

FUND FINANCE FRIDAY

Promissory Notes in Fund Finance

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When a promissory note is lost, the obligation to repay a loan continues, and the lender may “re-establish” the note so long as it has not sold or transferred the note, writes our colleague Susan Vuernick in ["Don't Lose It over a Lost Promissory Note"](#) in Cadwalader's *REF News and Views*. She goes on to review recent case law on lost notes arising in the context of real estate foreclosures. The article provides a helpful guide to the significance of a lost note and potential curative steps.

Of course, in the fund finance context, as with syndicated commercial credit facilities more broadly, there is no strict legal requirement for a note, and the primary benefit – a note’s usefulness as a negotiable instrument that a holder in due course can take free and clear of certain claims and defenses – is not available when the note does not contain all essential terms of the repayment and an unconditional promise to repay. Not surprisingly, a number of lenders have concluded that the additional administrative burden associated with notes outweighs the potential benefits.