

# TOP TIPS

## THE NOTE AND DEED OF TRUST

### *(Team Perspective)*

- ❖ The promissory note or (lien note) is the borrower's unconditional promise to repay.
- ❖ The term "mortgage" is a pledge of real estate as security for repayment of a debt.
- ❖ In Title Theory States, a "mortgage" is the transfer of ownership from borrower to lender. Upon repayment, title is transferred back to the borrower.
- ❖ Texas is a Lien Theory State. The borrower has ownership (by way of Warranty Deed) subject to the lien note and Deed of Trust.
- ❖ The Deed of Trust (the form of mortgage that we use in Texas) is a 3-party instrument. It consists of the borrower, the lender and trustee.
- ❖ We know what the borrower (grantor) and the lender (grantee) do. In the DOT the grantor conveys the property to the trustee.
- ❖ The trustee is a 3<sup>rd</sup> party fiduciary, who's major role is to hold the property in trust. Release the Deed of Trust upon repayment or foreclose upon default, if instructed by the lender.
- ❖ Warranty Deeds and the Deed of Trust are recorded instruments. Promissory Notes are generally not recorded.
- ❖ The original copy of the Deed is usually returned to the borrower after recording. The original Deed of Trust and Assignment are usually returned to the lender after recording.
- ❖ The primary practical difference between mortgage and DOT states is the foreclosure process. Judicial vs non-judicial. In Texas most foreclosures are non-judicial.

