

Holder in Due Course Analysis  
(TWH Draft 4/16/13)

HDC  
Principles

Holder in Due Course of Negotiable  
Instrument Originated After  
Enactment

Takes free of liens/adverse claims to  
the instrument (3-306)

NO CHANGE  
PROPOSED

Takes subject to core defenses like  
infancy, duress, capacity, illegality,  
fraud that induced signature 3-305(b)

NO CHANGE  
PROPOSED

Takes free of other defenses like  
general fraud, misrepresentation,  
lack of consideration,  
unconscionability 3-305(b)

UNDER DISCUSSION  
A. May not foreclose if  
these defenses are present.  
B. May not foreclose or  
enforce if these defenses  
are present.  
c. No change.

Other  
Transferee  
Liability

As a matter of other law, is  
generally **not** subject to out of  
pocket liability for damages and  
claims arising out of lender actions  
prior to becoming the holder of the  
note above and beyond the loss of  
amounts due on instrument

PROPOSED CHANGE TO  
CREATE EXPANDED  
TRANSFEREE LIABILITY  
REJECTED APRIL 2013;  
DRAFT FORECLOSURE LAW  
WILL INCLUDE REMEDIES  
FOR FORECLOSURE  
VIOLATIONS, BUT WILL NOT  
INCLUDE STAND-ALONE  
REMEDIES FOR VIOLATIONS  
OF OTHER LAW.