Talking Points in Opposition to Connecticut GB 6355 & HB 6325

(Requiring that (1) a fee be paid for every mortgage assignment not recorded in the municipal land records and (2) any assignment of debt be recorded in the municipal land records.)

- **The bill is unnecessary.** Public policy rationales for the bills are unsupportable. The main reason usually cited in support of these bills is that homeowners need to be able to find out who owns their loan from the public land records. The land records have not provided disclosure of the ownership of loans since the advent of the secondary market. Agents (like MERS or the servicer) have generally held the mortgage lien on behalf of the owners of the loan; a concept well recognized by the law. Moreover, Federal law already requires disclosure to homeowners about the owners of their loan.[1] The MERS® System also provides free access (through a toll free telephone number or the internet) to the general public to identify the current servicer for loans registered on the MERS® System, and the identity of the owner of the loan to the homeowner. The fiscal rationale of the increased government revenues from recording fees ignores the costs of a larger staff that will be needed to process the increased work-load in a timely manner. The better fiscal solution is found in the proposal to increase fees for recording subsequent pages (more revenue without additional work).

- **The bill is anti-consumer.** Costs associated with additional recording fees and the need for additional infrastructure for lenders and servicers (to process these assignments) will be borne by homeowners. The cost of the first assignment is directly charged to the homeowner at closing and the costs of subsequent assignments will be passed on indirectly through higher fees and interest rates charged by lenders.

- **The bill will make lending in Connecticut uncompetitive.** No other state has this requirement. Higher costs and more complexity in the law, which will result if the bill is enacted, will cause national lenders to deploy their more of their capital in those states where market conditions are more favorable, and less capital in Connecticut.

- **Missing intervening assignment will result in title issues that will have to be cleared by homeowners at their cost.** This bill overturns existing state law that has been in place for hundreds of years. Recording liens is for the benefit of creditors to provide notice to third parties of their lien. There are often intervening transfers that do not impact the homeowner; they are often for short periods of time and creditors elect not to record them for reasons of cost and efficiencies. Regardless of any statute, in many cases, intervening transfers will not get recorded because people will make mistakes.[2] In these cases, when the homeowners go to refinance his loan or sell his home, he or she will bear the case of fixing the title (inevitably some of the parties may not be in business so the homeowner will not have recourse against them). Title agents may also have difficulty identifying all of the intervening transfers, which may prevent them from being able to insure title.

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[1] Federal legislation passed in 2009 (Section 404 of the Truth in Lending Act) requires that anyone who acquires ownership of a mortgage loan must provide the borrower with a notice that the acquirer is the new owner (and if they use a servicing agent to collect payments, the name of the servicer). The Section 1463 of the Dodd-Frank legislation enacted in 2010 also requires servicers to disclose the owner of the loan within ten days upon written request from the borrower.

[2] Contrary to many assertions otherwise, MERS was created because of problems in the industry arising from problems associated with missing intervening assignments.

MERS® *WORKS*

QUICK FACTS

December 2012

AN INTRODUCTION TO THE MERS® SYSTEM, MERSCORP HOLDINGS, INC., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

What is MERSCORP Holdings?

MERSCORP Holdings, Inc. is a privately held corporation that owns and manages the MERS® System and all other MERS® products. It is a member-based organization made up of about 3,000 lenders, servicers, sub-servicers, investors and government institutions.

What is MERS?

Mortgage Electronic Registration Systems, Inc. (MERS) is a wholly-owned subsidiary of MERSCORP Holdings, and its sole purpose is to serve as mortgagee in the land records for loans registered on the MERS® System and MERS® Commercial. MERS is a nominee for the lender and subsequent buyers ("beneficial owners") of a mortgage loan and serves as a common agent for the mortgage industry.

What is the MERS® System?

The MERS® System is a national electronic database that tracks changes in mortgage servicing rights and beneficial ownership interests in loans secured by residential real estate.

Are MERS loans recorded in the public land records?

All mortgages (or deeds of trust) registered on the MERS® System are recorded in the public land records, and MERS remains the lien holder in the land records whenever transfers of the promissory note or servicing rights take place between MERS members. The MERS® System is not a legal system of record nor a replacement for the public land records. No interests are transferred on the system; they're only tracked.

How does MERS become a mortgagee?

There are two ways. At closing, the borrower and lender both agree to standard language in the security instrument making MERS the original mortgagee, with the right to act on behalf of the lender. The standard language is approved and used by Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Administration (FHA) and the Veterans Administration (VA). If MERS was not recorded as the original mortgagee on the security instrument, a lender can assign the mortgage to MERS after closing.

What does "MERS as original mortgagee" mean to borrowers?

MERS' role and rights are clearly spelled out in the contract between borrower and lender. When borrowers sign the mortgage security instrument at closing, they agree to standard language that grants and conveys legal title of the mortgage to MERS as mortgagee, giving the company the right to act on behalf of the current and subsequent owner of the loan. However, MERS does not make decisions regarding the borrower's mortgage.

Does MERS collect mortgage payments from borrowers?

MERS doesn't handle mortgage servicing. The mortgage lender, or another mortgage servicing company, collects payments from borrowers and manages their loans. Borrowers who have questions about their loans, or who need help with foreclosure prevention, should contact the company they send their payments to—not MERS. Since 2011, all mortgage loans going to foreclosure are assigned and recorded in the servicer's name.

COMPANY STATISTICS

WHAT: The MERS® System and Mortgage Electronic Registration Systems, Inc. (MERS).

WHO: For a complete list of shareholders, visit our website at www.mersinc.org.

WHEN: Established on Oct. 1995 in Delaware. The MERS® System began registering and tracking mortgage loans in 1997.

WHERE: MERSCORP Holdings, Inc. is headquartered in Reston, Va.

WHY: MERS was created in the 1990s, in response to changes in the mortgage finance industry, to streamline the mortgage process by using e-commerce to replace paperwork.

MEMBERSHIP: About 3,000 lenders, vendors and government entities.

MORTGAGES REGISTERED: Over 76 million to date; about 30 million active mortgage loans.

What does MERS do for lenders?

As the mortgagee of record, MERS provides service of process on legal documents and receives legal notices and other mail regarding the mortgaged properties. MERS sorts, scans and transmits documents electronically to the appropriate member for each loan. Because MERS is a common agent for its members, recording an assignment of the mortgage is not necessary when ownership of the promissory note or servicing rights transfer between members, eliminating work and cost. The MERS® System also provides information on undisclosed liens, which reduces fraud.

Does MERS have the documents for loans registered on the system?

MERS is not a document custodian and doesn't hold promissory notes or mortgage documents on behalf of the lender, servicer or investor. MERS is not responsible for keeping mortgage records—the servicer maintains the legal system of record.

How does MERS benefit borrowers?

MERS as original mortgagee eliminates breaks in the chain of title, resulting in less work and lower fees paid by the lender—fees that would ultimately be passed down to the homeowner. MERS provides access to data on the MERS® System free of charge to homeowners, county officials, and regulatory officials (subject to privacy restrictions). Homeowners can access the data on their mortgage loans registered on the MERS® System at www.mersinc.org or toll-free at 1-888-679-6377.

Does MERS hide the mortgage note owner?

Transfer of ownership of the promissory note is not a recordable transaction. However, the Truth In Lending Act (TILA) requires that borrowers be notified of ownership changes. RESPA regulations also provide for notice of servicing changes.

GLOSSARY

Beneficiary: The person/company for whose benefit a deed of trust is given.

Closing: The act of transferring ownership of a property from seller to buyer in accordance with a sales contract.

Deed of Trust: A document used in many states in lieu of a mortgage. Legal title to the property is vested in one or more trustees to secure the repayment of the loan.

Mortgage: A written debt instrument by which a borrower gives the lender a lien on real estate as security for the repayment of a loan.

Mortgagee: One who holds a lien on property or title to property, as security for a debt; the mortgage lender or lender's nominee.

Nominee: One who, in a limited capacity, is authorized to act for or represent another.

Promissory Note: A document that acknowledges a debt and outlines a borrower's promise to pay the specified sum to the lender under specified terms. It is a negotiable instrument and changes in its ownership are not recordable events.

Servicing: Often performed for a fee after loans are sold to investors; includes billing, collecting payments, filing reports, managing tax and insurance escrow accounts, and default follow-up for mortgages.

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MERS®

QUICK FACTS

December 2012

MYTHS vs. FACTS: THE MERS® SYSTEM, MERSCORP HOLDINGS, INC., AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

MYTH #1: MERS has failed to record transfers of mortgage loans in the public land records.

FACT: At closing, the lender and borrower agree to appoint MERS as the mortgagee on the mortgage or deed of trust. This means that when a MERS member sells the loan to another MERS member, only the promissory note—and not the mortgage—transfers, because the mortgage is grounded in the name of MERS. Therefore, because the mortgage did not transfer, an assignment to record the transfer need not be filed.

MYTH #2: MERS hides the chain of title so that borrowers can no longer see who owns their loans.

FACT: The public land records exist so that a lender can declare a lien on the property to protect them against borrowers defaulting on the loan. However, MERS actually makes it easy to identify the servicer and owner of a loan that's been registered on the MERS® System (see Myth #3 below).

MYTH #3: MERS makes it harder for borrowers to identify the servicer and owner of their mortgage loans.

FACT: MERS actually makes this EASIER. We have a toll-free number (888-679-6377) and website (www.mers-servicerid.org) that the public can access to find the current servicer—and where borrowers can find the owner—of any loan registered on the MERS® System. The MERS® System is the only national database with this information free and available to the public.

In addition, under federal law, borrowers are entitled to receive notification when the ownership of their loan changes. Servicers are also required under the Truth In Lending Act to respond to written borrower inquiries as to the ownership of their loans.

MYTH #4: MERS mortgages were not recorded in the public land records and has created an alternate recording system that's private and proprietary.

FACT: All MERS mortgages are recorded in the public land records and all required fees were paid. The MERS® System is not a legal system of record nor a replacement for the public land records. MERS' objective is not to replace county recorders; in fact we rely on the public land records to facilitate our business.

MYTH #5: Since MERS is not the lender, it does not have the right or "standing" to foreclose.

FACT: Because MERS is the mortgagee and common agent

BENEFITS WITH MERS®

Reduces cost of homeownership.

- Eliminates breaks in the chain of title
- Hard dollar savings on each loan for homeowners and lenders

Provides transparency.

- Identity of servicer and investor available for FREE to homeowners via phone or Internet
- Used by lenders to find undisclosed liens

Used by governments and code enforcement officers to find companies responsible for maintaining vacant and abandoned properties.

Simplifies lien releases when a lender goes out of business.

Increases efficiency in sale of loans and servicing transfers in secondary market.

Mortgage Identification Number (MIN) is assigned to each loan, used for tracking.

WITHOUT MERS®

Lenders would have to rely on paper recording with its inherent processing errors.

Recorders would have to staff according to the ebb and flow of mortgage activity.

There would be no single database with loan level history of ownership and servicing rights, no single mortgage identification number.

There would be breaks in the chain of title.

The cost of homeownership would be higher.

for all loans on the MERS® System, MERS has the right to act on behalf of the lender, which translates to our ability to foreclose on a borrower. Courts in all 50 states have upheld our role in this regard. However, we have changed our business process and no longer engage in foreclosures. But even when we did foreclose, it was never a key part of our business model and we never received a fee or profited from the practice.

Myth #6: MERS caused securitization.

FACT: Securitization began in the 1980s, before the company was founded. The MERS System was launched in 1997 in response to the challenges created by growth in mortgage origination and securitization in the 1990s.

MYTH #7: MERS stores mortgage documents that were previously kept by the servicer or investor.

MERS doesn't hold any documents on behalf of the servicer or investor. Just as it was prior to MERS, the recorded mortgage or deed of trust is typically held by the servicer, and the note is typically held by the custodian designated by the investor.

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