HOMEOWNERS LOSE ARGUING PSA/STANDING

In re Correia, 452 B.R. 319, 324-25 (B.A.P. 1st Cir. 2011) (finding debtors lacked standing to challenge validity of mortgage assignment, based upon alleged noncompliance with pooling and servicing agreement); **In re Smoak**,--- B.R. ---, 2011 WL 4502596, *5-6 (Bankr. S.D. Ohio 2011) (holding debtors under securitized notes lacked standing to raise violations of PSA);**In re Almeida**, 417 B.R. 140, 149 n. 4 (Bankr. D. Mass. 2009) (noting holder of second mortgage on property was "not a third party beneficiary of the PSA, and, ironically, he would appear to lack standing to object to any breaches of the terms of the PSA. . . . [Instead] the investors who bought securities based upon the pooled mortgages would be the parties with standing to object to any defects in those mortgages resulting from any failure to abide by the express provisions of the PSA."); **Livonia Property Holdings, LLC** v. 12840-12976 **Farmington Road Holdings, LLC**, 717 F. Supp. 2d 724, 748 (E.D. Mich. 2010), aff'd, 399 Fed. Appx. 97 (6th Cir.2010) (same); **Anderson v. Countrywide Home Loans**, 2011 WL 1627945, *4 (D. Minn. 2011) (rejecting argument that assignment to a securitization trust was invalid because the PSA provided that the trust ceased accepting mortgages several years before the contested assignment from MERS because "compliance with the chain of assignment mandated by a PSA was not relevant to the validity of the assignee's interest.") (citing **Peterson-Price v. U.S. Bank Nat'l Ass'n**, 2010 WL 1782188, *10 (D. Minn. 2010)); **Greene v. Home Loan Serv., Inc**., 2010 WL 3749243, *4 (D. Minn. 2010) ("Plaintiffs are not a party to the [PSA] and therefore have no standing to challenge any purported breach of the rights and obligations of that agreement."); **Long v. One West Bank**, 2011 WL 3796887, *4 (N.D. Ill. 2011) (rejecting argument that assignment executed after trust was closed in violation of the PSA rendered transaction invalid, reasoning that non-parties to the PSA lacked standing to challenge the assignment and "it is irrelevant to the validity of the assignment whether or not it complied with the PSA"); **Juarez v. U.S. Bank Nat'l Ass'n,** 2011 WL 5330465, *4 (D. Mass. 2011) (reasoning that plaintiff "does not have a legally protected interest in the assignment of the mortgage to bring an action arising under the PSA"); **Cooper v. Bank of New York Mellon**, 2011 WL 3705058, *17 (D. Haw. 2011) (dismissing breach of contract count brought by delinquent mortgagors for breach of PSA, reasoning that mortgagors were not third-party beneficiaries of PSA and thus had no standing to enforce its terms);

Abubo v. Bank of N.Y. Mellon, 2011 WL 6011787, *7-9 (D. Haw. 2011) (rejecting argument that PSA violation could form basis for relief, noting that this "argument has been rejected in recent decisions by many courts"); **Bascos v. Fed. Home Loan Mortg. Corp**., 2011 WL 3157063, *6 (C.D. Cal. 2011) ("To the extent Plaintiff challenges the securitization of his loan because Freddie Mac failed to comply with the terms of its securitization agreement, Plaintiff has no standing to challenge the validity of the securitization of the loan as he is not an investor of the loan trust.").; **In Re Walker,** 466 B.R. 271, 285 nn. 28-29 (Bankr. E.D. Pa. 2012) (collecting cases and noting that "[A] judicial consensus has developed holding that a borrower lacks standing to (1) challenge the validity of a mortgage securitization or (2) request a judicial determination that a loan assignment is invalid due to noncompliance with a pooling and servicing agreement, when the borrower is neither a party to nor a third party beneficiary of the securitization agreement."). **Armeni v. America's Wholesale Lender**, 2012 WL 253967 at *2 (C.D. Cal. Jan. 25, 2012)(same); **Junger v. Bank of Am., N.A**., 2012 WL 603262 (C.D. Cal. Feb. 24, 2012)(same);) **Greene v. Home Loan Servs. Inc**., 2010 WL 3749243, *4 (D. Minn. Sept. 21, 2010) ("Plaintiffs do not have standing to bring their challenge regarding the securitization of the mortgage" because they were "not a party to the Pooling and Servicing Agreement."). **Kain V. Bank Of New York Mellon** (D.S.C. 3-18-2013) (the third-party debtor who is not a beneficiary to the pooling and serving agreement lacks standing to challenge holder's rights to enforce the negotiable instrument due to an alleged invalidity in or noncompliance with the pooling and serving agreement): **Metcalf V. Deutsche Bank National Trust Company** (N.D.Tex. 6-26-2012) (Courts in this circuit have repeatedly held that borrowers do not have standing to challenge the assignments of their mortgages because they are not parties to those assignments…Plaintiffs do have standing, however, to challenge defendants' authority to foreclose on the ground that foreclosure did not comply with the terms *of the deed of trust*); **Almutarreb v. Bank of New York Trust Co., N.A**., 2012 WL 4371410, *2 (N.D. Cal. Sept. 24, 2012) ("holding that "because Plaintiffs were not parties to the PSA, they lack standing to challenge the validity of the securitization process, including whether the loan transfer occurred outside of the temporal bounds prescribed by the PSA."); **Lane v. Vitek Real Estate Industries Group,** 713 F.Supp.2d 1092, (E.D.Cal. 2010) ("The argument that parties lose interest in a loan when it is assigned to a trust pool has also been rejected by numerous district courts.");

Sami v. Wells Fargo Bank, 2012 WL 967051, at *5-6 (N.D. Cal. 2012) (rejecting claim "that Wells Fargo failed to transfer or assign the note or Deed of Trust to the Securitized Trust by the 'closing date,' and that therefore, 'under the PSA, any alleged assignment beyond the specified closing date' is void" because the plaintiff lacked standing); **White v. IndyMac Bank, FSB**, No. 09-00571, 2012 WL 966638, at *7-8 (D. Haw. Mar.20, 2012) (recognizing a servicer can foreclose on behalf of the beneficial owner of the loan); **Cervantes v. Countrywide Home Loans, Inc**., 656 F.3d 1034, 1042 (9th Cir. 2011) ("None of their allegations indicate that the plaintiffs were misinformed about MERS's role as a beneficiary, or the possibility that their loans would be resold and tracked through the MERS system .... By signing the deeds of trust, the plaintiffs agreed to the terms and were on notice of the contents."); **In re Weisband**, 427 B.R. 13, 22 (Bankr. D. Ariz. 2010) ("Arizona's deed of trust statute does not require a beneficiary of a deed of trust to produce the underlying note (or its chain of assignment) in order to conduct a Trustee's Sale."); **U.S. Bank, N.A. v. Knight,** 90 So. 3d 824 (Fla. 4th DCA 2012) ("to have standing, an owner or holder of a note, indorsed in blank, need only show that he possessed the note at the institution of a foreclosure suit; the mortgage necessarily and equitable follows the note."); **WM Specialty Mortg., LLC v. Salomon**, 874 So.2d 680, 682 (Fla. 4th DCA 2004), ("a mortgage is but an incident to the debt, the payment of which it secures, and its ownership follows the assignment of the debt. If the note or other debt secured by a mortgage be transferred without any formal assignment of the mortgage, or even a delivery of it, the mortgage in equity passes as an incident to the debt. . . ." Id.); **Wolf v. Fed. Nat'l Mortg. Ass'n** (4th Cir. 2013) Wolf lacks standing to attack the validity of the assignment. Furthermore, the assignment does not affect Wolf's rights or duties at all. Wolf still has the obligation under the note to make payments. In fact, the only thing the assignment affects is to whom Wolf makes the payments. Thus, she has no interest in the assignment from MERS to BAC. Accordingly, she has no standing to challenge it); **Rhodes V. JPMorgan Chase Bank** (S.D.Fla. 6-28-2012) (a failure by Defendant to record its assignment is "applicable only to and enforceable by competing creditors or subsequent bona fide purchasers of the mortgagee, not by the mortgagor." **Tapia V. U.S. Bank, N.A**. 718 F. Supp.2d 689, 697-98 (E.D.Va. 6-22-2010) ('Plaintiffs argue that Defendants could not demonstrate standing to institute the foreclosure because they could not prove Article III injury. The Court rejects Plaintiffs' standing argument to the

extent that Plaintiffs use the term "standing" to refer to the requirement that a secured party first prove in court its right to initiate a foreclosure before the procedure commences. The fundamental flaw in Plaintiffs' allegation is that Virginia is a non-judicial foreclosure state…a non-judicial foreclosure, does not require an interested party to prove "standing" in a court of law before initiating the foreclosure process…The Court therefore rejects Plaintiffs' "standing" argument) (internal citations omitted); **Indymac Bank, FSB V. Decastro,** NJ: Appellate Div. 2013 ("we now have made clear that lack of standing is not a meritorious defense to a foreclosure complaint. Russo, supra, 429 N.J. Super. at 101 (holding that "standing is not a jurisdictional issue in our State court system and, therefore, a foreclosure judgment obtained by a party that lacked standing is not `void' within the meaning of Rule 4:50-1(d)"); **Kan v. OneWest Bank, FSB**, 823 F. Supp. 2d 464, 470 (W.D. Tex. 2011) (dismissing suit for failure to state a claim where one of the arguments was that the mortgage documents were robosigned and therefore somehow invalid); **Tuille v. Am. Home Mortg. Servs., Inc.,** 483 F. App'x 132, 135 (6th Cir. 2012) (internal citations omitted) ("any defect in the written assignment of the mortgage would make no difference where both parties to the assignment ratified the assignment by their subsequent conduct in honoring its terms, and that [the plaintiff], as stranger to the assignment, lacked standing to challenge its validity."); **Benham v. Aurora Loan Services, No. C-09-2059 SC, 2009 WL 2880232,** at *3 (N.D. Cal. Sept. 1, 2009) ("Other courts in this district have summarily rejected the argument that companies like MERS lose their power of sale pursuant to the deed of trust when the original promissory note is assigned to a trust pool."); **Van Hauen v. Wells Fargo Bank, N.A**., 2012 WL 4162138 (E.D. Tex. Aug. 24, 2012), report and recommendation adopted, 2012 WL 4322518 (E.D. Tex. Sept. 20, 2012) ("Courts in Texas have repeatedly recognized that Texas law allows either a mortgagee or a mortgage servicer to administer a deed of trust foreclosure without production of the original note.") ; **Soberanis v. Mortgage Elec. Registration Sys., Inc**., 13-CV-1296-H KSC, 2013 WL 4046458, at *4 (S.D. Cal. Aug. 8, 2013) ("As unrelated third parties to the allegedly failed securitization and any other alleged transfers of the beneficial interest under the subject loan and deed of trust, Plaintiffs lack standing to enforce any agreements related to such transactions."); **Jenkins v. JP Morgan Chase Bank, N.A**., 216 Cal. App. 4th 497, 511-13, 156 Cal. Rptr. 3d 912 (Cal. Ct. App. 2013) ("[E]ven if any subsequent transfers of the promissory note were invalid, [the borrower] is not the victim of such

invalid transfers because her obligations under the note remained unchanged."); **Neal v. Bank of America, N.A.**, No. CV 12-08104-PCT-FJM, 2012 WL 3638762, at *4 (D. Ariz. Aug. 24, 2012) (rejecting Plaintiff's argument that the assignment of the deed of trust and the substitution of trustee are forgeries, were robosigned, and are therefore invalid under state statute because "Plaintiff, who is not a party to either the assignment or the substitution of trustee ... does not have standing to challenge the validity of these documents"); **Javaheri v. JPMorgan Chase Bank, N.A.**, No. 2:1D-cv-08185-ODW, 2012 WL 3426278, at *6 (C.D. Cal. Aug. 13 2012) (holding that "[w]ile the allegation of robo-signing may be true, . . [the plaintiff] lacks standing to seek relief under such an allegation, noting that "District Courts in numerous states agree"); **Mottale v. Tirey** (S.D. Cal., 2014) ("Plaintiffs cite the recent California Court of Appeal case **Glaski v. Bank of America National Association, et al**., 218 Cal. App. 4th 1079 (Aug. 8, 2013), to support the plausibility of Plaintiffs' unlawful securitization theory of liability. (Dkt. No. 22 at 3.)….The Court first notes that the weight of authority rejects **Glaski** as a minority view on the issue of a borrower's standing to challenge an assignment as a third party to that assignment. See **Rivac v. Ndex West LLC**, No. C 13-1417 PJH, 2013 WL 6662762 at *4 (N.D. Cal. Dec. 17, 2013) (collecting cases); Boza v. U.S. Bank Nat. Ass'n, LA CV12-069**93 JAK, 2013 WL 5943160 at *10 (C.D. Cal. Oct. 28, 2013) (same); In re Sandri**, 501 B.R. 369, 374-78 (Bankr. N.D. Cal. 2013) (same)."); ("This Court finds the reasoning in the above-cited caselaw to be more persuasive than the reasoning in **Glask**i. See **Rivac v. Ndex W. LLC**, No. 13-1417-PJH, 2013 WL 6662762, at *4 (N.D. Cal. Dec. 17, 2013) **Covarrubias v. Fed. Home Loan Mortg. Corp**. (S.D. Cal., 2014) ("This court is persuaded by the majority position of courts within this district, which is that **Glaski** is unpersuasive,…("[N]o courts have yet followed **Glaski** and **Glask**i is in a clear minority on the issue. Until either the California Supreme Court, the Ninth Circuit, or other appellate courts follow **Glaski**, this Court will continue to follow the majority rule.") (citations omitted)."); **Scomparin v. Deutsche Bank Nat'l Trust Co.** (In re Scomparin) (Bankr. N.D. Cal., 2014) ("As determined in **In re Sandri**, 501 B.R. 369 (Bankr. N.D. Cal. 2013), the clear weight of authority is against **Glaski** and its reasoning is unpersuasive. The **Glaski** court's interpretation of New York law is contrary to the more well-reasoned cases that have found that an act in violation of a trust agreement is voidable, not void….Consistent with **Sandri** and the majority of California court

decisions that have addressed this issue, this court finds that Plaintiff has no standing to successfully challenge the validity or effectiveness of the transfer. Id. See also **Patel v. Mortgage Electronic Registration Systems, Inc**., 2013 WL 4029277 (N.D. Cal. Aug. 6, 2013); **Sami v. Wells Fargo Bank**, 2012 WL 967051 (N.D. Cal. Mar. 21, 2012) (collecting cases). Further, Plaintiff provides no response to Defendants' position that they are entitled to enforce the debt even if the Loan was not deposited into the PSA. Specifically, if the Loan was not placed into trust, then whomever possesses the blank-endorsed Note memorializing the Loan is entitled to enforce the debt. Cal. Comm. Code § 3301. "); **Colletti v. Nationstar Mortg., LLC** (E.D. Mich., 2013) (Neither pooling the mortgage into mortgage-back security and selling it to a trust nor splitting the note from the indebtedness creates a cause of action. See **Stafford v. Mortgage Elec. Registration Sys**., Inc., 12-10987, 2012 WL 1564701, at *4 (E.D.Mich. May 2, 2012) (Cohn, J.) (quoting and collecting cases for the proposition that "courts have uniformly rejected the argument that securitization of a mortgage loan provides the mortgagor with a cause of action." "To the extent that Plaintiffs' proposed amended complaint would rely on claims regarding the securitization of the loan . . . into a mortgage-backed security, there is no merit to the contention that securitization renders the lender's loan in the property invalid.") (and citing cases for the proposition that splitting the indebtedness from the note does not render either invalid.) (citations omitted). The Court dismisses this claim.): **M&T Bank v. Strawn**, 2013 Ohio 5845 (Ohio App., 2013) ("the holder of a promissory note secured by a mortgage has an equitable interest in the mortgage and need not demonstrate that it was validly assigned the mortgage in order to establish standing."): The transfer of a promissory note secured by a mortgage operates as an equitable assignment of the mortgage. **See Fed. Home Loan Mortg. Corp. v. Rufo**, 11th Dist. Ashtabula No. 2012-A-0011, 2012-Ohio-5930, ¶41; **Citimortgage, Inc. v. Loncar**, 7th Dist. Mahoning No. 11 MA 174, 2013-Ohio-2959, ¶17 ("in a foreclosure action, the holder of the note, regardless of whether it has been assigned the mortgage, has standing not only because it is the party entitled to enforce the instrument, but because it also has an equitable interest in the mortgage"); **Citimortgage, Inc. v. Patterson**, 8th Dist. Cuyahoga No. 98360, 2012-Ohio-5894, ¶21 (holder of the note has standing to foreclose). Thus, appellee acquired an equitable interest in the mortgage when it became a holder of the note, "regardless of whether the mortgage [was] actually (or validly) assigned or delivered". **Deutsche Bank**

Natl. Trust Co. v. Najar, 8th Dist. Cuyahoga No. 98502, 2013-Ohio-1657, ¶65; In reality, of course, a PSA is executed to benefit the investors who buy securities backed by the mortgage pool-investors who would be harmed by enforcing the PSA to keep mortgages out of the pooling trust. Unsurprisingly, courts invariably deny mortgagors third-party status to enforce PSAs. *See, e.g.,* ***In re Walker***, 466 B.R. 271, 284-85 (Bankr.E.D.Pa.2012); ***Kelly v. Deutsche Bank Nat'l Trust Co.***, 789 F.Supp.2d 262, 267-68 (D.Mass.2011); ***Bittinger v. Wells Fargo Bank NA,*** 744 F.Supp.2d 619, 625-26 (S.D.Tex.2010); Richard A. Lord, Williston on Contracts § 74:50 (4th ed.2012) ("If the objection to the validity of an assignment is not that it is void but voidable only at the option of the assignor, or of some third person, the debtor has no legal defense whether or not action is brought in the assignee's name, for it cannot be assumed that the assignor is desirous of avoiding the assignment."); **Nobles**, 533 S.W.2d at 926-27 ("It is settled that ... a deed [executed by a person fraudulently misrepresenting his agency] is valid and represents prima facie evidence of title until there has been a successful suit to set it aside ... [which] can only be maintained by the defrauded [principal]."); **Rivac v. NDEX W. LLC** (N.D. Cal., 2013) (District courts have consistently found that conclusory allegations of robo-signing are insufficient to state a claim, absent some factual support. See **Baldoza v. Bank of America, N.A**., 2013 WL 978268 at *13 (N.D. Cal. Mar. 12, 2013); see **also Chan Tang v. Bank of America**, N.A., 2012 WL 960373 at *10-11 (C.D. Cal. March 19, 2012); **Sohal v. Fed. Home Loan Mortg. Corp**., 2011 WL 3842195 at *5 (N.D. Cal. Aug. 30, 2011); **Chua v. IB Property Holdings, LL**C, 2011 WL 3322884 at *2 (C.D. Cal. Aug. 1, 2011))…Further, where a plaintiff alleges that a document is void due to robo-signing, yet does not contest the validity of the underlying debt, and is not a party to the assignment, the plaintiff does not have standing to contest the alleged fraudulent transfer. See **Elliott v. Mortgage Electronic Registration Systems, Inc**., 2013 WL 1820904 at *2 (N.D. Cal. Apr. 30, 2013); **Javaheri v. JPMorgan Chase Bank N.A**., 2012 WL 3426278 at *6 (C.D. Cal. Aug. 13, 2012). ("Plaintiffs here do not dispute that they defaulted on the loan payments, and the robo-signing allegations are without effect on the validity of the foreclosure process.); **Tran v. Bank of N.Y**. (S.D.N.Y., 2014) ("courts considering EPTL § 7-2.4 have held that "even if it is true that the Notes were transferred to the trust in violation of the trust's terms [after the closing date of the trust], that transaction could be ratified by the beneficiaries of the trust and is therefore merely voidable.");

Brandrup v. Recontrust Co. N.A., 353 Or. 668, 303 P.3d 301 (Or., 2013) **(**Because a promissory note generally contains no description of real property and does not transfer, encumber, or otherwise affect the title to real property, it cannot be recorded in land title records.); **Romani v. Nw. Tr. Servs., In**c. (D. Or., 2013) (Plaintiff argues that the foreclosure sale was invalid because Defendants failed to record every transfer of the Deed of Trust,…As the unrecorded assignments in this case occurred by operation of law when the Note was transferred by endorsement in blank, no recording was necessary. Defendants failure to record such assignments will not undo the completed foreclosure sale.); **Herrera v. Federal National Mortgage Assn.** (2012) 205 Cal.App.4th 1495, 1507.) ("Because a promissory note is a negotiable instrument, a borrower must anticipate it can and might be transferred to another creditor. As to plaintiff, an assignment merely substituted one creditor for another, without changing her obligations under the note."); **Jenkins v. JPMorgan Chase Bank, N.A**. 216 Cal.App.4th 497, 515 (2013) ("An impropriety in the transfer of a promissory note would therefore affect only the parties to the transaction, not the borrower. The borrower thus lacks standing to enforce any agreements relating to such transactions."); **Dow Family, LLC v. PHH Mortg. Corp**., 2014 WI 56 (Wis., 2014) (“We also note that the doctrine of equitable assignment is not unique to Wisconsin case law. In Carpenter v. Longan, 83 U.S. 271, 275 (1872), the United States Supreme Court stated: "The transfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter." In the Restatement (Third) of Property (Mortgages) § 5.4(a) (1997) we find additional support for the doctrine of equitable assignment: "A transfer of an obligation secured by a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise."); **Cervantes v. Countrywide Home Loans, Inc**., 656 F.3d 1034, 1040 (9th Cir. 2011).(“MERS relies on its members to have someone on their own staff become a MERS officer with the authority to sign documents on behalf of MERS.”); **Nichols v. Bosco, et al.,** 2011 WL 814916, at *4 (D. Ariz. Mar. 4, 2011) (“A notary need not actually witness a signature or ask for photo identification for the notarization to be effective.”); **Hunt V. US Bank N.A**. (9TH Cir., 2015) (Under the majority rule in California, borrowers lack standing to challenge the authority of the foreclosing entity. Jenkins v. JP Morgan Chase Bank, N.A., 156 Cal. Rptr. 3d 912, 924–27 (Ct. App. 2013). The contrary holding in Glaski has been widely rejected.); **Marcuzzo v Bank of the West**, 290 Neb. 809 Sup. Ct. of Nebraska (2015) (“Where

the mortgage assignment does not alter the borrower's obligations under the note or mortgage, and no injury is traceable to the mortgage assignment, the borrowers simply have shown no injury.[18] In reaching this conclusion, courts rely on the general common-law principle that the maker of a promissory note cannot challenge his or her obligations under the note by asserting that an invalid assignment had occurred."); **HSBC Bank U.S. Nat'l Ass'n v. Rowe**, 2015 IL App (3d) 140553 (Ill. App., 2015) ("[w]hile the nonidentical copies do raise some questions—such as, at what point in time the note attached to the complaint was copied—these questions are immaterial to the issue o[f] ownership or standing."); **Moreland v. U.S. Bank, N.A.** (E.D. Cal., 2015) ("Section 11.09 of the PSA ("Successors and Assigns; Beneficiaries") expressly enumerates a number of intended third-party beneficiaries, none of whom are Plaintiff or Borrower. The last sentence of Section 11.09 reads as follows: 'No other Person, including any Mortgagor, shall be entitled to any benefit or equitable right, remedy or claim under this Agreement.' It is clear that the contracting parties to the PSA did not intend for Borrower (or Plaintiff, as a member of Borrower) to be a third-party beneficiary of the agreement. Accordingly, Plaintiff lacks standing to challenge the validity of any assignments made pursuant to the PSA."); **Keifert v. Nationstar Mortg. LLC**., 153 So. 3d 351, 352-53 (Fla. 1st DCA 2014) (Standing to foreclose requires only proof that the foreclosing party held the note when it filed the action. Proof of prior assignments is unnecessary.); **Deutsche Bank Nat'l Trust Co. v. Lippi**, 78 So. 3d 81, 85 (Fla. 5th DCA 2012) ("[I]ts standing is established because it is the note holder, regardless of any recorded assignments."). **In re Foreclosure of Deed of Trust**, 334 N.C. 369, 432 S.E.2d 855, 859 (N.C.1993) ("Historically, foreclosure under a power of sale has been a private contractual remedy."); **MORELAND v. US BANK, N A,** (E.D. Ca. 2015) (As he is neither a party nor a third-party intended beneficiary to either assignment, Plaintiff cannot enforce the "consideration" requirement contained therein.); **ASSIL V. AURORA LOAN SERVS., LLC**, 171 So. 3d 226, 227 (Fla. 4th DCA 2015) (A substituted plaintiff can acquire standing to foreclose if the original party had standing.); **FOCHT V. WELLS FARGO BANK, N.A.**, 124 So. 3d 308, 310 (Fla. 2d DCA 2013) (When the foreclosing party is not the original lender, it "may establish standing to foreclose a mortgage loan by submitting a note with a blank or special endorsement, an assignment of the note, or an affidavit otherwise proving the plaintiff's status as the holder of the note."); **Deutsche Bank**

National Trust Co. v. Valerie J. Slotke (Wash. Ct. App. 2016) ("it is the holder of a note who is entitled to enforce it. It is not necessary for the holder to establish that it is also the owner of the note secured by the deed of trust.); **Jepson v. Bank of NY Mellon**, No. 14-2459 (7th Cir. 2016) ("New York courts appear to have almost uniformly concluded that a beneficiary retains the authority to ratify a trustee's *ultra vires* act." *Cocroft v. HSBC Bank USA, N.A.*, 796 F.3d 680, 689 (7th Cir. 2015) (citing *Mooney v. Madden*, 597 N.Y.S.2d 775, 776 (N.Y. App. Div. 1993), and *Tran*, 2014 WL 1225575, at *5). If a beneficiary is able to ratify an unauthorized mortgage assignment, then the assignment is merely voidable and cannot be challenged by a mortgagor. *Id);* **Aurora Loan Servs., LLC v. Taylor**, 2015 NY Slip Op 04872 (Jun. 11, 2015) ("to have standing, it is not necessary to have possession of the mortgage at the time the action is commenced. This conclusion follows from the fact that the note, and not the mortgage, is the dispositive instrument that conveys standing to foreclose…); **Mortgage Electronic Registration Service v. Azize**, **965 So. 2d 151** (Fla. 2d DCA 2007) ("A servicing agent has standing to prosecute a foreclosure case on behalf of the principal.") **Blair Const., Inc. v. McBeth**, 273 Kan. 679, 691, 44 P.3d 1244 (2002). ("Promissory notes and mortgages are contracts to which the rules of contract construction apply. Absent an ambiguity in a contract, a court must give effect to the intent of the parties as expressed within the four corners of the instrument."); **SVETLANA TYSHKEVICH v. WELLS FARGO BANK, N.A**., (United States District Court, E.D. California. 2016) ("Plaintiff thus rests her entire case upon her allegation that the "true" lender — and therefore the other party to the loan — was never identified… Under the first, and most likely interpretation of the Complaint, plaintiff is alleging that "America's Wholesale Lender" is a fictitious name… However there is nothing in California law that prohibits an entity from doing business under a fictitious business name, or a "dba." To the contrary, California law specifically provides for this practice. See Cal. Bus. & Prof. Code §§ 17900-30 ("Fictitious Business Names")…plaintiff pressed the possibility that AWL was actually non-existent, rather than simply a fictional name, by asserting that the Deeds of Trust identify AWL as a New York corporation,… This argument misreads the Deeds of Trust. They do not state that "AWL" is a corporation. Rather, they state that the "Lender" is a corporation organized under the laws of New York. While the wording could be clearer, this plain meaning of this is that the "Lender" — which plaintiff implicitly acknowledges

is *Countrywide* (dba AWL) — is a New York Corporation. It does not assert that AWL — the fictitious name itself — is a New York Corporation.[10])")