WILLIAMSON COUNTY, TEXAS

REAL PROPERTY RECORDS AUDIT REPORT

JANUARY 29, 2013

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ATTACHMENTS

EXECUTIVE SUMMARY

Mortgage Electronic Registration Systems, Inc. ("MERS") is an electronic database set up by major banks to facilitate transfers of residential mortgage-backed securities outside the purview of county land records. MERSCORP Holdings, Inc. owns MERS. MERS has no employees. Employees of mortgage lenders and mortgage servicers sign MERS documents as officers of MERS although they are not, in fact, officers or employees of MERS.

Alarmed by information she obtained about the impact of MERS' practices upon the accuracy and reliability of the public records under her responsibility, Nancy Rister, Williamson County Clerk, commissioned this audit to evaluate the condition of affected documents in the Williamson County property records. In order to determine the effect of MERS' practices, a representative sample of records involving MERS was analyzed and the results of that analysis compiled.

There were 5,782 MERS-related assignments filed in the real property records of Williamson County during the target audit period from October 9, 2010 through October 9, 2012. The audit involved the detailed review of 1,576 assignments and associated documents. Problems found with MERS' practices have been grouped into three main areas. Nearly every document reviewed by the audit team involved one or more of the following:

1. Robosigning (fraudulent verifications of the contents of unread documents)
2. Wholesale document fabrication
3. Mortgage assignment issues
    a. Use of MERS as nominee for lender and lender's successors without naming the lender of record or the lender claiming an interest in the property
    b. Use of MERS for signors to assign an interest in the property to themselves
    c. Use of MERS agents to slander title to property; impose potential double liability on property owners; release and re-convey property through document manufacturers; to issue potentially or fatally flawed warranty and trustee's deeds and to appear to appoint themselves as substitute trustees

Mandatory notices of acceleration and posting for foreclosure required by Texas statutes were frequently not filed with the Clerk's office. MERS' failure to abide by Texas statutes had a further, pernicious impact: the failure to legally record changes to mortgages resulted in millions of dollars in lost revenue to Williamson County as MERS' privately tracked mortgages were not subject to the recording fees. While the audit does not purport to assign blame or assess specific monetary damage, attempts have been made to clarify the issues discussed above. Further investigation of these issues by the proper authorities within this jurisdiction is recommended.

This summary was prepared by David Krieger, Managing Partner of DK Consultants LLC. DK Consultants specializes in chain of title assessments and land record audits. David Rogers, an Austin attorney who handles foreclosure-related matters rendered the legal opinion.

AUDIT DISCLAIMER: In all instances in this audit report (and for all intents and purposes), the results produced and the explanations provided should not be construed to be the rendering of legal advice nor should they be construed to guarantee a legal outcome. Further, this study reflects the opinions of the Audit Team and does not directly reflect the opinions of any party involved in the commissioning of this study. The legal opinion as provided should be taken as the attorney's sole opinion for the results of this audit and also do not constitute legal advice or guarantee a legal outcome.

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INTRODUCTION

The subject audit's target period was from October 9, 2010 to October 9, 2012 and this audit was formally commissioned by Nancy E. Rister, the County Clerk of Williamson County, Texas. The study involved the partial review of the 5,782 assignments that were effectuated by agents of Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") during the target audit period. Subsequent to these assignments (or not at all) were appointments of successor (substitution of) trustee (based on the alleged permission granted by those assignments) and trustee's sale deeds and warranty deeds (issued post-foreclosure sale), many of which were considered suspect for impropriety. Many of these documents are mentioned in this report.

The target period was selected based on a 2-year statute of limitations in Texas*, wherein if a document is not challenged within a two-year time frame, it is deemed to be valid. It is also apparent that from the time of the release of this report, the two-year period for which one might contest any documentation found within the target period will have advanced to the date of release, two years forward. This audit report is based on the results ascertained within the target period and in effect, point out suspect issues for which there is no "margin of error" per se, because the indicators ("markers") that were determined to be "suspect" would then have to be litigated (or prosecuted) to determine their validity or in the alternative, their impropriety. A copy of this audit was also provided to counsel at the request of the Texas Attorney General. The audit team conducting this review will herein be referred to as the "auditor(s)".

*The two-year challenge to the validity of documents contained in the public records was enacted by the Texas Legislature through S.B. 1781, which amended Section 16.033 of the Civil Practice and Remedies Code, to give a person with a right of action for the recovery of real property or an interest in real property conveyed by an instrument (certain named defects) must bring suit not later than two years after the date the instrument was filed for record with the county clerk of the county where the real property is located.

The Audit Team

The audit team consisted of the following individuals (with the assistance of three of the Williamson County archive clerks who report directly to Nancy Rister, County Clerk):

Dave Krieger, Paralegal; Managing Member, DK Consultants LLC (San Antonio, Texas);
Author of *Clouded Titles*; Auditor and Team Leader
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Beth Brannon, Paralegal, Owner, Helios Consulting (Austin, Texas); Auditor
Janine Charbonneau (Dallas, Texas); Research Assistant
Bobbie Shawn New (Brownwood, Texas); Research Assistant
Stuart Nelson (Dallas, Texas); Research Assistant

Counsel for the Audit Team; also issuing the Legal Opinion for the Audit

David Rogers, Esq., 1201 Spyglass Drive, Suite 100, Austin, Texas 78746

THE BASIS FOR THE STUDY

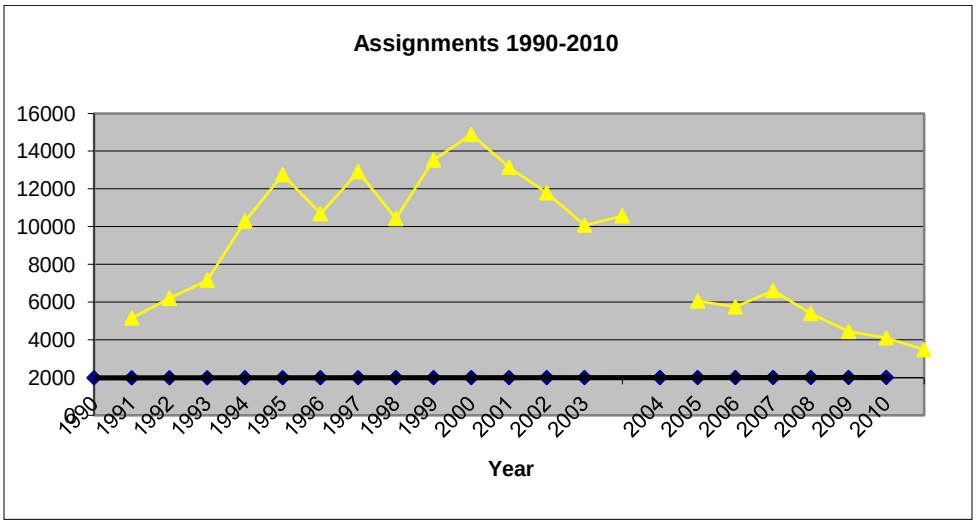
In 2007, there were changes made to the Texas Property Code (under § 51.0001) which allowed a "book entry system" the opportunity to record documents in the real property records of all Texas counties, including Williamson County, Texas. In effect, this statutory addition, which apparently slipped "under the radar" of the county clerks in this State at the time it was enacted, allowed Mortgage Electronic Registration Systems, Inc. (hereinafter referred to as "MERS") and its agents and certifying "officers" to cause to be placed within the land records of this target audit, assignments and other documents and notices containing references to this national book entry system, a privately-held Delaware corporation that is bankruptcy-remote, which is the wholly-owned subsidiary of MERSCORP Holdings, Inc., also a Delaware corporation.

The apparent intent of MERS's creation was to record a single deed of trust document in the land records, claiming MERS as a beneficiary and nominee for any given lender that allegedly extended credit to a Borrower in order to purchase real property. The definition of a beneficiary has been commonly accepted by virtue of Restatement of Mortgages 3d § 5.4 as was cited in the amicus brief filed with the Washington State Supreme Court on behalf of OUR Washington, a non-profit consumer group, in the *Bain v. Metropolitan Mortgage Group, Inc. et al* case*, which challenged MERS's right to be a "beneficiary" under the Washington Deed of Trust Act. The Supreme Court of that State ruled that "MERS is an ineligible beneficiary within the terms of the Washington Deed of Trust Act, if it never held the promissory note or other debt instrument secured by the deed of trust." (pp. 28-29)

**Kristin Bain v. Metropolitan Mortgage Group, Inc. et al*, No. 86206-1, Wash. Sup. Ct., issued August 16, 2012.

Upon examination of the deeds of trust in Williamson County, Texas, the recordation of these MERS deeds of trust is rampant and appears to have infected a larger part of the recordation system in Williamson County since its third inception on January 1, 1999. As a result of MERS recordations, the revenue for Williamson County has gradually declined, as demonstrated in the graph below, shown as TABLE "A":

TABLE "A"



Graph supplied by Nancy Rister, Williamson County Clerk, based upon a review of financial records and data supplied from the County's real property records. (2012)

There is an apparent break in the recordation of assignments from mid-2003, forward, to reflect the inclusion of MERS activities as they affect the number of assignments recorded in the real property records of Williamson County, Texas.

Notice the drop in the number of actual assignments recorded due to the apparent "static" condition created by the MERS business model.

Under *Section II. Overview of How MERS Works*, MERS was incorporated by leaders in the mortgage industry to be owned by the industry, and operated for the benefit of the industry, applying technology and electronic commerce to: (1) transform paper-based processes to an electronic format; (2) improve operational efficiencies; (3) increase the liquidity of mortgage servicing rights; (4) improve the profitability of the industry; (5) improve the flow and accuracy of information relative to the ownership of mortgage rights; and (6) facilitate continuing improvements through technology and electronic commerce.**

**Information derived from MERS public relations manual, 12/20/96

None of the foregoing platforms however, stated that MERS business model was devised to benefit the profitability of the real property records of Williamson County (or any other U. S. county for that matter), which prior to MERS entry into the Williamson County land records, the county derived a revenue gain from assignments that were mandated to be recorded once the original deed of trust was recorded under the Texas Local Government Code at § 192.001 – 192.007.

As the result of the MERS "static" recordation activity, there is also a corresponding reduction of income in recordation fees paid to record assignments, as shown in the graph below, also supplied by the Williamson County, Texas Clerk's office, as shown in Table "B" (below), a reduction based on the number of MERS recordations proliferating throughout the real property records over time:

TABLE "B"

Year	# of Assignments per year recorded in Williamson County		Variance	Reduced Filing Fees
1990	5156			
1991	6204			
1992	7163			
1993	10287	In this 10-year range, the average number of filed documents were: 11913 per year		
1994	12752			
1995	10681			
1996	12912			
1997	10423			
1998	13528			
1999	14884			
2000	13139			
2001	11788			
2002	10079			
2003	10571			
2004	6053	Decline due to MERS creating its database; so few assignments were recorded locally	5860	$ 82,040
2005	5744		6169	$ 98,704
2006	6609		5304	$ 84,864
2007	5397		6516	$ 104,256
2008	4448		7465	$ 119,440
2009	4109		7804	$ 124,864
2010	3478		8435	$ 134,960
2011	4474		7439	$ 119,024
			54992	$ 868,152

* The filing fee for a one-page document went up from $14 to $16 in 2005.

This reduction in income was apparently felt by not just Williamson County, but also by other counties across the nation, some of whom have retained law firms to engage in litigation against MERS and its member-subscribers in an attempt to recover lost revenue; with mixed success. Much of the revenue taken in by Williamson County is used for support of the Clerk's office, in addition to other public county services.

Many of the affected counties have had to cut back on these services since the invasion of MERS appears to have resulted in dramatically-reduced revenues for the counties, including Williamson County, a burgeoning penturbia county within the Austin Metro Statistical Survey Area (SMSA). MERS' involvement in Williamson County cuts across all demographic, political and judicial boundaries.

Thus, we have included ALL affected Williamson County Commissioners, other elected officials in legislative positions who represent Williamson County constituents and the Williamson County judiciary, who appear to be affected by MERS issues. As many of these judges are currently ruling on cases involving MERS, at issue is whether there is a conflict of interest because of MERS being a party to their own deeds of trust. Even though the implications of having MERS as a party in their chains of title may not be immediately felt (as to any legal consequence), there may be issues that will (at some point) arise at the time these affected officials attempt to convey their property. Their specific cases are individually discussed in brief herein.

How the MERS Business Model Appears to Affect the Real Property Records

According to MERS website (at www.mersinc.org), the apparent intent of MERS creation was two-fold:

> (1) to save its member-subscribers large sums of money previously spent on recording fees in counties all across America; and
>
> (2) serving as an electronic database for systematically recording sales and transfers of loans that were allegedly conveyed into trust pools at lightning speed.*

To that end, the founders of MERS included a report issued by the American Land Title Association, which stated that county recordation systems were too slow in recording and delivering documents which in effect would impede the intended progress within the MERS system; thus, recordation of sales and transfers within the MERS system would have to remain in the MERS system, while MERS initial recordation, the original deed of trust document, created a "static" condition in the real property records of the counties in which these original deeds of trust were recorded.

*The practice of securitization of mortgages was cited in *Bain v. Metropolitan Mortgage Group, Inc.*, supra, p. 10.

These trust pools were allegedly made of up large groups of residential mortgage loans. Each of these groups of loans was placed into what is known as a *tranche* (or a "slice" of the overall portfolio of loans allegedly in the trust pool). These loans were supposedly "rated" according to their purported performance by Moody's, Fitch's and Standard & Poor's.*

These pools of loans were then (as collateralized debt obligations, or CDOs) wrapped into derivatives, known as credit default swaps, and sold to investors as bonds (in the form of non-recourse certificates). While this report does not attempt to discuss the full-blown details of securitization, it is noteworthy that MERS was designed to handle the electronic recordations of the sales and transfers of these groups of loans. In order to further establish the MERS business model, the Borrowers would have to sign deed of trust contracts that would allow lenders (through the use of the MERS system, wherein MERS agents would transfer and assign notes (without the knowledge or consent of the Borrowers). It appears that when the Borrowers signed these deeds of trust at closing, they allowed MERS to act as nominee for the given lender and that lender's successors and assigns by their signatures on the notes and deeds of trust. There is also language in the MERS-originated deed of trust forms that also promulgates that MERS claims to act as a beneficiary.

However, there are other cases involving MERS popping up around the United States, besides the *Bain v. Metropolitan Mortgage et al* in Washington State (also a deed of trust State), the legal effects of which have yet to manifest themselves. As of the date of issuance of this report, the Oregon Supreme Court is also dealing with similar questions regarding MERS "beneficiary" status in that State.**

As of the issuance of this report, the Attorney General for the Commonwealth of Kentucky has also filed a lawsuit against MERSCORP Holdings, Inc. and MERS for statutory violations similar to the mandates of Texas statutes under the Texas Local Government Code at § 192.007.+

Further, legal challenges are now surfacing that allege that the loans supposedly placed into these trust pools of Residential Mortgage-Backed Securities (hereinafter "RMBS"), and then allegedly conveyed into Real Estate Mortgage Investment Conduits (hereinafter "REMICs"), were in fact not properly conveyed and certain courts have held that the trust pools do not have standing to foreclose due to non-compliance of the regulations promulgated by the Pooling and Servicing Agreements of the trust pools themselves. ++

*Standard & Poor's was recently denied a motion to dismiss in a lawsuit brought against it and its parent, in *Illinois v. McGraw-Hill et al*, by the Illinois Attorney General, for a number of deceptive trade practices act violations related to this activity; No. 12 CH 02535, Memorandum Opinion and Order of the Circuit Court of Cook County, Illinois, Chancery Dept.

***Niday v. GMAC Mortgage LLC et al*, No. S060655, Ore. Sup. Ct., writ of cert. from Ore. App. Ct. No. A147430, July 18, 2012

+*Commonwealth of Kentucky, ex rel Jack Conway, Atty. Gen. v. MERSCORP Holdings, Inc., Franklin Circuit Ct., Div. I, Cause No. 13-CI-00060, January 23, 2013.*

++*Ball v. Bank of New York as Trustee for CWALT, Inc. et al*, No. 4:12-CV-00144-NKL, US Dist. Ct., W. D. Mo. Dec. 20, 2012; and HSBC Bank USA, NA v. Young, No. 11-693 AV, Washtenaw Co. Cir. Ct., Michigan, Oct. 17, 2012.

By virtue of the fact that the MERS-member lenders have sold a partial interest in their promissory notes (which MERS is not a part of), Borrowers could face potential double liability increases, as there are then unknown intervening assignees which now possess "fractionalized" pieces of their loan. As the securitization process is facilitated, these "pieces" of loans would then be wrapped into bundles with other "pieces" of other Borrowers' loans and rebundled into other securities which could then be wrapped into derivatives and resold again and again, creating new "matrixes" of loans, which then are sold and transferred within the MERS system. Almost none of these assignments are ever recorded in the Williamson County land records when the sales of these loans and their bundling into securitized pools of mortgages takes place, leaving the Borrowers in a helpless quandary as to who really owns their mortgage loan.

Many of the pieces of these matrixes may also be transferred to parties outside of the MERS system, which in effect would make them non-MERS loans. This scenario also poses potential double liability for borrowers, who would have no idea whether the unrecorded intervening assignee would ever come to collect on their interest (or the portion thereof). To understand the consequences of the nature of the MERS business model, one would at least have to understand that most Borrowers the auditors came in contact with never knew who MERS was, let alone what contractual rights they were giving up by allowing MERS to participate in their deed of trust as a nominee and beneficiary, claiming to hold legal title to their properties.

Not only would the Borrowers have extreme difficulty finding out what lender owned their note, but almost none of these assignments would ever be recorded in the real property records of Williamson County once the original MERS-originated deed of trust was recorded.*

Each time a MERS member-subscriber logged into the MERS database to record a transaction, each would be charged a fee, much of which makes up MERS's parent (who owns the MERS database system), MERSCORP Holdings, Inc.'s multi-billion-dollar-a-year revenue stream. Thus, MERS receives the recording revenues previously paid to the county.

The conflict in the chains of title to tens of thousands of properties in Williamson County appears to occur because the subsequent transactions within the MERS system are routinely not recorded in the real property records of the Williamson County Clerk. In lawsuits it is defending, MERS claims it is not responsible for paying recording fees to the counties, as its member-subscribers (many of which are its founding members … Fannie Mae, Freddie Mac, Mortgage Bankers Association, American Land Title Association, as well as the majority of the lending institutions and their servicers) are the entities that are really responsible for payment of fees. Additionally, by not recording these assignments, there are now issues relative to the perfection of the lenders' interests, and NOT MERS, as shown in *"The Building Blocks of MERS"*, a PowerPoint® presentation provided to MERS member-subscribers, which explains the MERS business model.

*All subsequent recordations affecting the subject property required to be filed in the public record pursuant Texas Local Government Code § 192.007.

Using the MERS business model as a reference, many counties across America are attempting to file suit against the electronic database for loss of revenue, wherein the real issues appear to involve alleged improprieties in the trashing of the chains of title in the land records. There also appears an issue involving the improper taking of real property from Williamson County property owners by means of the introduction of "manufactured" and potentially fraudulent documents into the real property records system.*

The MERS agents (including the foreclosure mills discussed in this report) all appear to have played a part in the "taking" of these properties, as evidenced by the numerous suspect documents that appear in the land records, pre-foreclosure. With the MERS database being disclaimed for accuracy and lacking any regulatory oversight, the MERS member-subscribers appear to be riding roughshod all over the chains of title to every property touched by MERS' business model.

Even more problematic is what happens when a MERS-originated mortgage ("MOM") is conveyed to a party outside of the MERS system, as has become evident during this audit. At that point, the issue becomes relevant as to the condition of title when the outside party decides to finally record its interest or seeks to foreclose on a property for what it claims is its right as a holder of the note. Understand also that when this process is reversed, and a non-MOM loan becomes a MOM loan, generally, the Borrower is NOT notified that MERS is now a party to the deed of trust nor did the Borrower sign any contract (deed of trust) giving MERS the same contractual rights given to MERS when the Borrower in fact signs a MERS-originated deed of trust. In this instance, the actual real party in interest is further obfuscated in the MERS system. If the Borrower's note is securitized, the Borrower has no idea who really owns his note.

Further, due to the lack of regulatory oversight (and despite the Consent Order** agreed to by MERS and MERSCORP on April 13, 2011 in consort with several federal agencies, such as the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System), MERS member-subscribers appear unaffected by the Order (which appears to involve only "Examined Members" Fannie Mae and Freddie Mac; and thus appear to continue to aberrate the chains of title to over 70-million+ properties in America with their robosigning and apparent document manufacturing. Williamson County, Texas appears to be affected by these continued practices. Despite assurances from those parties being sought after for these infractions by various States' Attorneys General, the appearance of robosigning is reflected in this audit, along with other apparent misbehaviors. Many of these misbehaviors could be construed to be criminal in nature. It is recommended by the audit team that this report be turned over to the Williamson County District Attorney for further consideration in potential prosecution of those responsible, if in fact any "takings" of property using fraudulent documents were found to be "wrongful" or illegal.

*Texas Penal Code § 37.01 and Texas Civil Practice and Remedies Code § 12 et seq.
**Consent Order 2011-044, OCC No. AA-EC-11-20, Office of the Comptroller of the Currency (www.occ.org)
+Figures derived cumulatively from MERS website at www.mersinc.org

THE AUDIT PARAMETERS AND THEIR RESPECTIVE RESULTS

Audit Markers

Audit Markers are relative indicators that would be utilized to demonstrate suspect issues within the chain of title to any given property. Under the Texas Local Government Code at § 192.007, all documents affecting the chain of title to the property, including all liens and encumbrances, ***must*** be recorded once the claim of lien process to any chain of title has begun.

In *Dallas County v. MERSCORP* this statutory definition was utilized in the county's claims. The federal courts reviewing this cause of action have not seemed to dismiss this particular argument as invalid; thus, the audit makes reference to this statute as the fundamental basis for its review. The audit markers are reflected by abbreviation therein and an explanation for each is provided below. The only audit markers that will be discussed past the point of definition are those markers which presented themselves for consideration.

The Report

The results of the audit were then tabulated and compiled to form to indicate how often each given scenario presented itself. The results of course, were subjected to independent legal review by counsel, whose findings and legal opinion are affixed hereto. In the target audit period, there were 5,782 MERS-related assignments. Of that total, 1,576 documents (approximately one-third of the assignments and related documents) were electronically retrieved and audited. The results, if obtained, are reflected upon in each category listed below.

Appointment Not Filed (ANF)

According to the logical and systematic procedures involving foreclosure, as stated in most deeds of trust in Texas, the Lender may appoint a substitute trustee to execute the foreclosure and sale of the property. In some instances, foreclosures may have occurred without the filing of notice of Appointment of Substitute (Successor) Trustee, in violation of § 51 of the Texas Property Code. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there was only one instance where this scenario may have occurred; thus, this marker is negligible and was not considered as part of the results of this audit.

Appointment Filed After Foreclosure (APA)

Due to the pattern that was established in the past by known "foreclosure mills" (law firms designated to engage in the practice of foreclosing on properties in the State) as well as the servicers who claim to be representing the lenders in foreclosure, on many an occasion as the saying goes, "The right hand doesn't know what the left hand is doing."

As a result, due to the haste (because of limited time frames the foreclosure mill must act because they get on the average of $1,200.00 to prosecute any given case) in which these foreclosures are moved through the system, steps are overlooked. One of those steps is that the Appointment of Substitute Trustee (which would give permission for the successor trustee to act in the stead of the original trustee) would not be filed at the appropriate time; thus, the step regarding the "permission" to handle the foreclosure would be misfiled (inappropriately) and thus be subject to challenge. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there was only one instance where this scenario may have occurred; thus, this marker is negligible and was not considered as part of the results of this audit.

Assignment Not Filed (NAF)

There have been instances where not only the appointment of substitute trustee isn't filed, neither is the actual assignment, wherein one lender conveys its interests in the deed of trust and note to a successor. The inherent problem with these non-recordations is not only a statutory issue but also presents a moral dilemma in that the homeowner has absolutely no idea who has a legitimate claim for payment for their property because in the MERS system there is nothing of record to rely on. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there were no visible instances where this scenario may have occurred; thus, this marker is irrelevant and was not considered as part of the results of this audit.

Assignment Filed After Foreclosure (AFA)

Like the appointments involving the substitution of a trustee to conduct a foreclosure proceeding in Texas, on occasion, the Lender and its representatives who have "assigned" or transferred the lien right to another party may fail to actually record its assignment until AFTER the foreclosure sale has occurred.

Many times, that recordation error will be discovered, either through challenge or through the Lender's own observations, and corrected, resulting in the sale being vacated back to the pre-assignment period. The process would logically have to be reconstructed and re-filed all over again. This still leaves these documents in place in the real property records however, which may be utilized as evidence in future legal challenges against the subject property. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked. In order to fully comprehend the possibilities of this scenario, one would have to thoroughly research the entire chain of title to discover potential issues where this scenario may have occurred.

During the target audit period, there were no visible instances where this scenario may have occurred; thus, this marker is irrelevant and was not considered as part of the results of this audit.

Improper Filing (IF)

As was reflected in the Massachusetts case of *U.S. Bank v. Antonio Ibanez*, SJC-10694; 458 Mass. 637 (2010), it was the improper filings that got U.S. Bank into trouble in an action to quiet title. In this instance, U.S. Bank and Wells Fargo Bank both went into court to quiet title to two distinct pieces of property that was determined by the court neither could lay claim to via foreclosure because the assignments showing they actually had a lien interest in the properties were filed improperly (after the fact); thus "putting the cart before the horse". When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked. If there was an issue with the relevant parties claiming an interest as Grantor or Grantee during the review of the document, this category would be checked.

During the target audit period, there were seven (7) documents (all Trustee's Deeds) that appear to have been improperly filed. Again, the bulk of the audit contained MERS-related assignments along with related documents as presented for consideration by the Williamson County Clerk.

Suspect Invalid Warranty Deed (INV)

There are certain issues that could become apparent to cause a warranty deed to be subject to legal challenge in the Texas court system. Suspect issues could include the listing of an improper legal description; a legal description that does not match the situs address of the property; a document void of a legal description altogether; a warranty deed that is not properly attested to by the Grantor; attestation of an alleged Grantor in a warranty deed conveyed by a substitute trustee (otherwise known as a Trustee's Deed); or a warranty deed that fails to include a necessary notarial jurat and execution that are statutorily proper.

While this is certainly subjective, the concept here is to scrutinize the document for further potential legal review by either the attorney for the homeowner or any authority within Williamson County that may wish to review the documentation. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, four (4) instances manifested themselves where this scenario may have occurred; thus, four of the General Warranty Deeds purported to be legitimate, may have contained suspect information that could be subject to legal challenge.

MERS-Appointed Trustee (MAT)

In most deeds of trust in the State of Texas, there is a provision (generally found in Paragraph 24 of most long-form deeds of trust documents) that states that the "Lender" from time to time *may* substitute a trustee which would be vested with the same full powers and duties of the original trustee. As to the specific contractual research conducted to assert these results, there is no apparent language in said deeds of trust to indicate that the "Lender's nominee" or MERS, could appoint the substitute trustee. There is no "defined" language in the deeds of trust examined by the auditors during the course of this audit that would reflect MERS authority to do so.

Due to the fact the target audit encompassed specific facets of the MERS business model (acting as a nominee for the lender and lender's successors and assigns; and the successors and assigns of MERS), one specific facet relative to a potential conflict of interest in the document review leads us to believe that there were certain third-parties acting as MERS certifying officers, who proceeded to use their "MERS hat" to appoint a substitute trustee on behalf of the lender. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there were twenty-four (24) instances where this scenario may have occurred in the form of a foreclosure mill or representative of a third-party document manufacturer utilizing MERS as a means to appoint a substitute trustee, in conflict with the contractual language the auditors found while examining specific deeds of trust.

MERS-Assigned Deed of Trust (MAD)

The biggest issue we see in the instances of the deed of trust is the assignment by a party claiming to use the certifying official designation of Mortgage Electronic Registration Systems, Inc. as a Vice President or Assistant Secretary (as nominee) on its own free-standing claim or via the claim as nominee of another party, the corresponding box would be checked.

The persuasive argument arises from several court cases, including *Bellistri v. Ocwen Loan Servicing*, 284 SW 3d 619, Mo. (2009), wherein MERS can only assign what it has an interest in (granted by the Borrower), which is the deed of trust and not the promissory note.

However, in the issues we observe here indicate that in hundreds of instances involving assignments throughout the target audit period, MERS attempted to convey also "the note" with the deed. Many of the Texas courts rely on the maxim that the deed of trust follows the promissory note.

The MERS business model however, requires the note to be bifurcated (split) from the deed of trust, also as noted in the Northern District of Texas case of *McCarthy v. Bank of America et al*, wherein the Hon. James McBryde cited *Carpenter v. Longan*, 83 U.S. 271 (1872), which in part, states:

> "The note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity."*

Thus, our theory of use for determination in this audit is based on that premise and any appearance of the vernacular, "together with the note" in any MERS-related assignment was duly noted with a check of the corresponding box. Our concern with MERS transferring the note reflects solely on the previously-stated court cases.

It has been the understanding of the auditors that the Borrowers agreed to allow MERS to participate in their deeds of trust (as a nominee and beneficiary) by their signature(s); thus, MERS would then claim the right as a nominee for the lender to engage in only what authority was granted to it in the deed of trust. MERS has admitted in numerous court cases that it was not named as a "lender" or "payee" on the promissory notes in question.

During the target audit period, there were twelve hundred thirty-seven (1,237) instances where this scenario appears to have occurred (meaning the phrase "together with the note") was present; thus, this marker represents the highest ranking of occurrences within the audit.

**Carpenter v. Longan*, 83 U.S. 271 (1872); there are a long chain of Texas cases agreeing with this ruling.

Missing Information (MI)

There were documents that were reviewed as part of this audit that contained blank spaces where some item was missing that should have been (implied) stated. Some of this missing information involved areas like: (1) missing notarial jurat or execution; (2) missing or incomplete affixation of notarial seals; (3) missing gender delineation in the jurat; (4) missing notary signatures; (5) missing lender identification (where MERS conveys on its own as the claimed "note holder"); and (6) blank spaces or spaces where any appearance of a manufactured "form" document left out specific information necessary to identify a party or authority by attorney-in-fact. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there were at least sixty-six (66) documents that contained visible instances where this scenario may have occurred.

Suspect Forgery (SF)

This is one of the more serious issues the auditors had to face, as document manufacturing lends itself to "robosigning", an issue which has long plagued the mortgage industry and by extension, the Williamson County real property records. Signature comparisons were done among several of the known robosignors of notoriety. There appeared to have been variances in signature depending on which notary was acknowledging the document. This would lead us to believe that the notary was directed to sign the person's name to the document (as the attestant) and then acknowledge that signature.

There are several instances wherein suspected third-party document manufacturers, such as Lender Default Solutions, CoreLogic Document Solutions, other unknown Lender Processing Services, Inc. entities operating under different names, Verdugo Trustee Services Corporation, Orion Financial Group, Inc. (a Texas corporation), as well as the lender's own document manufacturing arms themselves, all manifested themselves at one point or another when certain documents were audited.

The scenario regarding this marker became an issue with the case against two Lender Processing Services, Inc. title officers in California (Gary Trafford and Gerri Sheppard), when a notary whistleblower (the late Tracy Lawrence, the Nevada notary public who was found dead in her apartment the day of her sentencing hearing) testified along with others in her office before a Clark County, Nevada grand jury, that they were ordered to forge the name of the attestants (the defendants herein) to the document without the attestant being present; and then acknowledging the signature that they (the notaries) themselves affixed.

In Texas, the notary is required to keep a log book of all signatures (Texas Government Code § 406.014) and is further required to witness the signature of the attestant. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, across all markers there were twelve hundred sixteen (1,216) instances where this scenario may have occurred; thus, this marker is very relevant to the use of third-party document manufacturing which manifested itself as a means to effectuate foreclosure of Williamson County property owners. It appears that most of these issues occurred within the MERS-related assignments category; thus, the larger figure coinciding with the number of these types of assignments reflected in the audit.

Suspect Notary Fraud (SNF)

Notary fraud has become a critical issue of late due to the integrity with which notary publics are supposed to act on behalf of the State of Texas. Because of the propensity for certain entities (including the foreclosure mills) to manufacture documents to effectuate foreclosure commencement, this issue runs parallel to the previously-discussed issue of forgery. This is a very serious problem that could be construed by prosecutorial authorities to be criminal in nature; thus, this issue was treated with grave concern and wherever the instance occurred where an attestant signature was delineated as suspect, meaning there were several different versions of that signature, notary fraud then became a suspect issue.

Notary fraud can occur on more than one premise. The notary might be aware that the person signing the document is NOT who they say they are which could constitute robosigning or surrogate signing. By the notary themselves failing to witness the signing attestant; or by affixing their signature to the document in the stead of the signor without express power of attorney, could be construed as suspect under this marker. There have been instances where the notary was **not** present to witness the attestant sign the document; or, in the alternative, may have affixed the attestant's signature to the document in lieu of the attestant's appearance. Some of these instances have been prosecuted. Most notably, Nikole Shelton (a notary public who was employed by GMAC Mortgage LLC) was stripped of her Pennsylvania notary commission and is currently under investigation for notary fraud. Nikole Shelton's notarial executions have been found in the official property records of Williamson County, Texas in cases now pending before the courts in this County.

There are certain persons named within this audit for which several signatures NOT identical to each other have manifested themselves, leaving the audit team with no choice but to conclude that there may be suspect fraudulent behavior relative to the manner in which the document was "processed". When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

During the target audit period, there were fourteen hundred twenty-six (1,426) instances (1,142 involving assignments; 244 involving appointments of substitute trustee; 5 involving issuances of warranty deeds and 35 involving trustee's deeds) where this scenario may have occurred.

Thus, it is implied that the potential exists for the notary public to have affixed their seal to a given document without visually observing the signor who attested to that document.* This marker is very relevant as to the suspect behaviors which have been prosecuted as the results of the use of third-party document manufacturing. It appears that most of these issues occurred within the MERS-related assignments category; thus, the larger figure coinciding with the number of these types of assignments reflected in the audit.

Suspect Surrogate Signing (SSS)

This marker was found to be relevant in the context of issues involving notary fraud and robosigning, largely in part due to third-party document manufacturing by servicers, substitute trustees and even trustee services processing foreclosure files entrusted to them by the lenders claiming to be involved. The act of suspect surrogate signing was highlighted in the CBS News *60 Minutes* news piece, where reporter Scott Pelley interviewed a man named Chris Pendley, who admitted on camera that he was paid to sign the name of "Linda Green" to hundreds of documents an hour in the offices of the now-defunct DOCX, a subsidiary of Lender Processing Services, Inc. located in Alpharetta, Georgia.

Pendley also admitted in the interview that he signed Linda Green's name on behalf of a number of banks and financial institutions; and MERS; claiming to be a Vice President of whatever entity was purported to have assigned something to another entity. Whenever there was an issue with signature variations, the corresponding box would be duly noted as such that the potential exists that the given document was suspect for manufactured signatures by parties other than the attestants themselves.

Again, it is clarified here that robosigning in of itself is NOT the issue, but rather the fact that the attestant signed these documents at such an alarmingly fast rate that they: (1) would have not had the opportunity to read the document and thus understand its contents; and (2) obviously didn't know of the contents to which they were attesting was factual. By virtue of the fact they signed someone else's name (without personal, first-hand knowledge of the facts contained and attested to) the clear intent appears to be wanton and reckless document manufacturing with the intended purpose of effectuating a foreclosure proceeding or in the alternative, assigning the document to another party who would then claim an interest in the property or to appoint a successor trustee in similar fashion. When such a designation became necessary to be delineated as part of this audit, the corresponding box would have been checked.

*All notaries public are regulated under the Texas Government Code at § 406 et seq.

During the target audit period, there were fourteen hundred fifty-eight (1,458) instances (involving 1,200 assignments; 223 appointments of substitute trustee and 14 involving trustee's deeds) where this scenario may have occurred; thus, it is implied that the potential exists for the audited documents to have been signed by someone other than the attestant, whether via assignment of a deed of trust (an alleged note) or through appointment of a substitute trustee. The numbers may vary between suspect issues where in some instances a certain issue may not be apparent where in other issues they were.

This marker is very relevant as to the suspect behaviors which have been prosecuted as the results of the use of third-party document manufacturing. It appears that most of these issues occurred within the MERS-related assignments category; thus, the larger figure coinciding with the number of these types of assignments reflected in the audit.

Self-Assigned Assignment (SAA)

In the assignment category of the audit, it became relatively easy to spot suspect issues wherein the appearance of "self-assignment" through the use of the "MERS HAT", or in the alternative, the servicer's own employees would assign the deed and note to themselves directly, when all of the markers indicated that the address of the signor was the same locale as the entity receiving the assignment. Whenever this occurrence became obvious, the corresponding box was duly checked.

During the target audit period, there were one hundred sixty-seven (167) instances where this scenario may have occurred; thus, it is implied that the potential exists for the audited documents to have been signed by an employee or officer of the assignee.**

Self-Appointed Trustee (SAT)

This marker generally became obvious whenever there was a reference to the foreclosure mill having prepared the document, wherein it appeared that one of its own attorneys or other employees (notaries) whose addresses were registered to the same address as the law firm, appointed themselves to conduct the foreclosure, or in the alternative, appoint a successive series of known representatives (associated with the respective law firm) to conduct the sale of the property for the foreclosure mill. The corresponding box was checked when this situation appeared to manifest itself.

***In many instances observed within this audit (post-2009 assignments conducted by signors of ReconTrust Company, N.A., with offices in Richardson, Texas (a wholly-owned subsidiary of Bank of America, N.A.) would appear to self-assign assignments on behalf of Countrywide Home Loans, Inc. or Countrywide Home Loans Servicing LP (then-defunct) to BAC Home Loans Servicing LP or to Bank of America, N.A. as successor by merger to BAC Home Loans Servicing L in an apparent attempt to utilize the assignment to effectuate an appointment of substitute trustee to commence foreclosure proceedings against Williamson County property owners.*

During the target audit period, there were one hundred thirteen (113) instances where this scenario may have occurred; thus, it is implied that the potential exists for the audited documents to have been signed by an employee or officer of the assignee AFTER they self-assigned the deed of trust and note to themselves. In the alternative, there were issues that were discussed in a separate section that would indicate that certifying officers of MERS would appoint the trustee.

Deed of Trust Verified (DOT)

In all instances wherein the original deed of trust had to be examined to verify an issue with another document (assignment or appointment) that was being audited, the box corresponding with this verification was checked. In many instances, the respective files were subjected to what is known as an Extraction of File. This is where the file is pulled from the audit and independently reviewed by multiple auditors for confirmation of specific issues relative to the results obtained as part of this audit. Approximately ten (10%) percent of the files examined involved pulling a deed of trust to examine specific lenders NOT NAMED in the MERS-related assignments, mostly signed by Stephen C. Porter of Barrett Daffin and Selim Taherzadeh of Brice Vander Linden, among many.

Not Filed (NF)

In the event that a suspect document could not be located when extracted, this designation was appropriately checked. Further review would then be necessary for example, to determine whether a notice of foreclosure sale was actually recorded in the real property records to comport to § 192.007 of the Texas Local Government Code as discussed herein. This designation would also apply to missing appointments and assignments that could not be verified as part of the chain of title under this same statute. Missing documents will be discussed within the parameters of the extracted files contained within this audit.

Cut-Off Date Missed on REMIC (CMR)

As explained in this report, whenever the situation arose that it became apparent that the assignee was a special purpose vehicle (SPV) or a special investment vehicle (SIV) which purported to operate under New York Trust Law, the auditor turned the file over to a research assistant who would conduct further searches of the U.S. Securities and Exchange Commission's (SEC) EDGAR databases (through peripheral sites) to determine the cut-off date of the Real Estate Mortgage Investment Trust (REMIC) that purported to receive the assignment. Within the trust's pooling and servicing agreement ("PSA"; wherein the banks are vehemently objecting to the homeowner's use of to provide affirmative defenses to a foreclosure action) are specific rules and regulations mandated under New York Trust Law that, if violated, would contravene that law and render the transaction void. One of these regulations covers a purported cut-off date, wherein the Borrower's note is supposed to be conveyed into the trust.

At the time of conveyance, the document is supposed to be recorded in the real property records. Whenever the date of the assignment indicated in the public record exceeded the date allowed for conveyance of the note and deed into the trust vehicle, the corresponding box therein was checked. This scenario will be discussed in more detail in this report.

During the target audit period, of all of the attempted assignments to special purpose or investment vehicles, after researching the files reported within the U. S. Securities and Exchange Commission's (SEC) peripheral website (www.secinfo.com), there were one hundred sixty (160) instances where the assignment date as reported in the audited conveyance did not appear to meet the criteria for properly conveying the deed of trust and note into these vehicles. Because many of them involved MERS-related assignments, it is highly suspect that the borrowers' promissory notes (along with their respective deeds of trust) failed to make the trust pools. It is unknown WHO owns these borrowers' notes at present because many of them appear to be obfuscated within the MERS electronic database, not available to the affected borrowers herein.

REMIC Unidentified (RUD)

As explained in the previous scenario, searches were conducted using all relevant values to determine the existence of said trust vehicles as **R**eal **E**state **M**ortgage **I**nvestment **C**onduits. When these vehicles could not be located after several value inputs, the corresponding box was checked to indicate that the REMIC could not be identified using normal search means. This could also mean that the trust vehicle that the property was allegedly conveyed into was not a trust required to report to the SEC and thus would constitute what is known as a potential 144-A Trust. There are various reasons why a trust would not report to the SEC, one of which is due to having less than 300 certificate holders involved as reported in the trust documents originally filed with the SEC. Another reason would be that the trust is an "acquisition trust" that is privately held by the Lender and makes up the bulk of the potential 144-A trust entities.

During the target audit period, of all of the attempted assignments to special purpose or investment vehicles, after researching the files reported within the U. S. Securities and Exchange Commission's (SEC) peripheral website (www.secinfo.com), there were twenty (20) instances where the trust entity could not be located; thus, it is unknown who actually holds the promissory notes and accompanying paperwork for the affected property owners in Williamson County, Texas.

Because these results involved MERS-related assignments, it is highly suspect that the borrowers' promissory notes (along with their respective deeds of trust) failed to make the trust pools. It is unknown WHO owns these borrowers' notes at present because many of them appear to be obfuscated within the MERS electronic database, not available to the affected borrowers herein.

Suspect Robosigning (SRS)

Much media attention has been given to this term; as such, we address it here as well. As will be further explained through different scenarios in this report, anytime that the auditor confronted a situation where document manufacturing appears to have occurred, it is implied that the signor of the document may not have signed the documents affecting Williamson County, Texas property owners without personal knowledge of their contents, in "robotic fashion" and then through various agents and third-party document manufacturers, caused these documents to be recorded in the official property records of Williamson County, Texas. As such, the corresponding box was checked if that scenario manifested itself within any audited document.

Again, robosigning became a commonplace issue as the result of securitization via use of the MERS system wherein allegations have surfaced that many of the borrowers' notes were lost or shredded after being electronically recorded by the third-party document manufacturers archive centers. The recent 49-State AG settlement, in which Texas was a party, negotiated settlement money in part for the issues created by robosigning activities. Robosigning has also become the "method of choice" of many mortgage loan servicers because of alleged "lost" or shredded notes.

To date, it does NOT appear that robosigning has stopped (or will at any point in time in the future) and the scenario manifested itself during the target audit period. The extraction files and certain documents discussed as the cause and effect of the scenarios evaluated within this audit will be presented in the Case Studies section; and will be discussed in synopsis form in the section involving those holding public office that represent Williamson County, Texas.

During the target audit period, there were fourteen hundred ninety-nine (1,499) instances where this scenario may have occurred. Of that total, 1239 instances were noted involving MERS-related or self-assigned assignments; 224 instances were noted involving appointments of substitute trustee (both by MERS certifying "officers" and subsequent self-assignees); and 36 instances involving the issuance of a Trustee's Deed, post foreclosure sale.

One of the extracted files discussed herein reflects on the foregoing issue, where it appears that suspected employees of Lender Default Solutions in Dakota County, Minnesota (on behalf of Wells Fargo Bank, N.A.) robosigned documents affecting a lost note affidavit and subsequent conveyance.

Another set of documents discussed herein will reflect servicing behaviors by branches of the title company giants themselves, like Fidelity National Financial and its wholly-owned subsidiaries, whose alleged "officers" (actual FNF subsidiary employees) utilized these processes and in doing so, made genuinely grievous errors in these manufactured documents.

Invalid Warranty Deed (INV)

One of the primary elements considered in a chain of title is actual proof that the property owner indeed owns the subject property in question, as Grantee. Also of primary consideration is that the party acting as the Grantor has the lawful authority to convey the subject property in question.

When it became suspect that a warranty deed being issued may not be genuine for any number of reasons, especially because it was issued as a result of a lender that may have not had a legitimate interest in the subject property, and utilized apparent document manufacturing to achieve that end, the box was checked as such to indicate suspect issues.

During the target audit period (even though the audit itself concentrated mainly on MERS-related assignments), there were four (4) specific issues involving the issuance of General Warranty Deeds, all post-foreclosure. While these are negligible in number, their relative probative value would not be irrelevant if the reader was one of the four property owners being issued that deed.

Audit Totals of General Significance

The significant audit totals are generally reflected in their entirety in TABLE "C" (below) of the 1,567 documents audited:

TABLE "C"

MERS "officer-assigned" assignments	**1,237**
MERS "officer-appointed" trustees	**24**
Apparent self-assigned assignments	**167**
Apparent self-appointed trustees	**113**
Suspect Robosigning in all categories	**1,499**
Suspect Notary Issues in all categories	**1,421**
TOTAL NUMBER OF DOCUMENTS REVIEWED	**1,576**

THE REQUIRED COMPONENTS OF A LEGALLY VALID FORECLOSURE

In order for the entire scenario of chain of title to fully be researched, there comes an understanding of the basic concepts of what is involved in a foreclosure proceeding in Texas. The following items were submitted by the Law Offices of David A. Rogers, Austin, Texas, for consideration in this audit (as requested by the Auditors) and constitutes his legal opinion:

1) A Deed from previous owner to the current owner must be recorded in the Deed records. Without a recorded Deed, the homeowners have no real property to secure to lender on their Note and Deed of Trust.

2) The Homeowner agrees to a Note and a Deed of Trust with the Lender. The Deed of Trust secures the Note and provides the authority and the terms by which the lending party may non-judicially foreclose on a property in the event of default, which may include non-payment of the note. *Slaughter v. Qualls,* 139 Tex. 340, 162 S.W.2d 671 (1942). The Note is the underlying contract, which a homeowner must breach prior to the enforcement the foreclosure terms stated in the Deed of Trust. The foreclosing party must be vested with both a valid Deed of Trust and the underlying Note that Deed of Trust secures in order to foreclose on the property. *Scott v. Hewitt*, 127 Tex. 31; 90 S.W.2d 816 (1936).

3) If someone other than an original "Lender" party to the Deed of Trust wishes to foreclose, then the Note and the Deed of Trust must be validly assigned to the party wishing to foreclose *prior* to initiation of foreclosure actions. If the assignment is not done correctly or timely, then the party will create confusion as which party is entitled to enforce the Deed of Trust. This can create a "clouded" title. A clouded title can arise in several situations, but the most common are:

    a. Assignment of the Deed of Trust to a party other than the party attempting to foreclose.
    b. Assignment of the Note or Deed of Trust after the initiation of foreclosure proceedings.
    c. Separation of the Deed of Trust from the Note by assignment or transfer to separate parties.
    d. Invalid assignment due to failure to comply with legal requirements.
    e. Invalid assignment because of failure by the foreclosing party to follow an order from a Bankruptcy court.
    f. Failure to record the transfer prior to initiation of foreclosure proceedings.
    g. Failure to timely or properly record appointments of substitute trustees.

4) If the loan was a home equity line of credit, the foreclosing party must obtain a court order. Tex. Const. art. XVI, § 50; Tex. R. Civ. P. 736.

5) At least 20 days prior to the sending of the Notice of the Foreclosure Sale, the foreclosing party must send out a Notice of Default by certified mail. *Tex. Prop. Code Ann. § 51.002(d).* However, a clause in the Deed of Trust Requiring additional notice will supersede the statute. *Slaughter v. Qualls,* 139 Tex. 340, 162 S.W.2d 671 (1942); *Michael v. Crawford,* 108 Tex. 352, 193 S.W. 1070 (1917). Most Deeds of Trust require 30 days between the default of notice and the notice of trustee sale. Additionally, any notice sent must state (1) the name and address of the sender of the notice (*Tex. Prop. Code Ann.* §§ 51.0025, 51.0075(e)) and (2) contain a statement that is

conspicuous, printed in boldface or underlined type, and substantially similar to the following:

> "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately." *Tex. Prop. Code Ann. § 51.002(i).*

6) A Notice of Foreclosure Sale must be posted at the courthouse, filed and served at least 21 days prior to the foreclosure sale. This notice must be (1) posted at the courthouse (2) filed with the county clerk, and (3) served by certified mail to each person on the deed of trust. *Tex. Prop. Code Ann. § 51.002(b).*

7) If the foreclosing party wishes to use a Trustee other than a Trustee named in the Deed of Trust, a notice of Substitute Trustee must be filed 21 days prior to the foreclosure sale. *Michael v. Crawford*, 108 Tex. 352, 193 S.W. 1070 (1917).

8) The property is sold at a public foreclosure auction. This must be conducted between 10 a.m. and 4 p.m. of the first Tuesday of the month at the courthouse of the county in which the property is located. *Tex. Prop. Code Ann. § 51.002(a).* Generally, sales are held at either 10 a.m. or 1 p.m., but the sale must begin no later than three hours after that time stated in the Notice of Foreclosure Sale. *Tex. Prop. Code Ann. § 51.002(c).*

The Use of the Foregoing Section as the Basis for Determination of Audit Guidelines

In determining certain potential issues within this assessment, the general review of what constitutes a valid foreclosure was taken under advisement and used as the basis for determination of certain items within the audit parameters, such as the failure of the trustee to file notices with the County Clerk as required under statute. In almost every case file that was extracted for further review (past the initial audit), few if any recorded "notices" per se could be located in the real property records of the Williamson County Clerk. The auditors would then suggest those wishing to follow up on the results of this report seek out the respective Substitute Trustee's Deeds and hold those parties accountable for not following Texas statutes. Due to the massive amount of documentation and paperwork that was reviewed by the audit team during this review, unless there was a specific reason to go into the file and look to see whether a Notice of Sale had been filed in compliance with the Texas Property Code as part of a foreclosure action, only those specific cases were noted herein. The fact remains however, that in the instances that were audited a small number of them had Notice of Foreclosure Sale filed in the county real property records. In the instances where the homeowners could not afford to retain counsel to challenge these issues, it became obvious to the audit team the expediency of the filing of Trustee's Deeds by the foreclosure mills processing these actions.

APPARENT ISSUES AFFECTING CHAINS OF TITLE; ISSUES INVOLVING EXTRACTED FILES

EXTRACTION FILE: Slander of Title Issues

Out of the hundreds of documents that were reviewed as part of the target audit, there were certain documents that were extracted, one of which is highlighted here to emphasize the point of alleged slander of title issues. This particular case involves the use of the wrong legal description on BOTH the Warranty Deed AND the Deed of Trust (the Security Instrument encumbering the Property with a lien). There is evidence that the original Trustee may have prepared the original deed of trust documents and may be in error here.

The subject property appears to be owned by a couple which entered into a MERS-originated deed of trust (Donald and Donna Jeffrey) when they were residing in Orange County, California. The Jeffrey's appeared to have owned two separate properties in Williamson County, Texas.

They sold one of their properties (with improvements) to another California resident named Debra Thomson. Instead of recording the lien interest again Thomson's new home parcel, the recorded documents appear to indicate that the Jeffery's own property's legal description was mistakenly utilized (and thus encumbered). It further appears that the firm representing itself as the original trustee may have prepared these documents and caused them to be recorded in the Williamson County real property records.

The Jeffreys already had a MERS-originated deed of trust on their own property; so in effect, it appears that the sale of one of their properties to Thomson resulted in two distinct encumbrances on their property, even though the situs addresses were listed respectively on each deed of trust issued to both parties. In this instance, the saying that "the right hand didn't know what the left hand was doing" appears to have been an understatement. It wasn't until Thomson allegedly suffered default on her note did MERS and its agents discover the error and attempt to file corrections not only in Thomson's chain of title, but also releasing the numerous liens in the chain of title to the Jeffrey's property as well.

Securitization Issues

In addition to our focus on the aspects of assignment, we also addressed the secondary issue involving MERS (as an agent) assigning the note and deed of trust into a *special purpose vehicle* ("SPV") or *special investment vehicle* ("SIV"); otherwise known as a trust made up of *collateralized debt obligations* ("CDOs"), which were then allegedly wrapped into derivatives called *credit default swaps* ("CDSs") and subsequently hedged bets against the performance of these trust pools. We preface further discussion of this topic with the contemplation of the use of MERS as an electronic database which would in effect, track the sale and transfer of securitized mortgage loans as they moved from pool to pool; owner to owner; by and through the use of an unregulated business model.

On one hand, this model relies on the integrity of MERS' member-subscribers to update accurate information as to the actual movement of the Borrower's note. On the other hand however, the MERS website contains a disclaimer which states that the contents of its website cannot be guaranteed as accurate.

We therefore have to conclude that any information obtained by a cursory review of the MERS website would thus either: (1) contain a margin of error based on the physical possibility that any given member-subscriber would potentially fail to cause an entry to be placed into the MERS database; or (2) contain information that may have been obfuscated by MERS and its member-subscribers to mislead the Borrower into believing that whatever is listed on the MERS system is indeed factual, when the contemplation of the alleged Servicer or alleged Investor states specifically what the parties claiming an interest in any given subject property want the reader of the website to accept as truth (whether it is in fact, or not).

It is further concluded that since the MERS database was designed for the purposes of tracking securitized notes as they moved from investment vehicle to investment vehicle on Wall Street, that when a MERS Identification Number appears on any Deed of Trust or referenced on any unrecorded promissory note, that the intent of the participating parties (albeit almost always unknown to the Borrower) was to utilize the MERS system to track securitized notes, implying the use of the securitization process. It is highly unlikely that any Borrower at the closing table knew that by signing their deed of trust involving MERS as nominee and beneficiary, that their promissory note was going to be bifurcated (split) from their deed of trust (according to published reports by MERS CEO R. K. Arnold)* and turned into a derivative on Wall Street.

At issue currently is whether the Borrower can argue the terms and conditions of the trust's pooling and servicing agreement (PSA) in court (as a third-party beneficiary) in light of two New York federal court rulings that state that the certificates being held as derivatives are evidences of debt, not equity investment. Further, the negotiability of the note is also up for argument, as the lenders claim it enforceable under UCC 3, while the borrowers' attorneys claim the note instrument is now non-negotiable because its character and status have been changed in comport with UCC Articles 8 and 9.

Again, we argue that the notes that were alleged to have been securitized were never properly transferred (assigned) into the trust pools that claimed to have standing in foreclosure actions. In some instances within this audit, the trust entity was not listed in the SEC's databases and thus, no further information could be ascertained. Thus, what the investors saw on the 424(b)(5) prospectuses for these trusts were most likely the account numbers that were applied to the loan transactions, but it is highly likely these loans relied upon the actual investors placing their funds into the hands of the aggregate fund managers based on the belief that the loans they were investing in were solidly rated as viable and repayable loans, supported by good credit ratings; today's investor lawsuits against these trust entities appear to indicate otherwise.

*Yes, There Is Life On MERS, by R.K. Arnold, Vol. 2, No. 1, Spring 1998, Real Estate Law, *Probate & Property*

Our review of any assignment purporting to convey into a trust was thus subjected to further scrutiny based upon a review of the pooling and servicing agreements ("PSAs") of the trusts as shown on the 424(b)(5) prospectus statements. Accordingly, a cut-off date as to when the notes were supposed to be conveyed into the trust pool in order to be included in the trust res appear to have been violated in contravention of New York Trust Law.

In fact, further research showed that every single conveyance into one of these alleged trusts appear to have been an invalid conveyance, yet the court systems relied on these assignments as valid and thus may have unfairly subjected the property owner to an improper foreclosure.

Absent litigation, there is no solid proof contained in the information reviewed both in the assignment document itself as compared with the prospectus information (of the alleged trust listings in the files of the Securities and Exchange Commission) that would lead the audit team to believe that the trust conveyances were legitimate; thus, any uncontested non-judicial foreclosure action may in fact have been improper, bringing forth issues of unlawful conversion and unjust enrichment to the benefit of unproven interests in the subject property.

For example, in one given document, an alleged assignment of a property belonging to John and Donna Crites of Williamson County showed a trust cut-off date of June 1, 2005, which would promulgate that any loans being conveyed into the Credit Suisse First Boston HEAT 2005-4 (the rest of the trust name was omitted from the document) should have been conveyed (through recordation of the assignment by the lender to the trust depositor and then from the trust depositor into the trust vehicle itself) by June 1, 2005. The closing date of the trust, when all affairs of the trust pool should have been concluded, was July 1, 2005.

Even though this assignment did not fall within the parameters of the target audit period, the auditors chose to use it to exemplify the type of suspect behaviors asserted herein. The alleged assignment, purportedly signed by Dallas foreclosure attorney Selim Taherzadeh as "attorney-in-fact" for a "certain Limited Power of Attorney" … dated August 29, 2008" (which the auditors could not locate in the land records) showed the alleged assignment (Williamson County real property records Instrument #2010016168) being actually assigned (and backdated) on March 10, 2010; acknowledged on March 15, 2010 by a notary public suspected of working in the law firm of Brice, Vander Linden & Wernick, P.C., stating that MERS as nominee for CIT Group/Consumer Finance, Inc. (a Delaware Corporation), its successors and assigns, ROUGHLY FIVE (5) YEARS AFTER THE LISTED CUT-OFF DATE OF THE TRUST!

Further, on January 13, 2006, the subject trust's officer recorded an SEC 15d-6 Form, which is construed to mean that the trust has less than 300 certificateholders and is no longer subject to SEC reporting requirements. The filing of the 15d-6 Form can also indicate the beginning of the winding down of the trust and its affairs. It is unknown whether there was a continued distribution of funds to the trust certificate holders past this date.

Many of these so-called "trusts" suffered what are known as "credit events", where a certain number of loans in any given "tranche" (an individually rated group of residential loans, promoted to be Triple-A rated, when in fact, they were all subprime, high-risk loans; or in the alternative, many were already paid in full through sale or transfer or default insurance payout).

Upon the Borrowers' default, re-insurers like AIG, AMBAC, MBIA and others, paid default insurance claims on these mortgages. Many of these re-insurers are now suing the trusts and their respective "lenders" and "trustees" for fraudulent misrepresentation as to the information listed on the prospectuses, which promoted the loans as low-risk, when in fact, the lenders knew the loans were structured to fail and thus were insured knowing of the potential insurance payouts.

A number of challenges under Texas Government Code § 51.903 have also of late been injected into the dockets of Williamson County District Courts as administrative proceedings to challenge deeds of trust and their relative assignments, in addition to the increased filings of quasi in rem quiet title actions. The auditors believe that these suspect filings will not stop or be seriously curtailed unless the parties conducting such activities are threatened with prosecution or actually charged and duly convicted.

Conveyances from Now-Defunct Lenders

Additionally, there were also issues where MERS "Certifying Officers" appear to have attempted conveyance of a deed of trust (and note) from already-defunct lenders (like Countrywide Home Loans, Inc.) to Bank of America, N.A., some two years AFTER Bank of America, N.A. subsumed Countrywide Home Loans, Inc. (2011). In any instance wherein an allegedly defunct entity attempted to convey (through the use of a MERS assignor) property to another existing entity, the question then arises as to HOW such an occurrence is possible without fully substantiating the events leading up to the assignment.

There is also a newly-discussed issue wherein defunct lenders in Chapter 11 bankruptcy are repudiating the MERSCORP signing agreements and divesting themselves from involvement with MERS, only to have MERS certifying officers then execute agreements (in contravention of the repudiation), generally as the result of self-assigning the deed of trust and note. Harder to understand is the issue wherein MERS certifying officers can convey or assign property away from a defunct entity (or an entity in reorganization under U. S. bankruptcy Chapter 11 protection) to an existing entity without permission from the bankruptcy trustee or the court itself.

In the instance where any of the foregoing entities attempted conveyance into a special purpose vehicle, the question then arises as to HOW a defunct entity can convey a defaulted promissory note into a trust vehicle, knowing it is in default. Numerous judges like Hon. Arthur Schack of Kings County, New York have asked foreclosure attorneys that very question, much to the attorneys' chagrin, without answer.

Use of Questionable Addresses by MERS Signers as Found in MERS-Related Assignments

In many instances, there was use of an address in Ocala, Florida address (3300 S.W. 34th Avenue, Suite 101, 34474) that in fact, was never registered to MERS to begin with. The lessee at that time was Electronic Data Systems ("EDS"), the entity that purportedly set up the MERS electronic database. That space is currently occupied by Hewlett-Packard, based on contact with the leasing agent for that space. See the following email, sent by the building's leasing agent to Steve Morberg (of Washington State), who supplied this correspondence for use herein:

> From: Randy Buss [mailto:randy@naiheritage.com]
> Sent: Sunday, August 21, 2011 9:53 AM
> To: Steve Morberg
> Subject: RE: Suite 101
>
> Steve,
>
> 3300 SW 34th Ave, Unit 101, Ocala is currently leased to Hewlett Packard and was formerly EDS before they bought them. I'd guess they've been there for 5-10 years. The unit is available next year but can be negotiated as sooner. I do not know of any lender that occupied this space but I'm only the leasing agent marketing vacant and upcoming vacant space. You'll need to address correspondence to the owner of the property which can be found in the public records. I hope this helps. I've received similar phone calls from others.
>
> Randy Buss
> NAI Heritage Business Director
>
> P.O. Box 2495, Ocala, FL 34478
> 2605 SW 33rd Street, Bldg 200, Ocala, FL 34471
> Ph: (352) 482-0777 x214, Fax: (352) 237-7329
> www.naiheritage.com
> An alliance partner of Heritage Management Corp.

A number of these address issues appear to have been facilitated by CoreLogic Document Solutions in Chapin, South Carolina (among others) at the request of Bank of America, N.A. Subsequently, MERS issued a policy bulletin telling document manufacturers who were using the foregoing address to change to a different address in Danville, Illinois. A search of this address produced the listing for a private detective agency (Metro Detective Agency), who appears to be receiving process and correspondence for MERS.

There is also apparent and obvious ignorance of MERS's own policies and directives, like the one for the use of MERS addresses, referenced herein as *Policy Bulletin Number 2010-2*, which MERS issued to its member-subscribers PRIOR to the start of this target audit period.

MERS®

Policy Bulletin

Number 2010-2

To:	**All MERS Members**	**September 24, 2010**

Re: Mortgage Electronic Registration Systems, Inc. Change of Mailing Address

Effective December 6, 2010, all recorded documents requiring a street address for Mortgage Electronic Registration Systems, Inc. should use the following address:

1901 E Voorhees Street, Suite C
Danville, IL 61834

Recorded documents not requiring a street address for Mortgage Electronic Registration Systems, Inc. should continue to use:

P.O. Box 2026
Flint, MI 48501-2026

Policy Bulletin 2008-2 provides examples of when a street address is required on recorded documents. When a street address is required, both the Danville, IL and Flint, MI addresses above should be included.

Starting December 6, all service of process to Mortgage Electronic Registration Systems, Inc. requiring a signature for delivery should be sent to the Danville, IL address. All service of process not requiring a signature for delivery should continue to be addressed to the Flint, MI address.

Service of process to the Ocala, FL address will be refused starting December 6. USPS mail sent to the Ocala address will be returned to sender with a stamp indicating the correct address.

Please provide this notice to all departments and affiliates responsible for generating documents with MERS language, or for providing service of process to Mortgage Electronic Registration Systems, Inc. (MERS).

Thank you for your cooperation.

One example of the blatant ignorance of MERS policies by its own members is reflected in the following example, where its signing officers (apparent employees of Bank of America subsidiary ReconTrust in Maricopa County, Arizona) wear the "MERS hat" to assign property to Bank of America, from then-defunct Countrywide Home Loans Servicing, L.P., to itself; and did so using the Ocala, Florida address, nearly 10 months AFTER MERS issued the foregoing policy bulletin:

ASSIGNMENT OF DEED OF TRUST

DocID# 927182800534181S7

Property Address:
416 Emma Rose Trail
Leander, TX 78641-3351

Recording Requested By:
Bank of America
Prepared By:
Michael Tarkington
888-603-9011
450 E. Boundary St.
Chapin, SC 29036

When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

MIN #: 100015904801970312 MERS Phone #: 888-679-6377

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto **BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP** whose address is **400 NATIONAL WAY, SIMI VALLEY, CA 93065**
all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender:	**CTX MORTGAGE COMPANY, LLC**
Borrower(s):	**RUSSELL A. MCDONNELL AND WIFE TAMMY M. MCDONNELL**
Original Trustee:	**TIMOTHY M. BARTOSH OR WILLIAM B. NARYKA**
Date of Deed of Trust:	**1/25/2008**
Original Loan Amount:	**$164,984.00**

Recorded in **Williamson County, TX** on: **2/4/2008**, book **N/A**, page **N/A** and instrument number **2008008709**

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on 9-29-11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

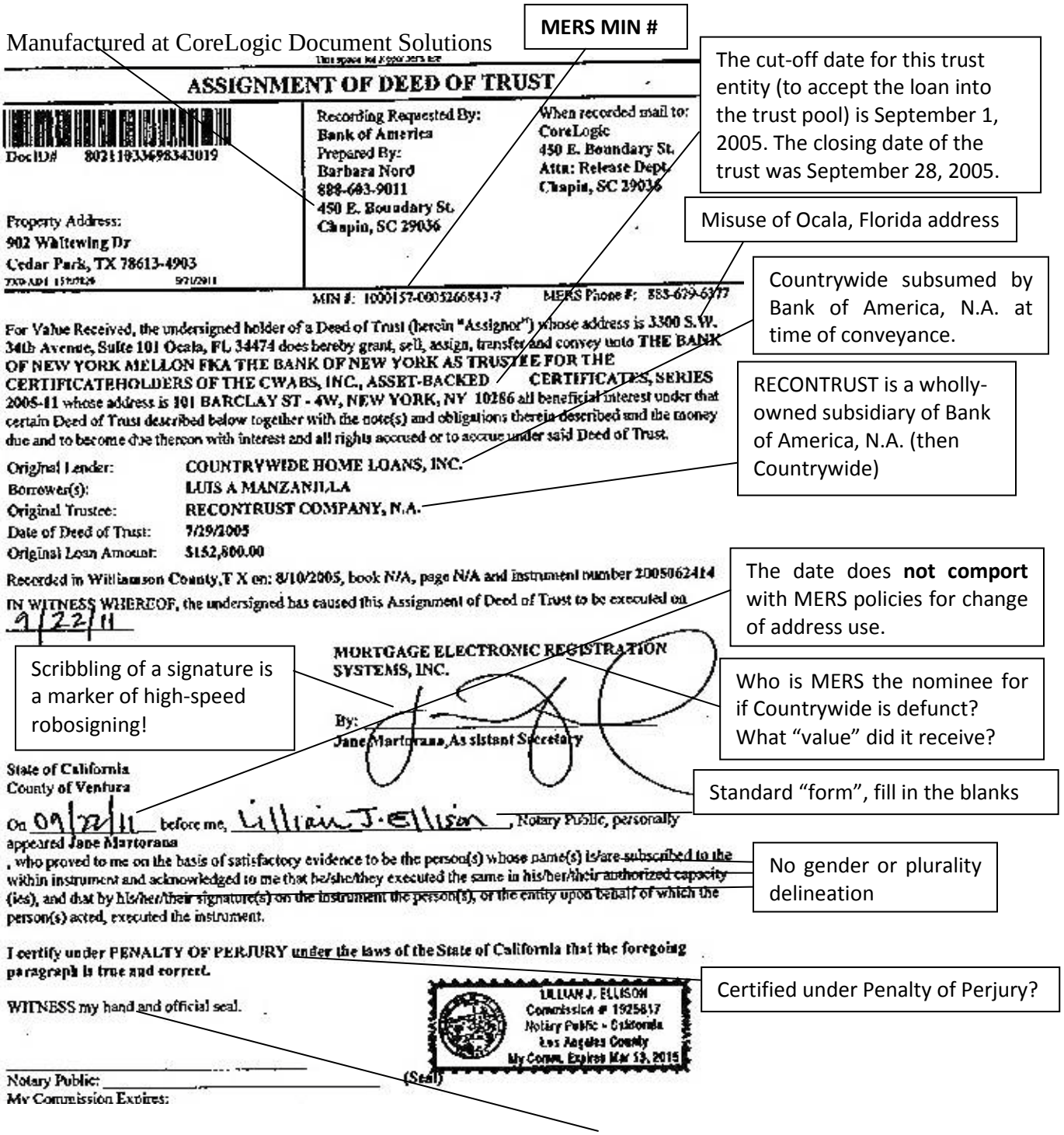
By: _____
Lorena Mahaquias, Assistant Secretary

State of **Arizona**
County of **Maricopa**

Signing date in conflict with
MERS Policy Bulletin Number 2010-2!

See the following example of Instrument #2011065381 that falls within the purview of our target audit; filed for record on September 28, 2011:

Manufactured at CoreLogic Document Solutions



ASSIGNMENT OF DEED OF TRUST

DocID# 8021103369834301 9

Recording Requested By:
Bank of America
Prepared By:
Barbara Nord
888-603-9011
450 E. Boundary St.
Chapin, SC 29036

When recorded mail to:
CoreLogic
450 E. Boundary St.
Attn: Release Dept.
Chapin, SC 29036

Property Address:
902 Whitewing Dr
Cedar Park, TX 78613-4903

MIN #: 100015700052668437 MERS Phone #: 888-679-6377

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34th Avenue, Suite 101 Ocala, FL 34474 does hereby grant, sell, assign, transfer and convey unto THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-11 whose address is 101 BARCLAY ST - 4W, NEW YORK, NY 10286 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: COUNTRYWIDE HOME LOANS, INC.
Borrower(s): LUIS A MANZANILLA
Original Trustee: RECONTRUST COMPANY, N.A.
Date of Deed of Trust: 7/29/2005
Original Loan Amount: $152,800.00

Recorded in Williamson County,T X on: 8/10/2005, book N/A, page N/A and instrument number 2005062414

IN WITNESS WHEREOF, the undersigned has caused this Assignment of Deed of Trust to be executed on 9/22/11

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By:
Jane Martorana, Assistant Secretary

State of California
County of Ventura

On 09/22/11 before me, Lillian J. Ellison, Notary Public, personally appeared Jane Martorana, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LILLIAN J. ELLISON
Commission # 1925817
Notary Public - California
Los Angeles County
My Comm. Expires Mar 13, 2015

Notary Public: _____ (Seal)
My Commission Expires:

MERS MIN #

The cut-off date for this trust entity (to accept the loan into the trust pool) is September 1, 2005. The closing date of the trust was September 28, 2005.

Misuse of Ocala, Florida address

Countrywide subsumed by Bank of America, N.A. at time of conveyance.

RECONTRUST is a wholly-owned subsidiary of Bank of America, N.A. (then Countrywide)

The date does **not comport** with MERS policies for change of address use.

Scribbling of a signature is a marker of high-speed robosigning!

Who is MERS the nominee for if Countrywide is defunct? What "value" did it receive?

Standard "form", fill in the blanks

No gender or plurality delineation

Certified under Penalty of Perjury?

WHERE IS THE NOTARY'S SIGNATURE? (Where did she "witness her hand"?)

The next question we pose, due to the extreme number of documents signed per hour (+/- 350), is: How much personal knowledge does Jane Martorano (the "Assistant Secretary" for MERS) have about the contents of the information she is attesting to (that Barbara Nord in South Carolina drafted)? Could you read every single document and look up the relative information to verify that the information is accurate if you were signing one document every six seconds?

Other Notary Issues

In the following example, the notary for Selim Taherzadeh appears not to have acknowledged the document with her full, commissioned name (as may be required under the Texas Government Code at § 406 et seq):

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 17th day of March, 2011, by ~~Max A. Wemick~~/Selim Taherzadeh of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR SEBRING CAPITAL PARTNERS, LIMITED PARTNERSHIP, ITS SUCCESSORS AND ASSIGNS on behalf of said corporation.

SARAH ELIZABETH MURPHY
MY COMMISSION EXPIRES
January 13, 2013

Sarah Murphy
Notary Public, State of TEXAS

The particular assignment in question was allegedly acknowledged on the 17th of March, 2011; however, the Date of Transfer allegedly occurred on the 2nd of March. How are we to know when the assignment actually occurred and if the attorney herein had knowledge of what he was attesting to, as it appears his law firm also manufactures documents to suit a given purpose? Of course, we also do not know why the document was backdated to reflect an assignment (transfer) date unknown to the Borrower unless he effectuates discovery within the filing of a lawsuit.

Certain Issues with Tracking Assignments

There were also issues arising out of simply listing the legal description on the assignment instead of the reference Deed of Trust instrument number. This happened in at least ten (10) instances involving the attestation of Selim Taherzadeh alone. All of the documents were Special Warranty Deeds of Trustee's Deeds (assigned after a foreclosure sale); all documents had a second page attached where a corporate acknowledgment existed (another marker of document manufacturing where the potential exists that the two pages were manufactured separately and attached to each other at a later point in time).

Additionally, all ten documents shown had Wells Fargo Bank, N.A. as the assignor, with Selim Taherzadeh claiming to have "attorney-in-fact" privileges as dictated by a Limited Power of Attorney acknowledged on June 18, 2009 (not found to be located in the real property records of Williamson County at any time during the audit). Other similarities with this grouping showed that the Assignee was The Secretary of Housing and Urban Development (HUD) in care of the law firm of Michaelson, Conner and Boul in Oklahoma City, Oklahoma. Similar types of documents were shown with listed "investors" as Freddie Mac or Fannie Mae, without the appearance of an appropriate assignment to the GSE's reflecting their interest in the property.

The problem with these recordations is that the Williamson County real property records system generally records documents by related instrument numbers. Since the documents only contain a legal description, the potential exists that these Warranty Deeds could only be found by instrument number alone, not by legal description as they pair with the original Deed of Trust which was foreclosed upon. This scenario would ultimately impede tracking the chain of title.

Selim Taherzadeh Issues

Selim Taherzadeh's signature, which appears as some authority vested by limited power of attorney for what appears to be foreclosure mill Brice Vander Linden & Wernick, P.C. claims he has a limited power of attorney vested to him on behalf of the following entities:

Wells Fargo Bank, N.A., June 18, 2009 P.O.A. to sign for original Lender DHI Mortgage Company with MERS listed as nominee (appointment of substitute trustee).

This particular appointment was preceded by an assignment that appears to be done on behalf of Wells Fargo Bank, N.A. (recorded on August 5, 2011) by agents of Lender Processing Default Solutions of Dakota County, Minnesota. The assignment appears to have conveyed the subject property to Wells Fargo Bank, by and through its own association with LPS. The signor is signing for MERS as nominee for DHI Mortgage Company, an Austin, Texas-based company created to benefit D. R. Horton, Inc. and its real estate development projects. There does not appear to be any Texas-based assignment involved with this assignment. All assignments relative to this conveyance appear to have been done by LPD employees with the assistance of Wells Fargo Bank, N.A.

There is reason to believe there is suspect robosigning and suspect notary fraud in this instance as it is unknown as to whether Taherzadeh actually (1) signed the documents, due to the signature variations; and (2) had personal knowledge of what he was attesting to, based on the number of documents he (as a managing attorney for Brice) would have to sign in one hour.

It appears that LPS was also instrumental in helping assign numerous mortgages over to Wells Fargo Bank, N.A. so Taherzadeh, as its alleged attorney-in-fact could sign off on appointing his own law firm (Brice) as the foreclosing entity, whether Wells Fargo indeed owned the Notes in question.

In this particular case, involving a Williamson county property belonging to Pedro Rodriguez and his wife Gabriella Rodriguez (involving the filing of Notices of Acceleration and Trustee's Sale), there was not one but FIVE notices filed with the Williamson County Clerk dated March 9, 2012; April 6 2012; May 9, 2012; June 6, 2012; and July 10, 2012 … five times the note appears to have been accelerated and five times, sale dates were set and re-set. Different substitute trustees appear to have signed the notices, all on behalf of the Brice foreclosure mill. Related source files were examined through www.wilco.org. There are also issues as to whether a valid power of attorney existed before May of 2012 giving Taherzadeh and Brice Vander Linden attorney-in-fact status from Wells Fargo Bank, N.A. (see *Appendix 2* for reference).

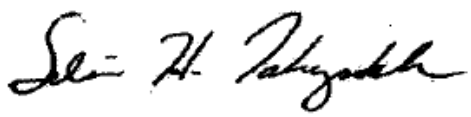
With the manner in which the notary's apparent handwriting either affixed the date of the signor (or in the absence of the "execution date" being listed), it is possible that Taherzadeh may have signed the document, but the notary did not witness it; or in the alternative, the notary surrogate signed Taherzadeh's signature at his direction. In the previous scenario, where Taherzadeh signed the Special Warranty Deeds, he may have in fact signed them, but the second page-attached corporate acknowledgments may have been pre-signed, which would mean that no one would have knowledge of their genuineness. Someone else may have surrogate signed Taherzadeh's name; thus, the attorney would lack knowledge of the document's actual contents.

Backdating Assignments

There were dozens of issues with Selim Taherzadeh (as well as Stephen C. Porter) acting as an attorney-in-fact for MERS in assigning various deeds of trust (and attempted assignments of notes) to special purpose vehicles as well as Wells Fargo Bank, N.A. **Over half of the assignments were backdated more than a week; some assignments were backdated to convey some sort of purported authority by more than 4-1/2 years!**

There were also as many signature variations of Taherzadeh's signature in these assignments. Again, we revisited the idea of self-assignment of the deed of trust through the use of MERS; suspect surrogate and robosigning and possible suspect forgery of Taherzadeh's signature, or in the alternative, notarization of documents containing Taherzadeh's signature without the notary witnessing the signature. The following signature of Taherzadeh (below) was reprinted from correspondence sent to one homeowner by certified mail:

Very truly yours,

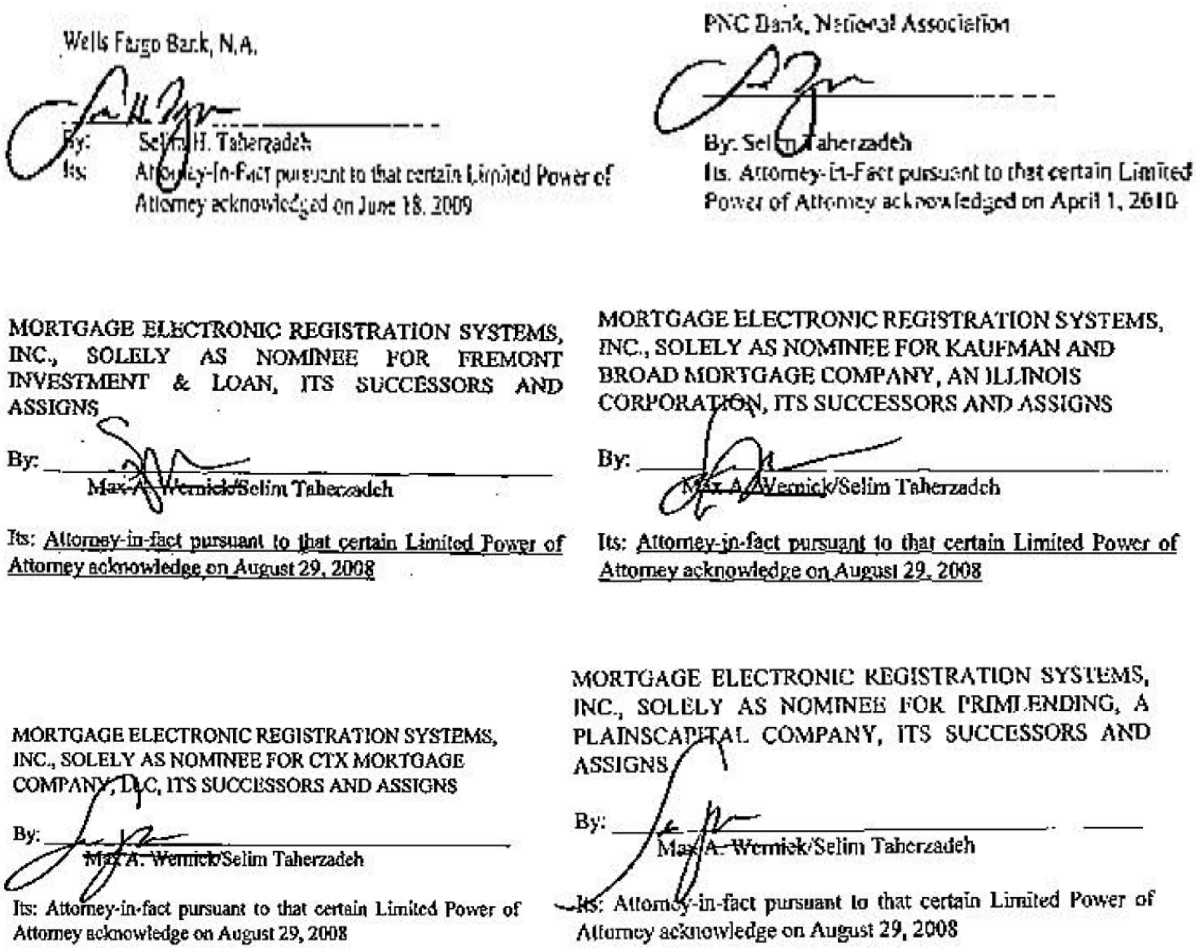


Brice, Vander Linden & Wernick, P.C.
Selim Taherzadeh

Managing Attorney

This particular signature is where he specifically identifies himself as a "Managing Attorney" for this alleged foreclosure mill and no other entity. Notice the formal signature, even though his middle initial ("H.") does not appear within the typewritten closing. The most common issues discovered as part of this audit were for suspect robosigning and suspect surrogate signing. Additionally, the signors (Taherzadeh in this instance) wear multiple hats, signing for MERS as attorney in fact as well as for other entities by limited power of attorney, even though few of these powers of attorney could be located. In one instance, Taherzadeh himself even certified his own signature and his own authority on a document. Technically, the authority is supposed to be granted by the lender (as holder of the note). Such does not appear to be the case here; instead based solely on arrogance of the foreclosure mill.

As was demonstrated by county registers of deeds, county clerks and county recorders in previous types of investigative audits and examinations done by third party contractors, multiple samples of "robosignatures" (such as with robosignor Linda Green) were gleaned from the records and posted on a single page to reflect the alleged surrogate-signing issues, as shown in this report:



Wells Fargo Bank, N.A.

By: Selim H. Taherzadeh
Its: Attorney-In-Fact pursuant to that certain Limited Power of Attorney acknowledged on June 18, 2009

PNC Bank, National Association

By: Selim Taherzadeh
Its: Attorney-In-Fact pursuant to that certain Limited Power of Attorney acknowledged on April 1, 2010

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR FREMONT INVESTMENT & LOAN, ITS SUCCESSORS AND ASSIGNS

By: ~~Max A. Wernick~~/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR KAUFMAN AND BROAD MORTGAGE COMPANY, AN ILLINOIS CORPORATION, ITS SUCCESSORS AND ASSIGNS

By: ~~Max A. Wernick~~/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR CTX MORTGAGE COMPANY, LLC, ITS SUCCESSORS AND ASSIGNS

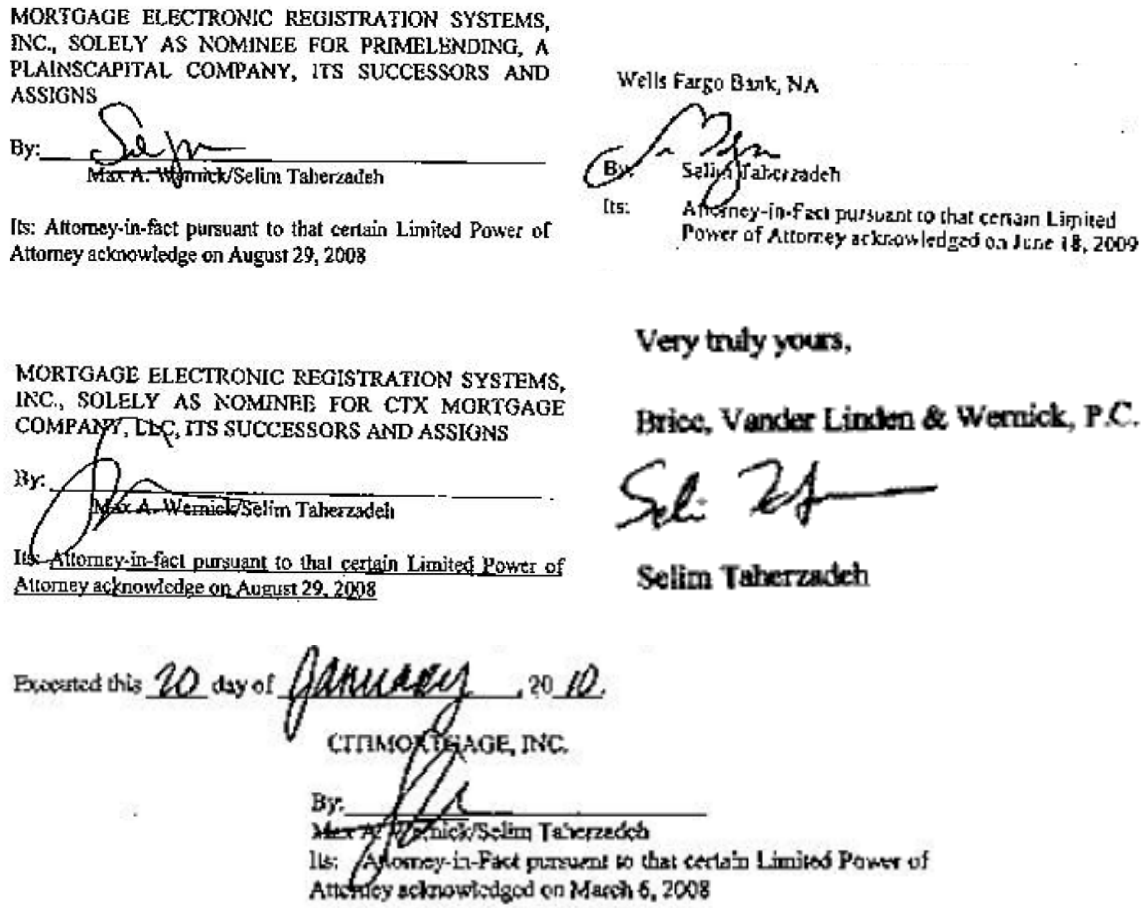
By: ~~Max A. Wernick~~/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR PRIMELENDING, A PLAINSCAPITAL COMPANY, ITS SUCCESSORS AND ASSIGNS

By: ~~Max A. Wernick~~/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008


MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR PRIMELENDING, A PLAINSCAPITAL COMPANY, ITS SUCCESSORS AND ASSIGNS

By: _____
Max A. Wernick/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

Wells Fargo Bank, NA

By: _____
Selim Taherzadeh

Its: Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on June 18, 2009

Very truly yours,

Brice, Vander Linden & Wernick, P.C.

Selim Taherzadeh

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR CTX MORTGAGE COMPANY, LLC, ITS SUCCESSORS AND ASSIGNS

By: _____
Max A. Wernick/Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

Executed this 20 day of January, 20 10.

CTHMORTGAGE, INC.

By: _____
Max A. Wernick/Selim Taherzadeh

Its: Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on March 6, 2008

Apparent Egregious Behaviors of Document Manufacturing by Foreclosure Mills

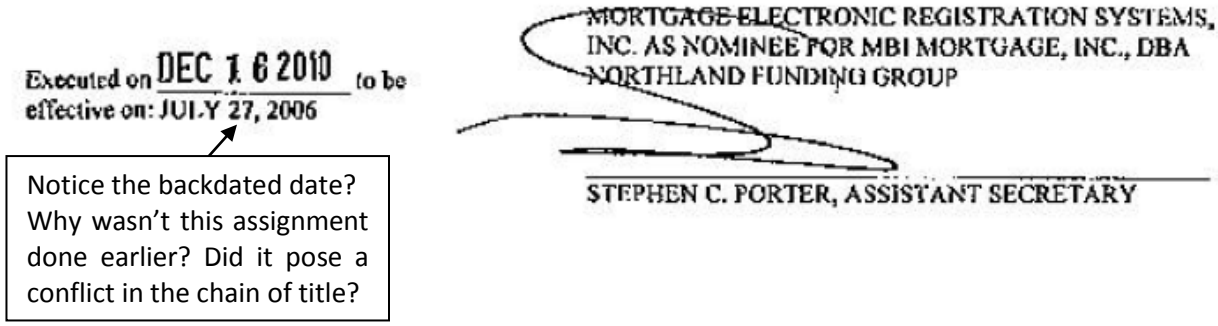
In one of the documents reviewed (Instrument #2012008827), it appears that the Grantor and Original Trustee are one in the same person (Rena M. Warden). **Ms. Warden is actually the Borrower here.** The original Deed of Trust (Instrument #2004025286) lists the original Trustee as John M. Harris.

In this instance, attorney-in-fact Selim Taherzadeh, who claims to have full knowledge of the facts herein, signed his name under an alleged authority from Wells Fargo Bank, N.A., when in fact, the information contained on this Appointment of Substitute Trustee, wherein Taherzadeh himself is listed, is incorrect as to the parties involved. Only the Lender is allowed to substitute the trustee according to the language in the original deed of trust filed in the land records herein. The assignment connected with this appointment appears to have been manufactured by LPS Default Solutions agents in Dakota County, Minnesota; more than likely, robosigned and "robonotarized" (meaning the notary may not have been a witness to the signing of the document by the attestant).

There are also various signors coming into presence here wherein the signor and the notary are in California or Arizona; the document appears to have been manufactured by CoreLogic Document Solutions in Chapin, South Carolina; and the document was requested by Bank of America, N.A., wherein Bank of America, N.A. was the named beneficiary of that assignment.

There were also documents reviewed as part of this audit that were notarized in another state other than California, but in the notarial jurat (an apparent error as the result of document manufacturing), it stated "under penalty of perjury under the laws of the State of California".

The most apparent egregious backdating efforts exposed in this audit are credited to Stephen C. Porter and Barrett Daffin Frappier Turner and Engel, LLP:



Notice the date of the execution of the foregoing assignment (Williamson County Official Property Records Instrument #2011000216) is December 16, 2010; notice how the "to be effective" is NOT the same language as "was effective on". "To be effective" denotes future tense.

One would also have to ask how Mr. Porter had personal knowledge of the facts contained in the document he allegedly signed over 4-1/2 years prior (by virtue of the backdating of the document).

Despite the audit date parameters being in conflict with the two-year document challenge statute, this type of backdating is commonplace, without any explanation in the document itself. How then are we to believe the validity of this assignment? One can observe the date (July 27, 2006) and readily make the same grammatical conclusions.

Further, Porter is signing as Assistant Secretary for MERS on this assignment; however, the notarial execution DOES NOT MATCH (as to the name of the Lender MERS is a nominee for):

CORPORATE ACKNOWLEDGEMENT

State of TEXAS §

County of DALLAS §

Before me, the undersigned Notary Public, on this day personally appeared STEPHEN C. PORTER, ASSISTANT SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS, a corporation, known to me to be the person whose name is subscribed to the foregoing instrument and on behalf of said corporation acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____ day of DEC 1 8 2010, 2010.

Georgia Ann Bradley
Notary Public Signature

My Commission Expires:
2.20.13

Georgia Ann Bradley
Printed Name of Notary Public

ASGNDOT.RPT.rpt - Vers 20 - 11/16/2010

GEORGIA ANN BRADLEY
Notary Public
State of Texas
My Comm. Exp. 02-20-2013

ASSG20100169813405

In other documents as part of this batch, the notary is also signing her name as "Georgia A. Bradley" (not her commissioned name). The rubber-stamped date is another "marker" of robosigning and robo-notarization (all part of the scheme utilized in third-party document manufacturing). There is no gender delineation either (another "marker" of robosigning). From this audit, Porter and his notaries appear to have fabricated hundreds of these so-called "assignments" during the target audit period in Williamson County alone (and also as reviewed but not audited in years prior to the target audit period).

As to MBI Mortgage, Inc. and Northland Funding Group

MBI Mortgage, Inc. operated branch offices in Dallas, Austin, Conroe and San Antonio. The Conroe office incorporated on August 22, 1994 (Texas SOS Filing #13213100) and has since forfeited its existence. The registered agent at that time was Lawrence A. Winslow, 152 Stones Edge, Montgomery, Texas 77356.

The Dallas office was incorporated on May 12, 2005 (Texas SOS Filing #800491937) and has since forfeited its existence. The registered agent at that time was Robert M. Currier, whose address appears to have been listed at the address of the MBI Dallas office of 1845 Woodall Rodgers Freeway, Suite 1225, Dallas, Texas 75201.

Northland Funding Group, LLC, appears to have been a Texas limited partnership, which was filed on October 18, 1999 (Texas SOS Filing #706776922); its entity status shows "Inactive" according to a search of the online database of the Texas Secretary of State's (SOS) website. It showed a business address of 6850 Austin Centre Blvd., Suite 220, Austin, Texas 78731.

Its registered agent at that time was NFG Management Company, LLC, listing the same address as above. Another name (Larry D. Weisinger) was also listed as a registered agent at that same address.

There are several issues with this assignment, to wit:

(1) The address given for MBI Mortgage, Inc., dba Northland Funding Group in South Carolina (upon further searches) produced an address for Wells Fargo Home Mortgage;

(2) Further, this same address also produced search results for the following entities: (a.) a branch location for Federal Home Loan Mortgage Corporation (FHLMC) or Freddie Mac; (b.) a branch location for HSBC Bank; and (c.) a branch location for Liquidation Properties, Inc.; among other firms located in the same complex;

(3) MBI Mortgage, Inc. and Northland Funding Group do not appear to be active in the State of Texas. Both are listed as being "Inactive" or "Forfeited";

(4) It is not uncommon to see MERS agents (Certifying Officers) convey property away from original lenders that have filed Chapter 11 or have gone out of existence;

(5) A check of the records in the online database of the South Carolina Secretary of State's website shows that MBI Mortgage, Inc. was incorporated in Texas; that it registered with the Secretary of State of South Carolina on November 29, 2006; that its status as a corporation in good standing was forfeited; that its registered agent resigned; that this entity was dissolved on March 8, 2010 (See Table "C" below);

(6) Thus, it appears that Stephen C. Porter is taking the liberty to backdate the assignment to a date when MBI Mortgage, Inc. was in business; however, the executed date of the assignment was well outside of the dissolution date of this entity.

How then can this assignment be valid?

How can the notary acknowledge such an attestation?

There appear to be no other assignments of record affecting the subject property, which would transfer the property to any other valid entity, as referenced in Table "D"** herein:

TABLE "D"

MBI MORTGAGE, INC.

Note: This online database was last updated on 11/10/2012 6:01:29 PM. See our Disclaimer.

DOMESTIC / FOREIGN:	Foreign
STATUS:	Forfeiture
STATE OF INCORPORATION / ORGANIZATION:	TEXAS Profit
REGISTERED AGENT INFORMATION	
REGISTERED AGENT NAME:	AGENT RESIGNED
ADDRESS:	
CITY:	
STATE:	
ZIP:	
SECOND ADDRESS:	
FILE DATE:	11/29/2006
EFFECTIVE DATE:	11/29/2006
DISSOLVED DATE:	03/08/2010

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Forfeiture	03/08/2010	SCBOS Filing: ADMINISTRATIVE DISSOLUTION #2	
No Agent	01/22/2008	RESIGNATION OF AGT/ADD	
Authority	11/29/2006	AUTH.	

***** This table was copied from the Texas Secretary of State's website under Business Entity searches.***

EXTRACTION FILE: Apparent Aberration of the Rowe's Chain of Title

The original Deed of Trust Instrument Number listed is #2006064203, executed by Paul M. Rowe and Sharon Rowe, husband and wife, on July 27, 2006 (not coincidentally, the date of the "To be effective" date shown on the foregoing assignment). The MERS MIN contained in this document was #1001625-0007764589-4.

After a diligent search of the real property records of Williamson County, Texas by the auditor, there was no assignment from MBI Mortgage (or Northland Funding) to Wells Fargo Bank, N.A. (per se) located in those records.

However, with the help of Barrett Daffin attorney Stephen C. Porter, who held himself out as **Vice President of Loan Documentation** for Wells Fargo Bank, N.A., appointed his trusted staff of substitute trustees on October 29, 2010 and caused that document to be filed for record as Instrument #2010082831 in the Williamson County real property records on December 7, 2010.

Unfortunately, the assignment that was audited as part of this target audit was dated December 16, 2010 and filed for record on January 3, 2011 as Instrument #2011000216. The two-year time frame for challenge to this recordation appears to have expired. There is also the appearance of an *Ibanez* scenario, wherein Porter appointed successor trustees on behalf of Wells Fargo Bank, N.A. BEFORE the assignment was duly recorded.

To further complicate matters, an "Affidavit of Lost Assignment with Indemnity" was filed for record on March 7, 2011 as Instrument #2011014990. This document also appears to have been manufactured by agents of Wells Fargo Bank, N.A., who claim that they are "authorized by the note holder to make this affidavit". Further, the affidavit admits that the "assignment to Wells Fargo Bank, N.A. was never recorded and inadvertently not completed and is now unobtainable."

The following document, filed for record as Instrument #2011014991 in the Williamson County real property records, in sequence with the Affidavit, appears to be a "Release of Lien". In this Release of Lien, which was also filed on March 7, 2011, the notary for the Affidavit, Terence Lynn Jutila, is now signing as Vice President of Loan Documentation, releasing the lien on the property, which was notarized by one Mai Doua Yang. The signatures of Terence Lynn Jutila on both of the foregoing documents appear to be forged through surrogate signing. The signatures are markedly different. Lender Processing Services' *Lender Default Solutions* may be behind this document manufacturing, working as subcontractors for Wells Fargo Bank, N.A.

How is it, given the scenario of the two preceding documents, that Stephen C. Porter could declare himself to be Vice President of Loan Documentation for Wells Fargo Bank on December 16, 2010 and then execute an assignment that was "unobtainable"? This is likely the truest appearance of an aberration in the chain of title found within the real property records during this target audit period. Further, notary Georgia Ann Bradley appears not to have acknowledged one of these documents using her fully-commissioned name.

There was a limited power of attorney filed for record in Collin County, Texas as Instrument #2003-0061812, which gave Stephen C. Porter specific powers of attorney to sign in certain instances as "attorney-in-fact" for Wells Fargo Bank, N.A. However, there is nothing in this Limited Power of Attorney that purports to designate Stephen C. Porter as a Vice President of Loan Documentation; nor is there any indication that Stephen C. Porter is an employee of Wells Fargo Bank, N.A. or Wells Fargo Home Mortgage. *See Appendix 2 for all relative power of attorney documents.*

Nothing in the foregoing recorded Instrument indicates that Mr. Porter can designate himself a "Vice President of Loan Documentation". It is also apparent that Mr. Porter is NOT an employee of Wells Fargo Home Mortgage; Lender Processing Services or any of its subsidiaries; but has been granted ONLY a limited power of attorney for Wells Fargo Home Mortgage.

The evidence found *solely* in the real property records searches has caused the auditor reviewing this scenario to believe that there may be serious defects not only in the chain of title to the Rowe's property at 1002 Wood Mesa Drive, Round Rock, Texas 78664; but also as to the identity of the true holder of the note; and whether Wells Fargo Bank, N.A. has unjustly enriched itself when it released the lien on the Rowe's property. Where is the proof Wells Fargo Bank, N.A. had a lien interest in this property?

And as for MERS, a search of its database produced the expected results that the mortgage servicer was Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. (what the servicer wanted to display as the results of this search).

Another interesting aspect of this scenario, besides listing the Rowe's mortgage loan as "Inactive", is a red-face type notation not previously seen in MERS search results:

"This mortgage loan is registered on the MERS System for informational purposes only. Mortgage Electronic Registration Systems, Inc. is not the mortgagee for this loan."

So if MERS is not the "mortgagee", then why is MERS listed as the "beneficiary" on the original deed of trust executed by the Rowe's on July 27, 2006?

AUDITOR'S NOTE: The term "mortgagee" is commonly used in MERS mortgages in states where a "Mortgage" is issued. The term "beneficiary" is commonly used by MERS in deed of trust states where a "Deed of Trust" is issued with MERS claiming itself as such to create the "static" condition previously spoken of herein. The auditor uses these terms interchangeably here since MERS would commonly identify itself in these instances to further its business model. The entire chain of title is in the possession of the auditor for further review or use as evidence of audit.

Further, Paragraph 20 on Page 10 of the Deed of Trust that Paul Rowe signed on July 27, 2006 (Paul Rowe signed all documents on behalf of his wife, Sharon, claiming to have a power-of-attorney; although there was none found in the real property records to indicate such authority) contained a provision wherein the lender could sell the note, or a partial interest in the note, without prior notice to Mr. Rowe.

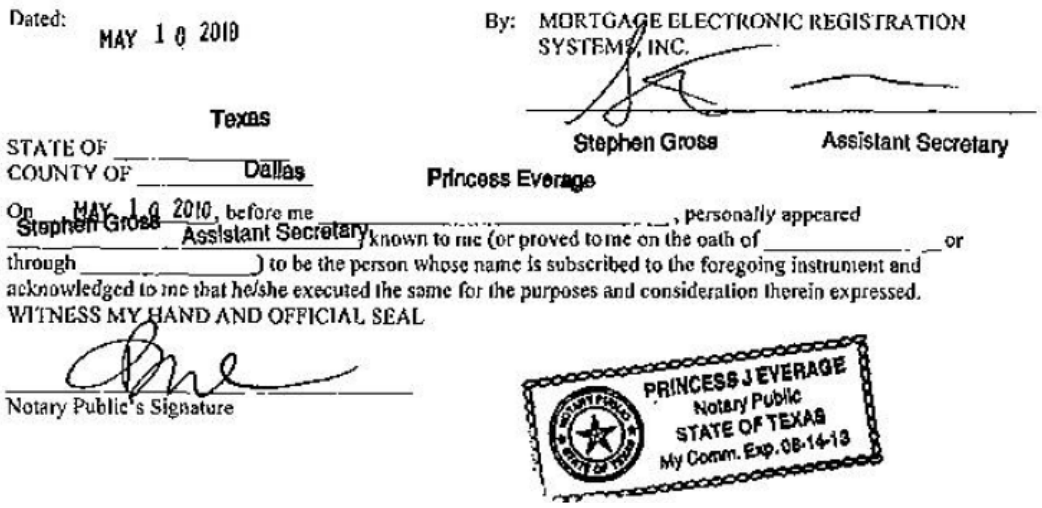
This suggests that the note could be fractionalized, then securitized (possibly resulting in mesne assignees in the Rowe's chain of title), who could at some point in time in the future claim an interest in the Rowe's property.

Since Wells Fargo indemnifies itself, what recourse would the Rowe's have? How can a lender claiming to indemnify itself by virtue a purported lost assignment affidavit, then turn around to release the lien (without any warranty) and expect the Rowe's to have clear title as a result of this scenario?

Stephen Gross Issues

Three different corporate assignments, recorded as Instrument Numbers #2010035294; #2010045841; #2010045849; and #2010045850, in the Williamson County land records, seem to contain the signature of one Stephen Gross who appears to be an employee of ReconTrust Company, N.A., which is the wholly-owned subsidiary and trustee for Bank of America, N.A. (located in Richardson, Texas, where Mr. Gross is believed to be employed). Some of these documents were carefully reviewed for signature dissimilarities at the request of the Williamson County, Clerk, even though they may not have been dated within the target audit period. Texas notary laws provide that any party attesting to a document which a notary is to acknowledge shall identify the signing party. In the documents reviewed herein there was no identification noted.

If the audit team were not aware of potential statutory noncompliance, such assertions would not have been made. Knowing this suspicious behavior exists leads us to believe that there may not have been a notary log book kept as part of the usual practice of notarial recordations as required under Texas Government Code at § 406.014. If the notary had to prove identification of the parties to which she acknowledged, would she actually have the properly-maintained log book to show any inquiring party as required under the foregoing Chapter? Below is a sample of the failure to identify problem, along with the noted "markers" (rubber stamped-type, fill-in-the-blank, robosigned, mass produced assignments called into question all over the country):


Dated: MAY 10 2010

By: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Stephen Gross Assistant Secretary

STATE OF Texas

COUNTY OF Dallas

Princess Everage

On MAY 10 2010, before me _____, personally appeared Stephen Gross Assistant Secretary known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

WITNESS MY HAND AND OFFICIAL SEAL

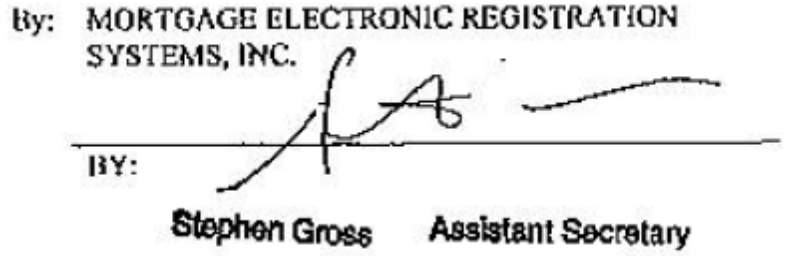
Notary Public's Signature

PRINCESS J EVERAGE
Notary Public
STATE OF TEXAS
My Comm. Exp. 08-14-13

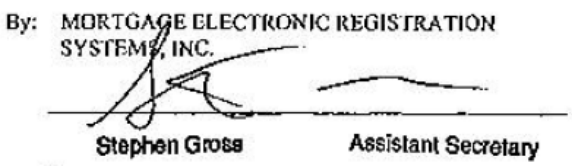
The rapid-fire pace of document manufacturing is illustrated by sloppy rubber stamping.

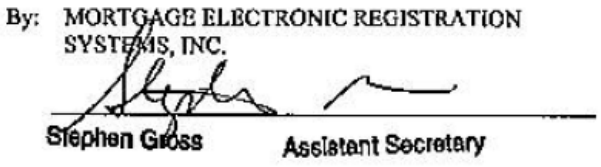
Notice the notary's "stamped name" is inserted at least ¼" above the line? Notice the blanks after "or proved to me on the oath of", that Stephen Gross is actually signing for MERS and attempting to convey the notes in which MERS does not have an interest (by their own admission in various cases). Thus, we question whether MERS could convey the note in this document.

Here MERS was not listed as acting on behalf of any lender; thus, we are left to search for the listed original lender of record based on the Instrument number of the listed reference document. Because of the issues involving the transfers and assignments of mortgage loans outside of the Williamson County real property records, the original lender may not be the current holder and owner of the note. In the examples identified in this section of the report, it appears that no oath was administered, nor was there any specific notation made as to how the alleged signor was identified. Now, we turn to different signature variations of Stephen Gross, as compared to the above signature. Depending on which notary is signing the documents, we list the results below:

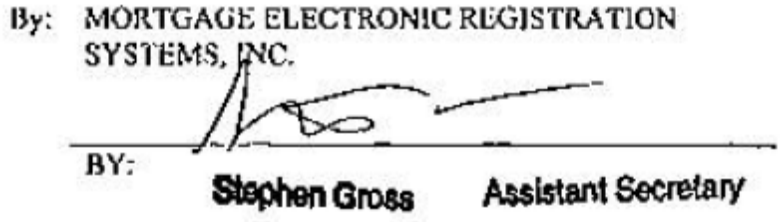


Texas notary Lauren D. Hollemon allegedly attested to the foregoing signatures with no apparent identification process recorded.



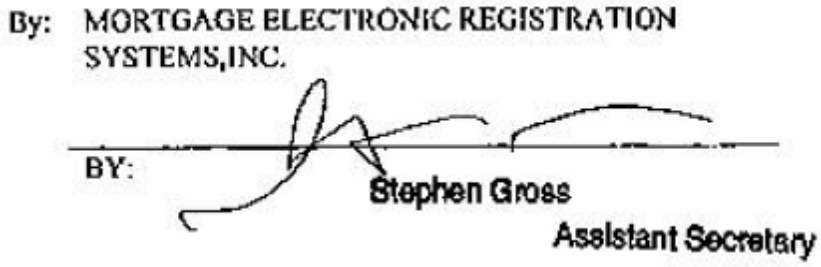


A different Texas notary, Princess Everage, allegedly attested to the foregoing two signature variations with no apparent identification delineation recorded.



And again, Texas notary Lauren D. Hollemon allegedly attested to the foregoing signature with no apparent identification delineation recorded. Notice the drastic signature variations of Stephen Gross (when Lauren D. Hollemon was acknowledging) all dated June 15, 2010?

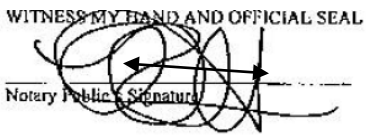
The following Princess Everage acknowledgement was done May 10, 2010:

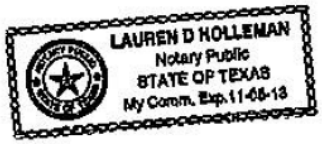


Another "marker", or indicator of questionable behavior, is the manner in which the notary signs the document.

Illegible (or "scribbled" signatures) brings to mind the information obtained in the DOCX investigations in Alpharetta, Georgia, during which signors admitted to signing over 350 documents an hour, many of whom were NOT in the presence of the notary who allegedly affixed their signature and seal to such assignments:

The samples below are reflective of these "markers", or sloppy signatures:



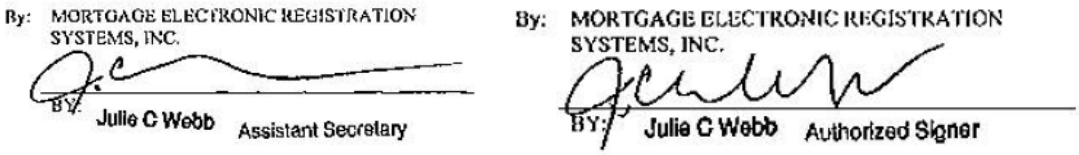


Because all of the foregoing signatures and notarial acknowledgments in this section occurred in Texas and all the assignments were assigned to BAC Home Loans Servicing, LP (now subsumed into Bank of America, N.A.), it implies that BAC's own "trustee" performed what we term a "self-assignment" of the MERS deed of trust.

When the wide and varied Linda Green signature variations (featured on CBS's *60 Minutes* April 3, 2011 program, which featured Florida fraud investigation attorney Lynn Szymoniak) manifest themselves in the same manner as they did in the foregoing documents in this section, we term this not only "robosigning" wherein the documents are suspect for document mass production, but also what is termed "surrogate signing", another facet of the 60 Minutes news piece, which involved other parties signing that person's name instead of the intended signor affixing their signature.

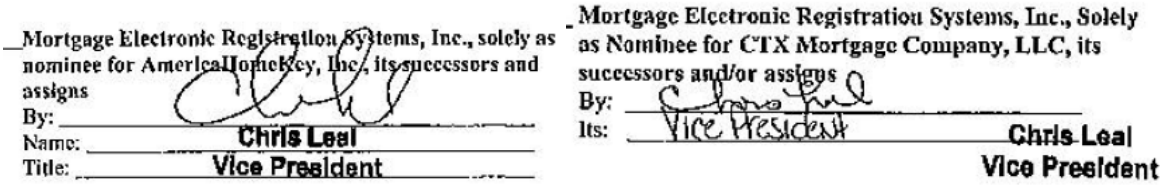
That program further revealed a place called the "signing room", where $10/hour employees of DOCX would almost robotically affix their signatures to documents (many of which were alleged to have already been notarized in a different part of the building). Thus, the surrogate signature, one without the presence of the attestant, creates a question as to what personal or actual knowledge the alleged signor had for which document they were attesting to and whether such acknowledgment was legal.

More Alleged ReconTrust Robosignors



Is Julie C. Webb an Assistant Secretary for MERS, or merely an "Authorized Signer"? Note the signature variations. Does MERS have a title "Authorized Signer" that it applies to employees of ReconTrust Company, N.A.?

Note Chris Leal's signature variations as he too appears to be an employee of ReconTrust:



ReconTrust Company, N.A. seems to have more than one document manufacturing plant, possibly aside from its purported headquarters in Richardson, Texas.

As to Surrogate Signing Issues

Surrogate signing is a scenario created when person(s) whose name(s) appear on a given document is not the actual signor of the document. Again, this scenario was disclosed on the *60 Minutes* news piece in which a former male DOCX employee admitted on camera, "Yes, I'm Linda Green."

Chris Pendley claimed he was paid $10 an hour to sign documents at the rate of 350 documents per hour, signing Linda Green's name as a Vice President or Assistant Secretary of Mortgage Electronic Registration Systems, Inc. (MERS) or some other financial institution. He even demonstrated for the news camera his method of robosigning; signing a piece of paper without reading it, flipping it over to sign the next one, and then the next one, in a robotic fashion.

Surrogate signors work much the same way as robosignors operate. There is mass signing of documents with no possible attempt to read the documents being signed, let alone possess any personal knowledge of each document's contents. Thus, most of these so-called robosignors admit in deposition that they have no personal knowledge of what they were attesting. Until the case is fully litigated, these issues would never be exposed.

Electronic Signature Issues

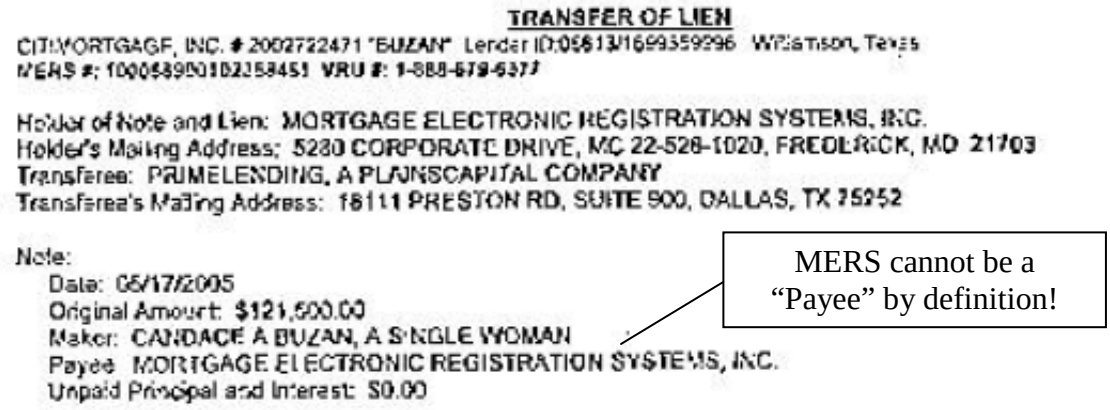
Certain States, including Texas, have passed statutes that allow for electronic signatures, or "e-sign".*

The problem with e-signatures is that there is no specific verification of record (as in a notary log book) if there exists a document that purports to have been created using a signature machine and that document is used to reconvey a property or any other use involving real property actions.

In the particular case reviewed below, as extracted from the audit files, there are significantly different signatures of BOTH the signor AND the notary, who purportedly appear to be involved with Verdugo Trustee Services Corporation of Maryland. This entity lost its good standing with the State of Maryland, twice, in 2002 and 2006, for failing to file the proper reports, although it was reinstated in good standing.

At issue is Williamson County official property records Instrument #20107543. As pictured below, the document purports to be a "Transfer of Lien" from MERS (as nominee for RBC Mortgage Company of Houston, Texas, the original lender in Deed of Trust Instrument #2005037689) to Primelending, a Plainscapital Company, as Transferee (the party allegedly in receipt of the lien):

*The Texas Statute however does not allow for electronic signatures relating to foreclosures; Texas Electronic Signatures Act.



Part of the problem in using third-party document manufacturers, like Verdugo Trustee Services Corporation, is the address shown above for MERS, at 5280 Corporate Drive, Frederick, MD 21703), when in reality this address is legally registered to Citibank/Citimortgage, Inc. (shown at the very top, left-hand corner of the picture).

The language in this transfer of lien purportedly indicates that MERS is "Holder of Note and Lien". Under the heading entitled "Note:", MERS is shown as the "Payee".

According to *Black's Law Dictionary*, 6th Edition, the definition of a PAYEE is:

> **The person in whose favor a bill of exchange, promissory note, or check is made or drawn; the person to whom or to whose order a bill, note, or check is made payable; the person to whom an instrument is payable upon issuance. The entity to whom a cash payment is made or who will receive the state amount of money on a check. One to whom money is paid or is to be paid.**

The problem with using the foregoing language in this recorded Instrument, showing Williamson County property owner Candace A. Buzan, a single woman, is that Ms. Buzan probably has no idea this assignment was recorded and more than likely, has no idea her Note was potentially securitized (or even worse, fractionalized) on Wall Street. (Citimortgage is known for allegedly securitizing a majority of its paper.)

Further, it is questionable whether MERS is actually the "payee". According to statements made by MERS, it's a bankruptcy-remote entity designed to act as an electronic registry for securitized mortgage loans and NOT as a payor or payee. It cannot have assets or liabilities; cannot incur income or expenses; nor can it have employees (because it would have to maintain a payroll for which expenses would have to be shown); thus, it would violate its bankruptcy-remote status.

What is even more confusing is the following phrase, which is excerpted from the same page of this recorded Instrument:

"For value received Holder of Note and Lien (MERS) transfers them to Transferee, warrants that the Lien is valid against the property in the priority as insured." The statements contained in this document give rise to a plethora of questions:

- How is it possible that MERS received anything of value without violating its bankruptcy-remote status?

- How can an electronic database registry can "hold" anything without it being considered an asset?

- How is it possible that MERS has the ability, through Verdugo Trustee Services Corporation, whose address is in Gaithersburg, Maryland, to list its address as the same as Citimortgage, Inc.?

- How can MERS as an electronic database "warrant" the validity of anything?

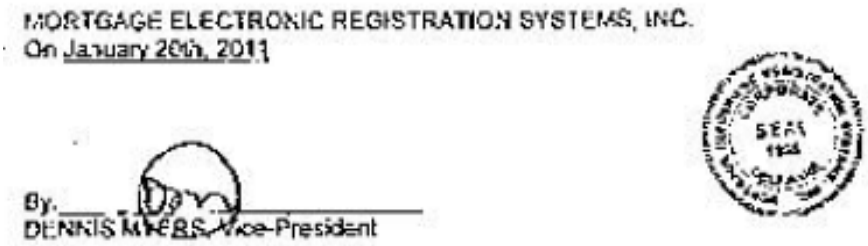
- How can MERS be a lawful payee without violating its bankruptcy-remote status?

Next is the issue of the signor and the notary. Without reviewing the original deed of trust, the original lender is difficult to ascertain because MERS's agents (in this instance Verdugo) never stated it in this "Transfer of Lien". Without MERS involvement "as nominee for the lender and lender's successors and assigns", this document appears to demonstrate that MERS (by and through its certifying officer, Dennis Myers, as Vice President of MERS) is more than just an electronic database.

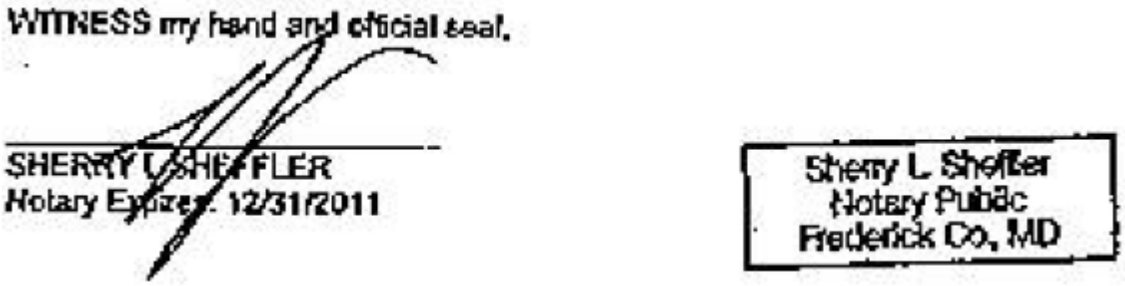
The Notary, Sherry L. Sheffler, has a notary seal showing her to be located in Frederick County, Maryland. When a search of the Maryland Secretary of State's notary database was conducted however, the following information resulted:

Sherry L. Sheffler	12189 Old Route 16	Waynesboro PA, 17268	WA	12/31/2015

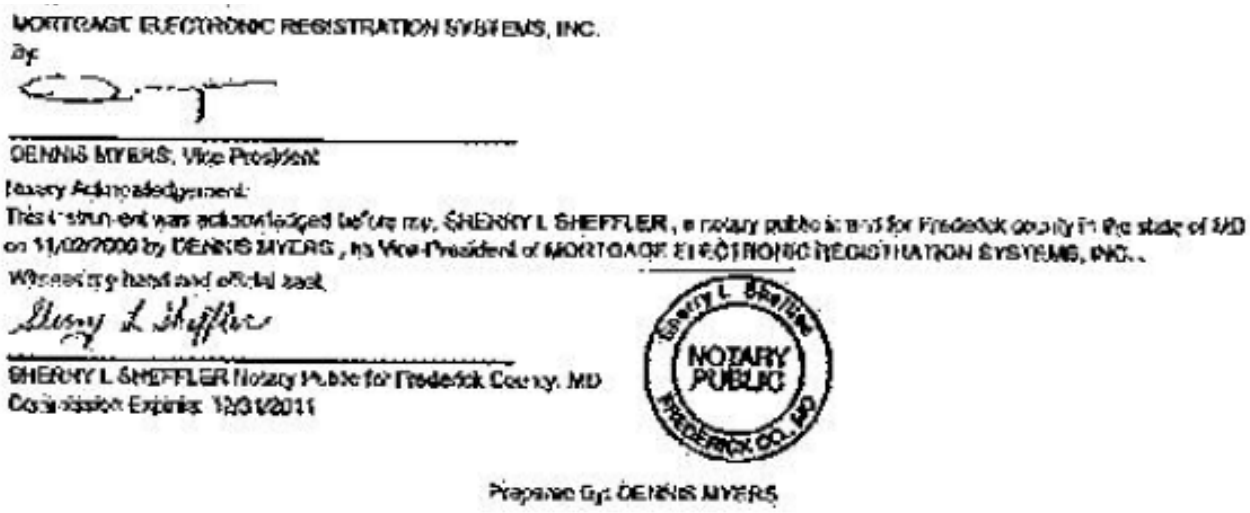
Further, the signature variations present a question whether there is e-signing going on at Verdugo Trustee Services Corporation. The variations are so grossly exaggerated that one would wonder whether there is surrogate signing going on as well.



The foregoing signature is shown (above) as represented on the audited Instrument, signed on January 20, 2011. The notary's signature and seal appears below:



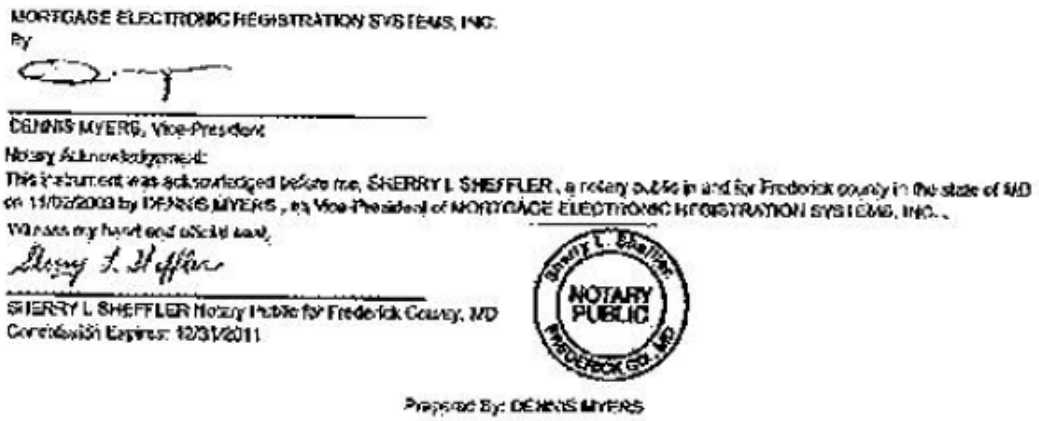
Next are documents that were obtained as part of research in the Broward County, Florida land records to show these same alleged signors' signature variations. Here is Clerk's File Number 108951292:



Note the different notarial seals for Sherry L. Sheffler. The notarial commission expires on the same date, meaning that there is more than one notary seal in existence for Sherry L. Sheffler (alleged robo-notary public).

Next is Clerk's File Number 108951318* (filed shortly after the previous document was filed):

*This document appears to contain items potentially created using Adobe Photoshop.


MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
By
DENNIS MYERS, Vice-President
Notary Acknowledgement
This instrument was acknowledged before me, SHERRY L. SHEFFLER, a notary public in and for Frederick county in the state of MD on 11/02/2009 by DENNIS MYERS, as Vice-President of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC..
Witness my hand and official seal,
SHERRY L. SHEFFLER Notary Public for Frederick County, MD
Commission Expires: 12/31/2011
NOTARY PUBLIC
FREDERICK CO. MD
Prepared By: DENNIS MYERS

When comparing the back-end attestation and notarial jurat, they are noticeably identical; all the way down to the placement of the signatures and the seal. Also notice a line appearing *above the seal* appears to be identical. These signatures look nothing like the signatures filed in the Williamson County official real property records Instrument previously discussed. Thus, there is apparent robosigning, robo-notary signing and significant, third-party document manufacturing going on at Verdugo Trustee Services Corporation in Maryland.

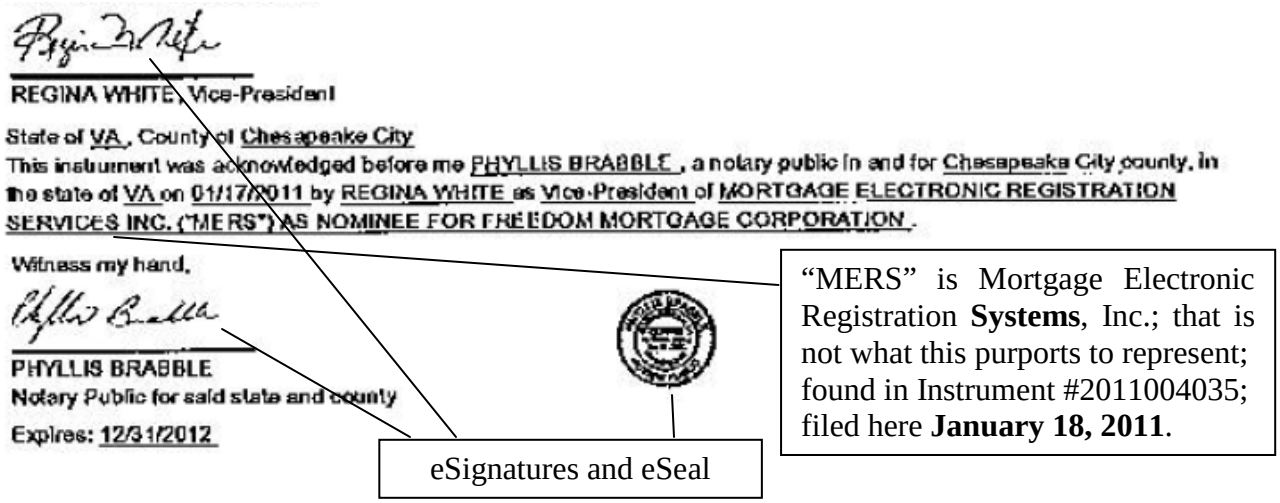
More eSignature Issues: Loancare, a Division of FNF Servicing, Inc.

The auditors further examined and cataloged a batch of documents all apparently computer generated in 2011 and recorded in the real property records of Williamson County. All of these documents, from indications on the filings, appear to have been generated by the "Release Department" of Loancare Servicing (http://loancareservicing.com); also using the name of an alleged third-party document software platform called, "ServiceLink" (as shown on the heading of the company's website), a division of Fidelity National Financial Servicing, Inc.

Fidelity National Financial is a publicly-traded company (FNF) that noticeably seems to appear at the center of document manufacturing when it comes to assisting lenders who seek to save time and money by allowing them (the manufacturers) computer access to information to be used to generate the information printed on the filings. Every time one observes an "underscore" beneath a specific piece of data, it is implied that this standardized form is manually keyed in, printed and then eSignatures of BOTH the attestant and the notary and the notarial seal are applied. On its face, the document would appear legitimate, unless one knew and understood how the documents were allegedly manufactured.

As Bryan Bly (infamous alleged robosignor for Nationwide Title Clearing, Inc. in Palm Harbor, Florida) admitted in a deposition under oath, his eSignature was placed on documents without his knowledge. In Florida, the notaries are also required under Chapter 117 of the Florida statutes to keep log books of their transactions (similar to Texas). If the documents are eSigned, how then can the notary acknowledge the presence of the signor?

In the instances examined here, the attestants to the facts on the Deeds of Release are all signing as alleged Vice Presidents of "Mortgage Electronic Registration Services, Inc. as Nominee for Freedom Mortgage Corporation" (of New Jersey):


REGINA WHITE, Vice-President

State of VA, County of Chesapeake City
This instrument was acknowledged before me PHYLLIS BRABBLE, a notary public in and for Chesapeake City county, in the state of VA on 01/17/2011 by REGINA WHITE as Vice-President of MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION.

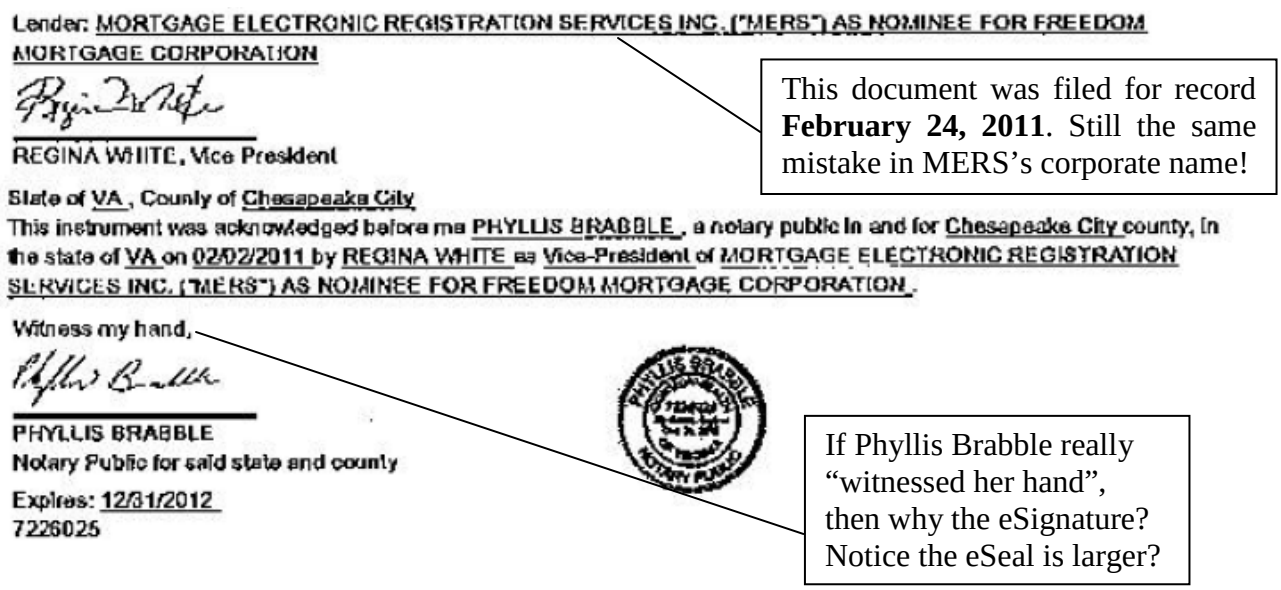
Witness my hand,

PHYLLIS BRABBLE
Notary Public for said state and county
Expires: 12/31/2012

"MERS" is Mortgage Electronic Registration **Systems**, Inc.; that is not what this purports to represent; found in Instrument #2011004035; filed here **January 18, 2011**.

eSignatures and eSeal

In the next example, found in Instrument #2011012547, we see the "Lender" listed as "Mortgage Electronic Registration **Services**, Inc. *[this is NOT what is contained on the Deed of Trust as the listing for the agent-nominee]* ("MERS") as Nominee for Freedom Mortgage Corporation":


Lender: MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION

REGINA WHITE, Vice President

This document was filed for record **February 24, 2011**. Still the same mistake in MERS's corporate name!

State of VA, County of Chesapeake City
This instrument was acknowledged before me PHYLLIS BRABBLE, a notary public in and for Chesapeake City county, in the state of VA on 02/02/2011 by REGINA WHITE as Vice-President of MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION.

Witness my hand,

PHYLLIS BRABBLE
Notary Public for said state and county
Expires: 12/31/2012
7226025

If Phyllis Brabble really "witnessed her hand", then why the eSignature? Notice the eSeal is larger?

In the two foregoing examples, it appears the notary (via eSignature) is attesting to a company as a "nominee" that is not in the original Deed of Trust listed, which is attesting to false information. As of this audit report date, Ms. Brabble's notarial commission has expired.

Six minutes later, two documents (Instruments #2011012549 and #2011012550), were filed for record containing the same MERS corporate name error; all generated and electronically recorded from Loancare's Virginia Beach, Virginia offices!

What happens when you compare what is previously eSigned to what is manufactured at a rapid-fire pace by human hand? From the examples listed below, more issues presented themselves:

MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION
On February 24th, 2011

By:
REGINA WHITE, Vice-President

STATE OF Virginia
COUNTY OF Chesapeake City

On February 24th, 2011, before me, PHYLLIS BRABBLE, a Notary Public in and for Chesapeake City in the State of Virginia, personally appeared REGINA WHITE, Vice-President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

PHYLLIS BRABBLE
Notary Expires: 12/31/2012 #7226025

PHYLLIS BRABBLE COMMONWEALTH 7226025 My Comm. Expires Dec. 31 2012 OF VIRGINIA NOTARY PUBLIC

(This area for notarial seal)

Note the appearance of Regina White's alleged "real signature" and Phyllis Brabble's alleged "real signature" appear to be different.

Also note the enlargement of the notarial seal, when apparent human signatures are applied.

This was filed as Instrument #2011014435 on March 3, 2011. Notice that it's March (a month after the previous recordations) and the MERS corporate name error is still there? This corporate name was NOT found on the original deed of trust as the proper "nominee" for the Lender and the Lender's successors and assigns.

One would wonder who actually signed Regina White's name. What about the notary? Did she sign her own name? Or did someone sign her name as well? This is what the auditors identify as alleged surrogate signing.

Three minutes later, Instrument #2011014436 (03/03/2011 at 2:25 p.m.) was electronically filed:

MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION
On February 24th, 2011

By:
REGINA WHITE, Vice-President

STATE OF Virginia
COUNTY OF Chesapeake City

On February 24th, 2011, before me, PHYLLIS BRABBLE, a Notary Public in and for Chesapeake City in the State of Virginia, personally appeared REGINA WHITE, Vice-President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

PHYLLIS BRABBLE
Notary Expires: 12/31/2012 #7226025

PHYLLIS BRABBLE COMMONWEALTH OF VIRGINIA 7226025 My Comm Expires Dec 31 2012 NOTARY PUBLIC

(This area for notarial seal)

Notice Regina White's signature appears markedly different that the signature on the previous example? Does Regina White even exist? Was Regina White hired to work at Loancare because her name is so short and easy to robosign? (This manufacturing issue was brought up in the Scott Pelley interview with infamous alleged robosignor Linda Green.) The MERS **name** error is still present. Also notice that there appears to be no gender delineation (markings of he/she/they); identification information ("personally known to me (or proved to me on the basis of satisfactory evidence"); or plurality ("person(s)").

The preceding two documents were entitled "Release of Lien" as opposed to the documents where alleged Loancare employees Sarah Hyatt and Crystal Davis's names were mentioned in the "Prepared By:" section of the documents.

Following these recordations, Loancare (acting in the same capacity as an alleged document manufacturer), caused to be electronically recorded the following Instruments (containing the same MERS corporate name error):

#2011016244; March 11, 2011; Deed of Release; prepared by Crystal Davis; eSigned
#2011016245; March 11, 2011; Deed of Release; prepared by Sarah Hyatt; eSigned

Notice the presence of a new alleged eSignor, Kim Bigham? (Instrument #2011016245)

Dated this: 03/07/2011

Lender: MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION

KIM BIGHAM, Vice-President

Now examine what happens when the "right hand doesn't know what the left hand is doing":

MORTGAGE ELECTRONIC REGISTRATION SERVICES INC. ("MERS") AS NOMINEE FOR FREEDOM MORTGAGE CORPORATION
On October 5th, 2011

By: _____
REGINA WHITE, Assistant Secretary

Filed as Instrument #2011067106; October 5, 2011; Release of Lien

STATE OF Virginia
COUNTY OF Virginia Beach City

On October 5th, 2011, before me, PHYLLIS BRABBLE, a Notary Public in and for Virginia Beach City in the State of Virginia, personally appeared REGINA WHITE, Assistant Secretary, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

PHYLLIS BRABBLE
Notary Expires: 12/31/2012 #7226025

PHYLLIS BRABBLE NOTARY PUBLIC

(This area for notarial seal)

Note Regina White's signature looks like Kim Bigham's alleged "real signature".

Note Phyllis Brabble's signature is more slanted without the "tail" on the "P" in Phyllis.

The misplacement of Regina White's signature with Kim Bigham's signature did not just happen on one document. The auditors further examined Instrument #2011068480 (October 12, 2011); Instrument #2011069133 (October 14, 2011); and Instrument #2011071596 (October 24, 2011). All contain the same name mistake (Kim Bigham signing where Regina White's name should have been); AND the same MERS corporate name mistake ("Services", not "Systems"). The difference in name error means the alleged appearance of two distinctly different corporations.

Finally, the auditors examined Instrument #2011082495; filed for record electronically on December 7, 2011 at 8:40 a.m. Also notice the changes over the course of the year (2011) of these filings … how the notarial jurat states: "State of Virginia – County of Chesapeake City" and morphs into "State of Virginia – County of Virginia Beach City"?

Also notice how the MERS corporate name error has proliferated throughout the entire pattern of recordations filed by Loancare for virtually the entire year? Notice also the address listed on each of the recordations presented here as: 3637 Sentara Way, Ste. 303, Virginia Beach, VA 23452? Here's what a Google search of the purported MERS address revealed:

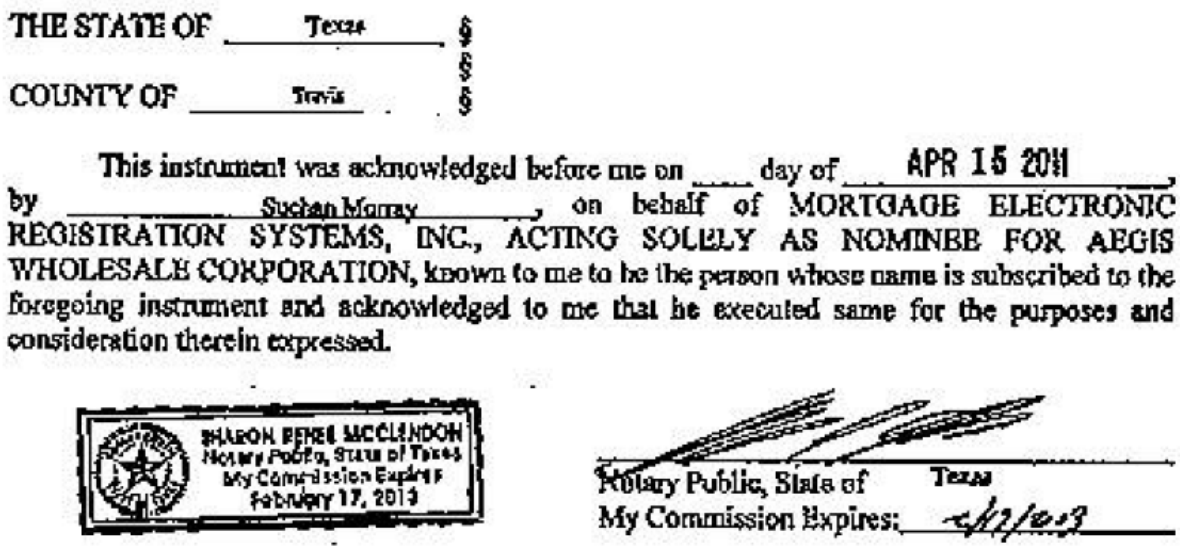
1. *3637 Sentara Way Ste 303, Virginia Beach, VA 23452* Directions **...**
   www.mapquest.com/maps?...**3637**%20**Sentara**%20**Way**%20**St**...
   Our interactive map lets you view, print, or send to your phone directions to and from **3637 Sentara Way Ste 303**, **Virginia Beach**, **VA 23452**, and view the **...**
2. LOAN CARE SERVICING CTR INC in *Virginia Beach, VA* - Find **...**
   find.hamptonroads.com/loan-care-servicing-ctr-inc-**virginia-b**...
   LOAN CARE SERVICING CTR INC. Address: **3637 Sentara Way** # **303 Virginia Beach VA 23452**; Phone: (757) 893-1300; Visit: loancareservicing.com **...**
3. Fnf Servicing - *Virginia Beach*, Virginia (*VA*) | Company Profile
   www.manta.com/c/mmdcs0r/fnf-servicing
   Fnf Servicing. Own This Business? Edit Company Info. Loancare A Div Fnf Servicing. **3637 Sentara Way** # **303**. **Virginia Beach**, **VA 23452**-4262 map **...**
4. Loan Care Servicing Ctr Inc in *Virginia Beach, VA* - Directions
   virginiabeach.citysearch.com › Virginia Beach
   Loan Care Servicing Ctr Inc. (757) 892-1700. **3637 Sentara Way Ste 303**, **Virginia Beach**, **VA** | Directions. **23452** 36.834046 -76.095311 View Website **...**
5. Loan Care Servicing Center - *3637 Sentara Way Ste 303 Virginia* **...**
   linktown.wcnc.com/biz/.../**virginia-beach/va/23452**/36963286
   Reviews and ratings of Loan Care Servicing Center at **3637 Sentara Way Ste 303 Virginia Beach**, **VA, 23452**. Get phone numbers, maps, directions and **...**
6. ServiceLink :: Contact Us
   www.servicelinkfnf.com/page/.../contactUs.html
   Texas Operations. 3800 Buffalo Speedway. **Suite** 450. Houston, TX 77098. (713) 295-5050 **...** (**303**) 253-3100 **... 3637 Sentara Way**. **Virginia Beach**, **VA 23452 ...**

Whether the signors have actual authorization to sign each other's name in spaces provided containing someone else's name underneath propounds the legal issue of actual personal knowledge of the contents of the information being attested to, especially in light of the blatant error, the corporate name of **Mortgage Electronic Registration Services, Inc.** The auditors would surmise that the attestants had no signing authority to represent the alleged nominee as shown in all of the previous examples (suspect surrogate signing, suspect robosigning, suspect notary fraud and suspect forgery); some of which may be criminal in nature. How does the Borrower actually know that their lien was actually released, based on this apparent third-party document manufacturing?

Issues Involving Conveyances out of a Debtor's Estate

We further examined Williamson County Instrument #2011029100, where MERS and its certifying officer, Suchan Murray, purportedly conveyed a deed of trust and note from Aegis Wholesale Corporation (the entire Aegis lending group filed for Chapter 11 bankruptcy protection in Delaware in 2007; it is still under that "protection") to One West Bank, FSB and its successors and/or assigns, on April 15, 2011. The document was allegedly signed and notarized in Travis County, Texas; and acknowledged by Texas notary public Sharon Renee McClendon, whose commission expires on February 17, 2013. After recording, this document was returned to the alleged foreclosure mill law firm of Hughes, Watters & Askanase, L.L.P. in Houston, Texas. The purported address of the assignee, One West, is in Pasadena, California.

However, based on previous depositions available to the audit team*, One West Bank has a signing center in Williamson County, Texas, where it is believed that Suchan Murray is employed, along with the infamous (alleged) deposed robosignor Erica A. Johnson-Seck, who has been deposed at least twice of which the audit team is aware. The notarial jurat and execution of this document contains document manufacturing "markers", namely, fill-in-the-blank, rubber-stamped information, as shown here (in this alleged self-assignment of the deed and note):



THE STATE OF Texas §
§
COUNTY OF Travis §

This instrument was acknowledged before me on ____ day of APR 15 2011, by Suchan Murray, on behalf of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ACTING SOLELY AS NOMINEE FOR AEGIS WHOLESALE CORPORATION, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

SHARON RENEE MCCLENDON
Notary Public, State of Texas
My Commission Expires
February 17, 2013

Notary Public, State of Texas
My Commission Expires: 2/17/2013

The auditor reviewing this document questions whether MERS or any of its officers had prior permission from the bankruptcy trustee in Delaware to convey this property out of Aegis' holdings. Further, it appears that unless One West Bank has an office in Travis County, Texas, the notarial jurat (containing the language, State of Texas, County of Travis) would be improper.

*Deposition of Erica A. Johnson-Seck; *IndyMac Federal Bank v. Machado et al*, Case No. 50 2008 CA 037322, 15th Judicial Circuit, Palm Beach County, Florida; taken on July 9, 2009.

There is no way Suchan Murray could work in the Williamson County offices of One West Bank, FSB and have a notary attest to her signature as being signed in Travis County at the time this document was signed (7700 West Parmer Lane, Bldg. D, Austin, Texas 78729 is in Williamson County, Texas; as stated in Erica A. Johnson-Seck's deposition at Page 4; Lines 15-16). Also in that deposition, Johnson-Seck admitted that Lender Processing Services ("LPS", which operates like FNF), is "on site" (taken from same deposition at Page 17, Line 3). The deposition seems to indicate that LPS employees are contracted by the lender to assist them with assignments and other transactions in their facilities in Williamson County, Texas.

Stephen C. Porter Issues

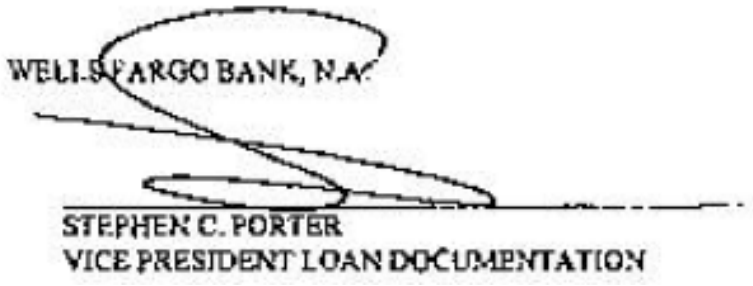
According to the research conducted through various sources in conjunction with this audit, there appear to be issues with not only the representations made by Stephen C. Porter, but also as to the signature variations of his attestations, which provide us with concerns as to robosigning, surrogate signing (by whichever notary public is acknowledging the document), self-assignments using various "hats" of authority; and suspect fraud on the part of the notaries participating in the manufacturing of these documents.

As part of the audit research, the physical residential location of Mr. Porter was determined to be in Collin County, Texas. Research was conducted in that county's real property records ancillary to this audit to locate original, valid signatures of Mr. Porter, obtained from various deeds of trust filed for record in that county (see *Appendix 1* for the original signature examples); as well as powers of attorney in which Mr. Porter is granted some sort of signing authority as "attorney-in-fact" (*see Appendix 2 for examples*).

Stephen C. Porter is a known attorney employed by purported foreclosure mill law firm Barrett Daffin Frappier Turner & Engel LLP (hereinafter "Barrett" or "Barrett Daffin") in Addison, Texas (Dallas area).

Stephen C. Porter is licensed by the State Bar of Texas as a practicing attorney.

Why then would we see items like the following, knowing the purported identity of this individual?



Further, the notary acknowledging this General Warranty Deed, on which Stephen C. Porter is alleged to have affixed his signature, verifies that this individual is who he purports to be in the document (a Vice President of Loan Documentation for Wells Fargo Bank, N.A.).

Mr. Porter may receive some compensation for services rendered from Wells Fargo Bank, N.A., but it is highly likely he is NOT being paid as an employee or as a VP of Loan Documentation.

There is nothing to indicate that Mr. Porter is signing **this** document with any kind of employment authority (Vice President of Loan Documentation), when his attorney-in-fact status is all that the auditors could locate (*see Appendix 2 for reference*).

CORPORATION ACKNOWLEDGMENT

STATE OF TEXAS
COUNTY OF DALLAS

Before me, the undersigned Notary Public, on this day personally appeared STEPHEN C. PORTER, who is the VICE PRESIDENT LOAN DOCUMENTATION of WELLS FARGO BANK, N.A., a corporation, on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of FEB 10 2012

Georgia A Bradley
Notary Public for the State of TEXAS

My Commission Expires:
8-20-2013

Georgia Ann Bradley
Printed Name of Notary Public

GEORGIA ANN BRADLEY
Notary Public
State of Texas
My Comm. Exp. 08-20-2013

RETURN TO:
BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP
15000 Surveyor Boulevard, Suite 100
Addison, Texas 75001

WRD20110169808719

HUD General Warranty Deed for Wells Fargo.
FC33WF.RPT - (04/14/2010) / Ver-06

From the Secretary of State of Texas's own website search, the address for the notary acknowledging this General Warranty Deed is the same as the law offices of Barrett Daffin:

Name: **Georgia Ann Bradley** - ID: **126812715**	
Address:	**15000 Surveyor Blvd** **Addison, Tx 75001**
Expires:	**Feb 20, 2013**
County:	**Dallas**
Agency:	**Frost Insurance Agency Inc**
Surety Company:	**Old Republic Surety Company**

History	**As**	**Effective**	**Expire Date**
Commissioned Notary Public	Georgia Ann Bradley	02/20/2009	02/20/2013

While it appears that the notary's commission is valid, there are significant issues with this document:

(1) There is an apparent lack of gender delineation as to the sex of the signor (who is obviously male), yet there are no circles or hash marks to reflect such;

(2) Due to the surrogate signing issues that may arise during a signature comparison and handwriting analysis of Mr. Porter's actual signature, it is impossible to determine whether Mr. Porter actually signed the document; or in the alternative, whether Mr. Porter signed the document before Ms. Bradley (and issues that may arise as to whether Ms. Bradley keeps a log book as required under Texas Government Code at § 406.014). Ms. Bradley appears quite frequently in the number of the audited documents;

(3) There is an apparent attempt to manufacture the document on the part of the purported foreclosure mill law firm. Rubber stamping of dates and parties is considered a "marker" (or an indicator) of robotic-type document manufacturing, where large volumes of foreclosures are processed through laws firms at breakneck speed, generally due to the small amount of funding that is given to these entities; and

(4) There is a definite question as to Stephen C. Porter's purported claim that he is a Vice President of Loan Documentation for Wells Fargo Bank, N.A. If Mr. Porter were required to testify as to his employment affiliation, issues would likely arise as to whether there would be any legitimate proof of employment with Wells Fargo.

Thus, there are apparent issues with the validity of the General Warranty Deed reviewed herein due to the potential lack of personal knowledge, improper employment attestation and suspect issues for robosigning, surrogate signing and notary fraud.

Stephen C. Porter "Wears More Than One Hat"

Besides purportedly being a "Vice President of Loan Documentation" for Wells Fargo Bank, N.A., Porter also signs with limited power of attorney for what appears to be dozens of lenders and MERS. The audit team searched the Williamson County land records numerous times in an attempt to locate these recorded limited powers of attorney for Porter with limited, if any, success. There were dozens of documents reviewed as part of the target audit that would list Porter as a Vice President of Loan Documentation in an apparent attempt to appoint substitute trustees to foreclose on Williamson County homeowners.

There were hundreds of documents reviewed as part of the target audit that would show Porter as an Assistant Secretary for MERS. In each of these documents, reference would be made to the original deed of trust that each of Porter's documents would purport to affect. When it came to Porter's signature for each of these documents, they would show Porter signing for:

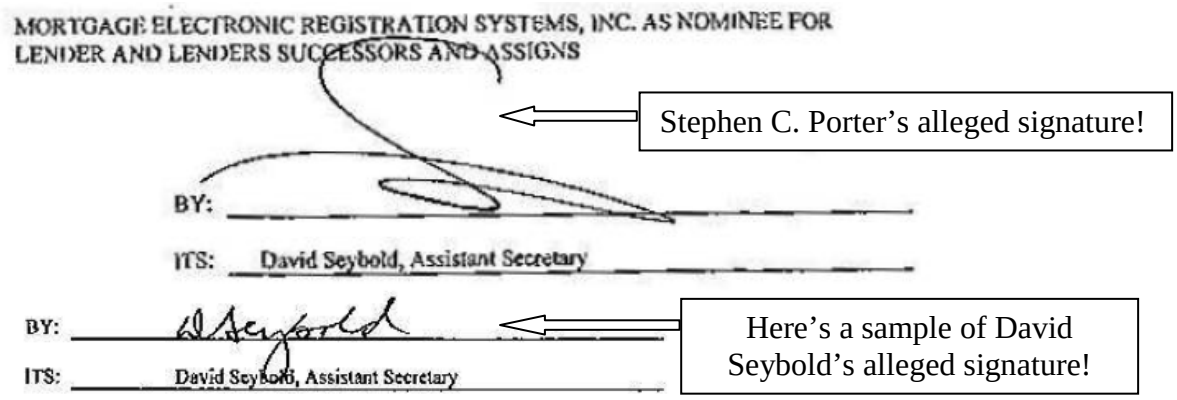
> MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR LENDER AND LENDER'S SUCCESSORS AND ASSIGNS.

At issue here however, is the fact that the name of the "Lender" of record is not shown anywhere in the recorded Instrument; one has to go back to the original deed of trust to find out who the original "Lender" was. With MERS involved, it is not known who is the <u>existing</u> "Lender" or "assign" at the time Porter claimed to have transferred the property by assignment, because no intervening assignments were ever recorded; thus, it appears MERS and its agents are attempting to use the electronic database as a "catch-all".

Even if one were to look at the original Deed of Trust, the original Lender may not have been the actual Lender conveying the purported Note and Deed of Trust to Wells Fargo Bank, N.A. (which many of these documents purported to do, even though MERS claims it does not have an interest in the Notes that Porter attempted to convey). One would have to assume that the MERS system appears to have obfuscated the real party in interest through its (MERS) involvement.

The fact remains however, anyone with an interest in any given piece of property would have to thoroughly investigate who may have had an interest in that property and still may not identify the true noteholder. How then would a property owner know who is being paid in full when their deed of trust and note are allegedly satisfied when the MERS system and the deed of trust contracts allow for bifurcation and fractionalization of the Borrower's promissory notes? This scenario gives rise to the theory that the chain of title does NOT match the chain of custody of the note, which is problematic in determining whether the chain of title is riddled with defects.

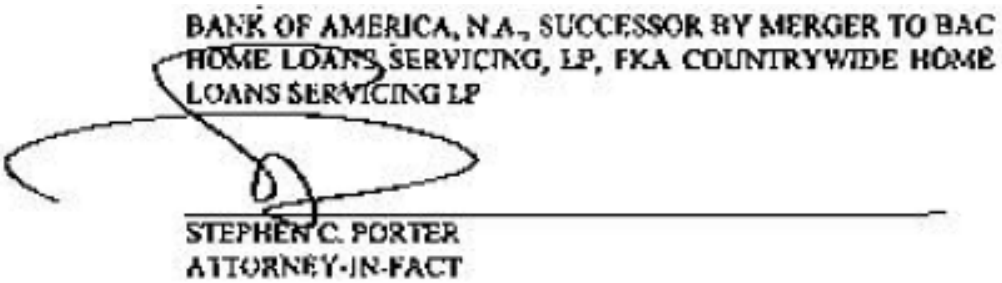
Obviously, due to time constraints, it is virtually impossible to outline every single potential chain of title issue uncovered during this audit. In the alternative, this section of the report is interspersed with extracted file examples of some of the issues the auditors encountered during the audit. As to other issues, it became apparent that the document manufacturing occurring at Barrett Daffin in Addison, Texas became reckless and sloppy when issues like the following were reviewed:



Notice in the foregoing reproduction of Stephen C. Porter's signature, wherein the actual signor (which was allegedly acknowleged by Texas notary public Kim Harris) was supposed to be Stephen C. Porter but it was designated for signature by David Seybold (whose actual and apparent signature appears below Porter's signature), another Texas State Bar-licensed attorney in Barrett Daffin's organization.

The assignment, without explanation, was backdated to be effective on October 2, 2009, when the assignment itself was dated November 17, 2009, 45 days later. It also became apparent to the auditors that Kim Harris (who by implication works for Barrett Daffin also) may not have kept an accurate log book as required by Texas statutes.

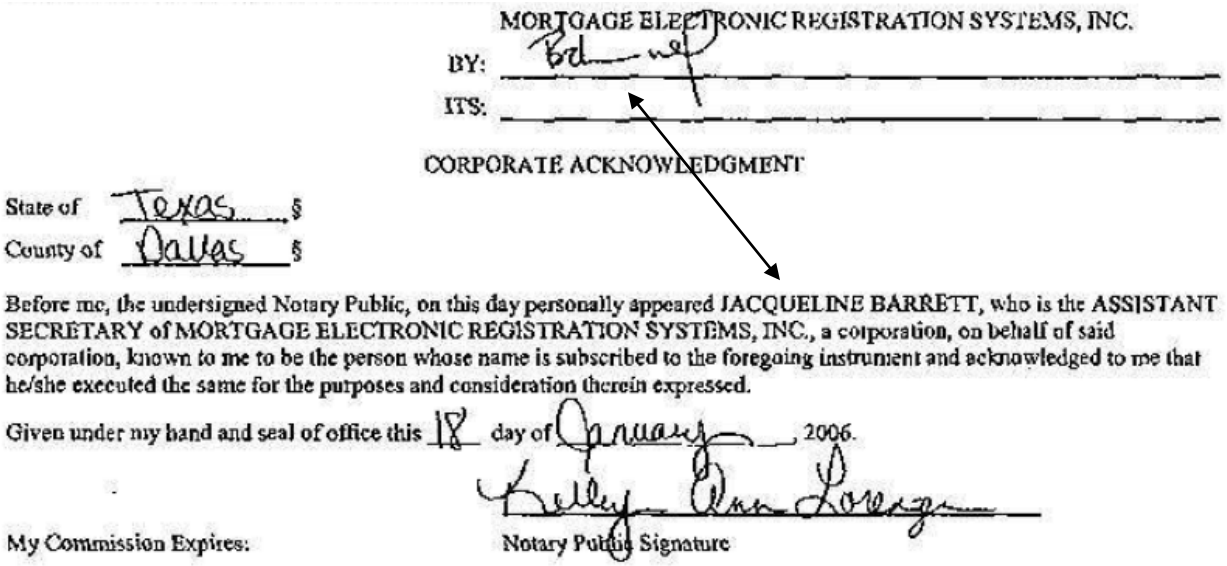
Here's another variation of Stephen C. Porter's signature (taken from Instrument #2012044898):



Porter has also signed as attorney-in-fact for Countrywide Home Loans, Inc. (Instrument #2013009064), conveying the alleged deed of trust and note to Bank of America, N.A., nearly two (2) years AFTER Bank of America, N.A. had purchased Countrywide through a stock merger. Conveyances from defunct entities to existing entities (without previous assignment) are commonplace in the world of document manufacturing. What would be the legal authority for signing under a Limited Power of an Attorney for a corporation that is defunct and was no longer in a position of good standing to grant such authority?

In this particular instrument, the Auditors wish to point out that Barrett Daffin has taken credit for preparing this document.

In Instrument #2012016020, Barrett Daffin (with Porter signing) claims the entire firm has power of attorney to execute this document in an assignment from JPMorgan Chase Bank, N.A. to the Secretary of the Department of Housing and Urban Development. Further, other members of the Barrett Daffin foreclosure mill (i.e. Brandon Wolf) also appear to have signed MERS-assigned assignments without indicating under which authority they were signing them (e.g. Vice President or Assistant Secretary). In this instance, notice who is supposed to be "personally appearing" before Texas notary Kelley Ann Lorenzen (not Brandon Wolf [no official title listed] who allegedly signed the document):



MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

BY: Brandon Wolf

ITS: _____

CORPORATE ACKNOWLEDGMENT

State of Texas §

County of Dallas §

Before me, the undersigned Notary Public, on this day personally appeared JACQUELINE BARRETT, who is the ASSISTANT SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a corporation, on behalf of said corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 18 day of January, 2006.

Kelley Ann Lorenzen

My Commission Expires: Notary Public Signature

Where does it identify that Brandon Wolf is an Assistant Secretary of MERS? It would appear here that there would be a legal consequence for the actions of the attestant and the notary. To date, to the knowledge of the auditors, no action has been taken. Even though this document is "outside" of the parameters of the target audit period, the audit team found this type of behavior "alarming", meriting further investigation.

This type of document manufacturing appears common at Barrett Daffin; there is no firm estimate at how many pieces of property registered in the Williamson County real property records, likely to be in violation of Texas Penal Code § 37.01 (filing fraudulent documents with a government agency to deprive a homeowner of their property) that have never been prosecuted. Few if any district attorneys nationwide have ever reportedly looked into such practices. It appears there are multiple firms that are engaging in this type of behavior, most of them known foreclosure mills. The State of Florida effectively shut down the foreclosure practices of David J. Stern and Marshall C. Watson for these same alleged behaviors; while the State of New York went after and caused the Stephen J. Baum Law Firm in Amherst, New York to padlock its doors. In one year, Baum and his fledglings filed over 16,250 foreclosure actions in the five New York City boroughs alone, many of which lacked proper documentation.

A Boone County, Missouri grand jury recently indicted DOCX (a now-defunct document manufacturing arm of Lender Processing Services, Inc.), who settled the matter by paying a hefty fine. DOCX's President Lorraine Brown has entered a guilty plea for directing the alleged operations and is awaiting sentencing, facing up to two years in the Missouri State Penitentiary.

Michigan Attorney General Bill Schutte has announced he is seeking an indictment against Brown on charges that could earn her another potential twenty-year prison term. Illinois Attorney General Lisa Madigan has filed suit against Nationwide Title Clearing of Palm Harbor, Florida for what she claims is illicit document manufacturing practices involving robosigning and other issues. At this juncture, there is no evidence of any prosecutorial actions against any of these foreclosure mills or suspect document manufacturing plants by any authority in Williamson County, Texas.

As to Self-Assigned Assignments

The audit also focused on certain issues involving what is termed as "self-assigned assignments", wherein a party (either of its own accord or through MERS as an alleged "Certifying Officer") attempts to assign the deed of trust and note to itself. As was previously stated, the problem with MERS assigning notes is that it has no interest in the note and courts have ruled that MERS cannot assign what it does not have an interest in. MERS deeds of trust give MERS the right to do a number of things via limited agency status as "nominee".*

In more cases that not during this audit, there were numerous issues that indicated that given signors transferred a deed and note to themselves (not using the proper parties who would have true, personal knowledge of the facts at hand, basically in an effort to save time and money. Many of these "robosignors" get their information from what are termed as "hearsay" third-party, document manufacturing software platforms.**

**Bellistri v. Ocwen Loan Servicing LP*, 284 SW 3d 219, Mo. (2009); *Bank of New York v. Silverberg*, 2011 NY App., 2nd Dept., 05002, June 7, 2011
***In Re Taylor*, also *Taylor v. HSBC*, No. 10-2154, U.S. Third App. E.D. Pa., August 24, 2011

Here is one example of an assignment that fell within the purview of the target audit, taken from the Williamson County real property records as Instrument #2010084776; recorded on December 15, 2010. In this instance, MERS as nominee for DHI Mortgage Company Ltd. (a company set up to fund D. R. Horton-built homes in Williamson County's "Settlers Crossing", revealed the following excerpts from this two-page recordation (examples called out for reference):

ASSIGNMENT OF DEED OF TRUST

THE STATE OF TEXAS
COUNTY OF Williamson
KNOW ALL MEN BY THESE PRESENTS:
That Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for DHI MORTGAGE COMPANY LTD
its successors and assigns, acting herein by and through a duly authorized officer, the owner and holder of one certain promissory note for the sum of $145,417.00 executed by Kelly Hensler & Matthew Friede

payable to the order of DHI MORTGAGE COMPANY LTD

, its successors and assigns, and secured by a Deed of Trust of even date therewith to Randall C Present Trustee, which was filed for record on 3/14/2006 under File No. 2006019976
for and in consideration of the sum of Ten

Dollars,
and other good, valuable and sufficient consideration paid, the receipt of which is hereby acknowledged, does

MIN: 100020410001065825 MERS Phone: 1-888-679-6377
495-7435881-796 38686 000493374

Texas MERS Assignment of Deed of Trust
VMP-95(TX) (0502) 2/05
Page 1 of 2 VMP Mortgage Solutions, Inc. (800)521-7291

hereby transfer and assign, set over and deliver unto DHI MORTGAGE COMPANY LTD

the above described note, together with the liens against said property securing the payment thereof, and all title held by the undersigned in and to said land.

TO HAVE AND TO HOLD unto said grantee said above described note, together with all and singular the lien, rights, equities, title and estate in said real estate above described securing the payment thereof, or otherwise.

Executed this the 1st day of December, 2010

Mortgage Electronic Registration Systems, Inc. ("MERS")

By: Tina M. Mallory
(Signature)
Tina M Mallory,
Assistant Secretary

AUDITOR'S NOTE: Tina M. Mallory (who is believed to be an employee of DHI Mortgage Company Ltd.) appears to be signing as "Assistant Secretary for MERS", NOT as nominee for DHI Mortgage Company Ltd. (legal description and superfluous information omitted).

The document was acknowledged by Texas notary public Scott Hicks, whose commission appeared to be valid at the time of acknowledgment. Here's what Scott Hicks' address of record shows in the Secretary of State's office under the Notary Search section:

Name: **Scott Hicks** - ID: **124666441**	
Address:	**12357 Riata Trace Pkwy Ste C 225 Austin, Tx 78727**
Expires:	**Sep 02, 2015**
County:	**Travis**
Agency:	**National Notary Association**
Surety Company:	**Merchants Bonding Co Mutual**

History	**As**	**Effective**	**Expire Date**
Recommissioned	Scott Hicks	09/02/2011	09/02/2015
Recommissioned	Scott Hicks	09/02/2007	09/02/2011
Commissioned Notary Public	Scott Hicks	09/02/2003	09/02/2007

The foregoing represents Scott Hicks notarial commissions. Hicks also appears to be connected to DHI and may also work directly with the signor. Notice the following address as taken from the heading of the assignment, "Return To", after it was duly recorded in the Williamson County real property records:

Return To:
DHI Mortgage Company
Post Closing Department
12357 Riata Trace Pkwy,
Suite C150
Austin, TX 78727

This address taken from the top of the previous document shown.

ASSIGNMENT OF DEED OF TRUST

Searches for Tina M. Mallory revealed the same address as shown above. Thus, the appearance of assigning the mortgage to one's own company by simply "putting on the MERS hat", something that Kings County New York judge (Hon.) Arthur Schack, who has called out robosignors repeatedly in many cases, has termed a "milliner's delight". *

MERS-assigned deeds of trust make up the larger part of self-assignment scenarios, common throughout the United States, not just to Williamson County. The question as to why a self-assignment was necessary may (as a result of a MERS MIN ID Search of the MIN listed in the assignment) have been to facilitate the removal of the MERS deed of trust back to DHI Mortgage Company Ltd. (standing on its own, rather than being involved in the MERS system).

If such is the case, then the MERS MIN ID Search database would show an "Inactive" MERS loan; thus defeating any attempts by the Borrower to do any further searching in the MERS database; the real party in interest of their loan further obfuscated because the loan was officially removed from the MERS system. In summation, the lack of understanding of how the MERS business model operates would lead the average person reviewing this document to be totally confused as to why this assignment was necessary. Another issue then becomes relevant … if MERS can only convey the interest it has been granted (the Deed of Trust herein … and NOT the Note), then how can MERS convey the note as well? (Even if Tina M. Mallory could have acted as an employee of DHI but in this case, did not?)

If MERS is only allowed to convey the interest it has been granted, was the note conveyed back to DHI Mortgage Company, Ltd. as purported in the assignment? If the note was originally pledged into the MERS system, was the note actually securitized? If the note was securitized, are there unknown intervening assignees that may (or may not) have unrecorded interests in the real property records of Williamson County, in violation of Texas Local Government Code § 192.007? These issues have been at the forefront of the MERS controversy when it comes to the perfection (or the lack thereof) of the property owners' chain of title. There were also issues outside the Texas borders effecting Williamson County properties, where self-assigning appeared prevalent:

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed and delivered, effective 10/26/2011.

Mortgage Electronic Registration Systems, Inc.

By:

Name: Derek Coleman

Title: Assistant Secretary

**HSBC Bank USA, N.A. v. Taher*, 2011 51208 (U), at p. 28, Slip Op., July 1, 2011; *OneWest Bank FSB v. Drayton*, 2011 20429, October 21, 2010, Judge Schack discusses MERS authorities and also mentions Erica A. Johnson-Seck.
This assignment was acknowledged by a notary of CitiMortgage, Inc. in St. Charles County, Missouri (where CitiMortgage, Inc. is located) by what appears to be a CitiMortgage employee (Derek Coleman), wearing the "MERS hat" to assign his own company, without recourse, the deed of trust and note of a Cedar Park property owner.

Notice Coleman is affixing a 1995 MERS stamp, when the first MERS entity was dissolved in 1998, on a 2011 document (when a 1999 stamp was later approved for issuance by MERS). Further, Coleman is signing in 2011 for MERS as a nominee for First Magnus Financial Corporation, which went belly-up years earlier.

Other Extraction File Issues

Certain cases were isolated based on the particular assignment or conveyance and extracted from the target audit for further scrutiny. These documents are all recorded in the official property records of Williamson County, Texas and are within the target audit dates. The auditors attempted to reference these specific instruments by number, especially when necessary to identify a questionable issue. Even though a small number of files were extracted, the results obtained appear to represent the cross-section of issues discovered that should be considered highly significant.

Wooten Home Purchase from HUD in 2012

Despite previous issues with the former owners of the subject property herein (not reviewed here), it appears that Annelle Rae Wooten and Dannie Lee Wooten purchased a property located at 130 Killian Loop, Hutto, Texas 78634. There appear to be recorded discrepancies with the purchase of their home (an apparent foreclosure) that may present issues of probative value.

On May 24, 2012 at 10:04 a.m., agents of the Secretary of Housing and Urban Development ("HUD") caused to be recorded Instrument #2012038855 (Special Warranty Deed with Vendor's Lien). This document was signed by an agent of HUD on May 21, 2012, but a stipulation stated therein that the deed was not in effect until May 23, 2012, two days later.

On May 25, 2012 at 8:07 a.m., it appears that agents handling the sale of the property caused to be recorded Instruments #2012039240 and #2012039241 (Deed of Trust, and Notice, respectively).

While the Notice itself is not at issue here, the deed of trust is. The date on the deed of trust was May 17, 2012 and was registered as a MERS-originated mortgage (MIN #1001302-5400212600-5) through SFMC, LP dba Service First Mortgage Company (which appears to be a mortgage broker) of Richardson, Texas as the "Lender". The Borrowers signed the deed of trust on May 23, 2012; but the actual date of the creation was May 17, 2012.

The creation date on the deed of trust in the MERS database, using the MIN provided, was May 23, 2012. SFMC, LP was listed as the "Servicer" and NOT the Lender); however, the Security Instrument itself (the Deed of Trust) was created six days earlier. How is it that the Borrowers had the right to encumber the Property PRIOR to them being issued the Warranty Deed?

To further illustrate the issue in the preceding paragraph is the paragraph on Page 2 of the Deed of Trust Instrument which the auditors refer to as the "seisin mechanism", derived from the feudal term "seisin", meaning to possess real property in freehold. This paragraph states that "the Borrower is lawfully seized of the estate thereby conveyed" (with the right to mortgage it). How would that be possible if the effective date of the deed of trust was May 17, 2012 and on THAT DATE, the Borrowers were assumed to have been lawfully seized, when the property's warranty deed was stipulated to become effective on May 24, 2012?

Further, it appears that the prior owners of this property also had MERS-related issues **prior** to the foreclosure and resulting sale on their property; thus, there may be unknown mesne assignees that have unrecorded interests that could subject any new homebuyers to double liability.

Part of the problem here is that when an investor (either foreign or domestic, from within the State of Texas or without) attempts to purchase a piece of property that has been foreclosed upon, at issue is: (1) whether the previous mortgage loan owner/holder was actually paid in full; and (2) whether the assignments and appointments leading up to the foreclosure were actually valid, not just on their face, but in fact genuine. This would virtually force any subsequent investor to spend money in legal fees trying to sort out the mess created in the chain of title. As to whether the investor would even have legal standing to pursue a claim is another matter entirely.*

The Rodriguez Foreclosure Scenario: October, 2010

On May 16, 2006, Samuel Rodriguez, Jr. and his wife, Eleanor Rodriguez entered into a deed of trust which granted an interest to now-defunct Long Beach Mortgage Company (as of 2008, Long Beach's portfolio reportedly consisted of mostly subprime mortgages), a subsidiary of Washington Mutual Bank, F.A. (also now defunct).

The Rodriguez deed of trust was recorded as Instrument #2006041342. It appears that the Rodriguez's defaulted on their loan, and on September 13, 2010, JPMorgan Chase Bank, N.A. (acting as attorney-in-fact for Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-5), by and through its "Foreclosure Officer" Ismeta Dumanjic, substituted the law firm (apparent foreclosure mill) of McCarthy, Holthus & Ackerman, LLP for the original trustee as substitute trustees.

**Bevilacqua v. Rodriguez*, Mass. Sup. Ct., SJC-100880, decided October 18, 2011; Bevilacqua could not sustain a trespass to try title claim because the entity (U. S. Bank, N.A.) that claimed to own the subject property when it quit claimed it to him did not legally own the property; therefore, Bevilacqua lacked standing to quiet the title.

The appointment was recorded as Instrument #2010064700. This appointment appears to contain eight (8) rubber-stamped items, one of which is the State the notary is acting on behalf of (Florida), which is scratched out with what appears to be an ink pen.

The probative concern here is HOW Chase could appoint anyone as a substitute trustee when the alleged assignment to Deutsche Bank (by Chase, acting NOT as attorney-in-fact but as successor in interest to Washington Mutual Bank) was not recorded until November 12, 2010 as Instrument #2010076849. It appears the assignment should have been recorded first, so Chase would have had the authority to file the appointment. The property was sold on October 5, 2010, **BEFORE Chase's assignment to Deutsche Bank was recorded!** A check of the Clerk's website (at www.wilco.org) shows NO NOTICES OF SALE filed, even up until the date of the sale as required by Texas law.*

Further, the Substitute Trustee's Deed conveyed the property to Deutsche Bank as high bidder on October 18, 2010 and BOTH DOCUMENTS were recorded in succession as Instrument #2010076849 (assignment) and #2010076850 (Trustee's Deed). How is it possible that Deutsche Bank (in conjunction with Chase) was entitled to sell a property it appears NOT to have owned, or had the right to appoint a trustee to sell, when it appears that nothing was filed for record until AFTER THE FACT!

Although Deutsche Bank appears to be representing the trust as Trustee, the SEC's files show that the cut-off date of the trust (into which the note could have been conveyed into the trust pool** via the Trust Depositor, Long Beach Securities Corporation) was June 1, 2006. **This assignment** directly into the trust violated the terms of the Pooling and Servicing Agreement ("PSA"), which specifically mandated that the required assignment order is: (1) to the Trust Depositor; and then (2) into the trust pool itself by the Trust Depositor. The alleged assignment to the trust was actually recorded on November 12, 2010, over FOUR years AFTER the trust pool's cut-off date; thus non-compliant with the PSA's terms.

See Page S-1 of the trust's website at http://www.secinfo.com/d12TC3.vX3q.htm

Further, new information out of Florida from a former officer of Washington Mutual Bank (which was placed into receivership of the Federal Deposit Insurance Corporation), Lawrence Nardi (also testifying as an officer of JPMorgan Chase Bank, N.A.), has stated under oath in a sworn deposition (May 9, 2012) that there is no evidence that any of Washington Mutual's loans were ever transferred or assigned to JPMorgan Chase Bank, N.A.+

*Texas Local Government Code § 192.007 mandates that all recordations (including the missed filings required here) affecting the original deed of trust MUST be filed in the real property records of the county where the property is situated.
**See prior discussion on securitization.
+*Chase v. Waisome et al*, 5th Dist. FL, Case 2009 CA 005717

While this scenario does not seek to draw legal conclusions, there are certainly enough issues to warrant further investigation into whether this foreclosure and sale were conducted legally since the parties claiming to have an interest may not have had such interest at the time of said sale.

Suspect Texas Local Government Code § 192.007 Issues with the Owens' Property

If what the Texas statutes* say about having to file assignments and reconveyances following the pay-off of a mortgage loan are to be upheld, there appears to be missing paperwork in the chain of title affecting 805 Escondido Drive, Leander, Texas 78641. In 2002, Darrell Owens and his wife Jessica executed a deed of trust in favor of SD Mortgage Services, Ltd., a Texas corporation (recorded as Instrument #2002018104).

On May 25, 2005, the Owens' appear to have refinanced their mortgage loan with New Horizon Mortgage, Inc. (another Texas corporation); their deed of trust recorded as Instrument #2005041056; after which, New Horizon (on that same date, by Wells Fargo Bank, N.A.'s Vice President of Loan Documentation acting as attorney-in-fact for New Horizon Mortgage, Inc.) appears to self-assign their mortgage by Wells Fargo; recorded as Instrument #2005045799.

We could assume that following the loan payoff to SD Mortgage Services, Ltd. by either New Horizon or Wells Fargo, that a deed of reconveyance would customarily be recorded, showing the release of the encumbrance by the proper parties. Despite the fact that Wells Fargo recorded three subsequent Notices of Acceleration and Notice of Trustee's Sale (February, March and April, 2012) for the Owens' property, as of the date of this audit report, no deed of reconveyance has been filed by the original mortgagee (SD Mortgage Services, Ltd.). Since the first mortgage was a MERS-originated mortgage, we would customarily assume that MERS agents would "manufacture" such a reconveyance to comply with Texas Local Government Code § 192.007, since it affects a previously-recorded deed of trust document. Could this then be construed to mean that there is still an outstanding lien on this property?

Apparent Lender Default Solutions Document Manufacturing Issues

Again, we briefly revisit Instrument #2011043241, wherein Wells Fargo Home Mortgage (through what appears to be a Lender Default Solutions employee in Dakota County, Minnesota) appears to have executed an assignment of Deed of Trust (on June 30, 2011) on behalf of MERS as nominee for then-defunct First Magnus Financial Corporation. Ramesch Vardan, represented himself as an Assistant Secretary for MERS; signing for MERS only and not MERS as nominee for First Magnus Financial Corporation (as the original lender). In this apparent self-assignment, there is an issue with MERS' authority and ability to convey the associated promissory note in which it does not have an interest. There appear to be assignments missing between the original lender and the real party in interest, obfuscated by the MERS electronic database.

*Texas Local Government Code § 192.007

"The Right Hand Doesn't Know What the Left Hand is Doing"
The scenario involving BOTH Barrett Daffin and Brice Vander Linden
at 237 St. Mary's Drive, Hutto, Texas 78634

Little did Brandon Graham and Brandi Rivera (husband and wife) know when they signed a deed of trust with PrimeLending, a PlainsCapital Company out of Dallas, Texas, that they would have the pleasure of dealing with not one but TWO sets of alleged substitute trustees, BOTH involving MERS-related assignments. The issue still remains as to MERS' ability as nominee to convey something it did not have the right to assign, namely, the promissory note.

The only deed of trust the couple signed was executed on February 27, 2006. They were probably unaware that this document was a MERS-originated Deed of Trust, recorded as Instrument #2006015854 on March 1, 2006. Although MERS was involved, the couple probably had no idea their note was likely sold multiple times through the securitization process. From examination of the Deed of Trust, there is nothing to indicate the original Lender intended to sell the note (or a partial interest thereof); thus, the Borrowers had no reason to suspect otherwise. The listed MIN number on the couple's deed of trust was #1000536-2010101492-5. A search of this MIN # revealed the following (as of December 19, 2012):

This mortgage loan is registered on the MERS® System for informational purposes only.
Mortgage Electronic Registration Systems, Inc. is not the mortgagee for this loan.

MIN: 1000536-2010101492-5 Note Date: 02/27/2006 MIN Status: Inactive

Servicer: Wells Fargo Home Mortgage a Division of Wells Fargo Bank NA
Minneapolis, MN

Phone: (651) 605-3711

Note the foregoing sentence in red-faced type that says MERS "is not the mortgagee for this loan". At the time the loan was active, MERS claimed to have been the *beneficiary*, which appears to be the relative term for *mortgagee* in a deed of trust. Why the contradiction on its website now? *(Anyone can run this search to verify the information contained herein.)* So if Wells Fargo Home Mortgage is the Servicer, who is the real party in interest as the owner of the Borrower's promissory note? How many times was

PrimeLending made the loan to the Riveras, but following an apparent default on their loan payments, the first assignment (Instrument #2008062792), filed August 13, 2008, purporting to claim MERS as the assignor "as nominee for lender and lender's successors and assigns" (not assigning for PrimeLending, who appears to be what is referred to as a "table-funded lender"*

*A table-funded lender is an entity that simply brokers the loan for another lender and collects commissions and fees for doing so. The real party in interest is hidden from the Borrowers.

The document was returned to Barrett Daffin after it was recorded. The document was executed on July 31, 2008 (with an effective, backdated assignment date to July 16, 2008) by David Seybold, as follows:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR LENDER AND LENDERS SUCCESSORS AND ASSIGNS

BY: _____

ITS: ASSISTANT SECRETARY

David Seybold is employed by Barrett Daffin. He allegedly has a signing agreement with MERS to act as its "certifying officer", yet the original table-funded lender is not named on the assignment caption (as noted above), but is substituted with the phrase "as nominee for lender and lenders successors and assigns".

If PrimeLending is only the broker, and the loan was sold multiple times, requiring multiple recorded assignments to comport with Texas Local Government Code § 192.007, then who is Seybold attempting to convey the note on behalf of? Then, on July 28, 2008, as indicated on Instrument #2008062804 (filed AFTER the assignment), Seybold claimed to have executed an Appointment of Substitute Trustee as follows:

WELLS FARGO BANK, N.A.

BY: _____

DAVID SEYBOLD

VICE PRESIDENT LOAN DOCUMENTATION

Isn't it amazing that David Seybold is now a Vice President for Wells Fargo Bank, N.A. (not the servicer, Wells Fargo Home Mortgage), at the very same time he works at Barrett-Daffin? There does not appear to be any recorded Power of Attorney (that could be located in any real property record, through due diligence) that vests the foregoing title and authority in Seybold, making him an officer of Wells Fargo Bank, N.A., let alone a Vice President of Loan Documentation.

AUDITOR'S NOTE: The information contained in the Appointment of Substitute Trustee states that the document was executed on July 28, 2008 but was not notarized by Texas notary Suzanne Staley until August 5, 2008! BOTH documents were filed for record on August 13, 2008. Did Suzanne Staley witness Mr. Seybold's signature? Did Suzanne Staley sign Mr. Seybold's signature without his authorization? Did Suzanne Staley keep a log book showing either transaction?

Fast-forward to 2011. It appears the couple paid the servicer the alleged deficiency and thus cured the default prior to any foreclosure sale where a second assignment is recorded on July 26, 2011 as Instrument #2011048655. In this assignment, Keegan Brown claims to be an Assistant Secretary for MERS as nominee for PrimeLending, executed with an effective date of July 20, 2011. Since the real party in interest is still unknown, we assume that MERS' "static" condition as *beneficiary* involved multiple hidden (and unrecorded) assignments between the time the original loan was made up until the present time when this assignment was executed.

It appears the document may have been manufactured by Brown, as an employee of Lender Default Solutions in Dakota County, Minnesota, as evidenced by Page 2 of the document, which contains two rubber-stamped items and an undelineated notarial execution. Two-page documents seem to be commonly used by document manufacturing plants, wherein the possibility exists that the notary did not physically witness the signature of the attestant nor recorded the act of acknowledgment. As previously discussed, this type of behavior was exposed in the *60 Minutes* news segment on April 3, 2011 wherein reporter Scott Pelley interviewed attorney and fraud investigator Lynn Szymoniak about certain aspects of fraudulent document manufacturing that was occurring at DOCX, a now-defunct subsidiary of Lender Processing Services, Inc. ("LPS") (Lender Default Solutions in Minneapolis, Minnesota is a subsidiary of LPS).

The problem appears however, that the Appointment of Substitute Trustee was filed on July 22, 2011, BEFORE the latest assignment, effectively backdated to July 20, 2011, so the recordations of the two documents combined would purport to evidence some sort of legal permission to appoint a substitute trustee. The appointment was allegedly signed by Selim Taherzadeh, who is employed by Brice Vander Linden. The signature on this document does not appear to closely match other noted signatures of Taherzadeh that are presented in this audit report. Further, the alleged power of attorney he asserts was granted to him on June 18, 2009 could not be located.

In spite of the dates, the appointment was recorded BEFORE the assignment was recorded. This would appear to "put the cart before the horse", for permission to do an act BEFORE authority was granted.

Further, these two separate assignments involved MERS. MERS already conveyed the deed of trust to Wells Fargo Bank, N.A. in 2008 (the conveyance of the note is in question at this juncture because MERS does not own the note and admittedly is "not the mortgagee"). What then is MERS doing, conveying again a second time, through the alleged acts of Lender Default Solutions in Minnesota?

To compound the issues with this couple's chain of title, two separate notices of acceleration of the loan were recorded, wherein Wells Fargo Bank, N.A. claimed to be the mortgagee; but by then, the first and second redundant assignments had already been placed into the official property records and three subsequent Trustee's Deeds (or Special Warranty Deeds were filed), transferring the property from the Substitute Trustee (Juanita Strickland, who works under contract as a trustee for the foreclosure mills) to Wells Fargo Bank, N.A. (who was listed as high bidder); again from Wells Fargo to the Secretary of Housing and Urban Development ("HUD"); and again from HUD to the purported bona fide purchaser, Ruben Gonzalez, who may have defects in the chain of title at the time he bought the property. Because many title companies "bought into" and rely upon the legitimacy of the MERS business model, any defects created by the failure to properly record assignments would be hidden by the MERS system from the chain of title to the property.

The validity of this sale was never challenged. The question also remains: Is MERS and its agents entitled to assign this property again, once MERS already assigned the property? Did MERS convey only the deed of trust and split the deed of trust from the note?* Did Wells Fargo only service this loan for an unknown securitized trust vehicle? As to Taherzadeh's power of attorney (after diligent search), the only Power of Attorney of record was found was in Dallas County, Texas (refer to *Appendix 2*).

When There's No Assignment of Record, Who Has the Right to Appoint Whom?
The Case of the Gomez Property at 502 Yosemite Trail, Taylor, Texas 76574

Millions of homeowners appear to be facing the same scenario as Nicole and Jeffrey Gomez (wife and husband), who executed a deed of trust (Instrument #2004095010) through an entity operating under an "assumed name certificate" ("Doing Business As"; "dba") known as America's Wholesale Lender, now defunct. This MERS-originated deed of trust shows a MIN of #1000157-0004462147-8. It is highly unlikely that the Gomez's knew about MERS when they signed the closing on or about November 26, 2004.

This home appears to have been foreclosed on, with no apparent indication of authority to do so. This chain of title contains two assignments (none of them from Countrywide Home Loans, Inc. or any of its dba's or subsidiaries), both of which appear to have been handled by ReconTrust Company, N.A. (a wholly-owned subsidiary of Bank of America, N.A., acting as its alleged "trustee"). The assignments were filed in 2011 (Instrument #2011067358) and in 2012 (Instrument #2012044027).

Prior to these assignments being recorded, FOUR Appointments of Substitute Trustee were executed and filed for record:

*This scenario was noted in a Memorandum Opinion by Hon. James McBryde of the U.S. District Court for the Northern District of Texas, Fort Worth Division, in *McCarthy v. Bank of America, N.A. et al*, No. 4:11-CV-356-A.

(1) Instrument #2006034474; May 1, 2006; by an Assistant Vice President of Bank of New York as Trustee, for the benefit of the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2004-15 (an apparent indicator of the securitization or transfer into a trust).

(2) Instrument #2007015079; February 26, 2007; by a First Vice President of the same entity (both of these appointments appear to have been executed in Collin County, Texas by a third-party document manufacturer, possibly ReconTrust Company, N.A.);

(3) Instrument #2008057792; July 25, 2008; by an Assistant Secretary of the same entity (this time executed in Dallas County, potentially under the direction of ReconTrust); and

(4) Instrument #2011045057; July 11, 2011; this time by an Assistant Vice President of the same entity, but now claiming status as "attorney-in-fact, BAC Home Loans Servicing, LP (which by this time had already been subsumed into Bank of America, N.A.), FKA Countrywide Home Loans Servicing, LP, by BAC GP, LLC, its General Partner.

Where were all of the assignments leading up to these appointments? Not found in the Williamson County real property records! In the last appointment, it appears ReconTrust is directing the production of this document.

Up until the point the first Appointment occurred, CTC Real Estate Services (another division of Countrywide) was the original trustee of the deed of trust. The persons executing these documents are suspected robosignors who may or may not have signed these documents before a notary public at the time of acknowledgment. There was no Notice of Acceleration and Sale filed in the real property records when the Appointment occurred.

Finally, on October 6, 2011 (Instrument #2011067358), alleged MERS robosignor Sandra L. Hickey attempts to convey to the trust vehicle, referenced previously in Paragraph (1), above, now worded as "Bank of New York Mellon FKA The Bank of New York as Trustee for the certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2004-15", the deed "together with the note or notes therein". MERS may not have had the right to convey, on behalf of a now-defunct entity, America's Wholesale Lender, not mentioned anywhere on this document. The only trustee mentioned was the original trustee (CTC) of the deed of trust.

If the note was securitized back in 2004, it would have first had to be assigned to the Trust Depositor to be placed into the trust vehicle itself (as previously discussed in the section of this report on securitization). This appears not to be the case here. In fact, according to SEC records, this trust entity filed an SEC Form 15-d(6), on January 24, 2005, as evidenced at:

http://www.secinfo.com/drjtj.zGy.htm

At the time this form was filed, there were four (4) certificate holders mentioned of record. Further, research of the trust's PSA shows the cut-off date for accepting the borrower's note into the trust pool was December 1, 2004; as noted here at Page S-2):

http://www.secinfo.com/dsvrn.14F1.htm?Find=cut%2Doff&Line=702#Line702

In many cases now before the courts in America, Bank of America is vehemently fighting efforts to discover when the trust pool actually received the borrowers' notes; and trying to block the introduction of the pooling and servicing agreement. The bigger problem here is that this assignment followed FOUR appointments into the Williamson County land records when there appeared to be no valid assignments recorded which would vest any kind of authority to appoint those substitute trustees.

On June 8, 2012, another assignment was filed for record as Instrument #2012044027. The document appears to have been manufactured by employees of ReconTrust Company, N.A.'s offices in Ventura County, California. It names the trust entity referenced in Instrument #2011067358 as the real party in interest. The purported assignee's address used in this assignment appears to be the same address as Metro Detective Agency in Danville, Illinois and not the true address of the assignee.

Again, the original trustee from the deed of trust is named (devoid of all mention of previously-appointed substitute trustees). MERS again attempts to convey the deed **and the note** from the original lender (as was previously done in 2011) to the trust vehicle itself, by-passing the Trust Depositor; thus non-compliant with the terms of the PSA and potentially only conveying the deed of trust and not the note. Following this assignment of apparent redundancy, two more Appointments of Substitute Trustee were filed, further creating suspect chain of title issues to the Gomez's property.

Instrument #2012024547; April 4, 2012; and again Instrument #2012043646; June 7, 2012; by Melanie D. Cowan who purports to be a Vice President, as attorney-in-fact for the trust entity (as previously referenced in Instrument #2011067358) when in reality, Ms. Cowan is likely an employee of ReconTrust Company, N.A., along with Texas notary public Michele Christine Preston, who acknowledged both signed documents.

By request, these documents were returned to ReconTrust Company, N.A. in Richardson, Texas after they were recorded in Williamson County, Texas. BOTH of the appointments have virtually identical information, further inundating the chain of title with apparent redundancy. On BOTH appointments, MERS is listed as the original mortgagee, when in fact, the deed of trust states that America's Wholesale Lender is the lender of record and MERS is listed as the "nominee" for now-defunct America's Wholesale Lender. Both appointments have numerous rubber-stamped items on them, another marker of document manufacturing. The only apparent difference between the documents is that one of them did not have a Trustee's Sale group number on it. Why does it take two Appointments of Substitute Trustee to accomplish a foreclosure?

In BOTH instances, there is no recorded Notice of Acceleration and Sale, as is mandated by law. The property appears to have been sold (July 3, 2012; Instrument #2012068155) to the trust entity as high bidder (there is no indication HOW the trust purchased the property for $88,722.00, leaving an outstanding balance). Again, the original mortgagee on the Substitute Trustee's Deed is MERS. The MERS MIN search revealed:

MIN: 1000157-0004462147-8 Note Date: 11/26/2004 MIN Status: Inactive
Servicer: Bank of America, N.A. Phone: (800) 669-6607
Simi Valley, CA

AUDITOR'S NOTE: There are numerous investor lawsuits against Countrywide Home Loans, Inc. and Bank of New York Mellon, as well as Bank of America, N.A. regarding misrepresentation and fraud on the part of the lenders as to the information relied upon in the prospectus for numerous trust vehicles offered to investors on Wall Street.

In sum, there are now suspect issues with the Gomez's chain of title prior to the foreclosure sale of this property to a new subsequent owner, if in fact the trust had the right to sell and subsequently purchase the property in the first place.

Extraction files reviewed in this audit appear to indicate MERS' infiltration into the land records of Williamson County as early as 2001.

The Case of the Unidentified Merger: The Cantrell Files

What happens when one banking entity is subsumed by another banking entity and there are no supporting assignments filed? Such is the case of the property that used to belong to Martin and Sharon Cantrell of Granger, Texas.

On July 18, 2007, the Cantrells (as husband and wife) appear to have executed a note and deed of trust (Instrument # 2007061076) in favor of National City Mortgage, a Division of National City Bank. Even though the deed of trust was a non-MERS-originated contract, Paragraph 20 on the deed of trust gave permission for the Lender (National City Mortgage) to sell the Cantrell's note or a partial interest thereof to outside parties (without notice to the Borrower). No assignment or transfer was ever recorded showing that PNC Bank, N.A. subsumed National City Bank.

On December 28, 2011, an Appointment of Substitute Trustee was recorded in the land records (Instrument #2011087814) allegedly executed on December 22, 2011 by Selim Taherzadeh (by apparent self-appointment) as "attorney-in-fact" for PNC Bank, N.A. (without evidencing that National City Mortgage was subsumed by them. The Power of Attorney stated therein (April 1, 2010) could not be located in the land records of Williamson County, Texas; or in Dallas County, Texas (where Selim Taherzadeh is located).

It appears that the foreclosure mill law firm of Brice Vander Linden was overseeing the drafting and execution of this document. They are not named in any recorded Power of Attorney by PNC Bank, N.A. either (locatable in any area database). Further, no Notice of Acceleration and Sale was filed (as required by Texas statutes).

Subsequently, a Trustee's Deed (Instrument #2012001656) was issued, the Grantee being PNC Bank, National Association. It appears that Brice Vander Linden directed the filings and activities of the Substitute Trustee (Juanita Strickland) and all recorded documents were returned to them. Further, Mickey Wilkinson completed the attached affidavit of Mortgage Servicer, when it is unknown what relationship he (or she) had with PNC Bank, N.A. (as named on other Brice Vander Linden documents).

It further appears that on February 13, 2012, a document purporting to contain the "authentic signature" of Selim Taherzadeh, referring to the same attorney-in-fact as referenced on the Appointment of Substitute Trustee, conveyed the property from PNC Bank, N.A. to Fannie Mae (Federal National Mortgage Association; Instrument #2012010747). The document was notarized by Micaela Wilkinson. It is uncertain if Micaela Wilkinson is the same person as Mickey Wilkinson are one in the same person. "Mickey" Wilkinson is named as a Power of Attorney on one of the *Powers of Attorney* found in *Appendix B* herein.

In this case study, there is no apparent assignment from National City Bank to PNC Bank, or any reference in any of the documents subsequent to the Deed of Trust, that refers to the foreclosing entity as "PNC Bank, National Association FKA National City Mortgage, a Division of National City Bank" (noting three [3] separate corporate entities operating here). Without judicial intervention challenging the rights and interests of the parties, this foreclosure and sale was allowed to proceed and any equity previously had or owned by the Cantrells (if any existed) is gone. It is probable that someone that may have presented themselves via improper claims, self-appointed themselves as trustee, executed the sale without recorded notice and potentially acted *ultra vires* (a Latin term, meaning "without authority").

This same scenario also appears to have occurred in another chain of title involving another conveyance to Fannie Mae by PNC Bank, N.A., without what appears to be a proper assignment (Instrument #2012049958). It contains the signature of Selim Taherzadeh, along with Texas notary Diana Hanna acknowledging on an entirely separate sheet of paper. This presents us with markers for document manufacturing, suspect forgery and surrogate signing under what appears to be Brice Vander Linden's direct control.

Similarly, on Instrument #2012044276, Substitute Trustee Juanita Strickland sold at auction a tract of land in Williamson County to PNC Bank, N.A. with no recorded assignment linking National City Mortgage to PNC Bank, N.A. in the chain of title.

Self-Assignments Are Not Uncommon Occurrences

A similar self-assignment appears to have occurred within Instrument #2012053488, wherein PHH Mortgage Company's Candace Gallardo purports to be a MERS "Assistant Secretary" signing the document in Burlington County, New Jersey before one of what appears to be one of PHH's employees (Beth Lashley) acting as notary. This MERS-related assignment appears to contravene MERS' own policies for using the old Ocala, Florida address previously tied to Electronic Data Systems. Isn't it convenient being able to "put on the MERS hat"*; using a questionable address in Florida to avoid self-assignment suspicion; and having the document notarized in the very county in which PHH (the assignee) operates? Evidence of a Release of Lien (Instrument #2012080244), involving the same piece of property and same owner, further demonstrates that PHH's principal place of business is located in Burlington County, New Jersey.

Post-Dating Assignment Issues

While the auditors did not see a lot of these types of issues manifest themselves, the evidence of document manufacturing by the foreclosure mill is certainly deceptive. In the instance of a deed of trust (and alleged promissory note) executed by Jesus F. Oviedo and his wife, Miriam Jaimes in favor of Home Financing Unlimited, Inc. d/b/a La Familia Mortgage, a Texas corporation (organized with the obvious intent to accommodate a specialized demographic cross-section of the Texas population), as Instrument #2005015552, with MERS as claimed beneficiary (MIN ID#1000475-0000006630-0; in what appears to be an FHA-based, MERS-originated deed of trust), there is no "Paragraph 20" in the deed of trust that would give the Lender power of sale. However, irregularities with assignments and appointments do seem to occur. In order for a lender to appoint a substitute trustee, the lender needs to first hold the deed of trust and note. Without holding BOTH the deed and note, foreclosure would appear to be improper.

In this instance, MERS as nominee for Wells Fargo Bank, N.A. caused to be filed an Appointment of Substitute Trustee (Instrument #2010087432) against the subject property herein; purportedly executed by Selim Taherzadeh on December 19, 2010; BEFORE Wells Fargo Bank, N.A. actually received assignment (Instrument #2011019863; April 7, 2011, post-dated), which in of itself was questionable. The assignment appears to have been executed by Taherzadeh as an attorney-in-fact for MERS as nominee for Home Financing Unlimited, Inc., based on a limited power of attorney granted August 29, 2008 (although no such power of attorney was ever filed for record in Williamson County, Texas).

In the two signature comparisons on the page 81, notice a difference in the brevity of the signature as compared to previous Taherzadeh signatures?

*This scenario was similarly posed as an issue in the most recent pleadings contained in the Plaintiff's Fourth Amended Complaint in the *Dallas County, Texas v. MERSCORP Holdings, Inc. et al*; Civil Action No. 3:11-cv-02733-O in the U. S. District Court for the Northern District of Texas; filed December 17, 2012.

NOW, THEREFORE the undersigned does hereby, in accordance with the above-referenced Deed of Trust:

1. Remove the Original Trustee and all Successor Substitute Trustees heretofore appointed and;
2. Appoint and constitute Juanita Strickland or Janie Mucha, Cara Featherstone, Kendall Yow, David Romness or Selim Taherzadeh, any to act, as Substitute Trustee who shall possess all the powers and estate delegated to the Original Trustee.

Executed this 19 day of December, 2010.

Mortgage Electronic Registration Systems, Inc., as nominee for Wells Fargo Bank, NA

By: [illegible] Selim Taherzadeh

Its: Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on August 29, 2008

For value received, Beneficiary of the Deed of Trust transfers them to Assignee and warrants that the lien is valid against the property.

When the context requires, singular nouns and pronouns include the plural.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR HOME FINANCING UNLIMITED, INC., D/B/A LA FAMILIA MORTGAGE, ITS SUCCESSORS AND ASSIGNS

By: _____
[illegible] Selim Taherzadeh

Its: Attorney-in-fact pursuant to that certain Limited Power of Attorney acknowledge on August 29, 2008

Note the sworl of the "S" is markedly different. Also note the "supposed T" in Taherzadeh looks more like the letter "P" and that the second signature's sworls of the capital letters are more pronounced than the first set (where the sworl on the "S" is devoid). The notaries for each of these two signatures are also different. Both notaries may be in the employ of Brice Vander Linden.

The first purported signature (self-appointment) of Taherzadeh was notarized by Texas notary Jennifer Carroll on December 19, 2010. The second purported Taherzadeh signature was notarized by Texas notary Sarah Leanne Appleberry.

There is the appearance of suspect forgery and surrogate signing between these two documents, with the clear intent to expedite the foreclosure process without the use of actual signatures of the parties who have properly-vested authority to sign and/or actually made a personal appearance before the notary and took the time required to sign the documents.

Again, the appointment is supposed to FOLLOW the assignment. In this instance, it appears that it does not. Where then is the permission to act? Also notice the sentence above the second signature that reads:

"For value received, Beneficiary of the Deed of Trust transfers them to assignee and warrants that the lien is valid against the property."

Several questions arise as to the language used herein:

(1) What "value" did MERS (as beneficiary of the Deed of Trust) receive?

(2) What did MERS transfer? The term used is "them". What are "them"? The deed of trust? The note (which there is an issue with MERS's ability to transfer)? Both of "them"?

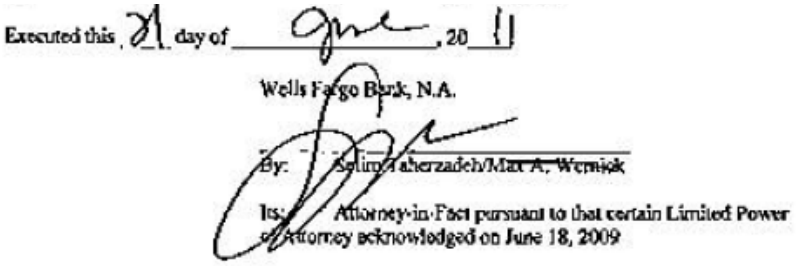
(3) How can MERS warrant the lien is valid when it is merely a "tracking database" for mortgage loans that have allegedly been securitized on Wall Street?

(4) Why was the assignment post-dated ahead of the Appointment of Substitute Trustee?

Even more disconcerting is that the first recorded Notice of Acceleration and Notice of Trustee's Sale was filed on December 14, 2010 (Instrument #2010084436), FIVE DAYS BEFORE the Appointment of Substitute Trustee was even executed; nearly TWO WEEKS PRIOR to the Appointment's recordation in the Williamson County, Texas real property records. What authority did Brice Vander Linden have to notice the property owners prior to their involvement as substitute trustee?

The fact remains that there appears to be glaring errors in procedure regarding the foreclosure proceedings against this property if the previous discussion of proper foreclosure procedures in the State of Texas are to be believed.

This signature variation of Selim Taherzadeh appears (below; along with Texas notary Michaela Wilkinson acknowledging the document on the SAME PAGE; Instrument #2011042042) on a recorded document involving property in Hutto, Texas:


Executed this 21 day of June, 20 11

Wells Fargo Bank, N.A.

By: Selim Taherzadeh/Matt A. Wernick

Its: Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on June 18, 2009

It appears that there are multiple parties executing multiple signatures which seem to vary according to which notary is acknowledging the documents. These are common conditions prevalent during robosigning and surrogate signing. Upon further review of the documents presented during the target audit period, one particular document that was examined (Instrument #2012047154); a Special Warranty Deed appears to have been drafted by Brice Vander Linden and signed by Taherzadeh (notice this alleged signature variation):

Wells Fargo Bank, N.A.

By: Selim H. Taherzadeh
Its: Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on June 18, 2009

Page 2 of this same recorded Instrument contains a paragraph wherein it appears that Taherzadeh is claiming his own authority (vested in him by Brice, with no supporting documentation or written statement from any lender or Brice board member) to support Taherzadeh's "authority":

Certificate of Authority

This is to certify that:

1. The undersigned is an attorney of Brice, Vander Linden & Wernick, P.C., being the same corporation which, contemporaneously with the execution of this Certificate, executed and delivered to the Secretary of Veterans' Affairs a Special Warranty Deed (hereafter "Deed") to which this Certificate is attached.

2. Selim H. Taherzadeh, who executed the Deed on behalf of the Grantor, was, at the time of execution of the Deed, an Attorney-in-Fact, duly elected at a meeting of the Board of Directors of Grantor and was qualified and acting in said capacity at the time of the execution of the Deed.

3. By virtue of the duly adopted bylaws of the Grantor and/or a resolution of its Board of Directors, said officer was duly authorized to execute the Deed on behalf of the Grantor.

4. I have custody of and have examined the records of the corporation reflecting the above and know the above to be true.

By:
Selim H. Taherzadeh
Attorney-in-Fact pursuant to that certain Limited Power of Attorney acknowledged on June 18, 2009

Taherzadeh also signed and used the same language, appearing to utilize the same boiler-plated "Certificate of Authority" (not notarized or granted as customarily presented in a limited power of attorney), within Instrument #2012047153, filed for record on June 20, 2012.

Incomplete Limited Power of Attorney

In the following example, we present the final issue of the appearance of a flawed recordation, filed for record on October 18, 2010 (Instrument #2010070422), within the target audit period:

02/ATC EFF#2493000130 sstad

RECORD AND RETURN
BANK OF AMERICA
2505 W CHANDLER BLVD
CHDLR-D3
CHANDLER, AZ 85224

LIMITED POWER OF ATTORNEY

PG 9 DOCS 20100704422

Wells Fargo Bank, N.A., Successor by Merger to Wells Fargo Bank Minnesota, N.A., F/K/A Norwest Bank Minnesota, N.A., (the "Company") hereby irrevocably constitutes and appoints **BAC Home Loans Servicing, LP, f/k/a/ Countrywide Home Loans Servicing LP** (hereinafter called "BAC Home Loans Servicing") and any other officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with power and authority in the place and stead of the Company and in the name of the company or in its own name from time to time in BAC Home Loans Servicing's discretion, for the purpose of servicing mortgage loans, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of servicing mortgage loans, and without limiting the generality of the foregoing, the Company hereby gives BAC Home Loans Servicing the power and right, on behalf of the Company, without assent by the Company, to do the following, to the extent consistent with the terms and conditions of the Pooling and Servicing Agreements attached hereto as Exhibit A (the "Agreements") :

(i) All documents with respect to residential mortgage loans serviced for Company by said attorney-in-fact which are customarily and reasonably necessary and appropriate to the satisfaction, cancellation, or partial or full release of mortgages, deeds of trust or deeds to secure debt upon payment and discharge of all sums secured thereby; (ii) Instruments appointing one or more substitute trustees to act in place of the trustees named in Deeds of Trust;
(iii) Affidavits of debt, notice of default, declaration of default, notices of foreclosure, and all such contracts, agreements, deeds, and instruments as are appropriate to effect any sale, transfer or disposition of real property acquired through foreclosure or otherwise. (iv) allonges and assignments (v) All other comparable instruments.

This Limited Power of Attorney is effective as of the date below and shall remain in full force and effect until revoked in writing by the undersigned or termination of the Agreement, whichever is earlier.

Dated: May 25, 2010

Wells Fargo Bank, N.A.,
as Trustee under the Agreement

Attest:

By: Alex Humphries
Its: Assistant Secretary

By: Kevin Trogdon
Its: Vice President

Unofficial Witnesses:

Laura Burgess

Kristin Mateo

WILLIAMSON

ACKNOWLEDGEMENT

STATE OF MARYLAND
COUNTY OF BALTIMORE ss:

On the 25th day of May 2010 before me, a Notary Public in and for said State, personally appeared Kevin Trogdon, known to me to be Vice President of Wells Fargo Bank, N.A. as trustee and also known to me to be the person who executed this Limited Power of Attorney on behalf of said bank, and acknowledged to me that such bank executed this Limited Power of Attorney.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my office seal the day and year written above,

Colleen Perry, Notary Public
My Commission expires: 2/6/2013
9062 Old Annapolis Road
Columbia, MD 21045

Colleen Perry
Notary Public
Baltimore County
Maryland
My Commission Expires 8-21-2012

Notice the Power of Attorney acknowledgment address on Old Annapolis Road in Columbia, Maryland? This address is the address for Wells Fargo's Master Servicing unit where files for trusts that Wells Fargo acts as Master Servicer for are kept (as shown in Publication 938 at www.irs.gov). In sum, there are 194 such entities listed as REMICs following this page, comprising exactly seven (7) pages of this recorded Instrument.

All that is listed however is just the name of the trust entity (not the Trustee claiming to represent it) that Wells Fargo appears to act as Master Servicer or Trustee for. As is called out on Page 1 of this recordation, the entire pooling and servicing agreement, "to the extent consistent with the terms and conditions of the Pooling and Servicing Agreements attached hereto as Exhibit A (the "Agreements") for each trust entity listed IS NOT ATTACHED THEREIN! The document claims that all of the trusts are specifically listed in detail, when in fact, they are not.

One reason for failuring to attach the entire PSA (as discussed earlier in this report) is that each PSA usually consists of 250 – 375 pages. Thus, at an average of 325 pages per PSA, the entire Exhibit A would be 63,050 pages! By not included this full attachment as stated, Williamson County may have lost tens of thousands of dollars in revenue in just one recordation; and the recorded filing could be challenged as incomplete.

Also, under the implied assumption that a Power of Attorney is necessary for any attorneys-in-fact to execute documents (assignments and appointments) on behalf of another entity, the auditors examined the nature of seemingly missing information, in the stated agreements on Page 1 of this Instrument (to avoid having to print out the document in its entirety) as Instrument #2010070422.

There is also another reason WHY the audit team feels that the actual PSA's were not attached in full as Exhibit "A". It is because by doing so, each PSA itself would become public record and could be offered as a potential exhibit at trial.

Further, each foreclosure defense attorney challenging the pooling and servicing agreement for errors in assignment based on the failure to transfer the properties into the trust before the cut-off date would now have ready access to the PSA by simply searching for the entire document in the land records based on this Instrument Number. By reciting only the titles to each trust entity in the recordation, its filing size is diminished and thus its notoriety in the land records is further purposefully diminished. Again, we proffer the idea of the notoriety based on the cost of recording such a document with over 63-thousand pages and the fact that the county real property records electronic database itself could be compromised in accommodating such a large file.

Additionally, the auditors took notice of the dates of many of these REMIC entities. Most if not all of the REMICs contain dates ranging from 2003 to 2007, which coincidentally was during the height of the housing boom when almost everyone could get a mortgage loan. The cut-off dates for each of these REMICs occurred within about ninety (90) days of the acceptance of the borrowers' promissory notes into the trusts; thus, there arises an issue of the legality regarding whether the notes actually made it into these trust pools according to the Limited Power of Attorney here, which purports to convey authority to BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP (a possible effort to assign these deeds and notes to the trust, past the cut-off and closing dates of each entity listed).

For example, a 2006 trust entity issuing certificates to investors in the third quarter of 2006 would have a cut-off date somewhere around September 30, 2006. After that date, the investors would be receiving an income from the REMIC (from the borrowers whose loans they allegedly funded) after October 31, 2006, until such time as the notes were repaid in full. If the note was not accepted into the trust by the cut-off date, it is implied that the Borrowers' notes were not transferred into or accepted into the trust pool.

Part of the PSA conditions are that the assignment of the deed and note to the trust MUST BE RECORDED IN THE LAND RECORDS OF THE COUNTY THE SUBJECT PROPERTY IS LOCATED IN BEFORE THE TRUST CLOSES! There are issues arising in courts all over the country regarding the date the assignment was recorded, because the documents alleged conveyance on the recorded given date (years later). The PSA dictates however that the note and deed of trust are supposed to be conveyed to the Trust Depositor FIRST; and then the Trust Depositor would convey the subject property into the Trust REMIC, which is then administered by the Trustee. These purported claims appear to conflict with the mandates of the PSA, making the assignment non-compliant with its terms.

The audit team could find no evidence of this proper procedure being followed in any of the examined Williamson County land records. Further, as characterized by the signing behaviors found within the target audit period), that the fourth sentence on Page 1 of the foregoing Limited Power of Attorney, which reads, in part "… and any other officer or agent thereof." … has been loosely construed to give MERS some sort of authority as nominee for the original lender (whether the original lender was connected in any way to BAC Home Loans Servicing LP or not) to transfer loans (in which it didn't have an interest, as agent) directly into the Trust vehicles, bypassing the Trust Depositor. Thus, the foreclosure mills have taken great liberties and authority with their relationships with MERS to perform acts that may contravene the terms and conditions of the pooling and servicing agreements to which this Limited Power of Attorney refers. MERS is NOT named as Trust Depositor for any trust entity that was researched as part of this audit.

AFFECTED WILLIAMSON COUNTY ELECTED OFFICIALS, COUNTY COMMISSIONERS AND COUNTY JUDICIARY

MERS appears to have received its validity with the passage of § 51.0001 of the Texas Property Code*, which took effect on January 1, 2004, which defines a "national book entry system", as being allowed to record documents in Texas county property records:

> **§ 51.0001. DEFINITIONS.**
>
> In this chapter:
>
> "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a **nominee for the grantee**, beneficiary, owner, or holder of the security instrument and its successors and assigns.
>
> **Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.**

Most Texas Clerks interviewed by the author of this report were admittedly unaware of the passage of this statute.

The potential for amendment of the foregoing statute seems to be the center of discussion among Texas County Clerks at present.

This statutory definition was purposed to allow MERS and its member-subscribers to create static conditions in the land records, by substituting MERS as an acting agent-beneficiary (claiming to hold legal title) as a nominee for the lender and the lender's successors and assigns (and the successors and assigns of MERS), as discussed previously.

This static condition not only affected tens of thousands of property owners in Williamson County, it also potentially affected the chain of title of a host of the officials they elected (as voters and constituents) to office to represent them and rule over their affairs.

By creating this static condition, the MERS-originated Deeds of Trust, MERS' business model dictates that MERS would remain as the beneficiary listed on each Security Instrument for each piece of real property affected, while the mortgage loans would be (intended to be as proffered by MERS) split off and sold (and potentially re-sold and repeatedly transferred) throughout the MERS electronic system of securitized Residential Mortgage Backed Securities ("RMBS's") without notice to the Borrowers.

The intended purpose was to save MERS' members hundreds of thousands of dollars a year in recording fees. The apparent side-effect of this statutory move was to (as MERS admits in its public relations pieces) deprive the County Clerks of recording fees (after the first MERS-originated Deeds of Trust were recorded); then MERS would play "catch-all" when it came to "ownership" interests, even though MERS admits it never lent any Borrower any money at all.**

It is also apparent that due to MERS' static conditions being created, other intended recipients of money derived from county property recordation fees paid have suffered as well. At the same time, the courts have been plagued with repeated challenges and arguments to MERS's business model, which clearly appears to have circumvented the perfection of the lien interests by the real parties concerned and also benefitted MERS member-subscribers in the reduction of recording fees they had to pay to the counties while enjoying rapid-fire electronic transfers of loans in the MERS electronic database.

In all instances where MERS MIN ID Searches were conducted, the following website was used:

https://www.mers-servicerid.org/sis/search

An explanation as to each elected officials' involvement with MERS is discussed separately in this section, as it is a matter of public record. Each elected official's file was extracted and audited separately for MERS-related issues (broken down by category of elected service).

***Mortgage Electronic Registration Systems, Inc. v. Nebraska Dept. of Banking and Finance;* A-04-000786, Neb. Ct. App., 2004

Texas State Representatives

Hon. Charles Schwertner, Texas House of Representatives, District 20

There appears to be only four (4) documents in Rep. Schwertner's chain of title to date. Following the issuance of a General Warranty Deed (with Third Party Vendor's Lien in favor of E-Loan, Inc.; Instrument #2007034751; filed April 27, 2007), Rep. Schwertner, along with his spouse Belinda, executed of a deed of trust in favor of E-Loan, Inc. as the listed "lender" and MERS as Beneficiary, holding legal title, with claimed power of sale, despite the fact that Calvin C. Mann, Jr. is listed as the original trustee, with those same powers as granted to him by statute.

The MIN listed on the front page of the deed of trust is #100039610001228398l, which when a search was conducted on said MIN, the search results revealed the following:

MIN: 1000396-1001228398-1 Note Date: 04/26/2007 MIN Status: Inactive

Servicer: Bank of America, N.A. Phone: (800) 669-6607

Simi Valley, CA

The Schwertners would not know the identity of their actual alleged securitized investor without running further searches through the MERS MIN ID Search site, in addition to other sources available to determine who the true party in interest is for their loan. The status of the MIN is shown to be "Inactive" for unknown reasons, even though Bank of America, N.A. is named as the Servicer of the loan.

There is a Paragraph 20 on Page 8 of their deed of trust that indicates that their loan may be sold without their consent and prior notification. After recording, the deed of trust document was returned to SMI – ELOAN, showing a Houston, Texas address (upon research reveals an address for Stewart Lender Services).

It further appears that the Schwertners conveyed the subject property into THE SCHWERTNER TRUST (an apparent conveyance for asset preservation), as part of a Reservation of Life Estate for Homestead Exemption; Instrument #2008057543).

There is also the implied assumption that the Lender was notified pursuant to Paragraph 18 of the deed of trust, which states:

> "If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all such sum secured by this Security Instrument" (unless prohibited by Applicable Law).

After the filing of the foregoing document, the Schwertners took out another note and deed of trust with JPMorgan Chase Bank, N.A. in favor of a created trust entity, with the Schwertners as co-trustees as a home equity line of credit (HELOC); Instrument #2008074922; filed for record on September 30, 2008. The HELOC does not appear to conflict with the first mortgage therein; however, there is no indication (by assignment) who the real party in interest is and who in fact is receiving the Schwertner's monthly mortgage payments after the Servicer is paid. There is no reason to believe that the first mortgage was retired; however, the issue remains that if the intent was to securitize the original deed of trust note, the Schwertner's may never have been notified of that intention, prior to or after closing.

Hon. Larry Gonzales, Texas House of Representatives, District 52

Representative Larry Gonzales and his wife appear to have two (2) homes that may be affected by MERS issues. The first home discussed herein was conveyed to another couple in 2004, but may still have chain of title issues worth investigating.

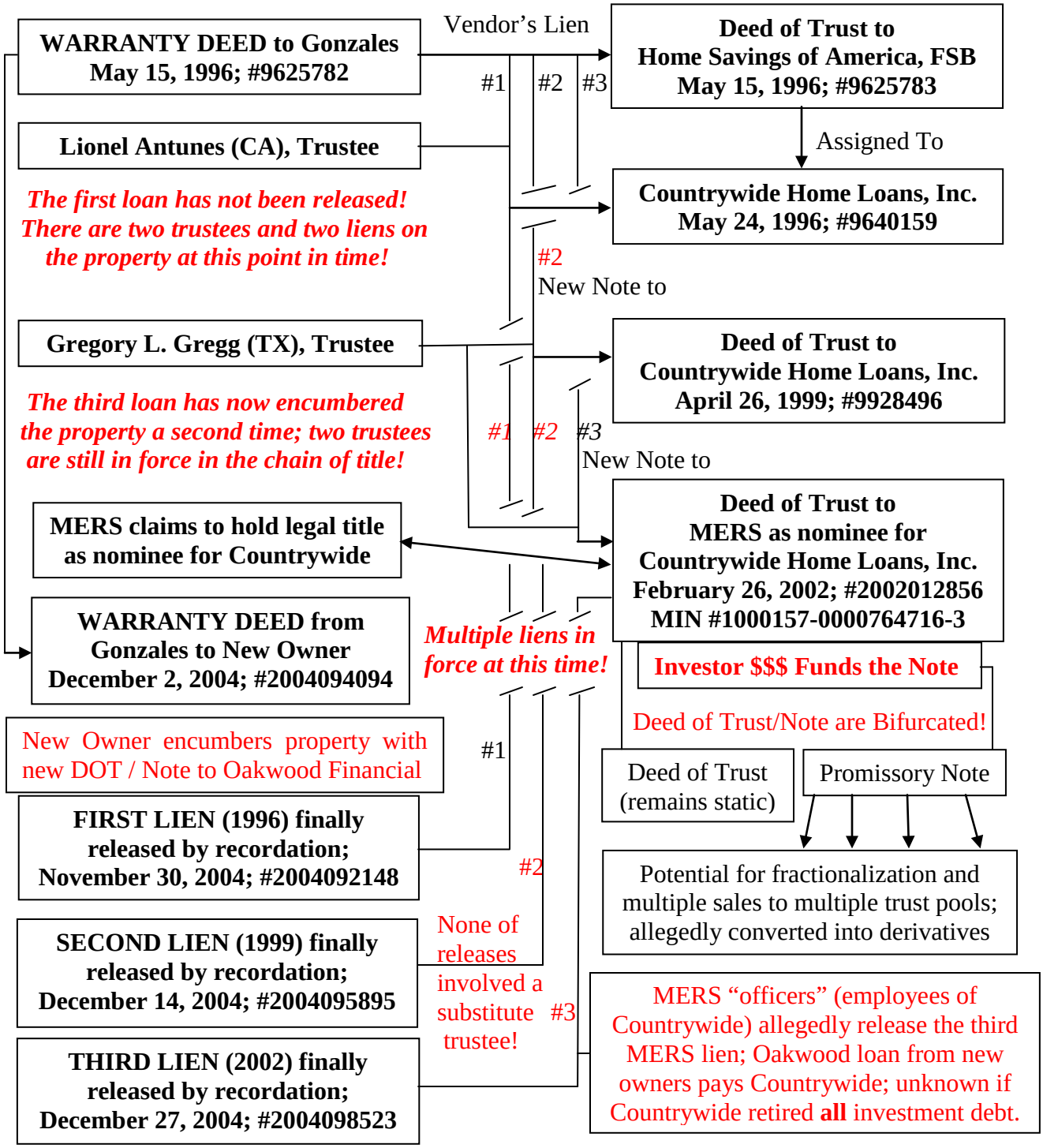
The first Gonzales home in question is situated in the Creekmont West Subdivision. It appears to have been deeded to Rep. Gonzales and his wife May 16, 1996 (via a General Warranty Deed with Vendor's Lien in Favor of a Third Party), conveyed to them as Grantees through the filing of a formal document on May 20, 1996, bearing Instrument #9625782. To secure the Vendor's Lien, the couple executed a note and deed of trust in what appears to be an FHA loan. It further appears that Home Savings of America, FSB, which appears to have transferred the couple's loan to Countrywide Home Loans, Inc. While this assignment (Instrument #9640149) appears to be legitimate, on May 24, 1996 (a week after the apparent table-funded loan was closed).

At issue is that the date of the loan was May 15, 1996. The date of the corporation assignment was May 15, 1996. The date of the Warranty Deed was May 16, 1996. That appears to indicate that the home was unofficially (not filed for record) encumbered the day before the Gonzales's actually owned it. The couple appears to have refinanced the previously-assigned FHA loan directly through Countrywide Home Loans, Inc. on April 26, 1999 (Instrument #9928496), filed for record four days later.

An additional concern here is that none of the loans in the chain of title appear to have been released subsequent to the first lien until November 30, 2004, AFTER the couple took out another Countrywide note and deed of trust (Instrument #2002012856) and it was paid in full when the couple sold their home. This is where the MERS issues appear to creep into their chain of title. A check of this MIN during the audit shows the Note "inactive" with the Servicer listed as Bank of America, N.A. (The NOTE DATE listed on the MERS website does NOT match the date of the note on the deed of trust.

As demonstrated in the following flow chart, the couple's home was encumbered multiple times, with as many as four liens in place, while the now-defunct lender "got its act together" as the couple sold their home to a new Grantee owner.

EXHIBIT: Flow Chart of Chain of Title to the First Gonzales Property



The current MERS database MIN information shows Bank of America, N.A. as the Servicer (2012); however, the Countrywide MERS loan was paid off in 2004 and Bank of America, N.A. did not take over Countrywide until 2009! Why is Bank of America, N.A. showing on the MERS database for an inactive loan that was paid off five (5) years earlier?

Further, Countrywide was famous for allegedly obtaining investor money through a series of New York special purpose REMICs known as CWALTs and CWABS (acronyms for Countrywide Alternative Loan Trust and Countrywide Asset-Backed Securities). This appears to indicate that Countrywide loaned the Gonzales' investor funds and acted as the "middle man" in the whole transaction, using MERS as a "static" beneficiary to sell and re-sell the couple's note multiple times without them knowing who the real lender was.

Paragraph 20 in their deed of trust allowed Countrywide to sell their note (or a partial interest thereof), meaning multiple investors could have claimed ownership interests at any point in time in the future. As is typical for the types of lender behaviors observed in reviews of documents during this audit, this loan was NOT RELEASED until 2004, AFTER TWO OTHER LOANS WERE TAKEN OUT AGAINST THE PROPERTY!

It further appears that on December 2, 2004, the couple sold the home, conveying it to another married couple, as demonstrated in Instrument #2004094094, secured by a Warranty Deed with Vendor's Lien in favor of Oakwood Financial Corporation (a corporation that appears to be based in Austin, Texas).

It appears that Alamo Title Company's (a division of Fidelity National Title) Round Rock, Texas office handled the closing. It further appears that during the closing transaction period, Alamo officials may have discovered the outstanding lien from February 6, 2002 that was never released and had to contact Countrywide to effectuate a release of lien. This lien was subsequently executed on November 24, 2004 by an alleged Countrywide "Vice President", but wasn't recorded until AFTER the couple had sold and closed their (the Gonzales) file on their home.

It further appears that the notary (instead of typing the date, "December 3, 2004" wrote it out by hand) instead of December 2, 2004 leaving to question exactly what date the conveyance was executed. **It also would appear to indicate that at the time the new couple took possession of the Gonzales's home, there were two outstanding liens on the property that had not been officially released, which continued to encumber the subject property.**

It is questionable whether or not the release of lien on the Gonzales' deed of trust is valid because the assignment of the original note was not listed as "Countrywide Home Loans, Inc. (fka Countrywide Funding Corporation)" but rather just "Countrywide Home Loans, Inc.". These appear to be two distinct and separate corporations.

This creates the "the left hand doesn't know what the right hand is doing" scenarios when the alleged Trustee, CTC Real Estate Services, who does NOT appear to be the trustee of record; its alleged "officer", Medy Brucal, attempts to reconvey the Property, using the same address as CTC Real Estate Services is using. The "assistant secretary" appears to have scribbled a signature on the Release of Lien (a marker of document manufacturing) and the notary did not delineate whether the signor was "personally known to me" or "(or proved to me on the basis of satisfactory evidence)" as to the signor's identity and official capacity.

Further, the notarial execution is NOT delineated, meaning we don't know the gender of the signor and in what capacity he/she or his/her acted. A number of Countrywide's notaries also appear to be using only a first initial in their commissions, which in a populated state like California, makes them more difficult to track.

The MERS lien (with potential unknown multiple assignees) was allegedly released on paper on December 6, 2004 (referenced in Instrument #2004095823) and appears to have been released PRIOR TO the 1999 loan (in filings). Unfortunately, Pamela Duncan signs on behalf of MERS, again using the same address that CTC Real Estate Services in Lancaster, California is using. Again, scribbled signatures for both her and the notary; and again, the notary is only using a first initial, another means to potentially obfuscate their identity. Again, the document is not gender- or capacity- delineated anywhere in the notarial execution; the Countrywide "constant" for document manufacturing appears to continue.

The second release of lien (the 1999 loan) was filed for record BEFORE the MERS loan was released (Instrument #2004095895). Once again, it appears that CTC is directing the activities and again, it appears that all of the previously-discussed signing issues are present here as well. It further appears that there were no substitutions of trustee authorized to execute the documents, atypical of most reconveyances.

The second home for Rep. Gonzales is situated in the Shadow Brook Subdivision in Williamson County. It appears to have been purchased in 2004 while the Gonzales's owned the first property. This purchase is evidenced by a Corporate Warranty Deed (Instrument #2004031146), which was filed for record on April 23, 2004. At issue is that the notarial jurat and execution states "The State of Missouri" and "County of St. Louis City" (there is no county named as such; it's St. Louis County).

In this instance, this is a non-MERS-originated deed of trust that became a MERS deed of trust without the knowledge of the Borrowers (the Gonzales's).

The Lender in the first Deed of Trust (Instrument #2004031147) is Westwind Mortgage, LLC, which appears to be headquarted in Austin, Texas. Even though this is NOT a MERS-originated deed of trust, there is a Paragraph 20 provision wherein the Borrowers gave Westwind the right to sell the Note (or a partial interest in the Note; page 10 of 13 of the deed of trust). Further, the MERS telephone number appears on ALL pages of the Security Instrument itself, even though there is no contractual language in the deed of trust wherein the Gonzales's granted to MERS any specific rights.

It further appears that the Borrowers executed a second mortgage (Instrument #2004031148) with Encore Bank of Houston, Texas. It appears from the language included in this deed of trust that Encore knew that Westwind Mortgage, LLC (and its successors and assigns) had first lien position in the chain of title to the property.

One issue is the appointment of L. Anderson Creel (who is believed to be an officer of Encore Bank) to act as Trustee, when the trustee is supposed to be a neutral party as the original trustee for the deed of trust. The Borrowers also gave Encore Bank power-of-attorney status to resolve matters on behalf of the Gonzales's should they (the Gonzales's) fail to act wherein matters related to the mortgage loan arise wherein the Borrowers would need to act. Additionally, Page 5 of this deed of trust allows the lender to sell the deed and note or a partial interest thereof.

It further appears from the assignment that was executed on April 22, 2004 (the same day as the first deed of trust was executed (the assignment being Instrument #2004035633), that Westwind (an alleged table-funded loan broker) assigned the first deed of trust and the note to Wells Fargo Bank, N.A. It further appears from the assignment that was executed on April 19, 2004 (THREE DAYS BEFORE the second deed of trust was executed by the Gonzales's), Encore Bank transferred the second mortgage loan into the MERS system (Instrument #2004080082).

Subsequent searches of the MERS database indicate that CitiMortgage, Inc. is the Servicer for the second mortgage loan (MIN #1002696-1008020143-5); showing the Note Date of April 22, 2004; Status: Active. The question remains however … how could Encore Bank assign a deed of trust and note into the MERS system BEFORE the Borrowers executed on the note and deed of trust; unless they had planned to sell the Note into the MERS system all along?

The question also arises as to whether the Gonzales's were told that their second mortgage was going to be turned into a MERS mortgage loan. Again, this property faces potential securitization of the note into one or more suspect trust vehicles which are presently unidentified.

By virtue of the fact that CitiMortgage, Inc. is listed as the Servicer, it is highly likely that (because Citi is notorious for securitizing most of its residential mortgage loan paper) there may be multiple unknown assignees already involved in the chain of title which have no representative interests evidenced by assignment in the real property records. Conversely however, with the note in the MERS system, the Gonzales' will more than likely never see another assignment unless they default on the second mortgage note.

Hon. Tony Dale, Texas House of Representatives, District 136

Anthony W. "Tony" Dale and his wife, Mary L. Dale appears to have MERS involvement in two (2) pieces of property in which they acted in the capacity of a Grantor or Grantee on in Williamson County. The Williamson County land records evidences the first piece of property purchased on April 26, 2002, wherein this couple executed a note and deed of trust in favor of CH Mortgage Company I, Ltd., a Texas limited partnership. This document was filed for record on April 30, 2002 as Instrument #2002032363, preceded by a Special Warranty Deed issued to the couple, as Grantees, by Continental Homes of Texas LP (Instrument #2002032362).

The Deed of Trust the Dales executed was also executed in favor of MERS as nominee for the "Lender" and as beneficiary, showing a MIN of #100020400071967422 (part of this 18-digit number includes their loan number). Upon conducting a search of the MIN #, it was discovered that Wels Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. was the "Servicer" and the real party in interest was not disclosed. Paragraph 20 of the Deed of Trust gave the Lender the right to sell the note or a partial interest thereof.

For all intents and purposes, it is not known WHO actually owns the Dale's note because of the involvement of MERS system. Therefore, when the couple conveyed a General Warranty Deed with a Second Vendor's Lien on May 30, 2007 (Instrument #20074370078), the title company claiming to handle the closing (Independence Title Company), may not have had all of the correct payoff information because of the potential of unknown intervening assignees present in the MERS database who may have an interest in the mortgage note.

The second property owned by the Dales has two (2) MERS deeds of trust involved in that tract's chain of title, as evidenced by the Deeds of Trust executed in favor of two separate Lenders (the first being now-defunct Countrywide Home Loans, Inc.; the second being Provident Home Loans). The first deed of trust secured by the deed of trust in favor of Countrywide was used to purchase a home in Silverado West in Williamson County, as Grantee from KB Home Lone Star Inc. as part of a Vendor's Lien.

The customary Countrywide MERS MIN #1000157-0007908005-3 appears on this document as well as the Vendor's Lien (Instruments #2007062637 and #2007062638). It appears Alamo Title handled the closing (Alamo Title is a subsidiary of Fidelity National Financial). It is not known whether the Dales knew what MERS was at the time they executed this Deed of Trust. It further appears that on November 9, 2010, the couple executed another MERS-originated Deed of Trust (MIN #100017932201000844) through Provident Home Loans (which appears to be a refinance of the existing loan).

A subsequent search of the MERS ID Search system revealed that the first MERS-originated deed of trust was being serviced by CitiMortgage, Inc. of O'Fallon, Missouri. CitiBank/ CitiMortgage is notorious for securitizing most of its residential mortgage portfolio; however, the original Lender was Countrywide.

Where is the connection between the two major lenders? Is there a valid assignment recorded transferring interest of this MERS-originated deed of trust from Countrywide to a trust entity or to CitiMortgage, Inc. to a trust entity? A search of the MIN shows Wells Fargo Home Mortgage, a Division of Wells Fargo Bank, N.A. to be the Servicer and the real party in interest is unknown to the Borrowers. None could be found in the county land records; thus, there may be issues with his chain of title, in light of the Deed of Release filed for the first mortgage loan when the Provident loan was executed in 2010.

Instrument #2011001537 (within the target audit period; filed on January 6, 2011 at 12:59 p.m.) evidences that third-party document manufacturer Verdugo Trustee Service Corporation (on behalf of CitiMortgage, Inc.) prepared the single-page document. The "Lender" is listed as "Mortgage Electronic Registration Systems, Inc.", which is patently false.

More than likely, the alleged robosignors who engineered this document relied on information supplied to them through a third-party memorandum provided through an online software program.

Further, the signatures appear to be electronically generated, which most likely means that neither the notary nor the alleged Vice President of MERS were present when these documents were signed, nor had personal knowledge of the contents thereof. Thus, there appear to be certain questionable improprieties involving the reconveyance of the property, in addition to unknown intervening assignees potentially still having a claim of lien against the property despite evidence of a purported payoff. Due to the fact MERS really isn't the "lender", there appear to be issues that may rise to legal challenges to the validity of this document.

County Commissioners Court

Lisa Birkman, Precinct One Commissioner

Williamson County Commissioner Lisa Birkman and her husband, Richard, received a General Warranty Deed from Clark Wilson Homes, Inc. (Instrument #9517829), dated April 28, 1995, for a home purchase in the Cat Hollow Subdivision in Round Rock, Texas.

To obtain the deed, Birkman and her husband appear to have executed a note and deed of trust (Instrument #9517830) dated that same day, in favor of Fairway Financial Company, Inc. (which appears to be a table-funded mortgage broker). This particular deed of trust form does NOT contain MERS provisions; however, Paragraph 19 does allow the Lender to sell the Note or a partial interest thereof, which it appears that this Lender chose to do.

Immediately following in sequence with the previous two filed documents is a Transfer of Lien (filed as Instrument #9517831), wherein Fairway Financial assigned the deed and note to Standard Federal Bank, FSB on that same day. There do not appear any irregularities with the assignment and transfer to Standard Federal Bank.

The chain of title remained uninterrupted until October 31, 2002, when the couple appears to have executed another note and deed of trust in favor of ABN AMRO Mortgage Group, Inc. (filed for record as Instrument #2002089193) on November 12, 2002. While MERS by definition does not appear on this deed of trust, it does contain a Paragraph 20 which allows the lender to sell the note or a partial interest thereof.

There does not appear to be any assignment activity involved in this second mortgage loan with ABN AMRO; however, there also does not appear to be any activity as far as releasing of any liens involving this loan anywhere in the chain of title until AFTER the couple entered into what appears to be a Home Equity Line of Credit refinance on January 11, 2008 (Instruments #2008005746 and #2008005747; the Affidavit accompanying the HELOC). In this particular instance, MERS is utilized. Paragraph 19 in this deed of trust form allowed the lender to sell the note or a partial interest thereof into the MERS system. It is likely that investor funds from a special purpose vehicle were used to fund the Birkman's HELOC loan. This also means that in the event of default, judicial action would have to be taken to prosecute a foreclosure.

A MERS MIN ID Search was conducted on this deed of trust MIN number, which produced the following results (as intended to be shown):

MIN: 1000115-2004953442-5 Note Date: 01/11/2008 MIN Status: Inactive
Servicer: CitiMortgage, Inc. Phone: (800) 283-7918
O'Fallon, MO

CitiMortgage, Inc. again securitizes much of its residential loan portfolio and it appears here that it retained servicing rights. What is unknown however (to the Borrowers here) is how many unknown intervening assignees there might be that have unrecorded interests outside of the chain of title (within the MERS electronic database).

Following the payoff of the ABN AMRO loan, a Release of Lien was filed as Instrument #2008021592 on March 24, 2008. This single-page document is suspect because of the apparent identity of the third-party document manufacturer that appears to have drafted this Instrument. The names on the document appear to be alleged employees of Verdugo Trustee Service Corporation, not employees of CitiMortgage, Inc.

The document identifies CitiMortgage, Inc. as successor in interest by merger to ABN, which for all intents and purposes, may satisfy the requirements of the reconveyance; however, the fact that the release has apparent document manufacturing "markers" raises red flags here, especially with the scribbled signatures and the notary (Jane Eyler), whose name has shown up on other alleged robosigned documents, filed for record all of the United States.

What is certain here is that the potential exists for unknown intervening assignees to remain outside of the chain of title, potentially unknown to the Borrowers. The Birkman's note could have been placed into a tranche that defaulted or suffered a credit event (such as a sale or transfer of a majority of the trust pool in a single transaction; or in the alternative, a majority of the loans all went into default); nonetheless, the loan itself was allegedly wrapped into a derivative. Because the Borrowers did not default, it would be virtually impossible (without litigation) to determine WHAT special purpose vehicle allegedly claimed to contain their note.

Upon review of the chain of title, it became necessary to do a MERS MIN ID Search, which revealed a second MERS MIN number on this property, as the results show below:

MIN: 1007757-0201208021-6 Note Date: 10/19/2012 MIN Status: Active
Servicer: NYCB Mortgage Company, LLC Phone: (800) 321-6446
Cleveland, OH

After the target audit period, the Birkmans appear to have executed another HELOC and affidavit (Instruments #2012088960 and #2012088961; filed for record on October 25, 2012) in favor of Adelo Mortgage, Inc. (which appears to be a Texas-based mortgage loan broker for NYCH Mortgage Company LLC, who does NOT appear as the lender of record). Further, the MERS MIN as shown above appears on this HELOC's first page and this agreement does contain a Paragraph 19 (on Page 11 of the deed of trust) which allows the lender to sell the note or a partial interest thereof). Again, the intent was to securitize the Birkman's loan into a special purpose vehicle. NYCB is acting as the Servicer for unknown entities who (according to the terms of most pooling and servicing agreements) are entitled to a monthly distribution of payments.

There are already issues regarding chain of title, because no assignments of record could be located that indicate that the Birkman's note was transferred into a trust pool or, in the alternative, to NYCB Mortgage or any Trust Depositor. In effect, the information has been shielded from the Birkmans and, unless they defaulted on the note they would actually find out who is legitimately claiming to be the real party in interest.

Cynthia Long, Precinct Two Commissioner

Commissioner Long has at least 3 different properties affected by MERS deeds of trust.

In the first property, Commissioner Long and her husband Donn received a Special Warranty Deed with Vendor's Lien from Meritage Homes of Texas, LLC (an Arizona limited liability company, successor by merger to Meritage Homes of Texas, L.P.) dated April 15, 2011. This document was recorded as Instrument #2011024727. Special Warranty Deeds are customarily issued in the event of a transfer of property by a corporation rather than a natural person. To secure the purchase of this home, the couple entered into a MERS-originated Deed of Trust on April 15, 2011 (MIN #100029001973321550) with Austin Telco Federal Credit Union as the Lender of record. After recording in the real property records, the document was returned to Colonial Savings, F.A., showing an address in Dallas, Texas.

When the MERS MIN ID Search was conducted on their 18-digit number, it revealed that the loan is being serviced by Colonial Savings, F.A. but the website failed to disclose who the real party in interest is (unknown without the Borrower's social security number being provided).

MERS claims to be the beneficiary here, but the Long's probably weren't aware that their mortgage loan was going to be securitized as part of a trust.

AUDITOR'S NOTE: Due to the fact that MERS does not have the regulatory oversight that the credit reporting agencies do, any loan applicant's personal identifying information is shared among MERS and its member-subscribers (as taken from the 1003 Loan Application) without the knowledge of the Borrower.

Further, Paragraph 20 of their Deed of Trust document clearly spelled out that the Lender had the right (without notice to the Borrowers) to sell the note (or a partial interest thereof), meaning that the Longs could have multiple unknown investors claiming to have an interest in their property. Again, the intent in using the MERS electronic database is to track sales and transfers of the Long's mortgage loan.

The information that is provided on the MERS website is the information the member-subscribers want the viewer to believe is correct while there is a statement on that website that disclaims accuracy of the data input of its member-subscribers. If in fact the Long's note was sold, they would have no idea who the real party in interest is.

Subsequently, further searches of the real property records appears to indicate no recorded assignments to any other parties, which would indicate that the Longs have no idea as to who really owns their mortgage note.

In the second property, a number of documents span the chain of title for a property owned by the Longs in Cypress Bend, Section One, beginning from the 27th of April, 1988 with the receipt of a Warranty Deed with Vendor's Lien (Instrument #12627, recorded in Vol. 1657, Pages 201-202; and ending (four deeds of trust/HELOCs later) with their conveyance as Grantors via a General Warranty Deed (Instrument #2007057311) on July 5, 2007.

The deed of trust was executed on March 25, 1992 (recorded in Vol. 2121 beginning at Page 604 and ending at Page 609; File No. 9330) in favor of Accubank Mortgage Corporation, a Texas corporation. On November 30, 1998, without notice to the Borrowers (as this deed of trust contained the typical sale provision as recited in Paragraph 19 or 20), wherein the lender could sell the note or a partial interest thereof), Accubank officials assigned the deed of trust to MERS.

Part of the problem with this particular conveyance is that MERS has no money and could NOT have paid Accubank value for the note and deed of trust. As MERS has publically stated, it does NOT own promissory notes. It further appears that the note itself may have been put into a Fannie Mae Trust Pool, as there is an Investor Number provided on the assignment (Instrument #2002092623). Because Fannie Mae is NOT named as the beneficiary (MERS is, instead), there are unknown entities that facilitated the purchase of this deed and note inside of the MERS system that may have resold this property dozens of times over, with no notice to the Longs.

This is basically another instance of a non-MERS note and deed of trust being converted into a MERS deed of trust, while tracking the sale of the note separately on the securitization markets.

The third property begins with a conveyance to the Longs as Grantees via a Warranty Deed with Vendor's Lien (Instrument #2007058120); for a parcel located in Oak Ridge Section II Subdivision) on July 6, 2007, secured by a note and deed of trust (Instrument #2007058121) in favor of Austin Telco Federal Credit Union. MERS is plainly stated in the deed of trust with a MIN of #100029008153631559. Upon a search of the MERS database, the following results were obtained:

MIN: 1000290-0815363155-9 Note Date: 07/06/2007 MIN Status: Inactive
Servicer: Colonial Savings, F.A. Phone: (817) 390-2000
Fort Worth, TX

Again, Paragraph 20 in the deed of trust provides for the Lender's sale of the note or a partial interest thereof. Not surprising is the fact there are no recorded assignments involved with this deed and note. The next recordation in the chain of title is a Release of Lien (Instrument #20100010900), in which MERS purports to be the following:

RELEASE OF LIEN

KNOW ALL MEN BY THESE PRESENTS that Mortgage Electronic Registration Systems, Inc., as nominee for the beneficial owner, whose address is P.O. Box 2026, Flint MI 48501-2026, holder of a certain mortgage, whose parties, dates and recording information are below, does hereby acknowledge that the beneficial owner has received full payment and satisfaction of the same. And in consideration thereof, does hereby cancel and discharge said mortgage.

Who is the beneficial owner?

Note Information:

Date:	JULY 6, 2007
Original Amount:	$65,000.00
Maker:	CYNTHIA P. LONG AND HUSBAND, DONN M. LONG
Payee:	AUSTIN TELCO FEDERAL CREDIT UNION

Holder of Note and Lien: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

This release of lien followed a pay-off using another Austin Telco Federal Credit Union HELOC (not MERS), wherein the foregoing note was satisfied. Again, how convenient for "MERS hats". The MERS system relies on "eNotes" and who happens to possess the "eNote" at the time of claim. It is understood that MERS agents scan the notes into the electronic database to create the eNote. Whether the original note remains viable and intact is the subject of legal challenge. MERS may claim to "hold" the note, but it cannot convey something it doesn't own.**

***Bellistri v. Ocwen Loan Servicing LLP*, 284 S.W. 3d 219, Mo. (2009)

Unfortunately, there is no assignment from Austin Telco to Colonial Savings, F.A., who appears to have (on February 12, 2010) using "MERS hat-wearing officer" Marilyn Jennings (who more than likely is an employee of Colonial Savings, F.A. and her able-bodied Tarrant County notary public, Constance Hartwell), collaborated in the Release of Lien (as the Servicer) that purported that MERS was the holder of the note and lien, when in fact, the front-end language used describes MERS as a nominee for the beneficial owner, WHO IS NOT NAMED. Because the "beneficial owner" appears to have no recorded interest or assignment following entry of the note into the MERS system, at issue is the violation of Texas Local Government Code § 192.007, which required that the assignments and all ancillary documents in the chain of title be filed. Again, the MERS database lists what its members want the Longs to know and nothing more.

The Longs tenure in the property may have ended when they conveyed to a new owner as Grantors (Instrument #2011022419), wherein the final HELOC was satisfied and reconveyed in the chain of title by Austin Telco Federal Credit Union; however, the previous issue with the MERS-originated HELOC and the apparent lack of recorded assignments in alleged violation of Texas statutes may at some point become the focus of litigation.

Ron Morrison, Precinct Four Commissioner

Board Commissioner Morrison and his wife Glenda, as Grantees, received a General Warranty Deed with Vendor's Lien from Howard R. Widmer and Janet K. Widmer, as Grantors, dated June 15, 1998 (Instrument #9840378). The Vendor's Lien was executed in favor of GMAC Mortgage Corporation (Instrument #9840379) on that same date and both documents were recorded on July 20, 1998 in the real property records of Williamson County.

Even though MERS was not involved in this particular transaction, further examination of the Deed of Trust revealed that the Borrowers gave the Lender the right to "sell the note or a partial interest thereof." (at p. 5 of the Deed of Trust) It is unknown whether GMAC exercised that option. This document was recorded as Instrument #2011024727. After recording, the document was returned directly to GMAC at its Horsham, Pennsylvania location.

It further appears that the Morrisons decided to refinance their property. Unfortunately, by that time, MERS was operating as a corporate entity and was firmly entrenched in the land records all across America, despite the lack of statutory permission created as previously discussed.

Prior to the execution of the new deed of trust, GMAC Mortgage Corporation, through its limited signing officer in Black Hawk County, Iowa (suspected document manufacturing facility), Carrie Yu, a Release of Lien was filed on December 29, 2003 (Instrument #2003123262), BEFORE the new Deed of Trust was recorded. Customarily, releases are done AFTER the payoff of the loan

occurs. Many times, the releases simply sit in files in title company offices, never to be recorded until someone raises concern about not finding their release in the land records.
On December 31, 2003 (Instrument #203127178), a new Deed of Trust (with a Renewal and Extension Rider attached) was filed in the real property records, indicating that the new note the Morrisons executed was a MERS-originated deed of trust. MERS is clearly stated on Page 1 of the document.

A MIN of #1000375-0560129308-1 is shown above the title on the Deed of Trust, along with the couple's loan number, which is incorporated into the MERS MIN, and shown to have been formally executed December 15, 2003.

This loan also contains a Paragraph 20 which allows GMAC to sell the note or a partial interest thereof. A MERS MIN ID search revealed GMAC Mortgage, LLC is the Servicer and without the Borrowers social security number (which is necessary to access the system to verify further details of who the "investor" is) was not available at the time of the search; thus the actual real party in interest is unknown at this time. Even though their note appears not to be in default (because there is no recorded activity on the Morrison's county land record files past this deed of trust), it is highly likely that the Note was potentially sold into securitization and that the money that funded the renewal loan was funded by trust pool investors and not from GMAC. Due to the participation in MERS, the Morrisons true note holder is unknown at this time.

District Court Justices

Hon. Billy Ray Stubblefield, 26th District Court

This property more than represents long-standing and historical pre-MERS tenure in property ownership.

So the reader of this audit report does not misconstrue the intended recording procedures at the time the initial Warranty Deed with Vendor's Lien was executed, it is important to recall that back in the 1980's the deeds to tracts of land were kept in separate volumes from the liens created by deeds of trust.

AUDITOR'S NOTE: The Williamson County Clerk's recordkeeping system began to change as of October 1, 1983; as this book recording changed to Instrument Numbers for easier tracking. In much of the early history of the current owners of this parcel, the Book and Page numbers appeared to continue well into 1998, when most of the older land records had been supposedly catalogued. The newer system of Grantor-Grantee indexing makes it much easier to investigate chains of title, whereas the older system made it much more difficult because one had to know where every document pertaining to the chain was kept, as some documents did not reference other documents, as they do in today's recordation processes. Because the old filing system contained separate indexing features,

the numbers of the recordings would not sequentially match up, thus creating some confusion.
In this chain of title, the first numerically indexed deed of trust appears as Instrument #199981675, in favor of NationsBank (which later was subsumed by Bank of America, N.A.). According to the current County Clerk (Nancy E. Rister), Volume 2732, Page 288 (May 31, 1995) was the last-known document recorded in the system of "Books" kept by Williamson County, Texas.

In this particular property, if the current recording standards were to be applied, the Deed of Trust would appear to have been recorded well before the Warranty Deed with Vendor's Lien (in favor of Georgetown National Bank), as the Deed of Trust was found in Book 397, beginning at Page 797 and ending at Page 800. The Warranty Deed with Vendor's Lien conversely begins the chain of title to Judge Stubblefield's property as found in Volume 959, beginning at Page 803 and ending on Page 805.

By the older standards, this set of recordations would follow in their respective places, as the dates of both documents (December 30, 1983) would indicate that Judge Stubblefield and his wife, Neta (hereinafter "Stubblefield") were appropriately conveyed the subject property in the River Bend Subdivision despite the current appearance of the placement of the documents into the real property records.

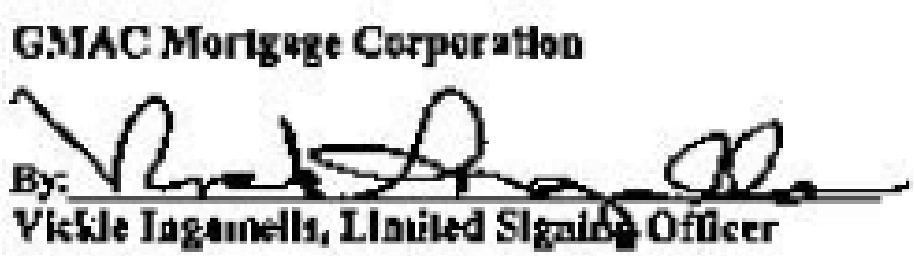
It would also be appropriate to mention here that, at the time these documents were executed, the act of securitization of notes was not uncommon; however, most banks generally held the notes they were servicing. As MERS began to appear in the land records, not coincidentally, it appeared that credit and lending restrictions were loosened and virtually anyone could get a mortgage loan. The problem was however, that subprime lending also became popular and folks who didn't deserve to get credit, got credit anyway (and those loans soon were in default).

By 2002, when two Releases of Lien for the Stubblefield's were filed in their chain of title, BOTH COVERING WHAT APPEARS TO BE THE SAME IDENTICAL LOAN from Bank of America, N.A. (formerly NationsBank, N.A.) on the same note, executed on September 10, 1998 and renewed on November 23, 1999 (apparently a HELOC); this appears to be the first known issue with suspect document manufacturing in the Stubblefield's chain of title.

The first exposure to the MERS system appears to be from a HELOC and Affidavit that the Stubblefield's executed dated December 18, 2002 (MIN #100052599909949089); that contained Paragraph 19 that appeared to give the Lender, Home Capital, Inc. of Atlanta, Georgia, the right to sell the couple's note (or a partial interest thereof) to one or more parties without prior notice to the Borrowers (Instruments #2002102367 and #2002102368).

Subsequent to the funding of the MERS-originated loan, three more Releases of Lien were filed (Instruments #2003005337, #2003026023 and #2003092544). These Releases appear to be the first of the "robosigned" and potentially "surrogate signed" documents.

The first release of lien (#2003005337) appears to have been executed by GMAC Mortgage Corporation in Black Hawk County, Iowa by one Vickie Ingamelis, who claims to be a "Limited Signing Officer", notarized by J. Simon (whose commission appears to be valid at the time of acknowledgement), executed January 10, 2003:



The second release of lien (#2003026023) also appears to have been manufactured by agents operating under the direction of Bank of America, N.A. to release the renewal of the HELOC the Stubblefield's borrowed from NationsBank on November 23, 1999.

The second release, instead of the document being drafted and finalized in Guilford County, North Carolina (where the first HELOC release of lien discussed was generated) from); this one was created in Jefferson County, Kentucky.

The third release of lien reverts back to Black Hawk County, Iowa again, where it appears the same "Limited Signing Officer" (Vickie Ingamelis) allegedly attesting that a note was held by Freddie Mac by GMAC Mortgage Corporation formerly known as GMAC Mortgage Corporation of PA, successor by merger to GMAC Mortgage Corporation of Iowa, its Attorney-in-Fact, is signing the release of lien:

The notary acknowledging this document was “R. Weber”; again, first initial, last name, harder-to-track individual; again, no gender delineation within the notarial execution (same as the first release acknowledged by J. Simon).

Do the signatures look identical? This is an apparent “marker” of someone else signing (surrogate signing) the name of an officer that probably has no personal, first-hand knowledge of what they’re attesting.

The auditors could not find the assignment that purports to claim that Federal Home Loan Mortgage Corporation (“Freddie Mac”) owns the note that is being released. Does Freddie Mac believe that it does not need to comply with the Texas Local Government Code?

It further appears that the documents are manufactured when looking at the scribbled signatures. How does one know that Vickie Ingamelis has the appropriate signing authority or that she was even the person affixing her signature to these documents? How do we know someone else did not sign her name without her even being there? Or were signed in some other part of the building?

To compound the problem with the Stubblefield’s apparent issues with chain of title, the MERS mortgage appears to have been serviced by Flagstar Bank (out of Troy, Michigan). Flagstar is infamous for securitizing mortgage loans. Flagstar has multiple corporations that separately conduct their securitizations, making the tracking of them by private investigators more difficult.

Here is what the MERS MIN ID Search revealed:

MIN: 1000525-9990994908-9 Note Date: 12/18/2002 MIN Status: Active

Servicer: Flagstar Bank Phone: (800) 945-7700

Troy, MI

Further, the first release of lien purports to have been recorded by GMAC Mortgage Corporation, releasing a lien from Temple Inland Mortgage Corporation. Why is there no assignment from Temple Inland to GMAC Mortgage, or was GMAC just the Servicer? How do we know that GMAC didn’t actually fund this loan? How do we know that the Temple Inland loan was not securitized to a private acquisition trust? We have no idea of how many assignees are missing from the Stubblefield’s chain of title. The foregoing note and deed of trust appear to be the last in the chain that the auditors could locate.

To further compound the issues in chain of title, after diligent search, the auditors (nor could the author of this report) could not find any assignments or releases of lien applicable to Georgetown National Bank, City Federal Savings & Loan or Capital City Savings & Loan to tie the releases of lien interest issue to their respective deeds of trust against the Stubblefield’s chain of title.

It further appears that the current, MERS-originated mortgage is still in place in the land records; that the potential exists for the Stubblefield's note to have been securitized; and that there may be multiple intervening assignees that have no recorded interest on file in the real property records (in violation of the Texas Local Government Code), that may further corrupt the chain of title. The only known way to discern who else might have an interest is to default on the loan payments (or through other legal means, what many homeowners are doing) and watch as MERS and its foreclosure mill agents appear out of the woodwork.

Patriot-Style Activities Find Their Way Into The Public Record

What the author did find in the Stubblefield's chain of title however is what appears to be a "patriot-style"* abstract of judgment (Instrument #2006010911) filed by a Round Rock attorney (Laurie J. Nowlin) on behalf of Charles Edward Lincoln III as Plaintiff, who claims that several currently-seated (and formerly-seated) justices in Williamson County owe him $50,000.00, yet to be paid; referencing a judgment he obtained on January 30, 2006, which the attorney appears to be attempting to perfect through recordation. Significantly, there is no referenced case number on the abstract of judgment itself; one has to go into the land records indexes to locate Cause No. 05-973-C395 to be able to ascertain its inception. Whether or not the attorney filing this document was duped into believing (or had any prior knowledge of the Plaintiff and his alleged behaviors) that filing this Abstract of Judgment was legal, there remains a purported judgment lien on record for all of the parties listed in this Instrument.

*To illustrate the types of behaviors that alleged "patriot types" engage in, many of these so-called "litigants" persuade the homeowners, some of whom are in foreclosure proceedings, to assign their rights in the property to him so he can have apparent standing to litigate against whomever he feels is "oppressing" his due process or other "God-given, natural rights" was denied him. When his lawsuits go unanswered, he appears to obtain a default judgment and then files documents like the foregoing in the land records. One example, Lincoln filed a 120-page quiet title action in California [wherein Mr. Lincoln appears to have acquired homeowner's rights; CV-10-00615-RGK (PJW)].

Not even the author of this report believed this 120-page petition (which he has a copy of) to be even 50% valid on its face (from a paralegal's standpoint), as it appears not to: (1) "stick to the point"; (2) goes off on a ranting tirade of seemingly maniacal proportions; and (3) attempts to slander title to the properties of multiple defendants (judges). In this abstract of judgment, Mr. Lincoln even provides the viewer with his Social Security Number, date of birth, alleged address and Texas Driver's License number, creating the potential for someone to steal his identity.

Unfortunately, as the foreclosure issues continue to plague this county, so will the unreasonable and rash occurrences of pro se (or pro per, sui juris), patriot-style attacks or filings against officials attempting to exert jurisdiction in these matters, rather than seek competent legal advice from attorneys versed in these matters. From previous contacts with other County Clerks in the State of Texas, the author of this report has reviewed other county real property records' databases. It appears that well-meaning "patriot paralegals" have drafted (for apparent well-meaning "patriot-type" filers, who base much of their concern with Constitutional violations) documents which purport to execute common law or judicial liens on county officials and judges; have attempted to place Uniform Commercial Code liens upon themselves as "natural persons" (attempting to remove government contracts they entered into); have filed commercial liens on judges and legislators because the disgruntled pro se litigant purportedly didn't like the judge's ruling or the way the legislator voted on a piece of legislation; and moreso, filing documents in an effort to slander title or hinder a foreclosure at any given stage of the process.

MERS and its Created Controversies Cannot be Ignored

Again, the controversies created by the use of the MERS system by lenders will continue to plague America and cause undue docket pressure on the legal systems in this county, for at least the next century and beyond, as homeowners attempt to sort out their corrupted chains of title and the issues created as the result of the implantation of the MERS business model.

MERS has denied any wrongdoing and continues to pontificate that its business model is lawful; however, the business model has no regulatory oversight and its member-subscribers and their third-party document manufacturing plants appear to be not only taking advantage of recording loopholes created by MERS' beneficiary status, but also appear to be abusing it through use of the suspect issues discussed in this report.

Hon. Burt Carnes, Presiding Judge, 368th District Court, Presiding Local Admin. Judge

Judge Carnes and his wife, Susan (hereinafter "Carnes") acquired a tract of land via a Warranty Deed with Vendor's Lien (Instrument #9661095), which was filed for record on November 19, 1996. To secure the Vendor's Lien, the Carnes's appear to have executed a note and deed of trust (Instrument #9660196).

A year later, it appears the couple started some construction on the property. Several executions of deeds of trust later, the notes ended up being refinanced through Sterling Capital Mortgage Company (Instrument #9832624), that deed of trust contains a Paragraph 19, which allowed the Lender to sell the note or a partial interest in the note without prior notice to the Borrowers. The couple also took out a smaller second mortgage with Guaranty Federal Bank. Through a series of assignments, these notes all ended up being assigned to Norwest Mortgage, Inc. (now owned by Wells Fargo Bank, N.A.).

On May 18, 2001, the Carnes took out a subsequent contract for improvements with a deed of trust and power of sale, which appears to be in favor of Guaranty Bank. It was then, on August 12, 2002 that the couple appears to have executed a note and deed of trust in favor of Sterling Capital Mortgage Company (Instrument #2002064116) that was in fact, a MERS-originated mortgage (MIN #100057500064523102).

Upon a MERS MIN ID Search, the following results were produced:

MIN: 1000575-0006452310-2 Note Date: 08/21/2002 MIN Status: Inactive

Servicer: Wells Fargo Home Mortgage a Division of Wells Fargo Bank NA Phone: (651) 605-3711

Minneapolis, MN

This deed of trust contained a Paragraph 20, which allowed the Lender to sell the note or a partial interest thereof without prior notice to the Carnes'. Shortly thereafter, Guaranty Bank assigned its beneficial interests to Sterling Capital Mortgage Company.

On September 26, 2002, it appears that Wells Fargo Home Mortgage, Inc. formerly known as Norwest Mortgage, Inc., by Beverly Bigelow, its Vice President, caused to be recorded an assignment from Wells Fargo to Sterling Capital Mortgage (Instrument #2003002769), filed for record on January 10, 2003.

On July 9, 2008, DOCX*, the now-defunct, third-party document manufacturing subsidiary of Lender Processing Services, Inc. apparently at the direction of Wells Fargo Bank, N.A., caused to be filed for record Instrument #2008055255, which purports to release the MERS-originated mortgage, which has been assigned and re-assigned, with potentially unknown intervening assignees.

This Release of Lien came shortly after the Carnes took out another loan from Wells Fargo Bank, N.A. and accordingly appear to have executed a note and deed of trust (Instrument #2008057369), which appears to be in place today. Even though it appears that MERS is NOT involved in this instance, the deed of trust contains a Paragraph 20, allowing the lender to sell the note (or a partial interest thereof) without notice to the Borrowers (Carnes).

On the following page is a copy of the Release of Lien discussed herein, with call-out boxes highlighting a couple of the "markers" discussed in this report.

It may take an army of title company folks to sort out what happened when on June 30, 2008, the Carnes appear to have executed the deed of trust and note, which Wells Fargo Bank, N.A. has attached a "Renewal and Extension Rider" (renewing the Sterling Capital Mortgage MERS-originated mortgage loan). The Instrument Number is handwritten into the Rider for reference.

Because of the involvement of DOCX, who has been sued; and with its President prosecuted criminally (and sentenced to prison), the question then arises why did Wells Fargo needed to transfer the note and deed of trust back to Sterling Capital Mortgage, only to renew the note and deed from the previously-assigned MERS mortgage effectuated by Sterling Capital?

If the note and deed of trust were renewed, the question arises as to whether the relevant documentation is still in the MERS system and whether the Carnes' note continues to float around in the securities market. At present, one would wonder how many intervening assignees are involved in the Carnes's note.

*Former DOCX President Lorraine Brown was sentenced in two separate instances as previously noted and is facing charges in Michigan that could result in another 20 years in prison; more than likely to run concurrent to her 2-year stint in a Missouri Department of Corrections facility.

Document Prepared By (Space Above for Recorder's Use Only)
Ronald E Meharg, PH#: 888-361-9638
Recording Requested By:
Wells Fargo Bank, N.A.
When Recorded Return To:
DOCX
1111 Alderman Drive
Suite 350
Alpharetta, GA 30005 – 9929
Property Address:
310 COUNTY ROAD 317
GEORGETOWN, TX 78626

1Krol-eR2.0 07/01/2005 Copyright (c) 2005 by DOCX LLC

WELL	708	0182137349

MIN #: 100057500064523102
MERS Telephone #:
888/679-6377CRef#:07/30/2008-PRef#:R089-POF
Date:06/30/2008-Print Batch ID:54870
Wells Fargo Bank, N.A.
Grantee's Mailing Address: CARNES,
310 COUNTY ROAD 317
GEORGETOWN, TX 78626

RELEASE OF LIEN

Know All Men By These Presents:

That **Mortgage Electronic Registration Systems, Inc.**, whose address is **P.O. Box 2026, Flint, MI 48501-2026**, in consideration of payment in full according to the face and tenor thereof, of a certain promissory note in the amount described below and payable to the Beneficiary described below and described more fully in the Deed of Trust referenced below.

Borrower(s): **A. B. BURT CARNES AND SUSAN CARNES, HUSBAND AND WIFE**
Original Trustee: **RON HARPOLE**
Original Mortgagee: **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR STERLING CAPITAL MORTGAGE COMPANY**
Date of Mortgage: **08/12/2002** Loan Amount: **$253,900.00**
Recording Date: **08/21/2002** Book: **N/A** Page: **N/A** Document #: **2002064116**

and recorded in the official records of the **County of Williamson**, State of **Texas** affecting Real Property and more particularly described on said Mortgage referred to herein.

Mortgage Electronic Registration Systems, Inc., the owner and holder of said note, does hereby release the lien shown by said instrument to exist upon the following described property, to secure payment of said note, viz:

IN WITNESS WHEREOF, the said corporation has caused these presents to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation on this date of **07/09/2008**.

Mortgage Electronic Registration Systems, Inc.

Pat Kingston
Vice President

Pat Kingston is a notorious DOCX robosignor, as infamous as Linda Green. Ms. Kingston may not have signed the document, as surrogate signing was popular during this time frame.

State of GA
County of **Fulton**

This instrument was acknowledged before me on this date of **07/09/2008** by **Pat Kingston of Mortgage Electronic Registration Systems, Inc.**, on behalf of said corporation.

Witness my hand and official seal on the day and date hereinabove set forth.

Notary Public: **Ellis Simmons**
My Commission Expires: **04/07/2012**

Scribbled signature of notary; who may not have witnessed the signor.

Ellis Simmons
NOTARY PUBLIC
Fulton County
State of Georgia
My Commission Expires
April 7, 2012

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2008055255
Nancy E. Rister
07/18/2008 10:16 AM

On September 30, 2009, the Carnes executed another deed of trust and note with Wells Fargo Bank, N.A. (Instrument #2009077085), which also contains a Paragraph 20, allowing Wells to sell the note (or a partial interest thereof) without prior notice to the Borrowers. Before this document could be recorded, Wells Fargo Bank, N.A., through its document processing department in Milwaukee, Wisconsin, filed a release of lien on the previous deed of trust and note. Suspect robosignor Carol Mane allegedly signed the document, with R. A. Keval acknowledging the document. The notarial execution was not gender-delineated and the notary's signature is scribbled. The recording was requested by Wells Fargo Home Mortgage's Lien Release Department. The document appears to have been executed on October 8, 2009. It is implied that the current note and mortgage are in force and that MERS is not involved at this juncture of the chain of title.

The results reflect an apparent linear relationship; the more the property is mortgaged, the more negatively-impacted the chain of title becomes. More of the negative impact comes from the lack of recorded assignments or releases of lien, or by the purported faulty assignments and releases of lien that ARE recorded. Certain cases have revealed that many of the notes were lost or destroyed, thus making their tracking or procurement impossible without bringing some sort of fraud on the court via use of a manufactured document.*

Hon. Ken Anderson, 277th District Court

There are two scenarios involving Judge Ken Anderson and his wife, Martha (hereinafter "Anderson") with respect to two different pieces of property.

In the first property, the Andersons appear to have executed a note and deed of trust to secure a Warranty Deed with Vendor's Lien on a property in the San Gabriel Heights Subdivision in Williamson County, in favor of Equitable Savings Association, on February 9, 1984. The Warranty Deed is found in Volume 975, beginning at Page 397 and ending at Page 398. The document was executed by Phil Ingalls, as President of Phil Ingalls & Associates.

There is a rubber stamp on the document near Ingalls' alleged signature that reads, "NO SEAL"; Construed to indicate that the corporate seal is missing from the original recordation. The Deed of Trust was found in Volume 975, beginning at Page 400 and ending at Page 406.

A second deed of trust and note appear to have been executed on March 25, 1986; following which a release of lien occurred, presented by Equitable Savings Association aka Creditbanc Savings Association (the lender in the second deed of trust). At present, upon examination of the documents, it appears the property and its Vendor's Lien is held in favor of Creditbanc Savings Association.

**U.S. Bank, N.A. v. Harpster*, Pasco Co. Circuit Court, Case No. 51-2007-CA-6684ES, wherein a fraudulently-manufactured document using only MERS and signed by a law firm secretary, was shown to be improperly backdated and notarized.

On December 14, 1994, FFB Mortgage Capital Corporation assigned the mortgage to now-defunct Metmor Financial, Inc. of Overland Park, Kansas. After recording, the document was returned to Franklin Federal Bancorp in Austin, Texas. There is an attached Exhibit A with a reference to Paragraph 21 (as a lot owner within the subdivision) showing Creditbanc Savings Association as the lienholder. There is no recorded assignment from Creditbanc to FFB Mortgage Capital Corporation filed for record in Williamson County. This would indicate a potential break in the chain of title to the property. A subsequent Deed of Release was filed by Mellon Mortgage Company, successor by merger to Metmor Financial, Inc. on August 26, 1996 (Instrument #9644657), for the benefit of Creditbanc Savings Association (again, there is no assignment filed to appear to support this release). For all intents and purposes, it appears that the mortgage is paid off; however, there are apparent discrepancies with the deed of release that again do not make sense.

On June 24, 2002, the Andersons appear to have executed another note and deed of trust (HELOC) in favor of the Austin Area Teachers Federal Credit Union (Instrument #2002054330). After resolving an apparent easement conflict with a neighbor, the Andersons appear to have conveyed title to the property to a subsequent purchaser, who appeared to encumber the property with a MERS-originated deed of trust and note in favor of now-defunct First Magnus Financial Corporation. A release of lien for the Andersons was filed on behalf of A+ Federal Credit Union. This release of lien DOES NOT INDICATE that there was an assignment filed or a "formerly known as" or "successor by merger to" filed to show the relationship or nexus between Austin Area Teachers Federal Credit Union and A+ Federal Credit Union. This represents another issue with the chain of title.

In the second property, the Andersons appear to have purchased a home in the Teravista Subdivision in Williamson County from Meritage Homes of Texas, L.P., and appear to have executed a note and deed of trust in favor of Prestige Lending Services, Ltd. to secure a Warranty Deed with Vendor's Lien (Instrument #2006016366). The deed of trust (Instrument #2005016367) a MERS-originated deed of trust (MIN #100239023015090486). Contained therein is Paragraph 20, which allows the lender to sell the note without prior notice to the Andersons.

Upon a search of the MERS MIN Search ID for the preceding loan, the following results were produced:

MIN: 1002390-2301509048-6 Note Date: 02/27/2006 MIN Status: Inactive

Servicer: Bank of America, N.A. Phone: (800) 669-6607

Simi Valley, CA

Bank of America, N.A. is shown as the Servicer, but the "investor" is unknown to the Andersons. There could be multiple investors who have no recorded interest in the real property records.

On July 27, 2010, the Andersons appear to have refinanced the first deed of trust, replacing it with another MERS-originated deed of trust, which was filed on August 30, 2010 (Instrument #2010057594; MIN #100025500007999715, preceded by what appears to be an electronically signed and notarized document (similar to the signors in other judge's chains of title). The notarial seal also appears electronically produced (Instrument #2010051443).

The foregoing document appears to have been manufactured by ReconTrust Company, N.A.'s Utah document operations plant in Cache County, Utah. As of the recorded date of the deed of trust, the audit team believes that the chain of title to the Anderson's property was compromised.

When the auditors see "underlined" words, it is generally indicates that these items were part of a template that is typed in by parties unknown to the signors, who then would affix their signatures to the document, attesting to the facts contained therein. With electronic signing however, the parties (the signor and the notary) aren't present and the facts at hand may not be known to them, even though their signatures appear to indicate otherwise. The Deed of Release was generated on August 3, 2010, almost a month BEFORE the new deed of trust was filed. A subsequent search of the MERS MIN ID Search system for this loan produced the following results:

MIN: 1000255-0000799971-5 Note Date: 07/27/2010 MIN Status: Active
Servicer: Bank of America, N.A. Phone: (800) 669-6607
Simi Valley, CA

There is a Paragraph 20 on the current deed of trust, meaning that Bank of America, N.A., the new "lender" can sell the note (or a partial interest thereof) into the MERS system to be handled on its electronic database, void of recorded assignments in the real property records of Williamson County causing potential chain of title issues involving intervening unknown assignees.

Hon. Michael Jergins, 395th District Court

The property under review in this instance appears to have been conveyed to Judge Michael Jergins and his wife (hereinafter "Jergins") on January 20, 1994 via a General Warranty Deed (with an incorporated Vendor's Lien; duly recorded in Volume 2456 at Pages 348-349, on January 25, 1994, involving a property in Oaklands subdivision, Section One-B, a property situated in Williamson County, Texas. The chain of title involving the Jergins' length of ownership in the property comprises a number of executions of notes and deeds of trust, HELOCs and subordination agreements, and recorded paperwork involving improvements to the subject property, all of which appear to be proper on the surface.

The issue in the chain of title becomes clear with the execution of a MERS-originated deed of trust and note by the Jergins, dated June 24, 2009 and subsequently filed in the official records as Instrument #2009047848; showing a MIN #100012601004022025.

This conversion to a MERS loan appears as the result of a renewal and extension rider to a deed of trust dating back to 2001 (wherein MERS was just starting to take a foothold in the land records but had not yet infiltrated the Jergins' chain of title). An ID Search of the MIN yielded the following results:

MIN: 1000126-0100402202-5 Note Date: 06/24/2009 MIN Status: Active
Servicer: CitiMortgage, Inc. Phone: (800) 283-7918
O'Fallon, MO

It is important to note that the lender of record in the deed of trust is Extraco Banks, N.A. dba Extraco Mortgage, a Texas corporation based in Waco, Texas. It appears that Independence Title Company handled the closing and processing of the paperwork into the Williamson County land records system where it remains to date. Again, it is also important to note that even though CitiMortgage, Inc. appears on the MERS database search results as a Servicer, the true real parties in interest are unknown due to the likely securitized promissory note, which was probably sold over and over in the MERS system without the Jergins' knowledge. After all, the Jergins' did execute the deed of trust, giving MERS the apparent authority; however, the chain of custody of the note and the relative assignments necessary to coincide with the chain of title appear to be lacking since the execution of this document, over three years ago.

The audit team believes the Jergins' condition of title to be compromised after of July 2, 2009, when the previously-discussed document was recorded.

County Court at Law Justices

Hon. Suzanne Brooks, County Court at Law One

This property appears to have been conveyed to Judge Suzanne Brooks and her husband, Cecil (hereinafter "Brooks") by Casa Sereno Homes, LLC on July 28, 2011; effective August 4, 2011 via a General Warranty Deed (with an incorporated Vendor's Lien; duly recorded as Instrument #2011053198, on August 11, 2011, involving a property in The Reserve at Berry Creek subdivision.

The chain of title involving the Brooks' ownership in the property comprises a single deed of trust, which appears to be MERS-originated (MIN #100012601004028683), filed for record as Instrument #2011053199, subsequent to the foregoing warranty deed. An ID Search of the MIN yielded the following results:

MIN: 1000126-0100402868-3 Note Date: 07/28/2011 MIN Status: Active
Servicer: JP Morgan Chase Bank NA Phone: (800) 848-9136
Monroe, LA

It is important to note that the lender of record is Extraco Banks, N.A. dba Extraco Mortgage, a Texas corporation based in Waco, Texas. It appears that Gracy Title, a Stewart Title Company, was involved in the closing and processing of the paperwork into the Williamson County land records system where this static file remains to date. Stewart Title, one of the nation's largest title companies, has elected to participate in the MERS business model. Another issue at stake here is that the title plant data that title companies like Stewart Title rely on to establish chain of title, are deficient because the title plants (electronic databases owned by title companies which store the research data mirroring the land records that are used to do "run-up" prior to closing to determine ownership interests) do not share information with MERS and vice versa. A "run-up" is a term denoting a cursory search of the land records between the time the loan is transacted and the time it is recorded, to make sure there are no issues with title.

Again, it is also important to note that even though JPMorgan Chase Bank, N.A. appears on the MERS database search results as a Servicer, the true real parties in interest are unknown due to the intent of the participants to securitize the Brooks' promissory note and re-sell it over and over in the MERS system without the Brooks' knowledge. After all, the Brooks did execute the deed of trust, giving MERS the apparent authority it has; however, the chain of custody of the note and the relative assignments necessary to coincide with the chain of title appear to be lacking since the execution of this document over three years ago. The audit team believes the Brooks' condition of title was compromised as of August 11, 2011, when they executed the MERS-originated deed of trust.

Hon. Doug Arnold, County Court at Law Three

There appear to be two (2) parcels of land involved in two (2) separate chains of title, the first chain of title exiting Judge Arnold and his wife Jamie Lee's (hereinafter "Arnold") ownership interests as Grantors, leaving the chain of title with MERS in its wake; the second subject property appearing to pick up where the first left off (as to ownership transfers) with MERS opening up the chain of title through an executed note and deed of trust at purchase to secure a Special Warranty Deed (from a corporate transfer).

In the first property, the Arnolds received a General Warranty Deed with an incorporated Vendor's Lien in favor of Cypress Mortgage Company, Inc. on June 11, 1998 (Instrument #9832633), conveying an interest in a parcel situated in the Reata Trails, Unit 3 subdivision in Williamson County, Texas.

The accompanying FHA deed of trust (non-MERS), sequentially followed as Instrument #9832634), both filed for record on June 15, 1998. On the same day the foregoing documents were filed for record, an officer of Cypress Mortgage Company, Inc. executed a Transfer of Lien to NationsBanc Mortgage Corporation and filed said transfer as Instrument #9852442 on September 9, 1998.

There are no recorded assignments or transfers after that point until the Arnolds appear to have refinanced their mortgage loan with Bank of America, N.A. and executed a deed of trust and note as such as Instrument #2003050655, filed for record on June 2, 2003.

There is an issue with the notarial execution of the Bank of America, N.A. deed of trust, to wit:

> (1) The Texas notary declared that the Arnolds appeared before her on "5-14-03" (in her own handwriting; while in the execution, declared, "Given under my hand and seal of office this 14th day of May 2001"; and
>
> (2) The Texas notary failed to gender-delineate in the plurality the number of signors to the deed of trust document.

It also appears that David D. Arnold, as Grantor, was the only party initialing the document, while his wife only signed the actual signature page (but did not initial anywhere on the DOT). To further confuse the issues in the chain of title, once it appears that the Bank of America, N.A. loan paid off the note that was transferred to Nationsbanc Mortgage Corporation, a Release of Lien was filed for record on August 25, 2003 as Instrument #2003082498, showing Bank of America, N.A. as "owner and holder of said note", when the only recorded assignment was from Cypress Mortgage to NationsBanc Mortgage.

The Release suggests that an assignment should have been filed from NationsBanc Mortgage to BA Mortgage, LLC **FIRST**, so that the Release would read, "Bank of America, N.A. successor by merger to BA Mortgage, LLC as successor in interest by merger of NationsBanc Mortgage Corporation". This would have been more accurately portrayed and proper conveyance. At this point, there is nothing in the chain of title that appears to represent the assignments necessary to tie the ownership interests in the chain together. Further, in the Release, the notarial execution is not gender delineated and appears to be "manufactured" to satisfy the note for of Bank of America, N.A.

It also appears that at some point during the Arnold's ownership, a payoff to Bank of America, N.A. was tendered, causing a Deed of Release to be issued (Instrument #2010045585) and filed for record on July 9, 2010. This deed of release appears to have been electronically manufactured (signatures and all) on the same day it was electronically recorded. Even the notarial seal appears to be electronically generated; the appearance that the entire document was part of a mass production of documents effectuated by ReconTrust Company, N.A. in Utah. Ironically, even though this appears NOT to have been a MERS-originated deed of trust, the Release contains "MERS ID:" and "MERS Telephone:"; further indications of form manufacturing by a third-party document manufacturing facility subsidiary of Bank of America.

On June 9, 2011, the Arnolds conveyed this property to a subsequent owner, who went out and entered into a deed of trust with Extraco Banks, N.A. (as seen in other instances in this audit), wherein the current owner obtained a MERS-originated deed of trust.

Of particular interest here is that the 2003 deed of trust the Arnolds signed contained a Paragraph 20, which allowed Bank of America, N.A. to sell the Note (or a partial interest thereof). It is unknown exactly as to whether Bank of America sold the note or not, as any subsequent assignments are not recorded. The current owner of this property may have more issues to deal with (involving MERS) than any purported backlash from the Arnold's ownership of the property.

In the second property, the Arnolds obtained a Special Warranty Deed with Vendor's Lien (Instrument #2011038421) that appears to coincide with the purported sale of their first property to purchase the property in The Reserve at Berry Creek Section 1C in Williamson County, Texas. The executed deed of trust (Instrument #2011038422) appears to indicate that Union State Bank, the Lender of record, used the MERS system to fund the loan; thus, bypassing the filing of any future assignments of record. Paragraph 20 of this deed of trust contains the provision wherein the Arnolds agreed to allow Union State Bank (or its subsequent assigns) to sell and re-sell the note multiple times, circumventing the filing of any assignments in the land records in favor of money-saving expediency and allowing probable repeated transfer of the Arnold's note. Subsequently, a Correction Addendum and Correction Deed of Trust were filed to correct issues with the responsible Borrower (Instrument #2011043463 and #2011043464, respectively). The MERS MIN (#100025500011323662) Search ID yielded the following results:

MIN: 1000255-0001132366-2 Note Date: 06/09/2011 MIN Status: Active

Servicer: Bank of America, N.A. Phone: (800) 669-6607

Simi Valley, CA

Again, even though Bank of America, N.A. appears to be the Servicer listed on the MERS database, the MERS member-subscribers control the content of the database, which MERS disclaims for accuracy. There is potential securitization of the Arnold's note and the possible failure of potential intervening assignees to record their interests to preserve the chain of title to the subject property.

Hon. John B. McMaster, County Court at Law Four

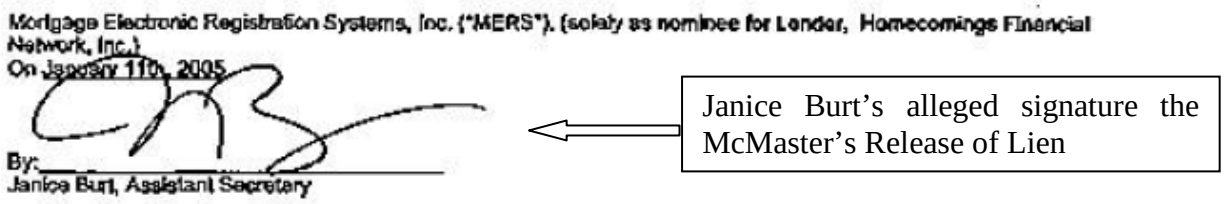
This review involves what appears to be Judge McMaster's personal residence in University Park. Judge McMaster and his wife, Gina (hereinafter "McMaster"), were apparently conveyed the subject property via a Warranty Deed (with an incorporated Vendor's Lien; Instrument #9648731; filed September 11, 1996), giving them fee simple title to the property. Deeds of trust that the McMasters entered into during the ownership of this property contained Paragraphs 19 or 20 (depending on the deed of trust form number); permissions to the Lender of record to sell the note (or a partial interest thereof). Direct involvement with MERS did not appear to occur until October 16, 2002, through a deed of trust executed in favor of Homecomings Financial Network, Inc. (a GMAC subsidiary).

On the face of this document (Instrument #2002086265) is a MIN (#100062604150462341), which, when entered into the MERS MIN ID Search database, yielded the following results:

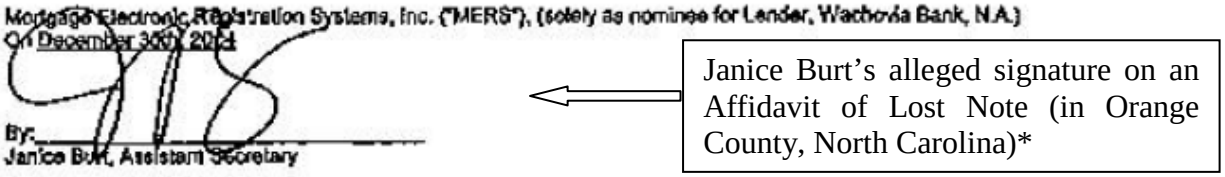
MIN: 1000626-0415046234-1 Note Date: 10/16/2002 MIN Status: Inactive
Servicer: GMAC Mortgage, LLC Phone: (800) 766-4622
Waterloo, IA

This "Form 3044", which is a format form number on TEXAS-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENTS WITH MERS, is seen commonly among title company document preparers familiar with the MERS system. This contract form also contains "Paragraph 20", which allows the Lender to sell the note (or a partial interest thereof) without prior notice to the Borrower (in addition to changing servicers).

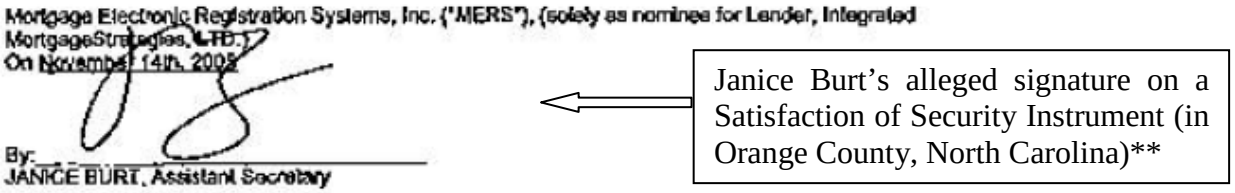
Further, while it appears that there is a "Renewal and Extension Rider" attached to the foregoing recordation, the "check box" under the Definitions section on page 2 of the Deed of Trust does not provide a reference to this rider. After numerous refinances of this deed and note, a specific Release of Lien was filed on January 21, 2005, which contains the name of a suspected robosignor (and robo-notary) who work for GMAC's document processing section in Black Hawk County, Iowa. As with any suspect behaviors in document manufacturing, surrogate signing and forgery is also suspect, as evidenced by the signatures of one Janice Burt, who purports to be an Assistant Secretary for MERS, when in fact she works for GMAC (Instrument #2005005504):


Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, Homecomings Financial Network, Inc.)
On January 11th, 2005
By:
Janice Burt, Assistant Secretary

Janice Burt's alleged signature the McMaster's Release of Lien


Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, Wachovia Bank, N.A.)
On December 30th, 2004
By:
Janice Burt, Assistant Secretary

Janice Burt's alleged signature on an Affidavit of Lost Note (in Orange County, North Carolina)*


Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, Integrated MortgageStrategies, LTD.)
On November 14th, 2005
By:
JANICE BURT, Assistant Secretary

Janice Burt's alleged signature on a Satisfaction of Security Instrument (in Orange County, North Carolina)**

The problem with document manufacturing is that there is room for surrogate signing; as no one seeks out and compares signatures of the particular signors to verify that the person claiming to have signed the document actually signed it. Then there is the issue of personal knowledge of the signor and where the personal, first-hand information originated (not to mention the MERS corporate seal; which was not present on any of the documents presented here).*

Justices of the Peace

Hon. Dain Johnson, Justice of the Peace, Precinct One

This particular tract of land was the subject of condemnation proceedings (as part of what appears to be an eminent domain action) two years AFTER the property was encumbered by a MERS-originated deed of trust, executed by Judge Dain Jay Johnson (hereinafter "Johnson") on July 25, 2007. The note and deed appear to have been executed in tandem with the issuance of a General Warranty Deed with Vendor's Lien (Instrument #2007064224), which was sequentially recorded ahead of the deed of trust (Instrument #2007064225), executed in favor of Union State Bank of Florence (obviously a member of MERS). The deed of trust contains a Paragraph 20, which allows the Lender to sell the note (or a partial interest thereof) without prior notice to the Borrower.

The deed of trust document contained references to MERS and further contained a MIN of #1000157-0008350386-8. Upon a search of the MERS MIN ID Search system, the following results were obtained:

MIN: 1000157-0008350386-8 Note Date: 07/25/2007 MIN Status: Inactive
Servicer: Bank of America, N.A. Phone:(800) 669-6607
Simi Valley, CA

The Notice of Lis Pendens (Instrument #2009088552) was released (Instrument #2010079295) after the litigation concluded; and a subsequent Special Warranty Deed issued from Judge Johnson to the City of Round Rock, Texas on March 10, 2010 (Instrument #2010014632); and the matter of the eminent domain proceeding resulted in the conveyance of the property to a subsequent Grantee, who erected a parking garage on the property.

However, in the Special Warranty Deed, Judge Johnson warranted to defend title to the property. The previous MERS deed of trust lien had not yet been released by the time the Special Warranty Deed was issued.

**Janice Burt is allegedly signing for Wachovia Bank, N.A. (document prepared by GMAC Mortgage Corporation)*
***Janice Burt is allegedly signing for Integrated Mortgage Strategies, Ltd. (document prepared by GMAC Mortgage Corporation)*

As was evidenced in the Release of Lien (discussion following), released BEFORE an assignment from Union State Bank to Bank of America, N.A. could be filed, there could be potential issues for the City of Round Rock arising from potential problems with the chain of title encumbered by Judge Johnson. Any title company insuring the transfer of the property from Judge Johnson to the City of Round Rock, Texas could be liable for legal fees to quiet the title to the property in favor of the City of Round Rock, not to mention the potential liability for Judge Johnson, who warranted to defend title to the property he conveyed to the city. For the title companies to largely ignore the statutory violations and blatant errors committed by MERS and its agents could represent financial suicide. Why would Judge Johnson knowingly convey property to a municipality if he knew of potential defects in title that could come back later to haunt him?

Perhaps it is because the Release of Lien was filed AFTER he conveyed the Property to the City of Round Rock; because MERS obfuscates the real parties in interest, no one knows who may come back at any time in the future and assert a claim against this property. The deed of release, likely after payment in full on the prior note in question (Instrument #2010015355), contains certain "issues" which will be discussed below:

Deed of Release

For Value Received, the present undersigned Beneficiary under a deed of trust executed by DAIN JAY JOHNSON as Grantor/Trustor , dated 07/25/2007 , certifies that the Deed of Trust has been fully paid, satisfied or otherwise discharged. The Deed of Trust was recorded in the Deed of Trust Records of Williamson County, TX on 07/30/2007 , and is indexed as Volume , Page , File No. 2007064225 . The undersigned releases and reconveys, without covenant or warranty, the Deed of Trust and all of its right, title and interest which was acquired by the Trustee under the Deed of Trust, in the property located at: 307 WEST MAIN AVENUE, ROUND ROCK, TX 78664

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. by the officers duly authorized, has duly executed the foregoing instrument.

Dated this: 03/11/2010

Lender: Mortgage Electronic Registration Systems, Inc.

This appears to contain a false statement … MERS is NOT the Lender; Union State Bank was.

Justin Bailey, Assistant Secretary

State of UT , County of Cache

This instrument was acknowledged before me Jessica Larsen , a notary public in and for Cache county, in the state of UT on 03/11/2010 by Justin Bailey as Assistant Secretary of Mortgage Electronic Registration Systems, Inc. .

Witness my hand,

Jessica Larsen

Notary Public for said state and county

Expires: 06/05/2012

NOTARY PUBLIC
JESSICA LARSEN
COMMISSION EXPIRES
JUN 05, 2012
STATE OF UTAH

Electronic Notary Seal

Electronic Signatures of Justin Bailey and Jessica Larsen, suspect robosignors who actually work for ReconTrust Company, N.A. (more than likely in its Utah document manufacturing operations).

If the intent of the lending parties behind the scenes was to securitize the Johnson promissory note, then how do we know that the lien was actually fully released if the signors' signatures may have been placed on the document (more than likely without their knowledge or personal knowledge of the facts contained therein) without them knowing the full details thereof before attesting to the facts.

Further, how did the deed of trust and note go from Union State Bank to Bank of America, N.A. without evidence of assignment? There is no evidence of any assignment in the land records of Williamson County, Texas to that end; thus leaving open the possibility of a break in the chain of title. There are additional concerns regarding potential violations of Texas Local Government Code § 192.007 and, due to securitization issues, there exists the potential for unrecorded intervening, unknown assignees to the chain of custody of the note (if a partial interest was conveyed but not paid in full, which could come back in later and claim an interest in the property).

Thus, since Judge Johnson warranted to defend title to the property, if any issues should arise, he could face burdensome litigation. With MERS involved in the equation, how could Judge Johnson warrant to defend title against the defects potentially created by MERS (with already one assignment purportedly not recorded in the chain of title in this equation)?

Hon. Steve Benton, Justice of the Peace, Precinct Three

In this instance, this subject property has the most MERS-originated deeds of trust against it of any of the affected judiciary in Williamson County: SIX. Because of the extensive report that would be necessary to satisfy a full chain of title assessment, the auditors chose to present a brief summary of the timeline of the current ownership of this property by the Bentons.

Judge Benton and his wife, Alanna (hereinafter "Benton"), purchased a property in the Stone Canyon subdivision and received a General Warranty Deed with Third-Party Vendor's Lien (Instrument #2010029796).

To facilitate the purchase, the Bentons appear to have executed a note and deed of trust (Instrument #2010029797) in favor of NTFN, Inc. dba Nationwide Home Lending, initiating a loan through the MERS system; MIN #100288910020570611. Paragraph 20 of the deed of trust gave the lender the power to sell the note (or a partial interest thereof) without prior notice to the Bentons.

Soon thereafter, the Bentons appear to have executed another deed of trust and note (potentially a refinance of the same sum as before) with Security National Mortgage Company (as evidenced by Instrument #2010058486). This deed of trust also contains a MIN #100031700005203134); and also contains a "Paragraph 20" that dictates the same provisions regarding sale of the note by the Lender.

Following the execution of the second deed of trust, it appears that alleged MERS agents/officers issued a "Deed of Release" (Instrument #2012007782). Oddly, it took the entities using the MERS system OVER TWO YEARS to release the first lien (which would be construed to mean that for a time, the subject property had TWO lien claimants against it at one time for an undue extended period). The signatures of the signor, and notary, and notarial seal appear to be electronically produced; thus, the inference that the two signors did not physically witness or have apparent knowledge of the facts contained on this Deed of Release to which they allegedly attested to.

The auditors cannot assume (as it took two years to release this lien) that the note in fact has actually been discharged, due to aspects involving third-party document manufacturing and MERS' ability to release liens when its agency status is limited and directly controlled by contract. It appears ReconTrust Company, N.A. (a wholly-owned subsidiary of Bank of America, N.A.) caused this document to be manufactured.

It further appears that a subsequent refinance of the Benton's property occurred on January 26, 2012 (Instrument #2012007782) when the couple executed another note and deed of trust in favor of Security National (the same previous lender) for a slightly less sum than previously borrowed. This deed of trust also contained a MERS MIN #100031700005439480 and also contained a "Paragraph 20".

Shortly after executing this note, agents of Wells Fargo Home Mortgage executed a Deed of Release (Instrument #2012001954), using the same apparent electronic signatures and notary seal from two different signors, this time in Wisconsin (instead of Utah).

Of particular concern here is that the deeds of trust signed by the Bentons appear to indicate that the Lender (not the Servicers), were required to release the liens. Accessing the MERS system's MIN Search ID database yielded the following results (placed in order from the Benton's current mortgage loan backward):

MIN: 1000317-0000543948-0 Note Date: 01/26/2012 MIN Status: Active

Servicer: Wells Fargo Home Mortgage, a division of Wells Fargo Bank NA Phone: (651) 605-3711

Minneapolis, MN

AUDITOR'S NOTE: The foregoing appears to reflect the Benton's current note and deed of trust information. If Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. is the Servicer, who then actually owns the Benton's mortgage note? As always, each MERS MIN ID Search gives the property owner (or his duly authorized representative, see the sentence below with the link attached) to further search to see who the "Investor" is on their loan.

Unfortunately, because the database is maintained by MERS member-subscribers (with no regulatory oversight), the results seen here are what the MERS members want you to see.

The results are disclaimed by MERS for accuracy on its website. **If Security National Mortgage Company was a table-funded lender, then WHO actually funded the Benton's current mortgage loan? A link on the MERS Search system allows Borrowers to see who the investor of their loan is; but again, the results obtained by Borrowers are the results the MERS member-subscribers want them to see.**

Here are the results of the MERS MIN ID Search on the second MERS deed of trust:

MIN: 1000317-0000520313-4 Note Date: 08/26/2010 MIN Status: Inactive

Servicer: Wells Fargo Home Mortgage a Division of Wells Fargo Bank NA Phone: (651) 605-3711

Minneapolis, MN

AUDITOR'S NOTE: The foregoing appears to reflect the Benton's second deed of trust and note information. It appears that Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. was acting as "Servicer" and not the lender therein (assuming that Security National as a table-funded lender immediately sold the Benton's note to an intervening assignee whose assignment is NOT filed for record in Williamson County).

Paragraph 23 of the Benton's deed of trust stated that the Lender must release the lien. What then is ReconTrust Company, N.A. (as wholly-owned subsidiary for Bank of America, N.A., the Servicer) doing releasing the lien if it's not the Lender? If it is a "third party", how did it get to be a third party? Who actually owned the Benton's note if Bank of America was actually collecting payments for the real party in interest as a Servicer? Why did it take the "lender" TWO YEARS to release the initial lien? It appears that Nationwide Home Lending sold the note to an intervening assignee who seemingly failed to record its interest in the Williamson County real property records pursuant to Texas Local Government Code § 192.007.

MIN:1002889-1002057061-1 Note Date: 05/06/2010 MIN Status: Inactive

Servicer: Bank of America, N.A. Phone:(800) 669-6607

Simi Valley, CA

AUDITOR'S NOTE: The foregoing appears to reflect the Benton's initial deed of trust and note information. It appears from the foregoing that Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. was acting as "Servicer" and not the lender therein.

Paragraph 23 of the Benton's deed of trust stated that the Lender must release the lien. Why is ReconTrust Company, N.A. (as wholly-owned subsidiary for Bank of America, N.A., the Servicer) releasing the lien if it's not the Lender? If it is a "third party", how did it get to be a third party? Who actually owned the Benton's note if Bank of America was actually collecting payments for the real party in interest as a Servicer?

If the note was securitized, then why didn't the real party in interest file an assignment in the land records in Williamson County, Texas pursuant to Texas Local Government Code § 192.007? How does anyone know whether Bank of America kept the Benton's monthly mortgage payment instead of paying the actual investor?

Additionally, it now appears that the prior owners (and possibly the owners prior to the former owners) mortgaged this property in the MERS system before the Benton's acquired it. It thus appears that the title companies that processed this paperwork were at risk for paying off the proper party in interest at closing.

There appear to be MORE chain of title issues dating all the way back to the year 2000 (since MERS's current corporate entity became active January 1, 1999) that could potentially affect the Benton's property.

Part of the inherent problem is the title companies' involved in the chain of title knew that the MERS system was involved prior to the Benton's acquisition of the property and knew of the potential issues created by MERS, but chose to ignore them; thus, appearing circumvent the defects in title by negating coverage under Schedule B for issues not recorded in the public records. Below are the known listings of MERS-originated mortgages PRIOR to the Benton's ownership (some of these loans may have been originated outside of MERS, and then conveyed (without the prior owner's knowledge) into the MERS system:

MIN: 1000157-0002115272-9 Note Date: 03/31/2003 MIN Status: Inactive

Servicer: Bank of America, N.A. Phone: (800) 669-6607

Simi Valley, CA

MIN: 1000157-0000437124-7 Note Date: 07/02/2001 MIN Status: Inactive

Servicer: Bank of America, N.A. Phone:(800) 669-6607

Simi Valley, CA

AUDITOR'S NOTE: Again, the "1000157" in the MERS MIN number prefix indicates this loan may have originated in connection with Countrywide Home Loans, Inc.

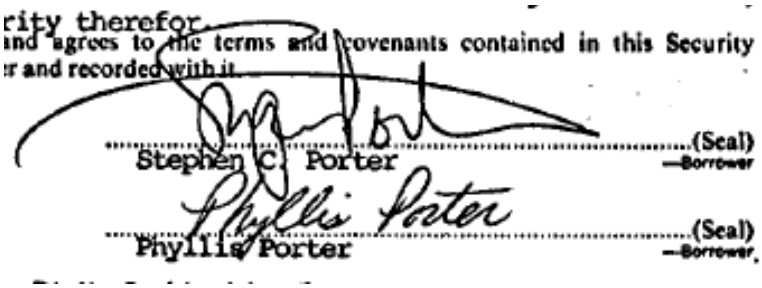
MIN: 1000124-0096882303-5 Note Date: 03/20/2000 MIN Status: Inactive
Servicer: FDIC as Receiver for Washington Mutual Bank Phone: (800) 848-9136
Monroe, LA

It boggles the mind thinking about how many unknown intervening assignees may have an interest in the Benton's property and yet have failed to record (to perfect) their lien interests, as mandated by Texas statutes.

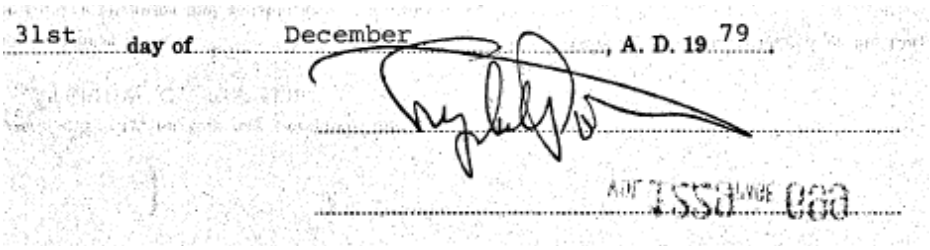
APPENDIX 1: DEED OF TRUST SIGNATURES OF STEPHEN C. PORTER

The following deeds of trust (identified by Instrument Number as recorded in the land records of Collin County, Texas) seek to demonstrate the "real" signatures of alleged robosignor/attorney-in-fact/Vice President of Loan Documentation/Assistant Secretary of MERS' Stephen C. Porter:

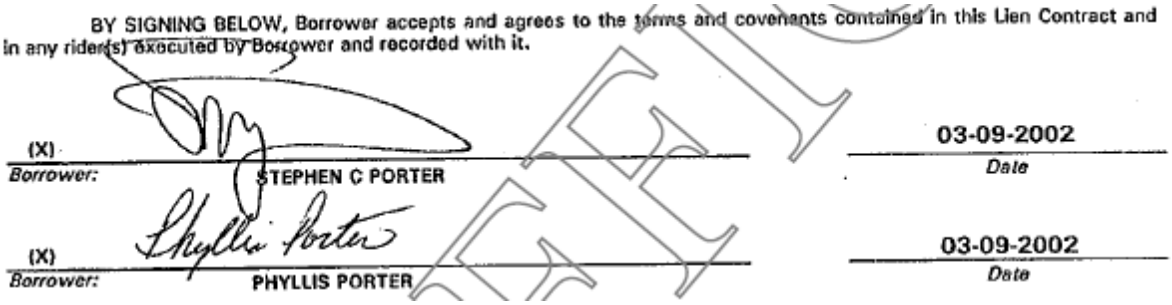
INSTRUMENT #17346; BOOK 2093, PAGE 885; 1612 Azurite Trail, Plano, TX 75075:



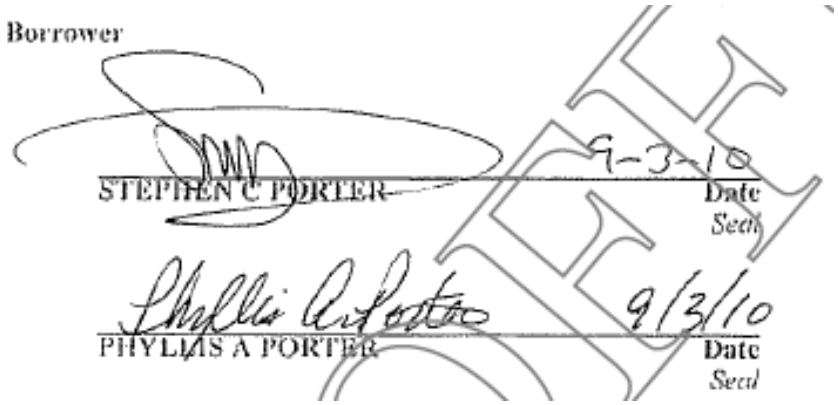
INSTRUMENT #03321; BOOK 1229, PAGE 698; Park Forest North Quit Claim Deed (1979)



INSTRUMENT #20020045029; BOOK 5136, PAGE 183; 1612 Azurite Trail, Plano, TX 75075:



INSTRUMENT #20100922001011300; 09/22/2010; 707 Glen Rose Drive, Allen, TX 75013; (2010):

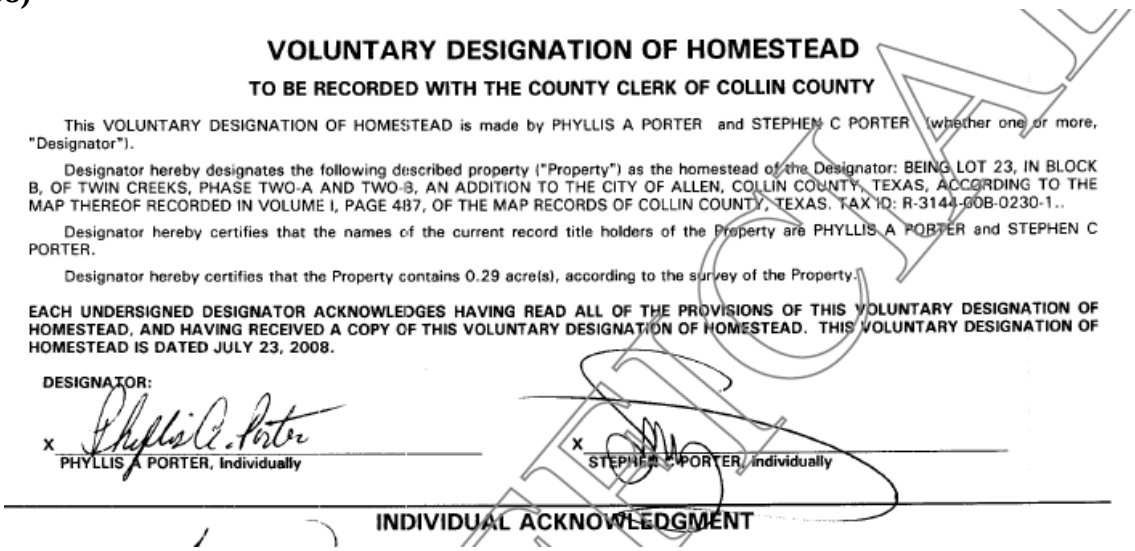


Borrower

STEPHEN C PORTER — 9-3-10 — Date — Seal

PHYLLIS A PORTER — 9/3/10 — Date — Seal

INSTRUMENT #20080807000963910; 08/07/2008; 707 Glen Rose Drive, Allen, TX 75013; (2008)



VOLUNTARY DESIGNATION OF HOMESTEAD

TO BE RECORDED WITH THE COUNTY CLERK OF COLLIN COUNTY

This VOLUNTARY DESIGNATION OF HOMESTEAD is made by PHYLLIS A PORTER and STEPHEN C PORTER (whether one or more, "Designator").

Designator hereby designates the following described property ("Property") as the homestead of the Designator: BEING LOT 23, IN BLOCK B, OF TWIN CREEKS, PHASE TWO-A AND TWO-B, AN ADDITION TO THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME I, PAGE 487, OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS. TAX ID: R-3144-00B-0230-1..

Designator hereby certifies that the names of the current record title holders of the Property are PHYLLIS A PORTER and STEPHEN C PORTER.

Designator hereby certifies that the Property contains 0.29 acre(s), according to the survey of the Property.

EACH UNDERSIGNED DESIGNATOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS VOLUNTARY DESIGNATION OF HOMESTEAD, AND HAVING RECEIVED A COPY OF THIS VOLUNTARY DESIGNATION OF HOMESTEAD. THIS VOLUNTARY DESIGNATION OF HOMESTEAD IS DATED JULY 23, 2008.

DESIGNATOR:

x Phyllis A. Porter
PHYLLIS A PORTER, Individually

x
STEPHEN C PORTER, Individually

INDIVIDUAL ACKNOWLEDGMENT

Even though NONE of the foregoing deeds of trust contained MERS, the last Deed of Trust (September 22, 2010) did contain a Paragraph 20 involving sale of the note (or a partial interest thereof) without prior notice to the Borrower. Actual "official" documents may be obtained by contacting County Clerk, Stacey Kemp.

APPENDIX 2: AVAILABLE LIMITED POWERS OF ATTORNEY

The following items represent what recorded power of attorney ("POA") documents could be located in conjunction with the target. Many of the POAs were not filed with Williamson County, but rather in Dallas and Collin Counties, where the alleged foreclosure mills were located. This may affect legal issues in some way regarding Texas Local Government Code § 192.007, as to the force and effect of filing the specific POA in the county of record where the subject property is located; or in the alternative, in conjunction with other applicable statutes.

05265 00755 2002-- 0140542

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That ABN AMRO Mortgage Group, Inc. (ABN AMRO), a corporation organized and existing under the laws of Florida with its principal office located at 7159 Corklan Dr Jacksonville, FL 32258 does hereby make, constitute and appoint any one of the following:

1. **Stephen C. Porter, Esq., or David Seybold, Esq., attorneys with the law firm of Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. ("Barrett Burke"), or Susan Friedrich, an employee of Barrett Burke;**

as attorneys-in-fact, to be authorized to act, do and perform, individually, with joint and several authority, on behalf of ABN AMRO with full power and authority to act for it, in its place and stead, any and all lawful acts, matters, and things whatsoever requisite, necessary, proper, or convenient to be done as full as ABN AMRO might or could do itself for all intents and purposes, with regard to the matters listed below performed in connection with the management and prosecution of foreclosure, bankruptcy, eviction, or general litigation matters, and with the disposition of real estate held by ABN AMRO;

1. To executed, to assign, to acknowledge, to seal, to deliver and to revoke

   (a) any agreement to sell or assign a note, mortgage or deed of trust, and/or any assignment of such note, mortgage or deed of trust or any interest thereof; and

   (b) any loan or mortgage documents necessary to permit the assignment of, or to accept an assignment of, a bid to purchase real estate at a foreclosure sale, or any deed or any rescission of any deed; and

   (c) removal of trustee and appointment of substitute trustee documents and warranty deeds.

2. This power of attorney shall be effective from the date of execution hereof until such time as it is revoked in writing by ABN AMRO by a Notice of Revocation duly executed and filed in the Office of the County Clerk of the County in which the Property is located. Revocation in the forgoing manner shall be effective as to any third party relying on this Power of Attorney. The revocation of such power of attorney shall only affect the specific parties, whether an entity, person, or individual, named in any revocation, and shall not affect or impair the powers of any entity, person, or individual not named. The revocation shall not affect any liability in any way resulting from transactions initiated prior to the revocation.

3. By exercise of this power, attorneys-in-fact or Barrett Burke shall indemnify ABN AMRO from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of ABN AMRO for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligations of attorney-in-fact under this agreement.

4. ABN AMRO agrees that any third party who receives a copy of this document may act under it. Revocation of this power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. ABN AMRO agrees to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

5. The attorney-in-fact, by accepting or acting under this appointment, assumes the fiduciary and other legal responsibilities of an agent.

ABN AMRO Mortgage Group, Inc.

By: J. Edwards
Jimmie Edwards
Asst. Vice Pres.

Commonwealth of Florida)
) SS
County of Duval)

On this 27 day of June, 2002, before me, a Notary Public of the State of personally appeared, known to me to be the person whose name is subscribed to this Power of Attorney and to be Asst. Vice Pres of ABN AMRO Mortgage Group, Inc, and acknowledged that he executed this Power on behalf of ABN AMRO Mortgage Group, Inc., for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

TONYA SHELBY
MY COMMISSION # CC 875866
EXPIRES: February 1, 2004
Bonded Thru Notary Public Underwriters

Notary Public, State of
My commission expires:

UNOFFICIAL

05265 00756

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

OCT 0 1 2002

Helen Starnes

Filed for Record in:
Collin County, McKinney TX
Honorable Helen Starnes
Collin County Clerk

On Oct 01 2002
At 9:30am

Doc/Num : 2002- 0140542

Recording/Type:PA 11.00
Receipt #: 34756

RETURN TO:
BARRETT BURKE WILSON CASTLE DAFFIN & FRAPPIER, LLP
15000 SURVEYOR BOULEVARD, SUITE 100
ADDISON, TEXAS 75001
ATTN: GENA LACK

6013 00115 HOLD FOR BBW

2005- 0137112

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Bank of America, N.A. ("BOA"), a corporation organized and existing under the laws of Delaware with its principal office located at 475 Crosspoint Parkway, Getzville, New York, 14068 does hereby make, constitute and appoint any one of the following:

Stephen C. Porter, Phillip G. Tinsley, Becky Howell, Paul Myers, Brooke C. Epstein, Brandon Wolf, Meribeth Novak;

as attorneys-in-fact, effective this _26th_ day of September, 2005, to be authorized to act, do and perform, individually, with joint and several authority, on behalf of BOA with full power and authority to act for it, in its place and stead, any and all lawful acts, matters, and things whatsoever requisite, necessary, proper, or convenient to be done as full as BOA might or could do itself for all intents and purposes, with regard to the matters listed below performed in connection with the management and prosecution of foreclosure, bankruptcy, eviction, or general litigation matters, and with the disposition of real estate held by BOA;

1. To execute, to assign, to acknowledge, to seal, to deliver and to revoke

   (a) any agreement to sell or assign a note, mortgage or deed of trust, and/or any assignment of such note, mortgage or deed of trust or any interest thereof; and

   (b) any loan or mortgage documents necessary to permit the assignment of, or to accept an assignment of, a bid to purchase real estate at a foreclosure sale, or any deed or any rescission of any deed; and

   (c) removal of trustee and appointment of substitute trustee documents and warranty deeds.

2. This power of attorney shall be effective from the date of execution hereof until such time as it is revoked in writing by BOA by a Notice of Revocation duly executed and filed in the Office of the County Clerk of the County in which the Property is located. Revocation in the forgoing manner shall be effective as to any third party relying on this Power of Attorney. The revocation of such power of attorney shall only affect the specific parties, whether an entity, person, or individual, named in any revocation, and shall not affect or impair the powers of any entity, person, or individual not named. The revocation shall not affect any liability in any way resulting from transactions initiated prior to the revocation.

3. By exercise of this power, attorneys-in-fact or Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. shall indemnify BOA from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of BOA for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligations of attorney-in-fact under this agreement.

4. BOA agrees that any third party who receives a copy of this document may act under it. Revocation of this power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. BOA agrees to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

5. The attorney-in-fact, by accepting or acting under this appointment, assumes the fiduciary and other legal responsibilities of an agent.

BANK OF AMERICA CORPORATE SEAL NATIONAL ASSOCIATION

Bank of America, N.A.

By: S Haumesser
Suzanne M. Haumesser, Senior Vice President

State of New York)
County of Erie)

On this 26th day of September, 2005, before me, a Notary Public of the State of New York, personally appeared, Suzanne M. Haumesser, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Senior Vice President of Bank of America, N.A., and acknowledged that she executed this Power on behalf of Bank of America, N.A. for the purposes herein contained.

Given under my hand and seal of office on this 26th day of September, 2005.

ROXANNE M. NOWICKI NOTARY PUBLIC STATE OF NEW YORK

Notary Public, State of New York
My commission expires:_____

ROXANNE M. NOWICKI
Notary Public, State of New York
Reg. No. 01N05075287
Qualified in Niagara County
My Commission Expires March 26, 2007

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas.

SEP 29 2005

Brenda Taylor

Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Sep 29 2005
At 8:39am

Doc/Num : 2005- 0137112

Recording/Type:PA 20.00
Receipt #: 39301

05105 00013

POWER OF ATTORNEY

2002- 0022639

KNOW ALL MEN BY THESE PRESENTS: That Countrywide Home Loans, Inc. ("Countrywide"), a corporation organized and existing under the laws of New York with its principal office located at 4500 Park Granada, Calabasas, CA 91302 does hereby make, constitute and appoint any one of the following:

1. **Stephen C. Porter, Esq., or David Seybold, Esq., attorneys with the law firm of Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. ("Barrett Burke"), or Susan Friedrich, an employee of Barrett Burke;**

as attorneys-in-fact, to be authorized to act, do and perform, individually, with joint and several authority, on behalf of Countrywide with full power and authority to act for it, in its place and stead, any and all lawful acts, matters, and things whatsoever requisite, necessary, proper, or convenient to be done as full as Countrywide might or could do itself for all intents and purposes, with regard to the matters listed below performed in connection with the management and prosecution of foreclosure, bankruptcy, eviction, or general litigation matters, and with the disposition of real estate held by Countrywide;

1. To executed, to assign, to acknowledge, to seal, to deliver and to revoke

   (a) any agreement to sell or assign a note, mortgage or deed of trust, and/or any assignment of such note, mortgage or deed of trust or any interest thereof; and

   (b) any loan or mortgage documents necessary to permit the assignment of, or to accept an assignment of, a bid to purchase real estate at a foreclosure sale, or any deed or any rescission of any deed; and

   (c) removal of trustee and appointment of substitute trustee documents and warranty deeds.

2. This power of attorney shall be effective from the date of execution hereof until such time as it is revoked in writing by Countrywide by a Notice of Revocation duly executed and filed in the Office of the County Clerk of the County in which the Property is located. Revocation in the forgoing manner shall be effective as to any third party relying on this Power of Attorney. The revocation of such power of attorney shall only affect the specific parties, whether an entity, person, or individual, named in any revocation, and shall not affect or impair the powers of any entity, person, or individual not named. The revocation shall not affect any liability in any way resulting from transactions initiated prior to the revocation.

3. By exercise of this power, attorneys-in-fact or Barrett Burke shall indemnify Countrywide from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of Countrywide for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligations of attorney-in-fact under this agreement.

4. Countrywide agrees that any third party who receives a copy of this document may act under it. Revocation of this power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. Countrywide agrees to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

5. The attorney-in-fact, by accepting or acting under this appointment, assumes the fiduciary and other legal responsibilities of an agent.

Countrywide Home Loans, Inc.

By: _____, Vice President

BRANDON SCIUMBATO, VICE PRESIDENT

Commonwealth of Texas)
) SS
County of Collin)

On this 25 day of January, 2002, before me, a Notary Public of the State of personally appeared, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Vice President of Countrywide Home Loans, Inc., and acknowledged that he executed this Power on behalf of Countrywide Home Loans, Inc. for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

Barbara Brummett

Notary Public, State of
My commission expires: _____

BARBARA BRUMMETT
Notary Public, State of Texas
My Commission Expires 08-31-05

RFF/536:RFF/cas

UNOFFICIAL

After Recording Return To:
Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.
15000 Surveyor Blvd., Suite 100
Addison, TX 75001
Attn: Title Services

Gena Lack

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

FEB 13 2002

Helen Starnes

Filed for Record in:
Collin County, McKinney TX
Honorable Helen Starnes
Collin County Clerk

On Feb 13 2002
At 8:05am

Doc/Num : 2002- 0022639

Recording/Type:PA 11.00
Receipt #: 5624

05912 06662

2005- 0059667

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Countrywide Home Loans Servicing LP ("Countrywide"), a corporation organized and existing under the laws of Texas with its principal office located at 7105 Corporate Drive, Plano, Texas 75024 does hereby make, constitute and appoint any one of the following:

1. **Stephen C. Porter, Esq., or David Seybold, Esq., attorneys with the law firm of Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. ("Barrett Burke"), or Becky Howell or Susan Scott, employees of Barrett Burke;**

as attorneys-in-fact, effective 2nd day of July, 2003, to be authorized to act, do and perform, individually, with joint and several authority, on behalf of Countrywide with full power and authority to act for it, in its place and stead, any and all lawful acts, matters, and things whatsoever requisite, necessary, proper, or convenient to be done as full as Countrywide might or could do itself for all intents and purposes, with regard to the matters listed below performed in connection with the management and prosecution of foreclosure, bankruptcy, eviction, or general litigation matters, and with the disposition of real estate held by Countrywide;

1. To executed, to assign, to acknowledge, to seal, to deliver and to revoke

   (a) any agreement to sell or assign a note, mortgage or deed of trust, and/or any assignment of such note, mortgage or deed of trust or any interest thereof; and

   (b) any loan or mortgage documents necessary to permit the assignment of, or to accept an assignment of, a bid to purchase real estate at a foreclosure sale, or any deed or any rescission of any deed; and

   (c) removal of trustee and appointment of substitute trustee documents and warranty deeds.

2. This power of attorney shall be effective from the date of execution hereof until such time as it is revoked in writing by Countrywide by a Notice of Revocation duly executed and filed in the Office of the County Clerk of the County in which the Property is located. Revocation in the forgoing manner shall be effective as to any third party relying on this Power of Attorney. The revocation of such power of attorney shall only affect the specific parties, whether an entity, person, or individual, named in any revocation, and shall not affect or impair the powers of any entity, person, or individual not named. The revocation shall not affect any liability in any way resulting from transactions initiated prior to the revocation.

3. By exercise of this power, attorneys-in-fact or Barrett Burke shall indemnify Countrywide from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of Countrywide for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligations of attorney-in-fact under this agreement.

4. Countrywide agrees that any third party who receives a copy of this document may act under it. Revocation of this power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. Countrywide agrees to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

5. The attorney-in-fact, by accepting or acting under this appointment, assumes the fiduciary and other legal responsibilities of an agent.

Countrywide Home Loans Servicing LP

By: Michael D. Vestal

Michael D. Vestal, Vice President

State of TEXAS)
County of TARRANT)

On this 22nd day of March, 2005, before me, a Notary Public of the State of Texas, personally appeared, **Michael D. Vestal**, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Vice President of Countrywide Home Loans Servicing LP, and acknowledged that he executed this Power on behalf of Countrywide Home Loans Servicing LP for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

Notary Public, State of TEXAS
My commission expires: 2/28/07

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
(THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin Co...

MAY 05 2005

Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On May 05 2005
At 3:56pm

Doc/Num : 2005- 0059667

Michael D. Vestal, Vice President

State of TEXAS)
County of TARRANT)

On this 22nd day of March, 2005, before me, a Notary Public of the State of Texas, personally appeared, **Michael D. Vestal**, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Vice President of Countrywide Home Loans Servicing LP, and acknowledged that he executed this Power on behalf of Countrywide Home Loans Servicing LP for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

Notary Public, State of TEXAS
My commission expires: 3/14/07

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
(THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas.

MAY 05 2005

Brenda Taylor

Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On May 05 2005
At 3:56pm

Doc/Num : 2005- 0059667

Recording/Type:PA 14.00
Receipt #: 18625

After recording return to:
Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.
15000 Surveyor Blvd. Suite 100
Addison, Texas 75001

NOTE: The following Limited Power of Attorney is for Stephen C. Porter and David Seybold, as attorneys with a law firm that was re-structured and is no longer referenced as the law firm shown below. Nowhere in this Power of Attorney does it give either attorney employment status as Vice President of Loan Documentation for Wells Fargo Bank, N.A.:

5391 000667

2003- 0061812

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Wells Fargo Home Mortgage, Inc., has made, constituted and appointed, and by these presents does make, constitute and appoint **Stephen C. Porter, Esq., or David Seybold, Esq.**, Attorneys with the law firm of **Barrett Burke, Wilson, Castle Daffin & Frappier, L.L.P. ("Barrett Burke")**, 15000 Surveyor Boulevard, Addison, TX 75001 individually and not jointly, its true and lawful attorney(s) in fact for, and in its name and stead, and for its use and benefit, for every act customarily and reasonably necessary and appropriate for:

The execution, acknowledgement, recording and delivery of beneficiary's Non Military Affidavits and Notices of Default on Mortgages wherein the above-named principal is the original substituted beneficiary or servicing agent for the beneficiary, Deeds to the Secretary of Veterans Affairs and Secretary of Housing and Urban Development to convey properties in which the Mortgage foreclosed secured a loan guaranteed or insured by the Department of Veterans Affairs or Department of Housing and Urban Development, the Deeds and assignments of beneficial interest and assignments of judgment to the investor on mortgage loans in which Wells Fargo Home Mortgage, Inc. is the beneficiary of record of the Mortgage.

Giving and granting unto said attorney(s)-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to accomplish the foregoing as the principal above-named might or could do as if personally present, with full powers of substitution and reservation, hereby confirming and ratifying all that principal's attorney in fact shall lawfully do or cause to be done by virtue of these presents. The Limited Power of Attorney shall not be constructed to prevent or prohibit Wells Fargo Home Mortgage, Inc., from acting on its own behalf to exercise all of the rights and privileges granted to it under the terms of the this Limited Power of Attorney. The undersigned fully acknowledges and understands that said attorney(s)-in-fact is being granted authority to appoint himself or a business in which he has a pecuniary interest as trustee to conduct foreclosures for Wells Fargo Home Mortgage, Inc. on a for profit basis and has consulted independent counsel regarding same.

By exercise of his limited power, the attorney(s)-in-fact shall indemnify Wells Fargo Home Mortgage, Inc. from all claims, demands, suits, penalties, or actions, and from all attendant losses, costs and expenses for any claims against losses or liability of Wells Fargo Home, Inc. for any cause to the extent the same arise out of, or result from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligation of the of the attorney(s)-in-fact under this power.

This limited power of attorney shall be effective from the date of execution hereof until December 31, 2010, or such time as Wells Fargo Home Mortgage, Inc. or its successor revokes it in writing.

IN WITNESS WHEREOF, **Rachael Hendrickson-Browder** has hereunto set his/her hand and seal this 16th day of January, 2003.

Wells Fargo Home Mortgage, Inc.

Signed: _____

Printed name: **Rachael Hendrickson-Browder**

Title: **Assistant Vice President**

STATE OF IOWA)
) ss
COUNTY OF POLK)

This is to certify that on the 16th day of January 2003, before me, a notary public in and for the State of Iowa, personally appeared **Rachael Hendrickson-Browder**, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that she/he, being informed of the contents thereof, she/he executed the foregoing documents as **Assistant Vice President** of Wells Fargo Home Mortgage, Inc., voluntarily for the act of said corporation, acting in said capacity, as aforesaid.

Given under my hand this 16th day of January, 2003.

After Recording Return To:
Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.
15000 Surveyor Blvd., Suite 100
Addison, TX 75001
Attn: Title Services
Genalock

Notary Public in and for:
My commission expires:

REBECCA A. BOWLSBY

UNOFFICIAL

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

APR 0 7 2003

Brenda Taylor

Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On Apr 07 2003
At 9:50am

Doc/Num : 2003- 0061812

Recording/Type:PA 11.00
Receipt #: 13014

NOTE: This document was only recorded in Collin County, Texas and was not found in the land records of Williamson County, Texas.

ELECTRONICALLY RECORDED 201200135179
05/10/2012 02:54:50 PM POA 1/2

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Wells Fargo Bank N.A., has made, constituted and appointed, and by these presents does make, constitute and appoint **Lawrence J. Buckley, Joe Lozano, Paul Cervenka, Craig Edelman, Hayden Hodges, Alexander Wolfe, Erica Lucas, Janice Villarreal, Melvin Shortess, Nickolaus McLemore, Cristina Camarata, Adam Womack, Michael Burns, Sammy Hooda, Stephanie Grace, David Romness, Hayden Hooper, Selim Taherzadeh, Mark Estle, Michael Gonzales, Michael Le, Kendall Yow, and Jeffrey Martin** of the firm of,**Brice, Vander Linden &Wernick, P.C., 9441 LBJ Freeway, Suite 250, Dallas, TX 75243** individually and not jointly, its true and lawful attorney in fact for, and in its name, place and stead, and for its use and benefit, for every act customarily and reasonably necessary and appropriate for:

The execution, acknowledgment, recording and delivery of Deeds to the Secretary of Veterans Affairs, Secretary of Housing and Urban Development, Deeds to Federal National Mortgage Association, and Deeds to Federal Home Loan Mortgage Corporation, to convey properties in which the Mortgage foreclosed secured a loan guaranteed or insured by the department of Veterans Affairs or Department of Housing and Urban Development or where the owner of the loan is Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, and Deeds and assignment of foreclosure bids to the investor on mortgage loans in which Wells Fargo Bank N.A. is the beneficiary of record of the Mortgage.

Giving and granting unto said attorney-in-fact full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to accomplish the foregoing as the principal above-named might or could do as if personally present, with full powers of substitution and reservation, hereby confirming and ratifying all that the principal's attorney in fact shall lawfully do or cause to be done by virtue of these presents. The undersigned fully acknowledges and understands that said attorney-in-fact is being granted authority to appoint himself or a business in which he has a pecuniary interest as trustee to conduct foreclosures for Wells Fargo Bank N.A. on a for profit basis and has consulted independent counsel regarding same.

By exercise of this limited power, the attorney(s)-in-fact shall indemnify Wells Fargo Bank N.A. from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of Wells Fargo Bank N.A. for any cause to the extent the same arise out of, or result from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligation of the attorney(s)-in-fact under this power.

This limited power of attorney shall be effective from the date of execution hereof until December 31, 2015 or such time as Wells Fargo Bank N.A. or its successor revokes it in writing.

IN WITNESS WHEREOF, Beena Menon has hereunto set his/her hand and seal this 24th day of, April, 2012.

Seal

Wells Fargo Bank N.A.

Signed: _____

Printed name: Beena Menon

Title: Senior Vice President

STATE OF South Carolina)
) ss.
COUNTY OF York)

This is to certify that on the 24th day of April, 2012, before me, a notary public in and for the State of South Carolina, personally appeared Beena Menon, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that s/he, being informed of the contents thereof, s/he executed the foregoing document as Senior Vice President of Wells Fargo Bank N.A., voluntarily for and as the act of said corporation, acting in said capacity, as aforesaid.

Given under my hand this 24th day of April 2012.

_____

Notary public in and for: SC
My commission expires: 9-1-2016

Seal
OFFICIAL SEAL
Notary Public
State of South Carolina
RANDY P. JONES
My Commission Expires Sept. 1, 2016

Return to Brice, Vander
Linden & Wernick, P.C.
9441 LBJ Freeway, Ste 250
Dallas, Texas 75243
Attn: Mickey Wilkinson

STATE OF South Carolina)
) ss.
COUNTY OF York)

This is to certify that on the 24th day of April, 2012, before me, a notary public in and for the State of South Carolina, personally appeared Beena Menon, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that s/he, being informed of the contents thereof, s/he executed the foregoing document as Senior Vice President of Wells Fargo Bank N.A., voluntarily for and as the act of said corporation, acting in said capacity, as aforesaid.

Given under my hand this 24th day of April 2012.

Notary public in and for: SC
My commission expires: 9-1-2016

Seal
OFFICIAL SEAL
Notary Public
State of South Carolina
RANDY P. JONES
My Commission Expires Sept. 1, 2016

Return to Brice, Vander
Linden & Wernick, P.C.
9441 LBJ Freeway, Ste 250
Dallas, Texas 75243
Attn: Mickey Wilkinson

Filed and Recorded
Official Public Records
John F. Warren, County Clerk
Dallas County, TEXAS
05/10/2012 02:54:50 PM
$20.00
201200135179

NOTE: This power of attorney only covers specific loans involving certain federal entities insuring loans and does not appear to cover regular Wells Fargo Bank, N.A. assignments. Also notice the date of April 24, 2012? What about all of the other powers of attorney claimed by Taherzadeh giving him authority to assign deeds of trust and notes, as well as appointing trustees (including himself)?

05085 00985 2002- 0007633

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That First Horizon Home Loan Corporation ("First Horizon"), a corporation organized and existing under the laws of KANSAS with its principal office located at 4000 HORIZON WAY IRVING, TEXAS 75063 does hereby make, constitute and appoint any one of the following:

1. **Stephen C. Porter, Esq., or David Seybold, Esq., attorneys with the law firm of Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. ("Barrett Burke"), or Susan Friedrich, an employee of Barrett Burke;**

as attorneys-in-fact, to be authorized to act, do and perform, individually, with joint and several authority, on behalf of First Horizon with full power and authority to act for it, in its place and stead, any and all lawful acts, matters, and things whatsoever requisite, necessary, proper, or convenient to be done as full as First Horizon might or could do itself for all intents and purposes, with regard to the matters listed below performed in connection with the management and prosecution of foreclosure, bankruptcy, eviction, or general litigation matters, and with the disposition of real estate held by First Horizon;

1. To executed, to assign, to acknowledge, to seal, to deliver and to revoke

   (a) any agreement to sell or assign a note, mortgage or deed of trust, and/or any assignment of such note, mortgage or deed of trust or any interest thereof; and

   (b) any loan or mortgage documents necessary to permit the assignment of, or to accept an assignment of, a bid to purchase real estate at a foreclosure sale, or any deed or any rescission of any deed; and

   (c) removal of trustee and appointment of substitute trustee documents and warranty deeds.

2. This power of attorney shall be effective from the date of execution hereof until such time as it is revoked in writing by First Horizon by a Notice of Revocation duly executed and filed in the Office of the County Clerk of the County in which the Property is located. Revocation in the forgoing manner shall be effective as to any third party relying on this Power of Attorney. The revocation of such power of attorney shall only affect the specific parties, whether an entity, person, or individual, named in any revocation, and shall not affect or impair the powers of any entity, person, or individual not named. The revocation shall not affect any liability in any way resulting from transactions initiated prior to the revocation.

3. By exercise of this power, attorneys-in-fact or Barrett Burke shall indemnify First Horizon from all claims, demands, suits, penalties or actions, and from all attendant losses, costs and expenses for any claims against, or losses or liability of First Horizon for any cause arising out of, or resulting from, default in the performance of, or the negligent performance of, or willful misconduct regarding any obligations of attorney-in-fact under this agreement.

4. First Horizon agrees that any third party who receives a copy of this document may act under it. Revocation of this power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. First Horizon agrees to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

5. The attorney-in-fact, by accepting or acting under this appointment, assumes the fiduciary and other legal responsibilities of an agent.

First Horizon Home Loan Corporation

By: _____
BRIAN BOLES Vice President

State of TEXAS)
) SS
County of DALLAS)

On this 11th day of November, 2001, before me, a Notary Public of the State of personally appeared, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Vice President of First Horizon Home Loan Corporation, and acknowledged that he executed this Power on behalf of First Horizon Home Loan Corporation for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

ANGELA WOOLSTON
MY COMMISSION EXPIRES
SEPTEMBER 13, 2004

_____
Notary Public, State of
My commission expires: 05/13/04

RFF/536:RFF/cas

UNOFFICIAL

BRIAN BOLES

State of TEXAS)
) SS
County of DALLAS)

On this 11th day of November, 2001, before me, a Notary Public of the State of personally appeared, known to me to be the person whose name is subscribed to this Power of Attorney and to be a Vice President of First Horizon Home Loan Corporation, and acknowledged that he executed this Power on behalf of First Horizon Home Loan Corporation for the purposes herein contained.

IN WITNESS WHEREOF, I have set me hand and official seal.

ANGELA WOOLSTON
MY COMMISSION EXPIRES
SEPTEMBER 13, 2004

Notary Public, State of
My commission expires: 05/13/04

RFF/536:RFF/cas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

(THE STATE OF TEXAS) (COUNTY OF COLLIN)

I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

JAN 15 2002

Helen Starnes

After Recording Return To:
Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.
15000 Surveyor Blvd., Suite 100
Addison, TX 75001
Attn: Title Services

Gena Lack

Filed for Record in:
Collin County, McKinney TX
Honorable Helen Starnes
Collin County Clerk

On Jan 15 2002
At 9:44am

Doc/Num : 2002- 0007633

Recording/Type:PA 11.00
Receipt #: 1669

NOTE: The foregoing files were pasted into format to save on space. Notice that the power of attorney covers the listed attorneys as members of the law firm in existence at the time? What about after the law firm ceased to exist and was restructured?

OPINION OF COUNSEL

The purpose of land records, for centuries, has been to keep a transparent record of ownership of land, so that government knows who to tax, and buyers and sellers of land are confident that the sale of land is clear of encumbrances, and that the very large sums of money paid for land are paid to the persons with the power to convey that land.

The MERS system threatens all three purposes.

WHAT IS MERS?[1]

It is important, for this discussion, to know what MERS is. MERS is more than just an electronic database. Numerous courts have looked into the question. The Washington Supreme Court wrote last year:

> In the 1990s, the Mortgage Electronic Registration System Inc. (MERS) was established by several large players in the mortgage industry. MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. This system allows its users to avoid the cost and inconvenience of the traditional public recording system and has facilitated a robust secondary market in mortgage backed debt and securities. Its customers include lenders, debt servicers, and financial institutes that trade in mortgage debt and mortgage backed securities, among others. MERS does not merely track ownership; in many states, including our own, MERS is frequently listed as the "beneficiary" of the deeds of trust that secure its customers' interests in the homes securing the debts. Traditionally, the "beneficiary" of a deed of trust is the lender who has loaned money to the homeowner (or other real property owner). …
>
> MERS is an ineligible "'beneficiary' within the terms of the Washington Deed of Trust Act," if it never held the promissory note or other debt instrument secured by the deed of trust.

Bain v. Metro. Mortg. Group, Inc., 175 Wn.2d 83, 88, 110, 285 P.3d 34; 2012 Wash. LEXIS 578 (Wash. 2012)

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[1] From its own presentations, MERS is:
• Electronic registry: Electronic registry for tracking servicing rights and beneficial ownership interests in mortgage loans
• Mortgagee: MERS is the mortgagee in a nominee capacity for the beneficial owner of a mortgage loan in the land records
• Registration vs. Recording. MERS is not a system of legal record or a replacement for the public land records. Mortgages must be recorded in the county land records
• MERS is a tracking system. No interests are transferred on the MERS® System, only tracked

Translation: MERS is a scheme to avoid paying county recordation fees and avoid the transparency of public records of ownership. In theory, it speeds up loan transactions and allows more parties to loan money to banks to make home loans. However, the "beneficiary" designation of MERS is of no value, and does not protect the lender.

In 2010, the Appellate Court in the New York wrote:

> This matter involves the enforcement of the rules that govern real property and whether such rules should be bent to accommodate a system that has taken on a life of its own. The issue presented on this appeal is whether a party has standing to commence a foreclosure action when that party's assignor—in this case, Mortgage Electronic Registration Systems, Inc. (hereinafter MERS)—was listed in the underlying mortgage instruments as a nominee and mortgagee for the purpose of recording, but was never the actual holder or assignee of the underlying notes. We answer this question in the negative.

***Bank of New York v. Silverberg*, 2010–00131 (Index No. 17464–08), Supreme Court, Appellate Division, Second Department, NY (2011):**

Translation: A MERS transfer for recording purposes is insufficient to transfer the Note, and does not grant the power to foreclose to the alleged MERS assignee.

The Kansas Supreme Court wrote in 2009:

> The mortgage instrument states that MERS functions "solely as nominee" for the lender and lender's successors and assigns. The word "nominee" is defined nowhere in the mortgage document, and the functional relationship between MERS and the lender is likewise not defined. In the absence of a contractual definition, the parties leave the definition to judicial interpretation.
>
> What meaning is this court to attach to MERS's designation as nominee for Millennia? The parties appear to have defined the word in much the same way that the blind men of Indian legend described an elephant-- their description depended on which part they were touching at any given time. Counsel for Sovereign stated to the trial court that MERS holds the mortgage "in street name, if you will, and our client the bank and other banks transfer these mortgages and rely on MERS to provide them with notice of foreclosures and what not." He later stated that the nominee "is the mortgagee and is holding that mortgage for somebody else." At another time he declared on the record that the nominee "is more like a trustee or more like a corporation, a trustee that has multiple beneficiaries. Now a nominee's relationship is not a trust but if you have multiple

> beneficiaries you don't serve one of the beneficiaries you serve the trustee of the trust. You serve the agent of the corporation."
>
> Counsel for the auction property purchasers stated that a nominee is "one designated to act for another as his representative in a rather limited sense." He later deemed a nominee to be "like a power of attorney."
> …
> The legal status of a nominee, then, depends on the context of the relationship of the nominee to its principal.
> …
> The relationship that MERS has to Sovereign is more akin to that of a **straw man than to a party possessing all the rights given a buyer.** A mortgagee and a lender have intertwined rights that defy a clear separation of interests, especially when such a purported separation relies on ambiguous contractual language. The law generally understands that a mortgagee is not distinct from a lender: a mortgagee is "[o]ne to whom property is mortgaged: the mortgage creditor, or lender." *Black's Law Dictionary*, 1034 (8th ed. 2004). By statute, assignment of the mortgage carries with it the assignment of the debt. K.S.A. 58-2323. Although MERS asserts that, under some situations, the mortgage document purports to give it the same rights as the lender, the document consistently refers only to rights of the lender, including rights to receive notice of litigation, to collect payments, and to enforce the debt obligation. The document consistently limits MERS to acting "solely" as the nominee of the lender.

Landmark Nat'l Bank v. Kesler, 289 Kan. 528, 536-540 (Kan. 2009) (**emphasis** added)

Translation: MERS' status as "nominee" gives it no rights.

The Missouri Court of Appeals wrote in 2009:

> **"**When the holder of the promissory note assigns or transfers the note, the deed of trust is also transferred. *George v. Surkamp*, 336 Mo. 1, 76 S.W.2d 368, 371 (1934). An assignment of the deed of trust separate from the note has no "force." Id. Effectively, the note and the deed of trust are inseparable, and when the promissory note is transferred, it vests in the transferee "all the interest, rights, powers and security conferred by the deed of trust upon the beneficiary therein and the payee in the notes." *St. Louis Mutual Life Ins. Co. v. Walter*, 329 Mo. 715, 46 S.W.2d 166, 170 (1931).
>
> When it assigned the deed of trust, MERS attempted to transfer to Ocwen the deed of trust "together with any and all notes and obligations therein described or referred to, the debt respectively secured thereby and all sums of money due and to become due." The record reflects that BNC was the

> holder of the promissory note. There is no evidence in the record or the pleadings that MERS held the promissory note or that BNC gave MERS the authority to transfer the promissory note. MERS could not transfer the promissory note; therefore the language in the assignment of the deed of trust purporting to transfer the promissory note is ineffective. Black v. Adrian, 80 S.W.3d 909, 914-15 (Mo. App. S.D. 2002) ("[A]ssignee of a deed of trust or a promissory note is vested with all interests, rights and powers possessed by the assignor in the mortgaged property"). MERS never held the promissory note, thus its assignment of the deed of trust to Ocwen separate from the note had no force. *See George*, 76 S.W.2d at 371. *St. Louis Mut. Life Ins. Co.*, 46 S.W.2d at 170.
>
> As Ocwen holds neither the promissory note, nor the deed of trust, Ocwen lacks a legally cognizable interest and lacks standing to seek relief from the trial court. See Scott, 235 S.W.2d at 374. The trial court was without jurisdiction to grant Ocwen its requested relief, and did not err in granting summary judgment in Bellistri's favor.

Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619, 623-624 (Mo. Ct. App. 2009)

Translation: MERS transfers are ineffective to transfer the Note.

The Nebraska Supreme Court wrote in 2005:

> MERS is a private corporation that administers the MERS System, a national electronic registry that tracks the transfer of ownership interests and servicing rights in mortgage loans. Through the MERS System, MERS becomes the mortgagee of record for participating members through assignment of the members' interests to MERS. MERS is listed as the grantee in the official records maintained at county register of deeds offices. The lenders retain the promissory notes, as well as the servicing rights to the mortgages. The lenders can then sell these interests to investors without having to record the transaction in the public record. MERS is compensated for its services through fees charged to participating MERS members.

Mortgage Elec. Reg. Sys., Inc. v. Nebraska Depart. of Banking, 270 Neb. 529, 530, 704 N.W.2d 784 (2005).

Translation: MERS is a mechanism for bypassing the official recording system.

In summary, we can say that Courts across the country have identified MERS as a mechanism for bypassing official county recording systems which is of dubious legality and dubious effect, which is opaque rather than transparent, and that may lead lenders and borrowers alike to believe that ownership of notes and real property are owned by parties who are not the actual lawful owners.

In short, Wall Street is playing fast and loose with the title to land in an effort to cut out the counties and make a fast buck. Your government is being deprived of lawful fees, and your real estate records are being sabotaged.

The integrity of the Texas public land records and their accuracy and reliability are of fundamental and critical importance for innumerable reasons. Texas public policy and jurisprudence has long held that property records should be open and accessible to the general public. There is currently a conflict between what MERS does in secret through its electronic database and the need for accurate accessible and current property records. MERS has made a deliberate effort to make property records more opaque and less transparent, which has muddled the property records and made thousands of the records less reliable. This audit report highlights many of the most pressing issues that are presented when clear records of title are not maintained. There is currently pending a good deal of litigation regarding these practices for the purpose of protecting homeowners against fraudulent foreclosures and protecting title to the homeowners' properties.

Current Texas jurisprudence is largely unsettled on the MERS issues. The Texas Supreme Court has not ruled on the authority of MERS to make these secret transfers and assignments between its member banks. The question of MERS' authority to transfer has not been squarely presented and ruled upon in Texas in the same way that Washington, Kansas, Nebraska, New York Massachusetts and Missouri have. Likewise, the various Texas-based federal courts have not consistently ruled on the authority of MERS. Foreclosure mills and TARP banks are spending enormous amounts of money in order the bolster and strengthen the MERS system and to pass laws to support MERS' authority to make these transfers as a book entry system.

These assignments still seem to run directly contrary to the Texas Recording Statute, Local Government Code 192.007, which requires that assignments after the Deed of Trust be recorded in the county property records.[2]

There are some other Texas statutes applicable to the foreclosure problems. Texas Government Code §51.903, which was enacted in response to "patriot" filings in property records, may be applicable to some filings. Additionally, Texas Civil Practices and Remedies Code Chapter 12, which provides civil penalties for "mak[ing], us[ing] or present[ing]" false claims against an interest in real or personal property, may provide some civil relief. CPRC 12 parties with standing include property owners, the Texas Attorney General, and the Williamson County district and county attorneys.[3] Beyond that, criminal sanctions may be available under Texas Penal Code 37.01(2).

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[2] Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

[3] Sec. 12.003. CAUSE OF ACTION. (a) The following persons may bring an action to enjoin violation of this chapter or to recover damages under this chapter:

(1) the attorney general;
(2) a district attorney;
(3) a criminal district attorney;

In 2003, at the behest of foreclosure mille Barrett Daffin and various industry lobbyists, the legislature enacted changes to the Texas Property Code, inserting §51.0001, with the intent of "fixing" the Texas Property Code to allow MERS to substitute for the actual owners and holders of Notes and Deeds of Trust. However, the "fix" was inadequate.

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

…

(4) "Mortgagee" means:

(A) the grantee, beneficiary, owner, or holder of a security instrument;

(B) a book entry system; or

(C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.

However, as explained in detail by federal Judge McBryde in *McCarthy v. Bank of America, 2011 U.S. Dist. LEXIS 147685 (N.D. Tex. 2011)*, that definition change is inadequate to allow MERS assignees to foreclose, or, presumably, to transfer Notes and title.

> inherent in the procedural steps outlined in the Texas Property Code is the assumption that whatever entity qualifies as a 'mortgagee' either owns the note or is serving as an agent for the owner or holder of the note; and, the statute assumes that when a foreclosure is conducted by someone other than the owner or holder of the note, the person conducting the foreclosure will be acting as agent or nominee for the owner or holder.

*McCarthy, No. 4:11-CV-356-A, 2011 U.S. Dist. LEXIS 147685, at *10-11*.

Former Texas Supreme Court Justice, now federal Judge Xavier Rodriguez has expressed agreement with Judge McBryde's decision, in *Millet v J.P. Morgan Chase* 2012 U.S.

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(4) a county attorney with felony responsibilities;

(5) a county attorney;

(6) a municipal attorney;

(7) in the case of a fraudulent judgment lien, the person against whom the judgment is rendered; and

(8) in the case of a fraudulent lien or claim against real or personal property or an interest in real or personal property, the obligor or debtor, or a person who owns an interest in the real or personal property.

Dist. LEXIS 40890, at 11-12 (W.D. Tex. March 26, 2012).[4] So, we can say with some certainty that the MERS model was not entirely vindicated by the 2004 amendments, and that MERS authority is dubious.

I have represented homeowners in hundreds of hearings and trials regarding homeowner defense, foreclosure and eviction. In my experience, the rulings of the Courts in the issues of title, possession and transfer have not been entirely consistent, and have changed over time. Some courts are notably more homeowner-friendly, and others are notably more bank and MERS-friendly.

The law, as is often the case, is not entirely settled. Who the judge is matters.

Fundamentally, we have here a failure by MERS and the banks to follow the law –failure to properly assign Deeds of Trust, failure to properly transfer Notes, failure to properly appoint trustees, failure to properly provide notice to homeowners, and, finally, and perhaps most importantly for the accuracy and transparency of County Property Records and for the fiscal health of the County Government– at the very least a failure to follow the Texas Recording Statute, thereby denying Williamson County and other counties around the state of millions of dollars in revenue.

In the opinion of the undersigned, the errors and omissions identified by the Auditor are real and serious.

Yours,

David Rogers

Texas State Bar No. 24014089

[4] Judge Sam Sparks of the Austin federal Court has declined to follow that precedent, though his decisions in this area are currently on appeal.

Appendix:

The Building Blocks of MERS
I. INTRODUCTION TO MERS

What is MERS?

History:

In 1991, an Inter Agency Technology Task Force (IAT) comprised of representatives from Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac and Ginnie Mae began evaluating the potential for an industry-sponsored central repository to electronically register and track ownership of mortgage rights. Two years later, in 1993, a White Paper was published that concluded that a book entry system had tremendous potential to reduce costs associated with transferring mortgage rights. In July 1994, it was decided that the MERS project should be funded and developed. The MBA played a key role in keeping MERS on track until MERS incorporated in October of 1995. MERS became operational in April 1997. However, it was not smooth sailing as forecasted, and much more work needed to be done to become the successful company MERS is today. One critical change to the original MERS structure was becoming a privately held stock corporation in 1998 as well as moving to a two-tiered corporate structure, MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. MERS constantly strives to serve our members and the industry better by creating new and innovative products. Two additions to our product line are MERS® Commercial and the MERS® e-Registry. Each went live in 2003 and 2004, respectively. MERS® Commercial is specifically designed to bring the benefits of the MERS® System to the CMBS marketplace, by eliminating the repurchase risk and costs associated with preparing, recording, and tracking assignments. MERS® e-Registry is a system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes. It allows lenders to register Notes electronically, and provides greater liquidity, transferability, and security in the creation and transfer of Notes.

Corporate Structure:

MERSCORP Holdings, Inc. is currently owned by 25 companies, including Fannie Mae, Freddie Mac, the Mortgage Bankers Association of America, the American Land Title Association, First American Title, Stewart Title, MGIC, PMI, Chase, CitiMortgage, Countrywide, Merrill Lynch, SunTrust and various other mortgage companies. A complete list can be found on the MERS Corporate Website, www.mersinc.org. MERSCORP Holdings, Inc. is the operating company that owns and operates the MERS® System. It is a national electronic registry system that tracks the changes in servicing rights and beneficial ownership interests in mortgage loans that are registered on the registry. It is also the parent company of Mortgage Electronic Registration Systems, Inc., a bankruptcy remote corporation whose sole purpose is to be the mortgagee of record and nominee for the beneficial owner of the mortgage loan. This two-tiered structure is approved by the three major rating agencies: Standard & Poor's, Moody's, and Fitch. The rating agencies have eliminated the requirement to have an

assignment to a securitization trustee prepared and recorded when MERS is the mortgagee of record. MERS registered loans have been included in rated securities issued by Lehman Brothers, Bank of America, RFC, Countrywide, Bank One and Wells Fargo.

Governing Documents:

Each Member of MERS enters into a Membership Agreement with MERSCORP, Inc. This Agreement consists of a Membership Application signed by the Member and incorporates the Terms and Conditions, the Rules of Membership and the Procedures Manual. All documents can be downloaded from the MERS web site: www.mersinc.org.

Basic MERS:

• Recording versus Registration. The security instrument is RECORDED in the applicable county land records. The mortgage information is REGISTERED on the MERS® System. The mortgage, deed of trust or assignment to MERS must be recorded in the land records in order to perfect the mortgage lien. Registering the mortgage loan information on the MERS® System is separate and apart from the function that the county recorders perform.

• Transfers of Mortgage Interests versus Tracking the Changes in Mortgage Interests: No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers. MERS remains the mortgage lien holder in the land records when these non-recordable events take place. Therefore, because no recordable event is taking place, there is no need for any assignments to be recorded. It is not true that the non-recordable events that are tracked on MERS are really electronic assignments. If in fact servicing is sold to a non-MERS member, then a paper assignment is generated because the mortgage lien will need to be transferred to the non-MERS member. MERS cannot remain holding the mortgage lien for a non-MERS member.

How Does MERS Become the Mortgagee of Record?

This occurs in one of two ways, either by an Assignment to Mortgage Electronic Registration Systems, Inc. (MERS) or by MERS being named as the Original Mortgagee of Record (MOM).

Using Assignments:

This is typically used with seasoned loan bulk transactions or is used when the originator is not a MERS member, but is selling to a MERS member who requires the originator to assign the loan to MERS. The assignment is recorded in the local county land records making MERS the mortgagee of record.

The MERS member registers the mortgage on the MERS® System. No further assignments are needed if the servicing rights are sold from one MERS member to another MERS member because the mortgage lien remains with MERS.

Original Mortgagee of Record:

In 1998, it was determined that recording an assignment to MERS is not the only way that MERS can become the mortgagee. The concept of MERS as Original Mortgagee (MOM) was developed. It involves naming Mortgage Electronic Registration Systems, Inc. (MERS) on the mortgage as the mortgagee in a nominee capacity for the Lender, who is the promissory note owner.

At the time the loan is closed, MERS is named as the mortgagee as nominee for the originating lender, its successors and assigns. The originating lender is named as the payee on the promissory note. The loan is registered on the MERS® System and the mortgage is recorded in the local county land records. Fannie Mae and Freddie Mac made changes to the Uniform Security Instrument to accommodate MERS as Original Mortgagee (MOM). Fannie Mae, Freddie Mac, the Department of Veteran's Affairs, Department of Housing and Urban Development, Federal Home Loan Bank System, State of New York Mortgage Agency (SONYMA) and California Housing Finance Agency have approved the use of MOM.

Three principal changes were made:
• To ensure that the note and mortgage are tied together, MERS is named in a nominee capacity for the Lender, because the Lender is named on the note.
• It is made clear that the Borrower in the granting clause grants the mortgage to MERS.
• Language was added to make clear that MERS as the mortgagee has the power to foreclose

CERTIFICATION FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON IN KRISTIN BAIN, *Plaintiff*, v. METROPOLITAN MORTGAGE GROUP, INC., ET AL., *Defendants*. AND IN KEVIN SELKOWITZ, *Plaintiff*, v. LITTON LOAN SERVICING, LP, ET AL., *Defendants*.

No. 86206-1, No. 86207-9

SUPREME COURT OF WASHINGTON

175 Wn.2d 83*; *285 P.3d 34*; *2012 Wash. LEXIS 578

March 15, 2012, Argued
August 16, 2012, Filed

PRIOR HISTORY: *Bain v. Metro. Mortg. Group Inc., 2011 U.S. Dist. LEXIS 155099 (W.D. Wash., June 24, 2011)*

SUMMARY:

WASHINGTON OFFICIAL REPORTS SUMMARY

Nature of Action: Home loan borrowers sought to enjoin the sales of their properties in nonjudicial foreclosure proceedings that were initiated by trustees appointed by a private company that provides electronic registration services for its members for tracking the ownership of mortgage-related debt. The plaintiffs also sought relief under the Consumer Protection Act.

United States District Court: The United States District Court for the Western District of Washington, Nos. C10-5523 and C09-0149, John C. Coughenour, J., certified to the Washington Supreme Court two questions regarding the private company's status as the "beneficiary" of the deeds of trust and one question concerning the plaintiffs' right of action under the Consumer Protection Act.

Supreme Court: The court holds that the private company does not statutorily qualify as the "beneficiary" of a deed of trust if it does not "hold" the promissory note or other instrument evidencing the obligation secured by the deed and that the plaintiffs may proceed under the Consumer Protection Act depending on the facts of their individual cases.

HEADNOTES

WASHINGTON OFFICIAL REPORTS HEADNOTES

[1] Courts -- Supreme Court -- Certified Questions -- Federal Courts -- Discretion of Court. Whether to answer a question certified from a federal court is discretionary with the Washington Supreme Court.

[2] Courts -- Supreme Court -- Certified Questions -- Federal Courts -- Question of Law or Fact -- Review -- Standard of Review. The Washington Supreme Court treats a question certified from a federal court as a pure question of law, which it reviews de novo.

[3] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Construction -- In Favor of Borrowers. The deeds of trust act (ch. 61.24 RCW) must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers' interests and because of the lack of judicial oversight of nonjudicial foreclosure sales.

[4] Deeds of Trust -- Nonjudicial Foreclosure -- Trustee -- Duties -- In General. Under the deeds of trust act (ch. 61.24 RCW), a trustee is not merely an agent for the lender or the lender's successors. A trustee has obligations to all of the parties to the deed, including the grantor.

[5] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Construction -- Purpose of Act. The deeds of trust act (ch. 61.24 RCW) should be construed to further three basic objectives: (1) the nonjudicial fore-

closure process should remain efficient and inexpensive, (2) the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure, and (3) the process should promote the stability of land titles.

[6] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- Context Exception -- Scope. The provision of *RCW 61.24.005* that the definitions expressed therein apply to the deeds of trust act "unless the context clearly requires otherwise" does not mean that parties can alter statutory provisions by contract. The provision applies only insofar as the act itself suggests a different definition might be appropriate for a specific statutory provision. Extrastatutory conditions cannot create a context in which a different definition of a statutorily defined term would be appropriate.

[7] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- "Instrument" or "Document" -- What Constitutes. For purposes of *RCW 61.24.005(2)*, which defines the beneficiary of a deed of trust as "the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation," an "instrument or document evidencing the obligations secured by the deed of trust" means a promissory note or other debt instrument and does not mean the deed of trust itself.

[8] Statutes -- Construction -- Related Statutes -- In General. In determining the meaning of a statute, a court may look to related statutes.

[9] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- "Holder" -- What Constitutes. For purposes of *RCW 61.24.005(2)*, which defines the beneficiary of a deed of trust as "the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation," to be a "holder," a person or entity must actually possess the instrument or document evidencing the obligation secured by a deed of trust, such as a promissory note, or be the payee under the instrument or document.

[10] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- Contractual Provisions -- Effect. Parties to a deed of trust cannot contractually agree to designate as the beneficiary of the deed a person or entity who does not meet the *RCW 61.24.005(2)* definition of "beneficiary."

[11] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- Representation by Agent -- Validity -- In General. The holder of a promissory note evidencing an obligation secured by a deed of trust may be represented by an agent for purposes of exercising rights under the deeds of trust act (ch. 61.24 RCW).

[12] Principal and Agent -- Relationship -- Determination -- Consent of Both Parties -- Control -- Necessity. An agency relationship does not exist absent a specifically identified principal that controls and is accountable for the putative agent's acts.

[13] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- Representation by Agent -- Private Registration Services Company -- Deed Language -- Effect. Language in a deed of trust describing a private registration services company as "acting solely as a nominee for Lender and Lender's successors and assigns" does not establish an agency relationship between unidentified successor note holders and the company.

[14] Constitutional Law -- Separation of Powers -- Policy-Making Decisions -- In General. The legislature, not the Supreme Court, is in the best position to assess public policy considerations.

[15] Deeds of Trust -- Nonjudicial Foreclosure -- Statutory Provisions -- Definitions -- "Beneficiary" -- "Holder" -- Necessity. Under *RCW 61.24.005(2)*, a person or entity that is not the payee under and has never held the document or instrument evidencing an obligation secured by a deed of trust, such as a promissory note, cannot be a lawful beneficiary of the deed with the power to nominate a trustee to initiate foreclosure proceedings to sell the property encumbered by the deed in satisfaction of the obligation. Only the actual holder of or payee under the instrument or note may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure.

[16] Consumer Protection -- Action for Damages -- Elements -- In General. A private action under the Consumer Protection Act (ch. 19.86 RCW) requires proof of five elements: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to the plaintiff's business or property, and (5) causation.

[17] Consumer Protection -- Action for Damages -- Unfair or Deceptive Conduct -- Capacity To Deceive -- Substantial Portion of Public -- Sufficiency. The unfair or deceptive act or practice element of a private ac-

tion under the Consumer Protection Act (ch. 19.86 RCW) may be satisfied by an act or practice that has the capacity to deceive a substantial portion of the public. Neither intent nor actual deception is required.

[18] Consumer Protection -- Action for Damages -- Unfair or Deceptive Conduct -- Capacity To Deceive -- Accurate Information. For purposes of a private action under the Consumer Protection Act (ch. 19.86 RCW), even accurate information may be deceptive if there is a representation, omission, or practice that is likely to mislead.

[19] Consumer Protection -- Action for Damages -- Unfair or Deceptive Conduct -- Misrepresentations of Material Terms of Transaction -- Failure To Disclose Material Terms of Transaction. A misrepresentation of the material terms of a transaction or a failure to disclose material terms can constitute a violation of the Consumer Protection Act (ch. 19.86 RCW).

[20] Consumer Protection -- Action for Damages -- Unfair or Deceptive Conduct -- Question of Law or Fact -- Review. For purposes of a private action under the Consumer Protection Act (ch. 19.86 RCW), whether the act complained of was deceptive is a question of law that is reviewed de novo.

[21] Deeds of Trust -- Nonjudicial Foreclosure -- Consumer Protection -- Unfair or Deceptive Conduct -- Improper "Beneficiary." A person or entity that holds itself out as the beneficiary of a deed of trust when the person or entity knows or should know that it does not meet the *RCW 61.24.005(2)* definition of "beneficiary" because it does not hold the document or instrument evidencing the obligation secured by the deed can constitute an unfair or deceptive act or practice that will support a private action under the Consumer Protection Act (ch. 19.86 RCW) by the owner of the property encumbered by the deed.

[22] Consumer Protection -- Action for Damages -- Effect on Public Interest -- Pattern of Activity. A pattern or generalized course of unfair or deceptive conduct can be sufficient to satisfy the "public interest impact" element of a private action under the Consumer Protection Act (ch. 19.86 RCW).

[23] Consumer Protection -- Action for Damages -- Injury to Business or Property -- Necessity. Proof of injury to the plaintiff's business or property is required to establish a private action under the Consumer Protection Act (ch. 19.86 RCW).CHAMBERS, J., delivered the opinion for a unanimous court.

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Shawn T. Newman on behalf of Organization United for Reform (OUR) Washington, amicus curiae.

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David A. Leen and *Geoff Walsh* on behalf of National Consumer Law Center, amicus curiae.

JUDGES: [***1] AUTHOR: Justice Tom Chambers. WE CONCUR: Chief Justice Barbara A. Madsen, Justice Charles W. Johnson, Justice Susan Owens, Justice Mary E. Fairhurst, Justice James M. Johnson, Justice Debra L. Stephens, Justice Charles K. Wiggins, Justice Steven C. Gonz·lez.

OPINION BY: Tom Chambers

OPINION

En Banc

[*88] [**36] ∂1 CHAMBERS, J. -- In the 1990s, the Mortgage Electronic Registration System Inc. (MERS) was established by several large players in the mortgage industry. MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. This system allows its users to avoid the cost and inconvenience of the traditional public recording system and has facilitated a robust secondary market in mortgage backed debt and securities. Its customers include lenders, debt servicers, and financial institutes that trade in mortgage debt and

mortgage backed securities, among others. MERS does not merely track ownership; in many states, including our own, MERS is frequently listed as the "beneficiary" of the deeds of trust that secure its customers' interests in the homes securing the debts. Traditionally, the "beneficiary" of a deed of trust is the lender who has loaned money to [***2] the homeowner (or other real property owner). The deed of trust protects the lender by giving the lender the power to nominate a trustee and giving that trustee the power to sell the home if the homeowner's debt is not paid. Lenders, of course, have long been free to sell that secured debt, typically by selling the promissory note signed by the homeowner. Our deed of trust act, *chapter 61.24 RCW*, recognizes that the beneficiary of a deed of trust at any one time might not be the original lender. The act gives subsequent holders of the debt the benefit of the act by defining "beneficiary" broadly as "the holder of the instrument or document evidencing the obligations secured by the deed of trust." *RCW 61.24.005(2)*.

∂2 Judge John C. Coughenour of the Federal District Court for the Western District of Washington has asked us to answer three certified questions relating to two home foreclosures pending in King County. In both cases, MERS, [*89] in its role as the beneficiary of the deed of trust, was informed by the loan servicers that the homeowners were delinquent on their mortgages. MERS then appointed trustees who initiated foreclosure proceedings. The primary issue is whether MERS is a lawful [***3] beneficiary with the power to appoint trustees within the deed of trust act if it does not hold the promissory notes secured by the deeds of trust. A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. Simply put, if [**37] MERS does not hold the note, it is not a lawful beneficiary.

∂3 Next, we are asked to determine the "legal effect" of MERS not being a lawful beneficiary. Unfortunately, we conclude we are unable to do so based upon the record and argument before us.

∂4 Finally, we are asked to determine if a homeowner has a Consumer Protection Act (CPA), *chapter 19.86 RCW*, claim based upon MERS representing that it is a beneficiary. We conclude that a homeowner may, but it will turn on the specific facts of each case.

FACTS

∂5 In 2006 and 2007 respectively, Kevin Selkowitz and Kristin Bain bought homes in King County. Selkowitz's deed of trust named First American Title Company as the trustee, New Century Mortgage Corporation as the lender, and MERS as the beneficiary and nominee for the lender. [***4] Bain's deed of trust named IndyMac Bank FSB as the lender, Stewart Title Guarantee Company as the trustee, and, again, MERS as the beneficiary. Subsequently, New Century filed for bankruptcy protection, IndyMac went into receivership, [1] and both Bain and Selkowitz fell behind on [*90] their mortgage payments. In May 2010, MERS, in its role as the beneficiary of the deeds of trust, named Quality Loan Service Corporation as the successor trustee in Selkowitz's case, and Regional Trustee Services as the trustee in Bain's case. A few weeks later the trustees began foreclosure proceedings. According to the attorneys in both cases, the assignments of the promissory notes were not publically recorded. [2]

1 The FDIC (Federal Deposit Insurance Corporation), in IndyMac's shoes, successfully moved for summary judgment in the underlying cases on the ground that there were no assets to pay any unsecured creditors. Doc. 86, at 6 (Summ. J. Mot., noting that "the [FDIC] determined that the total assets of the IndyMac Bank Receivership are $ 63 million while total deposit liabilities are $ 8.738 billion."); Doc. 108 (Summ. J. Order).

2 According to briefing filed below, Bain's "[n]ote was assigned to Deutsche [***5] Bank by former defendant IndyMac Bank, FSB, and placed in a mortgage loan asset-backed trust pursuant to a Pooling and Servicing Agreement dated June 1, 2007." Doc. 149, at 3. Deutsche Bank filed a copy of the promissory note with the federal court. It appears Deutsche Bank is acting as trustee of a trust that contains Bain's note, along with many others, though the record does not establish what trust this might be.

∂6 Both Bain and Selkowitz sought injunctions to stop the foreclosures and sought damages under the Washington CPA, among other things. [3] Both cases are now pending in Federal District Court for the Western District of Washington. *Selkowitz v. Litton Loan Servicing, LP, No. C10-05523-JCC, 2010 WL 3733928, 2010 U.S. Dist. LEXIS 105086 (W.D. Wash. Aug. 31, 2010)* (unpublished). Judge Coughenour certified three questions of state law to this court. We have received amici briefing in support of the plaintiffs from the Washington State attorney general, the National Consumer Law Center, the Organization United for Reform (OUR) Washington, and the Homeowners' Attorneys, and amici [*91] briefing in support of the defendants from the Washington Bankers Association (WBA).

CERTIFIED QUESTIONS

1. Is Mortgage Electronic Registration Systems, Inc., a lawful "beneficiary" within the terms of Washington's Deed of Trust Act, *Revised Code of Washington section 61.24.005(2),* if it never held the promissory note secured by the deed of trust?

[Short answer: No.]

2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed [**38] of Trust Act?

[Short answer: We [***6] decline to answer based upon what is before us.]

3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

[Short answer: The homeowners may have a CPA action but each homeowner will have to establish the elements based upon the facts of that homeowner's case.]

Order Certifying Question to the Washington State Supreme Ct. (Certification) at 3-4.

3 While the merits of the underlying cases are not [***7] before us, we note that Bain contends that the real estate agent, the mortgage broker, and the mortgage originator took advantage of her known cognitive disabilities in order to induce her to agree to a monthly payment they knew or should have known she could not afford; falsified information on her mortgage application; and failed to make legally required disclosures. Bain also asserts that foreclosure proceedings were initiated by IndyMac before IndyMac was assigned the loan and that some of the documents in the chain of title were executed fraudulently. This is confusing because IndyMac was the original lender, but the record suggests (but does not establish) that ownership of the debt had changed hands several times.

ANALYSIS

[1, 2] ∂7 "The decision whether to answer a certified question pursuant to *chapter 2.60 RCW* is within the discretion of the court." *Broad v. Mannesmann Anlagenbau, A.G., 141 Wn.2d 670, 676, 10 P.3d 371 (2000)* (citing *Hoffman v. Regence Blue Shield, 140 Wn.2d 121, 128, 991 P.2d 77 (2000)).* We treat the certified question as a pure question of law and review de novo. *See, e.g., Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 149 Wn.2d 660, 670, 72 P.3d 151 (2003)* (citing *Rivett v. City of Tacoma, 123 Wn.2d 573, 578, 870 P.2d 299 (1994)).*

[*92] DEEDS OF TRUST

∂8 Private recording of mortgage-backed debt is a new development in an old and long evolving system. We offer a brief [***8] review to put the issues before us in context.

∂9 A mortgage as a mechanism to secure an obligation to repay a debt has existed since at least the 14th century. 18 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS ß 17.1, at 253 (2d ed. 2004). Often in those early days, the debtor would convey land to the lender via a deed that would contain a proviso that if a promissory note in favor of the lender was paid by a certain day, the conveyance would terminate. *Id.* at 254. English law courts tended to enforce contracts strictly; so strictly, that equity courts began to intervene to ameliorate the harshness of strict enforcement of contract terms. *Id.* Equity courts often gave debtors a grace period in which to pay their debts and redeem their properties, creating an "equitable right to redeem the land during the grace period." *Id.* The equity courts never established a set length of time for this grace period, but they did allow lenders to petition to "foreclose" it in individual cases. *Id.* "Eventually, the two equitable actions were combined into one, granting the period of equitable redemption and placing a foreclosure date on that period." *Id.* at 255 (citing [***9] GEORGE E. OSBORNE, HANDBOOK ON THE LAW OF MORTGAGES ßß 1-10 (2d ed. 1970)).

∂10 In Washington, "[a] mortgage creates nothing more than a lien in support of the debt which it is given to secure." *Pratt v. Pratt, 121 Wash. 298, 300, 209 P. 535 (1922)* (citing *Gleason v. Hawkins, 32 Wash. 464, 73 P. 533 (1903)*); *see also* 18 STOEBUCK & WEAVER, *supra,* ß 18.2, at 305. Mortgages come in different forms, but we are only concerned here with mortgages secured by a deed of trust on the mortgaged property. These deeds do not convey the property when executed; instead, "[t]he statutory deed of trust is a form of a mortgage." 18 STOEBUCK & WEAVER, *supra,* ß 17.3, at 260. "More precisely, it is a three-party transaction [*93] in which land is conveyed by a borrower, the 'grantor,' to a 'trustee,' who holds title in trust for a lender, the 'beneficiary,' as security for credit or a loan the lender has given the borrower." *Id.* Title in the property pledged

as security for the debt is not conveyed by these deeds, even if "on its face the deed conveys title to the trustee, because it shows that it is given as security for an obligation, it is an equitable mortgage." *Id.* (citing GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW ß 1.6 [***10] (4th ed. 2001)).

[3, 4] ∂11 When secured by a deed of trust that grants the trustee the power of sale if the borrower defaults on repaying the underlying obligation, the trustee may usually foreclose the deed of trust and sell the property without judicial supervision. *Id.* at 260-61; *RCW 61.24.020*; *RCW 61.12.090*; *RCW 7.28.230(1)*. This is a significant power, [**39] and we have recently observed that "the [deed of trust] Act must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers' interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales." *Udall v. T.D. Escrow Servs., Inc., 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)* (citing *Queen City Sav. & Loan Ass'n v. Mannhalt, 111 Wn.2d 503, 514, 760 P.2d 350 (1988)* (Dore, J., dissenting)). Critically under our statutory system, a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties to the deed, including the homeowner. *RCW 61.24.010(4)* ("The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor."); *Cox v. Helenius, 103 Wn.2d 383, 389, 693 P.2d 683 (1985)* ("[A] trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them." (citing GEORGE [***11] E. OSBORNE, GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW ß 7.21 (1979))). [4] Among other things, "the trustee shall have proof [*94] that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust" and shall provide the homeowner with "the name and address of the owner of any promissory notes or other obligations secured by the deed of trust" before foreclosing on an owner-occupied home. *RCW 61.24.030(7)(a), (8)(l)*.

> 4 In 2008, the legislature amended the deed of trust act to provide that trustees did not have a fiduciary duty, only the duty of good faith. LAWS OF 2008, ch. 153, ß 1, codified in part as *RCW 61.24.010(3)* ("The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the property subject to the deed of trust."). This case does not offer an opportunity to explore the impact of the amendment. A bill was introduced into our state senate in the 2012 session that, as originally drafted, would require every assignment be recorded. [***12] S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012). A substitute bill passed out of committee convening a stakeholder group "to convene to discuss the issue of recording deeds of trust of residential real property, including assignments and transfers, amongst other related issues" and report back to the legislature with at least one specific proposal by December 1, 2012. SUBSTITUTE S.B. 6070, 62d Leg., Reg. Sess. (Wash. 2012).

[5] ∂12 Finally, throughout this process, courts must be mindful of the fact that "Washington's deed of trust act should be construed to further three basic objectives." *Cox, 103 Wn.2d at 387* (citing Joseph L. Hoffmann, Comment, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust in Washington, 59 WASH. L. REV. 323, 330 (1984)*). "First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles." *Id.* (citation omitted) (citing *Peoples Nat'l Bank of Wash. v. Ostrander, 6 Wn. App. 28, 491 P.2d 1058 (1971))*.

MERS

∂13 MERS, now a Delaware corporation, was established in the [***13] mid 1990s by a consortium of public and private entities that included the Mortgage Bankers Association of America, the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Government National Mortgage Association (Ginnie Mae), the American Bankers Association, and the American Land Title Association, among many others. [*95] *See In re MERSCORP, Inc. v. Romaine, 8 N.Y.3d 90, 96 n.2, 861 N.E.2d 81, 828 N.Y.S.2d 266 (2006)*; Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System, 31 IDAHO L. REV. 805, 807 (1995)*; Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System, 78 U. CIN. L. REV. 1359, 1361 (2010)*. It established "a central, electronic registry for tracking mortgage rights [where p]arties will be able to access the central registry (on a need to know basis)." *Slesinger & McLaughlin, supra, at 806*. This was intended to reduce the costs, increase the efficiency, and facilitate the securitization of mortgages and thus increase liquidity. *Peterson, supra, at 1361*. [5] [**40] As the New York high court described the process:

> The initial MERS mortgage [***14] is recorded in the County Clerk's office with "Mortgage Electronic Registration Systems, Inc." named as the lender's nominee or mortgagee of record on the instrument.

> During the lifetime of the mortgage, the beneficial ownership interest or servicing rights may be transferred among MERS members (MERS assignments), but these assignments are not publicly recorded; instead they are tracked electronically in MERS's private system.

Romaine, 8 N.Y.3d at 96. MERS "tracks transfers of servicing rights and beneficial ownership interests in mortgage loans by using a permanent 18-digit number called the Mortgage Identification Number." Resp. Br. of MERS at 13 (Bain) (footnote omitted). It facilitates secondary markets in mortgage debt and servicing rights, without the traditional costs of recording transactions with the local county [*96] records offices. *Slesinger & McLaughlin, supra, at 808*; *In re Agard, 444 B.R. 231, 247 (Bankr. E.D.N.Y. 2011)*.

> 5 At oral argument, counsel for Bain contended the reason for MERS's creation was a study in 1994 concluding that the mortgage industry would save $ 77.9 million a year in state and local filing fees. Wash. Supreme Court oral argument, *Bain v. Mortg. Elec. Registration* [***15] *Sys.*, No. 86206-1 (Mar. 15, 2012), at approx. 44 min., *audio recording by* TVW, Washington's Public Affairs Network, *available at* http://www.tvw.org. While saving costs was certainly a motivating factor in its creation, efficiency, secondary markets, and the resulting increased liquidity were other major driving forces leading to MERS's creation. *Slesinger & McLaughlin, supra, at 806-07*.

∂14 Many loans have been pooled into securitization trusts where they, hopefully, produce income for investors. *See, e.g., Pub. Emps.' Ret. Sys. of Miss. v. Merrill Lynch & Co., 277 F.R.D. 97, 102-03 (S.D.N.Y. 2011)* (discussing process of pooling mortgages into asset backed securities). MERS has helped overcome what had come to be seen as a drawback of the traditional mortgage financing model: lack of liquidity. MERS has facilitated securitization of mortgages bringing more money into the home mortgage market. With the assistance of MERS, large numbers of mortgages may be pooled together as a single asset to serve as security for creative financial instruments tailored to different investors. Some investors may buy the right to interest payments only, others principal only; different investors may want to [***16] buy interest in the pool for different durations. *Mortg. Elec. Registration Sys., Inc. v. Azize, 965 So. 2d 151, 154 n.3 (Fla. Dist. Ct. App. 2007)*; Dustin A. Zacks, *Standing in Our Own Sunshine: Reconsidering Standing, Transparency, and Accuracy in Foreclosures, 29 QUINNIPIAC L. REV. 551, 570-71 (2011)*; Chana Joffe-Walt & David Kestenbaum, *Before Toxie Was Toxic*, NAT'L PUB. RADIO (Sept. 17, 2010, 12:00 A.M.) [6] (discussing formation of mortgage backed securities). In response to the changes in the industries, some states have explicitly authorized lenders' nominees to act on lenders' behalf. *See, e.g., Jackson v. Mortg. Elec. Registration Sys., Inc., 770 N.W.2d 487, 491 (Minn. 2009)* (noting *MINN. STAT. ß 507.413* is "frequently called 'the MERS statute'"). As of now, our state has not.

> 6 *Available at* http://www.npr.org/blogs/money/2010/09/16/129916011/before-toxie-was-toxic.

∂15 As MERS itself acknowledges, its system changes "a traditional three party deed of trust [into] a four party deed of trust, wherein MERS would act as the contractually agreed upon beneficiary for the lender and its successors and assigns." MERS Resp. Br. at 20 (Bain). As recently as [*97] 2004, learned commentators William [***17] Stoebuck and John Weaver could confidently write that "[a] general axiom of mortgage law is that obligation and mortgage cannot be split, meaning that the person who can foreclose the mortgage must be the one to whom the obligation is due." 18 STOEBUCK & WEAVER, *supra*, ß 18.18, at 334. MERS challenges that general axiom. Since then, as the New York bankruptcy court observed recently:

> In the most common residential lending scenario, there are two parties to a real property mortgage -- a mortgagee, *i.e.*, a lender, and a mortgagor, *i.e.*, a borrower. With some nuances and allowances for the needs of modern finance this model has been followed for hundreds of years. The MERS business plan, as envisioned and implemented by lenders and others involved [**41] in what has become known as the mortgage finance industry, is based in large part on amending this traditional model and introducing a third party into the equation. MERS is, in fact, neither a borrower nor a lender, but rather purports to be both "mortgagee of record" and a "nominee" for the mortgagee. MERS was created to alleviate problems created by, what was determined by the financial community to be, slow and burdensome recording processes [***18] adopted by virtually every state and locality. In effect the MERS system was designed to circumvent these procedures. MERS, as envisioned by its originators, operates as a replacement for our tradi-

tional system of public recordation of mortgages.

Agard, 444 B.R. at 247.

∂16 Critics of the MERS system point out that after bundling many loans together, it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [*98] becomes extraordinarily difficult. [7] The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that "the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure." *Cox, 103 Wn.2d at 387* (citing *Ostrander, 6 Wn. App. 28*).

7 MERS insists that borrowers need know only the [***19] identity of the servicers of their loans. However, there is considerable reason to believe that servicers will not or are not in a position to negotiate loan modifications or respond to similar requests. *See generally* Diane E. Thompson, *Foreclosing Modifications: How Servicer Incentives Discourage Loan Modifications, 86 WASH. L. REV. 755 (2011)*; Dale A. Whitman, *How Negotiability Has Fouled Up the Secondary Mortgage Market, and What To Do About It, 37 PEPP. L. REV. 737, 757-58 (2010)*. Lack of transparency causes other problems. *See generally U.S. Bank Nat'l Ass'n v. Ibanez, 458 Mass. 637, 941 N.E.2d 40 (2011)* (noting difficulties in tracing ownership of the note).

∂17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes. With this background in mind, we turn to the certified questions.

I. DEED OF TRUST BENEFICIARIES

∂18 Again, the federal court has asked:

> 1. Is Mortgage Electronic Registration Systems, Inc., a lawful "beneficiary" within the terms of Washington's Deed of Trust Act, *Revised Code of Washington section 61.24.005(2),* [***20] if it never held the promissory note secured by the deed of trust?

Certification at 3.

A. Plain Language

[6-15] ∂19 Under the plain language of the deed of trust act, this appears to be a simple question. Since 1998, the deed of trust act has defined a "beneficiary" as "the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the [*99] same as security for a different obligation." LAWS OF 1998, ch. 295, ß 1(2), codified as *RCW 61.24.005(2)*. [8] Thus, in the terms of the certified [**42] question, if MERS never "held the promissory note," then it is not a "lawful 'beneficiary.'"

8 Perhaps presciently, the Senate Bill Report on the 1998 amendment noted that "[p]ractice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act." S.B. REP. on ENGROSSED SUBSTITUTE S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998). The report also helpfully summarizes the legislature's understanding of deeds of trust as creating three-party mortgages:

> **Background:** A deed of trust is a financing tool created by statute which is, in effect, a triparty mortgage. The real property owner or purchaser (the [***21] grantor of the deed of trust) conveys the property to an independent trustee, who is usually a title insurance company, for the benefit of a third party (the lender) to secure repayment of a loan or other debt from the grantor (borrower) to the beneficiary (lender). The trustee has the power to sell the property nonjudicially in the event of default, or, alternatively, foreclose the deed of trust as a mortgage.

Id. at 1.

∂20 MERS argues that under a more expansive view of the act, it meets the statutory definition of "beneficiary." It notes that the definition section of the deed of trust act begins by cautioning that its definitions apply "'*unless the context clearly requires otherwise*.'" Resp. Br. of MERS at 19 (Bain) (quoting *RCW 61.24.005*).

MERS argues that "[*t*]*he context* here *requires* that MERS be recognized as a proper 'beneficiary' under the Deed of Trust [Act]. The context here is that the Legislature was creating a more efficient default remedy for lenders, not putting up barriers to foreclosure." *Id.* It contends that the parties were legally entitled to contract as they see fit, and that the "the parties contractually agreed that the 'beneficiary' under the Deed of Trust was [***22] 'MERS' and it is in that context that the Court should apply the statute." *Id.* at 20 (emphasis omitted).

∂21 The "unless the context clearly requires otherwise" language MERS relies upon is a common phrase that the legislative bill drafting guide recommends be used in the introductory language in all statutory definition sections. *See* STATUTE LAW COMM., OFFICE OF THE CODE REVISER, BILL [*100] DRAFTING GUIDE 2011. [9] A search of the unannotated Revised Code of Washington indicates that this statutory language has been used over 600 times. Despite its ubiquity, we have found no case--and MERS draws our attention to none--where this common statutory phrase has been read to mean that the *parties* can alter statutory provisions by contract, as opposed to the act itself suggesting a different definition might be appropriate for a specific statutory provision. We have interpreted the boilerplate language, "[t]he definitions in this section apply throughout the chapter unless the context clearly requires otherwise" only once, and then in the context of determining whether a general court-martial qualified as a prior conviction for purposes of the Sentencing Reform Act of 1981 (SRA), *chapter 9.94A RCW*. *See* [***23] *State v. Morley, 134 Wn.2d 588, 952 P.2d 167 (1998)*. There, the two defendants challenged the use of their prior general courts-martial on the ground that the SRA defined "conviction" as "'an adjudication of guilt pursuant to Titles 10 or 13 RCW.'" *Morley, 134 Wn.2d at 595* (quoting *RCW 9.94A.030(9)*). Since, the defendants reasoned, their courts-martial were not "pursuant to Titles 10 or 13 RCW," they should not be considered criminal history. We noted that the SRA frequently treated out-of-state convictions (which would also not be pursuant to Titles 10 or 13 RCW) as convictions and rejected the argument since the specific statutory context required a broader definition of the word "convictions" than the definition section provided. *Id. at 598*. MERS has cited no case, and we have found none that holds that *extrastatutory* conditions can create a context where a different definition of defined terms would be appropriate. We do not find this argument persuasive.

9 *Available at* http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx (last visited Aug. 7, 2012).

∂22 MERS also argues that it meets the statutory definition itself. It notes, correctly, that the legislature did not limit "beneficiary" [***24] to the holder of the promissory note: instead, it is "the holder of the *instrument or document* [*101] evidencing the obligations secured by the deed of trust." *RCW 61.24.005(2)* (emphasis added). It suggests that "'instrument'" and "'document'" are broad terms and that "in the context of a residential loan, undoubtedly the Legislature was referring to all of the loan documents that make up the loan transaction -- *i.e.*, the note, the deed of trust, and any other rider or document that sets forth the rights and obligations of the parties under the loan," and that "'obligation'" must be read to include any financial obligation under any document signed in relation to the loan, including "attorneys' fees and costs incurred in the event of default." Resp. Br. of MERS at 21-22 (Bain). In these particular cases, MERS contends that it is a proper beneficiary because, in its view, it is "indisputably the 'holder' of the Deed of Trust." *Id.* at 22. It provides no authority [**43] for its characterization of itself as "indisputably the 'holder'" of the deeds of trust.

∂23 The homeowners, joined by the Washington attorney general, do dispute MERS' characterization of itself as the holder of the deeds of trust. Starting [***25] from the language of *RCW 61.24.005(2)* itself, the attorney general contends that "[t]he 'instrument' obviously means the promissory note because the only other document in the transaction is the deed of trust and it would be absurd to read this definition as saying that "'beneficiary means the holder of the deed of trust secured by the deed of trust.'"" Br. of Amicus Att'y General (AG Br.) at 2-3 (quoting *RCW 61.24.005(2)*). We agree that an interpretation "beneficiary" that has the deed of trust securing itself is untenable.

∂24 Other portions of the deed of trust act bolster the conclusion that the legislature meant to define "beneficiary" to mean the actual holder of the promissory note or other debt instrument. In the same 1998 bill that defined "beneficiary" for the first time, the legislature amended *RCW 61.24.070* (which had previously forbidden the trustee alone from bidding at a trustee sale) to provide:

> [*102] (1) The trustee may not bid at the trustee's sale. Any other person, including the beneficiary, may bid at the trustee's sale.
>
> (2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary's bid all or any part of the monetary obligations secured by the deed [***26] of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, cer-

> tified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof.

LAWS OF 1998, ch. 295, ß 9, *codified as RCW 61.24.070*. As Bain notes, this provision makes little sense if the beneficiary does not hold the note. Bain Reply to Resp. to Opening Br. at 11. In essence, it would authorize the nonholding beneficiary to credit to its bid funds to which it had no right. However, if the beneficiary is defined as the entity that holds the note, this provision straightforwardly allows the noteholder to credit some or all of the debt to the bid. Similarly, in the commercial loan context, the legislature has provided that "[a] beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates [***27] the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction." *RCW 61.24.100(7)*. This provision would also make little sense if the beneficiary did not hold the promissory note that represents the debt.

∂25 Finding that the beneficiary must hold the promissory note (or other "instrument or document evidencing the obligation secured") is also consistent with recent legislative findings to the foreclosure fairness act of 2011, LAWS OF 2011, ch. 58, ß 3(2). The legislature found:

> [(1)] (a) The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a [*103] new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments;
>
> ... .
>
> (2) Therefore, the legislature intends to:
>
> ... .
>
> (b) Create a framework *for homeowners and beneficiaries to communicate with each other* to reach a resolution and avoid foreclosure whenever possible; and
>
> (c) Provide a process for foreclosure mediation.

LAWS OF 2011, ch. 58, ß 1 (emphasis added). There is no evidence in the record or argument that suggests MERS has the power "to reach a [***28] resolution and avoid foreclosure" on behalf of the noteholder, and there is considerable reason to believe it does not. Counsel informed the court at oral argument that MERS does not negotiate on behalf of the holders of the note. [10] If the legislature intended [**44] to authorize nonnoteholders to act as beneficiaries, this provision makes little sense. However, if the legislature understood "beneficiary" to mean "noteholder," then this provision makes considerable sense. The legislature was attempting to create a framework where the stakeholders could negotiate a deal in the face of changing conditions.

10 Wash. Supreme Court oral argument, *supra*, at approx. 34 min., 58 sec.

∂26 We will also look to related statutes to determine the meaning of statutory terms. *Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11-12, 43 P.3d 4 (2002)*. Both the plaintiffs and the attorney general draw our attention to the definition of "holder" in the Uniform Commercial Code (UCC), which was adopted in the same year as the deed of trust act. *See* LAWS OF 1965, Ex. Sess., ch. 157 (UCC); LAWS OF 1965, ch. 74 (deeds of trust act); Selkowitz Opening Br. at 13; AG Br. at 11-12. Stoebuck and Weaver note that the transfer [***29] of mortgage backed obligations is governed by the UCC, which certainly suggests the UCC provisions may be instructive for other purposes. 18 STOEBUCK & WEAVER, *supra*, ß 18.18, at 334. The UCC provides:

> [*104] "Holder" with respect to a negotiable instrument, means the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. "Holder" with respect to a document of title means the person in possession if the goods are deliverable to bearer or to the order of the person in possession.

Former *RCW 62A.1-201(20)* (2001). [11] The UCC also provides:

> "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to *RCW 62A.3-309* or

> *62A.3-418(d)*. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

RCW 62A.3-301. The plaintiffs argue that our interpretation of the deed of trust act [***30] should be guided by these UCC definitions, and thus a beneficiary must either actually possess the promissory note or be the payee. *E.g.*, Selkowitz Opening Br. at 14. We agree. This accords with the way the term "holder" is used across the deed of trust act and the Washington UCC. By contrast, MERS's approach would require us to give "holder" a different meaning in different related statutes and construe the deed of trust act to mean that a deed of trust may secure itself or that the note follows the security instrument. Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around. MERS is not a "holder" under the plain language of the statute.

> 11 Several portions of *chapter 61.24 RCW* were amended by the 2012 legislature while this case was under our review.

B. Contract and Agency

∂27 In the alternative, MERS argues that the borrowers should be held to their contracts, and since they agreed in the [*105] deeds of trust that MERS would be the beneficiary, it should be deemed to be the beneficiary. *E.g.*, Resp. Br. of MERS at 24 (Bain). Essentially, it argues that we should insert the parties' agreement into the statutory definition. It notes [***31] that another provision of Title 61 RCW specifically allows parties to insert side agreements or conditions into mortgages. *RCW 61.12.020* ("Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition.").

∂28 MERS argues we should be guided by *Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034 (9th Cir. 2011)*. In *Cervantes*, the Ninth Circuit Court of Appeals affirmed dismissal of claims for fraud, intentional infliction of emotional distress, and violations of the federal Truth in Lending Act (*15 U.S.C. ß 1635*) and the Arizona Consumer Fraud Act (*ARIZ. REV. STAT. ß 44-1522*) against [**45] MERS, Countrywide Home Loans, and other financial institutions. *Id. at 1041*. We do not find *Cervantes* instructive. *Cervantes* was a putative class action that was dismissed on the pleadings for a variety of reasons, the vast majority of which are irrelevant to the issues before us. *Id. at 1038*. After dismissing the fraud claim for failure to allege facts that met all nine elements of a fraud claim in Arizona, the Ninth Circuit observed that MERS's role was plainly [***32] laid out in the deeds of trust. *Id. at 1042*. Nowhere in *Cervantes* does the Ninth Circuit suggest that the parties could contract around the statutory terms.

∂29 MERS also seeks support in a Virginia quiet title action. *Horvath v. Bank of N.Y., NA, 641 F.3d 617, 620 (4th Cir. 2011)*. After Horvath had become delinquent in his mortgage payments and after a foreclosure sale, Horvath sued the holder of the note and MERS, among others, on a variety of claims, including a claim to quiet title in his favor on the ground that various financial entities had by "'splitting ... the pieces of' his mortgage ... caused 'the Deeds of [*106] Trust [to] split from the Notes and [become] unenforceable.'" *Id. at 620* (third and fourth alterations in original) (quoting complaint). The Fourth Circuit rejected Horvath's quiet title claim out of hand, remarking:

> It is difficult to see how Horvath's arguments could possibly be correct. Horvath's note plainly constitutes a negotiable instrument under *Va. Code Ann. ß 8.3A-104*. That note was endorsed in blank, meaning it was bearer paper and enforceable by whoever possessed it. *See Va. Code Ann. ß 8.3A-205(b)*. And BNY [(Bank of New York)] possessed the note at the time it attempted [***33] to foreclose on the property. Therefore, once Horvath defaulted on the property, Virginia law straightforwardly allowed BNY to take the actions that it did.

Id. at 622. There is no discussion anywhere in *Horvath* of any statutory definition of "beneficiary." While the opinion discussed transferability of notes under the UCC as adopted in Virginia, there is only the briefest mention of the Virginia deed of trust act. *Compare Horvath, 641 F.3d at 621-22* (citing various provisions of VA. CODE ANN. Titles 8.1A, 8.3A (UCC)), *with id. at 623 n.3* (citing *VA. CODE. ANN. ß 55-59(7)* (discussing deed of trust foreclosure proceedings)). We do not find *Horvath* helpful.

∂30 Similarly, MERS argues that lenders and their assigns are entitled to name it as their agent. *E.g.*, Resp. Br. of MERS at 29-30 (Bain). That is likely true and nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note. Washington law, and the deed of trust act itself, approves of the use

of agents. *See, e.g.*, former *RCW 61.24.031(1)(a)* (2011) ("A trustee, beneficiary, *or authorized agent* may not issue a notice of default ... until ... ." (emphasis added)). MERS notes, correctly, that we [***34] have held "an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control." *Moss v. Vadman, 77 Wn.2d 396, 402-03, 463 P.2d 159 (1970)* (citing *Matsumura v. Eilert, 74 Wn.2d 362, 444 P.2d 806 (1968))*.

[*107] ∂31 But *Moss* also observed that "[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal." *Id. at 402* (emphasis added) (citing *McCarty v. King County Med. Serv. Corp., 26 Wn.2d 660, 175 P.2d 653 (1946))*. While we have no reason to doubt that the lenders and their assigns control MERS, agency requires a specific principal that is accountable for the acts of its agent. If MERS is an agent, its principals in the two cases before us remain unidentified. [12] MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as "acting solely as a nominee for Lender and Lender's successors and assigns." Doc. 131-2, at 2 (Bain deed of trust); Doc. 9-1, at 3 (Selkowitz deed of [**46] trust.); *see, e.g.*, Resp. Br. of [***35] MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender's nomination of MERS as a nominee rises to an agency relationship with successor noteholders. [13] MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.

12 At oral argument, counsel for MERS was asked to identify its principals in the cases before us and was unable to do so. Wash. Supreme Court oral argument, *supra*, at approx. 23 min., 23 sec.

13 The record suggests, but does not establish, that MERS often acted as an agent of the loan servicer who would communicate the fact of a default and request appointment of a trustee, but is silent on whether the holder of the note would play any controlling role. Doc. 69-2, at 4-5 (describing process). For example, in Selkowitz's case, "the Appointment of Successor Trustee" was signed by Debra Lyman as assistant vice president of MERS Inc. Doc. 8-1, at 17. There was no evidence that Lyman worked for MERS, but the record suggests she is 1 of 20,000 people who have been named assistant vice president of MERS. *See* Br. of Amicus National Consumer Law Center at 9 n.18 [***36] (citing Christopher L. Peterson, *Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory, 53 WM. & MARY L. REV. 111, 118 (2011)*). Lender Processing Service Inc., which processed paperwork relating to Bain's foreclosure, seems to function as a middleman between loan servicers, MERS, and law firms that execute foreclosures. Docs. 69-1 through 69-3.

∂32 This is not the first time that a party has argued that we should give effect to its contractual modification of a statute. *See Godfrey v. Hartford Ins. Cas. Co., 142 Wn.2d 885, 16 P.3d 617 (2001)*; *see also Nat'l Union Ins. Co. of* [*108] *Pittsburgh v. Puget Sound Power & Light, 94 Wn. App. 163, 177, 972 P.2d 481 (1999)* (holding a business and a utility could not contract around statutory uniformity requirements); *State ex rel. Standard Optical Co. v. Superior Court, 17 Wn.2d 323, 329, 135 P.2d 839 (1943)* (holding that a corporation could not avoid statutory limitations on scope of practice by contract with those who could so practice); *cf. Vizcaino v. Microsoft Corp., 120 F.3d 1006, 1011-12 (9th Cir. 1997)* (noting that Microsoft's agreement with certain workers that they were not employees was not binding). In [***37] *Godfrey*, Hartford Casualty Insurance Company had attempted to pick and choose what portions of Washington's uniform arbitration act, *chapter 7.04A RCW*, it and its insured would use to settle disputes. *Godfrey, 142 Wn.2d at 889*. The court noted that parties were free to decide whether to arbitrate, and what issues to submit to arbitration, but "once an issue is submitted to arbitration ... Washington's [arbitration] Act applies." *Id. at 894*. By submitting to arbitration, "they have activated the entire chapter and the policy embodied therein, not just the parts that are useful to them." *Id. at 897*. The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. MERS did not become a beneficiary by contract or under agency principals.

C. Policy

∂33 MERS argues, strenuously, that as a matter of public policy it should be allowed to act as the beneficiary of a deed of trust because "the Legislature certainly did not intend for home loans in the State of Washington to become unsecured, or to allow defaulting [***38] home loan borrowers to avoid non-judicial foreclosure, through manipulation of the defined terms in the [deed of trust] Act." Resp. Br. of MERS at 23 (Bain). One difficulty is that it is not the plaintiffs that [*109] manipulated the terms of the act: it was whoever drafted the forms used in these cases. There are certainly significant benefits to the MERS approach but there may also be significant drawbacks. The legislature, not this court, is

in the best position to assess policy considerations. Further, although not considered in this opinion, nothing herein should be interpreted as preventing the parties to proceed with judicial foreclosures. That must await a proper case.

D. Other Courts

∂34 Unfortunately, we could find no case, and none have been drawn to our attention, that meaningfully discusses a statutory definition like that found in *RCW 61.24.005(2)*. MERS asserts that "the United States District Court for the Western District of Washington has recently issued a series of opinions [**47] on the very issues before the Court, finding in favor of MERS." Resp. Br. of MERS at 35-36 (Bain) (citing *Daddabbo v. Countrywide Home Loans, Inc., No. C09-1417RAJ, 2010 WL 2102485, 2010 U.S. Dist. LEXIS 50223 (W.D. Wash. May 20, 2010)* [***39] (unpublished); *St. John v. Nw Tr. Sevrs., Inc., No. C11-5382BHS, 2011 WL 4543658, 2011 U.S. Dist. LEXIS 111690* (W.D. Wash. Sept. 29, 2011, Dismissal Order) (unpublished); *Vawter v. Quality Loan Servicing Corp. of Wash., 707 F. Supp. 2d 1115 (W.D. Wash. 2010))*. These citations are not well taken. *Daddabbo* never mentions *RCW 61.24.005(2)*. *St. John* mentions it in passing but devotes no discussion to it. *2011 WL 4543658, at *3, 2011 U.S. Dist. LEXIS 111690, at *8-9*. *Vawter* mentions *RCW 61.24.005(2)* once, in a block quote from an unpublished case, without analysis. We do not find these cases helpful. [14]

> 14 MERS string cites eight more cases, six of them unpublished that, it contends, establishes that other courts have found that MERS can be beneficiary under a deed of trust. Resp. Br. of MERS (Selkowitz) at 29 n.98. The six unpublished cases do not meaningfully analyze our statutes. The two published cases, *Gomes v. Countrywide Home Loans, Inc., 192 Cal. App. 4th 1149, 121 Cal. Rptr. 3d 819 (2011)*, and *Pantoja v. Countrywide Home Loans, Inc., 640 F. Supp. 2d 1177 (N.D. Cal. 2009)*, are out of California, and neither have any discussion of the California statutory definition of "beneficiary." The Fourth District of the California Court of Appeals in *Gomes* does [***40] reject the plaintiff's theory that the beneficiary had to establish a right to foreclose in a nonjudicial foreclosure action, but the California courts are split. Six weeks later, the Third District found that the beneficiary was required to show it had the right to foreclose, and a simple declaration from a bank officer was insufficient. *Herrera v. Deutsche Bank Nat'l Trust Co., 196 Cal. App. 4th 1366, 1378, 127 Cal. Rptr. 3d 362 (2011)*.

[*110] ∂35 Amicus WBA draws our attention to three cases where state supreme courts have held MERS could exercise the rights of a beneficiary. Amicus Br. of WBA at 12 (Bain) (citing *Trotter v. Bank of N.Y. Mellon, No. 38022, 2012 WL 206004, 2012 Ida. LEXIS 33 (Idaho Jan. 25, 2012)* (unpublished), *withdrawn and superseded by 152 Idaho 842, 275 P.3d 857 (2012)*; *Residential Funding Co. v. Saurman, 490 Mich. 909, 805 N.W.2d 183 (2011)*; *RMS Residential Props., LLC v. Miller, 303 Conn. 224, 226, 32 A.3d 307 (2011)). But see Agard, 444 B.R. at 247* (collecting contrary cases); *Bellistri v. Ocwen Loan Servicing, LLC, 284 S.W.3d 619, 623-24 (Mo. App. 2009)* (holding MERS lacked authority to make a valid assignment of the note). But none of these cases, on either side, discuss a statutory definition [***41] of "beneficiary" that is similar to ours, and many are decided on agency grounds that are not before us. We do not find them helpful either.

∂36 We answer the first certified question "No," based on the plain language of the statute. MERS is an ineligible "'beneficiary' within the terms of the Washington Deed of Trust Act," if it never held the promissory note or other debt instrument secured by the deed of trust.

II. EFFECT

∂37 The federal court has also asked us:

> 2. If so, what is the legal effect of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

Certification at 3.

∂38 We conclude that we cannot decide this question based upon the record and briefing before us. To assist the [*111] certifying court, we will discuss our reasons for reaching this conclusion.

∂39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: "All that it would mean is that there was a technical violation of the Deed of Trust Act that all parties were aware of when the loan was originally entered into." Resp. Br. of MERS at 41 (Bain). "At most ... MERS would simply need to assign its legal interest in the Deed of Trust to the [***42] lender before the lender proceeded with foreclosure." *Id.* at 41-42. The difficulty with MERS's argument is that if in fact MERS is not the beneficiary, then the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were se-

cured by the deed of trust or that lender's successors. [15] If the original lender had sold [**48] the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. Having MERS convey its "interests" would not accomplish this.

> 15 *See* 18 STOEBUCK & WEAVER, *supra*, ß 17.3, at 260 (noting that a deed of trust "is a three-party transaction in which land is conveyed by a borrower, the 'grantor,' to a 'trustee,' who holds title in trust for a lender, the 'beneficiary,' as security for credit or a loan the lender has given the borrower"); *see also U.S. Bank NA v. Ibanez, 458 Mass. 637, 941 N.E.2d 40 (2011)* (holding bank had to establish it was the mortgage holder at the time of foreclosure in order to clear title through evidence of the chain of transactions).

∂40 In [***43] the alternative, MERS suggests that if we find a violation of the act, "MERS should be required to assign its interest in any deed of trust to the holder of the promissory note, and have that assignment recorded in the land title records, before any non-judicial foreclosure could take place." Resp. Br. of MERS at 44 (Bain). But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey. Other courts have rejected similar suggestions. *Bellistri, 284 S.W.3d at 624* (citing *George v. Surkamp, 336 Mo. 1, 9, 76 S.W.2d 368* [*112] *(1934))*. Again, the identity of the beneficiary would need to be determined. Because it is the repository of the information relating to the chain of transactions, MERS would be in the best position to prove the identity of the holder of the note and beneficiary.

∂41 Partially relying on the *Restatement (Third) of Property: Mortgages ß 5.4* (1997), Selkowitz suggests that the proper remedy for a violation of *chapter 61.24 RCW* "should be rescission, which does not excuse Mr. Selkowitz from payment of any monetary obligation, but merely precludes non-judicial foreclosure of the subject Deed of Trust. Moreover, if the subject [***44] Deed of Trust is void, Mr. Selkowitz should be entitled to quiet title to his property." Pl.'s Opening Br. at 40 (Selkowitz). It is unclear what he believes should be rescinded. He offers no authority in his opening brief for the suggestion that listing an ineligible beneficiary on a deed of trust would render the deed void and entitle the borrower to quiet title. He refers to cases where the lack of a grantee has been held to void a deed, but we do not find those cases helpful. In one of those cases, the New York court noted, "No mortgagee or obligee was named in [the security agreement], and no right to maintain an action thereon, or to enforce the same, was given therein to the plaintiff or any other person. It was, *per se*, of no more legal force than a simple piece of blank paper." *Chauncey v. Arnold, 24 N.Y. 330, 335 (1862)*. But the deeds of trust before us names all necessary parties and more.

∂42 Selkowitz argues that MERS and its allied companies have split the deed of trust from the obligation, making the deed of trust unenforceable. While that certainly *could* happen, given the record before us, we have no evidence that it did. If, for example, MERS is in fact an agent for the holder [***45] of the note, likely no split would have happened.

∂43 In the alternative, Selkowitz suggests the court create an equitable mortgage in favor of the noteholder. Pl.'s Opening Br. at 42 (Selkowitz). If in fact such a split occurred, the *Restatement* suggests that would be an appropriate [*113] resolution. *RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES ß 5.4* reporters' note at 386 (1997) (citing *Lawrence v. Knap, 1 Root (Conn.) 248 (1791)*). But since we do not know whether or not there has been a split of the obligation from the security instrument, we have no occasion to consider this remedy.

∂44 Bain specifically suggests we follow the lead of the Kansas Supreme Court in *Landmark National Bank v. Kesler, 289 Kan. 528, 216 P.3d 158 (2009)*. In *Landmark*, the homeowner, Kesler, had used the same piece of property to secure two loans, both recorded with the county. *Id.* Kesler went bankrupt and agreed to surrender the property. *Id.* One of the two lenders filed a petition to foreclose and served both Kesler and the other recorded lender, but not MERS. *Id. at 531*. The court concluded that MERS had no interest in the property and thus was not entitled to notice of the foreclosure sale or entitled to intervene in [***46] the challenge to it. *Id. at 544-45*; *accord Mortg. Elec. Registration Sys., Inc. v. Sw. Homes of Ark., 2009 Ark. 152, 301 S.W.3d 1 (2009)*. Bain suggests we follow *Landmark*, but *Landmark* has nothing to say about the effect of [**49] listing MERS as a beneficiary. We agree with MERS that it has no bearing on the case before us. Resp. Br. of MERS at 39 (Bain).

∂45 Bain also notes, albeit in the context of whether MERS could be a beneficiary without holding the promissory note, that our Court of Appeals held that "'[i]f the obligation for which the mortgage was given fails for some reason, the mortgage is unenforceable.'" Pl. Bain's Opening Br. (Bain Op. Br.) at 34 (quoting *Fid. & Deposit Co. of Md. v. Ticor Title Ins. Co., 88 Wn. App. 64, 68, 943 P.2d 710 (1997))*. She may be suggesting that the listing of an erroneous beneficiary on the deed of trust should sever the security interest from the debt. If so, the citation to *Fidelity* is not helpful. In *Fidelity*, the court was faced with what appeared to be a scam. William and Mary Etter had executed a promissory note, secured by a deed of trust, to [*114] Citizen's National Mortgage,

which sold the note to Affiliated Mortgage Company. Citizen's also *forged* [***47] the Etters' name on *another* promissory note and sold it to another buyer, along with what appeared to be an assignment of the deed of trust, who ultimately assigned it to Fidelity. The buyer of the forged note recorded its interests first, and Fidelity claimed it had priority to the Etters' mortgage payments. The Court of Appeals properly disagreed. *Fidelity, 88 Wn. App. at 66-67*. It held that forgery mattered and that Fidelity had no claim on the Etters' mortgage payments. *Id. at 67-68*. It did *not* hold that the forgery relieved the Etters of paying the mortgage to the actual holder of the promissory note.

∂46 MERS states that any violation of the deed of trust act "should not result in a void deed of trust, both legally and from a public policy standpoint." Resp. Br. of MERS at 44. While we tend to agree, resolution of the question before us depends on what actually occurred with the loans before us, and that evidence is not in the record. We note that Bain specifically acknowledges in her response brief that she "understands that she is going to have to make up the mortgage payments that have been missed," which suggests she is not seeking to clear title without first paying off the secured [***48] obligation. Pl. Bain's Reply Br. at 1. In oral argument, Bain suggested that if the holder of the note were to properly transfer the note to MERS, MERS could proceed with foreclosure. [16] This may be true. We can answer questions of law but not determine facts. We reluctantly decline to answer the second certified question on the record before us.

> 16 Wash. Supreme Court oral argument, *supra*, at approx. 8 min., 24 sec.

[*115] III. CPA ACTION

∂47 Finally, the federal court asked:

> 3. Does a homeowner possess a cause of action under Washington's Consumer Protection Act against Mortgage Electronic Registration Systems, Inc., if MERS acts as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?

Certification at 4. Bain contends that MERS violated the CPA when it acted as a beneficiary. Bain Op. Br. at 43. [17]

> 17 The trustee, Quality Loan Service Corporation of Washington Inc., has asked that we hold that no cause of action under the deed of trust act or the CPA "can be stated against a trustee that relies in good faith on MERS' apparent authority to appoint a successor trustee, as beneficiary of the deed of trust." Br. of Def. Quality Loan Service at 4 (Selkowitz). As this is far outside [***49] the scope of the certified question, we decline to consider it.

[16] ∂48 To prevail on a CPA action, the plaintiff must show "(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986)*. MERS does not dispute all the elements. Resp. Br. of MERS at 45; Resp. Br. of MERS (Selkowitz) at 37. We will consider only the ones that it does.

A. Unfair or Deceptive Act or Practice

[17-21] ∂49 As recently summarized by the Court of Appeals:

> [**50] To prove that an act or practice is deceptive, neither intent nor actual deception is required. The question is whether the conduct has "the *capacity* to deceive a substantial portion of the public." *Hangman Ridge, 105 Wn.2d at 785*. Even accurate information may be deceptive "'if there is a representation, omission or practice that is likely to mislead.'" *Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 50, 204 P.3d 885* [*116] *(2009)* (quoting *Sw. Sunsites, Inc. v. Fed. Trade Comm'n, 785 F.2d 1431, 1435 (9th Cir. 1986))*. Misrepresentation of the material terms of a transaction [***50] or the failure to disclose material terms violates the CPA. *State v. Ralph Williams' Nw. Chrysler Plymouth, Inc., 87 Wn.2d, 298, 305-09, 553 P.2d 423 (1976)*. Whether particular actions are deceptive is a question of law that we review de novo. *Leingang v. Pierce County Med. Bureau, 131 Wn.2d 133, 150, 930 P.2d 288 (1997)*.

State v. Kaiser, 161 Wn. App. 705, 719, 254 P.3d 850 (2011). MERS contends that the only way that a plaintiff can meet this first element is by showing that its conduct was deceptive and that the plaintiffs cannot show this because "MERS fully described its role to Plaintiff through the very contract document that Plaintiff signed." Resp. Br. of MERS at 46 (Selkowitz). Unfortunately, MERS does not elaborate on that statement, and

nothing on the deed of trust itself would alert a careful reader to the fact that MERS would *not* be holding the promissory note.

∂50 The attorney general of this state maintains a consumer protection division and has considerable experience and expertise in consumer protection matters. As amicus, the attorney general contends that MERS is claiming to be the beneficiary "when it knows or should know that under Washington law it must hold the note [***51] to be the beneficiary" and seems to suggest we hold that claim is per se deceptive and/or unfair. AG Br. at 14. This contention finds support in *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 170 P.3d 10 (2007)*, where we found a telephone company had committed a deceptive act as a matter of law by listing a surcharge "on a portion of the invoice that included state and federal tax charges." *Id. at 76*. We found that placement had "'the capacity to deceive a substantial portion of the public'" into believing the fee was a tax. *Id.* (emphasis omitted) (quoting *Hangman Ridge, 105 Wn.2d at 785*). Our attorney general also notes that the assignment of the deed of trust that MERS uses purports to transfer its beneficial interest on behalf of *its own* successors [*117] and assigns, not on behalf of any principal. The assignment used in Bain's case, for example, states:

> FOR VALUE RECEIVED, the undersigned, Mortgage Electronic Registration Systems, Inc. AS NOMINEE FOR ITS SUCCESSORS AND ASSIGNS, by these presents, grants, bargains, sells, assigns, transfers, and sets over unto INDYMAC FEDERAL BANK, FSB all beneficial interest under that certain Deed of Trust dated 3/9/2007. [***52]

Doc. 1, Ex. A to Huelsman Decl. This undermines MERS's contention that it acts only as an agent for a lender/principal and its successors and it "conceals the identity of whichever loan holder MERS purports to be acting for when assigning the deed of trust." AG Br. at 14. The attorney general identifies other places where MERS purports to be acting as the agent for its own successors, not for some principal. *Id.* at 15 (citing Doc. 1, Ex. B). Many other courts have found it deceptive to claim authority when no authority existed and to conceal the true party in a transaction. *Stephens v. Omni Ins. Co., 138 Wn. App. 151, 159 P.3d 10 (2007)*; *Floersheim v. Fed. Trade Comm'n, 411 F.2d 874, 876-77 (9th Cir. 1969)*. In *Stephens*, an insurance company that had paid under an uninsured motorist policy hired a collections agency to seek reimbursement from the other parties in a covered accident. *Stephens, 138 Wn. App. at 161*. The collection agency sent out aggressive notices that listed an "amount due" and appeared to be collection notices for debt due, though a careful scrutiny would have revealed that they were effectively making subrogation claims. *Id. at 166-68*. The court found that "characterizing [***53] an unliquidated [tort] claim as an 'amount due' has the capacity to deceive." *Id. at 168*.

[**51] ∂51 While we are unwilling to say it is per se deceptive, we agree that characterizing MERS as the beneficiary has the capacity to deceive and thus, for the purposes of answering the certified question, presumptively the first element is met.

[*118] B. Public Interest Impact

[22] ∂52 MERS contends that plaintiffs cannot show a public interest impact because, it contends, each plaintiff is challenging "MERS's role as the beneficiary under Plaintiff's Deed of Trust in the context of the foreclosure proceedings on Plaintiff's property." Resp. Br. of MERS at 40 (Selkowitz) (emphasis omitted). But there is considerable evidence that MERS is involved with an enormous number of mortgages in the country (and our state), perhaps as many as half nationwide. John R. Hooge & Laurie Williams, *Mortgage Electronic Registration Systems, Inc.: A Survey of Cases Discussing MERS' Authority to Act*, NORTON BANKR. L. ADVISORY No. 8, at 21 (Aug. 2010). If in fact the language is unfair or deceptive, it would have a broad impact. This element is also presumptively met.

C. Injury

∂53 MERS contends that the plaintiffs can show no injury caused by [***54] its acts because whether or not the noteholder is known to the borrower, the loan servicer is and, it suggests, that is all the homeowner needs to know. Resp. Br. of MERS at 48-49 (Bain); Resp. Br. of MERS at 41 (Selkowitz). But there are many different scenarios, such as when homeowners need to deal with the holder of the note to resolve disputes or to take advantage of legal protections, where the homeowner does need to know more and can be injured by ignorance. Further, if there have been misrepresentations, fraud, or irregularities in the proceedings, and if the homeowner-borrower cannot locate the party accountable and with authority to correct the irregularity, there certainly could be injury under the CPA. [18]

> 18 Also, while not at issue in these cases, MERS's officers often issue assignments without verifying the underlying information, which has resulted in incorrect or fraudulent transfers. *See Zacks, supra, at 580 & n. 163* (citing Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing: Hearing Be-

fore Subcomm. on H. and Cmty. Opportunity H. Fin. Servs. Comm., 111th Cong. 105 (2010) (statement of R.K. Arnold, President and CEO of MERSCORP Inc.)). Actions [***55] like those could well be the basis of a meritorious CPA claim.

[*119] **[23]** ∂54 Given the procedural posture of these cases, it is unclear whether the plaintiffs can show any injury, and a categorical statement one way or another seems inappropriate. Depending on the facts of a particular case, a borrower may or may not be injured by the disposition of the note, the servicing contract, or many other things, and MERS may or may not have a causal role. For example, in *Bradford v. HSBC Mortgage Corp., 799 F. Supp. 2d 625 (E.D. Va. 2011)*, three different companies attempted to foreclose on Bradford's property after he attempted to rescind a mortgage under the federal Truth in Lending Act. All three companies claimed to hold the promissory note. Observing that "[i]f a defendant transferred the Note, or did not yet have possession or ownership of the Note at the time, but nevertheless engaged in foreclosure efforts, that conduct could amount to an [Fair Debt Collection Practices Act, *15 U.S.C. ß 1692k*] violation," the court allowed Bradford's claim to proceed. *799 F. Supp. 2d at 634-35*. As amicus notes, "MERS' concealment of loan transfers also could also deprive homeowners of other rights," such as [***56] the ability to take advantage of the protections of the Truth in Lending Act and other actions that require the homeowner to sue or negotiate with the actual holder of the promissory note. AG Br. at 11 (citing *15 U.S.C. ß 1635(f)*; *Miguel v. Country Funding Corp., 309 F.3d 1161, 1162-65 (9th Cir. 2002))*. Further, while many defenses would *not* run against a holder in due course, they could against a holder who was not in due course. AG Br. at 11-12 (citing *RCW 62A.3-302, .3-305*).

∂55 If the first word in the third question was "may" instead of "does," our answer would be "yes." Instead, we answer the question with a qualified "yes," depending on whether the homeowner can produce evidence on each element required to prove a CPA claim. The fact that MERS claims to [**52] be a beneficiary, when under a plain reading of the [*120] statute it was not, presumptively meets the deception element of a CPA action.

CONCLUSION

∂56 Under the deed of trust act, the beneficiary must hold the promissory note and we answer the first certified question "no." We decline to resolve the second question. We answer the third question with a qualified "yes;" a CPA action may be maintainable, but the mere fact MERS is listed on the deed [***57] of trust as a beneficiary is not itself an actionable injury.

MADSEN, C.J., and C. JOHNSON, OWENS, FAIRHURST, J.M. JOHNSON, STEPHENS, WIGGINS, and GONZ·LEZ, JJ., concur.

Annotated Revised Code of Washington by LexisNexis

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE

UNITED STATES OF AMERICA	:	
	:	
v.	:	CASE NO. 3:12- Cr-198-J-2S
	:	
LORRAINE BROWN	:	

AMENDED AFFIDAVIT AND REQUEST FOR RESTITUTION

I, John L. O'Brien, being sworn, depose and say:

1. I am of legal age and a citizen of the United States.

2. Since 1977, I have been the duly elected Register of Deeds for the Commonwealth of Massachusetts Southern Essex District Registry of Deeds, Salem, Massachusetts, www.salemdeeds.com.

3. The Southern Essex District Registry of Deeds (hereinafter, Southern Essex Registry) was established pursuant to Massachusetts General Laws, Chapter 36, Section 1.

4. The Southern Essex Registry records documents concerning title to all real property located in the Southern Essex District of Essex County, Massachusetts. This includes the municipalities of Amesbury, Beverly (Beverly Farms, Prides Crossing), Boxford, Danvers, Essex, Georgetown, Gloucester (Magnolia), Groveland, Hamilton, Haverhill (Bradford), Ipswich, Lynn, Lynnfield, Manchester-By-The-Sea, Marblehead, Merrimac, Middleton, Nahant, Newbury (Byfield), Newburyport (Plum Island), Peabody, Rockport, Rowley, Salem, Salisbury, Saugus, Swampscott, Topsfield, Wenham, and West Newbury.

5. Any Register of Deeds has a fiduciary duty to the residents of the jurisdiction that the Registry serves, as well as to members of the public at large. All of these rely and should be able to rely on the Register's efforts, supervision, and oversight in assuring, maintaining, and promoting the integrity, transparency, accuracy, and consistency of a Registry's land records.

6. In the Commonwealth of Massachusetts, furthermore, Registers of Deeds are elected officials. So Massachusetts Registers of Deeds also have the public responsibility of protecting the integrity of the documents evidencing title to their constituents' homes.

7. I am filing this *Affidavit and Request for Restitution ("Affidavit")* in order to carry out my fiduciary duty as Register of Deeds and my responsibility to my constituents.

8. On or about November 13, 2012, Defendant Brown pleaded guilty to one count of Conspiracy to Commit Mail and Wire Fraud in violation of 18 U.S.C. §371 (*"Plea Agreement"*). This count is Count One of the *Information* in the case captioned above (*"Information"*).

9. Count One of the *Information* charges that Defendant Brown was the founder of a firm named DocX LLC (hereinafter "DocX"). In or about mid-2008, DocX became a subsidiary of LPS Document Solutions (hereinafter, "LPS"). Defendant Brown became President and Senior Managing Director of LPS. This *Affidavit* refers to the two firms as "DocX/LPS."

10. Count One further charges that services provided by DocX /LPS for Residential Mortgage Servicers included assistance in creating and executing mortgage-related documents. DocX/LPS then filed these documents throughout the United States with such local Registries of Deeds as the Southern Essex Registry.

11. Count One in addition charges that, beginning in or about 2005, employees of DocX, at the direction of Defendant Brown and others, began executing a scheme and artifice to defraud by directing DocX/LPS employees to forge and falsify signatures on documents, primarily related to residential mortgages, which Defendant Brown and others had been hired to file with Registries of Deeds nationwide.

12. The mortgage-related documents on which DocX/LPS employees forged or falsified such signatures included purported *Assignments of Mortgages*, which purportedly transferred the ownership interest in mortgage-backed notes; purported *Lien Releases*, which purportedly evidenced payment in full of mortgage-backed notes; and *Affidavits* concerning lost notes and lost assignments. *Information,* para. 4.

13. Massachusetts law classifies the crime of forgery as a felony. The felony of forgery carries a maximum sentence of 10 years imprisonment. Massachusetts General Laws, Chapter 267, Section 1.

14. Massachusetts law also classifies the separate crime of uttering a forgery, e.g., by filing a forgery with a Registry of Deeds, as a felony. The felony of uttering a forgery also carries a maximum sentence of 10 years' imprisonment. Massachusetts General Laws, Chapter 267, Section 5.

15. The Southern Essex Registry is one of the Registries of Deeds with which DocX/LPS filed forged or falsified mortgage-related documents. The Southern Essex Registry has so far identified 10,567 mortgage-related documents filed with it by DocX/LPS.

16. *Exhibit A* to this *Affidavit,* for illustration, is a copy of a *Mortgage Release, Satisfaction, and Discharge*, dated 12/30/2004; purportedly signed by "Linda Green, Vice President, Loan Documentation" and by "Jessica Leete, Vice President, Loan Documentation;" bearing the legend, "When recorded return to: DOCX, LLC, 1211 ALDERMAN DR., SUITE 350, ALPHARETTA, GA 30005;" and recorded by the Southern Essex Registry

on 01/05/2005. This is within the period from on or about 2005 to on or about October 2009 to which Defendant Brown pleaded guilty.

17. In *Exhibit A*, furthermore, "Linda Green" and "Jessica Leete" are both on McDonnell Property Analytics' 06/12/2012 list of known "Robo-sign" names verified by Certified Fraud Examiner Marie McDonnell and appearing at: http://www.salemdeeds.com/robosite/pdf/robosigners.pdf.

18. Ms. McDonnell is an expert Mortgage Fraud and Forensic Analyst with a quarter-century of experience in transactional analysis, mortgage auditing, and mortgage fraud examination. She is President of McDonnell Property Analytics. For Ms. McDonnell's expert qualifications, *see* the *Affidavit of Marie McDonnell ("McDonnell Affidavit"),* also filed in the above-captioned case, Paras. 1 - 10.

19. *Exhibit B* to this *Affidavit*, for illustration, is a copy of an *Assignment of Mortgage*, dated 01/03/2008; purportedly signed by "Pat Kingston, Vice President," and by "Witness: Korell Harp;" bearing the legend "When recorded return to: DOCX, LLC, 1211 ALDERMAN DR., SUITE 350, ALPHARETTA, GA 30005;" and recorded by the Southern Essex Registry on 01/11/2008. This is within the period from on or about 2005 to on or about October 2009 to which Defendant Brown pleaded guilty.

20. In *Exhibit B*, furthermore, "Pat Kingston" and "Korell Harp" are both on McDonnell Property Analytics' 06/12/2012 list of known "Robo-sign" names verified by Certified Fraud Examiner Marie McDonnell and appearing at: http://www.salemdeeds.com/robosite/pdf/robosigners.pdf.

21. *Exhibit C* to this *Affidavit* is a DVD containing digitized copies of all 10,567 documents identified so far as having been prepared by DocX/LPS and filed, either directly or via U.S. Postal Service, a private or commercial interstate carrier, or electronically, with the Southern Essex Registry. These documents recite, on their face, their connection with DocX/LPS.

22. Defendant Brown pleaded guilty to a scheme or artifice to defraud extending from "From in or about 2005 through in or about October 2009 . . . " *Information,* Para. 7. The 10,567 DocX/LPS documents filed with the Southern Essex District date nonetheless from in or about 1998 to in or about 2011. This is both before and after the time period of the scheme or artifice to defraud to which Defendant Brown pleaded guilty.

23. Certified Fraud Examiner Marie McDonnell has studied a sample of the DocX/LPS documents filed with the Southern Essex Registry outside of the time period to which Defendant Brown pleaded.

24. The *"McDonnell Affidavit"* sets forth Ms. McDonnell's expert determination that these additional DocX/LPS documents exhibit the same invalidities due to forgery and falsification as the DocX/LPS documents recorded in the Southern Essex Registry from in or about 2005 through in or about October 2009, the period of the scheme or artifice to

defraud to which Defendant Brown pleaded guilty. *McDonnell Affidavit,* Section, *Lorraine Brown, DocX LLC and LPS.*

25. All of the DocX/LPS documents recorded in the Southern Essex Registry from in or about 1998 to in or about 2011 accordingly either corrupt, or call seriously into question, the integrity, transparency, accuracy, and consistency of the Southern Essex Registry's land records on which families, lenders, and title companies rely now, and will rely for decades to come, to determine whether sellers have, and purchasers can take, clear title to family homes. The Southern Essex Registry is therefore a victim of the scheme and artifice of Defendant Brown and others to defraud.

26. A forensic audit in 2011 of 565 *Assignments of Mortgage* that the Southern Essex District recorded in the year 2010 indicates that such corruption must necessarily extend well beyond the 10,567 admittedly or presumably false or fraudulent DocX/LPS documents that are at present recorded in the Southern Essex District.

27. In January of 2011, in my capacity as Southern Essex Register of Deeds, I commissioned credentialed Certified Fraud Examiner Marie McDonnell to conduct an audit testing the integrity of the land recordation documents on file with the Southern Essex District.

28. The Attorney General's Office of the Oregon Department of Justice (Oregon DOJ) has also recognized Ms. McDonnell's expert qualifications. For testimony prepared for the Oregon Attorney General before the House Interim Committee on General Government & Consumer Protection, November 19, 2011, the Oregon DOJ staff used a list of names used in "Robo-signing," developed and verified by McDonnell Property Analytics, Ms. McDonnell's research and litigation support firm. The Oregon DOJ staff's review, using this list, of roughly 400 mortgage deed assignments and foreclosure notices filed since 2008 in Deschutes County, Oregon, confirmed that at least 24 of the 85 individual names on the McDonnell Property Analytics list as of that time of names used in "Robo-signing" appeared on signature lines of documents filed with Deschutes County.

29. I requested Ms. McDonnell's audit due to my concern about representations by Mortgage Electronic Registration Systems, Inc. ("MERS") that, if its member banks recorded their *Assignments of Mortgage* and other mortgage-related documents with MERS, rather than with such local, public Registries of Deeds as the Southern Essex Registry, they could avoid the local Registries' per-document recordation fees.

30. I was furthermore concerned about how the so-called "Robo-signing" or forgery scandal, featured in a 60 Minutes exposé on the subject that included "Robo-sign" name "Linda Green," might affect the real property records on file with the Southern Essex District.

31. A true and correct copy of Ms. McDonnell's resulting Report, entitled *Forensic Examination Of Assignments Of Mortgage Recorded During 2010 In The Southern Essex District Registry Of Deeds,* is available on the Southern Essex Registry's web site at http://www.salemdeeds.com/pdf/Audit.pdf

32. Ms. McDonnell accepted this engagement on a pro bono basis because of a) its high and urgent

value to the public trust; b) to educate the 50 state Attorneys General, who were then attempting to resolve fraudulent foreclosure practices via a settlement with large banks; and c) to give consumers some guidelines for researching the Public Records to detect both invalid documents in the Public Records, and gaps in chain of title that needed to be addressed. Ms. McDonnell also wanted to prove the concept that Registries of Deeds across all counties and jurisdictions in the United States must have their records audited similarly to ensure the integrity of all title-ownership-related transactions filed on their respective Public Records.

33. This audit's scope was: Every *Assignment of Mortgage* during the year 2010 that the Southern Essex Registry's automated Grantor/Grantee index showed was recorded either to, or from, three of the nation's largest banks: JPMorgan Chase Bank, N.A. (147 *Assignments*); Wells Fargo Bank, N.A. (278 *Assignments*); and Bank of America, N.A. (140 *Assignments*).

34. Ms. McDonnell accordingly examined a total of 565 *Assignments of Mortgage*. This required inspecting approximately ~~2,~~000 3,000 documents to analyze 473 unique mortgages.

35. Ms. McDonnell's results, conclusions, and findings include the following:

    a. She could trace current ownership for only 287 of 473 mortgages (60%).
    b. 46% and 47% of mortgages were either registered privately with MERS or were owned by the Government Sponsored Enterprises (i.e., Fannie Mae, Freddie Mac, Ginnie Mae), respectively. Typically, ownership of these mortgages is highly obscure.
    c. 37% of mortgages were securitized into public trusts (as opposed to private trusts), which are typically more discoverable through use of forensic tools and high cost, subscription-based databases.
    d. Only 16% of all *Assignments* examined were valid.
    e. 75% of all *Assignments* examined were invalid; an additional 8.7% were questionable (required additional data).
    f. 27% of the invalid *Assignments* were fraudulent; 35% were "Robo-signed," that is, forged; and 10% violated the Massachusetts Mortgage Fraud Statute of 2010.
    g. 683 *Assignments* were missing.

36. Ms. McDonnell's forensic audit of the 565 *Assignments of Mortgage* filed in the Southern Essex Registry in the year 2010 by JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and Bank of America, N.A. thus demonstrated that corruption to the Southern Essex Registry's land recordation system reaches far beyond the specific records initially identified for audit.

37. It is accordingly clear that the 10,567 identified DocX/LPS documents must also have corrupted additional Southern Essex Registry records to a material extent.

38. False or fraudulent DocX/LPS documents are null, void, and of no legal effect. Each such false or fraudulent document consequently clouds the validity of every subsequent real property transaction that relies on it for a valid chain of title to the home that it concerns.

Each such false or fraudulent DocX/LPS document thus affects the validity of all subsequent transactions concerning the real property in question, as well the validity of the documents evidencing these transactions. This is so even though a bank, company, or firm other than DocX/LPS may have created these additional documents and recorded them in the South Essex Registry.

39. Only a forensic audit of all 10,567 identified DocX/LPS documents filed with the Southern Essex District can determine the actual extent of this corruption, and therefore identify the full extent of the corrective documentation needed to repair it.

40. In order to restore the integrity of the land title documents in the Southern Essex Registry, however, it is essential to ascertain as specifically as possible the scope of the damage that "Robo-signed" documents have done. I have therefore asked Ms. McDonnell to design an audit of a sample of the approximately 5,963 DocX/LPS documents recorded by the Southern Essex Registry during the time period that Defendant Brown's guilt plea covers. The purpose of such an audit is in order to ascertain, to the maximum degree possible, the full extent of the necessary repair. This would yield statistics on the types and numbers of additional documents ordinarily necessary to repair gaps in the chain of title. I therefore asked her to sample 1,000 DocX/LPS documents, in the approximate ratio of the most common documents, *Discharges of Mortgage* (approximately 80% - 85%) to *Assignments of* Mortgage (15% - 20%), in the universe of 5,693 DocX/LPS documents filed during the period of the scheme or artifice to defraud to which Defendant Brown pleaded guilty. A forensic audit on these lines would reveal the scope of subsequent damage to the various chains of title of which each of these 1,000 documents forms a part.

41. The Southern Essex Registry will then seek proposals for conducting such a forensic audit.

42. Such an audit would provide a reliable determination, to a high degree of probability, of the scope of the remedial documentation that will need to be prepared and recorded to restore the integrity of land title documentation both in the Southern Essex Registry, as well as in Registries of Deeds nationwide in which fraudulent DocX/LPS documents have been recorded. It is worthy of note that Homeowners may be current on their mortgage payments, yet be unaware of gaps in their chain of title due to "Robo-signing," the use of MERS for recording *Assignments of Mortgage*, or related reasons.

43. Ms. McDonnell's methodology and her expert estimate of the cost for such a forensic audit of 1,000 DocX/LPS documents filed with the Southern Essex District are set forth in the *McDonnell Affidavit,* Section, *Restitution Calculus*.

44. As the Southern Essex District Register of Deeds since 1977, I am thoroughly familiar with the Registry's practices for document recordation, organization, and retrieval. I have instituted numerous initiatives to automate its document systems, making a variety of real property records available online to homeowners, title insurers, the public, and historians.

45. I have reviewed Ms. McDonnell's proposed methodology for the forensic audit of a 1,000-document sample taken from the 5,963 identified DocX/LPS documents recorded in the Southern Essex Registry from in or about 2005 through in or about October 2009, the period of the scheme or artifice to defraud to which Defendant Brown pleaded guilty. I find it well calculated to determine the extent to which these forged, false, and fraudulent documents have corrupted Southern Essex Registry land title records even beyond the corruption inherent in the forged documents themselves, and the extent of the corrective documentation that will be necessary.

46. Pursuant to 18 U.S.C. §§ 3663A(a) and (b), in her *Plea Agreement*, Paragraph A5, Defendant Brown agreed "to make full restitution to any victims of the offense, as determined by the Court at sentencing."

47. As detailed above, the Southern Essex Registry is a victim of Defendant Brown's scheme and artifice to fraud.

48. As one step in repairing the integrity of its Land Recordation System, the Southern Essex Registry will have to record additional new, corrective documents for the 10,567 identified DocX/LPS documents. Defendant Brown should therefore pay the recording fee for each additional, corrective document. Accordingly, given my fiduciary duty as Southern Essex Register of Deeds, I hereby request restitution for the recordation of additional documents to correct the 10,567 admittedly and presumably false, fraudulent, null and void documents created by DocX/LPS and filed by it with the Southern Essex Registry, at the rate of seventy-five dollars ($75.00) for each such document, in the amount of seven hundred ninety-two thousand, one hundred twenty-five dollars **($792,125).**

49. As part of repairing the chain of title to the Southern Essex District homes affected by the forged, false, and fraudulent documents that DocX/LPS filed with the Southern Essex Registry, each bank, lender, or other entity that had DocX/LPS create and file such documents is responsible for creating and filing a new, valid document that corrects each of the forged, false, or fraudulent DocX/LPS documents pertaining to that bank, lender, or other entity.

50. Seventy-five dollars ($75.00) per document is the standard fee for recording a document in a Registry of Deeds in the Commonwealth of Massachusetts.

51. Furthermore, given Ms. McDonnell's outstanding qualifications as a Certified Fraud Examiner with a specialty in Mortgage Fraud and Forensic Analysis, plus her experience in auditing land records that are in my care, custody, and control, I hereby accept Ms McDonnell's expert cost determination of 1,000 x three hundred seventy five dollars **($375)** per document, or **$375,000**, plus one hundred seventeen thousand fifteen dollars **($117,015)**, for fixed audit-related costs that are fully documented in the *McDonnell Affidavit*. Ms McDonnell avers that these are required for a *Forensic Audit* on the lines indicated above. Accordingly I request, in addition, restitution in the amount of four hundred ninety two thousand fifteen dollars **($492,015)** for this forensic audit. *McDonnell*

Affidavit, Section, *Restitution Calculus*.

52. I aver that ~~restitution to~~ the Southern Essex Registry will use any restitution that this Court may order ~~will be used~~ for the purposes set forth both in this *Affidavit* and in the *McDonnell Affidavit*.

53. I accordingly ask this Court to order Defendant Brown to pay restitution to the Southern Essex Registry in the amount of:

$75.00 per DocX/LPS document recordation fee x 10,567 =	$ **792,375.**
$375.00 per DocX/LPS document audit cost x 1,000 =	$ **375,000.**
$117,015 for fixed audit-related costs =	$ **117,015**

TOTAL Restitution to the victim Southern Essex Registry: **$1,284,390**

Subscribed and signed voluntarily, under penalty of perjury, pursuant to the provisions of 18 U.S.C. § 1621.

John L. O'Brien
Register of Deeds
Southern Essex Registry of Deeds
Shetland Park
45 Congress Street, Suite 4100
Salem, MA 01970

Subscribed and sworn to before me this 14th day of January, 2013.

Teresa A Simpson
Notary Public

My commission expires: May 26, 2017

TERESA A. SIMPSON NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS MY COMM. EXPIRES MAY 26, 2017