ABCs of Legal Analysis of RMBS Securitizations

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1. Introduction - This article identifies and discusses the legal issues that must be considered and the various laws that must be consulted when conducting an assessment of credit risk in RMBS securitization transactions. As with any other financial transaction, assessment of credit risk begins with an understanding of the market and the economic context in which the financing will occur. Today, most banks originate most mortgage loans with the intent of distributing them through the securitization process. Selling mortgage notes enables banks to achieve various objectives; among them, converting illiquid into liquid assets; transferring interest rate risk, decreasing bank regulatory capital by transferring certain functions to non-regulated or lesser regulated non-bank affiliates, generating fees for the bank and increasing liquidity.[1]

2. Acquiring the Right to Payment under the Mortgage Note – The mortgage notes used in a securitization are either "negotiable instruments" governed by Article 3 of the Uniform Commercial Code (UCC)[2] or they are assignments governed by state assignment laws. UCC Article 3 governs the relationship between the person who makes the mortgage note (the borrower) and the person entitled to payment on it (initially, the originating bank and then the buyer or purchaser from that bank). A negotiable instrument is sold and transferred by a process known as negotiation. Negotiation means the mortgage note is delivered to the new owner with a special indorsement[3] or a blank indorsement. An indorsement looks like this: **"Pay to the order of _____________."** A special endorsement would have the name of a specific person written in. A blank endorsement is exactly what is shown above; an empty line where the name of a person should be. A blank indorsement makes the mortgage note payable to the person who received delivery of it. A blank indorsement also makes the mortgage note bearer paper. The bearer of the mortgage note further negotiates it either by special or blank indorsement. In either case, the borrower (also called the maker or obligor) on the mortgage note makes payment to the person identified through this negotiation process. From the perspective of Article 3 the person identified in a special indorsement is called the holder and is also called, <u>the person entitled to enforce</u> (the mortgage note). The person identified in a blank indorsement is also called a holder but in a more technical legal sense may be a <u>non-holder in possession of the instrument with the rights of a holder</u>.[4]

3. Acquiring Ownership of the Mortgage Note – When the bank sells the mortgage note to the purchaser, the purchaser will want to confirm that the seller and other third parties cannot claim they have any right to payment on the mortgage note. The process of acquiring an exclusive interest in the mortgage note and communicating this to others in a legally effective way is governed by UCC Article 9 rules. Article 9 requires the purchaser to do three related things. The purchaser must: 1) create a security interest, 2) against a specific kind of seller and then 3) have this seller "authenticate" a "security agreement" describing the note. To create a security interest, the purchaser must give the seller "value". Giving value involves promising to make payment or making payment for the mortgage note in exchange for the mortgage note. The seller must be a specific kind of seller – one that either has rights in the mortgage note or the power to transfer rights in the mortgage note. To "authenticate" a "security agreement" describing the note the purchaser must have the seller physically or via electronic equivalent sign an agreement that describes the transaction and the note. In the alternative the purchaser can take possession of the mortgage note

[1] See, Shadow Banking, Pozsar, Adrian, Ashcraft and Boesky, Federal Reserve Bank of New York, Staff Report No. 458, July 10, 2010, revised February 2012 for a detailed analysis of the bank securitization process.

[2] Articles 3 and 9 rules displace inconsistent *common law* rules that might have otherwise previously governed the same questions (UCC § 1-103(b) and Official Comment 2 to UCC § 1-103). See, REPORT OF THE PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE APPLICATION OF THE UNIFORM COMMERCIAL CODE TO SELECTED ISSUES RELATING TO MORTGAGE NOTES NOVEMBER 14, 2011.

[3] The word "indorsement" is not a misspelling of the word endorsement but reflects the spelling convention adopted in the UCC. The New Oxford American Dictionary (Oxford University Press 2001) defines the word "indorsement" as a variant spelling of the word "endorsement".

[4] UCC § 3-104(a); § 3-102 (a) S; § 3-203(a); § 3-201 (a); § 3-203 (a); § 1-201 (a) (21); § 3-301; § 3-309; § 3-204 INDORSEMENT; § 3-205; § 3-412; § 3-302 and § 3-306.

under the seller's security agreement. Once these things are done the security interest "attaches" – this means the security interest becomes enforceable but only against the seller. To enforce its rights against third parties the purchaser of a mortgage note must go one step further and perfect the security interest. One perfects by: 1) filing notice in the designated state office, 2) taking possession of the mortgage note or 3) automatically when the security interest in the mortgage note attaches. Under the Article 9, a security interest in a promissory note is perfected (automatically) when it attaches. A negotiable instrument is within the definition of a promissory note. Accordingly a security interest in a mortgage note that is a negotiable instrument under Article 3 is perfected (automatically) when it attaches.[5]A **perfected** security interest in a mortgage note *also conveys a perfected security interest* in the mortgage because the transfer of an obligation secured by a security interest or lien (i.e., a mortgage note) also transfers the security interest or lien itself (i.e., a mortgage).[6]

4. The Pooling and Servicing Agreement (PSA) and Security Interests – RMBS securitizations are typically governed by a PSA. The PSA must be carefully examined as to what it says and what it requires. The UCC permits parties to vary how its provisions will apply to a contemplated transaction. Therefore the PSA could simply mirror UCC rules or contain some variation of the UCC rules. For example, the PSA may require a chain of special indorsements from the originator to the Trust. Under this standard, each mortgage note must be delivered by special indorsement and show all a complete chain of indorsements from the originator to the last indorsee. To be effective against the seller and third parties the PSA must also adhere to the Article 9 rules discussed above. And the PSA and the related mortgage loan purchase agreement (MLPA) also functions as a trust agreement and must therefore comply with trust fiduciary law. Specifically and fundamentally, a trust can only come into being when a grantor delivers legal title of property to it. If delivery is never made or if it is made inconsistently with the PSA/MLPA, as a technical legal matter with serious potentially negative consequences in a foreclosure, the trust never comes into being.[7]

5. Tax Considerations – A securitization would not be economically possible if its cash flows were taxed at the level of the RMBS SPV. Entity level taxation of the SPV is avoided by complying with the REMIC provisions of the US tax code. Under the REMIC tax law provisions transfers of mortgages to a REMIC in return for interests in them does not create a gain or loss for tax purposes if the SPV complies with the statutory rules covering the types of assets that may be held and the type of interests that may be issued to investors. REMICs must maintain a fixed pool of mortgages that generally cannot vary following an initial 90-day period. Because loss of entity level tax exemption would be devastating for a securitization, the PSA will contain a clause that renders any transfer that

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[5] **UCC § 9-309.** SECURITY INTEREST PERFECTED UPON ATTACHMENT. The following security interests are perfected when they attach: (4) a sale of a promissory note; **UCC § 9-102**. DEFINITIONS AND INDEX OF DEFINITIONS. (a) [Article 9 definitions.] In this article: … (65) **"Promissory note"** means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds. **UCC § 9-102.** DEFINITIONS AND INDEX OF DEFINITIONS. (a) [Article 9 definitions.] (47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment …"

[6] UCC § 9-102 (a) (47) "Instrument"; § 9-102 (a) (65**) "Promissory note";** § 9-109 (a) (3); § 9-102 (a) (73) "Secured party" (D); § 1-201 (35) "Security interest"; § 1-204 VALUE; § 9-102 (a) (74) "Security agreement"; § 9-102 (a) (7) "Authenticate"; § 9-203 (a) [Attachment.] (b) [Enforceability.]; § 9-309 (4); § 9-310 (a) [General rule: perfection by filing.] (b) [Exceptions: filing not necessary.]; § 9-502 (a) [Sufficiency of financing statement.] (d) [Filing before security agreement or attachment.]; § 9-312 (a) [Perfection by filing permitted.]; § 9-102 (a) [Article 9 definitions.] (47) "Instrument"; § 9-313 (a) [Perfection by possession or delivery.] (d) [Time of perfection by possession] (e) [Time of perfection by delivery]; § 9-109 (b) [Security interest in secured obligation.] § 9-203 (g) [Lien securing right to payment.]; § 9-308 (e) [Lien securing right to payment.] Perfection; § 9-102 (a) [Article 9 definitions.] (52**) "**Lien creditor.**"**

[7] See, UCC § 1-302 and § 9-607; Daniel J. Langin, Documenting the Transfer of Securitized Mortgage Debt with Account Chain of Title Verification, April 4, 2011; Asset Securitization Forum, White Paper Series, Transfer and Assignment of Residential Mortgage Loans in the Secondary Mortgage Market, November 16, 2010; SNR Denton, Commentary on Transfers of Mortgage Loans to RMBS Securitization Trusts, October 18, 201 and then see REPORT OF THE PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE APPLICATION OF THE UNIFORM COMMERCIAL CODE TO SELECTED ISSUES RELATING TO MORTGAGE NOTES NOVEMBER 14, 2011.

would violate the tax law void and of no effect. This means it is possible that not all mortgage notes sold to the Trust will actually be effectively transferred to it.

6. Mortgage Foreclosure – If the borrower in the mortgage loan defaults, the Trust will have a right to proceed against the real estate. Proceeds from the foreclosure are then distributed to the tranche holders. Evidence that a person is entitled to foreclose on a mortgage is established by demonstrating ownership of the mortgage note. The PSA can only establish (through the attached Master Loan Schedule) what mortgage notes were identified for sale – not who owns that mortgage note. If a mortgage note sold in accordance with the UCC can be produced it is proof of ownership and establishes the right to foreclose because the mortgage follows the mortgage note. All that would then be required is recordation of the real estate interest in the real estate records. If the mortgage note cannot be produced or if it can be produced but is not endorsed as required by the PSA (for example does not show an unbroken chain of endorsements in a PSA that sets this as a requirement) the foreclosure may be prohibited because the Trust cannot establish it owns the mortgage note. The Trust can resort to the local mortgage record to show it is entitled to foreclose but it is possible that the legal requirement of filing a lien in the county records where the real estate is located was not followed when the sale to the Trust occurred. Article 9 provides that a secured party may record in the office in which the mortgage is recorded a copy of the security agreement transferring an interest in the note to it with the secured party's sworn affidavit in recordable form stating that default has occurred and that the secured party is entitled to enforce the mortgage without a court order. This may not be sufficient even in states that permit a foreclosure without a court order because some state laws say the lack of a recordable assignment precludes non-judicial foreclosure.[8]

7. US GAAP Accounting – Under SFAS 166 a true sale occurs when the transferor and its consolidated affiliates **surrender control** over the assets transferred and receives cash or other proceeds for them. Control is surrendered only if (1) the **assets have been legally isolated**; (2) the transferee has the ability to pledge or exchange the assets; and (3) the transferor otherwise no longer maintains effective control over the assets. To be legally isolated the transferred assets must be put beyond the reach of the transferor, its consolidated affiliate, and their creditors. This aspect of the accounting analysis is conducted against the applicable bankruptcy or receivership proceeding and often requires production of the true sale legal opinion discussed below. As in the (legal) recourse concept, (also discussed below) any agreement or practice between the parties gives the seller "control" over the assets and jeopardizes sales accounting. If sale accounting fails the transaction would be accounted for as a secured

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[8] Debra Thorne and Ethel Badawi, Does "the Mortgage Follow the Note"?, Lessons Learned, Best Practices for Assignment of a Note and Mortgage, ABI Journal, 54, May 2011; HON. Samuel L. Bufford, US Bankruptcy Judge, Central District of California and R. Glen Ayers, Langley & Banack, American Bankruptcy Institute; **WHERE'S THE NOTE, WHO'S THE HOLDER: ENFORCEMENT OF PROMISSORY NOTE SECURED BY REAL ESTATE,** April 3, 2009; SNR Denton, Commentary on Transfers of Mortgage Loans to RMBS Securitization Trusts, October 18, 2010: American Securitization Forum, White Paper Series, Transfer and Assignment of Residential Mortgage Loans in the Secondary Mortgage Market, November 16, 2010; Yyes Smith, American Securitization Forum Tells Monstrous Whoppers in Senate Testimony on Mortgage Mess, Naked Capitalism, posting of December 2, 2010; Fisking the American Securitization Forum's Congressional Testimony," Yyes Smith, Adam Levitin Shreds American Securitization Forum Defenses, Naked Capitalism, posting of December 5, 2010; David R. Greenberg, Neglected Formalities in the Mortgage Assignment Process and the Resulting Effects on Residential Foreclosures, Note, 83 Temple Law Review, 253, 2011; 1 GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW, § 5.28 (5th ed. 2009), available at 1 Real Estate Finance Law § 5.28 (Westlaw) quoted in David R. Greenberg; Documenting the Transfer of Securitized Mortgage Debt with Account Chain of Title Verification, By Daniel J. Langin, Langin law Firm, April 4, 2011, Global Debt Registry, LLC 2011; REPORT OF THE PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE APPLICATION OF THE UNIFORM COMMERCIAL CODE TO SELECTED ISSUES RELATING TO MORTGAGE NOTES NOVEMBER 14, 2011; Roy D. Oppenhein and Jacquelyn K. Trask, Deconstructing The Black Magic of Securitized Trusts: How the Mortgage Backed Securitization Process is Hurting the Banking Industry's Ability to Foreclose and Proving The Best Offense For a Foreclosure Defense, 2011 Stetson Law Review Spring 2012.

borrowing but this accounting determination may not have as drastic an impact on the securitization as would a court decision re-characterizing the transaction.

8. Protecting the Securitization from Bankruptcy

a. General Insolvency Concerns – The objectives of a securitization (keeping assets for the exclusive use of a defined group of investors) conflicts with the policy objectives of the bankruptcy process (ensuring all creditors receive a fair share of the debtor's assets). This makes it especially important that the collateral held in trust in a securitization not be characterized as possibly belonging to the seller or to a parent or affiliate of the SPV.

b. The Insolvency Framework - Under the US Bankruptcy Code, once a petition is filed and an Order for Relief is granted the debtor is replaced with a distinct legal person called the "bankruptcy estate." All rights of the debtor are vested in the estate. When the Order is granted an automatic stay comes into effect that prohibits anyone from prosecuting a claim or enforcing rights against the debtor or its assets. This reflects that the primary function of the proceeding is to identify assets that can be pulled back to pay creditors or fund a rehabilitation plan. Toward this end the trustee in bankruptcy or debtor in possession has the power to avoid transactions that violate the code and recover the corresponding assets.[9] This gives the debtor an incentive to scrutinize transactions that involve large scale transfer of assets – as in a securitization.

Once a securitization is implicated in a proceeding it will be subject to the automatic stay requiring the Trust to bring on a hearing by notice to lift it. While the Code prohibits the debtor from using cash collateral a request to use such collateral is a very typical event in Chapter 11 and is usually granted – if the court find that the creditor is adequately protected. A debtor in a Chapter 11 case may also ask the court to approve a super-priority lien, which can "prime" existing liens (i.e. those held by existing creditors). The debtor has an exclusive right to file a Reorganization Plan during the first 120 days after an Order for Relief has been entered but the Court may and usually does extend this time period upon request. Banks are not subject to the US bankruptcy code. But the FDIC has statutory authority to *disaffirm or repudiate* the transfer of assets in a securitization. Essentially, it can buy itself out of a deal without incurring breach of contract challenges but it does not have avoidance powers like a trustee in bankruptcy or a debtor in possession. The FDIC cannot repudiate or disaffirm to avoid a legally enforceable and perfected security interest in transferred financial assets, *whether or not the securitization meets the conditions for sale accounting*. Prior to repudiation the FDIC would make all required payments of principal and interest and other amounts due on the securitized obligations would also continue to be made. If the FDIC repudiates it pays **damages** equal to the par value of the outstanding obligations less prior payments of principal received plus unpaid accrued interest through the date of repudiation to discharge the lien on the securitization assets. If a transfer of financial assets by bank to an issuing entity in connection with a securitization is not characterized as a sale and is properly perfected, the securitized assets will be viewed as subject to a perfected security interest. The ability of the FDIC to reach financial assets transferred in a transaction characterized as a transfer for security is limited by the status of the entity as a secured party with a perfected security interest in the transferred assets and the statutory provision that prohibits the conservator or receiver from avoiding a legally enforceable and perfected security interest.[10]

[9] 11 U.S. Code § 541 - Property of the Estate - (a)The commencement of a case under section 301, 302, or 303 of this title creates an estate; 11 U.S. CODE § 362 - AUTOMATIC STAY; 11 U.S. CODE § 363 - USE, SALE, OR LEASE OF PROPERTY; 11 U.S. CODE § 361 - ADEQUATE PROTECTION; 11 U.S. CODE § 364 - OBTAINING CREDIT

[10] Section 11(e) (13) (C) 2 of the Federal Deposit Insurance Act. See also, [Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation;] November 12, 2009 - Interim Final Rule amending 12 CFR 360.6, … until March 31, 2010, further amended on March 11, 2010, by a Final Rule extending safe harbor until September 30, 2010 (as so amended, the ''Transition Rule''). Under the Transition Rule, all existing securitizations on or prior to September 30, 2010, were permanently ''grandfathered'' if they complied with the pre-existing Section 360.6. December 15, 2009 Advance Notice of Proposed Rulemaking; May 11, 2010 adopted a Notice of Proposed Rulemaking; Final rule in Vol. 75, No. 189 of the Federal Register, September 30, 2010/Rules and Regulation, 60287.

c. Attacking the Securitization – Creditors of an insolvent seller or of a parent or affiliate of the SPV may honestly believe that the transfer of assets to the securitization trust is the cause of the financial difficulty experienced by the seller or by the parent or affiliates of the SPV. Or, creditors or a parent or affiliate may argue that the assets in the collateral pool still belong to the seller because there was not a **true sale**. Under this theory the creditors may try to persuade the court that the transaction was actually only a loan secured by the collateral and not a sale under Section 541 of the Code; this is referred to as a re-characterization. The result could be sufficient to induce the securitization sponsors to negotiate a solution for their investors to avoid the burdens re-characterization would entail, as more fully discussed below. Creditors could alternatively argue that the **transfer of the assets was fraudulent.** The claim here is that the transfer was motivated by a desire and intent to put the assets out of the reach of other claimants. A transfer made within one year before the date of the filing of a petition and with the intent to hinder or defraud a creditor would be considered actual fraud. A constructive fraud occurs: when the debtor received less than "reasonably equivalent value" in exchange for the transfer and either: 1 - the debtor was or became insolvent due to the transfer; 2 – was engaged in business with unreasonably small capital; 3 - it intended to incur or believed it would incur debts that would be beyond its ability to pay as they matured; or 4 – it made the transfer to or for the benefit of an insider and not in the ordinary course of business. In either actual or constructive fraud, a debtor may seek to avoid and recover the transfer from the transferee within two years of the date the petition was filed. In determining whether actual or constructive fraud occurred courts consider all the circumstances surrounding a transaction on a case-by-case basis.[11]

Another alternative is for the creditors or the parent and or affiliates of the SPV to ask that the SPV's **corporate identity be set aside** (i.e., be pierced). This would remove limited liability exposing shareholders and directors to personal liability. The criteria for piercing varies by State, however the focus is whether the entity ignored its corporate identity in a way that led creditors to rely on it - making it unfair to let it now use the corporate identify as a shield to liability. The focus is whether the entity respected its corporate identity. Typical factors considered include whether the entity kept separate books and records, maintained different addresses, employed different employees; whether it held meetings of different board of director; and whether or not it inter-mingles or co-mingles corporate assets? Other considerations include the degree of discretion it has over its operations or assets; whether corporate dealings between entities are at arm's length. Because the remedy is equitable it is available only in exceptional circumstances. The best remedy to avoid veil piercing is to maintain corporate formalities so that all dealings between the parent and subsidiary are at arm's length. Provisions in the organizing documents that require an SPV to maintain a separate identity and to observe all corporate formalities are intended to guard against this risk. A similar attack is called **substantive consolidation**. Here the court is asked to permit the SPV's assets to be pooled with those of its parents and or affiliates and to also pool all creditors together. Substantive consolidation depends almost entirely on the facts of each situation. Consolidation has been granted when a subsidiary was not treated as a separate entity and the subsidiary's creditors dealt with the parent and subsidiary as one entity: e.g., the Virginia creditors knew that the New Jersey parent was part of the enterprise engaged in Virginia. Consolidation was approved for a corporation and thirteen affiliates because the creditors dealt with the entity and its affiliates as a single enterprise and did not rely on any single affiliate. Consolidation of eight shipping companies was granted when one individual owned or controlled all the companies and the corporations shifted funds, made inter-corporate loans, regularly paid each other's obligations, and made withdrawals and payments from and to corporate accounts without sufficient recordkeeping. The courts have reasoned that consolidation is warranted because the cost of untangling the "hopelessly" obscured financial records of the debtors would exceed the benefit that would accrue from the disentangled records.[12]

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[11] 11 USC § 548 - FRAUDULENT TRANSFERS AND OBLIGATIONS; NY CODE - DEBTOR AND CREDITOR - ARTICLE 10 FRAUDULENT CONVEYANCES SECTION 270-279.

[12] Judith Elkin, Lifting the Veil and Finding the Pot of Gold; Piercing the Corporate Veil and Substantive Consolidation in the United States; Volume 6, No. 2 Dispute Resolution International, October 2012. See, Robert B. Thompson, Piercing the Corporate Veil: An Empirical Study , in 76 Cornell L. Rev. 1036, July 1991. Note, Substantive Consolidation in Bankruptcy: A Primer, 43 Vanderbilt Law Review, 207, J. Stephen Gilbert, January 1990. , Special Report on the Preparation of Substantive Consolidation Opinions, By the Committee on Structured Finance and

d. Proofing the Securitization Against Attack – A variety of processes are employed to protect a securitization against the risks discussed above which we will refer to by the phrase bankruptcy remoteness. A core concern of bankruptcy remoteness is insulating the SPV against the risk of a voluntary or involuntary bankruptcy filing and isolating the mortgage notes from the seller so that they cease to be the property of the seller and become the property of the buyer. The risk that the SPV can or will voluntary file depends on its ability to incur liabilities it cannot repay and also by the risk that it will ignore corporate and related formalities that expose it to piercing and or substantive consolidation attacks. The first is commonly addressed by proper funding and by limiting the ability of the SPV to create debts or other obligations to third parties. The second is addressed by building required procedures that cause the SPV to observe a separate and arms relationship to parents and subsidiaries. The risk that an SPV may be drawn into an involuntary filing depends on parents or affiliates that have run into financial difficulties. Defeating the risk posed by the judicial doctrines of piercing and of substantive consolidation is managed by careful observance of corporate formalities, by putting in place procedures that ensure that transactions between affiliated entities are economic and at arms-length. Isolating the mortgage notes from the seller is concerned with defeating attempts at re-characterization. This involves conducting a **true sale**[13] - defined *as a transfer of an asset by a seller for fair value in an arms-length transaction with the result that all of the benefits and risks commonly associated with ownership are transferred to the buyer*. What could upset characterization as a true sale is the degree of **recourse** to the seller. Recourse, broadly speaking refers to *continued involvement by the seller in the assets* that are the subject of the sale. Recourse can exist for very legitimate business reasons and so its presence is not – by itself – an indication that a true sale was not intended or did not occur. A legal attack on the transfer of the mortgage note requires the court to identify the degree of recourse and to determine whether it is inconsistent with a true sale. If a bankruptcy court holds a true sale did not occur the implication is that the seller still owns that property, presumably subject to some interest of the buyer. If the court concludes that only a secured borrowing was intended (or resulted) the Trust is not the owner of the assets but if it complied with UCC Article 9 it still has rights in the collateral as a secured party. Re-characterization risk is managed by minimizing recourse, documenting the business logic for recourse and compensating for the performance of the activities characterized as recourse. The Trust should always have a perfected security interest in the collateral as a backstop to recharacterization. Vulnerability of a securitization to the kind of attacks is typically discussed in legal opinions.

the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York, 64, The Business Lawyer, 411, February 2009.

[13] See, Pantaleo, Edelman, Feldkamp, Kravitt, McNeill, Plank, Morrison, Schwarcz and Zaretsky, Rethinking the Role of Recourse in the Sale of Financial Assets, 52 The Business lawyer, 159, 1996; Steven L. Schwarcz, Structured Finance: The New Way to Securitize Assets, 11 Cardozo Law Review, 607, at 618; Baxter Dunaway, Law of Distressed Real Estate, Baxter Dunaway, Part H. (Miscellaneous Rights and Liabilities); Subpart H3 (Financial and Securities Concerns), Chapter 56. (Asset Securitization and Commercial Mortgage-Backed Securities) V. Special Purpose Entity (SPE/SPV) and Bankruptcy Remoteness, Law Database updated May 2013; West's Legal Forms, Commercial Transactions, Lawrence R. Ahern, III , Part 5 - Transactions under Article 9 of the Uniform Commercial Code H. Transactions in Rights to Payment and Other Intangibles, Chapter 23. Subordination, Participation and Securitization, Section 23:27 -"True sale" opinion to accompany securitization transaction, Database Updated December 2012.