

# Legal Assistance Resource Center of Connecticut, Inc.

44 Capitol Avenue, Suite 301 ♦ Hartford, Connecticut 06106  
(860) 278-5688 x203 ♦ cell (860) 836-6355 ♦ fax (860) 278-2957 ♦ RPodolsky@LARCC.org

## S.B. 407 -- Assignment of mortgage debts

Planning and Development Committee public hearing -- March 16, 2012  
Testimony of Raphael L. Podolsky

**Recommended Committee action: APPROVAL OF THE BILL**

S.B. 407 restores the historic practice of filing assignments of mortgage debt on the land records in a timely manner. The failure to do so does not jeopardize the effectiveness of the assignment but rather results in a surcharge on the recordation fee. That consequence is analogous to the charge in C.G.S. 49-8 for a lender's failure to promptly provide a release when a mortgage debt is paid in full. We support this effort to restore integrity and transparency to Connecticut's land records.

Over the past two decades, and especially over the past half dozen years, the banking system has created a private system for recording transfers of mortgage debt that undercuts the use of municipal land records as the conclusive way in which to determine who owns property. It also evades the payment of recordation fees and thereby deprives both municipalities and the state of revenue to which they are entitled by law. In Connecticut, this has had a particular impact on the state budget, since a significant portion of those fees go to the Community Investment Account under C.G.S. 4-66aa, which funds programs for affordable housing, historic preservation, open space, farmland preservation, and similar programs.

The system created is named MERS -- the Mortgage Electronic Registration System -- through which MERS was designated the "nominee" of the holder of mortgages. These mortgages were then assigned and reassigned many times without being recorded on the land records, thereby avoiding municipal recordation fees, and were ultimately combined into mortgage packages which were sold as securities. The avoidance of recordation fees was not an accident. In his leading article, *"Two Faces: Demystifying the Mortgage Electronic Registration System's Land Title Theory,"* William & Mary Law Review, Vol. 53, p. 111, <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3399&context=wmlr> (2011), Christopher L. Peterson, Associate Dean and Professor of Law at the University of Utah's Quinney College of Law, writes:

In the mid-1990s, mortgage bankers created Mortgage Electronic Registration Systems, Inc. (MERS) to escape the costs associated with recording mortgage transfers. To accomplish this, lenders permanently list MERS as the mortgagee of record instead of themselves to avoid the expense of recording any subsequent transfers...[F]inancial institutions used MERS to avoid paying billions of dollars in recording fees to county and state governments..."

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The securitization system enabled by MERS resulted in the false evaluation of subprime mortgages that led to the crash in the mortgage market when borrowers could no longer make the high mortgage payments on properties that had been overvalued, leading to the collapse of the value of the mortgages. Although the existence of MERS was hardly the sole cause of the foreclosure crisis, it was an important enabling factor.