

No Note? No Problem: Rhode Island Supreme Court Decides that Mortgagees Can Foreclose Without One

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The Rhode Island Supreme Court has strengthened the hand of foreclosing mortgage lenders who do not possess the original promissory note. Before the Court's recent decision in [Porch Swing Holdings, LLC v. Wayne A. Mallory](#), mortgage lenders lacking possession of the original note and instead relying on a lost note affidavit executed by a prior holder were largely out of luck in Rhode Island. This is because the state's legislature has not adopted the 2003 revision of the Uniform Commercial Code (UCC), which allows lenders to enforce notes lost by their predecessors in interest.

The *Porch Swing* decision now not only removes obstacles to lost note enforcement under the pre-2003 UCC law in Rhode Island, but also entirely eliminates any requirement that a mortgage lender demonstrate possession of the promissory note through which a borrower promises to repay this secured loan in order to foreclose upon real estate in Rhode Island.

Case Background

The borrower signed a promissory note in January 2006, through which he promised to repay a \$28,000 loan he obtained from Sovereign Bank. He secured repayment of the loan with a mortgage on a property located in Smithfield, Rhode Island. The borrower's loan was transferred through a series of sales to Porch Swing Holdings, which elected to pursue a judicial foreclosure in Rhode Island state court following Mallory's default and failure to cure. The parties agreed on the following facts:

- a) Porch Swing did not hold the original note,
- b) the original note was lost, and

c) *Porch Swing* was merely the holder of a lost note affidavit that a prior holder executed. The parties also agreed that *Porch Swing* possessed the mortgage.

The Rhode Island Supreme Court affirmed summary judgment in favor of *Porch Swing*, concluding that the mortgage was the legal instrument through which foreclosure was pursued, and *Porch Swing*'s possession of the mortgage was sufficient in the eyes of the Court to allow foreclosure to proceed. Moreover, the Court explicitly rejected the borrower's argument that a mortgagee can foreclose in Rhode Island only if the borrower defaults on a promissory note that either the mortgage lender or the lender's agent holds.

Significance of the Decision on Rhode Island Foreclosure Law

The decision in *Porch Swing* is something of a surprise, even a shock. Lost note cases in Rhode Island have largely been lost causes ever since [SMS Financial XXV, LLC v. David Corsetti](#), where the Rhode Island Supreme Court concluded that a transferee of a loan who had never held the note was not entitled to enforce a lost note.

As recently as 2019, in [Note Capital v. Perretta](#), the Rhode Island Supreme Court considered the mere existence of varying scans of a single promissory note to be a genuine issue of material fact that called into question a mortgage lender's authority to enforce the note through foreclosure of the mortgage securing its repayment.

Porch Swing zags where *Note Capital* zigged. Indeed, *Porch Swing* zags with gusto, with the Court stating that precedent left no doubt concerning the resolution of this matter; *Porch Swing* maintained the authority to foreclose on the mortgage even in the absence of its possession of the promissory note.

This decision, however, does not come completely out of the blue. In 2019, the Rhode Island Supreme Court found that differing scans, hole punches, and staple marks raised enough questions about the "authenticity" of a promissory note to preclude entry of summary judgment in *Note Capital*. However, in 2021, the Rhode Island Supreme Court concluded in [Ocwen Loan Servicing v. Medina](#) that a mortgagee does not need to hold the promissory note in order to foreclose on property in reliance on a 2017 decision, [Pimental v. Deutsche Bank National Trust Company](#).

Porch Swing, however, is not concerned with staples, hole punches, stamps, or any of the other artifacts that accumulate on and around an original promissory note as it is transferred, conveyed, and scanned over the life of a loan. The Court instead adopted the Superior Court decision wholesale, concluding that any argument that possession of the note is required to foreclose fails as a matter of law.

This decision appears to be a departure from the line of cases stemming from [Bucci v. Lehman Bros](#), which has consistently held or strongly intimated that a mortgagee must be acting on behalf of or as an agent of the holder of a promissory note. That's because it is. It would not be surprising for a new case to come down and narrow *Porch Swing*'s holding, but for now, mortgagees holding lost notes should swing for the fences.

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