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Supreme Court No. ——

Court of Appeals No.

43294-3- II)

SUPREME COURT
OF THE STATE OF WASHINGTON

KEITH PELZEL,

Plaintiff-Petitioner,

v.

QUALITY LOAN SERVICES CORP. OF WASHINGTON,

Defendant-

Respondent, and

NATIONSTAR MORTGAGE,

Defendant.

PETITION FOR REVIEW

Keith Pelzel
Appellant Pro Se
Puyallup, WA 98375
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I. IDENTITY OF PETITIONER

Petitioner Keith Pelzel ("Pelzel") was the Plaintiff in the original action in Pierce County Superior Court, Cause No. 10-2-16448-6, and the Appellant in the Court of Appeals, Division II, Cause No.43294-3-II.

II. COURT OF APPEALS DECISION

Pelzel seeks review of the unpublished decision of the Court of Appeals filed on March 24, 2015 a copy of which is attached in the Appendix at A-1 to A-17. The portion of the decision he seeks to have reviewed is the Court of Appeals' analysis and interpretation of RCW 61.24.030(7) set forth in the decision at A-5 to A-16.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the decision of the Court of Appeals that Nationstar is entitled to foreclose even though it does not own the note secured by the deed of trust ("DOT") violates this Court's decision in *Lyons v. U.S. Bank, NA,* 181 Wn.2d _____ (2014) .

2. Whether the common law "security follows the note" legal axiom applies to the alleged transfer to Nationstar of the right "to enforce" Pelzel's note, thereby automatically granting to Nationstar the right to enforce the security for Pelzel's note to person in physical

possession of that bearer note.

3. Whether Nationstar was authorized by RCW 61.24.010(2) to appoint Quality Loan Services of Washington ("Quality") the successor trustee even though it allegedly received the "beneficial interest" in the DOT through a MERS assignment.

4. Whether Quality became a lawfully appointed successor trustee as a result of its appointment by Nationstar on November 13, 2009.

5. Whether one or more of issues 1 through 6 above is an issue of substantial public interest that should be reviewed by this Court.

IV. STATEMENT OF THE CASE

A. Factual Background

Pelzel purchased his home in May 2003. *CP 3: 15 - 16.* He financed the purchase by executing a promissory note ("Note") in favor of Homecomings Financial Network, Inc. ("HFN"). The Note was secured by a DOT. *Id.* at 4: 11 – 12. The DOT was recorded on May 14, 2003 under Pierce County File No. 200305141271. *Id.*

On June 1, 2003 the Federal National Mortgage

Association ("Fannie Mae") purchased Pelzel's loan.[1] It is undisputed that Fannie Mae has continued to own the loan, uninterrupted, from June 1, 2003 until today.

The Fannie Mae Single Family Servicing Guide ("Guide") requires loan servicers to inform the *foreclosing trustee* and its lawyers that the loan is a Fannie Mae loan upon transfer of the loan file to the foreclosure trustee and *before* the foreclosing trustee commences the non-judicial foreclosure. The language in the Guide reads as follows: "In all cases, servicers must advise the attorney (or trustee) to whom the referral is made that Fannie Mae owns or securitizes the mortgage loan being referred."[2] At all times during the foreclosure proceeding, from the beginning of the proceeding until the present day, both Nationstar and Quality have been aware that Fannie Mae is the owner of Pelzel's loan.

According to Nationstar, on or about December 9, 2008, Nationstar acquired servicing rights on the Pelzel loan. *CP 138: 15 – 16.* The person who granted servicing rights to Nationstar, if such a person exists, has never been identified. Nationstar acquired

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[1] Pelzel obtained the exact date on which Fannie Mae purchased Pelzel's loan from a Fannie Mae customer service agent during a telephone conversation about the subject on Friday, May 22, 2015.

[2] ***Fannie Mae, Fannie Mae Single Family 2012 Servicing Guide, Section 106, Referral to Foreclosure Attorney/Trustee (01/01/11)***, at 853 (Fannie Mae, 2012).

physical possession of the Note on January 23, 2009. *Id. at 16 – 17.*

Pelzel failed for the first time to make a timely payment on the mortgage loan on May 1, 2009. *CP 133.*

On November 10, 2009, Quality, acting as an agent for Nationstar, issued a Notice of Default ("NOD"). *CP 173.* Among other things, the NOD stated Nationstar, the mortgage servicer, was the *owner* and servicer of the loan. *CP 170.* The NOD failed to provide Fannie Mae's name or address, even though by November 10, 2009 Fannie Mae had owned the loan for almost 6½ years. The failure to provide Fannie Mae's name and address in the NOD is a violation of RCW 61.24.030(8)(l).

Two days later, on November 12, 2009, MERS, acting as nominee for HFN, attempted to assign the Note and DOT to Nationstar.[3] *CP 127.*

On November 13, 2009, approximately one month *before* MERS attempted to assign the DOT to Nationstar, Nationstar -- through Quality, acting as Nationstar's authorized agent -- attempted to appoint Quality the successor trustee ("Attempted

[3] The attempted assignment was recorded in the Pierce County Auditor's Office under auditor's file no. 200912070005 on December 7, 2009.

Appointment"). *CP 124.* The Attempted Appointment was recorded under Pierce County Auditor's File No. 200911170683 on November 17, 2009. *CP 123.* Additionally, neither Nationstar nor MERS nor HFN owned the Note on November 13, 2009.

On January 14, 2010, Mildred Fore, allegedly Nationstar's authorized agent, executed a document entitled "Declaration of Ownership." *CP 162.* Nationstar did not *own* the loan on January 14, 2010 and has never *owned* the loan since January 14, 2010. The document indicates Nationstar is the actual "*holder*" of Plaintiff's Note and the beneficiary of the DOT. *Id.*

Most significantly, the declaration also states that Nationstar is the "*agent*" for the "*owner*" of the Note. *Id.* As a result of this admission, it is an indisputable fact that the so-called "beneficiary declaration" was not made by Nationstar for the purpose of proving Nationstar was the "*owner*" of the Note. It couldn't have been made for that purpose because Nationstar has never been the *owner* of the Note. And, since Quality knew Nationstar was not the *owner* of the Note, Quality did not accept, and could not have accepted, the "*beneficiary declaration*" as proof Nationstar was the *owner* of the Note.

RCW 61.24.030(7)(a) requires a lawfully-appointed trustee

to have proof that the purported beneficiary of the DOT is the owner of the note before the trustee is authorized to record, transmit, or serve a notice of trustee's sale ("NOTS"). Hence, if the purported trustee knows the declarant is not the owner of the note, the declaration, regardless of what it says, cannot possibly authorize the purported trustee to record, transmit or serve a NOTS. If it could, RCW 61.24.030(7)(a) would be an absurdity.

Before Quality filed the initial NOTS it knew Nationstar was not the *owner* of the Pelzel Note.

On January 20, 2010, Quality, acting as the purported successor trustee and pursuant to the authority allegedly obtained through Quality's receipt of the so-called beneficiary declaration, recorded a notice of trustee's sale ("NOTS 1"). *CP 129.*

NOTS 1 set April 23, 2010 as the original sale date. *Id.* Section VI of NOTS 1 states that the NOD issued on November 10, 2009, the only NOD that has ever been issued in this foreclosure proceeding, was NOTS 1's antecedent in the foreclosure process. *CP 130.*

The property did not sell on April 23, 2010.

On September 30, 2010, Quality recorded a second notice of trustee's sale ("NOTS 2"). *CP 132.* NOTS 2 set January 17,

2011 as the sale date. *Id.*[4] Section VI of NOTS 2 listed the November 10, 2009 NOD -- the same NOD listed in Section VI of NOTS 1 -- as its antecedent in the foreclosure process.

B. Procedural Background.

In December 2010, after two discontinuances of attempted foreclosures, Mr. Pelzel filed suit in Pierce County Superior Court.

Mr. Pelzel alleged Nationstar was not a lawful beneficiary – that is, was not a beneficiary under the DTA -- because MERS assigned the beneficial interest in the DOT to Nationstar. MERS was not authorized to assign any interest in the DOT because it never held any interest in Pelzel's Note. Further, because Quality was appointed by Nationstar, Quality was not a *lawfully-appointed successor trustee* – that is, Quality was not a trustee under the DTA -- and therefore was not authorized by RCW 61.24.030(7)(a) to record a NOTS.

Additionally and alternatively, Quality could not rely on a declaration from Nationstar stating that Nationstar was the "*actual*

[4] January 17, 2011 was *269 days* after the original, April 23, 2010 sale date. Pursuant to RCW 61.24.040(6) and this Court's holding in *Albice v. Premier Mortg. Servs. Of Washington, Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012), Quality and Nationstar were obligated to start the foreclosure process from the beginning after 120 days beyond the original sale date. The failure to do so was a material violation of the DTA.

holder" of the Note as proof that Nationstar *owned* the note because, prior to receiving the declaration, Quality knew Nationstar *was not* the *owner* of the Note.

On February 1, 2012, Defendants Quality, Nationstar and MERS moved for summary judgment. *CP 135 - 199.* The trial court granted the summary judgment motion on March 2, 2012. *CP 287 - 88.* Mr. Pelzel timely appealed on April 2, 2012. *CP 296 - 98.*

The Appellate Court, after considering the briefs and oral argument, found that Nationstar was the beneficiary. *Pelzel v. Quality, et al.,* No. 43294-3-II at 8. As beneficiary, the Court went on, Nationstar had authority to appoint a successor trustee. *Id.* at 8 - 9. While finding that Nationstar was a *lawful beneficiary* and Quality was a *lawfully-appointed successor trustee*, the Court acknowledged that Fannie Mae was the *owner* of the Note. *Id.,* at 9.

Pelzel argued that RCW 61.24.030(7)(a) required proof of *ownership* of the note. The Court disagreed. *Id.,* at 10.

The *Pelzel* Court then, adopting Division I's holding in *Truillo,* held that the receipt of "proof that the beneficiary is the note's *holder* is sufficient for a successor trustee to initiate a nonjudicial foreclosure, regardless of whether the beneficiary is the note's *owner*." *Id.,* at 11. The Court then affirmed the lower court ruling.

This Petition for Review followed.

V. REVIEW SHOULD BE ACCEPTED

A. The Appellate Court's decision that Nationstar is entitled to foreclose even though it does not own the note secured by the DOT violates this Court's decision in *Lyons v. U.S. Bank, NA.*

In *Lyons v. Northwest Trustee Services, Inc.*, 181 Wn.2d 775, 336 P.3d 1142, 2014 Wash. LEXIS 897 (2014), this Court held that the purported beneficiary must be the "*owner*" of the note to be entitled to foreclose non-judicially. *Lyons,* 181 Wn.2d at 788 – 90.

Defendants-Respondents herein have not disputed the fact that Nationstar has never *owned* the Pelzel Note. Moreover, throughout the foreclosure process, from beginning to end, Nationstar, MERS, HFN and Quality knew Nationstar was not the *owner* of the Note.

Obviously Nationstar knew it was not the Note owner. The primary purpose for MERS' creation was to track transfers of *ownership interests* in notes owned by MERS members. *Bain v. Metro. Mortg. Grp., Inc.,* 175 Wn.2d 83, 95, 285 P.3d 34 (2012). Fannie Mae is one of MERS' founding members. MERS knew that Fannie Mae, not Nationstar, was the owner of the Note.

HFN sold the loan to Fannie Mae. HFN knew Fannie Mae, Not Nationstar, was the owner of the Note. And Quality, pursuant to Fannie Mae Guidelines, was told that Fannie Mae was the *owner* of the Note when the file was transferred to Quality *before* the foreclosure proceeding commenced.

The *Pelzel* Court's decision contradicts this Court's holding in *Lyons*. This Court's holding in *Lyons* is supported by the previous decisions of the Court, the DTA, the standard DOT that is utilized in the vast majority of home loan transactions in the State of Washington, and Article 9A of the Washington version of the Uniform Commercial. The *Pelzel* Court's decision is unsupported.

B. *Bain* and *Lyons* establish the beneficiary of the DOT must be both the *holder* and *owner* of the note that the DOT secures.

In *Bain,* this Court, in the process of finding that MERS could not be the beneficiary of a DOT, made the following statement:

> Since 1998, the deed of trust act has defined a "beneficiary" as "the *holder* of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation." Laws of 1998, ch. 295, § 1(2), codified as RCW 61.24.005(2). (fn. omitted). Thus, in the terms of the certified question, if MERS never "held the promissory note" then it is not a "lawful 'beneficiary.'"

Bain, 175 Wn.2d at _____.

In *Bain* this Court clearly established that the "*beneficiary* of the DOT" must be the "*holder* of the note" secured by the DOT. In *Lyons*, the Court concluded that the beneficiary of the DOT must be the "*owner* of the note" that the DOT secures. Since the Court has already held in *Bain* that the beneficiary must be the "*holder*" of the note and in *Lyons* that the beneficiary must be the "*owner*" of the note, it is incontestable that, under Washington law, the beneficiary of the DOT must be both the "*holder*" and "*owner*" of the note that the DOT secures.

C. This Court's position that the beneficiary of the DOT under the DTA must be both the "holder" and "owner" of the note is supported by the standard DOT, 900 years of mortgage history in Western

culture, and Article 9A of the Washington version of the UCC.

1. The standard DOT, which is the DOT Pelzel executed, secures repayment of the debt to the lender (the *owner* of the debt) only.

The standard DOT that almost all Washingtonians execute when entering into a mortgage loan transaction contains the following provision:

> This Security Instrument secures to *Lender*: (i) the repayment of the loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrowers covenants and agreements under this Security Instrument and the Note.

CP 228. (Italics added).

The DOT that Pelzel executed contained the above-quoted provision. For the 900 years that mortgages have existed in Western Civilization, they have only ever secured the *owners* of the debt obligations that the mortgages secured. A DOT is just a variety of mortgage. And like a mortgage, as the language quoted immediately above unambiguously indicates, a DOT secures repayment of a debt to the *owner* of the debt obligation (i.e., the Lender). The method by which it secures repayment of the debt obligation is by granting the Lender, *and no one else in the world*, the right to foreclose on the mortgaged property in the event of the borrower's default on the underlying debt obligation.

The position taken by this Court in *Lyons* is absolutely correct historically speaking. Yet, many courts around the State of Washington, including both divisions of the appellate court that have considered the issue, have found that an entity need only be the "*holder*" of the note to be entitled to appoint a successor trustee and commence a foreclosure.

Over the past seven years, entities that have not owned the notes that they have held have appointed successor trustees by the thousands and have conducted thousands of foreclosure sales. To this day, scores of successor trustees are being appointed each week in Washington by entities that claim to "hold" notes that they admittedly do not "own" -- even after this Court's decision in *Lyons.*

Not one of the borrowers whose home was sold under these circumstances ever had an opportunity to meet and negotiate with the owner of his debt, in spite of the requirement in the Foreclosure Fairness Act that borrowers have such an opportunity. This failure of lenders and trustees to adhere to the requirements of the DTA is a tremendously impactful scandal that largely has been ignored by the lower courts.

This august body should accept review and then use this case to make a very clear and forceful statement that cannot be ignored by the lower courts: As the legislature intended, only

those who actually own an interest in a secured note – and hold the note that they own -- are entitled to foreclose in the event of the borrower's default on that note.

2. RCW 62A.9A-203(a), (b), and (g) supports the Court's holding in *Lyons*.

In Washington, the "security follows the note" legal axiom is no longer a common law doctrine and has not been a common law doctrine for approximately 50 years. Approximately 50 years ago, the Washington State Legislature codified the axiom at RCW 62A.9A-203(a), (b), and (g). *See Official Comment 9 to UCC 9-203.* RCW 62A.9A-203(a), (b), and (g), the Division I's findings in *Trujillo* to the contrary notwithstanding, emphatically supports this Court's holding in *Lyons* that the beneficiary is the "*owner*" of the debt obligation that the DOT secures.

RCW 62A.9A-203(a) states a "*security interest*" (which includes the interest of a "*buyer*" of a promissory note in a transaction governed by Article 9A (*See* RCW 62A.1-201(b)(35)) "*attaches*" to a promissory note when the security interest becomes "*enforceable*" against the debtor (the "debtor" concept includes a "*seller*" of a promissory note (*See* RCW 62A.9A-102(a)(28)). A mortgage note is just a variety of *secured* promissory note. Consequently, Article 9A, the *Secured*

Transactions Article, not Article 3, provides the rules that govern transactions involving transfers of security for *secured* mortgage notes.[5]

RCW 62A.9A-203(b) states that a security interest (i.e., "*ownership*" interest (*See* RCW 62A.1-201(b)(35)) in collateral (i.e., a mortgage note (RCW 62A.9A-102(a)(12)(B)) becomes *enforceable* against the world when three conditions are met: (1) "*value*" has been given for the note (RCW 62A.9A-203(b)(1)); (2) the *seller* has rights in the note or the power to transfer rights in the note to a purchaser (RCW 62A.9A-203(b)(2)); and (3) either (a) the debtor (i.e., the *seller* of the note (RCW 62A.9A-102(a)(28)(B)) has signed a security agreement that provides a description of the note (RCW 62A.9A-203(b)(3)(A)), or (b) the note is not a certificated security and, pursuant to the terms of the *seller's* security agreement, is being held by someone other than the *secured party* (i.e., the *purchaser* of the note (RCW 62A.9A-102(a)(73)(D)) solely for the purchaser's benefit (RCW 62A.9A-

[5] Both Division I in *Trujillo* and Division II in this case devote a lot of space in their respective opinions to the right of a note holder to enforce the note pursuant to RCW 62A.3-301. With respect, that discussion has nothing to do with the primary issue each Court was asked to decide. As the discussion in this section of the Petition demonstrates, the right to enforce the note and the right to enforce the DOT are not synonymous. RCW 62A.9A-203(a), (b), and (g) clearly establish that if you do not own the note that you hold, you have the right to enforce the note, but you do not have the right to enforce the security for the note (the DOT). In other words, as RCW 62A.9A-203(a), (b), and (g) clearly state, the DOT follows a transfer of the "*ownership rights in the note*," ***not*** a transfer of the "right to enforce the note."

203(b)(3)(B)). *See RCW 62A.9A-203(b)(3)(A) and (B) and RCW 62A.9A-313.*

Under RCW 62A.9A-203(b), the instant the three conditions listed in the preceding paragraph have been met, the purchaser's *ownership* interest in the note becomes enforceable against the world and attaches to the note. At that same instant, pursuant to RCW 62A.9A-203(g), the note purchaser's enforceable ownership interest in *the security for the note* (i.e., the DOT) becomes enforceable against the world and attaches to the security (DOT). In other words, the security (DOT) follows the transfer of an "*ownership*" interest in the note. *See Official Comment 9 to UCC 9-203.* The "*right to enforce the DOT*" *does not* follow a transfer of the "*right to enforce the note*," and never has, notwithstanding the holdings of Divisions I and II in *Trujillo* and *Pelzel.*

3. In Washington, even if ownership of the note is transferred, the transferee is not automatically entitled to enforce the DOT.

In addition, in Washington, the transfer of an ownership interest in the note does not mean the transferee is automatically entitled to enforce the DOT. Since RCW 64.04.010 requires all interests in real property to be transferred by deed, the right to enforce the DOT does not exist until a deed that complies with

state law has been executed and transferred to the *purchaser*.[6]

Because the attempted assignment of the DOT by MERS was legally ineffective, there has been no transfer of the DOT in this case. Consequently, in addition to being unable to enforce the Note because it does not *own* the Note, Nationstar has never had the right to enforce the DOT because the beneficial interest in the DOT has never been assigned to it. And, as a result, Quality, for two reasons, has never been a lawfully-appointed trustee.

D. The Court should accept review.

The Court should accept review to correct Division II's holding in this case. Review is warranted under

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[6]*Report of the Permanent Editorial Board for the Uniform Commercial Code, Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes, at 12, n. 43 (*The American Law Institute and the National Conference of Commissioners on Uniform State Laws, 2011*)*:

> Under the rule in UCC § 9-203(g), if the holder of the note in question demonstrated that it had an attached security interest (including the interest of a buyer) in the note, the holder of the note in question would also have a security interest in the mortgage securing the note even in the absence of a separate assignment of the mortgage. (This Report does not address whether, under the facts of the *Ibanez* case, the holder of the note had an attached security interest in the note and, thus, qualified for the application of UCC § 9-203(g). ***Moreover, even if the holder had an attached security interest in the note and, thus, had a security interest in the mortgage, this would NOT, of itself, mean that the holder could enforce the mortgage without a recordable assignment of the mortgage to the holder. Whatever steps are required in order to enforce a mortgage in the absence of a recordable assignment are the province of real property law.***

RAP 13.4(b)(l) because the Court of Appeals' decision conflicts with this Court's decision in *Lyons.*

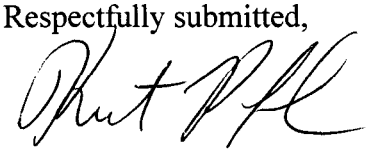
Review is also warranted under RAP 13.4(b)(4) because these important issues arise in the vast majority of non-judicial residential foreclosures in Washington. These are issues of substantial public interest that affect thousands of homeowners in our State, and the Court should grant review to clarify the law in this area.

VI CONCLUSION

For all the foregoing reasons, pursuant to RAP 13.4(b)(l) and 13.4(b)(4), this Court should accept review and reverse the Court of Appeals.

DATED this 26th day of May _____ 2015.

Respectfully submitted,



Keith Pelzel, Appellant Pro se

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KEITH PELZEL, Appellant, v. NATIONSTAR MORTGAGE, LLC; QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; HOMECOMINGS FINANCIAL NETWORK, INC., MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ALL PERSONS UNKNOWN, CLAIMING ANY VALID SUBSISTING INTEREST, AND RIGHT TO THE POSSESSION IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON PLAINTIFF'S TITLE THERETO; and DOES I-X, INCLUSIVE, Respondents.	No. 43294-3-II UNPUBLISHED OPINION

WORSWICK, P.J. — Keith Pelzel sued Nationstar Mortgage, LLC, Quality Loan Services Corporation of Washington, Homecomings Financial Network, Inc., and Mortgage Electronic Registration Systems, Inc. (MERS) to prevent Quality's nonjudicial foreclosure of a deed of trust secured by Pelzel's property. Pelzel also sought damages under the Consumer Protection Act[1] (CPA). The superior court granted summary judgment in favor of defendants. Pelzel appeals,

[1] Chapter 19.86 RCW.

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arguing summary judgment was inappropriate because under the deed of trust act[2] (DTA) (1) Nationstar was not a beneficiary, (2) Nationstar had no authority to appoint a successor trustee, (3) Quality lacked authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, (4) MERS's assignment of the deed of trust and note to Nationstar was invalid, and (5) Nationstar failed to prove it was a servicer or agent for the note's owner. Pelzel also argues summary judgment was inappropriate because under the CPA, (6) the defendants deceived Pelzel by misrepresenting Quality's authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, (7) Quality deceived Pelzel by falsely identifying Nationstar as the note's owner in the "notice of default" sent to Pelzel, and (8) MERS deceived Pelzel by assigning the deed of trust and note as the nominee of Homecomings, the lender and original beneficiary. We reject Pelzel's arguments and affirm.

FACTS

A. *The Promissory Note and Deed of Trust*

In 2003, Keith Pelzel borrowed $104,000 from the lender Homecomings Financial Network, Inc. Pelzel signed a promissory note promising to repay the loan, and secured the note with a deed of trust against his property. The deed of trust listed Pelzel as the borrower, Homecomings as the lender, and Fidelity National Title as the trustee. The deed of trust then said the following about MERS:

> MERS is a separate corporation that is acting solely as a nominee for [Homecomings] and [Homecomings'] successors and assigns. **MERS is the beneficiary under this Security Instrument.**

[2] Chapter 61.24 RCW.

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Clerk's Papers (CP) at 37.

Homecomings possessed the deed of trust and the note. Then, at some time prior to January 23, 2009, Homecomings indorsed the note to GMAC Mortgage Company, who in turn indorsed the note in blank. After the note was indorsed in blank, on January 23, 2009, Nationstar took physical possession of the note. Nationstar had physical possession of the note at the time of the motion for summary judgment.

At some point, the Federal National Mortgage Association (Fannie Mae) purchased the loan represented by the note, making Fannie Mae the note's owner. *See Trujillo v. Nw. Tr. Servs., Inc.*, 181 Wn. App. 484, 487-89, 326 P.3d 768 (2014). But Fannie Mae did not take physical possession of the note.

On November 13, 2009, Nationstar appointed Quality as the deed of trust's successor trustee. From then onward, Quality served as the deed of trust's successor trustee.

On November 19, 2009, MERS, as nominee for Homecomings, executed a document purporting to assign both the deed of trust and the note to Nationstar. MERS executed this document even though Homecomings had already indorsed the note to GMAC and even though Nationstar had already obtained physical possession of the note.[3]

B. *Notice of Default, Declaration of Ownership, and Trustee's Sale*

In November of 2009, Quality, as successor trustee, sent Pelzel a notice of default, which stated in part:

> The current *owner*/beneficiary of the Note secured by the Deed of Trust is: Nationstar Mortgage LLC

[3] From the record it appears MERS may have been attempting to assign the *deed of trust* to Nationstar, but failed to remove language assigning the note.

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> The Loan Servicer managing your loan, and whom you should contact about your loan is:
> Nationstar Mortgage LLC

CP at 17 (emphasis added).

In January of 2010, Nationstar's authorized agent signed a "Declaration of Ownership," which stated under penalty of perjury that Nationstar was "actual holder of" the note. CP at 176. In September of 2010, relying on this declaration of Nationstar's agent, Quality initiated a nonjudicial foreclosure of Pelzel's property by scheduling a trustee's sale of Pelzel's property.

C. *Pelzel's Complaint and Summary Judgment*

Prior to the trustee's sale, Pelzel filed a complaint against Nationstar, Quality, Homecomings, and MERS, making claims for, among other things, (1) defect in trustee's sale under the DTA, (2) defective initiation of foreclosure under the DTA, and (3) violation of the CPA. Pelzel requested many forms of relief, including (1) declaratory relief, (2) an order vacating the foreclosure sale, and (3) damages under the CPA. In response to Pelzel's complaint, Quality stopped the trustee's sale.

The defendants moved for summary judgment, and the superior court granted summary judgment against Pelzel on all claims. The superior court ruled that no cause of action for wrongful *initiation* of foreclosure existed, and that the lack of a completed foreclosure sale rendered Pelzel unable to prove damages on his other claims. Pelzel appeals.

ANALYSIS

We review summary judgment orders de novo. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Summary judgment is appropriate if, when viewing the

facts in the light most favorable to the nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. 164 Wn.2d at 552.

Interpretation of a statute is a question of law we also review de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). Our objective in interpreting a statute is to carry out the legislature's intent. *Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217 (2004). "The 'plain meaning' of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, the related provisions, and the statutory scheme as a whole." *City of Spokane v. Rothwell*, 166 Wn.2d 872, 876-77, 215 P.3d 162 (2009). "In general, words are given their ordinary meaning, but when technical terms and terms of art are used, we give these terms their technical meaning." *Swinomish Indian Tribal Cmty. v. Dep't of Ecology*, 178 Wn.2d 571, 581, 311 P.3d 6 (2013).

Turning to Pelzel's arguments, we examine and reject his claims for relief under the DTA as well as his claims for monetary damages under the CPA.[4]

I. Declaratory Relief Under The DTA

At the superior court, Pelzel requested "a declaration of the rights and duties of the parties, specifically Defendants Quality Loan and Nationstar initiated a defective foreclosure of the Property." CP at 12. Washington courts may issue declaratory judgments under the Uniform

[4] Defendants argue that Pelzel waived his CPA claims by failing to include an assignment of error challenging the superior court's denial of his CPA claims. *See Ryder v. Port of Seattle*, 50 Wn. App. 144, 155, 748 P.2d 243 (1987). Because Pelzel argues the CPA throughout his brief, we use our discretionary authority to consider Pelzel's claim. *See* RAP 2.5(a); *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005).

Declaratory Judgments Act[5] to declare the rights of the parties if the plaintiff shows that a justiciable controversy exists. *To–Ro Trade Shows v. Collins*, 144 Wn.2d 403, 410-11, 27 P.3d 1149 (2001). Because Pelzel has made such a showing, we consider his arguments regarding declaratory relief for alleged DTA violations.[6]

Under the DTA, a deed of trust is a three-party transaction. *Bain v. Metro Mortg. Grp., Inc.*, 175 Wn.2d 83, 92-93, 285 P.3d 34 (2012). Land is conveyed by a borrower (the grantor), to a third party (the trustee), who holds title in trust for the lender (the beneficiary), as security for credit or a loan. 175 Wn.2d at 93. The deed of trust protects the beneficiary by giving it the power to nominate a trustee, who then has the power to sell the property at a trustee's sale on the beneficiary's behalf if the borrower defaults. 175 Wn.2d at 88; *Rucker v. Novastar Mortg., Inc.*, 177 Wn. App. 1, 10-11, 311 P.3d 31 (2013).

MERS maintains a private electronic registration system for tracking ownership of mortgage related debt. *Bain*, 175 Wn.2d at 95. In many states, including Washington, MERS is also often listed as the *beneficiary* of a deed of trust. 175 Wn.2d at 88. In *Bain*, our Supreme Court held "MERS is an ineligible 'beneficiary within the terms of the Washington Deed of Trust Act,' if it never held the promissory note or other debt instrument secured by the deed of trust." 175 Wn.2d at 110 (internal quotation marks omitted).

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[5] Chapter 7.24 RCW.

[6] At the superior court, Pelzel requested an injunction to vacate the trustee sale. We do not consider Pelzel's claim for injunctive relief because Quality already stopped the trustee's sale and the record does not show that a new trustee's sale was initiated. Thus, there was no trustee sale for an injunction to stop.

Pelzel argues that when Quality initiated the nonjudicial foreclosure (1) Nationstar was not the lawful beneficiary under the DTA, (2) Nationstar had no authority to appoint a successor trustee, (3) Quality's initiation of a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf was improper, (4) Nationstar's foreclosure was improper, and (5) Quality lacked authority to initiate a nonjudicial foreclosure against Pelzel's property on Nationstar's behalf. We reject Pelzel's arguments and hold that Nationstar was the deed of trust's beneficiary with authority to appoint Quality as successor trustee, which gave Quality authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf under RCW 61.24.030(7). We further hold that neither any defect in MERS's assignment of the note and deed of trust nor Nationstar's relationship to the deed of trust's owner Fannie Mae affected Quality's authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf.

A. *Nationstar's Status as Beneficiary Under the DTA*

Pelzel argues Nationstar was not the lawful beneficiary under the DTA. We disagree.

1. *Definition of Beneficiary*

The deed of trust's beneficiary is traditionally the lender who loaned money to the homeowner. *Bain*, 175 Wn.2d at 88. But lenders are free to sell the secured debt, typically by selling the note. 175 Wn.2d at 88. The DTA recognizes that the deed of trust's beneficiary at any one time might not be the original lender. 175 Wn.2d at 88. Therefore, RCW 61.24.005(2) of the DTA defines "beneficiary" broadly as the "holder of the instrument or document evidencing the obligations secured by the deed of trust." 175 Wn.2d at 88.

Here, the note was the instrument or document evidencing the obligations secured by the deed of trust. Thus, the note's holder was the beneficiary under the DTA. Accordingly, we must determine whether Nationstar was the note's holder.

2. *Definition of "Holder"*

The Uniform Commercial Code[7] (UCC) guides our interpretation of the DTA's terms.[8] *Bain*, 175 Wn.2d at 104. The UCC defines "holder" as "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." RCW 62A.1-201(21)(A). A note indorsed in blank is payable to bearer. RCW 62A.3-205(b).

Here, the undisputed evidence establishes that Nationstar was the note's holder. Pelzel does not challenge that the note was indorsed in blank or that Nationstar had actual physical possession of it after it was indorsed in blank. Once the note was indorsed in blank, it became payable to bearer. Because Nationstar had physical possession of the note and the note was payable to bearer, Nationstar was the note's holder. Thus, Nationstar was the holder of the instrument evidencing the obligations secured by the deed of trust, which made Nationstar the deed of trust's beneficiary under the DTA.

B. *Nationstar's Authority To Appoint a Successor Trustee*

Pelzel argues Nationstar had no authority to appoint a successor trustee. We disagree.

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[7] Title 62A RCW.

[8] Pelzel argues that we should not use the UCC to guide its interpretation of the DTA's terms. But our Supreme Court has established that the UCC guides our interpretation of the DTA's terms. *Bain*, 175 Wn.2d at 104.

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Only a lawful beneficiary has the power to appoint a successor to the original trustee named in the deed of trust. *Bavand v. OneWest Bank, F.S.B.*, 176 Wn. App. 475, 486, 309 P.3d 636 (2013). Only a properly appointed trustee may proceed with a nonjudicial foreclosure of real property. 176 Wn. App. at 486-87.

As discussed above, Nationstar was a lawful beneficiary because it held the note. Thus, Nationstar had authority to appoint a successor trustee.

C. *Quality's Authority To Initiate a Nonjudicial Foreclosure Under RCW 61.24.030(7)*

Pelzel argues that under RCW 61.24.030(7), Quality lacked authority to initiate a nonjudicial foreclosure against Pelzel's property on Nationstar's behalf. Again, we disagree.

RCW 61.24.030 provides that "[i]t shall be requisite to a trustee's sale":

> (7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that *the beneficiary is the owner of any promissory note* or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that *the beneficiary is the actual holder of the promissory note* or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.
>
> (b) Unless the trustee has violated his or her duty [of good faith] under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

The note's *holder* is the person or entity entitled to enforce the note. *Trujillo*, 181 Wn. App. at 500. Conversely, the note's *owner* is the person or entity entitled to the note's economic benefits. 181 Wn. App. at 497. Here, Nationstar was the note's holder, but Fannie Mae was the note's owner.

Under RCW 61.24.030(7)(a), a successor trustee needs proof that the beneficiary is the note's *holder*, not that the beneficiary is the note's owner, to initiate a nonjudicial foreclosure. *Trujillo*, 181 Wn. App. at 502. Accordingly, under RCW 61.24.030(7)(b), the declaration from

Nationstar's authorized agent was sufficient proof of Nationstar's status as the note's holder for Quality to initiate a nonjudicial foreclosure against Pelzel's property.

1. RCW 61.24.030(7)(a): *Proof Required To Initiate a Nonjudicial Foreclosure*

Pelzel argues RCW 61.24.030(7)(a) requires a successor trustee to have proof the beneficiary is the note's owner prior to initiating a nonjudicial foreclosure. We disagree.

The first sentence of RCW 61.24.030(7)(a) suggests that the trustee must have proof that the beneficiary is the *owner* of the note. But the second sentence of RCW 61.24.030(7)(a) suggests that a declaration establishing the beneficiary is the actual note's *holder* meets the requirements of the statute.

A note is a negotiable instrument governed by article 3 of the UCC. RCW 62A.3-102. RCW 62A.3-301 of the UCC governs who is entitled to enforce the note. RCW 62A.3-301 provides:

> "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). *A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.*

(Emphasis added.)

In *Trujillo*, consistent with *Bain's* statement that courts should use the UCC to interpret the DTA's terms, Division One applied RCW 62A.3-301 to interpret RCW 61.24.030(7)(a). Division One concluded that despite ambiguity in RCW 61.24.030(7)(a)'s language, it requires a beneficiary's declaration to establish only that the beneficiary is the *note's holder*, regardless of whether the beneficiary is the note's *owner*:

> [RCW 62A.3-301(i)] makes clear . . . the "holder" of a note is entitled to enforce the note. It also makes clear that a "holder" may enforce the note "even though the [holder] is not the owner" of the note.
>
> We have no reason to conclude that the legislature intended to depart from either the common law . . . or the UCC, as articulated in RCW 62A.3-301, in enacting RCW 61.24.030(7)(a) regarding proof of who is entitled to enforce a note that is secured by a deed of trust. The language of the first sentence of RCW 61.24.030(7)(a) could have more clearly stated that a beneficiary who is the owner of a note is not always the holder of the note. The holder is entitled to enforce it. Better still, the legislature could have eliminated any reference to "owner" of the note in this provision because it is the "holder" of the note who is entitled to enforce it, regardless of ownership.
>
> Nevertheless, when we consider the second sentence of this statute, which specifies that the beneficiary must be the holder of the note for purposes of proof, together with the case authority and other related statutes we have discussed, we must conclude that the required proof is that the beneficiary must be the holder of the note. It need not show that it is the owner of the note.

181 Wn. App. at 500-01 (alteration in original).

We adopt Division One's reasoning and hold that proof that the beneficiary is the note's holder is sufficient for a successor trustee to initiate a nonjudicial foreclosure, regardless of whether the beneficiary is the note's owner. Looking to related provisions, this interpretation makes RCW 61.24.030(7)(a) consistent with RCW 61.24.005(2)'s language that defines the "beneficiary" as the "holder." Thus, we hold that under RCW 61.24.030(7)(a), proof that the beneficiary is the note's holder is sufficient for a successor trustee to initiate a nonjudicial foreclosure.

2. *RCW 61.24.030(7)(b): Adequate Proof of Holder Status*

Pelzel argues that under RCW 61.24.030(7)(b), Quality cannot accept a declaration of Nationstar's authorized agent as proof that Nationstar was the note's holder. We disagree.

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RCW 61.24.030(7)(b) states that the beneficiary's declaration is sufficient, but not necessary, to establish proof that the beneficiary is the note's holder, unless the trustee has violated its duty of good faith in some other way. An authorized agent can make declarations on its principal's behalf:

> [T]he fact of the agency being once established by proper evidence, then the acts and declarations of the agent done or made within the scope of his agency, and while employed in or about the business of his principal, are binding upon the principal, for the reason that the acts and declarations of the agent are then deemed to be the acts and declarations of the principal himself.

Ennis v. Smith, 171 Wash. 126, 130, 18 P.2d 1 (1933); *see also State v. Austin*, 65 Wn.2d 916, 920-21, 400 P.2d 603 (1965). Accordingly, we hold that under RCW 61.24.030(7)(b), the declaration of a beneficiary's agent stating the beneficiary is the note's holder is sufficient proof that the beneficiary is the note's holder, unless the trustee has violated its duty of good faith in some other way.

Here, Pelzel does not allege any other way in which Quality violated its duty of good faith as successor trustee. Thus, we reject Pelzel's argument.

D. *MERS's Assignment of the Deed of Trust*

Pelzel argues Quality's initiation of a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf was improper because MERS's assignment of the deed of trust and note to Nationstar was invalid. We reject this argument.

As we discussed above, because Nationstar held the note, Quality was authorized to initiate a nonjudicial foreclose of Pelzel's property on Nationstar's behalf. Under the DTA "a security interest follows the obligation it secures." *In re Butler*, 512 B.R. 643, 656 (Bankr. W.D. Wash. 2014). Thus, the deed of trust (the security interest) followed the note (the obligation the

deed of trust secures) to Nationstar. This is true regardless of whether the deed of trust was assigned properly or at all. *See* 512 B.R. at 656.

Likewise, Nationstar was the note's holder because the note was payable to bearer and Nationstar had physical possession of it, regardless of whether the note was assigned properly or at all. Thus, the validity of MERS's deed of trust or note assignments to Nationstar had no effect on Quality's authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, and Pelzel's argument fails. 512 B.R. at 656.

E. *Servicer or Agent for Fannie Mae*

Pelzel argues that Nationstar's foreclosure was improper because Nationstar did not prove that it was a servicer or agent for the note's owner, Fannie Mae. We disagree.

As the note's holder, Nationstar was the beneficiary entitled to appoint a successor trustee, and Quality had authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, regardless of whether Nationstar owned the note. Accordingly, whether Nationstar was the servicer or agent of the note's owner had no effect on Quality's authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf. Pelzel's claims for declaratory relief under the DTA fail.

II. CPA

Pelzel raises arguments under the DTA and CPA on appeal. In the superior court, Pelzel requested damages and attorney fees against the defendants. After the briefing was filed in this case, our Supreme Court held that absent a completed foreclosure sale, a plaintiff could bring a cause of action for monetary damages for alleged DTA violations under the CPA, but not under the DTA. *Frias v. Asset Foreclosure Servs., Inc.*, 181 Wn.2d 412, 433, 334 P.3d 529 (2014).

Because no completed foreclosure sale occurred in Pelzel's case, we consider Pelzel's claims for damages under only the CPA, not the DTA.

Under Washington's CPA, "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful." RCW 19.86.020. To prevail on a CPA claim, a plaintiff must prove that (1) the defendant engaged in an unfair or deceptive act or practice, (2) the act occurred in trade or commerce, (3) the act affects the public interest, (4) the plaintiff suffered injury to his business or property, and (5) the injury was causally related to the act. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Failure to establish even one of these elements is fatal to the claim. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007).

The CPA does not define the term "deceptive," but implicit in that term is "the understanding that the actor *misrepresented* something of material importance." *Hiner v. Bridgestone/Firestone, Inc.*, 91 Wn. App. 722, 730, 959 P.2d 1158 (1998), *rev'd on other grounds*, 138 Wn.2d 248 (1999). For an unfair or deceptive act, "[a] plaintiff need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public." *Hangman Ridge Training Stables Inc.*, 105 Wn.2d at 785.

Pelzel argues that when Quality initiated the nonjudicial foreclosure (1) the defendants violated the CPA by misrepresenting that Quality had authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, (2) Quality violated the CPA by giving Pelzel a notice of default identifying Nationstar as the note's owner, and (3) MERS violated the CPA by assigning the deed of trust and note to Nationstar as the nominee of Homecomings. We

hold that the defendants did not misrepresent Quality's authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, and we further hold that Pelzel failed to demonstrate how either the Notice of Default's misstatement that Nationstar owned the note or MERS's assignment of the deed of trust on Homecoming's behalf caused him injury.

A. *Quality's Authority To Initiate a Nonjudicial Foreclosure of Pelzel's Property on Nationstar's Behalf*

Pelzel argues the defendants violated the CPA by misrepresenting that Quality had authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf. We disagree.

As we discussed above, Quality had authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf because Nationstar was the note's holder and the deed of trust's beneficiary. Thus, any representation that Quality had authority to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf was a true representation, and thus, not a deceptive act. Pelzel's claim fails.

B. *Notice of Default*

Pelzel argues that Quality violated the CPA by giving Pelzel a notice of default that identified Nationstar as the note's owner, when Nationstar was not the owner. We disagree.

The notice of default properly informed Pelzel that he was in default and that Nationstar was the entity Pelzel should contact. Pelzel provided no evidence or argument as to how the statement that Nationstar was the owner/beneficiary injured him. Because Pelzel provided no evidence that any injury was causally related to the notice of default's misstatement that Nationstar owned the note, he has failed to prove all the necessary elements of a CPA claim, and his CPA claim fails.

C. *Assignment of the Deed of Trust*

Pelzel argues MERS violated the CPA by assigning the deed of trust and note to Nationstar as the nominee of Homecomings because Nationstar already held the note, meaning that MERS no longer had physical possession of the note and Homecomings was no longer the note's beneficiary. Again, we disagree.

As we discussed above, because Nationstar was the beneficiary who held the note, Quality was entitled to initiate a nonjudicial foreclosure of Pelzel's property on Nationstar's behalf, regardless of whether MERS's assignment of the note and deed of trust was valid. *Butler*, 512 B.R. at 656. MERS's assignment of the note and deed of trust directed those who read it to Nationstar, the very entity authorized to enforce the note. Pelzel has provided no evidence or argument how MERS's assignment, even if deceptive, caused Pelzel any injury. Because Pelzel provided no evidence that any injury was causally related to MERS's assignment, he has failed to prove all the necessary elements of a CPA claim, and his CPA claim fails.

ATTORNEY FEES

Pelzel requests attorney fees and costs on appeal under the CPA. Only a prevailing party may recover attorney fees under the CPA. RCW 19.86.090; *Swain v. Colton*, 44 Wn. App. 204, 206-07, 721 P.2d 990 (1986). Here, because Pelzel is not a prevailing party, he is not entitled to attorney fees on appeal. 44 Wn. App. at 206-07.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, P.J.

We concur:

Melnick, J.

Sutton, J.

APPENDIX 1

RCW 61.24.005

(2) "Beneficiary" means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

RCW 61.24.010

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

RCW 61.24.030

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

(8) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the borrower and grantor at their last known addresses by both first-class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on the premises, a copy of the notice, or personally served on the borrower and grantor. This notice shall contain the following information:

. . . . .

(l) In the event the property secured by the deed of trust is residential real property, the name and address of the owner of any promissory notes or other obligations secured by the deed of trust and the name, address, and telephone number of a party acting as a servicer of the obligations secured by the deed of trust.

RCW 61.24.040

(6) The trustee has no obligation to, but may, for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by (a) a public proclamation at the time and place fixed for sale in the notice of sale and if the continuance is beyond the date of sale, by giving notice of the new time and place of the sale by both first class and either certified or registered mail, return receipt requested, to the persons specified in subsection (1)(b)(i) and (ii) of this section to be deposited in the mail (i) not less than four days before the new date fixed for the sale if the sale is continued for up to seven days; or (ii) not more than three days after the date of the continuance by oral proclamation if the sale is continued for more than seven days, or, alternatively, (b) by giving notice of the time and place of the postponed sale in the manner and to the persons specified in subsection (1)(b), (c), (d), and (e) of this section and publishing a copy of such notice once in the newspaper(s) described in subsection (3) of this section, more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given.

RCW 62A.1-201

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title.

RCW 62A.3-301

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.9A-102

(a) **Article 9A definitions.** In this Article:

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold.

(28) "Debtor" means:

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes.

(73) "Secured party" means:

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold.

RCW 62A.9A-203

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability**. Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

OFFICIAL COMMENT 9 TO UCC 9-203

9. Collateral Follows Right to Payment or Performance. Subsection (g) codifies the common law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien. See Restatement (3d), Property (Mortgages) section 5.4(a) (1997). See also section 9-308(e) (analogous rule for perfection).

RCW 62A.9A-313

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging

that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

RCW 64.04.010

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

DECLARATION OF SERVICE

I, Keith Pelzel, certify under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing Petition for Review to be served by first-class mail, postage prepaid, upon the following counsel of record:

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DATED this 26th day of May _____2015.