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**Panel One: Securitization & Governance**

**Private-label Residential Mortgage Securitization:  
Recording Innovations and Bankruptcy Remoteness\***

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*The following is a working abstract, for current and updated papers and resources visit [our panel webpage](#).*

A central tenet of asset securitization in the United States – that assets are bankruptcy remote from their sponsors – may be threatened by important and recent innovations in the transfer and assignment of mortgage loans into the private-label secondary mortgage market. This paper focuses on the economics of private-label residential mortgage securitization in which loan transfers to special purpose vehicles (SPVs) are eligible for sale accounting treatment under Financial Accounting Standards (FAS 140). Sale accounting eligibility requires that (i) there has been a “true sale” of the assets to the SPV and (ii) that on the bankruptcy of the sponsor, the sponsor’s creditors have no recourse to the assets of the SPV and *vice versa*. We review the transfer methods that are currently in place to assure that the promissary note and the mortgage are, indeed, bankruptcy remote from the originator, sponsor, and depositor and discuss the operation of this chain of title transfer using the traditional recorded assignment and transfer process and the more recently introduced Mortgage Electronic Registration System (MERS). We then review the scholarly and case law theories that seek to establish whether these methods are legally sufficient to achieve bankruptcy remoteness either generically or in practice. We then track the evolution these legal transfer theories as they are articulated in the Pooling and Servicing Agreements of private-label securitization deals from 2005 through 2007. Finally, we summarize how the ambiguity in the current state of electronic-transfer practices may not meet a true standard of bankruptcy remoteness either because of its actual implementation or because of the rapidly evolving case law on the federal and state law standing of these practices.

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