

"Confession of judgement": *First, in its broader sense, it refers to a type of contract (or a clause with such a provision) in which a party agrees to let the other party enter a judgment against him or her. Such contracts are highly controversial and may be invalidated as a violation of due process by courts, since the obligor is essentially contracting away his right to raise any legitimate defenses.^[1]*

"Realize on": *To liquidate, such as an asset. "How much did you realize on that car you sold."*

UNIFORM COMMERCIAL CODE

U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS
..PART 1. GENERAL PROVISIONS AND DEFINITIONS

3-104. NEGOTIABLE INSTRUMENT.

- (a) Except as provided in subsections (c) and (d), "**negotiable instrument**" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
 - (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - (2) is payable on demand or at a definite time; and
 - (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.
- (b) "**Instrument**" means a negotiable instrument.
- (c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.
- (d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this Article.
- (e) An instrument is a "**note**" if it is a promise and is a "**draft**" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

- (f) "**Check**" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."
- (g) "**Cashier's check**" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.
- (h) "**Teller's check**" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.
- (i) "**Traveler's check**" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.
- (j) "**Certificate of deposit**" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

2010 California Code

Code of Civil Procedure

Chapter 1. Confession Of Judgment Without Action

CODE OF CIVIL PROCEDURE

SECTION 1132-1134

1132. (a) A judgment by confession may be entered without action either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed by this chapter. Such judgment may be entered in any superior court.

(b) A judgment by confession shall be entered only if an attorney independently representing the defendant signs a certificate that the attorney has examined the proposed judgment and has advised the defendant with respect to the waiver of rights and defenses under the confession of judgment procedure and has advised the defendant to utilize the confession of judgment procedure. The certificate shall be filed with the filing of the statement required by Section 1133.

1133. A statement in writing must be made, signed by the defendant, and verified by his oath, to the following effect:

1. It must authorize the entry of judgment for a specified sum;
2. If it be for money due, or to become due, it must state concisely the facts out of which it arose, and show that the sum confessed therefor is justly due, or to become due;
3. If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability, and show that the sum confessed therefore does not exceed the same.

1134. (a) The statement required by Section 1133 shall be filed with the clerk of the court in which the judgment is to be entered, who must endorse upon it, and enter a judgment of the court for the amount confessed with the costs provided in subdivision (b).

(b) At the time of filing, the plaintiff shall pay as court costs that shall become a part of the judgment the fee as provided in subdivision (b) of Section 70626 of the Government Code. No fee shall be collected from the defendant..

(c) The statement and affidavit, with the judgment endorsed thereon, together with the certificate filed pursuant to Section 1132, becomes the judgment roll.

My notes:

1. Yellow: All promissory notes are are collected by "trustee sale." Thus all trustee sales are confessions of judgment or realized on or dispose of collateral, This is legal in CA under UCC-3-104 (a) (3) (ii). However it is not legal in many states, those states are called judicial foreclosure states.

2. Pink. **CODE OF CIVIL PROCEDURE SECTION 1132** (a) A judgment by confession may be entered without action. This means that it is legal to dispose of collateral without going to court.

3. Green. However, it must comply with **CODE OF CIVIL PROCEDURE SECTION 1132** (b). I have never even heard of this being done, however if it was it would be a lawful action. However if it is not done, it violates UCC-3104 (a) (3) (ii) and thus violating the provisions required in order for the promissory note to be considered a negotiable instrument.

4. Investopedia defines 'Non-Negotiable' as:

1. When an asking price is considered non-negotiable, it means that you cannot try to change the price as it has been firmly established.
2. Securities and products that are considered non-negotiable cannot be transferred from one party to the next and thus are typically illiquid. An example of a non-negotiable instrument would be a government savings bond. These can only be redeemed by the owner of the bond and are not allowed to be sold to other parties.

Once the note is transferred it detaches itself from the trust deed and may be assigned however never foreclosed on.

The assignee of the note now becomes the holder in due course of the note and the note will "Transfer free of equities." This means the holder in due course can hold better title than the party he obtains it from, the holder.

I know there are much better examples than this, but this is one kind of came to me off the top of my head.

For example, if somebody writes a check to buy a car from and dealer, and then the guy sells the car to a new guy and then the check bounces, the new guy retains all the benefits of the car and drops the liability from it as it "transfers free of equities" or recourse from the original contract.

Meaning the dealer or "holder" of the bad check can't go to the new guy, the "holder in due course" of the car and collect on the terms of the contract with the "maker" who wrote the bad check.

So moving from the position of being a mere holder to a holder in due course can have its advantages. However buy becoming a holder in due course, you have a disadvantage too.

In the car example, let's say the car is a complete lemon and it makes the holder in due course pissed as all hell. He can only go back to the dealer and seek recourse, not the maker. So now let's say the dealer says, "well I can give you his bounced check though and I will assign my rights to sue to you."

So now the holder in due course of the car can sue him, and he will win a judgment against you. However, he cannot go down to the bank and say, "hey I have this bounced check in my hand which was legally assigned to me and I want to cash it."

However, once the check goes to the dealers bank and is stamped non-sufficient funds and returned, the check becomes, "functus officio." Which means that it has served it's official function (the guy who wrote the check to get the car) and therefore becomes non-negotiable.

So even though the holder in due course has the right to sue for the value of the check, he can't sue for the check itself as it is worthless to anybody except the payee. **He can sue for performance and he will be able to get a judgment on you however he has no recourse other than through the courts (i.e. no confession of judgment, no Trustee Sale.)**

Meanwhile, the trust deed which clouds title can easily be removed by a quiet title action in court, thus leaving the property free and clear, however the original the judgment the holder in due course got will eventually attach to the house, IF STILL OWNED, if it is sold, the judgment can't attach to the house.

The Supreme Law of the land? The United States Constitution.

The Fifth Amendment, provides in pertinent part that "nor be deprived of life, liberty, or property, without due process of law..." Due process is denied when a meaningful hearing is denied as in this cause.

The Seventh Amendment, provides in pertinent part that "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved..."

The Fourteenth Amendment Due Process Clause and Equal Protection clause (Section 1), expressly declares no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..."

The Fourteenth Amendment, Section 3, provides in pertinent part that "No person shall hold any office, civil or military, under the United States or under any State.....who, having previously taken an oath,....as an executive or judicial officer of any State to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same...."