ACTUAL CASE: FLOW FROM REAL ESTATE CLOSING TO FORECLOSURE

Start

At Real Estate Closing:
Borrower signs:
- Promissory Note promising to pay **GB Company**
- Security Deed or Deed of Trust (deed to secure debt)

GB Company sells **Promissory Note** to **Nations Bank**
(Security deed should be transferred with Note)

Note is bundled with 5.000 other Notes to make a securities package **Mortgage Backed Securities** (MBS's)

Multiple bundles of MBS's are packaged into **C**ollateralized **M**ortgage **O**bligations (CMO's)

CMO

MBS | MBS
MBS | MBS
MBS | MBS

CMO's Sold to Investors and Investment Houses

Investment Houses:
Bear Stearns
Leaman Brothers
Goldman Sachs
Merrill Lynch
Other Investors:
Deutche Bank
Groups of banks
Private Individuals

Important:
These Investors are **supposed to hold** the original Promissory Note signed at closing, not a copy.

Government Bailout

Mortgage Electronic Registration Systems (MERS):
Electronic registry formed by heads of mortgage banking industry to track ownership and servicing rights in mortgages. Avoids fees associated w/ recording in public registry.

MERS **registers Security Deed or Deed of Trust (deed to secure the note)** while servicing rights are transferred from one entity to the other. It never legally holds the Promissory Note and therefore has no beneficial interest in the Note. (See Exhibit on MERS)

American Home Mortgage buys Servicing Rights (responsible for collecting money for the promissory note holder.)

Irwin Mortgage buys Servicing Rights (responsible for collecting money for the promissory note holder.)

Fraudulent Document Recorded in Cobb County:
Assignment of Beneficial Interest in Security Deed -- from **MERS** to **Wells Fargo**

Associate attorneys from the foreclosing law firm signed as officers of MERS. Also Notary did not witness signatures. Stamp dated > 4 years from date signed.

America Servicing Company (owned by Wells Fargo) buys Servicing Rights (responsible for collecting money for the promissory note holder.)
ASC failed to respond to borrower who offered full payment – **rushed to foreclosure**. Request for promissory note (legally required by attorneys to foreclose) denied.borrower.

End

Notes: Required documents before foreclosing entity (attorney) can legally foreclose:
- **Original (not copy) wet ink promissory note** signed by borrower at closing **endorsed (signed/notarized) in sequence** from the mortgagee to the foreclosing party. Or, absolute proof of loss of note (per UCC Section 3-309).
- Assignments of Beneficial Interest in Deed to Secure Debt – in sequence - from mortgagee to foreclosing entity
- Signed and notarized Deed of Trust or Security Deed (with recording information)
- Copy of modifications of the Note (with recording information).
- Accurate accounting of payments and charges.
- Security Deed or Deed of Trust has to have a legitimate Power of Sale provision.

CAUTION: Why is it the Borrower's right to demand proof that the foreclosing entity is the legal noteholder? In the event the judge allows a "copy" to be submitted, the Borrower will be at risk because the original noteholder could later come forward demanding payment.