

**G. TOMMY BASTIAN  
BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L.L.P.  
1500 SURVEYOR, SUITE 100  
ADDISON, TEXAS 75001  
(972) 386-5040 Telephone  
(972) 341-0734 Telecopier  
tommy@bbwcdf.com**

G. Tommy Bastian is a partner in the law firm of Barrett Burke Wilson Castle Daffin & Frappier, L.L.P. and is Board Certified in Residential Real Estate Law by the Texas Board of Legal Specialization. Mr. Bastian's practice is limited to mortgage banking matters, including title, real estate, regulatory, probate litigation and class actions issues. In addition, he is Texas counsel for MERS, i.e., MERSCORP, Inc. and Mortgagor Electronic Registration System, Inc.

Mr. Bastian was born in San Saba, Texas. He received his Bachelor of Arts degree in 1969 from Howard Payne University and his law degree from Texas Tech Law School in 1974. He is also a graduate of the U.S. Army Command and General Staff College and the U.S. National Defense Security University. As a Army Reserve officer, Mr. Bastian served on the staff of the Commanding General of the United States Army Reserves in the Pentagon.

Mr. Bastian is licensed to practice before the United States Supreme Court; the United States Tax Court; U.S. Circuit Court of Appeal for the Fifth, Ninth, and Tenth Circuits; the U.S. District Court for the Northern, Eastern and Southern District of Texas and the Texas Supreme Court.

He has been a regular continuing legal education (CLE) seminar speaker for the the University of Texas School of Law, St. Mary's Law School, South Texas School of Law, Texas Mortgage Bankers Association, Texas Independent Bankers Association, Texas Land Title Institute and a guest lecturer at numerous other mortgage lending seminars. He also serves as an instructor for Fidelity National Title Insurance Company and Alamo Title. In addition, he is a regular speaker at the annual Texas County and District Court Clerks seminar sponsored by the V. G. Young Institute of County Government through the Texas A & M Extension Service.

Mr. Bastian has had numerous legal articles published which include *Probate When the Mortgagor is Deceased*, *Residential Foreclosure in Texas*, *The Fair Debt Collection Practices Act*, *Texas Home Equity Loan Foreclosures*, *Republic of Texas: Code Name For Paper Terrorism*, *When Home Equity Loans Go Bad*, *10 Ways to Avoid a Wrongful Foreclosure* and *Non Traditional Probate Procedures*. He also authored the Texas law section for the NATIONAL MORTGAGE SERVICES REFERENCE DIRECTORY published by the USFN; is the contributing editor for servicing related chapters of the TEXAS MORTGAGE LENDING LAW & PRACTICES DESKBOOK published by the Texas Mortgage Banking Association; and a contributing editor to the MORTGAGE LENDER'S GUIDE TO MITIGATING LOSS published by the Mortgage Bankers Association.

Mr. Bastian was the scrivener of Texas Rule of Civil Procedure 735 and 736, i.e. the home equity and reverse mortgage foreclosure rule for the Task Force appointed by the Texas Supreme Court as well as Texas Property Code §51.007.

H:\GTB\RESUME\AUG-2001.DOC:H:\GTB\RESUME\AUG-2001.DOC



**MERS: WHAT IS IT  
AND  
WHAT IS ITS IMPACT  
ON  
FORECLOSURE**

The 12<sup>th</sup> Annual  
Robert C. Sneed

**TEXAS LAND TITLE INSTITUTE**

**Dec. 6, 2002  
Hyatt Regency Hill Country Resort  
San Antonio, Texas**

**G.TOMMY BASTIAN**

**BARRETT BURKE WILSON CASTLE DAFFIN  
& FRAPPIER, L.L.P.**

15000 Surveyor Boulevard, Suite 100  
Addison, Texas 75001  
Phone: (972) 341-0539  
Fax: (972) 341-0734  
E-Mail: [tommyb@bbwcdf.com](mailto:tommyb@bbwcdf.com)

## Table of Contents

I. INTRODUCTION.....	1
II. MERS BEGINNINGS .....	2
III. MERS MISSION.....	3
IV. MERS OPERATION PRINCIPLES .....	4
A. Membership.....	4
B. Registering Loans on MERS® System .....	5
C. Certifying Officers .....	6
D. Mortgage Identification Number (MIN).....	7
E. MERS® OnLine.....	7
F. Security .....	8
G. Assumption of a Mortgage .....	8
H. MERS as Original Mortgagee (“MOM”) .....	8
I. MERS as Assignee.....	9
V. MERS INFRASTRUCTURE.....	10
A. Mail Center .....	10
B. Customer Service .....	10
VI. FORECLOSURE .....	11
A. Background .....	11
B. MERS Recommended Texas Foreclosure Procedure.....	12
VII. HELPFUL NUGGETS .....	13
VIII. APPENDIX: Exhibits .....	14
Deed of Trust with MERS Reference Comments .....	15
Assignment with MERS Reference Comments.....	16
MERS Training Bulletin <i>re</i> Certifying Officers.....	17
MERS Lite Tool Kit.....	18
Texas MERS Deeds of Trust and Assignment .....	19
MERS Lawsuit and Attorney General Opinion.....	20
MERS Website and Member Search .....	21
MERS “Forum” Example .....	22
Texas Non-judicial MERS Foreclosure Forms .....	23
Texas Home Equity MERS Foreclosure Forms.....	24

# MERS: WHAT IS IT AND WHAT IS ITS IMPACT ON FORECLOSURE

## I. INTRODUCTION

In the early 1970s, Wall Street was booming but its backrooms were swamped trying to transfer stock and bond certificates between buyers and sellers. This servicing crisis forced Wall Street to action as lost stock certificates mounted, settlement dates were delayed, and customer frustration reached alarming levels. After several failed attempts to automate the paper flow, Wall Street came up with the idea of trading securities by computerized book entries that would eliminate the need to physically trade stock and bond certificates. It worked. Today, a paper stock or bond certificate is obsolete.

Thirty years later, after drowning in its own paperwork crisis, the mortgage banking industry has its own book entry system for trading mortgages rights, commonly known as MERS.

The official name of this mortgage registration system is "MERS® System" which is controlled under the corporate umbrella of MERSCORP, Inc. MERS® System does not purchase or sell mortgages, but simply tracks electronically the ownership and servicing rights of mortgages held by MERS' members. The MERS membership includes 28 of the 30 largest mortgage banking organizations; Fannie Mae, Freddie Mac, VA, and HUD; the American Land Title Association, PMI, and Merrill Lynch.

To facilitate the mortgage registration process on MERS® System, MERSCORP, Inc. resurrected the name Mortgage Electronic Registration Systems, Inc. ("MERS") from its corporate past. MERS is a bankruptcy remote corporate subsidiary that serves as the deed of trust beneficiary and mortgagee of record for each security instrument or assignment evidencing a loan that is registered on MERS® System.

MERS remains the mortgagee of record for the life of the loan, or as long as the loan is registered with MERS. Regardless of the number of times a mortgage is transferred, no assignment is required because the beneficial

ownership or servicing rights of the mortgage is bought, sold, or traded electronically. Clearly, mortgages have become securities just like stock, bonds, and commodities.

With the click of a mouse on the Internet or a phone call to the MERS Customer Service Center, the servicer for any mortgage registered on MERS can be determined along with the servicer's name, address, phone number, and MERS contact. Consequently, an escrow officer or loan closer can get payoff quotes and lien release information without the usual hassle of identifying and contacting the servicer of a loan.

As the mortgagee of record, all foreclosures are done in the name of MERS. To date, 10,750 judicial and non-judicial MERS foreclosures have been completed, and 44,700 MERS foreclosures are in progress.

In the bankruptcy context, MERS, as the mortgagee of record, holds an *in rem* security interest in the property. Therefore, a proof of claim can be filed jointly in the name of MERS and the lender. In addition, MERS, as a real party in interest, has standing to seek relief from the automatic stay.

Stewart, Chicago, and First American Title have modified their underwriting requirements so that a MERS loan can be insured in the name of the lender and MERS, as an additional insured, without an additional fee.

To date, 450 MERS members have registered approximately 10,500,000 loans on MERS® System. An average of 15,000 loans are being registered each day, and the volume will only increase as the mortgage banking community learns about and understands MERS.

## II. MERS BEGINNINGS

In 1991, the Mortgage Bankers Association, Fannie Mae, Freddie Mac, Ginnie Mae, FHA, HUD, VA, and several large mortgage-banking companies formed a task force to consider a mortgage registration system similar to Wall Street's Depository Trust Company and its subsidiary, the National Securities Clearing Corporation. In 1993, the Task Force published the "Whole Loan Book Entry White Paper" which concluded that costs and paperwork would be significantly reduced if the mortgage banking industry adopted an electronic book entry system.

Two years later, Mortgage Electronic Registration Systems, Inc. ("MERS") was incorporated as a member-owned, non-stock, Delaware Corporation with the business purpose of electronically tracking ownership and servicing rights of mortgages. EDS was chosen as MERS'

technology partner to design and build the registration system and, in 1997, the first MERS loan was registered.

In 1998, Mortgage Electronic Registration Systems, Inc. was converted to MERSCORP, Inc., a privately held stock corporation, owned by 30 of the mortgage banking industry's major players. Since the VA and HUD could not be stockowners, the current ownership of MERSCORP, Inc. is divided into three classes of stock. The "Class A" stockholders include Fannie Mae, Freddie Mac, and the MBA. The "Class B" stock is owned by 20 mortgage companies, both large and small; and industry-related companies, including title and mortgage insurance organizations, control the "Class C" stock.

### III. MERS MISSION

When the first loan was registered on MERS® System, Paul Mullins, the CEO at the time said,

*"MERS represents the culmination of a dream that those of us in the mortgage industry have long had, and that is to transform our business through the cooperative application of advanced business processes and technologies."*

With a certain amount of bravado, but without apology, MERS' literature proudly proclaims that its mission is to:

*"Register every mortgage loan in the United States on the MERS® System."*

According to MERS, the mortgage banking industry will save over \$200 million annually using MERS® System. This saving is accomplished by replacing the current manual, error-prone lien assignment process with electronic speed and accuracy. The annual savings are based on the following:

- (1) By electronically registering the various "bundle of rights" connected with a mortgage, lenders and servicers can reduce loan level costs by an average of \$25.00 per loan by eliminating the need to record assignments;
- (2) By joining MERS, buyers and sellers of servicing rights can reduce the per-loan transfer costs by at least \$25.00; and
- (3) By registering loans on MERS® System, lenders and servicers can reduce lien release costs by an average of \$7.50 per lien.

#### IV. MERS OPERATION PRINCIPLES

##### A. Membership

MERSCORP, Inc. makes MERS® System available to any member ("Member") of MERS. A Member is any organization or natural person who signs a MERS Membership Agreement. To be approved for membership, the applicant must meet certain financial, operational, and character standards to include:

- (1) The applicant must demonstrate it has sufficient computer trained staff to accurately and timely register loans on MERS;
- (2) The applicant, or any person associated with the applicant, cannot be responsible for fraud, a breach of fiduciary duty, or made misstatement of material facts to MERS.

A Member can be removed from MERS for any misdemeanor or felony involving the purchase, sale, funding, or servicing of a mortgage loan. In addition, a Member can withdraw from MERS by giving 90-days written notice to the President or Secretary of MERSCORP, Inc.

If a Member sells, transfers, or substantially disposes of all of its assets to an entity that is not a member of MERS, the Member is considered to have withdrawn from membership, unless the acquiring entity signs a Membership Agreement with MERS.

If a Member merges with a non-Member of MERS, the Member Agreement remains in full force and effect as to the acquiring non-Member entity, unless the surviving non-Member elects to withdraw from membership.

Each Member must designate one individual within its organization to act as the contact person for all MERS-related issues, and each Member is responsible for updating MERS® System if the contact person changes.

Primary and Associate membership in MERS is generally based on lines of business:

- (1) Primary Members are generally original note holders, servicers, subservicers, investors, custodians, or interim funders. Primary Members can make loan level changes to the MERS® System database.
- (2) Associate Members are collateral agents, FHLB/FRB, government housing agencies, master servicers, mortgage insurance companies, trustees, warehouse/gestation lenders, alternative custodians, or



participation investors. Associate Members have only inquiry access to MERS® System loan level database.

However, MERS, in its sole discretion, determines the type of transactions and level of access permitted to a Member on MERS® System.

#### **B. Registering Loans on MERS® System**

A loan is registered on MERS® System after being closed as a MERS as Original Mortgagee (“MOM”) loan, or, a conventional loan is purchased by a MERS Member and the lien assigned to the “Mortgage Electronic Registration Systems, Inc., as nominee” for registration on MERS® System.

Subject to the MERS Membership Agreement, Members can register the following categories of mortgage “interests” on MERS® System:

- (1) The pledge and corresponding release of any security interest or servicing right;
- (2) The transfer of any beneficial ownership or servicing right by a Member to a Member or non-Member;
- (3) The transfer of servicing rights from a non-Member to a Member;
- (4) The foreclosure of any loan registered on MERS® System;
- (5) The release of any lien registered on MERS® System;
- (6) The transfer of servicing to subservicers; and
- (7) The renewal, extension, or modification of any loan registered on MERS® System that involves the recording of a new security instrument that changes more than the rate, principal balance, or term.

If the servicing rights are transferred to a non-Member, the loan must be deactivated on MERS® System; however, if the new servicer is a Member, the loan remains registered on MERS® System.

The transfer of a beneficial interest to a non-Member does not require deactivation of the loan from MERS® System, unless the servicer is a non-Member.

Each Member is obligated to insure that any security instrument or assignment registered on MERS® System contains the words:

*“Mortgage Electronic Registration Systems, Inc., as a separate corporation that is acting solely as a nominee for Lender and Lender’s successors and assigns.”*

As soon as practicable, the Member must update MERS® System with the official land record recording information, whether by volume and page, clerk's file number, or instrument number.

Within ten (10) business days after receiving notice from a Member that a loan has been paid in full, MERS gives notice of the payoff to all Members shown on MERS® System as having an interest in the loan. The Member servicing a loan that is paid off is responsible for delivering a release to the land record recording office.

If MERS learns that a Member has not released a lien in compliance with applicable state law, MERS has the right to execute and record the release. The negligent Member must reimburse MERS for all penalties and out-of-pocket costs, as well as an administrative fee.

### C. Certifying Officers

The "Certifying Officer" concept makes MERS® System work. The Mortgage Electronic Registration Systems, Inc. ("MERS") furnishes each Member with a corporate resolution for appointing one or more employees of the Member as "certifying officers" for Mortgage Electronic Registration Systems, Inc. [See *Helms v. Home Owners' Loan Corp*, 129 Tex.121, 103 S.W. 2d 128 (Tex 1937) for use of a corporate resolution for the appointment process.] For any interest registered to a Member on MERS® System, this corporate resolution allows the Member to:

- (1) Release any lien registered to the MERS Member;
- (2) Assign any lien registered to the Member as the current promissory note-holder or servicer on MERS® System;
- (3) Foreclose the property securing any lien registered to the Member on MERS® System;
- (4) Take any action necessary to protect the Member's interest in a bankruptcy proceeding;
- (5) Take any action necessary to fulfill the Member's servicing obligations to the beneficial owner of a registered mortgage;
- (6) Take any action and execute all documents necessary to refinance, amend, or modify any mortgage loan registered to the Member on MERS® System; and
- (7) Endorse checks received by the Member that are payable to MERS for the payoff of any loan registered to the Member.

A Member must indemnify MERS and its employees, directors, officers, agents, or affiliates against all loss, liability, and expenses, which were caused by any act or omission of a Member's certifying officer.

#### **D. Mortgage Identification Number (MIN)**

The Mortgage Identification Number (“MIN”) is the backbone of the MERS process. A MIN number can be generated from various loan origination underwriter programs; MINGen™, which is software provided by MERS; or, a Member’s custom software designed to generate a MIN.

The MIN is a unique 18-digit number that is permanently assigned to every loan registered on MERS® System. Once created, a MIN can be deactivated or reactivated but never duplicated or reused. The first seven digits of the MIN identify the MERS Member organization (Org. ID). The next ten digits are the loan identifier, and the last number is a security check calculated according to a Mod 10 Weight 2 Algorithm.

The MIN must be placed on all MERS’ registered security instruments and assignments that are recorded in the real property records.

MERS provides several ways for searching and identifying loans if the MIN is not known. Any loan can be found by entering the borrower’s social security number, property address, the note date, note amount, or recording information. A “Group Search” function can be used to create a list of MINs that fit certain criteria such as “all paid off loans held by a particular investor or servicer.”

Regardless of the search requests, only those MINs associated with a Member on MERS® System can be accessed by the Member to make changes in the database.

#### **E. MERS® OnLine**

MERS® OnLine is a browser-based application available through the Internet using Explorer 5.x or Netscape 6.x or higher. The URL address for MERS® OnLine is <https://www.mersonline.org>. A link to MERS® OnLine is also available from the MERS website at [www.mersinc.org](http://www.mersinc.org).

To log on, you must have:

- (1) The seven-digit organization identification (Org. ID) assigned by MERS; and
- (2) The individual user’s identification (User ID) and password assigned by the Member’s system administrator.

## **F. Security**

Members and users in a Member's organization are granted access to MERS® System according to the security level authorized. Each security level defines what processes are available to the user.

The person responsible for the administration of MERS® System for each Member is assigned a User ID called "sysadmin." The "sysadmin" is used to create all other User IDs for the Member. The "sysadmin" only creates, modifies, or deletes User IDs and cannot be used to perform other functions on MERS® System.

A User ID may be modified, enabled, or disabled by the system administrator as needed. User security codes do not default; therefore, a security code must be entered for each User ID. Only one security level can be assigned to a User ID. When a user forgets a password, the Member's system administrator must reset the password for the User ID.

## **G. Assumption of a Mortgage**

When a MERS mortgage is assumed, the servicer or subservicer is responsible for entering the new borrower information on MERS® System.

Though the original borrower and the new borrower's names and social security numbers (SSN) are retained on MERS® System, the new borrower becomes the current borrower. Interim borrower information is not maintained in MERS® System if a mortgage is assumed several times.

## **H. MERS as Original Mortgagee ("MOM")**

A MERS as Original Mortgagee ("MOM") loan is documented with a standard Fannie Mae/Freddie Mac note and deed of trust that contains MERS specific language.

The MERS compliant Texas deed of trust form approved by Fannie Mae and Freddie Mac changes the definition of "Lender" to:

*"Lender includes any holder of the Note who is entitled to receive payments under the Note."*

In addition, a new definition described in paragraph ("E") is added that states:

*"MERS is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS."*

In the section of the deed of trust entitled Transfer of Rights in Property the following language is added:

*"The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS...Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to foreclose and sell the Property; and to take any action required for Lender including, but not limited to, releasing and canceling this Security Instrument."*

A sample MOM Texas deed of trust is included in the Appendix as Exhibit "1."

After closing, a newly originated MOM loan security instrument must be sent for recording within seven calendar days and registered within 14 calendar days of funding. If a MOM loan is deactivated, the assignment from MERS must be recorded within 14 calendar days of the deactivation date.

#### **I. MERS as Assignee**

A loan assigned to a MERS Member must be registered on MERS® System within 14 calendar days of the purchase date. With the exception of bulk portfolio purchases, assignments must be sent for recording within 14 calendar days of registration. Bulk portfolio assignments must be sent for recording within 30 days of registration.

The MIN number and MERS Voice Response Unit telephone number (888-679-MERS/6377) must appear on the assignment document in the top center as well as ½ inch from the bottom.

## V. MERS INFRASTRUCTURE

### A. Mail Center

Because MERS is the mortgagee of record, MERS receives service of process for court proceedings as well as funds intended for the servicer. Since MERS is **NOT** the servicer and has no loan administration responsibility, MERS created a sophisticated mail facility to ensure service of process and correspondence was forwarded to the servicer.

The MERS Mail Center scans and converts all physical documents it receives related to loan administration into electronic images that are indexed to the appropriate MIN and routed electronically to the current servicer. Checks, money orders, and other funds are also scanned but sent by overnight delivery to the servicer.

The largest number of documents handled by the MERS Mail Center is:

- (1) Recorded mortgage documents or assignments that were sent to MERS by mistake; i.e., documents that should have been sent to the servicer or borrower;
- (2) Lawsuit pleadings, bankruptcy proceedings, and foreclosure notices;
- (3) Title insurance policies;
- (4) Notices of intent to release liens;
- (5) Tax bills and tax sale notices;
- (6) City or municipality notices such as demolition and code violations; and
- (7) Payoff requests.

It cannot be emphasized enough that the servicer or subservicer is always the primary contact for any matter concerning loan administration on a loan registered on MERS® System.

### B. Customer Service

To support its Members, MERS has a customer service organization that uses a Help Desk as the point of contact for all matters related to MERS, including:

- (1) MERS Client Desktop Application;
- (2) MERS Online;
- (3) MERS Connectivity;
- (4) MERS Technical Support;
- (5) MS Exchange, Internet e-mail, or MERS Electronic Mail;

- (6) MERS Document Image Viewer for mail processing; and
- (7) MERS Forum, which responds to MERS questions.

MERS also has a toll free Voice Response Unit (VRU) at 1-888-679-MERS/6377 for the use of the general public and MERS Members to access certain information on MERS® System using the MIN. The only information available from the VRU is public records and the servicer/subservicer's name, address, and customer service telephone number. The VRU also has a fax back feature to confirm servicer/subservicer information.

If the MIN is not available, MERS has a Help Desk phone number, 1-888-680-6377, which can supply the servicer's name, address, and customer service phone number using the borrower's name, the property address, the borrower's social security number, or the MIN. The VRU is a better choice if the MIN is available because the VRU gives a faster response.

## VI. FORECLOSURE

### A. Background

MERS was specifically designed to comply with the existing foreclosure laws in all 50 States and has recommended foreclosure procedures for each state posted on its web site at [www.mersinc.org](http://www.mersinc.org).

The cardinal principles that make a MERS foreclosure work are:

- (1) MERS is the beneficiary of the security instrument, and "MERS as nominee" is the mortgagee of record for all loans registered on MERS® System that must be foreclosed; and
- (2) "Certifying officers" have the authority granted by corporate resolution to execute all necessary foreclosure documents required for either MERS or the servicer.

In addition, because most MERS Members seem to be using the MERS Fannie Mae/Freddie Mac uniform security instrument as their master form, loan documentation for MERS' loans is consistent.

Of course, the fecund minds of lawyers make any new procedure like MERS subject to attack; therefore, MERS continually reviews its recommended foreclosure procedures and issues revisions, if necessary.

A MERS® System loan does not change the rule that the deed of trust beneficiary or the mortgagee of record, as the term "mortgagee" is defined in *Tex. Prop. Code § 12.017*, determines when and how a foreclosure

proceeding is initiated. Though Mortgage Electronic Registration Systems, Inc., as nominee ("MERS") is the beneficiary of the deed of trust and mortgagee of record, MERS does not handle any of the logistics of foreclosure, which is the responsibility of the Member servicer registered for the loan.

If the MERS loan must be foreclosed in the name of someone other than "MERS as nominee", the servicer must execute and record an assignment from MERS to the new organization.

MERS is not obligated to take title after foreclosure as the grantee under the substitute trustee unless the Member requests MERS take title. Even so, the Member must promptly convey the property from MERS to another grantee as soon as practicable.

#### **B. MERS Recommended Texas Foreclosure Procedure**

Though foreclosing in the name of MERS appears new, when the role of MERS is examined, MERS acts like a servicer. MERS as the beneficiary of the deed of trust commences the Texas foreclosure and exercises the power of sale found in the deed of trust as the mortgagee of record.

Based on an official MERS' corporate resolution, an employee of the Member servicer is authorized as a "certifying officer" of MERS to sign any foreclosure document necessary.

Since the government sponsored enterprises, i.e., Fannie Mae, Freddie Mac, and Ginnie Mae, and most large mortgage banking organizations require promissory notes be endorsed in blank, a blank endorsement does not effect a foreclosure in the name of MERS.

The certifying officer of the Member servicer gives the trustee the credit bid of MERS. (See *Habitat Inc. v. McKenna* 523 S.W. 2d 787 (Tex. App.—Eastland 1974) which holds a mortgagee can make a credit instead of cash bid.) If MERS makes the highest bid, the trustee conveys the foreclosed property to MERS by a trustee or substitute trustee's deed and the Member servicer's "certifying officer" promptly conveys the property from MERS to the beneficial owner or investor.

Ideally, there should be no change in the evictions process after a MERS foreclosure. However, if the eviction is brought in the name of "MERS as nominee", be prepared to explain MERS to the Justices of the Peace or County Court on appeal, because many do not understand the "MERS as nominee" concept. Therefore, the Member servicer's "certifying officer"



should ensure the property is conveyed out of MERS prior to initiating eviction.

According to MERS' recommended practices, if the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the Member servicer in order to disclose to the court the relationship of MERS and the servicer. However, the "creditors" address in the bankruptcy documents should be the Member servicer's address so that all trustee payments go to the servicer, not to MERS. A Motion for Relief from Stay may be filed either in the name of MERS or jointly with the servicer.

## VII. HELPFUL NUGGETS

If you have a question about MERS, you can always send an email to the MERS Forum [See example at Appendix, Exhibit 9]. Your question will be promptly answered and posted on the MERS web site so that others can profit from both the question and answer. In addition, you can call me, since I am Texas foreclosure counsel for MERS.

If you need to know who is servicing a MERS loan and have the MIN, call 1-888-679-6377, which provides the name, address, and customer service phone number of the Member servicer. Once you know the servicer's name, go to the MERS web site at [www.mersinc.org](http://www.mersinc.org) and under the menu heading "Member Search" you can obtain the name and phone number of the person in the Member servicer's organization who is supposed to be the MERS expert for the Member.

If you do not have the MIN, call 1-888-680-6377 and, with the property address, borrower's name, or borrower's social security number, you can obtain the same information referenced above.

## VIII. APPENDIX: Exhibits

- (1) Deed of Trust with MERS Reference Comments
- (2) Assignment with MERS Reference Comments
- (3) MERS Training Bulletin *re* Certifying Officers
- (4) MERS Lite Tool Kit [*See page 15 for Certifying Officer Corporate Resolution*]
- (5) Texas MERS Deeds of Trust and Assignment
- (6) MERS Lawsuit and Attorney General Opinion
- (7) MERS Website and Member Search
- (8) MERS "Forum" Example
- (9) Texas Non-judicial MERS Foreclosure Forms
- (10) Texas Home Equity MERS Foreclosure Forms

# **Deed of Trust with MERS**

## **Reference Comments**

**This is an Example of a Deed of Trust naming MERS as the Original Mortgagee (MOM Document)**

**Recording Requested By:**

[Company Name]

**And When Recorded Mail To:**

[Company Name]

[Name of Natural Person]

[Street Address]

[City, State Zip Code]

\_\_\_\_\_[Space Above This Line For Recording data]\_\_\_\_\_

MIN: 10

The MERS 18-digit MIN must be visible on the Security Instrument. Place the MIN to the right of the form title, but not within the top recording margin or on the right margin.

**DEFINITIONS**

Words used in multiple sections of this document are defined below, and other 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

**DEED OF TRUST**

(A) "Security Instrument" means this document, which is dated **December 29, 2000** together with all Riders to this document.

(B) "Borrower" is **John and Mary Borrower**. Borrower is the trustor under this Security Instrument.

(C) "Lender" is **XYZ Mortgage Company** organized and existing under the laws of The State of **XXXXXX**. Lender is a **Corporation**. Lender's address is **12345 Lender's Street Address, Lender's City, ST, ZIP**

(D) "Trustee" is **ABC Trustee**

MERS as the Original Mortgagee/Beneficiary language. See page 3 of this document to note further reference to MERS as Mortgagee/Beneficiary.

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **December 29, 2000**. The Note states that Borrower owes Lender

**One Hundred Fifty Thousand Dollars (U.S. \$150,000.00 )**  
plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

Initials: \_\_\_\_\_

**This is an Example of a Deed of Trust naming MERS as the Original Mortgagee (MOM Document)**

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the

[Type of Recording Jurisdiction] of [Name of Recording Jurisdiction] :

**MERS noted as beneficiary in the transfer/due on sale clause.**

Assessor's Identification Number:

which currently has the address of

[City] , California [Street] ("Property Address")  
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

Initials: \_\_\_\_\_

# **Assignment with MERS**

## **Reference Comments**

# ASSIGNMENT OF MORTGAGE

Example of an assignment to MERS from a non-MERS servicer or investor.

Lenders Loan Number:  
MIN: [insert 18-digit MIN] MERS Phone: 1-888-679-6377

FOR VALUE RECEIVED, XYZ Mortgage Company, Inc., its successors and assigns, hereby assigns and transfers to **Mortgage Electronic Registration Systems, Inc.**, its successors and assigns P.O. Box 2026, Flint, Michigan 48501-2026, all its right, title and interest in and to a certain mortgage executed by John Doe and Mary Doe, husband and wife, to XYZ Mortgage Company, Inc. and bearing the date of the 12<sup>th</sup> day of September A.D. 1998 and recorded on the 14<sup>th</sup> day of September A.D. 1998 in the office of the Recorder of Imaginary County, State of California in Book IV at Pages 32-34

or Nassau,  
uffolk,  
Westchester, and  
utchess  
ounties, New  
ork, use MERS  
orporate address;  
595 Spring Hill  
oad, Suite 310,  
ienna, VA  
2182

Signed on the 15<sup>th</sup> day of March A.D. 2002.

MERS' name and address are added to the Assignment here. *If the state of incorporation for MERS is required, please note that MERS is organized and existing under the laws of Delaware, not Virginia.*

## Sample Only

XYZ Mortgage Company, Inc. (Assignor)

By \_\_\_\_\_  
Assistant Secretary

State of California }  
County of Imaginary } ss:

On the 15<sup>th</sup> day of March A.D. 2002, before me, a Notary Public, personally appeared name of person signing document (above), to me known, who being duly sworn, did say that he or she is the Assistant Secretary of XYZ Mortgage Company, Inc., and that said instrument was signed on behalf of said corporation.

\_\_\_\_\_  
Notary Public

Address of Preparer:

**XYZ Mortgage Company, Inc.**  
1234 Sample Street  
Assignment, CA 98765  
Attn: Final Documents Dept.

The MIN and MERS telephone number may be placed at the bottom of the assignment or within close proximity of the lender's loan number if recording jurisdictions allow. In any case, the county requirements should always be followed.

MIN: [insert 18-digit MIN] MERS Phone: 1-888-679-6377

**MERS Training Bulletin**  
*re* **Certifying Officers**





# Training Bulletin

Number 2002-03

To: Active Members Only

May 17, 2002

## RE: MEMBER CERTIFYING OFFICERS – PROCESS CHANGE

MERS has developed a new process for streamlining the submittal of Certifying Officer information. In the past, Members have supplied this information to MERS in various formats. Effective immediately, MERS will use one document to capture this information, the "Certifying Officer for Corporate Resolution" document. Following the steps below will simplify the data collection process and will shorten the turn-around time for approval.

### Steps for Submitting New Certifying Officers

1. Go to the MERS® Website: <http://www.mersinc.org/index1.htm>
2. Click on Manuals & Forms on the left-hand menu
3. Click on Rules of Membership on the left-hand menu
4. Click the link to "Download" the Certifying Officer Update Form
5. Tab to the Company Name & Address fields
6. Enter your Company Name and company address
7. Tab down and check the appropriate box if ordering Corporate Seals (use the space bar to check the box)
8. Tab and input the number of Corporate Seals, if applicable
9. Tab and enter your Company Name again
10. Tab and enter the current day of the week (i.e. 6, 10, 20)
11. Tab and enter the current month (i.e. January, July, December)
12. Tab and enter your Company Name again
13. Tab and enter the Certifying Officers  
**NOTE: Please enter them in alphabetical order (A – Z), last name first**
14. When finished, close the window by clicking on the X in the top right corner of your screen.
15. You will be prompted to save the document, click "Yes"
16. Select the directory location to save to locally (i.e. c:\temp or c:\my documents)
17. Rename the file to your Org ID and the date (i.e. 1000001\_5-15-02.doc)
18. Click "Save"
19. Utilize the following steps to send the document to the MERS Legal Department
20. Open your email reader (i.e. Outlook, Outlook Express, NS Messenger)
21. On the "To..." line enter the following: [stephaniem@mersinc.org](mailto:stephaniem@mersinc.org)
22. On the "Cc..." line enter the following: [sharonh@mersinc.org](mailto:sharonh@mersinc.org)
23. For the "Subject:" type Your Company Name, Org ID, and *Certifying Officers* (i.e. Subject: MERS 1000001 Certifying Officers)

- 24.
25. For the text of the message enter your name and phone number
26. Attach the previously saved Certifying Officer document to the email
27. Send the email
- 28.

Upon receipt of the email, MERS will execute the document and return a copy to the member.

If you have any questions regarding this bulletin, please call the MERS HelpDesk at 1-888 680-MERS (6377).

# **MERS Lite Tool Kit**



---

## MERS Lite Tool Kit

Version 4.0  
May 20, 2002

---

# **TABLE OF CONTENTS**

INTRODUCTION.....	2
(1) MERS CUSTOMER PROFILE.....	5
(2) MIN MANAGEMENT.....	7
(3) MOM DOCUMENTS.....	9
FAX: (703) 748-0183.....	9
(4) REGISTRATION.....	10
(5) SIGNING AUTHORITY.....	12
(6) TRADING PARTNER READINESS.....	16
CONCLUSION.....	18

# INTRODUCTION

Dear New MERS Lite Member:

**Congratulations!.....By joining MERS, your company has made an excellent decision that will streamline your business processes in originating and selling mortgages to other MERS members.**

**Before you begin to integrate MERS into your process flow, there are six (6) basic steps to complete.**

**The design of this Tool Kit is based on those six steps and the on-going interaction with other members of MERS.**

**The completion of this integration process will eliminate paper assignments, and initiate the electronic registration of loans on the MERS® System.**

**Throughout the integration process, a MERS Business Integration Manager/Director, who shares your goals, will work systematically with you to assist your company to quick accomplishment of those goals.**

**The six (6) steps to completion are as follows:**

**1. MERS Customer Profile:**

This assists the Business Integration Manager/Director to understand the method in which your company conducts business and assist you with decisions regarding your MERS Implementation and Project Management.

**2. Mortgage Identification Number ("MIN"):**

A MIN must be created and affixed to all documents, that name MERS as the mortgagee. When the loans are registered in the MERS® System, a MIN remains with the loan throughout its lifetime. .MINs can be generated from:

- Loan Origination Systems
- MINGen™ (MERS provided software. Note: this program will not be supported after December 31, 2002)
- Custom programming designed to calculate a MIN.

### 3. MERS as Original Mortgagee (“MOM”) Documents:

The “MOM” Documents incorporate the authorized changes to the standard FHLMC, FNMA, FHA and VA Mortgage or Deed of Trust, to name MERS as the original mortgagee of record, as nominee for the lender, and lender’s successors and assigns. To receive the advantages of eliminating paper assignments, you must be able to produce a MOM Security Instrument. The documents are currently available through various vendors.

### 4. Registration/Transfer:

Registration can be completed in various ways:

- a) You may be working with a trading partner that will register the loans for you.
- b) b) You can complete registrations and transfers online through the MERS® OnLine.
- c) Your Loan Origination System may be “MERS® Ready”. In many cases, a work-around solution can be developed through a flat-file format. In this case, the information is extracted and the loans can be processed electronically.

All these possibilities will be explored and discussed with you by your Business Integration Manager/Director.

### 5. Trading Partner Readiness:

If you sell to a company that is not yet “*MERS® Ready*”, you will simply create an assignment from MERS to the non-MERS member. Since you will be originating MOM security documents, the assignment is issued from MERS to those entities. You have the authority through the Corporate Resolution to create and execute this assignment as a MERS officer. (*See Step 3*)

We strongly suggest that you notify your trading partners of the anticipated date you will begin using MOM documents.

### 6. Signing Authority:

MERS provides its members’ designated employees with the authority to execute documents, as an officer of MERS, if necessary. You need only to complete and return the enclosed form listing the staff members authorized to execute documents on behalf of your company today. MERS will provide you with a “Corporate Resolution”, enabling the designated employees to execute documents for MERS.

*When you have established a plan to complete these six (6) items and incorporate them into your current procedures, we will be ready to move into the next stage:*

- Training
- Testing
- Quality Assurance Standards



## (1) MERS CUSTOMER PROFILE

Completion of the MERS Customer Profile is the first step to the integration process. The profile provides an overview of how your firm conducts business by previewing specific operational, systems, production and, if applicable, servicing information to develop an implementation strategy for integration. Your Business Integration Manager/Director will finalize this information with you.

**Refer to the table below for details regarding necessary information for each section of your profile:**

Data	Purpose
<ul style="list-style-type: none"> <li>• <i>Addresses</i></li> <li>• <i>Telephone numbers</i></li> <li>• <i>E-mail addresses</i></li> <li>• <i>Membership type</i></li> <li>• <i>Role with your firm.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Contact information</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>All information from Page 1</i></li> <li>• <i>Company affiliations</i></li> <li>• <i>Intended purpose</i></li> <li>• <i>Implementation plan.</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Contact information</i></li> <li>• <i>Ownership</i></li> <li>• <i>Related entities</i></li> <li>• <i>MERS Value</i></li> <li>• <i>Deployment Strategy</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>With whom do you buy and sell?</i></li> <li>• <i>Is servicing retained or released?</i></li> <li>• <i>What are your selling points, implementation dates and timeframes?</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Type of business</i></li> <li>• <i>With whom you trade</i></li> <li>• <i>Resource availability</i></li> <li>• <i>Matrix and support from all affected areas</i></li> <li>• <i>Anticipated date to start project</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>What is your origination system?</i></li> <li>• <i>Do you have other projects?</i></li> <li>• <i>What is the location of the operations?</i></li> <li>• <i>What are the underwriting, document preparations, custodial and secondary systems that are used?</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Infrastructure for production activity.</i></li> </ul>

<ul style="list-style-type: none"> <li>• <i>Percentage sold to investors</i></li> <li>• <i>Volume to each investor</i></li> <li>• <i>Origination volume by lines of business</i></li> <li>• <i>Warehouse relationships</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Production volume</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>Servicing system utilized</i></li> <li>• <i>Value-added networks</i></li> <li>• <i>Platforms and lien/assignment Management facility</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Infrastructure of servicing activity (if applicable)</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>Volume of bulk sales</i></li> <li>• <i>Description of the acquisition data</i></li> <li>• <i>Portfolio composition</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>Servicing volume (if applicable)</i></li> </ul>
<ul style="list-style-type: none"> <li>• <i>What final actions are needed to move ahead with MERS integration?</i></li> <li>• <i>Do you need a consultant to assist with your project management?</i></li> </ul>	<ul style="list-style-type: none"> <li>• <i>To Conclude</i></li> </ul>

**Note: Periodically roles may change within your organization. MERS asks that you notify us of any changes as soon as possible.**

## (2) MIN MANAGEMENT

A MIN (*Mortgage Identification Number*) must be created for every loan registered on the MERS® System. The MIN must also be affixed to the Security Instrument, the Assignment, and the Note (if required by your trading partners). The MIN remains with the loan throughout its life. Therefore, you must develop a process for creating and affixing the MIN to the document and managing the database. MERS provides a software package (MINGen™) for your use, if desired. A demo version of MINGen™ is available on the MERS web site at [www.mersinc.org](http://www.mersinc.org). If you cannot access the Internet, we can send you the MINGen™ software.

### **What is a MIN?**

The MIN is a unique universal identification number, permanently assigned to a loan, when registered on the MERS® System. This number is 18 digits and contains the following components:

#### **MIN Design:**

- MERS-maintained organization ID number (7 digits)
- Locally generated sequential number (10 digits)
- Check digit routine (Mod 10 Weight 2 Algorithm) (1 digit)
- Org ID + Sequence Number + Check Digit = 18 digits
- $(100XXXX + 0123456789 + 1) = \text{MIN}$

#### **Components of MIN Management:**

##### **Producing MINs:**

- MINGen™ Software to create MINs (supported only through December 31, 2002)
- Mod 10 Weight 2 algorithm to create your own program to generate MINs, or if your origination system cannot generate MINs for you.

##### **Affixing MINs to the Documents:**

- Populate fields on Document Preparation System
- Facility through Origination System (if available)
- Labels produced through MINGen™

##### **Database Management**

- Test all MINs on security instruments prior to going out for closing
- Insure your method of generating MINs does not create duplications
- Backup system daily, ensure portability from one generation source to another

**MIN Placement:**

- All MINs must appear on the Security Instrument (Mortgage or Deed of Trust).
- Security Instrument – Place MIN to the right of or below, the form title, but not within the top recording margin or on the right margin.
- Promissory Note (Recommended) – Place Min to the right of, or below, the form title.
- Assignment to MERS – Centered one-half inch below the last of text and one-half inch above the bottom of the page, along with the VRU number.

**Note:**  
Refer to the *MERS Quality Assurance Procedures Manual* for complete information on positioning the MIN and VRU number on your documents.

**Upon Funding/Purchase:**

- Loan sold from Company ABC (Org ID 100XXXX)
- To Company XYZ (Org ID 100XXXX)
- MIN (100XXXX-0123456789-1), servicing and beneficial rights now owned by Company XYZ (Org ID 100XXXX), but the MIN does not change.

### (3) MOM DOCUMENTS

#### (MERS as the Original Mortgagee)

**Note:**

The language shown is representative language to be used in security instruments throughout the country, with minor variations in some states. The MIN must also appear to the right of or below the form title. Most trading partners require the MIN on the Promissory Note as well.

To take advantage of MERS, and eliminate the need for an assignment, you must be able to produce and close with MOM documents, name MERS as Original Mortgagee, and incorporate the authorized changes to the standard FHLMC, FNMA, FHA and VA Mortgage or Deed of Trust, to name MERS as the original mortgagee. The document set(s) are currently available through various vendors. For a list of MERS® Ready document providers, visit our web site at [www.mersinc.org](http://www.mersinc.org).

An example of the MOM Language approved for all security instruments is as follows:

“This Security Instrument is given to Mortgage Electronic Registration Systems, Inc. (MERS), solely as nominee for the Lender, as hereinafter defined, and Lender’s successors and/or assigns, as beneficiary. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of: P. O. Box 2026, Flint, MI 48501-2026, telephone (888) 679-MERS. Company Name (Lender) is organized and existing under the laws of State, and has an address of, Mailing Address, City, State, Zip Code.

**Close every loan as a MOM:**

- Close all loans with MOM documents, register each loan
- Eliminate ALL assignments (Recorded and Unrecorded)
- Exception: If an investor is not yet MERS®Ready, prepare an assignment from MERS to that investor, which you can sign as a MERS officer, under the authority of the Corporate Resolution.

Included in this kit are the specific required MERS Authorized Document, approved by Freddie Mac, Fannie Mae, FHA and VA.

Once you have obtained the MERS as the Original Mortgagee documents, we require a sample copy be submitted to MERS for review. We would like to review two examples, either two (2) states in which you lend, or two (2) product types (FHA, VA, Conventional, etc). Please submit these examples to:

MERS Corporate Counsel

**FAX: (703) 748-0183**

**Note: All Registrations must occur within 10 days of the Note Date (Effective January 1, 2002)**

**Note:**

It is your responsibility to ensure that ALL documents are accurate and contain the appropriate MERS language. This should be part of an ongoing Quality Assurance Process. See the *MERS Quality Assurance Procedures Manual* for complete information.

## (4) REGISTRATION

### Registration can be completed in several ways.

- *You may be working with trading partners that will register loans for you.*
- *You can register loans through MERS® OnLine, a web browser application.*
- *Your Loan Origination System may have the capabilities to extract data through a tab delimited flat file that can then be transmitted electronically. The format for this file is available in the MERS Integration Handbook, Volume II, located on our web site [www.mersinc.org](http://www.mersinc.org)*

### Trading Partner Registrations

- *Simply provide them with the MOM Document with a valid MIN.*

### Registrations through MERS® OnLine, our browser application

- *We will assign you a temporary OrgID and provide you with MINs for testing.*
- *We will then schedule training with a MERS Trainer.*

### Automated Process

Depending on technical resources available, you may elect to develop an interface between your Loan Origination System and the MERS® System.

Data can be extracted and delivered to MERS through a "Flat File Format" or "EDI X12 Format". The specifics for these are outlined in the *MERS Integration Handbook Volume II*, (available at [www.mersinc.org](http://www.mersinc.org))

Your Business Integration Manager/Director will review this option with you, during the "Customer Assessment" phase of your integration.

The following table includes the required data fields for registration processing:

Field Name	Conditions
1. MIN	YES
2. Lien Position (1 <sup>st</sup> or 2 <sup>nd</sup> )	YES
3. Actual Note Amount	YES
4. Actual Note Date	YES
5. Original Note Holder	YES (if applicable)
6. Name of Servicer	YES
7. Investor Name	YES
8. Investor Loan Number	YES (If Investor requires)
9. Pool Number	YES (If Investor requires)
10. Agency ID	YES (If Investor requires)
11. Borrower Standing (Original or Current)	YES
12. Type of Borrower (Primary or Co-Borrower)	YES
13. Corporation Flag (If Applicable)	YES
14. Corporation Name (If Corporation Flag is Checked)	YES
15. Borrower First Name	YES
17. Borrower Last Name	YES
18. Social Security Number of Primary Borrower (If not a Corporation)	YES
19. Street Name (Street Number is Optional)	YES
20. City	YES
21. State	YES
22. Zip Code (First 5 digits)	YES
23. County Description	YES
24. MOM Flag (Located at the Security Instrument Tab)	YES (defaults to Yes)

## (5) SIGNING AUTHORITY

MERS provides its members with the authority to execute documents on behalf of MERS. You need only to return the completed form listing the staff that are to be granted signing authority, as an officer of MERS, under the MERS corporate resolution. MERS will provide a Corporate Resolution, authorizing those employees to execute documents as an officer of MERS.

A sample of the Corporate Resolution is enclosed.

An original copy of your Corporate Resolution will be sent directly to the Member's Project Manager (please designate below). You will need this authority to execute assignments from MERS to your trading partners that are not yet MERS@-Ready.

*Please return the completed form to:*

**Sharon Horstkamp, MERS Corporate Counsel**  
**Telephone: (703) 761-1280**  
**Fax: (703) 748-0183**

<u>NAME</u>	<u>TITLE</u>

(Use another sheet if necessary)



**Note:** *If you do business in a state that requires a corporate seal, please advise when this form is returned to MERS, as well as the number of seals required. Each corporate seal is \$25.00 plus postage.*

Please forward the Corporate Resolution and, if applicable, corporate seals to:

Company Name: \_\_\_\_\_

OrgID: \_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

City:

\_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Corporate Seals needed: \_\_\_\_\_ (Yes/No)

If yes, number of seals needed: \_\_\_\_\_ (@ \$25.00 + shipping each)

## **CORPORATE RESOLUTION (Members)**

Be it Resolved that the attached list of candidates are employees of **XYZ Mortgage**, a Member of Mortgage Electronic Registration Systems, Inc. (MERS), and are hereby appointed as assistant secretaries and vice presidents of MERS, and, as such, are authorized to:

(1) release the lien of any mortgage loan registered on the MERS System that is shown to be registered to the Member;

(2) assign the lien of any mortgage loan naming MERS as the mortgagee when the Member is also the current promissory note-holder, or if the mortgage loan is registered on the MERS System, is shown to be registered to the Member;

(3) execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member, including but not limited to (a) substitution of trustee on Deeds of Trust, (b) Trustee's Deeds upon sale on behalf of MERS, (c) Affidavits of Non-military Status, (d) Affidavits of Judgment, (e) Affidavits of Debt, (f) quitclaim deeds, (g) Affidavits regarding lost promissory notes, and (h) endorsements of promissory notes to VA or HUD on behalf of MERS as a required part of the claims process;

(4) take any and all actions and execute all documents necessary to protect the interest of the Member, the beneficial owner of such mortgage loan, or MERS in any bankruptcy proceeding regarding a loan registered on the MERS System that is shown to be registered to the Member, including but not limited to: (a) executing Proofs of Claim and Affidavits of Movant under I I U.S.C. Sec. 501-502, Bankruptcy Rule 3001-3003, and applicable local bankruptcy rules, (b) entering a Notice of Appearance, (c) vote for a trustee of the estate of the debtor, (d) vote for a committee of creditors, (e) attend the meeting of creditors of the debtor, or any adjournment thereof, and vote on behalf of the Member, the beneficial owner of such mortgage loan, or MERS, on any question that may be lawfully submitted before creditors in such a meeting, (f) complete, execute, and return a ballot accepting or rejecting a plan, and (g) execute reaffirmation agreements;

(5) take any and all actions and execute all documents necessary to refinance, amend or modify any mortgage loan registered on the MERS System that is shown to be registered to the Member.

(6) endorse checks made payable to Mortgage Electronic Registration Systems, Inc. to the Member that are received by the Member for payment on any mortgage loan registered on the MERS System that is shown to be registered to the Member;

(7) take any such actions and execute such documents as may be necessary to fulfill the Member's servicing obligations to the beneficial owner of such mortgage loan (including mortgage loans that are removed from the MERS System as a result of the transfer thereof to a non-member of MERS).

I, William C. Hultman, being the Corporate Secretary of Mortgage Electronic Registration Systems, Inc., hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Board of Directors of said corporation effective as of the **6th** day of **July, 1999**, which is in full force and effect on this date and does not conflict with the Certificate of Incorporation or By-Laws of said corporation.

---

Secretary

## CORPORATE RESOLUTION (MERS)

Be it Resolved that the Daniel R. McLaughlin and William C. Hultman are officers of Mortgage Electronic Registration Systems, Inc. and are hereby appointed as an authorized signing officer of XYZ Mortgage, ("Member"), and, as such, are authorized to do the following acts if the Member will not or cannot perform such actions.

(1) release the lien of any mortgage loan registered on the MERS System that is shown to be registered to the Member;

(2) assign the lien of any mortgage loan naming MERS as the mortgagee when the Member is also the current promissory note-holder, or if the mortgage loan is registered on the MERS System, is shown to be registered to the Member;

(3) execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member, including but not limited to (a) substitution of trustee on Deeds of Trust, (b) Trustee's Deeds upon sale on behalf of MERS, (c) Affidavits of Non-military Status, (d) Affidavits of Judgment, (e) Affidavits of Debt, (f) quitclaim deeds, (g) Affidavits regarding lost promissory notes, and (h) endorsements of promissory notes to VA or HUD on behalf of MERS as a required part of the claims process;

(4) take any and all actions and execute all documents necessary to protect the interest of the Member, the beneficial owner of such mortgage loan, of MERS in any bankruptcy proceeding regarding a loan registered on the MERS System that is shown to be registered to the Member, including but not limited to: (a) executing Proofs of Claim and Affidavits of Movant under 11 U.S.C. Sec. 501-502, Bankruptcy Rule 3001-3003, and applicable local bankruptcy rules, (b) entering a Notice of Appearance, (c) vote for a trustee of the estate of the debtor, (d) vote for a committee of creditors, (e) attend the meeting of creditors of the debtor, or any adjournment thereof, and vote on behalf of the Member, the beneficial owner of such mortgage loan, or MERS, on any question that may be lawfully submitted before creditors in such a meeting, (f) complete, execute, and return a ballot accepting or rejecting a plan, and (g) execute reaffirmation agreements;

(5) take any and all actions and execute all documents necessary to refinance, amend or modify any mortgage loan registered on the MERS System that is shown to be registered to the Member.

(6) take any such actions and execute such documents as may be necessary to fulfill the Member's servicing obligations to the beneficial owner of such mortgage loan (including mortgage loans that are removed from the MERS System as a result of the transfer thereof to a non-member of MERS).

I, \_\_\_\_\_, being the \_\_\_\_\_ of \_\_\_\_\_, hereby certify that the foregoing is a true copy of a Resolution of said corporation effective as of the \_\_\_\_\_ day of \_\_\_\_\_, which is in full force and effect on this date and does not conflict with the Certificate of Incorporation or By-Laws of said corporation.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

(Corporate seal) \_\_\_\_\_  
(Date)

## (6) TRADING PARTNER READINESS

We suggest that you notify your trading partners when a date has been established to begin producing MOM documents. MERS provides you and your company with the authority to execute documents on MERS behalf (see "Signing Authority" from Step 5). This authority allows you to maintain a continuous business flow to your trading partners who are not yet "MERS® Ready"

You will create all loans on MOM Documents ("MERS as the Original Mortgage"). In addition, if you sell to a non-MERS member, you have the ability to execute an assignment from MERS to them.

We can assist you with communication to your trading partners about MERS and answer any questions they might have. An example of a letter to your investors is provided.

This scenario describes an instance that a MERS assignment might be applicable:

*If an investor is not yet MERS® Ready, and you sell loans to them servicing released, the Corporate Resolution authorizes you to execute an assignment from MERS to the investor.*

### You should contact:

- All branch offices, if applicable
- Investors
- Wholesale Lenders
- Warehouse Banks
- Related Entities
- Parent Companies
- Technology Partners/Vendors  
(to determine if MERS® Ready, discuss any special requirements, and anticipated production date for MERS loans)

Advising your trading partners that you have made a business decision to begin using MERS is a very important part of a successful MERS Implementation. You cannot fully gain all the financial and time compensation until your trading partners are MERS® Ready also.

There may also be other partners (i.e. Warehouse Banks), where you could eliminate the unrecorded assignment, or the elimination of a brokered loan assignment, if the MERS member:

1. Executes the Broker Agreement.
2. Executes documents in the Broker's name and table-funds the loans.
3. Generates the MIN and registers on the MERS® System.

*Please contact your Business Integration Manager/Director to discuss these opportunities.*

# Your Logo and Address

DATE

ADDRESSEE: INVESTOR

Street Address

City, State Zip

RE: MERS and MOM Security Instruments

Dear *(Investor)*:

MERS is an industry initiative to eliminate assignments between all trading partners. MERS' major stockholders include Fannie Mae, Freddie Mac, MBA and other industry leaders.

*(MERS Member/Lender)* Mortgage currently is generating MOM (*MERS* as the **Original Mortgagee**) loans. The MOM language is legal in all 50 states and has the approval of Fannie Mae, Freddie Mac, FHA, VA, Ginnie Mae and all Wall Street rating agencies.

Eventually, we would like your organization to be *MERS* Ready and to accept the transactions electronically. Until such time, we hope that your organization will accept our assignments from MERS to *(Investor)*.

Since *(MERS Member/Lender)* Mortgage is closing loans using MERS as their nominee in the county land records, you will receive an assignment from MERS. MERS has provided *(MERS Member/Lender)* Mortgage with the authority to execute an assignment to *(Investor)* on behalf of MERS.

Your cooperation will make this process easier for *(MERS Member/Lender)* Mortgage to do business with *(Investor)*.

We have enclosed a sample of the assignment and the MOM security instrument that will be delivered to you.

If there should be any questions regarding this matter, please feel free to contact me. Should you need to speak to a representative of MERS, please call (800) 646-MERS (6377), Customer Division.

Sincerely,

Sender's Name

Sender's Telephone Number

Attachments: Sample of Assignment from MERS  
MOM Security Instrument

## CONCLUSION

*In conclusion, once routines for addressing these six (6) items have been incorporated into your procedures, we will be ready to move into Testing, Training and Development of Quality Assurance Standards*

You are now on your way  
to the elimination of paper  
assignments forever.



**1595 Spring Hill Rd.  
Suite 310  
Vienna, Virginia 22182**

**Corporate Office  
(800) 646-MERS (6377)**

**MERS HelpDesk  
(888) 680-MERS (6377)**

**MERS VRU  
(888) 679-MERS (6377)**

# **Texas MERS Deeds of Trust and Assignment**



157  
327

K2 NEW  
CHICAGO TITLE  
OF 260484

Return To:  
COUNTRYWIDE HOME LOANS, INC.  
MS SV-79 DOCUMENT PROCESSING  
1800 TAPO CANYON ROAD  
SIMI VALLEY, CA 93063

**FHLMI**

**2002-12-115**

DT

+SC

(Spec Above This Line For Recording Data)

260484  
[Escrow/Closing #]

3999590  
[Loan #]

**DEED OF TRUST**

MIN1000157-0000035903-0

**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated AUGUST 25, 2000, together with all Riders to this document.
- (B) "Borrower" is DANE HARRIS, JOINED HEREIN PRO-FORMA BY HIS SPOUSE CYNTHIA HARRIS

Borrower is the grantor under this Security Instrument.

(C) "Lender" is COUNTRYWIDE HOME LOANS, INC. Lender is a CORPORATION organized and existing under the laws of NEW YORK. Lender's address is 4500 PARK GRANADA, CALABASAS, CA 91302-1613. Lender includes any holder of the Note who is entitled to receive payments under the Note.

(D) "Trustee" is SHONDA JUSTICE. Trustee's address is 7654-A F.M. 1950 WEST HOUSTON, TX 77070-

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is a beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone of P.O. Box 2026, Flint, MI 48501-2026, tel. (888)679-MERS.

TEXAS Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 12

Initials: *[Signature]*

Form 2044 2/00

8A(TX) (0607) 01 CHL (83/06) VNF MORTGAGE FORMS - (000) 821-7291  
CONVVA

p bk



522

CF# 275600-D-55

FNT/MD/JN

02-314-138

Return To:

MS SV-79 DOCUMENT PROCESSING  
1800 TAPO CANYON ROAD  
SIMI VALLEY, CA 93063

1170254

10/17/00 2359432 623.00  
Deed of Trust

[Space Above This Line For Recording Data]

275600-D-55  
[Escrow/Closing #]

2059032  
[Loan #]

THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

**TEXAS HOME EQUITY SECURITY INSTRUMENT  
(Cash Out - First Lien)**

MIN 1000157-0000090441-3

This Security Instrument is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY INSTRUMENT is made on OCTOBER 06, 2000

The grantor is  
SHEILA ANN SUTHERLAND, AN UNMARRIED WOMAN

("Borrower"). The trustee is  
GREGORY L. GREGG

whose address is  
1700 WEST LOOP SOUTH, SUITE 260 HOUSTON, TEXAS 77027

("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS") (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888)679-MERS. FULL SPECTRUM LENDING, INC.

("Lender") is organized and existing under the laws of TEXAS, and has an address of 4500 PARK GRANADA, CALABASAS, CA 91302-1613

Borrower owes Lender the principal sum of  
SEVENTY EIGHT THOUSAND FOUR HUNDRED and 00/100

Dollars (U.S. \$ 78,400.00). This debt is an extension of credit as defined by Section 50(a)(6), Article XVI of the Texas Constitution (referred to herein as the "Extension of Credit") and is evidenced by Borrower's note dated the same date as this Security Instrument (the "Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on NOVEMBER 01, 2015. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following

Texas Home Equity Security Instrument (Cash Out - First Lien) - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

9046(TX) (REV)

CHL (04/00)

VAP MORTGAGE FORMS - (REV) 1/98

SAS  
Form 3044.1 1/98  
Amended 4/98

\*23991\*

\*0020590320000028046\*

20202 04664

4542 1871 99- 0139387

ENVELOPE  
ATTACHED

WHEN RECORDED RETURN TO:  
NORTH AMERICAN MORTGAGE COMPANY  
PO BOX 800005- 80831  
PETALUMA, CA 94975 - 8081  
ATTN: PATTY LEACH - AU054 - DOCM

7870847 - 458 A10  
94238798  
705

POOL #: 482888

ASSIGNMENT OF DEED OF TRUST

\$134,417.00  
Original Mortgage Amount

FOR VALUE RECEIVED, the undersigned as Beneficiary ("Assignor"), hereby grants, convey, assigns and transfers to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., its successors and assigns, as nominee for PNC MORTGAGE CORP. OF AMERICA, its successors and assigns, P.O. BOX 2028, FLINT, MICHIGAN 48501-2028 ("Assignee") all beneficial interest under that certain Deed of Trust, dated June 19, 1998 executed by PRITCHARD, TIMOTHY J PRITCHARD, MELINDA G.

\_\_\_\_\_, Grantor, to  
scott r. valby, and is  
filed of record in the office of the Real Property Records of COLLIN County, Texas,  
under Clerk's file No. 98-0062539 /Volume 4187 , Page 2358 , covering  
the following described property:

LOT 52, OF WILLOW WOOD RANCH ESTATES, AN ADDITION TO THE CITY OF MURPHY, COLLIN COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 6, PAGE 48, OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS.

Property Address: 240 WILLOW WOOD ST, MURPHY, TX 75094

Together with note or notes therein described or referred to, the money due and to become due thereon, with interest, all liens securing the payment of said note or notes, and all rights accrued or to accrue under said Deed of Trust.

Dated: October 05, 1999

**NORTH AMERICAN MORTGAGE COMPANY,  
A DELAWARE CORPORATION**

STATE OF CALIFORNIA  
COUNTY OF SONOMA

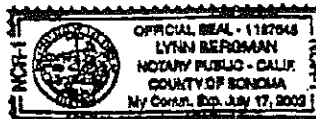
By: TC  
T. COLLOM  
Its: ASSISTANT SECRETARY

On October 05, 1999 , before me LYNN BERGMAN , a Notary Public,  
personally appeared T. COLLOM

, 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(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.

WITNESS my hand and official seal.

Signature [Signature]



(seal)

TX-1.RSL PNC89E [Barcode]

MIN 100012400942387982 MERS PHONE: 1-888-879-8377

Page: 1

# **MERS Lawsuit and Attorney General Opinion**

1 of 1 DOCUMENT

**GEORGE FABORO AND/OR ALL OTHER OCCUPANTS, Appellants v.  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., ITS  
SUCCESSORS AND ASSIGNS, AS NOMINEE FOR HOUSEHOLD FINANCE  
CORPORATION, ITS SUCCESSORS AND ASSIGNS, Appellee**

**No. 05-02-01179-CV**

**COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS**

*2002 Tex. App. LEXIS 8041*

**November 12, 2002, Opinion Filed**

**NOTICE:**

[\*1] PURSUANT TO THE TEXAS RULES OF APPELLATE PROCEDURE, UNPUBLISHED OPINIONS SHALL NOT BE CITED AS AUTHORITY BY COUNSEL OR BY A COURT.

**PRIOR HISTORY:**

On Appeal from the County Court at Law No. 5. Dallas County, Texas. Trial Court Cause No. CC-02-06090-E.

**DISPOSITION:**

Appeal dismissed.

**JUDGES:**

Before Justices Kinkeade, Bridges, and FitzGerald.

**OPINION:**

**OPINION PER CURIAM**

Before Justices Kinkeade, Bridges, and FitzGerald

This appeal was filed on July 25, 2002 by George Gary. The \$ 125 filing fee has not been paid. In a letter dated July 25, 2002, the Clerk notified appellants that this appeal might be dismissed if they did not remit the filing fee within ten days. In a letter dated August 12, 2002, the Clerk warned appellants this appeal would be dismissed if they failed to remit the \$ 125 filing fee within ten days. In a third letter dated October 15, 2002, the Clerk warned Gary specifically that the appeal would be dismissed unless he paid the filing fee within ten days. Appellants have not responded. On the Court's own motion, this appeal is **DISMISSED**. See TEX. R. APP. P. 5, 42.3(b), (c).

**PER CURIAM**

LEXSEE 273 br 354

IN RE: MARK F. VIENCEK, Debtor

CASE NO. 99-64711, Chapter 13

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT  
OF NEW YORK

273 B.R. 354; 2002 Bankr. LEXIS 167

February 15, 2002, Decided

**DISPOSITION:**

[\*\*1] Motions ruled upon.

**CASE SUMMARY**

**PROCEDURAL POSTURE:** Debtor moved to expunge a proof of claim arguing there was no debt owed to the claimant. The claimant responded, asserting it had authority to file and defend the claim as a servicing agent for the mortgage creditor. The debtor filed a motion to strike the response, alleging that the claimant, by arguing the position of the owner of the mortgage on the debtor's residence, was engaging in the unauthorized practice of law.

**OVERVIEW:** It was the debtor's position that the claimant, as a servicing agent, had no interest in the mortgage. The debtor had listed the claimant in his schedules as holding a claim secured by a mortgage. The debtor did not dispute the claimant's right, as a servicing agent, to file a proof of claim on behalf of the mortgagee, but contended that the proof of claim was not valid because it failed to identify the actual owner of the claim. The court found the claimant was a party in interest because of its pecuniary interest in the mortgages it serviced, including that on the debtor's residence. As such it had standing to object to the debtor's motion to expunge the claim. The claimant was authorized to file the claim as the agent of either the owner or the mortgagee. It was evident from the fact that the debtor listed the claimant as a secured creditor in his schedules that he knew of the debt. The debtor did not argue that the amount listed on the claim was incorrect. The claim was timely filed. To allow the debtor to expunge the claim based on the claimant's failure to disclose its principal would have elevated form over substance.

**OUTCOME:** The debtor's motion to strike the claimant's response was denied. The debtor's motion seeking expungement of the claim filed by the claimant was denied. The claimant was granted 15 days to file an amended proof of claim identifying the actual creditor on whose behalf the claim was filed.

**CORE TERMS:** proof of claim, mortgage, servicing, entity, mortgagee, expunge, claim filed, correctly, unauthorized practice of law, motion to strike, secured claim, party-in-interest, expungement, declaration, settlement, adjourned, advancing, asserting, disclose, asking, notice, amend, owes

**CORE CONCEPTS**

***Bankruptcy Law > Creditor Claims & Objections > Allowances & Objections***

That it is possible for more than one party to be a real party in interest as to a creditor claim filed in a bankruptcy illustrates an understanding of modern day financing by which creditors frequently carve up the bundle of rights associated with the claim. A debtor has no standing to challenge which entity appears in court to enforce a claim that the debtor owes.

***Bankruptcy Law > Creditor Claims & Objections > Allowances & Objections***

To allow a debtor to expunge a claim based on the party filing the claim's failure to disclose its principal would be to elevate form over substance.

***Bankruptcy Law > Creditor Claims & Objections > Allowances & Objections***

Bankruptcy courts have the power to insure that substance will not give way to form and that technical

considerations will not prevent substantial justice from being done with respect to the allowance of claims.

***Bankruptcy Law > Creditor Claims & Objections > Allowances & Objections  
Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings***

Amendments to a proof of claim are to be freely allowed as long as the original proof of claim provided notice of the existence, nature and amount of the claim, as well as the intent to hold the bankruptcy estate liable.

**COUNSEL:**

JAMES F. SELBACH, ESQ., Syracuse, New York, for Debtor.

WILLIAM J. BROWN, ESQ., Of Counsel, PHILLIPS, LYTTLE, HITCHCOCK, BLAINE & HUBER, LLP, Buffalo, New York, for Aurora Loan Services, Inc.

LYNN HARPER WILSON, ESQ., Syracuse, New York, for Chapter 13 Trustee.

**JUDGES:**

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge.

**OPINIONBY:**

Stephen D. Gerling

**OPINION:**

[\*355] **MEMORANDUM-DECISION,  
FINDINGS OF FACT CONCLUSIONS OF LAW  
AND ORDER**

Presently under consideration by the Court are two motions filed by Mark F. Viencek ("Debtor"). The first motion was filed on January 4, 2001, asking the Court to expunge the claim of Aurora Loan Services, Inc. ("Aurora") because "there is simply no debt between this debtor and Aurora." On March 15, 2001, Aurora filed a response, asserting that it had authority to file and defend the proof of claim it filed on October 25, 1999, and amended November 4, 1999.

On May 2, 2001, the [\*2] Debtor filed a motion asking that the Court strike Aurora's response, alleging that Aurora, by arguing the position of the owner of the mortgage on the Debtor's residence, is engaging in the unauthorized practice of law. It is the Debtor's position that Aurora is a servicing agent and has no interest in the mortgage.

Both motions were heard on May 15, 2001, at the Court's regular motion term in Syracuse, New York. The Court adjourned the motions to June 26, 2001, to consider the arguments. The motions were consensually

adjourned until July 24, 2001, at which time the Court granted the parties an opportunity to file additional memoranda of law. The motions were submitted for decision on August 7, 2001. n1

n1 On November 15, 2001, the Court apprized the parties that it was prepared to render a decision. In light of the parties' advice that a possible settlement was being negotiated, the Court indicated it would give the parties until January 22, 2002, to file a motion and be heard on any settlement. This deadline was extended 30 days at the request of the parties in a letter dated January 16, 2002. However, on February 5, 2002, Debtor's counsel requested that the Court issue its decision.

[\*\*3]

**JURISDICTIONAL STATEMENT**

The Court has jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. § § 1334, 157(a), (b)(1) and (b)(2)(A) and (B).

**FACTS**

The Debtor filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code, 11 U.S.C. § § 101-1330 ("Code") on August 26, 1999. On December 21, 1999, the Debtor filed his schedules and Statement of Financial Affairs, as well as his chapter 13 plan ("Plan"). Debtor lists Aurora as holding a claim in the amount of \$ 92,276.56, secured by a mortgage on the Debtor's residence, valued by the Debtor at \$ 80,000. The claim is not identified as being contingent, unliquidated or disputed. *See* Schedule D.

Aurora filed a proof of claim on October 29, 1999, in which it asserted a secured claim of \$ 92,084.16, and \$ 15,988.85 in arrears. Aurora is identified on the proof of claim as "Creditor" or "the person or entity to whom the Debtor owes money or property." Attached to the proof of claim is a copy of a note and mortgage, dated May 21, 1997, naming Commonfund Mortgage [\*356] Corporation ("Commonfund") as the "Lender." Also attached is a document, [\*4] dated May 21, 1997, assigning Commonfund's interest in the mortgage to Source One Mortgage Services Corp. ("Source One"). According to another document attached to the proof of claim, on May 28, 1997, the same mortgage appears to have been assigned to Government National Mortgage Association ("GNMA") by Source One. Aurora indicates that Lehman Capital, a Division of Lehman Brothers Holding, Inc. ("Lehman") n2, acquired the loan from Source One pursuant to a Mortgage Servicing Purchase

and Sale Agreement dated August 31, 1998, "as a group of approximately \$ 1.65 billion of GNMA Mortgage Servicing Rights." See Exhibit B attached to Aurora's Response to Debtor's Request for Production of Documents and Things, filed August 7, 2001. n3

n2 According to a declaration of Scott Drosdick, Vice President and Associate Counsel of Aurora, Lehman Brothers Holding, Inc. owns 78% of Aurora's stock. See Exhibit C attached to Aurora's Response, filed May 16, 2001.

n3 Aurora contends that on or about October 1, 1998, the Debtor received notification from Source One that "the servicing of our mortgage loan has been transferred to" Aurora and that all payments were to be remitted to Aurora. See Aurora's Supplemental Exhibit, filed July 23, 2001.

[\*\*5]

On November 9, 1999, Aurora filed an amended proof of claim listing a secured claim of \$ 92,276.56 and arrears totaling \$ 16,181.25. According to the terms of the Plan, the amount of arrears owing to Aurora, based on its proof of claim, totaled \$ 17,306.92, and was to be paid through the Plan.

#### ARGUMENTS

The Debtor contends that the proof of claim filed by Aurora should be expunged because Aurora does not own the mortgage on the Debtor's residence and is not a creditor. The Debtor does not dispute Aurora's right, as a servicing agent, to file a proof of claim on behalf of the mortgagee, but contends that the proof of claim is not valid because it fails to identify the actual owner of the claim. At the hearing on May 15, 2001, Debtor's counsel acknowledged that there is a mortgage lien on the Debtor's residence and someone has a claim but that entity is not Aurora.

According to a letter addressed to Aurora and dated March 14, 2001, Lehman is the owner of the mortgage debt. See Exhibit F of Aurora's Response, filed March 15, 2001; see Declaration of Krista Gingrich, Vice President of Aurora, filed August 7, 2001. The letter states that pursuant to a Flow Servicing Agreement [\*\*6] between Lehman and Aurora, dated February 15, 2000, Aurora was authorized to file the proof of claim. It appears that Aurora was also given authority to pursue the debt identified in the proof of claim. See Exhibits A, B and C attached to Aurora's Response, filed March 15, 2001.

It is Aurora's position that it was not necessary that Aurora own the mortgage in order for it to file the proof of claim and to defend it. Aurora argues that it just needs to have a tangible interest, which it does by virtue of its servicing activities for which it receives compensation. Aurora also contends that it can file a proof of claim which does not identify the actual creditor. Aurora points out that the "Official Forms" are prescribed by the Judicial Conference of the United States. Aurora takes the position that the current official form used in filing proofs of claim, "Form 10", was revised to delete the prior requirement for disclosure of agency.

In response, Debtor's counsel has submitted to the Court a copy of a letter, [\*357] dated August 3, 2001, from Patricia S. Ketchum, Senior Attorney, Bankruptcy Judges Division of the Administrative Office of the U.S. Courts, who also served as staff counsel [\*\*7] to the Advisory Committee on Bankruptcy Rules. n4 See Exhibit F, attached to Debtor's Attorney's Affirmation, filed August 7, 2001. In the letter, Ms. Ketchum suggests that the Advisory Committee, in discussing proposed amendments to the official forms, "intended to maintain the long-standing requirement that any agent disclose that capacity when filing a claim." See *id.*

n4 It is the Advisory Committee that drafts the amendments to the rules which are ultimately submitted to the Judicial Conference for approval.

Aurora asserts that if the Court were to determine that the proof of claim must disclose the agency relationship and the identity of the actual creditor, then it should be permitted to amend the proof of claim, which has provided the Debtor with notice of the existence, nature and amount of the claim.

With respect to the Debtor's second motion seeking to have Aurora's response in defense of the proof of claim stricken, the Debtor argues that Aurora is advancing arguments that are not its to make. [\*\*8] It is the Debtor's position that the mere fact that Aurora has a contract to service the Debtor's mortgage does not authorize it to practice law and represent the interest and position of the actual party-in-interest. The Debtor asserts that Aurora's counsel is advancing arguments on behalf of an entity that is not the true party-in-interest.

In response, Aurora's counsel contends that it does not constitute the practice of law for Aurora to respond to a motion regarding its activities. Aurora argues that the proof of claim was filed by it as a duly authorized agent. Aurora points out that the Debtor is not objecting



to the validity or amount of the claim; its only objection is based on the fact that Aurora filed the proof of claim.

#### DISCUSSION

Debtor relies on two decisions in support of his motions. See *In re Morgan*, 225 B.R. 290 (Bankr. E.D.N.Y. 1998) and *In re O'Dell*, 251 B.R. 602 (Bankr. N.D.Ala. 2000). Unfortunately for the Debtor, neither case is good law. The *Morgan* decision was vacated by the U.S. District Court of the Eastern District of New York, which found that the bankruptcy court's decision was an improper advisory opinion [\*\*9] because, *inter alia*, the controversies at issue had been rendered moot, divesting the bankruptcy court of any authority to issue a decision. See *In re Nunez*, 2000 U.S. Dist. LEXIS 12078, 2000 WL 655983 (E.D.N.Y. March 17, 2000). More recently, the *O'Dell* decision was reversed by the U.S. District Court of the Northern District of Alabama. See *In re O'Dell*, 268 B.R. 607 (N.D. Ala. 2001).

In *O'Dell*, the Debtors listed Max Flow Corporation as an unsecured non-priority creditor with a claim for unpaid prepetition charges on a credit card account. Max Flow filed a proof of claim "On Behalf of MBNA America Bank, N.A. and Its Assigns." The debtors filed an objection to the claim, asserting that Max Flow was not a party in interest. The debtors also filed a motion to strike Max Flow's reply. Both motions were granted by the bankruptcy court.

With respect to the debtors' argument that Max Flow had engaged in the unauthorized practice of law, the District Court in *O'Dell*, citing to *Wadsworth v. Yancey Bros. Co.*, 423 So. 2d 1343 (Ala. 1982), noted

that it is possible for more than one party to be a real party in interest as to [\*\*358] the creditor claim, [\*\*10] illustrates an understanding of modern day financing by which creditors frequently carve up the bundle of rights associated with the claim. The court [in *Wadsworth*] correctly held that a debtor has no standing to challenge which entity appears in court to enforce a claim that the debtor owes (citations omitted).

*O'Dell* 268 B.R. at 617. While the District Court in *O'Dell* ultimately concluded that Max Flow was the actual creditor and owned the claim, it made it clear that even if Max Flow had only been an authorized agent, it still was entitled to conduct the legal affairs of its principal. See 268 B.R. at 613-614 (citations omitted).

In the present case, Aurora is a party in interest because of its pecuniary interest in the mortgages it services, including that on the Debtor's residence. As such it had standing to object to the Debtor's motion to expunge the claim. Accordingly, the Court will deny the

Debtor's motion to strike Aurora's response to the Debtor's motion seeking expungement of the claim it filed.

As to the Debtor's motion seeking to expunge the claim filed by Aurora, the Court concludes that Aurora was authorized to file the proof of claim as the agent of [\*\*11] either the owner or the mortgagee. n5 It is evident from the fact that the Debtor listed Aurora as a secured creditor in his schedules that he knew of the debt. Indeed, there is no argument by the Debtor that the amount listed on the proof of claim is in any way incorrect. The proof of claim was timely filed and, as noted by the District Court in *O'Dell*, "debtors are supposed to pay their debts." 268 B.R. at 615. To allow the Debtor to expunge the claim based on Aurora's failure to disclose its principal would be to elevate form over substance. See *Pepper v. Litton*, 308 U.S. 295, 305, 60 S. Ct. 238, 244, 84 L. Ed. 281 (1939) (indicating that bankruptcy courts have the power to insure that "substance will not give way to form" and that "technical considerations will not prevent substantial justice from being done" with respect to the allowance of claims). As Aurora has correctly pointed out, amendments to a proof of claim are to be freely allowed as long as the original proof of claim provided notice of the existence, nature and amount of the claim, as well as the intent to hold the estate liable. See *McLean Industries, Inc.*, 121 B.R. 704, 708 (Bankr. S.D.N.Y. 1990); [\*\*12] *In re Unioil, Inc.*, 962 F.2d 988, 992-993 (10th Cir. 1992) (allowing the amendment of the original proof of claim to identify the proper claimant in the situation where the original proof of claim had been filed by the trustee without identifying the trust as his principal). Therefore, the Court will allow Aurora fifteen (15) days from the date of this Order to amend the proof of claim to identify the actual creditor, which it acknowledges it is not.

n5 In the context of these motions, it is unnecessary for the Court to make a determination of just who the actual creditor is. From the arguments made on behalf of Aurora and the documents presented for the Court's review, there is reason to believe that Mortgage Electronic Registration Systems, Inc. may be the mortgagee and Lehman may, at least at the time of the two hearings, have been the beneficial owner of the mortgage on the Debtor's residence.

Based on the foregoing, it is hereby

ORDERED that the Debtor's motion seeking to strike Aurora's [\*\*13] response is denied; it is further

ORDERED that Debtor's motion seeking expungement of the claim filed by Aurora is denied; and it is finally

[\*359] ORDERED that Aurora be granted fifteen (15) days from the date of this Order to file an amended proof of claim identifying the actual creditor on whose behalf it was filed.

Dated at Utica, New York

this 15th day of February 2002

STEPHEN D.GERLING

Chief U.S. Bankruptcy Judge

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich Dept of Attorney General Web Site - [www.ag.state.mi.us](http://www.ag.state.mi.us))

---

## STATE OF MICHIGAN

## JENNIFER M. GRANHOLM, ATTORNEY GENERAL

DEEDS AND CONVEYANCES: Register of deeds duty to record and index mortgage document where mortgagee is listed as nominee

MORTGAGES:

REAL ESTATE:

REGISTER OF DEEDS:

A county register of deeds may not decline to accept for recording a mortgage, assignment of mortgage, or discharge of mortgage on the ground that the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee.

When recording and indexing a mortgage document in which the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee, the county register of deeds may list the mortgagee as "nominee" or, when appropriate, nominee for identified principal.

Opinion No. 7116

August 28, 2002

Honorable A. T. Frank  
State Representative  
The Capitol  
Lansing, MI

You have asked two questions concerning the duties of a county register of deeds in processing a mortgage, assignment of a mortgage, and discharge of mortgage where the document's mortgagee is identified as a nominee.

Your first question asks whether a county register of deeds may decline to accept for recording a mortgage, assignment of mortgage, or discharge of mortgage on the ground that the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee.

Information supplied with your request indicates that several county registers of deeds have received for recording documents in which a mortgage, assignment of mortgage, or a discharge of mortgage is given by the Mortgage Electronic Registration System Inc. (MERS), an organization of lending institutions established to serve as mortgagee of record for mortgage lenders who participate in the MERS system.

OAG, 1999-2000, No 7067, p 158 (November 29, 2000), which considered the nature of the office of county register of deeds, stated in part as follows:

Const 1963, art 7, § 4, provides for the office of county register of deeds "whose duties and powers shall be provided by law." The powers and duties assigned to this office are ministerial, not discretionary, in nature. *Youngblood v US*, 141 F2d 912, 913 (CA 6, 1944). The county register of deeds must accept for filing or recording all deeds or other

instruments affecting title to real or personal property for which the law provides as long as (i) the instruments satisfy the legal requirement for form and (ii) the requisite filing or recording fees are paid. *Van Husan v Heames*, 96 Mich 504, [508-509]; 56 NW 22 (1893). [See also 1 OAG, 1955, No 2065, p 576, 578 (November 1, 1955).]

In the Recording Requirements Act, 1937 PA 103, MCL 565.201 *et seq*, the Legislature has set forth the requirements governing recordation of documents by the county register of deeds. Section 1 enumerates these requirements as they relate to the form of the document submitted for recording. Subsection (b) of this section imposes a duty on the county register of deeds to ascertain that:

A discrepancy does not exist between the name of each person as printed, typewritten, or stamped beneath their signature and the name as recited in the acknowledgment or jurat on the instrument.

No provision in the Recording Requirements Act suggests that a discrepancy will exist in a mortgage instrument simply because a mortgagee is listed as a nominee of a mortgagee who remains undisclosed.

The term "nominee" was defined in *Schuh Trading Co v Comm'r of Internal Revenue*, 95 F 2d 404, 411 (CA 7, 1938), as follows:

The word nominee ordinarily indicates one designated to act for another as his representative in a rather limited sense. It is used sometimes to signify an agent or trustee. It has no connotation, however, other than that of acting for another, or as the grantee of another. . . .

Michigan law vests no authority upon a county register of deeds to decline to record a mortgage or mortgage-related instrument on the basis that a nominee's name appears on the document. As long as the instrument conforms to the specific requirements contained in the Recording Requirements Act, a county register of deeds is required to accept and record the instrument, provided the requisite recording fees are paid.

It is my opinion, therefore, in answer to your first question, that a county register of deeds may not decline to accept for recording a mortgage, assignment of mortgage, or discharge of mortgage on the ground that the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee.

Your second question asks how a county register of deeds may list the mortgagee in the register's records when the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee.

The Conveyances, Deeds, and Mortgages Act, RS 1846, c 65, MCL 565.1 *et seq*, directs that "[e]very register of deeds shall keep an entry book of deeds and an entry book of mortgages, each page of which shall be divided into 6 columns, with title or heads to the respective columns . . ." Section 24. In that same Act, the Legislature has imposed a duty upon a county register of deeds to enter into the entry book of mortgages all mortgages and assignments of mortgages. Section 25. The register of deeds is also required to keep a general index to each set of books in which the register "shall enter alphabetically the name of each party to each instrument recorded by the register of deeds, with a reference to the book and page where the instrument is recorded." Section 28.

The first step in ascertaining legislative intent is to look to the text of the statute. *Piper v Pettibone Corp*, 450 Mich 565, 571; 542 NW2d 269 (1995). Where the language of the statute is clear and unambiguous, the Legislature's intent must be carried out according to its plain meaning. *Dean v Dep't of Corrections*, 453 Mich 448, 454; 556 NW2d 458 (1996). In such instances, statutory construction is neither required nor permitted; rather, the court must apply the statutory language as written. *Piper, supra*, at 572.

It is my opinion, therefore, in answer to your second question, that when recording and indexing a mortgage document in which the mortgagee is identified as a nominee of a disclosed or undisclosed mortgagee, the county register of deeds may list the mortgagee as "nominee" or, when appropriate, nominee for identified principal.

# **MERS Website and Member Search**



## Website Directions for Sample Documents and Foreclosure Procedures

Follow the directions shown below once you reach the MERS website  
URL address: [www.mersinc.com](http://www.mersinc.com)  
download sample documents, foreclosure procedures and other items of interest.

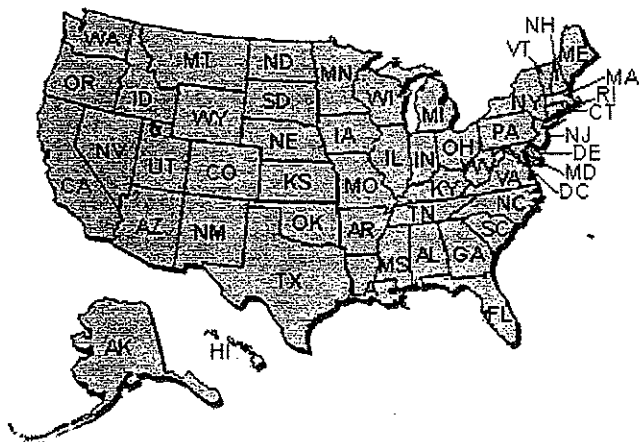
Use the MENU at the left side of the page when the welcome screen loads on your computer.


### Sample Documents Procedures:

- 1) **SELECT "Manuals and Forms" from the right side screen menu by mouse clicking it once.**
- 2) **From the sub-menu list, select "Sample Forms" by mouse clicking the selection once.**
- 3) **Select the word "view" by clicking once on it at the end of each sentence listing a particular form that you wish to view.**
- 4) **You may then select "print" from your browser's menu to print a sample copy if you wish.**

### For Foreclosure Procedures:

- 1) **From the left side screen menu, click once on the word "Foreclosures" from the screen menu**
- 2) **The state map shown below will appear. Use your mouse pointer to select your state and click on the state name, then print out or copy the instructions.**



Select a State 

---

Recommended Foreclosure Procedures  
MERS Directory of Local Counsel

## Member Search

Four types of searches are accommodated. They are described below:

**By Organization ID** - Enter a 7 digit Organization ID.

**By Company Name** - Enter at least the first 4 letters of the company name.

**By Specific Alphabet Letter** - Enter an alphabet letter from A to Z and a company list will be generated for the specified letter.

**ALL Company Names** - Press submit and a company list will be generated alphabetically from A to Z.

---

Copyright© 2002 by MERSCORP, Inc. 1-800-646-MERS (6377)  
Other products or company names are or may be trademarks  
or registered trademarks and are the property of  
their respective holders.

**Please Select A Company Below:**

[Wells Fargo as Trustee](#)

[Wells Fargo Home Mortgage, Inc.](#)

[Wells Fargo Mortgage Document Custody](#)

[Wells Fargo Mortgage Warehousing Group](#)

[Back To Member Search](#)

---

Copyright© 2002 by MERSCORP, Inc. 1-800-646-MERS (6377)  
Other products or company names are or may be trademarks  
or registered trademarks and are the property of  
their respective holders.



**Corporate Name:** Wells Fargo as Trustee  
**Address:** 1015 SE 10 Street  
**City,State,Zip:** Minneapolis, MN 55114  
**Toll Free Number:**  
**Direct Number:** (999) 999-9999  
**Fax Number:** (999) 999-9999  
**Email Address:**  
**Primary Contact:** Gretel Meier  
**Website:**  
**Member Org ID:** 1000105  
**Lines Of Business:** Investor, Title Company, Trustee

[Back To Member Search](#)

---

Copyright© 2002 by MERSCORP, Inc. 1-800-646-MERS (6377)  
Other products or company names are or may be trademarks  
or registered trademarks and are the property of  
their respective holders.

# MERS “Forum” Example

Re: FORECLOSURE OF MERS LOANS

[ View Follow-Ups ] [ Post Follow-Up ] [ MERS Forum ]

Posted By Sharon Horstkamp on August 06, 2001 at 16:27:06:

In Reply To: FORECLOSURE OF MERS LOANS posted by TOM GOWER on July 27, 2001 at 19:11:35:

: IF A MERS LOAN GOES INTO FORECLOSURE DOES THE TRUSTEE'S/SHERIFF'S DEED GET RECORDED WITH MERS AS THE GRANTEE. WHEN THERE IS AN REO SALE DOES MERS CONVEY TO THE LAST ASSIGNEE UNDER THEIR SYSTEM AND THAT COMPANY DEED'S THE PROPERTY TO THE NEW BUYER. WHAT ABOUT DOCUMENTARY TRANSFER TAX ON THE DEED FROM MERS TO THE ASSIGNEE.

The steps to follow when foreclosing in the name of MERS can vary from state to state. The common step in most states' procedures is that MERS does not end up with title at the end of the foreclosure. There are some states where this cannot be prevented (strict foreclosure in Connecticut). However, in most states the bid can be assigned so that the Trustee's/Sheriff's deed can be issued directly to the mortgage servicer or investor. If the Trustee's/Sheriff's deed is issued directly to MERS, then MERS members are instructed to issue a subsequent deed to either themselves or the investor (i.e., Fannie Mae, Freddie Mac) as soon as possible to remove MERS from title.

Foreclosing in MERS name should not cause any mortgage servicer to incur additional documentary transfer tax.

View Follow-Ups

Post Follow-Up

\*Required Fields

Name: \*

E-Mail:

Subject: \*

Comments: \*

# **Texas Non-judicial MERS**

## **Foreclosure Forms**



7160 9668 9670 0024 4777

FRESNO TX 77543

**IMPORTANT INFORMATION IS  
CONTAINED WITHIN THE ATTACHED  
NOTICE.**

**PLEASE READ CAREFULLY**

**BARRETT BURKE WILSON CASTLE DAFFIN  
& FRAPPIER, L.L.P. IS A DEBT COLLECTOR  
ATTEMPTING TO COLLECT A DEBT. ANY  
INFORMATION OBTAINED WILL BE USED  
FOR THAT PURPOSE.**

October 23, 2002

**Name and Address of Sender**  
 Barrett Burke Wilson Castle  
 Daffin & Frappier, L.L.P.  
 15000 Surveyor Blvd., Suite 100  
 Addison, TX 75001

**Check type of mail:**  
 Express  
 Registered  
 Insured  
 COD  
 Return Receipt (RR) for Merchandise  
 Certified  
 Int'l Rec. Del.  
 Del. Confirmation (DC)

**If Registered Mail, check below:**  
 Insured  
 Not Insured

**Affix stamp here if issued as certificate of mailing, or for additional copies of this bill.**  
 Postmark and Date of Receipt

Line	Article Number	Addressee Name, Street, and PO Address	Postage	Fee	Handling Charge	Actual Value (if Reg.)	Insured Value	Due Scales	RR Fee	DC Fee	SC Fee	SH Fee	SD Fee	RD Fee	Remarks
1	7160 9668 9670 0024 4760		\$0.37	\$2.67											
2	7160 9668 9670 0024 4777		\$0.37	\$2.67											
3	7160 9668 9670 0024 4784		\$0.37	\$2.67											
4	7160 9668 9670 0024 4791		\$0.37	\$2.67											
5			\$0.37	\$2.67											
6			\$0.37	\$2.67											
7			\$0.37	\$2.67											
8			\$0.37	\$2.67											

**Total Number of Pieces Listed by Sender**

**Total Number of Pieces Received at Post Office**

**POSTMASTER, PER (Name of receiving employee)**

The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for the reconstruction of nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for registered mail, sent with optional postal insurance. See Domestic Mail Manual R900, S913, and S921 for limitations of coverage on insured and COD mail. See International Mail Manual for limitations of coverage on international mail. Special handling charges apply only to Standard Mail (A) and Standard Mail (B) parcels.

**BARRETT BURKE WILSON CASTLE DAFFIN & FRAPPIER, L.L.P.**

A Partnership Including  
Professional Corporations  
**ATTORNEYS AND COUNSELORS AT LAW**  
15000 Surveyor Boulevard  
Suite 100, Department 4000  
Addison, Texas 75001

Telephone: (972) 419-1163  
Telecopier: (972) 386-7673

October 23, 2002

FRESNO TX 77545

Re: Servicer/Creditor:  
Loan No.:  
BBWCDF No.:

This law firm represents COUNTRYWIDE HOME LOANS, INC., the Servicer/Creditor, or the duly authorized agent thereof (hereinafter "Servicer"), in its mortgage banking activities in the State of Texas. We have been authorized by the Servicer to initiate legal proceedings in connection with the foreclosure of a Deed of Trust associated with your real estate loan (hereinafter the "Debt").

This letter is formal notice of the following:

1. Payment of the past due balance on the Debt has not been received by the Servicer. Because of this default, the Holder of the Note has elected to ACCELERATE the maturity of the Debt.
2. The amount of the Debt as of the date of this notice, according to the records of the Servicer, is \$151,465.08. Because of interest and other charges that may vary from day to day, the amount due on the day you pay may be greater. If you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call the Foreclosure Department of this firm at (972) 419-1163. Payment must be made in certified funds, cashier's check or money order(s).

The creditor to whom the Debt is owed: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE

3. As designated on the enclosed Notice of Trustee's Sale, the Trustee, or the Substitute Trustee, will sell the real estate therein described to the highest bidder for cash.
4. All of the obligors and guarantors (if any) of the Debt have the right to reinstate the loan as provided in the Deed of Trust and as provided by Texas law. You may obtain reinstatement figures by calling the Foreclosure Department of this firm at (972) 419-1163.
5. All of the obligors and guarantors (if any) have the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and foreclosure which they may have.

**PLEASE BE ADVISED THAT THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT THE ABOVE-REFERENCED DEBT. ANY INFORMATION OBTAINED FROM YOU WILL BE USED FOR THAT PURPOSE.** Federal law gives you thirty (30) days after you receive this letter to dispute the validity of the Debt or any part thereof. If you don't dispute the Debt within that period, this firm will assume that the Debt is valid. If you do dispute the Debt by notifying this firm in writing, the firm will obtain and mail verification of the Debt to you. If within the same period, you request in writing the name and address of the original creditor, and if the original creditor is different from the current creditor, this firm will furnish you with that information.

The law does not require this firm to wait until the end of the thirty-day period before taking action to collect the Debt. If, however, you have requested verification of the Debt or the name and address of the original creditor within the time stated above, this firm will cease collection activities until such requested information has been mailed to you.

If you are not obligated on the Debt, or if the Debt has been discharged in a bankruptcy proceeding, the Servicer is not attempting to collect from you personally. You are being given this notice as a courtesy because your interest in the Real Estate may be affected.

Sincerely,

Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.

Enclosed: Notice of Trustee Sale



Client Loan No.:  
BBWCDF File No.:  
Investor Loan No.:  
Loan Type:

APPOINTMENT OF SUBSTITUTE TRUSTEE

DEED OF TRUST

DATED:

GRANTOR(S):

RECORDED IN: CLERK'S FILE NO.

PROPERTY COUNTY: FORT BEND

The owner of such obligation and beneficiary under said Deed of Trust, according to the provisions therein set out, does hereby remove the original Trustee and all successor substitute trustees and appoints in their stead OR as Substitute Trustee, who shall hereafter exercise all powers and duties set aside to the said original Trustee under the said Deed of Trust; and, further, does hereby request, authorize, and instruct said Substitute Trustee to conduct and direct the execution of remedies set aside to the beneficiary therein.

Executed on October 23, 2002.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,  
INC., AS NOMINEE

BY: \_\_\_\_\_

CORPORATE ACKNOWLEDGMENT

STATE OF TEXAS }  
COUNTY OF COLLIN }

Before me, the undersigned Notary Public, on this day personally appeared \_\_\_\_\_, who is the VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, 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 \_\_\_\_\_.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public for the State of TEXAS

\_\_\_\_\_  
Printed Name of Notary Public

RETURN TO:  
BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L.L.P.  
15000 Surveyor Boulevard, Suite 100  
Addison, Texas 75001





**BARRETT BURKE WILSON CASTLE DAFFIN & FRAPPIER, L.L.P.**

A Partnership Including  
Professional Corporations  
ATTORNEYS AND COUNSELORS AT LAW  
15000 Surveyor Boulevard  
Suite 100  
Addison, Texas 75001

Telephone: (972) 419-1163  
Telecopier: (972) 386-7673

October 23, 2002

FRESNO TX 77545

RE: Servicer:  
Loan No.:  
BBWCDF No.:

This law firm represents COUNTRYWIDE HOME LOANS, INC., the Servicer/Creditor, in its mortgage banking activities in the State of Texas. We have been authorized by our client to initiate legal proceedings in connection with the foreclosure of a deed of trust associated with your real estate loan.

**THIS FIRM IS A DEBT COLLECTOR ATTEMPTING TO COLLECT THE DEBT. ANY INFORMATION OBTAINED BY IT WILL BE USED FOR THAT PURPOSE.**

This letter is formal notice of the following:

1. Payment of the past due balance on the Debt has not been received by the Servicer. Because of this default, the Holder of the Note has elected to ACCELERATE the maturity of the Debt.
2. On Tuesday, December 3, 2002, as designated on the enclosed Notice of Trustee's Sale, the Trustee, or the Substitute Trustee, will sell at the Courthouse of FORT BEND County, Texas in the area designated by the Commissioner's Court of such County, or if no area is designated by the Commissioner's Court, in the usual and customary place in that County, to the highest bidder for cash, the Real Estate described in the enclosed Notice.
3. All of the obligors and guarantors (if any) of the Debt have the right to reinstate the loan as provided in the Deed of Trust and as provided by applicable Texas law. Payment must be made in certified funds, cashier's check or money order(s).
4. All of the obligors and guarantors (if any) have the right to bring a court action to assert the non-existence of a default or any other defense to acceleration and foreclosure which they may have.

Any questions regarding the matters set forth should be directed, in writing, to the attention of the Foreclosure Department of this firm.

Sincerely,

Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.

Enclosed: Notice of Trustee Sale

Current Borrower:  
Client Loan #:  
BBWCDF File #:  
VA/FHA/PMI #:  
Loan Type:  
Property Address:

FRESNO TEXAS 77545

## NOTICE OF SUBSTITUTE TRUSTEE SALE

Deed of Trust

Date:

Grantor(s):

Original Beneficiary:

MERS, INC. AS NOMINEE FOR AMERICA'S WHOLESALE LENDER

Current Beneficiary:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE  
C/O COUNTRYWIDE HOME LOANS INC  
7105 CORPORATE  
PLANO TEXAS 75024

Recorded in: CLERK'S FILE NO

Property County: FORT BEND

Legal Description:

LOT ONE (1), IN BLOCK TWO (2), OF ESTATES OF TEAL RUN SECTION TWO (2), A SUBDIVISION, IN FORT BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN SLIDE NO. 2156/A OF THE MAP RECORDS OF FORT BEND COUNTY, TEXAS.

Date of Sale: Tuesday, the 3 of December, 2002.

Earliest Time Sale will Begin: 1:00PM

Place of Sale of Property:

THE NORTH ENTRANCE OF THE FORT BEND COUNTY COURTHOUSE OR AS DESIGNATED BY THE COUNTY COMMISSIONERS

The Substitute Trustee will sell the property by public auction to the highest bidder for cash at the place and date specified. The sale will begin at the earliest time stated above or within three (3) hours after that time.

Dated this 28 day of October, 2002.

---

Substitute Trustee

Current Borrower:
Property Address:
FRESNO TEXAS 77545

Client Loan No.:
Investor Loan No.:
BBWCDF File No.:
VA Case No.:
Loan Type:

SUBSTITUTE TRUSTEE'S DEED

DEED OF TRUST DATE: March 29, 2002

DATE OF SALE OF PROPERTY: December 3, 2002

GRANTOR(S):

TIME OF SALE:

PLACE OF SALE OF PROPERTY:
THE NORTH ENTRANCE OF THE FORT BEND
COUNTY COURTHOUSE OR AS DESIGNATED BY
THE COUNTY COMMISSIONERS

ORIGINAL BENEFICIARY:
MERS, INC. AS NOMINEE FOR AMERICA'S
WHOLESALE LENDER
4500 PARK GRANADA
CALABASAS CALIFORNIA 91302

GRANTEE/BUYER:
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., AS NOMINEE

CURRENT BENEFICIARY:
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
INC., AS NOMINEE

GRANTEE/BUYER'S MAILING ADDRESS:
C/O COUNTRYWIDE HOME LOANS INC
7105 CORPORATE
PLANO TEXAS 75024

RECORDED IN:
CLERK'S FILE NO.

AMOUNT OF SALE:

PROPERTY COUNTY: FORT BEND
LOT ONE (1), IN BLOCK TWO (2), OF ESTATES OF TEAL RUN SECTION TWO (2), A SUBDIVISION, IN FORT BEND
COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN SLIDE NO. 2156/A OF THE MAP RECORDS
OF FORT BEND COUNTY, TEXAS.

Grantor conveyed the property to Trustee in trust to secure payment of the Note. Beneficiary declared that Grantor defaulted in performing
the obligations of the Deed of Trust. Current Beneficiary of the Note, accordingly has appointed Substitute Trustee and requested
Substitute Trustee to enforce the trust.

Notices stating the time, place and terms of sale of the property were mailed, posted and filed, as required by law. Substitute Trustee sold
the property to Buyer, who was the highest bidder at the public auction, for the amount of sale in the manner prescribed by law. The
subject sale was conducted no earlier than 1:00PM as set forth in the Notice of Substitute Trustee's Sale and was concluded within
three (3) hours of such time. All matters, duties and obligations of Beneficiary were lawfully performed as evidenced by the affidavit(s)
attached hereto and incorporated herein for all purposes.

Substitute Trustee, by the authority conferred by Current Beneficiary and by the Deed of Trust, subject to prior liens and other exceptions
in the Deed of Trust, if any, and for the amount of sale paid by buyer as consideration, grants, sells and conveys to Buyer, Buyer's heirs,
executors, administrators, successors or assigns forever, the property together with all rights and appurtenances belonging to Grantor.
Substitute Trustee binds Grantor and Grantor's heirs, executors, administrators, successors and assigns to Buyer and Buyer's heirs,
executors, administrators, successors and assigns against every person lawfully claiming to warrant and defend all right, title and interest
in the property or any part thereof.

WITNESS MY HAND, this the 3 day of December, A.D., 2002.

Substitute Trustee

STATE OF TEXAS }
COUNTY OF }

Before me, the undersigned Notary Public, on this day personally appeared as
Substitute Trustee, known to me or proved to me through a valid State driver's license or other official identification described as
, to be the person whose name is subscribed to the foregoing instrument and acknowledged to me
that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3 day of December, 2002.

My Commission Expires:

Notary Public for the State of TEXAS

Printed Name of Notary Public

RETURN TO: BARRETT BURKE WILSON CASTLE
DAFFIN & FRAPPIER, L.L.P.
15000 Surveyor Boulevard, Suite 100
Addison, Texas 75001

Current Borrower:  
BBWCDF File No.:  
Client Loan No.:  
Investor Loan No.:  
VA/FHA/PMI No.:  
Property Address:  
FRESNO TEXAS 77545

AFFIDAVIT OF MORTGAGEE

STATE OF TEXAS }  
COUNTY OF DALLAS }

BEFORE ME, the undersigned authority on this day personally appeared Sylvia Loreda, who after being duly sworn, deposed and stated:

1. I am an employee of BARRETT BURKE WILSON CASTLE DAFFIN & FRAPPIER, L.L.P., attorney for:  
COUNTRYWIDE HOME LOANS, INC.

at the time of the events hereinafter set forth and make this affidavit for the purpose of declaring the incidents of statutory and contractual compliance of the entity or entities set out below.

2. This affidavit is made with respect to the foreclosure of that certain Deed of Trust dated March 29, 2002, recorded in CLERK'S FILE NO. 2002034737, Real Property Records, FORT BEND County, TEXAS, executed by:

to CTC REAL ESTATE SERVICES, Trustee(s) to secure payment of a Note to MERS, INC. AS NOMINEE FOR AMERICA'S WHOLESALE LENDER.

3. COUNTRYWIDE HOME LOANS, INC. is the mortgage loan servicer for MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE, the holder of the debt or the agent for the holder of the indebtedness secured by said Deed of Trust.

4. To the best of my knowledge and belief, proper notice was sent prior to acceleration of the indebtedness. All obligations and duties of the holder of the debt were performed in the manner required by law and all notices were served on the Debtor at the Debtor's last known address as shown by the records of the holder of the debt.

5. To the best of my knowledge and belief, the mortgagors holding an interest in the above described property were not members of the Armed Forces of the United States of America and had not been members of any such entities for at least three (3) months prior to the date of the Trustee's Sale and the subject hereof and were alive on the date of such sale.

6. At the instructions and on behalf of the holder of the debt or its agent, notice of acceleration of indebtedness and Trustee's Sale was served on every debtor obligated on the debt, in strict compliance with the Texas Property Code, by certified mail at least twenty-one (21) days prior to the date therein specified for sale at the last known address of each such debtor according to the records of the holder of the debt.

7. At the instructions and on behalf of the holder of the debt or its agent, Notice of Trustee's Sale was filed with the County Clerk in the county or counties in which the subject property is situated and copies thereof posted at said courthouse(s) as required by law and in the manner specified by ordinance and custom.

DATED: December 3, 2002

\_\_\_\_\_  
AFFIANT

STATE OF TEXAS }  
COUNTY OF DALLAS }

Sworn to and subscribed before me, the undersigned Notary Public, on this day personally appeared Sylvia Loreda, who is the Foreclosure Specialist and duly authorized agent of BARRETT BURKE WILSON CASTLE DAFFIN & FRAPPIER, L.L.P., a limited liability partnership, on behalf of said partnership, 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 3 day of December, 2002

My Commission Expires:

\_\_\_\_\_  
Notary Public for the State of TEXAS

\_\_\_\_\_  
Printed Name of Notary Public

RETURN TO: BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L.L.P.  
15000 Surveyor Boulevard, Suite 100  
Addison, Texas 75001

# **Texas Home Equity MERS Foreclosure Forms**

**BARRETT BURKE WILSON**  
**CASTLE DAFFIN & FRAPPIER, L.L.P.**  
A PARTNERSHIP INCLUDING  
PROFESSIONAL CORPORATIONS

ATTORNEYS AND COUNSELORS AT LAW

15000 SURVEYOR BOULEVARD  
SUITE 100, DEPARTMENT 4005  
ADDISON, TEXAS 75001  
TELEPHONE: (972) 386-5040  
TELECOPIER: (972) 341-0783

**INSERT DATE**

**CM/RRR #** [REDACTED]  
**and Regular Mail**

**MORTGAGOR**

[REDACTED]

**MORTGAGOR**

[REDACTED]

RE: Mortgagee and Loan No.: Mortgage Electronic Registration Systems, Inc. ("MERS")\*<sup>1</sup>  
Served by [REDACTED]  
Property: [REDACTED]  
BBWCDF File No.: [REDACTED]

**NOTICE OF DEFAULT AND INTENT TO ACCELERATE**  
**HOME EQUITY EXTENSION OF CREDIT**  
**TEX. CONST. art. XVI, 50a(6)**

**This firm is a debt collector attempting to collect a debt and any information obtained will be used for that purpose.**

Dear [insert full name of mortgagor(s) here: John D. Doe and Janet M. Doe]:

The Mortgagee named above and its successors and assigns (hereafter "Mortgagee"), has retained this firm to act as its Texas counsel to enforce a certain note and security instruments (collectively "mortgage documents") which evidences a home equity extension of credit (hereafter "Mortgage"). Any Mortgagor named above who is NOT obligated for the debt is given the following notice as a courtesy because your interest in the Property may be affected. According to and relying on the information provided to this firm by the Mortgagee, each Mortgagor named above who is obligated for the Mortgage debt is advised of the following information:

1. Each Mortgagor obligated for the debt is in default because all past due loan installments have not been received. To cure the default, the Mortgagee requires receipt of all past due loan installments, late charges, expenses of collection, including attorney, inspection, appraisal fees and any other expenses that are legally due Mortgagee under the terms of the mortgage documents and applicable law as of the date the default is cured.

\*<sup>1</sup> "MERS" is Mortgage Electronic Registration Systems, Inc. that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument executed by Mortgagor. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS [6377].

2. If the total amount due Mortgagee is not paid within thirty (30) days of the mailing of this notice, as well as any other loan installments which become legally due, the Mortgagee **will accelerate** the maturity of the Mortgage in accordance with the terms of the mortgage documents. After acceleration, if the default is not timely cured, a court order will be sought to foreclose the Property in accordance with TEX. CONS. art XVI, 50a(6) and Tex. R. Civ. P 735 or 736.
3. After acceleration you have the right to reinstate the Mortgage in the time and manner provided by the Mortgage documents and have the right to bring a court action to assert the non-existence of a default or any defense to acceleration, foreclosure or other rights reserved by the mortgage documents and applicable law.

Federal law provides that you be given notice of the provisions quoted in *italics* below, which will serve as the firm's notice of your legal rights. *[Note: The highlighted portion below applies to your personal loan situation.]*

*15 U.S.C. 1692g(a) . . . "...a debt collector [which means this firm] . . . shall send the consumer [which means each Mortgagor obligated for the debt] a written notice containing --*

- (1) *The amount of the debt; [which means according to Mortgagee's records, the amount due as of [REDACTED] is \$[REDACTED]. Please be advised that the legally earned interest accrues on a daily basis and certain costs of collection and other fees and expenses allowed in the mortgage documents will also continue to accrue until the default is cured.]*
- (2) *The name of the creditor to whom the debt is owed; [which means the Mortgagee]*
- (3) *A statement that unless the consumer, within thirty (30) days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;*
- (4) *A statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and*

- (5) *A statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor."*

Any questions regarding default or reinstatement or other matters related to the home equity loan in question must be **TIMELY** presented to this firm for submission to the Mortgage Company for a response or resolution prior to foreclosure. **To insure proper handling of any of your concerns, send a written request or facsimile to this firm referencing the "BBWCDF File No."** found on page one of this letter. You may also secure the sum necessary to cure the default on or by a certain date by making a **TIMELY** written request to this firm.

Only payment made by certified funds, cashier's check or money order payable to the order of Mortgagee and **TIMELY** delivered to this firm will be accepted to cure the default. The default and any other legal action that may occur as a result of the default may be reported to one or more credit reporting agencies. No person in this firm can give you legal advice, therefore, you should consider retaining legal counsel.

Sincerely,

Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.



**BARRETT BURKE WILSON**  
**CASTLE DAFFIN & FRAPPIER, L.L.P.**  
A PARTNERSHIP INCLUDING  
PROFESSIONAL CORPORATIONS

ATTORNEYS AND COUNSELORS AT LAW

15000 SURVEYOR BOULEVARD  
SUITE 100, DEPARTMENT 4005  
ADDISON, TEXAS 75001  
TELEPHONE: (972) 386-5040  
TELECOPIER: (972) 341-0783

INSERT DATE

**CERTIFIED MAIL/RRR #** \_\_\_\_\_

**MORTGAGOR**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RE:** Mortgagee and Loan No.: Mortgage Electronic Registration Systems, Inc. ("MERS") \*<sup>1</sup>  
Served by: \_\_\_\_\_ if applicable  
Property: \_\_\_\_\_  
BBWCDF File No.: \_\_\_\_\_

**NOTICE OF ACCELERATION**  
**HOME EQUITY EXTENSION OF CREDIT**  
TEX. CONST. art. XVI, § 50a(6)

**This firm is a debt collector attempting to collect a debt and any information obtained will be used for that purpose.**

Dear (insert full name of mortgagor[s] here):

The Mortgagee named above and its successors and assigns (hereafter "Mortgagee"), has retained this firm to act as its Texas counsel to enforce a certain note and security instruments (collectively "mortgage documents") which evidences a home equity extension of credit (hereafter "Mortgage"). Any Mortgagor named above who is NOT obligated for the debt is given the following notice as a courtesy because your interest in the Property may be affected. According to and relying on the information provided to this firm by the Mortgagee, each Mortgagor named above who is obligated for the Mortgage debt is advised of the following information:

1. Because of non-payment of all the past due mortgage loan installments and other amounts legally due, the Mortgagee has **ACCELERATED** the maturity of the debt in accordance with the mortgage documents.
2. After acceleration, each Mortgagor obligated for the debt has the right to reinstate the mortgage debt in the time and manner provided by the mortgage documents and has the right to bring a court action to assert the non-existence of a default or any defense to acceleration, foreclosure or other rights reserved by the mortgage documents and applicable law.

\*<sup>1</sup> "MERS" is Mortgage Electronic Registration Systems, Inc. that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument executed by Mortgagor. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS [6377].

3. This firm has been retained to obtain the court order required to foreclose the Property pursuant to TEX. CONST. art. XVI, § 50 (a)(6)(D) and Tex. R. Civ. P. 735 and 736.

Any questions regarding default or reinstatement or other matters related to the home equity loan in question must be TIMELY presented to this firm for submission to the Mortgage Company for a response or resolution prior to foreclosure. **To insure proper handling of any of your concerns, send a written request or facsimile to this firm referencing the "BBWCDF File No."** found on page one of this letter. You may also secure the sum necessary to cure the default on or by a certain date by making a TIMELY written request to this firm.

Only payment made by certified funds, cashier's check or money order payable to the order of Mortgagee and TIMELY delivered to this firm will be accepted to cure the default. The default and any other legal action that may occur as a result of the default may be reported to one or more credit reporting agencies. No person in this firm can give you legal advice, therefore, you should consider retaining legal counsel.

Sincerely,

Barrett Burke Wilson Castle Daffin & Frappier, L.L.P.

Cause No. \_\_\_\_\_

In re: Order for Foreclosure  
Concerning

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

██

("Respondent[s]")

and

██████████ COUNTY, TEXAS

██

("Property Mailing Address")

and

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. ("MERS")

("Applicant")

\_\_\_\_\_ JUDICIAL DISTRICT

**HOME EQUITY FORECLOSURE APPLICATION**

SYNOPSIS: Applicant seeks a court order pursuant to Tex. R. Civ. P. 735 and 736 allowing the *in rem* foreclosure of a home equity lien created under Tex. Const. art. XVI §50a(6).

1. In accordance with Tex. R. Civ. P. 736(1)(A) the name of the person to receive notice of foreclosure is ██ (hereafter "Respondent"). Respondent is the party who is obligated to pay the debt or is a grantee of the security instrument made the subject of this proceeding. In accordance with Tex. R. Civ. P. 736(1)(B) Mortgage Electronic Registration Systems, Inc. ("MERS") is the Applicant acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument executed by Respondent. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS/6377. MERS or its successors or assigns (hereinafter "Applicant") is the holder of the debt or mortgagee of record, as the term "mortgagee" is defined in Tex. Prop. Code § 12.017.

2. In accordance with Tex. R. Civ. P. 736(1)(C), the security instrument executed by Respondent is secured by the real property and improvements ("Property") with the mailing address of [REDACTED] and legal description:

[REDACTED]

3. In accordance with Tex. R. Civ. P. 736(1)(D), the security instrument encumbering the Property is recorded in the official real property records of [REDACTED] County, Texas at [REDACTED] [REDACTED] where all or part of the Property is located. In the alternative, a legible copy of the security instrument may be attached.

4. In accordance with Tex. R. Civ. P. 736(1)(E), Applicant alleges that:

- (a) "a debt exists";
- (b) "the debt is secured by a lien created under Tex. Const. art. XVI §50a(6) for a home equity loan";
- (c) "a default under the security instrument" exists;
- (d) "the Applicant, or its agent or attorney, has given the requisite notices to cure the default and accelerated the maturity of the debt under the security instrument, Tex. Prop. Code §51.002 and applicable law."

5. In accordance with Tex. R. Civ. P. 736(1)(F), the facts which establish the existence of a default under the security instrument are:

- (a) According to Applicant's records, the Respondent obligated for the debt has not made the mortgage installment payments required under the terms of the loan agreement since [REDACTED] and, as of [REDACTED], the amount owed Applicant is at least \$ [REDACTED] therefore,
- (b) There has been a material breach of Respondent's obligations under the terms of the loan agreement and security instrument securing the debt.

6. In accordance with Tex. R. Civ. P. 736(1)(G), Applicant seeks a court order required by Tex. Const. art. XVI §50a(6)(D) to sell the Property under the security instrument and Tex. Prop. Code § 51.002.

7. In accordance with Tex. R. Civ. P. 736(1)(G), a combination Verification and Affidavit, which is attached and made a part of this Application for all purposes, was made on personal knowledge and sets forth such facts as would be admissible in evidence.

8. Applicant appoints [REDACTED] or successor, as the substitute trustee to conduct the public auction provided by Tex. R. Civ. P. 736, the security instrument or Tex. Prop. Code § 51.002.

9. In accordance with Tex. R. Civ. P. 736(1)(G), Applicant verifies this Application by the Affidavit which is attached hereto and made a part hereof for all purposes. Applicant also submits the Affidavit attached in accordance with Tex. R. Civ. P. 736(6) which provides in pertinent part: *“[A]t the hearing, the applicant shall have the burden to prove by affidavits on file or evidence presented the grounds for the granting of the order sought in the application.”*

Respectfully submitted,

BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L.L.P.

---

Kerry Braxton  
State Bar No. 02921010  
Brandon Wolf  
State Bar No. 24025724  
Maureen S. Kersey  
State Bar No. 11354800  
G. Tommy Bastian  
State Bar No. 01895300  
15000 Surveyor Blvd., Suite 100  
Addison, Texas 75001  
972-386-5040 (Phone)  
972-386-7673 (Fax)

ATTORNEYS FOR APPLICANT



accelerate and acceleration of the maturity of the debt will be given to each Respondent obligated for the debt.

"Because the Loan Agreement debt is in default, Applicant seeks an order from the court to continue the *in rem* foreclosure process against Respondent's homestead in accordance with Tex. R. Civ. P. 736. Applicant does not seek personal liability against Respondent for the debt, except as provided in Tex. Const. art. XVI §50a(6)(C) for actual fraud.

"Applicant appoints [REDACTED], or successor as substitute trustee to conduct the public sale sought in the Application."

FURTHER AFFIANT SAITH NOT.

SIGNED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2002.

AFFIANT

By: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

SUBSCRIBED and SWORN TO before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_ to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
[Stamp or Seal here]

My Commission Expires:

\_\_\_\_\_

Cause No. [REDACTED]

In re: Order for Foreclosure  
Concerning

[REDACTED] Respondent Name(s)

and

[REDACTED] Respondent Name(s)

In the District Court of

[REDACTED] County, Texas

[REDACTED] Judicial District

**NOTICE TO: RESPONDENT**

Name [REDACTED]  
Mailing or property Address [REDACTED]  
City, State, Zip Code [REDACTED]

**RESPONDENT**

Name [REDACTED]  
Mailing or property Address [REDACTED]  
City, State, Zip Code [REDACTED]

An application has been filed by Mortgage Electronic Registration Systems, Inc. ("MERS") \*1, as Applicant ("Applicant"), on Date [REDACTED] in District Court, in a proceeding described as:

**In re: Order for Foreclosure Concerning [REDACTED] Applicant, AND [REDACTED] Respondent Name(s)**

The attached application alleges that you, the Respondent, are in default under a security instrument creating a lien on your homestead under Tex. Const. art. XVI, § 50(a)(6) for a home equity loan, or § 50 (a)(7) for a reverse mortgage. This application is now pending in this court.

Applicant seeks a court order, as required by Tex. Const. art. XVI, § 50(a)(6)(D), to allow it to sell at public auction the property described in the attached application under the security instrument and Tex. Prop. Code § 51.002.

You may employ an attorney. If you or your attorney do not file a written response with the clerk of the court at [REDACTED] on or before 10:00 a.m. on Monday, [REDACTED], an order authorizing a foreclosure sale may be signed. If the court grants the application, the foreclosure sale will be conducted under the security instrument and Tex. Prop. Code § 51.002.

You may file a response setting out as many matters, whether of law or fact, as you consider may be necessary and pertinent to contest the application. If a response is filed, the court will hold a hearing at the request of the applicant or respondent.

**In your response to this application, you must provide your mailing address.** In addition, you must send a copy of your response to [REDACTED] ATTORNEY WHO SIGNED APPLICATION, Barrett Burke Wilson Castle Daffin and Frappier, L.L.P. at 15000 Suneyor Blvd., Suite 100, Addison, TX 75001.

ISSUED

By: [REDACTED], Attorney for Applicant

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this notice with a copy of the application and all documents attached thereto was sent certified mail # [REDACTED] and regular first class mail to [REDACTED] RESPONDENT at [REDACTED] MAILING ADDRESS on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

[REDACTED], Attorney for Applicant

\*1 "MERS" is Mortgage Electronic Registration Systems, Inc. that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument executed by Mortgagor. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS [6377].





secured Property according to the terms of the security instrument, *Tex. Prop. Code § 51.002* and applicable law in accordance with Rule 736(5).

IT IS THEREFORE ORDERED that the Applicant may proceed with a foreclosure sale under the terms of the security instrument, *Tex. Prop. Code § 51.002* and applicable law with respect to the secured Property made the subject of this proceeding.

IT IS FURTHER ORDERED that a copy of this Order shall be sent to Respondent with the notice of the date, time and place of the foreclosure sale; and

IT IS FURTHER ORDERED that Applicant may communicate with the Respondent and all third parties reasonably necessary to conduct the foreclosure sale; and

IT IS FURTHER ORDERED that if Respondent is represented by counsel, the notice of foreclosure sale shall also be mailed to counsel by certified mail.

IT IS FURTHER ORDERED that the Applicant file a certified copy of this Order in the real property records of the county where the Property is located within ten (10) business days after the entry of this Order; however, failure to timely record this Order shall not affect the validity of the foreclosure and defeat the presumption of *TEX. CONST. art. XVI, § 50(i)*.

This Order is not appealable pursuant to Rule 736(8)(A).

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2002.

---

JUDGE PRESIDING

CAUSE NUMBER \_\_\_\_\_

MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.  
("MERS")  
Plaintiff

v.

\_\_\_\_\_  
Defendant(s)

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE \_\_\_\_\_ COURT OF

\_\_\_\_\_ COUNTY, TEXAS

IN RE: \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

NOW COMES Mortgage Electronic Registration Systems, Inc. ("MERS") acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under the Security Instrument executed by the Mortgagor. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS/6377. MERS, its successors and assigns ("Plaintiff" or "Mortgagee" as the context implies) and would respectfully show the Court the following:

DISCOVERY

1. Discovery is intended to be conducted under Level 2, *Tex. R. Civ. P. 190*

PROPERTY

2. This proceeding concerns a certain loan agreement, as that term is defined in *Tex. Bus. & Com. Code § 26.02* ("Loan Agreement"), secured by the real property and improvements commonly known as \_\_\_\_\_ ("Property"), and more particularly described as follows:

\_\_\_\_\_  
AN EXHIBIT TO COPIED FROM THE DEED OR TRUST

**PARTIES**

3. Plaintiff acquires security interests in real property in the State of Texas and, when necessary, seeks to collect the delinquent debts related to such security interests. With respect to the Property and Loan Agreement made the subject of this cause, Plaintiff is the mortgagee of record, as "mortgagee" is defined in *Tex. Prop. Code § 12.017*.

4. Defendant [REDACTED] may be served with process at [REDACTED] property address or last known address NOT PO BOX.

Defendant [REDACTED] may be served with process at [REDACTED] property address or last known address NOT PO BOX.

**JURISDICTION and VENUE**

5. This Court has subject matter jurisdiction over the controversy in accordance with TEX. CONST. art. V § 8 and XVI, § 50a(6). Venue is proper in this county in because the Property is located in this county. Plaintiff doesn't seek personal liability against any Defendant obligated for the debt.

**FACTS**

6. The documents attached to this petition are made a part of this proceeding for all purposes and are true and correct copies of the original Loan Agreement and related documents pertaining to the Property made the subject of this proceeding.

7. The obligors or assumptors of the debt under the terms of the Loan Agreement used funds advanced by the original mortgagee to either purchase the Property, extinguish a prior mortgage or tax lien, or obtain cash for their equity in the Property. The debt was created as a Texas home equity loan under the provisions of TEX. CONST. art. XVI § 50(a)(6) and evidenced by the Loan Agreement which was secured by the Property. A grantor of the Loan Agreement's

security interest who is not obligated for the debt, is made a party for purpose of due process because their interest in the Property may be affected by this proceeding.

8. According to the Mortgagee's records, no payments have been made in accordance with the terms of the Loan Agreement since [REDACTED]. Therefore, there has been a material breach of the Loan Agreement. As a consequence of the failure to cure the default, Plaintiff hereby accelerates the maturity of the debt evidenced by the Loan Agreement. As of [REDACTED], the Loan Agreement payoff, as "pay-off" is defined in *Tex. Prop. Code* § 12.017, was at least \$[REDACTED]; however, this sum increases daily according to the terms of the Loan Agreement to include, but not limited to, earned interest, collection costs, to include attorney fees, taxes, insurance and other legally authorized expenses. All conditions precedent for foreclosure have been performed or have occurred as required by *Tex. R. Civ. P. 54*.

### **CAUSES OF ACTION**

#### **Judicial Foreclosure**

9. For failure to cure the default of the Loan Agreement, Plaintiff seeks to enforce its security interest against the Property in an amount equal to the payoff at the time of judgment.

10. Pursuant to *Tex. R. Civ. P. 309*, Plaintiff seeks a judgment for foreclosure together with an order of sale issued to the sheriff or constable of the county where the Property is located directing the sheriff or constable to seize and sell the Property in satisfaction of the judgment.

#### **Non-Judicial Foreclosure**

11. Because of a material breach of the Loan Agreement, Plaintiff seeks non-judicial foreclosure pursuant to TEX. CONST. art. XVI § 50(a)(6) and *Tex. R. Civ. P. 735(2) or 735(3)*, the terms of the Loan Agreement and *Tex. Prop. Code* § 51.002 with respect to all Defendants who are obligated for the Loan Agreement debt.

12. Plaintiff appoints **INSERT SUBSTITUTE TRUSTEES NAMES** or their successors, as the Substitute Trustees to conduct the auction.

#### **Public Auction**

13. Because of the material breach of the Loan Agreement, a public auction of the Property in conjunction with all other regularly scheduled non-judicial foreclosure sales on the first Tuesday of the month would provide the most practical, efficient and effective means to enforce Plaintiff's security interest in the Property. Because the rights, responsibilities and duties of Plaintiff, Defendant and the Trustee are well known under *Tex. Prop. Code § 51.002* and Texas case law, a public auction conducted in the same manner as a non-judicial foreclosure sale would meet all constitutional standards of due process. A public auction of the Property would also be the most expedient means to put the Property back into the stream of commerce as well as into the housing stock of the community. Otherwise, the Property will continue to be a wasting asset that is subject to vandalism and deterioration.

14. Plaintiff appoints **INSERT TRUSTEE NAMES**, or their successors, as the Trustee for such public auction as described herein.

#### **Subrogation**

15. At the time of closing of the Loan Agreement made the subject of this proceeding, a portion of the loan proceeds were used to extinguish a debt secured by a valid lien against the Property in the amount of at least \$**██████████**. In addition, loan proceeds in the amount of at least \$**██████████** were advanced to extinguish certain past due ad valorem taxes.

16. Pursuant to Plaintiff's rights of subrogation reserved in the Loan Agreement or equitable subrogation, Plaintiff seeks recovery of all sums advanced under the Loan Agreement that were used to extinguish the valid prior liens against the Property.

17. Plaintiff seeks to enforce its express or equitable subrogation lien against the Property by judicial foreclosure pursuant to *Tex. R. Civ. P. 309* or public auction as described herein.

18. Plaintiff seeks to enforce its equitable subrogation lien against the Property by judicial foreclosure or public auction.

### WRIT OF POSSESSION

19. If any other ("Occupant") occupies or claims possession of the Property after transfer of all right, title and interest in the Property by sheriff, constable or trustee's deed, Plaintiff requests a writ of possession from this court in accordance with *Tex. R. Civ. P. 310*.

### PRAYER.

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that, upon final hearing, the court enter judgment that:

Plaintiff has a claim against the Property in an amount equal to the pay-off of the Loan Agreement; an order directing the sale of the Property pursuant to *Tex. R. Civ. P. 309* or foreclosure in accordance with *Tex. R. Civ. P. 735 (2) or 735(3)* and *Tex. Prop. Code § 51.002*;

An order declaring that Defendants have no personal liability for the loan agreement.

A writ of possession should Occupants fail to or refuse to leave the Property after foreclosure;

All other relief, in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

BARRETT BURKE WILSON CASTLE  
DAFFIN & FRAPPIER, L.L.P.

---

G. Tommy Bastian  
State Bar No. 01895300  
Maureen S. Kersey  
State Bar No. 11354800

L. Keller Mackie  
State Bar No. 24013077  
Michael W. Zientz  
State Bar No. 24003232  
15000 Surveyor Blvd., Suite 100  
Addison, Texas 75001  
972-386-5040 (Phone)  
972-341-0783 (Fax)

**ATTORNEYS FOR PLAINTIFF**