Original Signed Debt Instruments:

This information was originally written to help with specific foreclosures issues, where the nominal borrower suspects that their mortgage company has sold or transferred the subject debt instrument to an unknown third party, without proper disclosure and authorization. The basic principals outlined herein also apply to many other types of consumer credit loans and credit card debts.

One of the primary issues many are having with foreclosures is being able to relate to the actual reason why it is important to demand the original signed debt instrument. The real reason is not the reason most people think it is. Surprisingly, “copies” of debt instruments can be, and in fact are properly enforced by the courts quite regularly.

First, let's get past what the "debt instrument" is. It used to be simpler, when it was just a common promissory note associated with your mortgage file. Now it may be one of several documents, sometimes none of which are actually called a promissory note, but at least one of which will contain the essential wording necessary to incorporate a promissory note into it. Sometimes this wording (*of the legal characteristics of a promissory note*) is contained within the Loan Application, or it could be contained within the Mortgage Agreement, or in a separate Loan Agreement or sometimes even in the Security Agreement.

The only place it probably won't be is in the Collateral Security Agreement, if a separate one exists. So all of this simply means that although you may never have signed a document specifically entitled "promissory note", you did sign at least one document that contains the legal essence required to constitute a promissory note within it. In any case, that document which contains the wording equivalent to what is required to make a promissory note, whatever it is called, and wherever it may be found within your set of documents, is the actual "debt instrument", and that original signed debt instrument is the one you must be concerned with, because it is the one the bank or mortgage company typically sells or trades to an unknown third party.

Offering to pay the alleged loan in consideration of and in exchange for delivery to you of the "original signed debt instrument" is vital. It is not vital just because only an original can be enforced. Under many circumstances a copy can be enforced. In many mortgages for example, your signature on the agreement pre-authorizes the mortgage company’s reliance upon copies. It is vital to demand the signed original

because production and delivery of the original signed debt instrument proves that the bank did not sell or trade your debt instrument to an unknown third party.

Pretend I loan you $100 and give you a p-note due in 30 days. Then 15 days go by and you need your $100 so you give my note to John Smith for $100. This means you have already been paid. So if you come to collect using a copy of my note, it may not be enforceable because the court will not make an order that would enable you to defraud me by allowing you - the one party to get paid twice, not because I or the court have any concerns about me being forced to pay two parties once each. My private note was made non-transferable, purely by omission of the required clause that could have otherwise made it transferable.

The difference is huge. Look at it this way. What if you did not sell the note to John Smith, but kept the note and I came along and paid you, let you keep my note, and only got a receipt from you. Do you think you could enforce the original signed note now simply because you still possess it? Not a chance, because I can produce the receipt proving I already paid for it once. "Once" is the operative word.

The court will not order anything that could in any way enable any party to get paid twice - that would be a brand new fraud. That brand new fraud would be you getting paid twice. It would not be the potential of two parties getting paid once each. Nor would it be the potential of even the wrong party getting paid first. These types of debt instruments are not transferable without the maker's authorization for this very good reason. Even if I paid the bank against a copy, the unknown third party could not enforce against me even with the original for two reasons - first they obtained my note without my authorization, and second, they are not the secured party named on the note.

There are any number of frauds committed by your bank before they get even close to foreclosure, but unfortunately, you signed their very one-sided mortgage agreements that actually say quite clearly that you either agree, or give permission to your bank to commit all of those frauds - or at least most of them. There are a few that you tacitly agree to, or accept by acquiescence, without knowing it, simply be following the procedures at your lawyer's office, by making your regular payments, and by following procedures at any subsequent court hearings.

This is important to realize and accept, because it is not the job of the judge to stop either party to the contract from committing fraud against the other where the other

party may be seen to have already agreed to it, or given permission for it, or tacitly accepted it. If both parties agree to anything that is fraudulent between them, then that thing is no longer fraudulent - it is now part of a legal contract.

Therefore, the ONLY potential fraud that you would never have agreed to directly, tacitly or otherwise, which is the only potential fraud that is also NOT already pre-agreed to or included in any of the mortgage or security agreements, is the possibility of the bank getting paid twice. If this happened or was ordered, it would be a brand new fraud in the transaction, occurring after the “agreement” of all of the frauds incorporated into the loan documents or into any evidence at any foreclosure proceedings.

This is why you must make formal demand for the bank to produce and deliver the original signed debt instrument in whatever form it was made, as soon as possible if there is a foreclosure proceeding, because their production and delivery of that original signed debt instrument is the only way they can prove that they did not already get paid once by selling or trading your debt instrument to an unknown third party - AND - their production and delivery of it also prevents any possibility of them getting paid twice for one debt. On the other hand, their failure or refusal to produce your original signed note is tantamount to proof that they have sold or transferred it to an unknown third party - AND - it proves they have already been paid once.

Such active failure or refusal to produce and deliver in the face of a *bona fide* offer to pay them, can only be interpreted as an act of admission that they are NOW attempting to defraud you AGAIN - but this time without your direct or tacit agreement or consent, merely by trickery, and this time they are also attempting an abuse of the court and of the legal process by trying to trick the court into granting an order to enable them to defraud you. This is also why the court cannot grant such an order that could only be construed as enabling the bank to commit another brand new fraud against you.

The court can grant orders where both parties have pre-agreed or consented to the various frauds or quasi-frauds contained in the alleged contracts, but the court certainly can't grant an order that enables one party to commit a new fraud against the other, specifically when that party has expressly stated its objection to that new fraud.

The sad part is, if you don't EXPRESSLY state that the reason why you are demanding the production and delivery of your original signed debt instrument, is because you object to the bank defrauding you and getting paid twice, then it will be perceived by the court and pursuant to the court's rules, by your acquiescence on that matter, that you have accepted and agreed to them being paid twice - even if you have never said so directly, and then the court can actually grant an order allowing you to be defrauded by your bank because you have according to their rules, accepted it.

Even if you state quite clearly that it is your belief that the bank cannot and therefore should not be allowed to enforce only copies of your debt instrument, the court will rule against you - because under the right circumstances, even copies are enforceable - and you may well have agreed to it in your own mortgage documents.

So now if you properly present this issue to the bank directly (*by asking the simple questions in writing*) before a foreclosure proceeding, they will pretend not to understand your questions and make all kinds of silly responses to try and confuse you or trick you into arguing some other issue, thereby causing your tacit acceptance of their non-response on the double payment issue. Or, if you present this issue properly at a hearing during a foreclosure proceeding, they and often even the judge will cleverly try to change topics or confuse you into accidentally defending another issue, which may according to their rules of procedure, cause you to tacitly accept the double payment issue again.

Proper presentment and proper follow-up of these points is essential, and if done correctly in either instance, even if it did not cause an immediate settlement or dismissal of claim, it may subsequently enable either a successful civil claim to enforce a settlement agreement, or it may enable an appeal to a higher level of court or legal intervention process for settlement.

If you have presented it properly in either instance, and particularly if you have done so in a court hearing, and won - then great. If you were tricked, well then you have to review and summarize your proper presentment for intervention to the next level of administrative remedy, which may be your provincial Attorney General or the federal one, or maybe even the Governor General if the fraud was blatant enough.

This is also the stage where you can properly stand on your Crown Grant and rely upon its protection. But you had better fully comprehend the importance of WHY you

have been asking for the production and delivery of your original debt instrument - not because of its enforceability, but simply because it prevents the enabling of a brand new fraud of being paid twice for one debt (*and it prevents the court from being inadvertently complicit with the bank's attempted fraudulent scheme*).

There are times when it is appropriate in legal proceedings to demand production and delivery of certified true copies of the original signed debt instrument including but not limited to all mortgage and loan applications, credit line agreements, loan and mortgage agreements, security agreements and collateral security agreements and any other documents which are the property of and belong to you (*Defendant/Respondent/etc.*), hereinafter the “Documents”, to be produced and delivered to the court for example, as evidence that the mortgage company remains in possession and control of the original signed Documents at the time the demand was made.

At all times during your attempt to settle such a matter, you must with supporting evidence where available, make it perfectly clear to your mortgage lender, and their lawyers and the court, if applicable, that you remain ready, willing and able to pay the entire balance of the alleged debt in consideration of and in immediate exchange for their production and delivery of the original signed debt instrument. You may even make such an offer to the court into a formal fiduciary relationship with them by offering to pay your balance to the court to hold and administer on these conditions (*that the court not release your payment until the original signed Documents are delivered to the court and approved*).

The idea here, is to ensure that you generate the circumstances where the onus is on the bank to prove they did not sell or trade your original signed Documents, rather than on you attempting to prove they did.

But any demand you make for production and delivery of the Documents may not provide any remedy unless it is supported by the explanation that the demand will also serve to prove that the mortgage company has not sold or traded the subject Documents to an unknown third party, and that the effects of the demand will also serve to protect the court from the Petitioner’s attempt to cause the court to grant an order that would enable the Petitioner to commit a new fraud against you. The court needs to know that you are cognizant of these two things.