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An Open Letter to Williamson County Commissioners Court on the “Williamson County Real Property Records Report”

February 5, 2013

To the Members of the Williamson County Commissioners Court:

At your January 22, 2013 meeting, you heard testimony concerning a report about the county’s real property records. Much of this testimony, and the report that was submitted, presented a misleading and inaccurate description of Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a utility for the lending community that plays a narrow – but important – role in the mortgage transfer process. We are contacting you because we would like to set the record straight.

In more than half of all mortgage transactions, the borrower names MERS as the beneficiary of the deed of trust (as an agent for the lender). By doing so, the need for certain assignments is eliminated, thereby reducing paperwork and errors and lowering the overall cost of home financing. This role is disclosed and explained to the borrower on the first pages of the deed of trust, which they have signed.

Key facts about MERS that were misrepresented and require clarification:

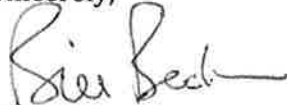
- **Every MERS deed of trust is recorded in the county land record and the appropriate fees are paid.** MERS does not replace the county land records; we rely on them to disclose to the public that a lien exists on a property within that county.
- **MERS has operated continuously in Texas for 15 years and is recognized in the land statutes.** MERS has consistently prevailed in legal challenges; of note, the legal cases cited in the “audit” were out of state court opinions dealing narrowly with the non-judicial foreclosure process in those states, which are not relevant to MERS authority to operate in Texas. More importantly, the “audit” ignores relevant Texas case law such as: *Huml v. Mortg. Elec. Reg. Sys., Inc.*, 3:12-cv-001460-DCG, slip op. at 8-9 (W.D. Tex. Oct. 25, 2012), ECF No. 70 (dismissing fraudulent misrepresentation claim alleging “MERS’s designation as the ‘beneficiary’ in the deeds is fraudulent,”); *Malikyar v. BAC Home Loans Serv’g, LP* 2011 WL 5837262, at *4 (E.D. Tex. Oct. 28, 2011) (dismissing misrepresentation claim alleging the statement that “MERS is the beneficiary” is false, holding, “[t]hese attacks have been repeatedly rejected by this Court as well as others). These cases, and numerous others, have consistently upheld the validity of deeds of trust having MERS as the named beneficiary and affirm MERS’ authority to make assignments. We are not aware of any court that has invalidated a MERS assignment in Texas.

- **MERS does not foreclose.** Currently, prior to commencing foreclosure, the deed is assigned from MERS to the foreclosing party, and this assignment is recorded in the county land records.
- **No one has ever wrongfully lost his or her home due to MERS being named as beneficiary (or mortgagee) in a deed of trust (or mortgage).** While some foreclosures were conducted in the name of MERS (before July, 2011), there was not a single instance of which we are aware when a borrower who had not defaulted on their loan lost their home.
- **There is no “cloud on title” by using MERS; title companies accept and support MERS.** We have not heard of any title company in Texas that refused to issue insurance due to MERS being named as beneficiary or assignor of a deed of trust; in fact the American Land Title Association and other title companies helped found MERS and remain shareholders and users today.
- **MERS provides transparency.** All MERS mortgages and deeds of trust are tracked on an electronic registry and servicer information can be accessed conveniently and free via telephone or internet. Borrowers and their authorized agents can also confirm their investor 24 hours a day.

It is true that MERS reduces fees paid to county recorders; MERS also reduces the work that county recorders must do after a deed of trust is recorded. This results in fewer errors in the chain of title and lower costs for all. It is also true that the foreclosure crisis exposed some challenges for the industry and MERS; we met those challenges head on in partnering with the industry and cooperating with regulators to improve governance, oversight and quality assurance.

One closing thought. MERS is mortgagee or beneficiary on over half the mortgages in the U.S. and operates in all 50 states. Over the past three years, the majority of those mortgages have been refinanced at least once if not more, resulting in material savings to borrowers. This would not be possible if MERS created title issues, recklessly foreclosed or put a borrower's home ownership at risk. These unfounded allegations are disproven by the facts and they have caused unnecessary confusion and distress to homeowners. The key fact is, MERS Works.

Sincerely,



Bill Beckmann
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MERSCORP Holdings, Inc.