

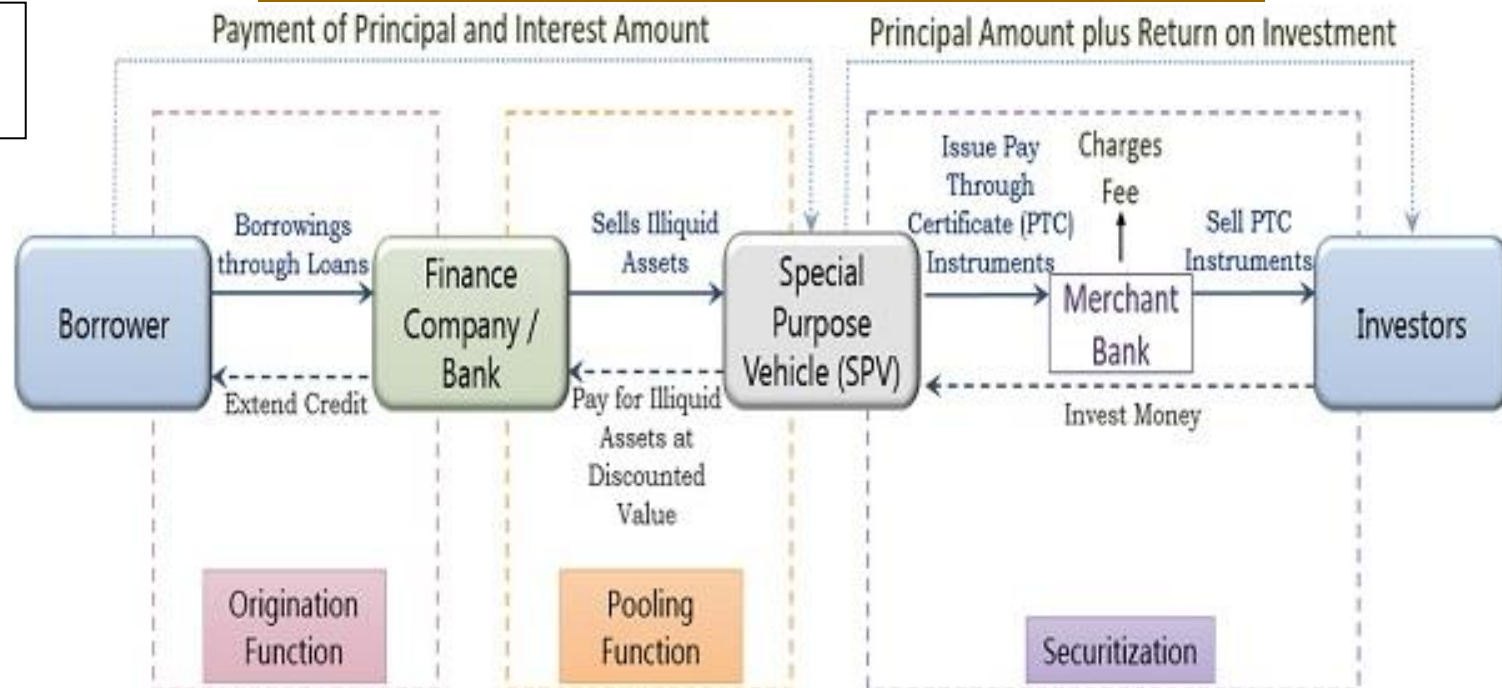
Quick Summary of the **Repossession Rights Scam** in Securitisation

Compiled by Leon Ashby (with help from many others)

- Securitisation is when Banks convert a bunch of Mortgaged loans into Tradable Securities (Bonds) to raise funds and reduce their Liabilities.
- Most of the time it is done without the knowledge of the Borrower.

Securitisation Process

A diagram of Securitisation which gives the appearance of fairness



- Bank Victims have discovered Securitisation has a “**Repossession Rights Scam**” involved
- It allows Banks to be paid twice when they should only be paid once.

How Banks get paid the first time

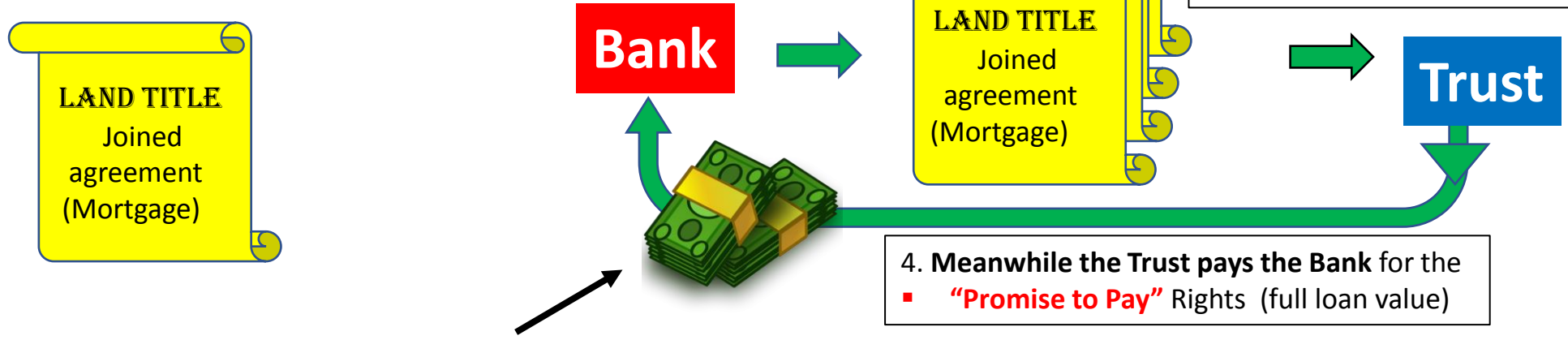
1. Hundreds of Mortgages are signed up
 A Mortgage is

- a **promise to pay** (e.g. \$X / month for YZ Years)
- If payments don't get payed, the Bank can “**Sell up**” the mortgaged property

2. Under Securitisation
 The Bank bundles together many Mortgages and sells them to a # Trust

3. & the Mortgage is “supposedly” split so

- The Trust can sell the **promise to pay** rights
- But the Bank “supposedly” keeps the Rights to “**sell up**” the property (**Repossession rights**)



▪ At this point, the Banks are first paid for a loan (because the loan has been sold to the Trust)

▪ Then, if the loan goes bad (is in default), the banks can sell up the property **and be paid the loan value a second time**

Trust - A special type of legal arrangement just for securitization. It holds all the loans together and re issues the funds in amounts for investors to purchase.
 * Bonds – The Bonds or notes that are an agreement the Trust offers an investor - much like shares are traded. They give the investor a return (more or less principle & interest)

So why is this a Scam ?

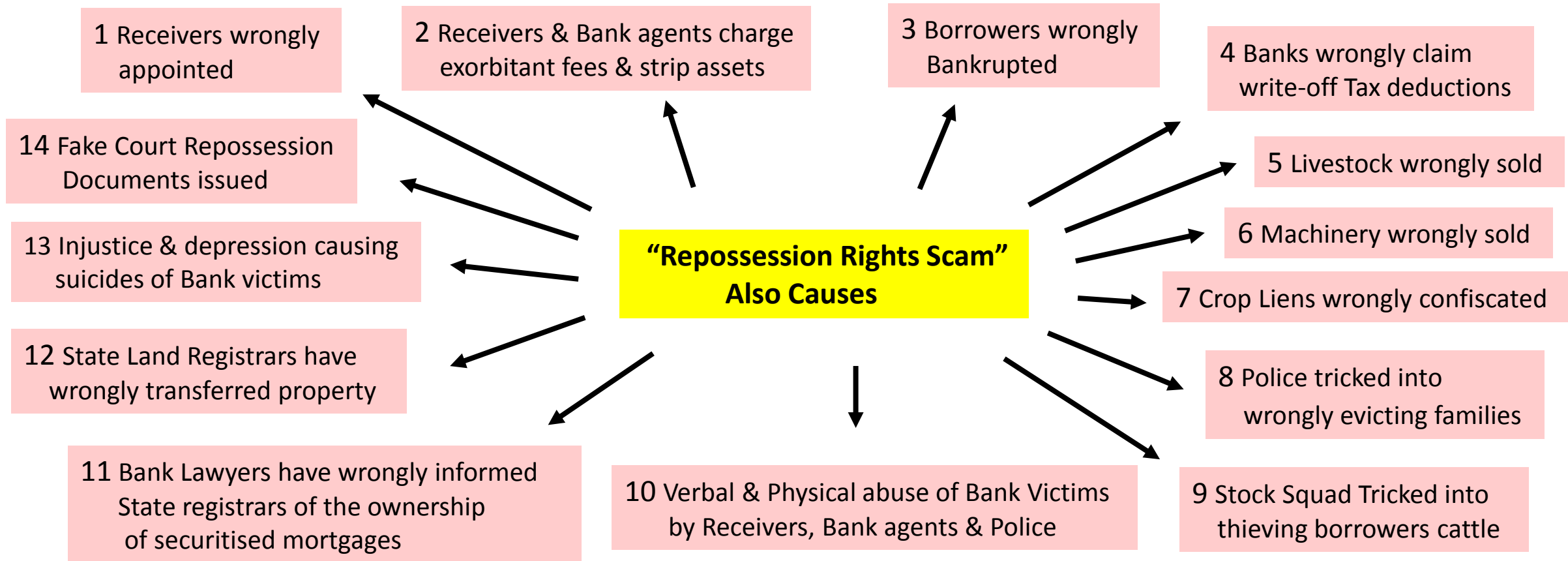
- A Scam involves being tricked into a “Rip off”.
- Banks claim repossession rights they shouldn't have - to be twice paid for Loans which they have sold.

What is happening in legal terms ?

- 1) Banks claim they can sell “the mortgaged Loan” as an ‘**Equitable title**’ to a Trust - but keep the **Repossession rights and Power of Attorney rights**.
 - **The Repossession rights** allow a bank to repossess and sell the borrowers assets
 - However the **splitting of the mortgage** so the **Beneficial / Promise to Pay** Rights can be sold - *appears to extinguish the Repossession rights*
 - A Court case *DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)* (1980) said Legal (**Repossession rights**) & Equitable Titles (**beneficial / promise to pay rights**) cannot be split and held separately.
 - Uni Study Guides NSW also says Legal and Equitable title cannot be split and cites the above case.
- 2) Morally the Splitting of the **Promise to Pay** Rights from the **Repossession Rights and retaining them separately** is Immoral.
 - **After you sell your car – do you have the right to repossess it and sell it a second time ? - No you don't**
 - Why should a Bank who has sold your **promise to pay** rights (& in the process collects full value of the loan) be able to “**double dip**” and **repossess and sell up your property** to obtain the loan amount a second time?
- 3) Banks apparently believe claiming **Repossession Rights and Power of Attorney rights** are fair and proper on a Nil Mortgage –
 - **A Nil Mortgage is when the paperwork for a mortgage exists but the amount owed is zero.**
 - **So once a Mortgage is “paid out” (by the Trust) – it is a Nil Mortgage and Legally the Repossession rights should be extinguished..**
 - We maintain there are three court cases which support the concept of a Nil Mortgage not being a Mortgage hence repossession is not enforceable
 1. *Perpetual Trustees Victoria LTD v Tsai* 2004 NSWSC 745,
 2. *Printy v Provident Capital Limited & Anor* [2007] NSWSC 287.
 3. *Sabah Yazgi v Permanent Custodians Limited* [2007] NSWCA 240.
 - **Therefore we conclude No Repossession rights or Power of Attorney rights are justified on any Securitised loan.**

Are there other compounding consequences of this Scam?

Yes – Here are 14 consequences – But there are more than these.



But if someone borrows funds – Surely they should pay for any defaults on that loan?

- 1) Yes – when the **Promise to pay rights** & **Repossession rights** are still tied together – (in a genuine Mortgage)
- 2) But at Securitisation the two rights do **not** remain “tied together”. Legally & morally the **Repossession rights are extinguished**

But how do Lenders (Bondholders) get fairness if a default (non payment) occurs?

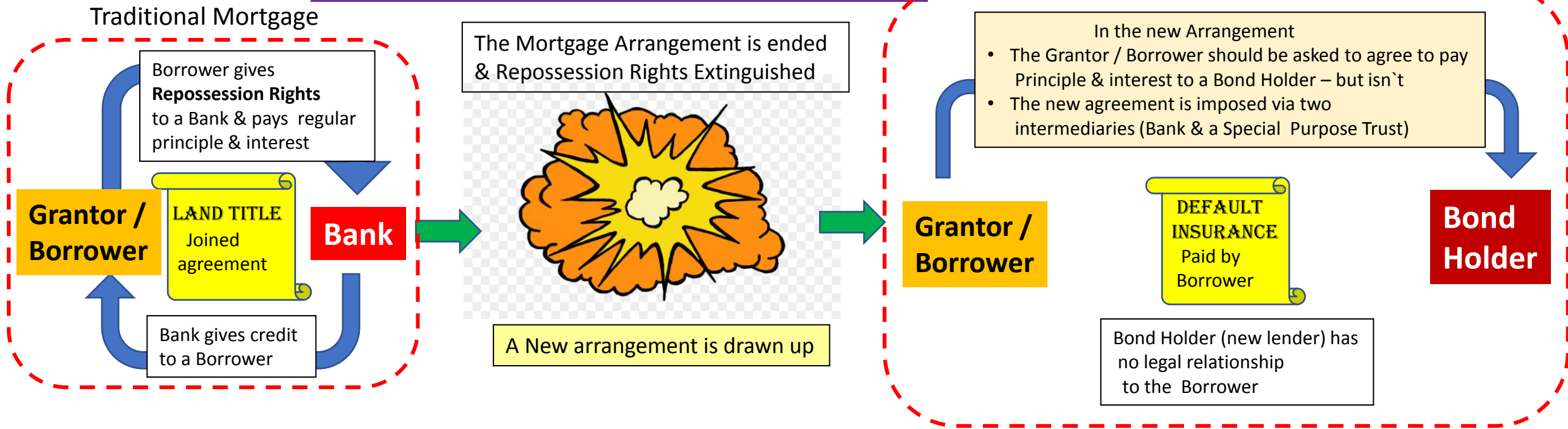
- 1) The **Borrowers pay for default insurance to cover the new Lenders (Bond Holders) Losses.**
- 2) The Bond Holders collect the insurance payout when a default occurs, therefore no one is harmed by a default.
- 3) **In effect – At Securitisation, the protection (security) to the lender changes from a “Mortgage system” to an “Insurance system”.**
Therefore **Repossession rights and Power of Attorney Rights are extinguished at securitisation.**

So are you saying the Securitisation system has a different way of being fair and just without Repossession Rights being required?

- 1) Yes – Its about the default insurance (across hundreds of loans) being organised to do the “harm nullifying” job that Individual repossession rights normally do (in the case of an individual mortgage arrangement).
- 2) Therefore **the Banks have RORTED AND SCAMMED THE SYSTEM** simply because they have conned everyone into thinking Securitisation is the same system as a Mortgage system.
- 3) **The Banks are scamming Customers without telling them their loan is not with the bank anymore.**

So how do Banks say Securitisation works?

The 1st explanation is by Novation

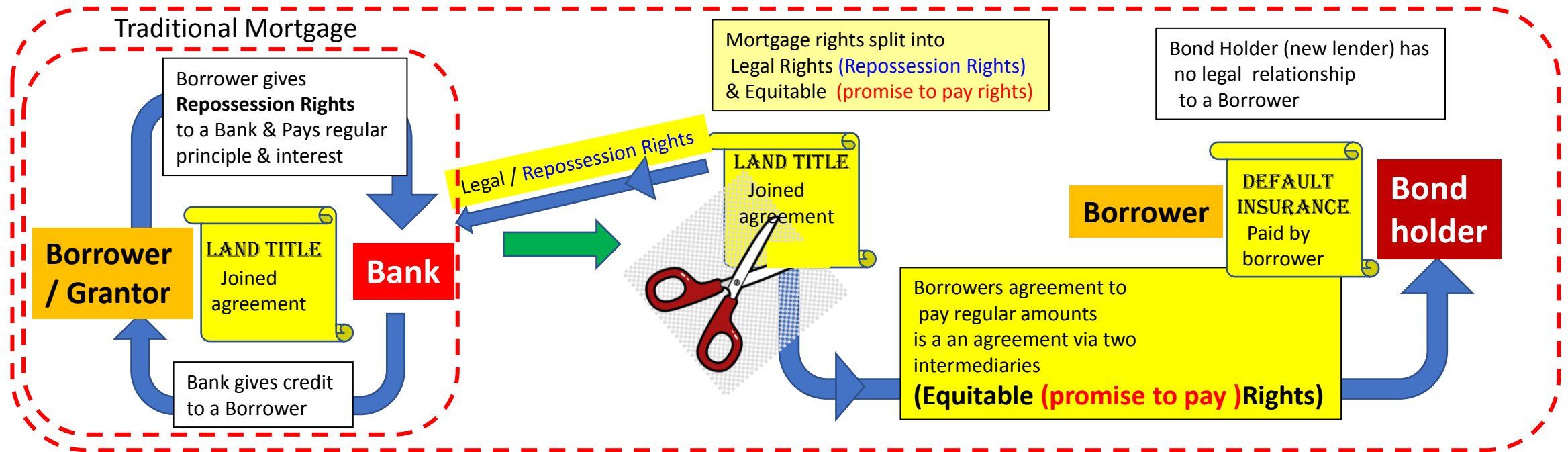


- Under Novation, the Repossession Rights do not get transferred to anyone –
- Nor do they remain with the bank (they disappear / are extinguished) – See Article By Dr Pelma Rajapakse AFR June 2011
 - a. via Novation, the Mortgage ceases / ends so a new (Bond selling) system can begin.
 - b. When the Mortgage ceases, the previous ‘tie ups of rights’ cease / end.
 - c. If (for argument sake) the new process was to “tie together” the old Repossession Rights to the bond,
 - d. That arrangement would need to be established with the Borrower’s express agreement and consent.
 - e. That never happens (although it could be possible).

The 2nd explanation is via Assignment

- Banks claim they can create Bonds via **Assignment** - “splitting Mortgage rights” into “Equitable (**promise to pay**) Rights” & “Legal (**Repossession**) Rights”
- While this is a fiction, I will indulge the idea to explain why the Banks explanation is flawed.
- **“Legal (Repossession) Rights” need to stay tied to a loan /debt to exist. Via securitisation that doesn’t happen.** This is where the Bank’s idea falls apart.
- This was discussed in *DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties (NSW)* (1980) - **Legal & Equitable Titles cannot be split**
- It essentially says “The owner of a property cannot keep **equitable title** in a property whilst transferring **legal title** to another”
- That strongly implies a bank also cannot keep the **legal title** while selling the **equitable title** either.

Securitisation via Assignment



- **The Assignment method has the Bank holding Repossession Rights with no justification of a debt** (*because the Trust paid the Bank for the loan*)
- This is evidenced by the Bank (legally & correctly) removing the **debt / loan** from it’s financial reporting books (therefore it is a Nil Mortgage)
- APRA’s Prudential Practice guide APG 120 securitisation chapter two on separation and disclosure says **the Trust owns the assets, (not the Bank)**
- So if the Bank still has **Repossession Rights**, it does so without the Borrower owing the Bank a cent. (An Immoral thing to do)

What other issues related with The Repossession Rights Scam need to be understood?

- 1) The recognition Borrowers are also Grantors of their assets to Trusts –
 - Therefore Borrowers should be seen and treated as partners in gaining profits from Securitisation
 - This includes sharing revenue from income gained from the sale of Carbon Credits linked to a property.
 - Also the fact the Grantor **NEVER agreed** to **waive his rights** to receiving a “fair share” of Assets profits with the Trust.
- 2) The recognition that **Power of Attorney Rights** are also **extinguished** once a loan is Securitised.
 - Therefore there is no lawful Power of Attorney given by the Grantor/Owner, appointing the Bank as Attorney, to act in a land transaction. (So the whole Land transferring process is done illegally and Immorally.)
- 3) The recognition Securitised loans cannot be returned (reversed) to individual Mortgage loans e.g. as explained in
 - **Beconwood Securities Pty Ltd v ANZ Banking Group Limited [2008].**
- 4) The recognition that **at the moment of Securitisation, Banks are not the Mortgagee any more**, but become a “servicer” of the Securitised portfolio of loans.
- 5) It appears the Federal Government has Guaranteed Banks via guaranteeing Bond Holders will not be out of pocket if insurance companies collapse from too many defaults occurring.
- 6) Many hard working families have been ruined & devastated by tricks performed on them by their Banks e.g. “technical defaults” performed on their Securitised loans.
 - While Borrowers with substantial assets were still meeting their payments, the bank demanded they pay for a new property valuation.
 - The new valuation (performed by a complicit valuer) showed the Borrowers loan value ration (LVR) was deficient – thereby they were in “technical default” and were subsequently sold up with no surplus funds, and became financially destroyed.
- 7) The **bankruptcy of the Grantor/Owner allows the Bank to claim tax “write offs” from the ATO**, for an alleged unpaid debt/loan.
 - This makes the ATO complicit in these unlawful foreclosures.
- 8) **Logically All Assets wrongly confiscated must be returned or refunded to remedy some of the injustices to wrongly “sold up” Borrowers.**

About the Author - Leon Ashby



- Born 1959 at Mt Gambier SA, into dairy & fat lamb Farming and Rock lobster fishing family
- Married to Jane with 5 children and 6 grandchildren.
- Studied Science at Flinders University (SA) 1977
- Mt Gambier Dairy farmer and Irrigator 1978 – 89
- Owned and ran 14,000 Ha Qld grazing property near Aramac 1989 – 2001
- Runner up in 1999 Qld Landcare Research Award for designing a 10,000 ha Waterspreading Project.
- Convenor of Landholders Institute, Australia wide environmental & pro development email group 2000 – 2005
- Collaborated on “Watering Australia” irrigation ideas with former WA Independent MP Ernie Bridge 2000
- Awarded Centenary Medal for services to Conservation and the Environment 2001
- SA Senate candidate in 2010, 2013 - narrowly missing election in 2013
- Water, Rural industry, Property Rights and Banking advisor to two Qld Senators 2016 – 19
- Written many probing questions used by Senators in Senate Estimates & Senate Inquiries
- Convenor of Bank Victims News & Views which discusses banking issues with over 300 bank victims

The Research which has come together for this article is the result of Dozens of others. Leon is merely the compiler.
Contact: Leonnashby@gmail.com