was industry practice. In its 2009 white paper submitted to the Florida Supreme Court, the Association stated that, "the original promissory note is deliberately eliminated and a copy is kept solely for the servicer's internal records," and further acknowledged that "it is customary for the original note to be destroyed once it is imaged into an electronic format."

This practice, framed as a cost-saving measure, effectively obliterated the primary evidence required to lawfully enforce these instruments—undermining both borrower rights and the chain of title.

As an example, and to further underscore the significance of original notes, Oregon's Uniform Trial Court Rules (UTCR 2.100 and 2.040), require that in actions based on negotiable instruments, the original must be surrendered to the court and marked as paid before judgment can be entered—and returned to the borrower once satisfied. These requirements reflect the long-standing legal principle that the original note is a personal asset of the borrower and must be returned upon satisfaction of the debt. Yet these rules are rarely enforced, as courts routinely

allow judgments based on scanned or fabricated copies. As outlined in my own investigative findings, this is not just a procedural failure, it is a systemic denial of property rights.

As litigation mounted, the visible MERS identifiers (such as the 18-digit MIN number) incorporated into the mortgage and promissory note contracts, began disappearing from digital note copies, further severing the paper trail. These deliberate hidden redactions can only be construed as an intentional strategy to obscure MERS' involvement and avoid judicial scrutiny.

This intentional obfuscation of ownership by MERS enabled even more dangerous distortions downstream—particularly the bifurcation of note and deed, and the rise of phantom creditors as I address in Part 5 below.

**Arguendo: Addressing the Participation Agreement Argument**

Some may attempt to rebut this analysis by invoking participation agreements, which allow fractional ownership of loans among multiple parties. But even assuming arguendo that such structures apply, the argument collapses for several reasons:

Participants lack enforcement rights unless they are assigned the note. See *In re Okura & Co.*, 249 B.R. 596 (S.D.N.Y. 2000), where the court made clear that a participation interest does not equate to legal standing to enforce the instrument.

Foreclosure requires full holder or beneficiary status—a fractional interest is insufficient under both state law and UCC Article 3, which mandates that only the holder in due course with possession of the note has standing to enforce it.

REMIC structures prohibit post-closing asset restructuring, so any attempt to reaggregate note interests from various participants would violate the governing Pooling and Servicing Agreements and contravene IRS regulations under § 860G.

Courts have held consistently that enforcement must come from a party with the entirety of legal and beneficial interest in the note and deed of trust—not from a collection of unverified participants with indirect stakes or undisclosed arrangements. This is particularly evident in cases involving "Master Participation Trusts," where concealed parties attempt to foreclose despite no trust agreements or agency authority being produced.

A prime example of this is U.S. Bank Trust N.A. as trustee on behalf of the LSF9 Master Participation Trust, which is used to attempt foreclosure and enforcement despite its structure as a participation-based entity. I have personally investigated this particular entity over the past 10 years and have compiled a massive body of evidence showing that it operates precisely as a straw entity—holding no actual assets or enforceable rights. This has been confirmed in deposition testimony, litigation discovery, and procedural filings where representatives have admitted that LSF9 does not directly own or hold the mortgage loans it seeks to enforce. On its face, LSF9 is a non-creditor aggregation vehicle—a shell entity that does not actually hold any enforceable rights in the underlying loans but is instead presented as acting on behalf of multiple undisclosed investors or beneficial owners. These parties are absent from the public chain of

title, never identified in court, and never produced in discovery. LSF9 seeks to enforce alleged debts using a proxy trust model in which the real parties in interest are concealed behind a façade of administrative contracts. This tactic violates the foundational requirement of standing: that the party seeking to enforce a note must have received a valid transfer and must possess the legal and beneficial interest—not merely serve as a placeholder or aggregator for unknown principals.

Such participation-based enforcement attempts amount to legal shell games designed to bypass REMIC limitations, chain-of-title scrutiny, and Article 3 and 9 requirements for negotiability and transfer. They are fundamentally incompatible with both procedural due process and substantive contract law.

Critically, this directly rebuts the notion that the atomization of mortgage notes is irrelevant. On the contrary, the atomization of the notes—coupled with the reliance on participation agreements—renders these instruments legally fragmented and unenforceable under established UCC doctrines. Without full, singular ownership of the negotiable instrument, no party—participant or aggregator—has the requisite standing to foreclose.

**Part 4: State Law Case Studies – Yvanova, Bain, and Beyond**

The legal implications of atomized and fragmented mortgage ownership have not gone unnoticed by state courts. Landmark decisions in California and Washington underscore that enforcement rights require full, undivided legal and beneficial ownership of the note and deed of trust. These courts have made clear that participation interests, incomplete assignments, and proxy actors like MERS or pass-through trustees do not meet the threshold of standing.

Two foundational cases illustrate this principle:

- **Yvanova v. New Century Mortgage Corp., 62 Cal. 4th 919 (2016):**
  The California Supreme Court held that a borrower has standing to challenge an assignment of a deed of trust if the defect renders the assignment void. Importantly, *Yvanova* clarified that only a party with the entire legal and beneficial interest may enforce the instrument. An assignment from a party that held no enforceable interest was deemed void ab initio, confirming that partial or unauthorized interests cannot support foreclosure**.**

  *"As to a borrower who owes money on a debt, it is no mere 'procedural nicety' to require that the foreclosing party have the legal authority to do so. The borrower owes money not to the world at large but to a particular person or institution. If a stranger to the debt sued the borrower to collect it, the borrower would be entitled to defend the suit on the ground that the plaintiff had no right to enforce the debt."*
  — *Yvanova*, 62 Cal. 4th at 938.

- **Bain v. Metropolitan Mortgage Group, Inc., 175 Wash. 2d 83 (2012)**: The Washington Supreme Court ruled that MERS cannot act as a lawful beneficiary unless it holds the actual interest in the note. The court rejected the notion that MERS could act on behalf of undisclosed principals or serve as a proxy agent. Crucially, Bain established

that under Washington law, a party must prove both the legal and beneficial ownership of the obligation to initiate foreclosure.

These decisions reflect a growing judicial recognition that securitization and participation structures have blurred ownership to the point where enforcement often violates black-letter law. The following principles emerge:

- **Standing to enforce requires 100% ownership** of both the note and the deed. Fragmented or shared interests are legally insufficient.
- **Assignments or transfers from non-owners are void**, not merely voidable, and may be challenged by borrowers.
- **MERS, participation trustees, and proxy servicers cannot stand in for actual holders**, especially where the chain of title is unsubstantiated.

In both Oregon and Washington, statutory and court rules reinforce these holdings. As previously noted, Oregon's UTCR 2.100 and 2.040 require production and surrender of the original note in negotiable instrument actions. This supports the conclusion that only a party in full possession—both legally and physically—may enforce.

These cases discredit any argument that securitization or participation frameworks circumvent the need for unified ownership. Courts are increasingly willing to probe the substance behind the paper and demand proof that the enforcing party actually holds and owns the obligation. Without this proof, foreclosure proceedings are unlawful.

Borrowers and their advocates must therefore insist upon demonstration of full ownership and standing—not by inference or agency, but by documentary evidence showing an unbroken, lawful transfer of the entire interest. No fractional participant, placeholder, or MERS nominee may substitute for a bona fide holder in due course.

## Part 5: Bifurcation, Trustees, and Phantom Creditors

The legal doctrine that "the mortgage follows the note" is routinely contradicted in practice. When securitized loans are atomized and the note is split from the deed of trust—whether through fractional ownership**,** failure to transfer, or post-default assignments—this bifurcation undermines the enforceability of the security instrument and invalidates the legal ability to foreclose under longstanding principles. One of the foundational authorities on this issue is *Carpenter v. Longan*, 83 U.S. 271 (1872), where the United States Supreme Court held:

*"The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."*

This decision remains a cornerstone of mortgage law, affirming that a security instrument without the debt it secures has no legal force.

Servicers routinely execute assignments of mortgages "for value received" years after loan origination and only upon default. Depositions from industry representatives—including Nationstar's litigation trainer A.J. Loll—confirm that servicers fabricate assignments only once default occurs, undermining any claim of preexisting authority or standing.

Trustees of REMIC trusts, including U.S. Bank and Deutsche Bank, have openly admitted in litigation that they:

- Do not verify chain of title
- Do not possess the original loan documents
- Do not exercise oversight over servicers
- Do not maintain beneficial or economic interest in the loans

These legal shell games rely on "rent-a-charter" models where federally chartered banks serve as nominal trustees to avoid state-level trust registration and fiduciary scrutiny, as well as shielding beneficial owners and obstructing legal accountability. Borrowers are left facing enforcement from parties that disclaim ownership, operate through strawman trusts, and manufacture documents post-default to create the illusion of lawful authority.

More fundamentally, the very notion of "servicing" assumes that the servicer is acting as an agent on behalf of a principal—the legal owner or creditor of the loan. However, in the securitized loan landscape, it is impossible to identify any valid principal. Where no lawful transfer has taken place, and no trust can prove ownership of the debt or note, the servicer is effectively acting as an agent for a non-existent or legally disqualified principal. In agency law, this scenario creates serious legal consequences. An agent without a disclosed or legally competent principal may incur liability themselves and cannot shield their actions under the guise of representation. Servicers asserting enforcement authority without identifying a principal in possession of enforceable rights are operating ultra vires—beyond their authority—and any such enforcement action should be void ab initio.

This principle was clearly addressed in the Oregon Court of Appeals decision in *Wolf v. GMAC Mortgage, LLC*, 276 Or. App. 541 (2016), which held that where a trustee conducts a sale without actual authority conferred by a valid assignment or direction from a lawful beneficiary, the sale is void—not merely voidable—and may be challenged at any time. This case confirms the legal reality that without a valid principal, the agent's actions are null.

This same logic calls into question the very foundation of non-judicial foreclosure statutes in states like Oregon, California, Washington, and Montana. These statutory schemes depend on a chain of valid assignments and an identifiable beneficiary to authorize foreclosure. But when assignments are fabricated post-default or issued without a legitimate transfer of the underlying note, the entire process collapses under its own fraud. Trustees, under these circumstances, are executing foreclosures without legal standing, rendering the entire process constitutionally defective and structurally unsound.

## Part 6: Standing Under UCC Articles 3 and 8

In my experience, judges and attorneys often groan or wince when the Uniform Commercial Code (UCC) is mentioned in court. Many admit it was the one part of law school they glossed over, and some visibly disengage when UCC principles are raised in foreclosure litigation. But this tendency to ignore or downplay UCC law is a profound mistake. The UCC provides the very framework for determining who may enforce negotiable instruments—such as the promissory notes at the center of nearly every mortgage foreclosure case. This casual disregard for the UCC has allowed servicers and trustees to circumvent essential legal standards, and it is precisely this body of law that offers borrowers some of their strongest defenses.

Understanding who may legally enforce these instruments requires turning to the rules of negotiable instruments—specifically, the Uniform Commercial Code.

Under UCC Article 3, a party may only enforce a note if they are a "holder in due course"—one who took the instrument for value, in good faith, and without notice of dishonor or defect.

However, servicers and trustees almost universally acquire the notes after default, disqualifying them under UCC § 3-302. Moreover, these parties rarely establish that they paid value or received a lawful transfer of the note—two additional requirements under UCC § 3-301 and § 3-203.

UCC Article 8 becomes relevant where notes are treated as financial assets in book-entry systems or held by securities intermediaries like MERS. Under UCC § 8-501, a person who acquires a security or has a financial interest in a security may be considered an “entitlement holder.” In the context of securitized mortgages, the borrower—whose promissory note has been deposited into a financial structure and traded—arguably holds such an entitlement interest. While not a traditional security holder, the borrower’s original asset was the source of the financial instrument being transacted. Therefore, under commercial law principles, the borrower retains an equitable interest in the underlying collateral and the transaction itself.

Moreover, every party named on a mortgage security instrument—including the borrower, lender, trustee, and any nominee such as MERS—holds a legally relevant interest in the enforcement, assignment, and outcome of that instrument. UCC Article 8 contemplates that all interest holders must be recognized and that entitlement holders are owed disclosure and accounting. Ignoring the borrower's status in this legal construct denies their lawful position in the transaction and suppresses their rights under the Uniform Commercial Code.

Borrowers—whose original asset was the genesis of the securitized transaction—may be entitled to more than just disclosure. When that instrument is traded, pledged, and profited from repeatedly—sometimes producing returns five, ten, or even thirty times its face value—it raises a critical question: Should the borrower not be entitled to a share of those proceeds—or at minimum, a credit against any remaining alleged debt?

After all, it was their promise to repay that created the entire value stream now circulating through financial markets. Under equitable and commercial law principles, the borrower is not

just a passive debtor but a stakeholder whose interest should be reconciled. If banks, trusts, and investors are entitled to exponential gains from securitization, then logic—and justice—demand that the party who originated the value receive recognition, disclosure, and potentially, restitution.

This also raises a deeper legal concern bordering on identity misuse. These securitized instruments, often bearing the borrower's name, are traded across global markets without the borrower's knowledge or consent. While structured as financial assets, they functionally carry identifying information that is inseparable from the individual. This invites the question: Does the unauthorized trading of borrower-linked documents constitute a commercial form of identity theft? The borrower's financial identity becomes the foundation of profit-generating securities—without their participation, consent, or share in the proceeds.

Together, Articles 3 and 8 expose the structural defects in securitized enforcement. Without physical possession, without proof of value exchanged, and without meeting the statutory definition of a holder, these entities lack legal standing to enforce the notes. Yet, foreclosure actions continue, often with courts assuming validity based on appearance alone.

## Part 7: TILA Rescission and the Question of Consummation

Beyond standing under the UCC, borrowers also possess powerful statutory rights under TILA that can undermine the enforceability of defective loans altogether.

The Truth in Lending Act (TILA), codified at 15 U.S.C. § 1635, provides borrowers with the right to rescind certain mortgage transactions within three days of consummation—or within three years if material disclosures were never properly made. However, in securitized mortgage transactions, the concept of "consummation" itself is deeply problematic.

The legal definition of consummation hinges on whether a "loan" was truly completed, with value given and an enforceable contract formed. If the original lender never actually funded the loan with its own money—and instead monetized the borrower's promissory note to create credit—then consummation may never have occurred.

In *Jesinoski v. Countrywide Home Loans, Inc.*, 574 U.S. 259 (2015), the U.S. Supreme Court ruled that rescission is effective upon mailing, and that no lawsuit or court approval is necessary to initiate the rescission process. If the creditor fails to respond within 20 days under § 1635(b), the rescission stands.

This becomes highly relevant when:

- The lender was a non-bank originator with no capacity to fund loans;
- The transaction was designed for immediate sale into a REMIC trust;
- The promissory note itself generated the capital used to fund closing.

Where these conditions exist, the borrower may assert that there was no meeting of the minds and no lawful consummation. Consequently, the three-year rescission limit never began to run. The borrower's rescission may remain valid long after origination.

Servicers rarely respond to such rescission notices with evidence of consummation. Instead, they ignore them or attempt to proceed with foreclosure regardless. This silence can be treated as tacit admission that they cannot establish legal standing or a consummated loan.

Borrowers can strengthen their position by demanding:

- A full GAAP-compliant accounting of how the loan was funded;
- Evidence of when and how the note was recognized on the originator's books;
- Proof that consideration was paid and a lawful transfer occurred.

Such administrative demands place the burden on the alleged creditor to validate their standing and the loan's legitimacy—often revealing fatal defects that support rescission or complete discharge of obligation.

This concept—that banks never actually loan out existing deposits, but instead create credit by monetizing the borrower's promissory note—is not speculation. It is confirmed in the Federal Reserve Bank of Chicago's own publication, *Modern Money Mechanics*, which states:

*"What they do when they make loans is to accept promissory notes in exchange for credits to the borrowers' transaction accounts."* (FRB Chicago, Modern Money Mechanics)

In other words, the borrower's signature creates the very credit that is then claimed to be the "loan." This means the bank never actually gave consideration in the form of its own money or assets. Instead, it recorded a new asset (the borrower's note) and a matching liability (the bank's credit) through an accounting entry—creating new money based on the borrower's own creditworthiness.

Walker F. Todd, former legal counsel and assistant general counsel to the Federal Reserve Bank of New York and research officer at the Federal Reserve Bank of Cleveland, provides sworn testimony on this exact practice. In his affidavit, Todd states:

*"Instead of the bank lending its money or other assets to the customer, as the customer reasonably might believe… the bank created funds for the customer's transaction account without the customer's permission, authorization, or knowledge, and delivered the credit on its own books…"*
*— Affidavit of Walker F. Todd, submitted in Oakland County Circuit Court, Michigan, Case No. 03-047448-CZ (2004)*

Todd further explains that:

*"No lawful money was or probably ever would be disbursed by either side in the covered transactions… At most, the Plaintiff extended its own credit (money of account), but the*

*Defendants were required to repay in money (money of exchange)... creating an inequality of obligations."*

These authoritative admissions further support the claim that securitized loan transactions do not reflect traditional lending or consummated contracts. As discussed above in Part 2, these notes are often used as collateral in repurchase trades and diverted from their purported legal destinations in REMIC trusts—making the case even stronger that borrowers are not dealing with conventional loan instruments. Instead, they involve self-funding instruments issued by borrowers and recycled through institutional accounting maneuvers—none of which satisfy the legal prerequisites for consummation under TILA.

Therefore, borrowers retain the right to rescind based on the lack of valid consideration and the structural failure of the originating transaction. By invoking their right of rescission and demanding validation under the Truth in Lending Act, borrowers can compel creditors to admit—or fail to rebut—the absence of a legitimate, enforceable obligation.

## Part 8: FDCPA, § 1641(g), and Federal Disclosure Failures

Disclosure failures under TILA often intersect with other statutory violations, especially those involving the FDCPA and post-transfer notice requirements under § 1641(g).

The Helping Families Save Their Homes Act of 2009, which amended the Truth in Lending Act, imposes a duty on any new owner or assignee of a mortgage loan to notify the borrower in writing within 30 days of the transfer. Codified at 15 U.S.C. § 1641(g), this rule was designed to enhance transparency in the wake of the foreclosure crisis.

Despite this clear statutory mandate, such notices are almost never provided in securitized transactions. Why? Because the assignments of the notes and deeds of trust often do not occur until long after default—if at all—and are typically fabricated for foreclosure purposes. These backdated or defective assignments make timely compliance with § 1641(g) impossible.

The failure to disclose new ownership or assignment not only violates TILA but also the Fair Debt Collection Practices Act (FDCPA). Under the FDCPA, debt collectors must validate their authority to collect and disclose the identity of the creditor. When servicers attempt foreclosure without providing the § 1641(g) notice or verifying their authority, they are engaging in deceptive collection practices.

This systemic noncompliance results in:

- Homeowners being sued or foreclosed upon by entities with no verified interest;
- Courts issuing rulings based on presumed authority, not proven claims;
- A two-tiered system where borrowers are held to strict contractual compliance while creditors ignore federal law.

When discovery is pursued, servicers often cannot produce the original note, a valid chain of title, or any record of lawful transfer. In these cases, courts should deny enforcement rights altogether—but too often, they don't.

To challenge such actions, borrowers should:

- Demand the § 1641(g) transfer disclosure in writing;
- Serve a Qualified Written Request (QWR) under RESPA to confirm assignment history;
- Assert FDCPA violations for any attempt to collect without full validation.

This legal framework further supports the argument that most foreclosure actions involving securitized loans are not only procedurally flawed but violate fundamental consumer protection statutes.

## Part 9: Judicial Presumptions and the "Yes, But" Problem

A recurring pattern in foreclosure litigation is what I call the **"Yes, But" problem**—a shorthand for the way borrowers are routinely silenced or dismissed in court the moment they admit they signed a loan or fell behind on payments. This oversimplification masks deeper, systemic failures in judicial reasoning—failures that have real consequences for due process and the rule of law.

**Consider a typical courtroom exchange:**

**Judge:** "Did you take out a loan?"
**Homeowner:** "Yes, but—"
*(Judge interrupts or disregards further argument.)*

**Judge:** "Did you stop making payments?"
**Homeowner:** "Yes, but—"
*(Once again, the court cuts off any explanation.)*

This pattern reflects a widespread judicial presumption: once a borrower acknowledges they received a loan and defaulted, the court need not ask any further questions. But this short-circuits the fundamental legal inquiry: Does the foreclosing party have the legal authority to enforce the note and deed of trust? Far too often, courts apply strict scrutiny to borrowers while giving banks, servicers, and trustees a pass, effectively inverting the burden of proof.

This shortcut thinking leads courts to ignore crucial issues of standing, chain of title, and compliance with statutes such as the UCC, TILA, FDCPA, and RESPA. It allows document fabrication, backdated assignments, and violations of trust law to be forgiven or overlooked—all on the basis that the borrower "admitted" they stopped paying.

This judicial dynamic is not accidental. It has been supported by a deliberately crafted narrative, manufactured by banks and servicers from the earliest days of the foreclosure crisis: the "deadbeat borrower" myth. Under this narrative, any homeowner who dares to assert legal rights

or demand proof of enforcement authority is portrayed as seeking a “free house”, while the rest of society is urged to see itself as morally superior for continuing to pay—regardless of the legality or enforceability of the underlying obligation.

This rhetoric has created a false moral dichotomy—one in which homeowners are vilified simply for exercising their legal rights. It pits neighbors against neighbors, jurors against defendants, and even family members against each other, fueling division and resentment. It has created a climate where the assertion of legal defenses is portrayed as a character flaw, and where the public sympathy is weaponized against those most harmed by the system. Banks and servicers invoke the specter of “moral hazard” to deflect from their own systemic misconduct, encouraging the public to focus on borrowers as the problem rather than the predatory practices that brought the crisis about.

Borrowers are not the only ones misled by these narratives. In my work as an expert investigator, I often encounter clients who—though well-meaning—fall victim to their own misconceptions. A common example is when clients demand to know what trust their loan is in, assuming there must be one. But when forensic analysis reveals no trust at all, and that no party has legal standing to enforce, they struggle to grasp the implications. Borrowers frequently find themselves trying to prove a negative, chasing phantom trusts, when the correct legal position is to demand that the alleged creditor prove the positive: that they are the lawful holder in due course with the right to enforce.

Foreclosure law is clear: it requires proof of both the existence of the debt and the legal authority to enforce it. The borrower’s acknowledgment of a loan does not resolve these questions.

To restore integrity to foreclosure litigation, courts must be required to confront the threshold issues that are routinely bypassed:

- Is the foreclosing party a holder in due course under UCC Article 3?
- Was the loan lawfully transferred prior to default?
- Is there a valid and continuous chain of title?
- Have all disclosures and obligations under federal law been satisfied?

Only by re-centering foreclosure litigation on these essential legal questions can we begin to dismantle the institutional myths, correct systemic bias, and restore faith in a process that has for too long favored expedience over justice.

But this raises a fundamental question:

If all that truly matters in court is whether the homeowner made their payment or not—if that alone determines the outcome regardless of who is enforcing the debt or how—then why do we even have consumer protection laws on the books?

What purpose do statutes like TILA, RESPA, FDCPA, and the UCC serve if the courts refuse to enforce them when it matters most? If no party has to prove ownership, no documentation has to be authentic, and no transfer has to be lawful, then the rule of law itself is reduced to a

ceremonial pretense—an empty ritual that punishes borrowers while insulating financial institutions from scrutiny.

This is the quiet tragedy of the foreclosure crisis—not just the loss of homes, but the erosion of legal accountability in the very courts meant to uphold it.

**They Knew: Hearsay, Manufactured Standing, and the Texas Task Force Admissions**

This section draws from the official transcript of the Texas Task Force on Judicial Foreclosure Rules, convened on November 7, 2007, in Austin, Texas, under the Texas Office of Court Administration. The task force was composed of judges, attorneys, trustees, and foreclosure law firm insiders, all gathered to discuss procedural reforms and evidentiary concerns surrounding foreclosure practice in the state.

One of the most revealing moments from the session came when a participant bluntly stated:

*"If you're looking for the owner, you're not going to find it. Over 90 percent of the time, nobody can say who really owns these loans."*

This admission came not from a critic, but from a deeply embedded insider. It was a public concession that ownership of securitized loans was not just uncertain—it was intentionally opaque. Yet courts were—and still are—being asked to enforce debts without verified creditors, on the strength of declarations from actors who admit they do not know who owns the debt.

More troubling were the open acknowledgments about the lack of personal knowledge by servicer employees who routinely signed affidavits in foreclosure cases:

*"You can tell that there's no way that one person can have personal knowledge of everything that's in there… They just say they have personal knowledge, and you can't have personal knowledge that a loan occurred in 1978."*
*— Hon. Bruce Priddy, Task Force Transcript*

The task force also addressed the use of attorney-in-fact or power of attorney arrangements, and the potential abuse of these legal instruments by servicers acting on behalf of multiple trusts. Judge Tim Redding highlighted the impropriety of these practices:

*"We have a bunch of servicers that are corporations or trusts attempting to foreclose on behalf of other trusts using a power of attorney, and I don't think that's really proper. I mean, we all kind of turn a blind eye to it, but I think that's an issue that somebody could use to potentially attack a foreclosure."*

This was more than procedural critique—it was an admission that widespread violations of agency law were embedded in daily foreclosure operations, with legal professionals and judges complicit in ignoring them for the sake of expediency.

Perhaps the most ironic and revealing moment of all came from Mike Barrett, then a senior partner at Barrett Burke Wilson Castle Daffin & Frappier. After admitting that identifying the true creditor was "an impossibility in 90 percent of cases," Barrett nonetheless went on to build a national foreclosure law firm network that aggressively prosecuted foreclosures across the U.S. on behalf of mortgage servicers and alleged trustees. He knew the documents were defective. He knew personal knowledge was faked. He knew no one could identify the true owner. And yet, he monetized the chaos.

*"Finding a document that says, 'I am the owner and holder, and I hereby grant to the servicer the right to foreclose in my name' is an impossibility in 90 percent of the cases."*
*— Mike Barrett, Task Force Transcript*

This is the very definition of manufactured standing—a legal mirage engineered through blanket powers of attorney, boilerplate affidavits, robo-signed assignments, and hearsay declarations, all designed to simulate legitimacy without ever proving it.

The Texas Task Force transcript is damning—not just because of what was said, but because of who said it. Judges, servicer attorneys, and foreclosure mills openly acknowledged the collapse of evidentiary standards. Yet no corrective action followed. The system persisted and evolved—not toward reform, but toward deeper entrenchment.

They knew.
They knew the affidavits were false.
They knew the documents were fabricated.
They knew there was no legal authority.
And still—they foreclosed.

## Part 10: The Endorsed-in-Blank Myth and the Illusion of Standing

A common misconception in foreclosure law is that possession of a note endorsed in blank is sufficient to enforce it. Courts and even defense attorneys often assume that an entity holding a bearer note automatically gains standing. But under scrutiny, this assumption collapses.

The UCC, specifically § 3-301, provides that only a "person entitled to enforce" the instrument may collect. This requires more than mere possession:

- The holder must have taken the note for value,
- In good faith,
- And without notice of dishonor or defenses.

Under § 3-302, an entity that acquires the note after default cannot qualify as a holder in due course. Yet most servicers and trustees only acquire or create the paperwork after default—disqualifying them outright.

Even more fundamentally, the note itself is only evidence of a debt. If the debt has been derecognized, paid off, cancelled, or securitized beyond legal transfer, then the note becomes a nullity. The paper may exist, but the enforceable obligation does not.

To challenge this myth in litigation, discovery must compel:

- Proof of value paid for the note;
- Ledger entries showing the note remains recognized as an asset;
- Trust documents confirming timely delivery and acceptance;
- Absence of any post-closing endorsements that violate REMIC terms.

Without this, possession of a note endorsed in blank proves nothing. It is the illusion of standing, not the reality.

## Part 11: ASC 860 - The Accounting Trail Is the Truth

ASC 860 (formerly FAS 140) governs how financial assets, including mortgage loans, are treated for accounting purposes when they are sold, transferred, or securitized. The core principle is **derecognition**—the point at which the original lender removes the loan from its balance sheet because it no longer holds the risks and rewards of ownership.

To achieve derecognition under ASC 860, a transfer must meet three criteria:

1. The transferred assets are isolated from the transferor,
2. The transferee has the right to pledge or exchange the assets,
3. The transferor does not maintain effective control over the assets.

In the context of mortgage securitization, if these criteria are met, the originating lender derecognizes the asset and records it as a sale. This means the lender no longer claims the loan as an asset on its financial statements.

In my experience reviewing foreclosure cases across the country, derecognition is rarely considered by courts—even though it is often determinative. If the original lender sold the note and derecognized it for accounting purposes, then it no longer owns the loan. It cannot simultaneously assert creditor rights without violating both accounting standards and legal doctrines of standing.

This is especially important when:

- The original note was used in repurchase agreements or pledged as collateral;
- The loan was sold to a depositor and placed into a REMIC trust;
- The accounting treatment on SEC or investor reports shows a transfer and derecognition;
- The foreclosing party never bought or reacquired the loan asset.

Derecognition is not simply an accounting entry—it is a legal and financial admission that the debt has been permanently transferred. When a party forecloses after derecognition without reacquiring the asset, it is enforcing a loan it no longer owns.

This is why ASC 860 is so critical. It exposes the fiction behind many enforcement actions and reveals that no enforceable obligation remains. If the trust truly owns the loan, as many parties claim, then derecognition by the original lender is not optional—it is required under GAAP. Conversely, if the loan was not derecognized, then the trust cannot possibly own it. They cannot have it both ways. This creates a powerful binary question that can be used in discovery or litigation: *Was the loan derecognized? Admit or deny.* A truthful answer either confirms the trust's ownership and the originator's loss of standing, or it reveals that the trust is fraudulently asserting rights to an asset it never legally acquired. The party collecting or foreclosing is doing so in the absence of any asset on its books, often long after receiving settlement proceeds or transferring all legal interest in the loan.

The presumption of standing often collapses entirely when examined through the lens of accounting—specifically, the derecognition principles of ASC 860.

Whether foreclosures take place in judicial or non-judicial states, nearly all enforcement actions rely not on documentary certainty, but on judicial presumptions—presumptions often unsupported by fact. Courts frequently assume that someone must be owed a debt and that the party presenting the paperwork is the rightful creditor, despite glaring deficiencies in evidence of ownership, standing, or consideration.

The only true way to verify whether a loan is enforceable today is to examine the accounting trail. Show whether the obligation was handled on the originating lender’s books. Show whether it was derecognized. Show whether the loan was securitized, pledged, repledged, or written off. Show whether tax documents were filed recognizing its cancellation. Show whether the trust actually paid for it and accepted it.

The accounting evidence—under ASC 860 and federal tax law—tells the real story. It reveals whether the debt still exists, whether anyone has standing to enforce it, and whether the borrower is being pursued for a ghost obligation that was monetized and cancelled years ago.

This is precisely the evidence that servicers, trustees, and foreclosure mills most vigorously conceal. Once revealed, the entire enforcement framework unravels. ASC 860 provides clarity: when a loan is sold and derecognized, it ceases to exist as a creditor-held asset. Any enforcement action taken without a corresponding asset on the books is, at minimum, procedurally void—and potentially fraudulent.

Borrowers and their counsel should demand:

- Accounting ledgers from originator and servicer;
- Proof of derecognition under GAAP;
- Documentation of any trust-level asset acceptance;
- Tax filings, Form 1099-C, or SEC reports indicating cancellation.

By confronting the presumed debt with a demand for hard accounting proof, homeowners can shift the burden of proof to the party asserting rights. If no such evidence exists, then neither does the enforceable obligation.

In fact, the mere assertion by a trustee or servicer that a loan has been sold into a REMIC trust is a tacit admission that the asset has been derecognized. Under ASC 860, one cannot claim the benefits of a true sale and simultaneously retain the asset on the books. If the trust owns the loan—as these parties assert—then the originator or prior holder must have derecognized it. This undermines any later claim to enforcement unless the loan was formally reacquired, which is rarely, if ever, documented.

**Part 11.5: From Enron to MERS – The Evolution of Off-Balance-Sheet Fraud**

The accounting scandals of the early 2000s, particularly the collapse of Enron and the role of Arthur Andersen, serve as a chilling prelude to what would soon unfold in the mortgage securitization world. Enron's scheme relied heavily on Special Purpose Entities (SPEs) to move liabilities off its books, creating the illusion of profitability while hiding risk. When exposed, this off-balance-sheet deception became synonymous with corporate fraud.

Strikingly, around the same time that Enron’s fraudulent use of SPEs was unraveling, MERS and mortgage securitization structures were expanding across the financial sector. While Enron was collapsing under its own fictitious accounting, Wall Street was creating an even more elaborate—and more legally protected—framework to achieve similar results in the mortgage space.

MERS functioned as the clearinghouse for tens of millions of mortgage transactions, allowing banks and servicers to bypass county recording requirements and mask ownership transfers. Simultaneously, mortgage loans were being pooled into securitized trusts, often without true legal transfers, and recorded as off-balance-sheet assets. The same deception that defined Enron—hiding true risk and avoiding transparency—was now scaled up and systematized in housing finance, backed by a digital clearinghouse immune from regulation.

Just as Arthur Andersen signed off on misleading financial statements for Enron, trustees and servicers signed off on falsified documents and incomplete chains of title. The difference? In Enron’s case, executives went to prison, and reforms like Sarbanes-Oxley followed. In the mortgage crisis, no such reckoning occurred. Instead, banks were bailed out, MERS was institutionalized, and foreclosure fraud was normalized.

The lesson is clear: mortgage securitization replicated and surpassed the very accounting abuses that brought down Enron—but this time, the scheme was embedded in housing markets and propped up by government and judicial tolerance. Until we confront these systemic accounting fictions, the same foundational flaws will continue to erode trust, legality, and financial stability.

## Part 12: Administrative Demands and Shifting the Burden of Proof

One of the most powerful tools available to homeowners is the use of administrative demands rooted in commercial law and accounting principles. These demands, when properly framed, can expose the deficiencies in a creditor's claim and shift the burden of proof back onto the party seeking enforcement.

An effective administrative demand may include requests under:

- **UCC § 3-501(b)(2)**: *Request to produce the instrument for inspection* — A negotiable instrument must be presented for enforcement upon demand. If the note is unavailable, the party claiming enforcement must justify its absence and prove standing.
- **UCC § 9-210**: *Demand for an accounting or list of collateral* — The debtor has a right to request a formal accounting or itemization of the obligations and collateral tied to a security interest, which is especially relevant in ambiguous securitization structures.
- **RESPA, 12 U.S.C. § 2605(e)**: *Qualified Written Request (QWR)* — Servicers must respond to borrower inquiries regarding the servicing of a loan, including requests for payment history, escrow activity, and transfer information.
- **TILA, 15 U.S.C. § 1641(f)(2)**: *Request for identity of the current creditor* — Borrowers may request the identity of the current holder of their mortgage note. The servicer must respond within a prescribed time period or face liability.
- **FDCPA, 15 U.S.C. § 1692g(b)**: *Debt validation notice* — Upon a debtor's timely written dispute, the collector must cease collection and verify the debt before proceeding.
- **UCC § 2-609**: *Adequate Assurance of Due Performance* — Although traditionally applied to sales contracts, this provision is equally relevant in mortgage disputes where the borrower has reasonable grounds for insecurity regarding the counterparty's ability to perform—such as:
    - the destruction of original promissory notes;
    - broken chains of title;
    - lack of custodial integrity in securitized transactions;
    - and an inability or refusal to return the original note upon payoff.

[**Sidebar Note:** In securitized mortgage transactions, where documentation is routinely missing, altered, or destroyed—and the entity demanding payment often lacks proof of ownership or authority—borrowers are well within their rights to demand adequate assurance of due performance. If a creditor cannot demonstrate that it will perform its obligations (such as reconveying a properly endorsed original note upon satisfaction), the borrower may justifiably suspend performance until such assurance is received.]

These demands are not mere procedural devices—they are legal entitlements that must be honored. A failure to respond, or a response that fails to provide documentation of ownership, consideration, or authority, may be treated as a tacit admission that the party lacks standing.

By issuing a verified demand for:

- Proof of consideration paid for the note;

- Proof of delivery and acceptance by a trust under REMIC timelines;
- GAAP-compliant ledgers showing the loan as a current asset;
- Valid assignments executed prior to default;
- And certification of the chain of title;

the borrower effectively creates a record that challenges the legal presumptions courts often rely on. When servicers and trusts cannot respond with evidence, the case for enforcement evaporates.

This process also sets the stage for affirmative claims, including:

- Declaratory relief for lack of standing;
- Injunctive relief to stop wrongful foreclosure;
- FDCPA and RESPA claims for failure to respond or disclose;
- Equitable estoppel to bar inconsistent representations.

Administrative discovery, when tied to statutory rights and verified with affidavits, provides the homeowner with a factual and legal record that courts cannot ignore without violating procedural fairness. It places the onus where it belongs—on the party making the claim.

**Part 13: The 'Too Big to Fail' Myth and Judicial Complicity**

Since the 2008 financial crisis, a quiet doctrine has taken root in foreclosure jurisprudence—one that suggests the stability of the entire financial system depends on allowing mortgage enforcement actions to proceed, even in the face of defective documents, broken chains of title, and perjured affidavits. This is the so-called “Too Big to Fail” rationale. Courts, regulators, and politicians have subtly absorbed the idea that refusing to enforce these toxic instruments could trigger systemic collapse. But this mindset has effectively legalized fraud and shifted the burden of the crisis onto homeowners, communities, and the rule of law itself.

Rather than dismantling the scheme that caused the crisis, the judiciary has often acted as its enabler—allowing fabricated endorsements, robo-signed affidavits, and post-default assignments to prop up foreclosures that would never survive rigorous evidentiary scrutiny in any other area of law. This has not prevented financial destruction—it has multiplied it. The consequences are everywhere: millions of wrongful foreclosures, clouded titles that will haunt the real estate market for decades, and a public that has lost faith in the legal system’s ability to deliver justice.

The belief that enforcing these void instruments is necessary to preserve the financial system is not only false—it is backwards. The continuation of this charade is what endangers the system. True reform requires facing the fraud, not institutionalizing it. If we seek long-term economic stability, clarity, transparency, and lawful process must take precedence over expediency. It is not the refusal to enforce void debts that will collapse the system, but the refusal to correct them.

An even more disturbing development that ties directly into this judicial complicity is the passage of the False Statements Accountability Act of 1996 (Public Law 104-292). This obscure but critical statute narrowed the scope of 18 U.S.C. § 1001—the federal false statements

statute—by removing liability for knowingly making false statements in matters outside the jurisdiction of a judicial, legislative, or executive proceeding. In plain terms, it created a "safe harbor" for perjury and falsification in administrative, non-judicial foreclosure contexts, which are often the only venue where these enforcement claims are processed.

This legislative carve-out provides a license to lie in the very proceedings that most directly affect millions of homeowners. It raises the deeply unsettling question: Why would such immunity be necessary unless those crafting and enforcing these systems foresaw a reckoning in which mass perjury and document fraud would become central tools of debt enforcement? This provision undermines the rule of law by shielding servicers and agents from consequences, even as homeowners are stripped of property without due process.

Rather than insulating fraudulent enforcement under the guise of financial stability, Congress should have strengthened judicial oversight and criminal accountability. Until this loophole is closed, the judiciary continues to operate under the shadow of legally sanctioned deceit, placing system preservation above constitutional protections.

Compounding this institutional bias is the effect of the U.S. Supreme Court's decisions in *Bell Atlantic Corp. v. Twombly* (2007) and *Ashcroft v. Iqbal* (2009)—now known as the Iqbal/Twombly standard. These rulings reshaped federal pleading standards by granting judges broad discretion to dismiss complaints deemed not "plausible" on their face, often before discovery even begins.

Subsequent research confirms that homeowners and foreclosure defendants have suffered most under this doctrine. Empirical studies show that in over 90% of post-Iqbal mortgage-related dismissals, courts ruled in favor of financial institutions, routinely disregarding valid statutory and constitutional claims.

The Iqbal/Twombly framework, when combined with:

- Judicial deference to servicers;
- The safe harbor under the False Statements Accountability Act; and
- Presumptions of standing with no documentary basis—

has created a litigation environment where truth, proof, and accountability are optional. The foreclosure system now operates in a legal vacuum, protected not by law but by institutional fear, convenience, and complicity.

And perhaps most revealing of all is the pervasive, structural conflict of interest embedded in the judiciary itself. In the wake of the 2008 crisis, financial institutions and Wall Street investment firms offloaded trillions of dollars in toxic mortgage-backed securities (MBS) into the pension funds of public employees—including judges.

From the California Public Employees' Retirement System (CalPERS) to state and federal judicial pension systems nationwide, courts are now financially entangled with the very instruments they are being asked to rule on. These pension systems—many of them quietly

dependent on the performance of MBS trusts—have a vested interest in the continued enforcement of these instruments.

As a result, you'd be hard-pressed to find a judge in America who doesn't—directly or indirectly—hold a financial interest in the foreclosure outcomes they adjudicate. This baked-in conflict of interest casts a long shadow over judicial impartiality and undermines the legitimacy of rulings that overwhelmingly favor institutional plaintiffs. The very system that is supposed to protect the rule of law is fiscally invested in its breach.

Until these conflicts are acknowledged and dismantled, and until fraud is no longer rewarded under the cloak of systemic necessity, the foreclosure machine will continue to operate not as a forum of justice—but as a tool of institutional self-preservation.

**Part 14: Post-Settlement Enforcement and the Hypocrisy of Litigation Admissions**

Perhaps one of the most outrageous and revealing aspects of the post-crisis securitization landscape is the continued pursuit of foreclosure and debt enforcement by entities who have already admitted—under oath or through settlement—that the instruments they rely upon are legally defective and unenforceable.

A notable example is the 2016 FDIC Global Settlement Agreement involving Deutsche Bank National Trust Company (DBNTC), JPMorgan Chase, and the FDIC. In this agreement, DBNTC expressly released all claims related to defective or missing documentation on mortgage loans originated by Washington Mutual. Section 3.03 of the agreement reads:

*"...relating to the documentation of any Mortgage Loan including with respect to allegedly defective, incomplete, or non-existent documentation… or any other matter relating to legal enforceability of a mortgage or mortgage note…"*

This sweeping release was exchanged for over $3 billion in settlement value, effectively barring DBNTC from asserting future enforcement rights over the very documents they had disclaimed. Yet, DBNTC and its affiliated trusts—including Long Beach Mortgage Loan Trusts 2006-4 and 2006-5, for example—continue to appear in foreclosure litigation as if their claims were pristine and unquestioned. This constitutes not just hypocrisy, but fraud on the court and the borrower.

A parallel example arises with the **SARM 2005-20 Trust**, serviced in part by **NationStar Mortgage LLC (d/b/a Mr. Cooper)**—a servicer owned by **BlackRock**, one of the world's largest asset managers. In a revealing twist, **BlackRock was a lead plaintiff** in a major lawsuit against **Wells Fargo Bank, N.A.**, the trustee for numerous residential mortgage-backed securities (RMBS) trusts, including SARM 2005-20. The case, titled *BlackRock Allocation Target Shares: Series S Portfolio, et al. v. Wells Fargo Bank, N.A.*, was filed on **November 24, 2014**, in the **U.S. District Court for the Southern District of New York**, under **Case No. 14-cv-9371**.BLB&G Law+1Justia Law+1

In this litigation, BlackRock and other institutional investors alleged that Wells Fargo had failed in its trustee duties by accepting defective loan documentation and failing to enforce repurchase

obligations for ineligible loans—defects that undermined the validity of the mortgage instruments. BLB&G Law

The case culminated in a global settlement announced on November 9, 2018, wherein Wells Fargo agreed to pay $43 million in cash and release $70 million from reserve funds to resolve claims related to 271 RMBS trusts. The settlement included a comprehensive release of all claims, effectively barring the plaintiffs from pursuing further enforcement or corrective actions related to the defective mortgage loans in these trusts. BLB&G Law+1Reuters+1

Despite this settlement and release, NationStar, under BlackRock's ownership, later resumed foreclosure proceedings using the same defective instruments. This action contradicts the legal implications of the settlement, which precluded any retroactive attempts to "cure" or correct the documentation defects through assignments or endorsements. Such conduct raises serious concerns about the integrity of the foreclosure process and the enforcement of mortgage instruments that have been previously discredited in court.

These cases exemplify a pattern of "strategic amnesia," where parties settle claims acknowledging that notes, assignments, and endorsements are void or missing, only to reemerge years later using those very instruments to collect from unsuspecting homeowners. Meanwhile, judges and juries are often kept in the dark about prior admissions and settlements.

It is essential that courts begin recognizing this pattern as a violation of judicial integrity. Borrowers and their counsel must aggressively demand:

- Disclosure of all prior litigation involving the asserted trust;
- Production of any settlement agreements affecting enforceability;
- Judicial notice of estoppel and waiver doctrines arising from these admissions.

Enforcement rights do not exist in a vacuum. When a party has been paid billions in exchange for giving up its rights, it cannot return later pretending to have retained them. To do so is not only dishonest—it is a direct assault on the rule of law.

**Part 15: Final Thoughts on Title Destruction and Systemic Failure**

One of the most far-reaching consequences of the securitization scheme is the destruction of clear title across potentially over 100 million properties in the United States. Through the atomization of mortgage notes, bifurcation of security instruments, and the fraudulent assignment practices involving MERS—often purporting to assign deeds of trust without the note—the integrity of public land records has been fatally compromised.

Entities like BlackRock—one of the largest financial institutions in the world—are not only key investors in securitized trusts and servicing companies like NationStar, but are also embedded in the title insurance industry. BlackRock holds a significant stake in the Fidelity National Financial Network, the parent of many of the largest national title insurers. These intertwined interests create incentives to obscure defects rather than cure them.

In practice, title defects are routinely concealed through indemnity policies rather than resolved. Insurers and servicers enter into agreements to cover potential future liability instead of addressing the root causes. This creates an illusion of clean title while allowing fatally flawed assets to circulate through foreclosure auctions and secondary markets. Rather than title assurance, what results is a form of legalized title laundering.

In my role as a title review expert, I have reviewed hundreds of power of attorney documents that expressly prohibit servicers from issuing general warranty deeds—authorizing only limited or special warranty deeds instead—an admission that they cannot warrant clear title. Yet these same servicers routinely present witnesses who testify under oath that they possess clean and marketable title for the purpose of obtaining foreclosure judgments.

This is not an isolated problem. It is a nationwide degradation of property rights. Borrowers, buyers, and even financial institutions have engaged, and continue to engage, in transactions based on fractured legal claims and irreconcilable paper trails. The erosion of clear title threatens not only individual ownership but the foundational trust in our system of land records.

It is my firm conclusion that this condition was not born of negligence or misunderstanding. It was engineered—deliberately—to extract profit while shedding responsibility. Risk was shifted from Wall Street to Main Street, and accountability was buried under layers of digital obfuscation, unrecorded transfers, and regulatory silence.

If allowed to persist, this system will leave future generations with a housing market plagued by legal uncertainty and systemic fraud. But this outcome is not inevitable. Armed with knowledge, documentation, and the tools outlined throughout this article, homeowners and their advocates can confront these abuses head-on. Justice demands not only exposure, but action. The path to reform is paved with verified facts, not manufactured presumptions—with lawful discovery, not blind deference. The time to act is now.

If you would like help investigating your case and obtaining consultation regarding the strategies outlined in this article, you may contact:

**William Paatalo**
Paatalo – Private Investigator
Oregon (OR) PSID #49411
(406) 309-1812
bill.bpia@gmail.com

## About the Author

**William J. Paatalo** is a nationally recognized expert in mortgage fraud investigations, chain of title analysis, and securitization forensics. A licensed private investigator (OR PSID #49411) and the founder of BP Investigative Agency, LLC, Mr. Paatalo brings over 17 years of investigative experience combined with a prior background in law enforcement and mortgage lending.

Since 2009, Mr. Paatalo has conducted over 1,200 investigations involving securitized mortgage loans, foreclosure fraud, and title defects. He has provided expert testimony in state and federal courts across the United States, appearing in trials and depositions nationwide. His work has resulted in the submission of more than 450 sworn declarations and affidavits, supporting homeowners and legal professionals in complex litigation against major financial institutions and servicers.

Mr. Paatalo is certified in forensic loan auditing and has been qualified as an expert witness in both civil and bankruptcy proceedings. His unique skill set includes deep knowledge of Pooling and Servicing Agreements (PSAs), SEC filings, and the structural components of RMBS trusts, with advanced use of platforms like Bloomberg Terminal, ABSNet, and MBSData.

Prior to founding his investigative firm, he served as the president of a multi-state mortgage brokerage and worked as a police officer and field training officer for the St. Paul Police Department in Minnesota.

Through his investigative work, Mr. Paatalo has become a leading voice in exposing the systemic failures and frauds within the mortgage securitization system—providing critical insights and litigation support in hundreds of contested foreclosure and quiet title actions across the country.

**Glossary of Terms**

- **ASC 860** – Accounting rule under GAAP governing how financial institutions derecognize transferred assets, including mortgage loans.
- **Bifurcation** – The separation of the mortgage note from the deed of trust, which can render enforcement legally invalid.
- **Endorsed in Blank** – A note that has been endorsed without naming a payee, making it payable to whoever possesses it.
- **FDCPA** – Fair Debt Collection Practices Act; governs lawful practices for debt collection, including identity and authority of debt collectors.
- **Holder in Due Course** – A legal term under UCC for a party that took a negotiable instrument in good faith, for value, and without knowledge of defects.
- **MERS** – Mortgage Electronic Registration Systems; a private database used to track changes in mortgage servicing and ownership without public record.
- **Participation Agreement** – A financial agreement where a party purchases a percentage of a loan's income stream without owning the loan.
- **Pooling and Servicing Agreement (PSA)** – Governs the rights and duties of parties involved in a mortgage-backed securities trust.
- **RESPA** – Real Estate Settlement Procedures Act; ensures borrowers receive disclosures about the cost of their mortgage and servicing.
- **REMIC** – Real Estate Mortgage Investment Conduit; a special purpose vehicle under the IRS code for pooling mortgage loans into securities.
- **SEC** – U.S. Securities and Exchange Commission; oversees securities transactions and requires disclosures about mortgage-backed securities.

- **TILA** – Truth in Lending Act; requires transparent loan disclosures and allows rescission in some transactions.
- **UCC** – Uniform Commercial Code; a comprehensive set of laws governing commercial transactions, including negotiable instruments like mortgage notes.
- **UCC § 3-301** – Defines who may enforce a negotiable instrument.
- **UCC § 8-501** – Establishes rights of entitlement holders in a financial asset held by a securities intermediary.
- **Derecognition** – The removal of an asset (e.g., a loan) from a company's balance sheet, typically following a transfer or securitization.
- **Strawman Trustee** – A nominal trustee used in name only, often without holding real authority or assets, to shield true parties in interest.