MERS Southeast Law Seminar
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MERS® Residential

- 26+ million residential loans registered
- Over 1,800 companies actively registering loans on a monthly basis
- 85 of the top 100 lenders in the country are using the system in at least one or more divisions
- Over 50% origination market share
- More than 25% of total outstanding mortgage loans in U.S. registered

Process loans, not paperwork
MERS® Commercial

- Live July 2003
- Over 300 loans registered, over $6 billion in CMBS production
- System development partners:
  - Bear Stearns
  - Wells Fargo
  - John Hancock
- Live on the system: Bear Stearns, Wells Fargo, Banc of America, Morgan Stanley and Ginnie Mae

Process loans, not paperwork
Future of Mortgage Banking: The MERS® eRegistry

- Launched April 2004
- Working with MBA, the Agencies and others industry participants
- Designed to track and identify electronic promissory notes
- MBA has officially endorsed MERS to create and operate the eRegistry
- Without an eNote, there is no eMortgage
Agenda

- Current Status of MERS
- Overview of MERS
- How MERS works in day to day practice including title policies, pay-offs and lien releases
- Service of Process
- Foreclosures and Bankruptcy
- Suffolk County Litigation
- MERS® Link
- Questions and Answers
What is MERS?

- **Electronic Registry**: Electronic registry for tracking servicing rights and beneficial ownership interests in mortgage loans.
- **Mortgagee**: MERS is the mortgagee in a nominee capacity for the beneficial owner of a mortgage loan in the land records.
MERS Basics

• Registration vs. Recording. MERS is not a system of legal record nor a replacement for the public land records. Mortgages must be recorded in the county land records.

• MERS is a tracking system. No interests are transferred on the MERS® System, only tracked.
### Every Loan Needs a MOM

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MERS History

- MERS was incorporated in 1995.
- EDS selected as technology provider in 1996.
- First MOM (MERS as Original Mortgagee) loans registered in 1998.
Corporate Structure

• **MERSCORP, Inc.** – The operating company that owns the MERS® System. Owned by 28 leading mortgage industry companies.

• **Mortgage Electronic Registration Systems, Inc. (‘‘MERS’’):** A bankruptcy-remote subsidiary of MERSCORP, Inc. whose sole purpose is to serve as mortgagee in the land records for loans registered on the MERS® System.
• Each Member enters into a Membership Agreement with MERSCORP, Inc.

• Agreement consists of Membership Application that incorporates Terms and Conditions, Rules of Membership and the Procedures Manual.

• All documents can be downloaded from MERS website: www.mersinc.org.

• Member agrees that MERS shall serve as their nominee as the mortgagee in the land records in exchange for the Member registering the mortgage on the MERS® System.
Two Ways for MERS to Become Mortgagee

• **MERS as Original Mortgagee ("MOM").** Use Deeds of Trust or Mortgages with MERS as Original Beneficiary or Mortgagee using standard language approved by Fannie Mae, Freddie Mac, FHA and VA.

• **Assignment to MERS.** Use an assignment to MERS for an existing non-MOM mortgage.
Changes to Security Instrument

- **Definition Section** - “MERS” is defined in subsection (C) as the Mortgagee.

- **Granting Clause** – Borrower mortgages, grants and conveys the Property to MERS.

- **Disclosure Section** – Borrower agrees that MERS holds legal title and acknowledges that MERS has right to exercise rights of mortgagee, including foreclosing.
Certifying Officers

• MERS executes documents through Certifying Officers who are employees of the members.

• Corporate Resolution v. Power of Attorney

• What powers do Certifying Officers have?
We recommend that MERS be a named insured on title policies when a MOM is used.

- Note owner is always an insured party.
- MERS cannot fix problems in the chain of title that occurred prior to becoming mortgagee.
Payoffs

- Only the loan Servicer can provide a payoff figure.
- Best way for title professionals to contact the current servicer is by using MERS® Link.
- Sample letter explaining relationship between MERS, Servicer and Note Owner
Lien Releases

- When Servicer receives payoff, an officer of MERS executes lien release.
- If Lender executes the lien release instead of MERS, it will cloud title.
• Modifies the mortgage and note, which means both MERS and Lender should sign Agreement.
Service of Process

• How does MERS receive mail?
  – Address on MOMs and Assignments
  – MERS Mailroom
  – MERS Corporate Headquarters
  – Registered Agents
  – Delaware Secretary of State

• All mail received is electronically scanned and forwarded to the current Servicer
Foreclosures

• MERS provides Recommended Foreclosure Procedures as a guideline.
• Status of foreclosing in MERS name in Florida.
• Use of Connecticut cases by Borrowers’ counsels in challenging MERS standing is misleading to the Court.
MERS holds an “in rem” interest and such an interest constitutes a claim under the Bankruptcy Code.

Motions for Relief from Automatic Stay should be brought in MERS name as a creditor and mortgagee.
• Began with a 2001 Attorney General Opinion that deals with how to index documents.

• Resulted in a 2004 decision confirming that county clerks are obligated to record and index mortgages and assignments naming MERS as mortgagee.

• Case is currently on appeal on collateral issues raised by the Court.
Georgia Intangible Tax

• To receive exemption, the mortgage lender must be the original lender and cannot have assigned the mortgage loan at any time prior to refinancing the mortgage loan.

• Department of Revenue’s position on exemption when using MOM mortgages.

• Revisiting issue to clarify exemption when original loan is non-MOM for Lender ABC and refinanced loan is MOM for Lender ABC.
MERS® Link

- Browser-based access to MERS® System with paid subscription.
- Subscribers and members can get information regarding current servicer.
- Some servicers have a “hot link” to the servicer’s website for customer information.

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Live Demonstration