
City of Seattle Review of Mortgage Documents
Conducted by McDonnell Property Analytics

Dedication to Robert F. McDonnell

I pay tribute here to my beloved father, Robert F. McDonnell, now celebrating his 100th year, who taught me from a young age the absolute necessity of finding the truth.

ACKNOWLEDGMENTS

The *City of Seattle Review of Mortgage Documents* project would not have come about were it not for Seattle City Councilmember Nick Licata, former Councilmember Sally Clark and their staff who took the time to listen to their constituents' complaints that foreclosures were being brought based on false documents that had been recorded in the King County land records. Their public interest concern was that the alleged corruption of the land evidence recording system potentially undermined the third tenet of the Washington Deed of Trust Act, namely that the nonjudicial foreclosure process should promote the stability of land titles. The Seattle City Council's purpose in commissioning this audit was to survey a finite population of mortgage assignments involving Mortgage Electronic Registration Systems, Inc. ("MERS") filed with the King County Recorder's Office during the first half of 2013, and determine whether their constituents' complaints had merit.

I want to thank David G. Jones, City Auditor and Virginia Garcia, Assistant City Auditor who worked closely with us to inform and guide our efforts.

McDonnell Property Analytics ("MPA") collaborated with Real Estate Services and Technology ("REST") to construct a scalable *Registry of Deeds Audit Model* that can accurately, efficiently, and systematically audit thousands of land records based on rules written according to specifications designed to fulfill the audit objectives. I want to thank Fred Popke, REST's CEO, Titus Thobias, REST's CTO, and the team at REST who adapted their technology platform and input thousands of fields of data that enabled us to determine who is responsible for preparing and recording the mortgage assignments we examined. I also want to acknowledge Stephanie Souza, my senior analyst, for her outstanding effort and uncompromising dedication to excellence.

Marie McDonnell, CFE

FORENSIC EXAMINATION OF REAL PROPERTY RECORDS COMISSIONED BY THE SEATTLE CITY COUNCIL

Objective

The objective of this project is to determine whether residential real estate property assignments within the Seattle city limits involving Mortgage Electronic Registration Systems, Inc. (MERS) are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision in Bain v. Metropolitan Mortgage Group, Inc.



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Disclaimer

The findings and opinions expressed herein do not constitute legal advice or conclusions of law but are deduced from the facts as they became known to the Examiner through the Examiner's forensic investigation of the documents, records, and information available at the time of this writing.

The Examiner is not an attorney at law but possesses unique skills, tools and specialized knowledge that are of assistance to the legal profession, courts, and governmental authorities. It is for this reason that the City of Seattle awarded the contract to conduct a review of mortgage documents to McDonnell Property Analytics.

McDonnell Property Analytics reserves the right to alter or amend this report as new information becomes available.

Foreclosure terminates legal rights in real property that was pledged to secure the debt obligation. McDonnell Property Analytics strongly recommends that anyone facing foreclosure seek the advice and counsel of a qualified licensed attorney in the state where the property is situated.



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Preface

INTRODUCTION

In November 2014, at the direction of Seattle City Councilmember Nick Licata and former City Councilmember Sally Clark, the Seattle Office of City Auditor issued a *Request For Quote* (“RFQ”) to consultants with significant experience in examining mortgage assignments. The objectives were to research the public real property records and then report on: 1) whether the true, current owner of the underlying mortgages¹ could be ascertained; and 2) whether the assignments of the selected mortgages are valid in light of the 2012 Washington State Supreme Court ruling that deemed certain practices of Mortgage Electronic Registration Systems, Inc. (MERS) to be invalid.²

McDonnell Property Analytics (“MPA”) submitted a detailed proposal and was awarded the contract on December 17, 2014.³ Subsequently, McDonnell Property Analytics engaged Real Estate Services and Technology (“REST”)⁴ to adapt its technology platform to meet MPA’s specifications, and in doing so, create a scalable *Registry of Deeds Audit Model* attuned to the objectives of the City of Seattle Review of Mortgage Documents.

BACKGROUND⁵

“In some jurisdictions outside Washington State, the examination of mortgage assignments⁶ related to foreclosures has led to legal challenges of those foreclosures. In some cases the foreclosures were deemed without merit because the entity bringing the foreclosure did not have the legal authority to do so. The assignments in question have been those that involved Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a corporation that operates an electronic database set up by major banks to facilitate transfers of residential mortgage-backed securities outside the purview of county land records.

¹ In this report, the term “mortgage” means a loan secured by a mortgage or deed of trust on real property and has the same meaning as “deed of trust.” (See Appendix I: *Definitions of Terms*)

² See *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

³ See McDonnell Analytics, Inc. contract #OCA2014-06 available at: http://web6.seattle.gov/fas/summitpan/R297/R297.Result.aspx?BUSINESS_UNIT=LEG&PO_ID=0000000536&SortOnReturn=SortOnReturn=vwstPoListGridViewSortExp%253d%2526vwstPoListGridViewSortDir%253d0.

⁴ See Real Estate Services and Technology (“REST”) at: <http://www.reservicestech.com/>.

⁵ The “background,” “objectives,” and “scope” sections that follow have been excerpted in their entirety from the City Auditor’s *Request For Quote* as amended so the reader can better understand the Seattle City Council’s concerns.

⁶ Assignment of a mortgage is a written document which indicates that a mortgage has been transferred from the original lender or borrower to a third party. Source: <http://www.wisegeek.com/what-is-an-assignment-of-mortgage.htm> (downloaded 9/23/14).

There have been only a few audits conducted in the country of the mortgage documents recorded by counties and MERS' practices. Some states (not Washington) require that assignments of mortgages be recorded in the county in which the property is located. Audits have found that in some of these states the assignments were not recorded, which raised questions about who had authority over a mortgage. In some cases, even if the assignments were recorded, the documents associated with the assignments have been found to be invalid. In 2012, the Washington State Supreme Court found that MERS was not a lawful beneficiary on a promissory note because it was not the lawful holder of the note. Although the Court did not rule on the legal effect of MERS' status, it implied that MERS could not properly proceed with a non-judicial foreclosure action unless it was the beneficiary. In addition, the Court found that a homeowner could maintain a claim against MERS for violation of Washington's Consumer Protection Act based on MERS' acting as an unlawful beneficiary. While MERS has indicated that it stopped seeking foreclosures as of 2011, audits from other jurisdictions are still finding problems with mortgage documents involving MERS. These problems could contribute to future foreclosure actions by MERS that violate the Washington State Supreme Court ruling."

OBJECTIVE

"The City of Seattle is interested in hiring a consultant to determine whether residential real estate property assignments within the Seattle city limits involving MERS are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision."

SCOPE

"To address the objective we would like a consultant to conduct, at minimum, the following analysis and/or tasks based on an examination of a sample of mortgage-related records as follows:

- 1) Conduct a statistical analysis of Seattle residential real property mortgage assignments filed in King County between January 1, 2013 and June 30, 2013, to determine the number of assignments that are associated with or registered to MERS.
- 2) From that population, randomly select a minimum of 100-200 residential real property mortgage assignments from five Seattle neighborhoods with the highest 2013 foreclosure rates identified in a study titled *Principal Reduction/Foreclosure Prevention Interdepartmental Team Final Report*, dated September 5, 2014, namely: 98106, 98108, 98118, 98144, or 98126 to determine:
 - a) How discoverable is the true, current owner of the mortgage? And,
 - b) Whether the assignments of the selected mortgages are valid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid.
- 3) Based on this review, the consultant will summarize findings and propose recommendations in a written report to the City Auditor and City Council that the City of Seattle could propose to King County or the Washington State Legislature. The consultant will also prepare and make one presentation of the report's findings and recommendations to City of Seattle policy makers as directed."

Executive Summary

SCOPE OF WORK

McDonnell Property Analytics, in collaboration with Real Estate Services and Technology, examined 195 “Alpha Assignments” that met the selection criteria established by the Auditor’s Office, as follows:

- 1) each Alpha Assignment was filed of record with the King County Recorder’s Office on or between January 1, 2013 and June 30, 2013;
- 2) each Alpha Assignment was either executed by an officer of Mortgage Electronic Registration Systems, Inc., (“MERS”), contained a reference to MERS, or was related to a Deed of Trust that defined MERS as the beneficiary;
- 3) each Alpha Assignment relates to one of 193 residential properties located within the Seattle city limits, and lies within one of the five (5) high-foreclosure zip codes identified in a study titled *Principal Reduction/Foreclosure Prevention Interdepartmental Team Final Report*,⁷ dated September 5, 2014, namely: 98106, 98108, 98118, 98126, or 98144.

On our own initiative, we researched the underlying deeds of trust and assembled all documents cross-indexed thereto such as prior and subsequent assignments, appointments of successor trustee, notices of trustee’s sale, full reconveyances (i.e., satisfactions), etc.⁸ This increased the population of examined documents to 825, which quadrupled the scope of our engagement.

We undertook this extra effort in order to gather documentary evidence that would enable us to understand the purpose of each of the Alpha Assignments in the chain of title, and determine whether it was *valid*, *invalid*, *void* (a nullity), or *void ab initio* (an absolute nullity) as defined in our *Definitions of Terms* attached hereto as Appendix I.

METHODOLOGY

The methodology by which Real Estate Services and Technology first identified, and then reduced the universe of assignments filed with the King County Recorder’s Office during the first half of 2013—from 13,811 to 195—is described in detail in Appendix III: *Real Estate Services and Technology’s Methodology*.

⁷ The Seattle City Council adopted Resolution 31495 on December 16, 2013, which directed an Interdepartmental Team (IDT) consisting of staff from the City Council, City Attorney’s Office, City Budget Office, Finance and Administrative Services, and the Office of Housing, to explore principal reduction and other foreclosure prevention programs to assist low-income homeowners at risk of losing their homes due to foreclosure.

⁸ For readers unfamiliar with the vocabulary used in this report to describe the documents involved in real estate transactions; and to understand the precise meaning of the words we use to describe our findings, we direct you to Appendix I: *Definitions of Terms*.

REST began by gathering and integrating data obtained from the King County Department of Assessments' online system with the Grantor/Grantee index maintained by the King County Recorder's Office. This cross-indexing procedure was necessary to identify the population of assignments tied to properties located within the Seattle city limits because, for the most part, the assignments do not contain the address or parcel number of the property to which they relate.

REST discovered there were 3,264 assignments relating to properties in Seattle including vacant land, office buildings, retail, commercial, and industrial properties clearly not designated for residential use and occupancy. REST filtered the data and found that 2,620 assignments related to residential properties located within the Seattle city limits.

Next, REST searched for assignments that had a reference to MERS in the text of the document, or where MERS appeared in the chain of title. The final filter was designed to identify 100-200 assignments that involved properties in Seattle situated within the five (5) high-foreclosure zip codes. Once applied, REST found 195 Alpha Assignments that fulfilled all of the defined parameters set forth by the Auditor's Office which became our "control group."

Once REST had identified the 195 Alpha Assignments, it gathered all available documents from the King County Recorder's Office that were cross-indexed to the deed of trust referenced in each Alpha Assignment. Because the deeds of trust themselves are "not scanned or available online," REST and MPA paid a third party to provide those to us. The documents and data were then uploaded to REST's technology platform and organized into Casefiles.⁹ REST's staff read each document and typed critical information into pre-programmed data fields for each document type according to MPA's specifications, which allowed us to analyze that information programmatically.

McDonnell Property Analytics devised a *Deed of Trust Act Violations Checklist* ("Checklist") tailored to objectives outlined in the RFQ as refined by MPA's proposal. REST programmed the Checklist into its system and applied rules based logic to find the answers to the Seattle City Council's questions. The results are tabulated in the Statistical Analysis at the end of this report.

McDonnell Property Analytics' methodology and guiding principles for determining whether the Alpha Assignments examined are valid (or not) begins with a definition of terms that explains the precise meaning of the terminology we use throughout this report. Appendix I: *Definitions of Terms* is tailored to Washington State law and explains what an assignment is, as well as the elements or conditions that would render an assignment *valid*, *invalid*, *void* (a nullity), or *void ab initio* (an absolute nullity).

⁹ Casefile in this context refers to the documents and data gathered from the King County Recorder's Office, the Assessor's Office, and outside sources necessary to conduct the City of Seattle Review of Mortgage Documents. Each Casefile is comprised of the "alpha" document (Assignment Deed of Trust/Mortgage), the source document (Deed of Trust), and all other documents in the chain of title that relate to the source document, e.g., an Appointment of Successor Trustee, a Deed of Full Reconveyance, a Notice of Trustee's Sale, Trustee's Deed, etc.

Appendix II: *Examination of Assignments Deed of Trust/Mortgage* analyzes five (5) Alpha Assignments and demonstrates how MPA applied the definitions to the documents to determine whether they should be classified as *valid*,¹⁰ *invalid*,¹¹ *void* (a nullity),¹² or *void ab initio* (an absolute nullity).¹³

Because it is possible for an *invalid* assignment to be ratified by parties to the transaction, we needed to distinguish that situation from one where the assignment was so fatally flawed that it was beyond ratification or repair, i.e., *void*. This distinction is of particular importance to anyone facing foreclosure because some courts have held that a borrower has no standing to challenge an assignment of their mortgage unless the assignment is *void*.

In Appendix II, MPA classified an assignment as *void* wherever MERS assigned a beneficial interest in the deed of trust because the Washington State Supreme Court ruled in *Bain*, that if MERS does not hold the note (which, by MERS's own admission, it never does), then MERS is not a lawful beneficiary. If MERS is not a lawful beneficiary, it stands to reason that it cannot convey, transfer and assign beneficial rights that it does not have. The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.”

MPA classified an assignment as *void ab initio* when, in addition to being *void*: it was deceptive; it was employed for an illegal purpose (e.g., to prosecute a non-judicial foreclosure without the requisite authority); it violated a statute; or it clearly involved a public interest issue.

¹⁰ *Black's Law Dictionary*, 1550 (6th ed. 1990) defines the term “valid” as:

Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside... Founded on truth of fact; capable of being justified; supported, or defended; not weak or defective...Of binding force; legally sufficient or efficacious; authorized by law...as distinguished from that which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law.

¹¹ *Black's Law Dictionary*, 952 (10th ed. 2014) defines “invalid” as:

1) Not legally binding. 2) Without basis in fact. The opposite of *valid*.

¹² *Black's Law Dictionary*, 1805 (10th ed. 2014), defines “void” as:

Of no legal effect; to null. The distinction between *void* and *voidable* is often of great practical importance. Whenever technical accuracy is required, void can be properly applied only to those provisions that are of no effect whatsoever – those that are an absolute nullity.

¹³ *Black's Law Dictionary*, 1805 (10th ed. 2014), defines “void ab initio” as:

Null from the beginning, as from the first moment when a contract is entered into. A contract is *void ab initio* if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.

KEY QUESTIONS AND FINDINGS

Briefly, our report answers the two questions posed in the contract scope of work as follows:

Question 1: Transparency

How discoverable is the true, current owner of a mortgage?

Without exception, in 195 instances —100% of the time across the board— we found that we could not determine who the true, current owner of the mortgage was based on:

- i. the information contained on the face of the assignment;
- ii. a review of the ancillary documents recorded in the chain of title; and
- iii. a MERS MIN Number¹⁴ search which revealed the identity of the servicer.

Some assignments indicated that the “investor” was Fannie Mae, Freddie Mac, Ginnie Mae, or a securitized trust. The fact is Fannie Mae and Freddie Mac securitize virtually all of their mortgage loans, or purchase mortgage backed securities rather than whole loans in which case, they are not mortgage owners. Ginnie Mae is a guarantor, not a mortgage loan owner.

Where a private label securitized trust is concerned, the pattern we saw over and over again involves an assignment from MERS to the trustee of a securitized trust, leapfrogging over the interim assignees. Such assignments are not authorized by the pooling and servicing agreements that govern these securitized trusts which calls into question MERS’s authority, the validity of the assignments, and the identity of the true, current owner of the mortgage.

MPA performed a MERS MIN Number search for all 195 Alpha Assignment and found that 170 of these (87%) were assigned to the *servicer*, not to the *mortgage owner*. This statistic evidences a paradigm shift engineered by the mortgage industry which now insists all a consumer needs to know is the identity of their mortgage *servicer*, and the address of where to send their mortgage payments. (*See* Statistical Analysis, Table 1 – Section 1.09 below)

We concluded that it is impossible to know who the true, current owner of a mortgage is based on the recorded chain of title. (*See* Statistical Analysis, Table 3 – Section 2(c).24 below)

Question 2: Chain of Title Integrity

How valid are the assignments of mortgage?

We made a concerted, objective, and fair-minded effort to identify even one (1) Alpha Assignment that was *valid*. Appendix II contains five (5) examples of the types of Alpha Assignments we examined. Assignment #1 and Assignment #3 appeared to be valid at first, but

¹⁴ The Mortgage Identification Number (MIN) is an 18-digit number that uniquely identifies a mortgage loan registered on the MERS® System. (*See* Appendix I: *Definitions of Terms*)

when we analyzed them within the chain of title, we determined that they were *void*¹⁵ and *void ab initio*¹⁶ respectively for the reasons explained therein. (See Appendix II: *Examination of Assignments Deed of Trust/Mortgage*) and (See Statistical Analysis, Table 3 below)

Of the 195 Alpha Assignments examined, we determined that 175 of them are *void* because Mortgage Electronic Registration Systems, Inc. purports to transfer beneficial interests and rights in the deeds of trust that Mortgage Electronic Registration Systems, Inc. does not, in fact, own. The remaining 20 Alpha Assignments were deemed to be void because they were preceded by a MERS Assignment or a MERS Appointment of Successor Trustee that was void for the same reason.

Despite the fact that these assignments are void and transfer no beneficial interests to the assignee, they function as if they do. In a foreclosure situation, MPA found that the recorded assignment is followed immediately by an appointment of successor trustee; once the trustee is in place the sale can move forward expeditiously—all based on the void assignment.

This report, and the appendices attached hereto that are integral to it, explain what is happening, and what can be done to close the loopholes and bring Mortgage Electronic Registration Systems, Inc. and its members into compliance.

EXAMINER'S EXCEPTION REPORT

As we were in the process of identifying MERS Assignments with the characteristics specified in the RFQ, we noticed that the Recorder's Office did not always index Mortgage Electronic Registration Systems, Inc. as a Grantor when, in fact, MERS was the Grantor.

We didn't know what the impact of this inconsistency would be until the audit was complete. For reasons yet unexplained, we ended up with a skewed population of MERS Assignments broken down as follows:

- Out of 211 assignments that were executed by Signing Officers of Mortgage Electronic Registration Systems, Inc., 147 (70%) were assigned to Bank of America, N.A.
- Out of 195 Alpha Assignments included in the study, as many as 166 (86%) involved assignments that were prepared to satisfy the debt and reconvey the property.
- Out of 193 properties involved in the study, 20 (10%) had a Notice of Trustee's Sale in the recorded chain of title.

¹⁵ Assignment #1, which was recorded to notice a "true sale," is *void* because it was executed by a MERS Signing Officer, but was never registered in the MERS® System. Therefore, the MERS Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.

¹⁶ Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. purported to transfer beneficial interests in the Deed of Trust that it did not own or hold.

- Out of 193 properties involved in the study, only 1 had a Trustee's Deed in the recorded chain of title.

To better understand why we found only one (1) Trustee's Deed recorded during the first six months of 2013 relating to properties situated within the five (5) Seattle zip codes suffering the highest rates of foreclosure, MPA conducted a spot check of 45 Notices of Sale using the following parameters and investigative techniques:

- (1) Login to the King County Recorder's Office online records search engine at: <http://www.kingcounty.gov/depts/records-licensing/Recorders-Office/records-search.aspx>.
- (2) Search for document type "Notice of Trustee Sale" from 01/01/2013 through 06/30/2013.
- (3) Select "Instrument Number" relating to the Notice of Trustee Sale.
- (4) Select "Deed of Trust" noting whether Mortgage Electronic Registration Systems, Inc. is indexed as a Grantee.
- (5) Select the first "Assignment Deed of Trust/Mortgage" in the chain of title.
- (6) Download the Assignment and determine whether it was executed by a MERS Signing Officer.

We found that there were 4,695 Notices of Trustee Sale filed with the Recorder's Office during this time period in all of King County. Following protocols #1 through #4 above, we found that the Recorder's Office is highly inconsistent with respect to whether or not Mortgage Electronic Registration Systems, Inc. will be indexed as a Grantee of the Deed of Trust.

For example, out of the 45 Notices of Trustee's Sale, we found 33 related to Deeds of Trust that involved Mortgage Electronic Registration Systems, Inc. After doing the research, we found that MERS was indexed as a Grantee in only 7 of the 33 Deeds of Trust.

When we examined the Grantor/Grantee Index for the 33 MERS Assignments we found only 2 instances where MERS was indexed as the Grantor when MERS was the Grantor in the Assignment.

By this process of reverse engineering the chain of title to properties in foreclosure that relate back to a MERS Assignment, we were able to draw a number of important findings:

- A. The population of MERS Assignments is far greater than those we were able to identify based on the King County Recorder's Office's Grantor/Grantee Index.
- B. The negative impact of MERS's unlawful practices is borne primarily by residents who are facing foreclosure.

- C. Our audit was hampered to some extent by the King County Recorder's Office's inconsistent cataloging of MERS in its Grantor/Grantee Index.
- D. The Seattle City Council has been deprived of one of its main goals in commissioning this audit, which was to have a better understanding of the extent to which MERS purports to assign beneficial interests as a precursor to the institution of non-judicial foreclosures under the Deed of Trust Act.

There were a number of other issues Real Estate Services and Technology discovered as it went about the process of gathering documents and data from the King County Recorder's Office and the Assessor's Office. Those issues are set forth in Appendix III: Real Estate Services and Technology's Methodology.

I. REPORT STRUCTURE

In deciding how best to structure and present our examination findings, we wanted to give some background as to how this project came about; recap the objectives established by the Seattle City Council; explain our methodology; document our decision making process; and provide the deliverables we committed to in a manageable way so that the reader does not become overwhelmed.

The Acknowledgements and the Preface explain how the idea for an audit of the public land records was introduced to the Seattle City Council and give an overview of the objectives.

The Executive Summary is a synopsis of the scope, methodology and key findings, which are quantified "by the numbers" in the Statistical Analysis at the end of this report.

In Section II, we begin by introducing the reader to the subject of this study, MERSCORP Holdings, Inc. and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc., collectively referred to hereinafter as "MERS."

The task at hand was to survey a defined set of mortgage assignments executed by or related in some way to MERS and determine whether they are valid and in accordance with Washington state law in light of the landmark decision by the Washington State Supreme Court on August 16, 2012, which deemed certain practices of MERS to be invalid. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) (hereinafter "*Bain*").

In Section III, we discuss the one question left unanswered in the *Bain* decision: *What is the 'legal effect' of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington's Deed of Trust Act?*

In Section IV, we address the legal effect of the MERS Assignments from a layman's point of view in light of the documents and data we analyzed, the relevant statutes, and the *Bain* decision.

Although beyond our defined scope of work, we added Section V because as we were researching and writing this report, we became aware of recent developments affecting the State of Washington that now require MERS to remove the language in its deeds of trust and

assignments that refer to it as a *beneficiary*. We wanted to know if implementing these changes brings MERS into compliance with Washington statutes and the *Bain* decision, so MPA conducted further research with that objective in mind.

After summarizing our findings in Section VI, and establishing McDonnell Property Analytics' credentials in Section VII, we offer recommendations in Section VIII that we believe will effectively deter rogue behavior and bring MERS and its members into compliance.

Five (5) appendices are attached to and incorporated herein by reference:

Appendix I: *Definitions of Terms*, is important to read because it explains the precise meaning of the words we use throughout the report to communicate our findings and recommendations.

Appendix II: *Examination of Assignments Deed of Trust/Mortgage*, is a detailed examination of five (5) case studies that demonstrate how the MERS Assignments are being used in the chain of title, and why we found them to be *valid*, *invalid*, *void*, or *void ab initio*.

Appendix III: *Real Estate Services and Technology's Methodology*, walks the reader through the mechanics of gathering the documents and data required for the study. It also addresses technical problems we encountered with the way the King County Recorder's Office maintains its Grantor/Grantee Index.

Appendix IV: *Non-Judicial Foreclosure Procedures Document Review*, is a prototypical audit tool developed by MPA that will assist consumers, advocates, attorneys, and regulators to examine the key documents that must be served upon the borrower, or filed in the public records in order to foreclose a Deed of Trust under the statutory power of sale. We used Kristin Bain's title documents as an example and, among other things, we identified the predatory lending characteristics that doomed the transaction to fail from the very beginning.

Appendix V: *Forensic Title Examination of Kristin Bain's Property*, is an analysis of Kristin Bain's title documents in report form. It includes our securitization research and explains how fraudulent, robo-signed title documents were used to bring a non-judicial foreclosure action against Ms. Bain.

II. WHO IS MERS?

To address the Seattle City Council's concerns regarding the validity of assignments involving MERS, we begin with a discussion of who "MERS" is. On February 23, 2015, MERSCORP Holdings, Inc. published a procedures manual that describes its own evolution, its corporate governance, the several reincarnations of Mortgage Electronic Registration Systems, Inc., and the purpose and function of the MERS® System. The excerpt that follows is the official explanation of who MERS is.¹⁷

¹⁷ See: MERS® System Integration Handbook, Volume 1, Release 27.0, February 23, 2015 available at: <http://www.mersinc.org/join-mers-docman/998-mers-system-ihbvi/file>.

A Two-Tiered Corporate Structure

MERSCORP Holdings, Inc.¹⁸ is a Delaware stock corporation incorporated on June 30, 1998, and is the successor to a Delaware membership corporation incorporated in October 1995. Its shareholders include: Mortgage Bankers Association of America, Fannie Mae, Freddie Mac, American Land Title Association, and various mortgage companies, title insurers, and mortgage insurers. In addition to the capital contributed by the shareholders, MERSCORP Holdings has a committed line of credit from Bank of America, guaranteed by the Mortgage Bankers Association of America, Fannie Mae, and Freddie Mac. [FN8, Pg. 9]

MERSCORP Holdings, Inc. ("*MERSCORP Holdings*") owns and operates a national, electronic registry called the MERS® System that tracks changes in *Mortgage* servicing rights and beneficial ownership interests in loans secured by residential real estate. [FN8, Pg. 3]

Mortgage Electronic Registration Systems, Inc. ("*MERS*"), MERSCORP Holdings' wholly owned subsidiary, acts as the *Mortgagee* in the public land records and as *Nominee* for the *Lender* and its successors and assigns. At closing, the borrower and Lender agree to name MERS as Mortgagee on the Mortgage. The Lender then records the Mortgage in the public land records and registers the loan information on the MERS® System. [FN8, Pgs. 3-4]

MERS serving as the Mortgagee, in conjunction with use of the MERS® System, largely eliminates the need for subsequent mortgage Assignments, thereby improving the process and reducing the cost to transfer and track the changes in mortgage rights and increasing the efficiency of the Lien Release process. [FN8, Pg. 4]

Note: The MERS® System is neither a legal *System of Record* nor a replacement for the public land records. Mortgage servicing rights and beneficial ownership interests **are not** transferred on the system; they are only tracked. [FN8, Pg. 4] (emphasis in original)

¹⁸ The Board of Directors (the Board) consists of not less than fourteen (14) and not more than twenty (20) individuals; however, the board by super majority may vote to increase the number. The current board is sixteen (16) directors. There are three classes of directors:

- Class A – There are three Class A directors, one from each of the Mortgage Bankers Association of America, Fannie Mae, and Freddie Mac.
- Class B – There are at least nine Class B directors elected by shareholders from the mortgage servicing and lending business, one of whom is President of MERSCORP Holdings.
- Class C – There are at least two Class C directors elected by shareholders from businesses that are related to mortgage servicing and lending.

In this two-tiered corporate structure, MERSCORP Holdings, Inc. (“MHI”) is a member-based organization made up of thousands of lenders, servicers, sub-servicers, investors and government institutions. MHI is located at 1818 Library Street, Suite 300, Reston, VA 20190 and, reportedly, has fewer than fifty (50) employees of its own.

Mortgage Electronic Registration Systems, Inc., on the other hand, is a shell corporation that has no employees, but has appointed over 20,000 assistant secretaries and vice presidents (now known as “Signing Officers”) to do its bidding.¹⁹ These Signing Officers prepare, execute, and record land title documents that purport to transfer interests in security instruments (i.e., mortgages, deeds of trust, security deeds, etc.) held in the name of Mortgage Electronic Registration Systems, Inc. They also update the MERS® System by registering transfers of the beneficial ownership rights in the mortgage loans as well as transfers in servicing rights.

MERS as Original Mortgagee

MERS establishes its interest in a security instrument in one of two ways: a) the lender can assign the deed of trust to MERS; or b) the lender may use a form deed of trust that defines MERS as the beneficiary (referred to by MERS as a “MOM” standing for MERS as Original Mortgagee). The specific language in the deeds of trust we examined contained the following boilerplate language:

Mortgage Electronic Registration Systems, Inc. (“MERS”) is defined in Definition (E) as “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.**” (emphasis in original).

... 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. (emphasis supplied)

Over the last fifteen years, the meaning of these words and the novel concept that “legal title” to the security instrument (*but not the note, the beneficial rights in the security instrument, or the collateral property*) can be extracted and held by a fictional shell corporation that has no employees, have been hotly contested in courts throughout the United States. So much so, in fact, that MERS has had to adapt its business model to survive the litigation and to comply with regulatory enforcement actions.²⁰

¹⁹ See Christopher L. Peterson, Two Faces: Demystifying the Mortgage Electronic System’s Land Title Theory, 53 Wm. & Mary L. Rev. 111, 116 (2011).

²⁰ See Federal Reserve Board’s Enforcement Actions of April 13, 2011: <http://www.federalreserve.gov/newsevents/press/enforcement/20110413a.htm>.

Up to this point, the idea that MERS can cancel, release, and reconvey a deed of trust has been taken for granted; after all, everyone benefits when a borrower pays off a mortgage, and the law requires that the security instrument be discharged promptly thereafter.²¹ The authority, or lack thereof, of those who handle these ministerial tasks appears to be of no great concern; but our examination here suggests that recording valid discharges is also vital to maintaining the integrity of land titles, and that this issue deserves more attention.

The real controversy arises when MERS attempts to initiate a foreclosure action. On this topic, the blowback has been so forceful and effective that Fannie Mae,²² Freddie Mac,²³ and MERS²⁴ itself now prohibit MERS members from bringing foreclosure actions in the name of Mortgage Electronic Registration Systems, Inc.

MERS Has No Interest in Promissory Notes

For clarification, MERS openly admits that it has no beneficial interest in the promissory notes secured by the mortgages it claims to track.²⁵ MERS is *never* a party to the instrument of indebtedness (the mortgage note), and has no control over it. Further, MERS's Terms and Conditions, ¶ 2, states emphatically:

The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. ***MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans...*** (emphasis supplied)

Any remaining doubt with respect to this issue is dispelled by Fannie Mae in its Selling Guides. As an example, Fannie Mae's Selling Guide for 2007, Part IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02), states in relevant part: (See Exhibit A. - Excerpt of Fannie Mae's Selling Guide for 2007)

²¹ See RCW 61.16.020 and RCW 61.24.110.

²² See Fannie Mae Announcement SVC-2010-05 (March 30, 2010).

²³ See Freddie Mac Bulletin No. 2011-5 (March 23, 2011, effective April 1, 2011).

²⁴ See MERSCORP, Inc. Rules of Membership, Rule 8(d). MERS announced this rule change with MERS Announcement No. 2011-01 (February 16, 2011).

²⁵ See *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012). [285 P.3d 36] (The primary issue is whether MERS is a lawful beneficiary with the power to appoint trustees within the deed of trust act if it does not hold the promissory notes secured by the deeds of trust.)

Even when MERS is named as the nominee for the beneficiary in the security instrument, it will have no beneficial interest in the mortgage.²⁶

This precise instruction has been continuously in effect since at least June 30, 2002,²⁷ when Fannie Mae published its 2002 Selling Guide. On October 30, 2009, Fannie Mae updated its Selling Guide and slightly modified this instruction to make it absolutely and abundantly clear that “[MERS] has no beneficial interest in the the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt.” Fannie Mae published its most recent Selling Guide on August 30, 2015; Part B8-7-01: Mortgage Electronic Registration Systems (MERS) (04/15/2014) states as follows: (See Exhibit B. - Excerpt of Fannie Mae’s Selling Guide for 2015)

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.²⁸

MERS Amended its Rules for Washington State

Due, in large part, to the Washington Supreme Court’s decision in *Bain v. Metropolitan Mortgage Group, Inc.*, in which the Supreme Court found that MERS is not a lawful beneficiary if it never held the note, MERS and its most powerful members —Fannie Mae, Freddie Mac, and the FHA— modified their policies and procedures and now require lenders making loans in Washington, Oregon, and Montana to either modify their definition of MERS, or attach a “MERS Rider” to the mortgage.

The MERS Rider attempts to eliminate or override the boilerplate language used in MOM mortgages that states: “MERS is the beneficiary under this Security Instrument;” and replaces it with the simple, less ambiguous statement that: “MERS is the nominee for the Lender.”

Fannie Mae issued the following announcement on April 15, 2014, which admonishes:²⁹

²⁶ Fannie Mae’s 2007 Selling Guide: Glossary defines the term “Mortgage” as follows:

Mortgage. Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan); an individual secured loan that is sold to us for retention in our portfolio or for inclusion in a pool of mortgages that backs a Fannie Mae-guaranteed mortgage security. The term includes a participation interest where context requires.

²⁷ Fannie Mae’s earlier Selling Guides are not available online. Nevertheless, this appears to be a consistent, time-honored policy of Fannie Mae and we would expect it dates back to 1995 when MERS was founded.

²⁸ See Fannie Mae’s 2015 Selling Guide, E-3-13, Glossary of Fannie Mae Terms: M (06/30/2015)

Mortgage – Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a co-op share loan).

For newly originated mortgage loans that the lender elects to be registered with the Mortgage Electronic Registration System, Inc. (MERS), Fannie Mae requires lenders to modify the standard security instruments to name MERS as the nominee for the mortgagee. ***As a result of recent judicial decisions regarding MERS and its role as the nominee for the mortgagee***, Fannie Mae is requiring the use of a *Mortgage Electronic Registration Systems, Inc. Rider (MERS Rider)* (Form 3158) to modify the standard security instruments in the states of Montana, Oregon and Washington. The MERS Rider must be used in these three states for newly originated mortgage loans that will be registered with MERS. Consequently, post-closing assignments into MERS are prohibited in these states. Lenders must also make changes to the standard security instruments for these three states as detailed in the Instructions to the MERS Rider. The new rider and instructions are available on the Single-Family Riders & Addenda page of Fannie Mae's website. (emphasis supplied)

MERS also changed its Rules and now requires: "For the states of Washington, Oregon, and Montana, MERS should only be referenced as the nominee for the Lender on deeds of trust, or subsequent documents, appearing in the chain of title."³⁰

The MERS Rider

To comply with the new rules established for Washington, Oregon, and Montana, the mortgage industry had to harmonize the language it uses in mortgage assignments with the MERS Rider. For example, DocuTech,³¹ a leading mortgage loan document vendor for the financial services industry, modified its MERS Assignments effective October 30, 2014, as follows:

MERS Assignments

In addition to these edits, we have also audited our "to" and "from" MERS Assignments for the three aforementioned states, to ensure that they comply with the formatting requirements of MERS Procedures Manual, Release 25.5.1.

The "to" MERS Assignments for Montana (Cx1536), Oregon (Cx1546), and Washington (Cx1553) are being edited in the following ways:

- Deleting any references to the holder of the instrument "selling" it to MERS;
- Referring to MERS as being the nominee of the holder;
- Deleting the last clause of the body of the assignment which states that the promissory note is being assigned to MERS along with the instrument; and

²⁹ See Fannie Mae Selling Guide Announcement SEL-2014-03, effective October 15, 2014, found at: <https://www.fanniemae.com/content/announcement/sel1403.pdf>.

³⁰ See MERS® System Procedures Manual– Release 27.0, Page 190, Effective 02/23/2015, found at: <https://mersinc.org/join-mers-docman/978-mers-system-procedures-final/file>.

³¹ See DocuTech website at: <http://www.docutechcorp.com/new-document-fha-mers-rider-cx19052-and-changes-to-montana-oregon-and-washington-fha-security-instruments-and-assignments>.

- Removing a reference that the “beneficial interest” of the loan is being assigned to MERS (Washington only).

The “from” MERS Assignments for Montana (Cx4332), Oregon (Cx4343), and Washington (Cx4353) are being edited in the following ways:

- Reformatting the clause concerning MERS, as nominee for a lender, and its successors and assigns to match the model clause provided in the Procedures Manual;
- Deleting any references to MERS “selling” the instrument to the assignee; and
- Deleting the last clause of the body of the assignment which states that the promissory note is being assigned from MERS along with the instrument.

These changes to the language in MERS assignments are semantic in nature and are intended to give the appearance that MERS has come into compliance with the *Bain* decision by eliminating any words that purport to assign beneficial rights in the deed of trust and note. Regardless of the artful wording, if the assignments serve the same purpose as before, the problem remains.

What is MERS Assigning?

The questions central to our examination that beg answering are these:

- (1) What is MERS assigning if it has no beneficial interest in the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt?
- (2) If MERS holds only bare legal title to the security instrument, what is the effect of assigning legal title to another entity?³²
- (3) How can we distinguish between an assignment that is required by MERS’s membership rules to terminate MERS’s interest in a deed of trust from one that purports to convey beneficial rights?³³
- (4) Since MERS admits that it cannot assign beneficial rights in the MERS® System,³⁴ on what authority does it purport to transfer beneficial rights in the public land records?

³² MERS claims to hold bare legal title to the security instruments that its members have registered in the MERS® System. Whereas that may be true for a *mortgage*, it is not true where a *deed of trust* is concerned. Deeds of trust introduce a third party to the transaction, the trustee, who holds legal title to the deed of trust on behalf of the parties.

³³ For an explanation of the three (3) types of assignments, please refer to Appendix II: *Examination of Assignments of Deed of Trust/Mortgage*, Section IV.

³⁴ **MERSCORP, Inc. Law Department: Case Law Outline 2nd Quarter 2011**

Basic Business Model:

- **Transfers of Mortgage Interests versus Tracking the Changes in Mortgage Interests:** No mortgage rights are transferred on the MERS® System. The MERS® System only tracks the changes

The Washington Supreme Court was troubled by these questions in *Bain v. Metro. Mortg. Grp., Inc.*, and pondered: [285 P.3d 47-48]

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act that all parties were aware of when the loan was originally entered into.” Resp. Br. of MERS at 41 (Bain). “At most ... MERS would simply need to assign its legal interest in the Deed of Trust to the lender before the lender proceeded with foreclosure.” *Id.* at 41–42. The difficulty with MERS's argument is that if in fact MERS is not the beneficiary, then the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were secured by the deed of trust or that lender's successors.¹⁵ If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions. ***Having MERS convey its “interests” would not accomplish this.*** (emphasis supplied)

¶ 40 In the alternative, MERS suggests that, if we find a violation of the act, “MERS should be required to assign its interest in any deed of trust to the holder of the promissory note, and have that assignment recorded in the land title records, before any non-judicial foreclosure could take place.” Resp. Br. of MERS at 44 (Bain). ***But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey.*** Other courts have rejected similar suggestions. *Bellistri*, 284 S.W.3d at 624 (citing [175 Wash.2d 112] *George v. Surkamp*, 336 Mo. 1, 9, 76 S.W.2d 368 (1934)). ***Again, the identity of the beneficiary would need to be determined.*** Because it is the repository of the information relating to the chain of transactions, MERS would be in the best position to prove the identity of the holder of the note and beneficiary. (emphasis supplied)

in servicing rights and beneficial ownership interests. Servicing rights are sold via a purchase and sale agreement. This is a non-recordable contractual right. Beneficial ownership interests are sold via endorsement and delivery of the promissory note. This is also a non-recordable event. The MERS® System tracks both of these transfers. MERS remains the mortgage lien holder in the land records when these non-recordable events take place. Therefore, because MERS remains the lien holder, there is no need for any assignments. Transactions on the MERS® System are not electronic assignments. ***Because MERS only holds lien interests on behalf of its Members, when a mortgage loan is sold to a non-MERS member, an assignment of mortgage is required to transfer the mortgage lien from MERS to the non-MERS member. Such an assignment is subsequently recorded in the land records providing notice as to the termination of MERS's role as mortgagee.*** (emphasis supplied)

MERS appears to have removed access to this document so you must now Google “Case Law Outline 2nd Quarter 2011” to obtain a copy.

III. THE UNANSWERED QUESTION

In its Request For Quote, the Seattle City Council prefaced its scope of work definition with the following background:

In some jurisdictions outside Washington State, the examination of mortgage assignments related to foreclosures has led to legal challenges of those foreclosures. In some cases the foreclosures were deemed without merit because the entity bringing the foreclosure did not have the legal authority to do so. The assignments in question have been those that involved Mortgage Electronic Registration Systems, Inc. (MERS). MERS is a corporation that operates an electronic database set up by major banks to facilitate transfers of residential mortgage-backed securities outside the purview of county land records.

There have been only a few audits conducted in the country of the mortgage documents recorded by counties and MERS' practices. Some states (not Washington) require that assignments of mortgages be recorded in the county in which the property is located. Audits have found that in some of these states the assignments were not recorded, which raised questions about who had authority over a mortgage. In some cases, even if the assignments were recorded, the documents associated with the assignments have been found to be invalid.

In 2012, the Washington State Supreme Court found that MERS was not a lawful beneficiary on a promissory note because it was not the lawful holder of the note. Although the Court did not rule on the legal effect of MERS' status, it implied that MERS could not properly proceed with a non-judicial foreclosure action unless it was the beneficiary.

In addition, the Court found that a homeowner could maintain a claim against MERS for violation of Washington's Consumer Protection Act based on MERS' acting as an unlawful beneficiary. While MERS has indicated that it stopped seeking foreclosures as of 2011, audits from other jurisdictions are still finding problems with mortgage documents involving MERS. These problems could contribute to future foreclosure actions by MERS that violate the Washington State Supreme Court ruling.

...The City of Seattle is interested in hiring a consultant to determine whether residential real estate property assignments within the Seattle city limits involving MERS are valid and in accordance with Washington State Law in light of the 2012 State Supreme Court decision

This background suggests that the Seattle City Council was looking to McDonnell Property Analytics for guidance on the one question the Washington State Supreme Court left for another day, i.e., ***“What is the ‘legal effect’ of Mortgage Electronic Registration Systems, Inc., acting as an unlawful beneficiary under the terms of Washington’s Deed of Trust Act?”***

The Washington State Supreme Court explained that it was unable to address this question because, in its own words: *Bain v. Metro. Mortg. Grp., Inc.*, [285 P.3d 47, ¶ 38]

We conclude that we cannot decide this question based upon the record and briefing before us.

Because of MPA's collaboration with Real Estate Services and Technology, McDonnell Property Analytics is in a unique position to address this question. We have at our disposal 193 Casefiles containing a total of 825 recorded documents consisting of the complete chain of title related to each source document, i.e., the Deed of Trust.

Whereas it is true that in any given contested case, the parties must bring their arguments and evidence before the court; MPA and REST have the ability here to filter and sort through the publicly available documents and data we gathered and discover pattern and practice evidence of rogue behavior.

An integral and indispensable part of our examination required that we first familiarize ourselves with the relevant statutory law as well as established and developing case law in Washington State.

From there, we analyzed each Alpha Assignment and then classified it as *valid*, *invalid*, *void* or *void ab initio* depending on: 1) the plain language and representations contained on the face of the Assignment; and 2) what function the Assignment served in the recorded chain of title. (See Appendix II: Examination of Assignments Deed of Trust/Mortgage for examples.)

MPA performed a factual analysis of the documents we reviewed in light of our understanding of the law in order to classify them accordingly. We drew logical conclusions based on empirical facts, and express our findings and opinions to inform the Seattle City Council.

MPA's conclusions and opinions are not to be interpreted as "conclusions of law" which is a function reserved exclusively for a court of competent jurisdiction. They are, however, intended to educate and enlighten policymakers and authorities as to what is taking place.

IV. **LEGAL EFFECT OF MERS ASSIGNMENTS**

Black's Law Dictionary defines the word "legal" as: 1) Of, relating to, or involving law generally; falling within the province of law. 2) Established, required, or permitted by law; lawful. 3) Of, relating to, or involving law as opposed to equity. *Black's Law Dictionary*, 1029 (10th ed. 2014).

Individuals, who execute legal documents such as a mortgage, an assignment of mortgage, an appointment of successor trustee, a notice of default, a notice of trustee's sale, a trustee's deed, etc., are expected to understand what they are signing and to know that there are legal consequences for falsifying or forging documents and for breaking the law.

It is a maxim of law that "ignorance of the law is no excuse." In a just and civilized society, we are all expected to know the law and abide by it or suffer the consequences. Furthermore, the

rule of law applies equally to all persons, including MERSCORP Holdings, Inc., Mortgage Electronic Registration Systems, Inc., its shareholders and its members.

McDonnell Property Analytics examined a total of 242 Assignments Deed of Trust/Mortgage, of which 211 involved MERS as a “Transacting Party” (“MERS Assignments”). MPA reviewed all of the documents and data gathered and found clear patterns and practices regarding the legal content, legal purpose, and legal effect of the MERS Assignments.

Legal Content

Every MERS Assignment purported to transfer all beneficial interest in the deed of trust to the assignee, and stated in words to this effect:

For value received, the undersigned, Mortgage Electronic Registration Systems, Inc., ...hereby grants, assigns and transfers to [Assignee] all beneficial interest under that certain Deed of Trust...

Legal Purpose

The purpose of recording each MERS Assignment was to close the gap in the chain of title in advance of a “termination event” such as a full reconveyance or a trustee’s sale. This was necessary to give the appearance in the public record that the assignee had the requisite legal authority to reconvey the deed of trust, or exercise the statutory power of sale contained therein and foreclose upon the property pledged as collateral for the obligation.

Concurrently, the MERS Assignment was necessary to extinguish MERS’s role as a “nominee for Lender and Lender’s successors and assigns” as required by MERS Rules, and especially, Rule 8 which prohibits MERS Members from bringing a foreclosure action in the name of Mortgage Electronic Registration Systems, Inc.

Legal Effect

In *Bain*, the Washington State Supreme Court determined that MERS is not a lawful beneficiary if it never held the note. As discussed earlier, MERS admits that is it not the noteholder. Fannie Mae removes any uncertainty about this issue in its Selling Guides where it states emphatically:

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.

Fannie Mae defines “Mortgage” as:

Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan).

Therefore, MERS simply cannot assign beneficial rights in a note or deed of trust that it does not have. *Nemo dat quod non habet*.³⁵ MPA classified MERS Assignments as *void* for the following reasons:

- 1) When we found that a MERS Assignment operated in such a way that it effectively—though invalidly—transferred beneficial rights in the deed of trust to the assignee, we classified it as *void*. We made this determination only after examining documents that were subsequently recorded by the assignee such as an Appointment of Successor Trustee that could only be filed by a *beneficiary* as that term is defined in RCW 61.24.005(2).
- 2) When classifying MERS Assignments as void, we relied upon our *Definitions of Terms* and followed the well-reasoned principles set forth by the First Circuit in the appeal of *Wilson v. HSBC Mortg. Servs., Inc.*, 744 F.3d 1 (1st Cir., 2014) decided February 14, 2014. Quoting from *Wilson* the Justices of the First Circuit explained:

A void contract...is one that is of no effect whatsoever and whose terms a court will not enforce. *See, e.g., Ball*, 53 Mass. at 401–04 (refusing to enforce a contract where the parties placed a wager on the outcome of an election). Specific to the mortgage context, a void mortgage assignment is one in which the putative assignor “never properly held the mortgage and, thus, had no interest to assign.” *Culhane*, 708 F.3d at 291. ***We have also found that a party who challenges a mortgage assignment on the grounds that the assignor was but a nominee for the mortgage holder and “never possessed a legally transferable interest” in the mortgage alleges a void, as opposed to merely voidable, assignment.*** *Woods*, 733 F.3d at 354 (applying Massachusetts law). (emphasis supplied)

- 3) In our opinion, MERS Assignments are inherently deceptive when they pretend to transfer economic (beneficial) and legal interests that MERS does not, in fact, possess. Through the MERS® System, MERS members know who the current beneficiary is but frequently withhold that information to avoid recording interim assignments, and to suppress the identity of the true beneficiary. We believe that this

³⁵ The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – “no one can give that which he does not have.” In other words, if I own something because someone transferred it to me – by sale, gift, bequest, etc. – I normally have only that which the previous owner had and nothing more. This is sometimes called the “derivation” principle: The transferee’s rights derive from those of the transferor. The *nemo dat* principle rests on a vision of a chain of transactions. Current owners must be able to trace their ownership back in time through a series of legitimate transfers (ideally) to an act of legitimate original acquisition.

See Merrill and Smith’s Casebook: *Property: Principles and Policies*, Chapter 8 (2nd ed. 2012) authored by Thomas W. Merrill and Henry E. Smith; published by West Academic:
<http://www.merrillandsmithproperty.com/>.

behavior supports a claim under the Washington Consumer Protection Act. [RCW ch. 19.86]

- 4) We found systemic evidence that MERS Assignments contain false statements, misrepresentations, and omissions of material fact as exemplified in the five (5) case studies detailed in Appendix II: *Examination of Assignments Deed of Trust/Mortgage*. We believe that there is sufficient evidence to establish a knowing violation of RCW 40.16.030 – Offering false instrument for filing or record.
- 5) “Obtaining an assignment through fraudulent means invalidates the assignment. Fraud destroys the validity of everything into which it enters. It vitiates the most solemn contracts, documents, and even judgments.”³⁶ (*See Appendix I: Definitions of Terms*)
- 6) It is axiomatic that the legal effect of recording a void assignment is that all subsequent filings which depend upon the assignment will also be ineffective, null and void.
- 7) Pursuant to RCW 61.24.010(2), only a *beneficiary* may appoint a trustee or a successor trustee. Because MERS is not a lawful beneficiary pursuant to RCW 61.24.005(2), it cannot transfer by assignment beneficial rights to its assignee. Therefore, an assignee of a MERS Assignment is not imbued with the requisite legal capacity to appoint a successor trustee. In blatant disregard for Washington State law, MERS assignees continue to flood the public land records with appointments of successor trustee in violation of RCW 61.24.010(2).
- 8) We have documented copious evidence of the fact that once appointed, the (imposter) successor trustee files reconveyances, notices of trustee’s sale, and other documents required under the Deed of Trust Act (RCW 61.24, *et seq.*) to prosecute a non-judicial foreclosure.
- 9) We note here that RCW 40.16.030 – Offering false instrument for filing or record, makes it a felony to file false or forged documents in any public office. This offense is punishable by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars (\$5,000.00), or by both.
- 10) Since these false documents are being presented to the King County Recorder’s Office using the U.S. Postal Service and electronic communications devices, they also violate federal statutes that prohibit such activities as mail fraud and wire fraud.
 - a. Mail fraud is defined as an act of fraud using the U.S. Postal Service, as in making false representations through the mail to obtain an economic advantage. 18 USCA §§ 1341-1347.

³⁶ *See International Milling Co. v. Priem*, 179 Wis. 622 (Wis. 1923)

- b. The federal Wire Fraud Act provides that any artifice to defraud by means of wire or other electronic communications (such as radio or television) in foreign or interstate commerce is a crime. 18 USCA § 1343.

As the Washington Supreme Court observed in *Bain*: [285 P.3d 47-48]

¶ 39 MERS contends that if it is acting as an unlawful beneficiary, its status should have no effect: “All that it would mean is that there was a technical violation of the Deed of Trust Act...”

McDonnell Property Analytics’ forensic examination of the evidence establishes that MERS’s activities are not—as MERS would have everyone believe—innocuous, technical violations of the Deed of Trust Act; rather, the activities we documented flagrantly violate the Deed of Trust Act and a host of other consumer protection and criminal statutes enacted by the Washington State Legislature in the public interest.

V. RECENT DEVELOPMENTS

In the process of researching and writing this report, MPA became aware of recent developments affecting Washington State that now require MERS to remove the language in its deeds of trust and assignments that refer to it as a *beneficiary*. These policies became effective in the fall of 2014, well after the target dates established for our examination, i.e., from January 1, 2013 through June 30, 2013.

MPA wanted to know if implementing these changes brings MERS into compliance with Washington statutes and the *Bain* decision, so we conducted further research on our own initiative with that objective in mind.

In essence, we found that MERS is now attempting to redefine its denomination as a *beneficiary* by focusing on its role as a *nominee*. MERS now wants the courts to believe that the term *nominee* is equivalent to *agent* and in this capacity, MERS can perform the functions of a beneficiary. The Washington State Supreme Court anticipated this argument in the *Bain* decision and reasoned as follows: [285 P.3d 46]

¶ 30 Similarly, MERS argues that lenders and their assigns are entitled to name it as their agent. E.g., Resp. Br. of MERS at 29–30 (*Bain*). That is likely true and nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note. Washington law, and the deed of trust act itself, approves of the use of agents. *See, e.g.*, former RCW 61.24.031(1)(a) (2011) (“A trustee, beneficiary, or *authorized agent* may not issue a notice of default ... until ...” (emphasis added)). MERS notes, correctly, that we have held “an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control.” *Moss v. Vadman*, 77

Wash.2d 396, 402–03, 463 P.2d 159 (1970) (citing *Matsumura v. Eilert*, 74 Wash.2d 362, 444 P.2d 806 (1968)). [175 Wash.2d 107]

¶ 31 But *Moss* also observed that “[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal.” *Id.* at 402, 463 P.2d 159 (emphasis added) (citing *McCarty v. King County Med. Serv. Corp.*, 26 Wash.2d 660, 175 P.2d 653 (1946)). While we have no reason to doubt that the lenders and their assigns control MERS, agency requires a specific principal that is accountable for the acts of its agent. If MERS is an agent, its principals in the two cases before us remain unidentified.¹² ***MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender’s successors and assigns.”*** Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of trust.); e.g., Resp. Br. of MERS at 30 (Bain). But MERS offers no authority for the implicit proposition that the lender’s nomination of MERS as a nominee rises to an agency relationship with successor noteholders.¹³ MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal. (emphasis supplied)

To illustrate how MERS is adapting to the new rules, MPA provides two case studies below based on title documents filed with the King County Recorder’s Office during the first half of 2015. For evidentiary purposes, we attach these title documents as exhibits to this report.

Case Study #1: Assign. Appoint. Reconvey.

This first case study involves a Deed of Trust dated December 6, 2004, that was granted in favor of America’s Wholesale Lender to secure an Adjustable Rate Note of even date for \$249,000.00. The documents on file with the King County Recorder’s Office indicate this loan was in foreclosure in 2009; was modified in 2013; and was reconveyed in 2015 as follows:

Corporation Assignment of Deed of Trust

Instrument #20150504000534

For value received, Mortgage Electronic Registration Systems, Inc., as ***designated*** nominee for America’s Wholesale Lender, ***beneficiary of the security instrument***, its successors and assigns, [address] hereby assigns and transfers to Bank of America, N.A. [address] all its rights, title and interest in and to a certain Deed of Trust dated 12/06/2004... (emphasis supplied)

Dated: 04/29/2015

Mortgage Electronic Registration Systems, Inc., as designated nominee for America’s Wholesale Lender, ***beneficiary of the security instrument***, its successors and assigns

By Lorena Malaquias, Assistant Vice President

To begin with, the difference with a distinction in this MERS Assignment is that it credits America's Wholesale Lender as being the beneficiary, even though the Deed of Trust states: **"MERS is the beneficiary under this Security Instrument."** (*See* Exhibit C. - Corporation Assignment Deed of Trust, 04/29/2015)

We highlight the terms of art in bold italic to draw the reader's attention to them. The word "designated" preceding "nominee" suggests that MERS is the agent of the beneficiary.

MERS then purports to assign "...all its rights, title and interest in and to a certain Deed of Trust dated 12/06/2004" to Bank of America, N.A. ("Bank of America"). The question now becomes: What does the transfer of MERS's status as a nominee permit Bank of America to do?

While that remains an open question, Bank of America took it to mean that the MERS Assignment transferred beneficial interests in the note and deed of trust. Accordingly, two (2) days later, Bank of America executed a Substitution of Trustee ("SOT"), which only a beneficiary is permitted to do pursuant to RCW 61.24.010(2). Below we abstract and then discuss this SOT. (*See* Exhibit D. - Substitution of Trustee and Full Reconveyance, 05/01/2015)

Substitution of Trustee and Full Reconveyance
Instrument #20150504000533

Whereas, [name] was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and Pacific Northwest Title Company was the original trustee ("Original Trustee") under that certain Deed of Trust dated 12/06/2004...

Whereas, Bank of America, N.A. is the ***current beneficiary of record*** ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

Whereas, Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

Now therefore, ***Bank of America, N.A., acting on behalf of the Investor as its servicer***, hereby substitutes ReconTrust Company, N.A. as new trustee ("Trustee") under the Deed of Trust and the Trustee does hereby reconvey... (emphasis supplied)

Dated: 05/01/2015

Bank of America, N.A.

By Deborah Hogan, Assistant Vice President

ReconTrust Company, N.A.

By Tricia Baca, Assistant Vice President

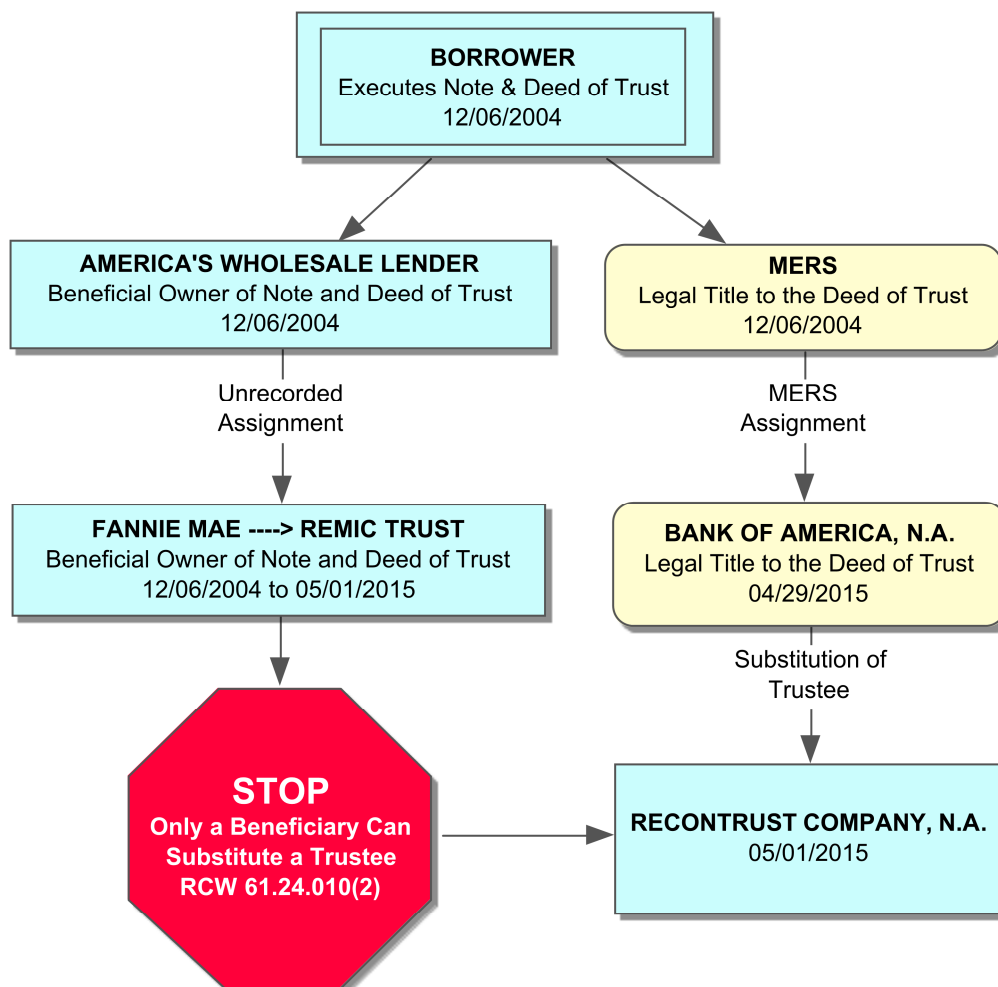
By examining the MERS Assignment in relationship to the Substitution of Trustee, we can tell that the true purpose and effect of the MERS Assignment is to transfer beneficial ownership

rights to Bank of America, N.A. —even though MERS has none to give. *Nemo dat quod non habet*.

Paragraph two of the Substitution states that Bank of America is the “current beneficiary of record (“Beneficiary”) of the Deed of Trust;” and reveals that “Federal National Mortgage Association is the (“Investor”).” The problem here is that the Deed of Trust Act does not define the term “current beneficiary of record;” nor does it define what is meant by “Investor” leaving us to bridge the mental gap by guessing at who the Beneficiary really is.

To complicate things further, Bank of America also claims in paragraph four that it is acting on behalf of the Investor as its servicer, which implies an agency relationship exists with the Investor. Diagram #1 below is our attempt to visualize what is really going on here.

Diagram #1: MERS Assignment



In a deceptive sleight of hand, MERS purports to assign beneficial interests that it does not possess. The wordsmithing³⁷ here is clever, but more confusing than ever before and is bound to become the subject of future litigation as Washingtonians attempt to sort out “who” is foreclosing on their property.

Simply put, because Bank of America, N.A. did not become a lawful beneficiary by virtue of the MERS Assignment pursuant to RCW 61.24.005(2),³⁸ it cannot lawfully appoint a successor trustee under RCW 61.24.010(2). It follows, that since Bank of America was without authority to substitute the trustee under RCW 61.24.010(2); ReconTrust Company, N.A. had no authority to reconvey the property pursuant to RCW 61.24.110(1).

To explain why MERS and its members are crafting and recording these false documents, we take this analysis one step further and provide a case on point.

America’s Wholesale Lender was a d/b/a of Countrywide Home Loans, Inc., a wholly owned subsidiary of Countrywide Financial Corporation, which is now a wholly owned subsidiary of Bank of America Corporation. In this transaction, America’s Wholesale Lender (“AWL”) claims: Lender is a corporation organized and existing under the laws of New York. (*See* Exhibit E. - Excerpt Deed of Trust, Definition “C”, 12/06/2004)

In truth of fact, AWL was never “organized and existing under the laws of New York.” This has been the subject of contentious litigation across the country. An interesting case on point brought In the Circuit Court of the Eighteenth Judicial Circuit, in and for Seminole County, Florida, Case No. 59-2011-CA-004389, Division 14-K is the matter of *Bank of America, N.A., et al. v. Linda A. Nash, et al.* On October 14, 2014, after a Trial on the matter, Senior Judge Robert J. Pleus, Jr. issued a Final Judgment in which he ruled that:

- a.) America’s Wholesale Lender, a New York Corporation, the “Lender”, specifically named in the mortgage, did not file this action, did not appear at Trial, and did not Assign any of the interest in the mortgage.
- b.) The Note and Mortgage are void because the alleged Lender, America’s Wholesale Lender, stated to be a New York Corporation, was not in fact incorporated in the year 2005 or subsequently, at any time, by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities.

³⁷ The mental gymnastics required to understand who the beneficiary here is reminds us of the famous comedy routine “Who’s On First” perfected by Abbott & Costello in about 1953. The premise of the sketch is that Abbott is identifying the players on a baseball team for Costello, but their names and nicknames can be interpreted as non-responsive answers to Costello’s questions. For example, the first baseman is named “Who”; thus, the utterance “Who’s on first” is ambiguous between the question (“Which person is the first baseman?”) and the answer (“The name of the first baseman is ‘Who’”). For a little comic relief at this point, we invite you to view this hilarious routine at: <https://www.youtube.com/watch?v=kTcRRaXV-fg>.

³⁸ RCW 61.24.005(2) – “Beneficiary” means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

- e.) Plaintiff and its predecessors in interest had no right to receive payment on the mortgage because the loan was invalid and therefore void because the corporate mortgagee named therein, was non-existent, and no valid mortgage loan was ever held by Plaintiff or its predecessors in interest.
- f.) The alleged Assignment of Mortgage which purported to transfer interest in this Mortgage to BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP, as assignee, was invalid because Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for America's Wholesale Lender had no authority to assign the ownership interest of said mortgage, because MERS was not the owner of the subject mortgage and was only a nominee of America's Wholesale Lender, an alleged New York Corporation which was a non-existent Corporation. Said purported assignment was without authority, and therefore invalid.

Further, Judge Pleus ordered Bank of America, N.A. to disgorge all sums paid by Ms. Nash amounting to \$75,680.72 together with interest; and that she may recover costs and attorney's fees. Subsequent to the Final Judgment, Bank of America, N.A. filed an appeal. (See Exhibit F. - Final Judgment, 10/16/2014)

The point of the story here is that MERS and its members are using these MERS Assignments to cover up the gaping holes in their documentation of ownership. They don't want anyone to question their practices and now insist that all a consumer needs to know is the identity of their mortgage servicer and the address of where to send their mortgage payments. They argue that it should be of no concern to a consumer who owns his mortgage note.

This elitist attitude flies in the face of our national housing policy as codified by the Truth in Lending Act ("TILA"), which stands for the principle that a consumer has an absolute right to know the identity of the person who owns his mortgage obligation.

TILA was strengthened considerably on this point with the enactment of *The Helping Families Save Their Homes Act of 2009*. Section 404 of the Act amends the Truth in Lending Act to require that a new notice be given to consumers within 30 days after the sale, transfer or assignment of the consumer's mortgage loan. The new notice requirement became effective on May 20, 2009 and applies to any sale, assignment or transfer of a mortgage loan occurring on or after May 20, 2009.

What this means is that under federal law, there has to be a paper trail documenting every transfer of a mortgage note. Therefore, the Washington State Legislature could enact legislation to require that these transfers be recorded in the county land records within 30 to 45 days of the transfer without causing undue burden upon the mortgage servicing industry. Doing so would ensure that county recorder's offices are able to safeguard the integrity of land titles by maintaining a complete, accurate, and timely chain of title.

Case Study #2: MERS Substitution of Trustee

This second case study involves a Deed of Trust dated June 1, 2007, that was granted by the borrowers in favor of Countrywide Bank, FSB to secure a Fixed Rate Note of even date for \$70,000.00. (See Exhibit G. - Substitution of Trustee, 04/28/2015)

We ordered a chain of title transaction history from First American DataTree and learned that this loan was a piggyback second mortgage (“2nd DOT”) subordinate to a first Deed of Trust in the amount of \$680,800.00 (“1st DOT”) granted by the borrowers on June 1, 2007, in favor of Countrywide Home Loans, Inc. dba America’s Wholesale Lender. We also discovered a MERS Assignment dated June 27, 2012, that purports to transfer all beneficial interest under the 1st DOT (together with the note) to The Bank of New York Mellon fka The Bank of New York, as Trustee for the certificateholders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-11.

There is no public record that indicates the 2nd DOT was sold and assigned, but we suspect it was. The language in the Substitution of Trustee regarding MERS —innovative though it may be— is so obtuse as to be incomprehensible. Below, we extract the gist of the Substitution of Trustee so the reader can better understand the issue.

Substitution of Trustee *Instrument #20150429000586*

Whereas, [name] was the original Trustor, Ranier Title was the original Trustee, and Mortgage Electronic Registration Systems, Inc. was the **representative of the original Beneficiary** under that certain Deed of Trust dated 06/01/2007...

Whereas, the undersigned is the **designated nominee of the present Beneficiary** under said Deed of Trust and

Whereas, the **undersigned desires to substitute a new Trustee** under Deed of Trust in place and stead of said original Trustee thereunder.

Now therefore, the undersigned hereby substitutes Nationwide Title Clearing, Inc., a Washington State corporation, as Trustee under said Deed of Trust... (emphasis supplied)

Dated: 04/28/2015 Mortgage Electronic Registration Systems, Inc.,
 (“MERS”) as designated nominee for Countrywide
 Bank, FSB, **beneficiary of the security instrument**,
 its successors and assigns
 By Jessica Barreres, Assistant Secretary

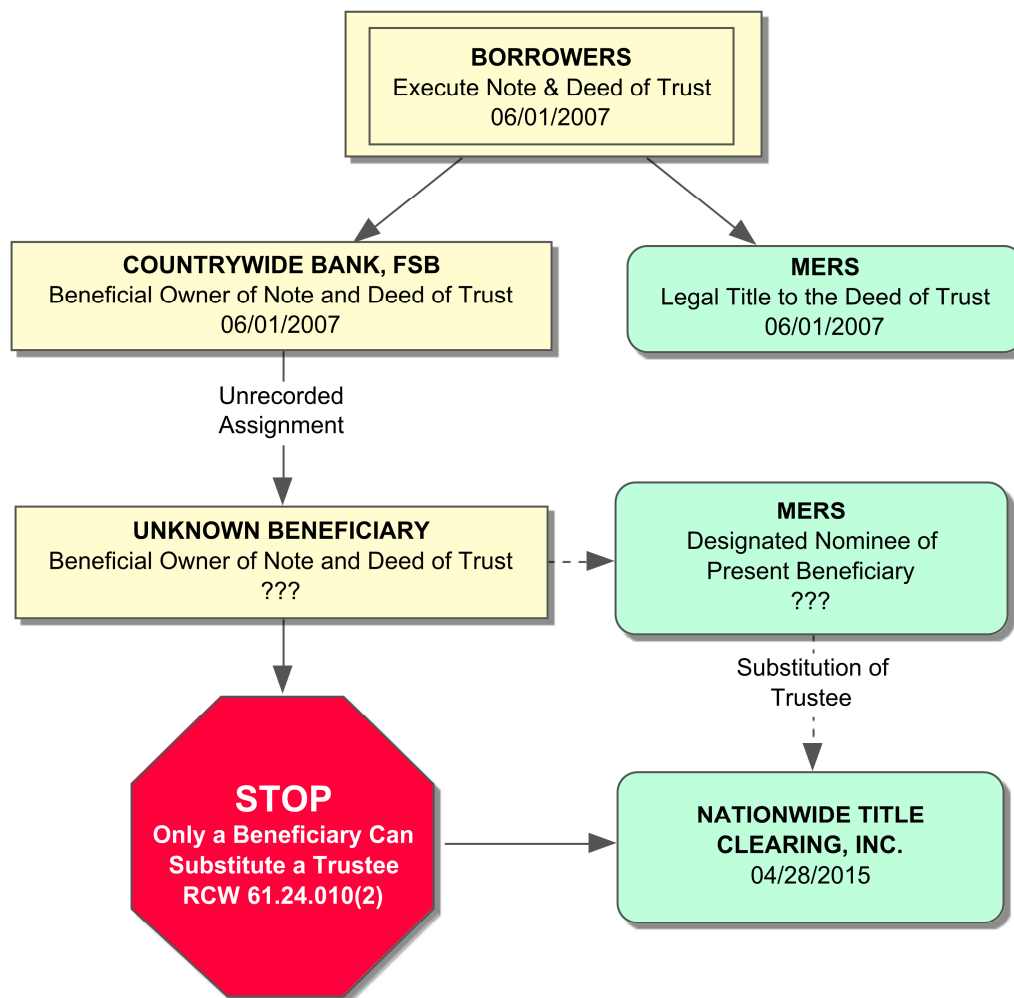
Here again, under the “new rules,” we see MERS backpedaling from the definition in the Deed of Trust that: “**MERS is the beneficiary under this Security Instrument.**” MERS now prefers to be viewed as “the representative of the original Beneficiary” although it offers no evidence of agency such as a power of attorney. (See Exhibit H. - Excerpt Deed of Trust, 06/01/2007)

The Substitution of Trustee contains this non sequitur: "...the undersigned is the **designated nominee of the present Beneficiary**." There is no indication whatsoever who the "present Beneficiary" is. According to the FDIC, Countrywide Bank, FSB has been inactive since April 27, 2009, when it was merged into Bank of America, National Association (FDIC #: 3510).

The signatory, Jessica Barreres, asserts her authority as Assistant Secretary of Mortgage Electronic Registration Systems, Inc., ("MERS") as designated nominee for Countrywide Bank, FSB, **beneficiary of the security instrument**, its successors and assigns. However, there is a complete disconnect between the "original beneficiary" and the "present beneficiary" (indicating there was a sale of the mortgage note), which calls into question Ms. Barreres' authority.

It is important to note here that Ms. Barreres is employed by Nationwide Title Clearing, Inc., the (improperly appointed) successor trustee. To visualize the representations made in the Substitution of Trustee, we created the following diagram:

Diagram #2: MERS Substitution of Trustee



Pursuant to RCW 61.24.010(2), only a beneficiary can appoint a successor trustee. MERS does not meet the requirements of RCW 61.24.005(2), and therefore, the above referenced Substitution of Trustee is void.

Flooding the Recorder's Office

Notwithstanding the strict requirements of the Deed of Trust Act and the Washington State Supreme Court's decision in *Bain v. Metropolitan Mortgage Group, Inc.*, MERS and its members continue to flood the King County Recorder's Office with void assignments and void appointments of successor trustee as shown in the screen prints below.

Screen Print #1: MERS Assignments

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SEATTLE - marie@mcdonn... King County Recorder's Office ... Unrecordable | Define Unre... +

146.129.54.93:8193/results.asp?c=y&pg=

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Fee Increase - June 12, 2014

Official Public Records

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Criteria: Name or Associated Name Begins with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS Document Type is ASSIGNMENT DEED OF TRUST/MORTGAGE Filed between 01/01/2015, 06/21/2015

Search Results - A total of 557 records matched your criteria.

Displaying Records 1 to 10

Jump to Page: 1 2 3 4 5 6 7 8 9 10 11 - 56

Instrument Number	Book-Page	Date Filed	Document Type (+) = More Names	Name
20150611000355		06/11/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS (+)
20150102001597		01/02/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150105001001		01/05/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150106001398		01/06/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150106001402		01/06/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001105		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001366		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001691		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107001710		01/07/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150108001043		01/08/2015	ASSIGNMENT DEED OF TRUST/MORTGAGE	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)

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Screen Print #2: MERS Appointments

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SEATTLE - marie@mcdonn... King County Recorder's Office ... Unrecordable | Define Unre... +

146.129.54.93:8193/results.asp

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Fee Increase - June 12, 2014

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Criteria: Name or Associated Name Begins with MORTGAGE ELECTRONIC REGISTRATION SYSTEMS Document Type is APPOINTMENT OF SUCCESSOR TRUST Filed between 01/01/2015, 06/21/2015

Search Results - 97 matches

Displaying Records 1 to 10

Jump to Page: 1 2 3 4 5 6 7 8 9 10

Instrument Number	Book-Page	Date Filed	Document Type (+) = More Names	Name
20150102001553		01/02/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150107000657		01/07/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150129002121		01/29/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150130000703	000 - 000	01/30/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150303000873		03/03/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150312001525		03/12/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150330002010		03/30/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC
20150424002023		04/24/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150424002025		04/24/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)
20150427000584		04/27/2015	APPOINTMENT OF SUCCESSOR TRUST	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC (+)

Jump to Page: 1 2 3 4 5 6 7 8 9 10

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MERS Remains Non-Compliant

After analyzing a number of assignments such as the one described in Case Study #1; and researching substitutions of trustee such as the one detailed in Case Study #2, we concluded that the implementation of new policies and procedures mandated by Fannie Mae, Freddie Mac, the FHA and MERS in the fall of 2014 have not brought—and cannot bring—MERS and its members into compliance with Washington State’s statutory law and decisional case law.

By all appearances, the policy changes described above employ semantics over substance in an attempt to cure fatal defects in the chain of title. Without documenting the actual transfers of mortgage notes—which was the standard before MERS arrived on the scene—this scheme simply cannot work. The Washington State Supreme Court in *Bain* observed: [285 P.3d 45-46]

While we have no reason to doubt that the lenders and their assigns control MERS, ***agency requires a specific principal that is accountable for the acts of its agent.*** If MERS is an agent, its principals in the two cases before us remain unidentified.¹² ***MERS attempts to sidestep this portion of traditional agency law by pointing to the language in the deeds of trust that describe MERS as “acting solely as a nominee for Lender and Lender’s successors and assigns.”*** Doc. 131–2, at 2 (Bain deed of trust); Doc. 9–1, at 3 (Selkowitz deed of trust.); e.g., Resp. Br. of MERS at 30 (Bain). ***But MERS offers no authority for the implicit proposition that the lender’s nomination of MERS as a nominee rises to an agency relationship with successor noteholders.***¹³ ***MERS fails to identify the entities that control and are accountable for its actions. It has not established that it is an agent for a lawful principal.*** (emphasis supplied)

Whereas the Supreme Court observed that MERS doesn’t identify the noteholder, or the entities that control and are accountable for its actions, MPA has documented the fact that MERS doesn’t even identify itself, that is, MERS Signing Officers execute documents on behalf of multiple entities and never reveal their true employer.

For example, in Case Study #1 above, Lorena Malaquias executed the MERS Assignment on behalf of Mortgage Electronic Registration Systems, Inc., as designated nominee for America’s Wholesale Lender, beneficiary of the security instrument, its successors and assigns. In reality, Lorena Malaquias³⁹ is a certified public notary employed by ReconTrust Company, N.A. in Chandler, Arizona.

In Case Study #2, Jessica Barreres executed the MERS Substitution of Trustee on behalf of Mortgage Electronic Registration Systems, Inc., (“MERS”) as designated nominee for Countrywide Bank, FSB, beneficiary of the security instrument, its successors and assigns. But actually, Jessica Barreres⁴⁰ is employed by Nationwide Title Clearing, Inc. in Palm Harbor, Florida.

To assist the Seattle City Council in better understanding “who MERS is,” we had REST program our *Registry of Deeds Audit Model* to search for the “Transacting Parties” and “Supporting Parties” involved in the instruments we examined so that we could identify who is ordering and executing these documents. A list of those entities is found below in our Statistical Analysis – Objective #2, Table 2: *Qualitative Analysis of MERS Assignments*.

³⁹ See: <http://findnotary.org/notary/chandler/Lorena-Malaquias-851151>.

⁴⁰ A Google search brings up many title documents bearing the name of Jessica Barreres that were prepared by Nationwide Title Clearing, Inc.

VI. CONCLUSIONS

Our forensic examination of the City of Seattle land records revealed widespread, systemic patterns of practice that appear to violate numerous state and federal statutes and are, therefore, clearly against public policy.⁴¹

We found that the assignments we analyzed, and all trailing documents filed of record that depend upon the validity of those assignments are *void* because these assignments purport to convey interests the assignor does not own, are unauthorized, are inherently deceptive and cannot be repaired or ratified. For these reasons, they —and their progeny— violate RCW 40.16.030 which prohibits the offering of false instruments for filing or record.

We concluded that the Seattle City Council's concerns are justified, and that both legislative and prosecutorial action is necessary to protect the public and keep the peace.

Our examination began with a review of 195 Assignments Deed of Trust/Mortgage filed with the King County Recorder's Office on or between January 1, 2013 and June 30, 2013. From that control group, we found 175 assignments executed by MERS Signing Officers. Bearing in mind that the Washington State Supreme Court rendered its decision in *Bain v. Metropolitan Mortgage Group, Inc.* on August 16, 2012, we found incontrovertible evidence that MERS and its members continue to assign beneficial interests in deeds of trust and appoint successor trustees in flagrant disregard for the Washington State Supreme Court's decision in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

MERS may argue that it was merely assigning deeds of trust out of the MERS® System; however, when we analyzed those assignments within the context of chain of title, their true purpose came to light, which was to assign beneficial rights MERS does not possess.

As a result of the encroachment of MERS's private industry practices upon the public domain, homeowners in Washington State can no longer look to their taxpayer-funded government maintained land evidence recording systems to determine the true, current owner of their mortgage. The implications of this are far reaching as commerce depends upon certainty in land titles; and our courts rely on the validity of recorded documents and business records when adjudicating the rights of the parties.

The Washington Supreme Court was most insightful when it observed in *Bain v. Metropolitan Mortgage Group, Inc.*:

¶ 16 Critics of the MERS system point out that after bundling many loans together, ***it is difficult, if not impossible, to identify the current holder of any particular loan, or to negotiate with that holder. While not before us, we***

⁴¹ *Black's Law Dictionary* defines public policy as: "Community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowmen, having due regard to all circumstances of each particular relation and situation. *Hammonds v. Aetna Cas. & Sur. Co.*, D.C.Ohio, 243 F.Supp. 793, 796." *See Black's Law Dictionary*, 1231 (6th ed. 1990).

note that this is the nub of this and similar litigation and has caused great concern about possible errors in foreclosures, misrepresentation, and fraud. Under the MERS system, questions of authority and accountability arise, and determining who has authority to negotiate loan modifications and who is accountable for misrepresentation and fraud [175 Wash.2d 98] becomes extraordinarily difficult. [FN7] *The MERS system may be inconsistent with our second objective when interpreting the deed of trust act: that “the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.”* Cox, 103 Wash.2d at 387, 693 P.2d 683 (citing *Ostrander*, 6 Wash.App. 28, 491 P.2d 1058). (emphasis supplied)

¶ 17 The question, to some extent, is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.

Based on the overwhelming weight of the documentary evidence MPA and REST gathered and analyzed, we conclude that MERSCORP Holdings, Inc., Mortgage Electronic Registration Systems, Inc., and the use of the MERS® System promote *private corporate interests* that are diametrically opposed to the *public interest* in Washington State as expressed by the Legislature in the Revised Code of Washington, and by the Supreme Court in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012).

For all of the reasons explained above, we answer the Seattle City Council’s questions succinctly as follows:

Question 1: Transparency

How discoverable is the true, current owner of a mortgage?

Without exception, in 195 instances —100% of the time across the board— we found that we could not determine who the true, current owner of the mortgage was based on:

- i. the information contained on the face of the assignment;
- ii. a review of the ancillary documents recorded in the chain of title; and
- iii. a MERS MIN Number⁴² search which revealed the identity of the servicer.

Some assignments indicated that the “investor” was Fannie Mae, Freddie Mac, Ginnie Mae, or a securitized trust. The fact is Fannie Mae and Freddie Mac securitize virtually all of their mortgage loans, or purchase mortgage backed securities rather than whole loans in which case, they are not mortgage owners. Ginnie Mae is a guarantor, not a mortgage loan owner.

⁴² The Mortgage Identification Number (MIN) is an 18-digit number that uniquely identifies a mortgage loan registered on the MERS® System. (*See Appendix I: Definitions of Terms*)

Where a private label securitized trust is concerned, the pattern we see over and over again involves an assignment from MERS to the trustee of a securitized trust, leapfrogging over the interim assignees. Such assignments are not authorized by the pooling and servicing agreements that govern these securitized trusts which calls into question MERS's authority, the validity of the assignments, and the identity of the true, current owner of the mortgage.

MPA performed a MERS MIN Number search for all 195 Alpha Assignment and found that 170 of these (87%) were assigned to the *servicer*, not to the *mortgage owner*. This statistic evidences a paradigm shift engineered by the mortgage industry which now insists all a consumer needs to know is the identity of their mortgage *servicer*, and the address of where to send their mortgage payments. (See Statistical Analysis, Table 1 – Section 1.09 below)

We concluded that it is impossible to know who the true, current owner of a mortgage is based on the recorded chain of title. (See Statistical Analysis, Table 3 – Section 2(c).24 below)

Question 2: Chain of Title Integrity *How valid are the assignments of mortgage?*

We made a concerted, objective, and fair-minded effort to identify even one (1) Alpha Assignment that was *valid*. Appendix II contains five (5) examples of the types of Alpha Assignments we examined. Assignment #1 and Assignment #3 appeared to be valid at first, but when we analyzed them within the chain of title, we determined that they were *void*⁴³ and *void ab initio*⁴⁴ respectively for the reasons explained therein. (See Appendix II: *Examination of Assignments Deed of Trust/Mortgage*) and (See Statistical Analysis, Table 3 below)

Of the 195 Alpha Assignments examined, we determined that 175 of them are *void* because Mortgage Electronic Registration Systems, Inc. purports to transfer beneficial interests and rights in the deeds of trust that Mortgage Electronic Registration Systems, Inc. does not, in fact, own. The remaining 20 Alpha Assignments were deemed to be void because they were preceded by a MERS Assignment or a MERS Appointment of Successor Trustee that was void for the same reason.

Despite the fact that these assignments are void and transfer no beneficial interests to the assignee, they function as if they do. In a foreclosure situation, MPA found that the recorded assignment is followed immediately by an appointment of successor trustee; once the trustee is in place the sale can move forward expeditiously—all based on the void assignment.

⁴³ Assignment #1, which was recorded to notice a “true sale,” is *void* because it was executed by a MERS Signing Officer, but was never registered in the MERS® System. Therefore, the MERS Signing Officer lacked the legal capacity to assign the Deed of Trust rendering it void.

⁴⁴ Assignment #3 was recorded to provide notice that MERS no longer held any interest in the Deed of Trust. In and of itself, we found Assignment #3 to be *valid*; however, when viewed in light of the complete chain of title we found that Mortgage Electronic Registration Systems, Inc. as nominee for CitiMortgage, Inc. purported to transfer beneficial interests in the Deed of Trust that it did not own or hold.

VII. MCDONNELL PROPERTY ANALYSICS

McDonnell Property Analytics has considerable experience in the examination of real property records throughout the United States of America. We have been auditing residential and commercial mortgage loans on a case-by-case basis for more than twenty-eight years. This includes all aspects of the transaction cycle.

Our inaugural audit of a registry of deeds was conducted during the first six months of 2011 at the request of The Honorable John L. O'Brien, Register of the Essex Southern District Registry of Deeds in Salem, Massachusetts. Mr. O'Brien, who has held his office continuously since 1977, was concerned that the mortgage banking industry's use of Mortgage Electronic Registration Systems, Inc. was corrupting title to properties located within his jurisdiction; and he wanted to test the accuracy, transparency, and reliability of his registry to measure the damage.

We concluded our audit on June 28, 2011, which revealed widespread, systemic patterns of practice employed by several of the nation's largest banks that had eroded the transparency and corrupted the chain of title to real property records maintained by Mr. O'Brien and his staff.⁴⁵

One of the most important lessons we took from that examination was the knowledge that the biggest national banks, e.g., Bank of America, N.A., Wells Fargo Bank, N.A., and JPMorgan Chase Bank, N.A. do not register their own loans in the MERS® System. Nevertheless, we found their behavior was identical to MERS in that they did not record interim assignments of mortgage and they intentionally concealed the identity of the note owner. To cure the resulting gaps in the chain of title, mortgage servicing companies and their third party document preparers recorded fictitious and fraudulent assignments immediately before either: a) discharging the mortgage; or b) instituting a non-judicial foreclosure action.

Our next opportunity to audit a public registry was on behalf of The Honorable Nancy J. Becker, Recorder of Deeds for Montgomery County, Pennsylvania. Ms. Becker sued MERSCORP Holdings, Inc. (f/k/a MERSCORP, Inc.) and its wholly owned subsidiary, Mortgage Electronic Registration Systems, Inc. on behalf of herself and all other Pennsylvania Recorders of Deeds alleging that by creating and maintaining a private, members-only registry for recording and tracking conveyances of interests in real property, the MERS Defendants have violated 21 P.S. §351, which requires that such conveyances be publicly recorded in the county recorder of deeds offices. Specifically, Ms. Becker is challenging the practice by which MERS serves as the mortgagee of record in the public land records as the "nominee" for a lender who holds the mortgage note and its successors and assigns and thereby circumvents the need to record the transfer of the note each time it is sold.⁴⁶

⁴⁵ A true and correct copy of our "*Forensic Examination of Assignments of Mortgage Recorded During 2010 In The Essex Southern District Registry of Deeds*" is available on Register O'Brien's website at: <http://salemdeeds.com/pdf/Audit.pdf>

⁴⁶ *See Montgomery County, Pennsylvania, Recorder of Deeds, by and through Nancy J. Becker v. MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc.*, USDC-EDPA, Case No. 2:11-cv-06968.

Our responsibilities there were to identify and examine a population of suspect mortgage assignments; trace those assignments to the related mortgage; review ancillary documents recorded in the chain of title; and perform a forensic examination to determine whether there were any unrecorded transfers of the mortgage note. In that capacity, we had the opportunity to analyze a sampling of MERS MIN Summaries and MERS Milestones Reports and compare those with the recorded chain of title. Our preliminary findings proved positive and were submitted on a redacted basis to the United States District Court for the Eastern District of Pennsylvania in support of the Plaintiff's Cross-Motion for Partial Summary Judgment on November 5, 2013;⁴⁷ Plaintiff's Motion was granted pertinent in part on July 1, 2014. Class certification was also granted on February 12, 2014. The MERS Defendants filed an appeal to the Third Circuit, and on August 3, 2015, the Third Circuit reversed the United States District Court's rulings. Plaintiff filed an request for a rehearing *en banc* which was denied on August 28, 2015.

As we were completing the *City of Seattle Review of Mortgage Documents*, MPA and REST were engaged to perform an analysis of land title documents recorded in three (3) Arizona counties (Maricopa, Pima, and Pinal) by plaintiffs' attorneys in the matter of: *IN RE: Mortgage Electronic Registration Systems (MERS) Litigation*, before the United States District Court, District of Arizona, Case No. 2:09-md-02119-JAT. In this case, we were tasked with the job of determining whether assignments of deeds of trust executed by signing officers of Mortgage Electronic Registration Systems, Inc., in which MERS purports to assign the mortgage note, violate ARS 33-420 which prohibits the recordation of documents that are forged, groundless, contain a material misstatement or false claim or are otherwise invalid.

We provide this background with the understanding that our findings may be relied upon by the Seattle City Council, the Washington State Legislature, the Attorney General's Office, the Department of Financial Institutions, and the Washington Courts.

To ensure the integrity of this examination and our findings, MPA and REST have spared neither time nor expense in gathering the information necessary to fulfill the Seattle City Council's objectives.

VIII. A CALL TO ACTION

The preponderance of the evidence allows us to conclude that MERSCORP Holdings, Inc. and Mortgage Electronic Registration Systems, Inc., collectively "MERS," is a private, member-only organization that serves the interests of its members to the detriment of the public interest.

In a free society, people may pursue their interests only up to the point where they infringe upon the rights of others. In a just society, the rule of law governs all and is equally applied.

MERS should be allowed to operate the MERS® System to track changes in beneficial ownership rights as well as servicing rights among its members; but it must be restrained from

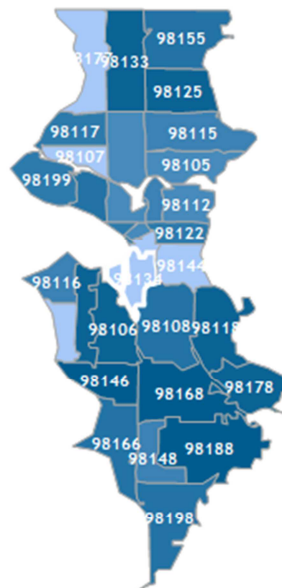
⁴⁷ *Id.* at at Docket #81, Exhibit 30 - Declaration Exhibit G - Redacted McDonnell Declaration.

corrupting the taxpayer-funded government maintained land evidence recording systems throughout Washington State.

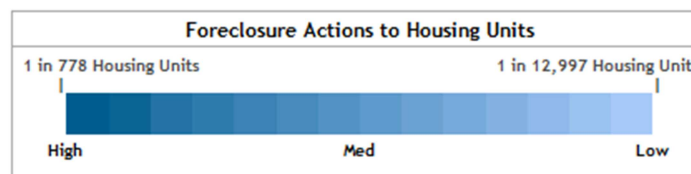
We find that with respect to the MERS related mortgage documents we examined filed of record with the King County Recorder's Office; chain of title to the affected properties has been severely impaired. Under color of law, MERS members access certain statutes only to violate others in order to seize title to real property unlawfully and profit from its disposition.

Not only is MERS corrupting the land records; it is interfering with the public's access to justice by infecting the Washington state and federal courts with phony title documents that purport to give its members legal standing when, in actuality, they have none. The story of Kristin Bain illustrates this perfectly.

Of concern to the City of Seattle is the disruption and economic harm caused by wrongful and unnecessary foreclosures carried out, almost exclusively, by trustees who have not been duly appointed by the true beneficiary as required by law. According to RealtyTrac, as of July 1, 2015, Washington State remains among the top 10 states in the nation as far as high foreclosure rates; and the City of Seattle has been, and continues to be, especially hard-hit.



Realtytrac.com Statistics as of
July 1, 2015



The damage caused by foreclosures can be seen and measured in the form of blight, vacant homes, depreciating real property values, an eroding tax base, etc. The cost of this disruption can be assessed in terms of care for the homeless, increased need for social services such as police, fire, rescue, medical care, special school programs—all borne by Washington taxpayers.

The financial crisis of 2008 should have taught us that the premise of the Depository Institutions Deregulation and Monetary Control Act of 1980—that the banking industry would regulate itself— couldn't have been more wrongheaded. Rather than apply self-restraint, the banking industry (and a new breed of unregulated federal housing creditor created by Congress in 1982) saw this as a “gold rush” and aggressively ramped up operations to claim their share of the trillions of dollars of unleveraged equity in the U.S. housing market owned by law abiding, unsuspecting American families.

After examining the impact of the new policies and procedures implemented in the State of Washington by Fannie Mae, Freddie Mac, the FHA and MERS, we find these rules have not brought—and cannot bring—MERS and its members into compliance with Washington law.

Radical change is needed to maintain the rule of law, and to ensure equal justice under the law, which requires the political will of, and decisive action by, Washington's elected officials. We submit the following recommendations to accomplish that end.

1. Suspend or Revoke Business Licenses

The Secretary of State and the Department of Financial Institutions have the inherent power to suspend or revoke a license to do business in Washington State for cause, which can be a powerful motivating force.

For example, over the past year, Ocwen Loan Servicing, LLC (“Ocwen”) has been the target of regulatory enforcement actions by the New York Department of Financial Services (“DFS”),⁴⁸ and the California Department of Business Oversight (“DBO”).⁴⁹

The New York DFS opened an investigation to look into the growing list of questions it received from judges over rotating servicers and trustees, servicing practices, robo-signing, forgery, fabrication of documents and the refusal of the foreclosing party to simply show the funding for the loan and the consideration paid for the acquisition of the loan. On December 23, 2014, the DFS announced a settlement which required William C. Erbey, who built Ocwen, to step down from his position as Executive Chairman of Ocwen Financial Corporation (OCN) and from his

⁴⁸ See New York Department of Financial Services (“DFS”) Announces OCWEN Settlement Which Could Spell Doom For Other Servicers, 12/23/2014, by [Barry Fagan: http://www.jdsupra.com/legalnews/new-york-department-of-financial-service-19150/](http://www.jdsupra.com/legalnews/new-york-department-of-financial-service-19150/).

⁴⁹ See California threatens to suspend Ocwen's mortgage license: *Fails to comply with state laws*, by [Brena Swanson](http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license), January 13, 2015: <http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license>.

See Ocwen Agrees to \$2.5 Million Settlement for Failing to Provide Loan Information, January 23, 2015: http://www.dbo.ca.gov/Press/press_releases/2015/Ocwen%20Settlement%20Announcement%2001-23-15.asp.

See also, California threatens to suspend Ocwen's mortgage license: *Fails to comply with state laws*, by [Brena Swanson](http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license), January 13, 2015: <http://www.housingwire.com/articles/32580-california-threatens-to-suspend-ocwens-mortgage-license>.

positions as Chairman of the Board of Directors of each of four related companies. In addition, Ocwen must undertake significant operational reforms to address serious servicing misconduct and conflict of interest issues at the company; have an NYDFS-selected, independent monitor on site for up to an additional three years; and provide "hard-dollar" assistance to New Yorkers totaling \$150 million.

On January 13, 2015, the California DBO threatened to suspend Ocwen Loan Servicing, LLC's license due to its failure for more than a year to provide loan information needed by the DBO to assess Ocwen's compliance with state mortgage lending laws. Ten (10) days later, on January 23, 2015, Ocwen announced a settlement with the DBO and agreed to pay a fine of \$2.5 million. Losing its California license would mean that Ocwen would have to sell its mortgage servicing (and foreclosure) rights. Since California represents the single biggest source of business for Ocwen, losing its license there was too big a risk, and Ocwen quickly came into compliance.

We recommend that the Seattle City Council ask the appropriate authorities in Washington State to review our findings and consider whether there are any regulatory enforcement actions that could effectively deal with MERS and its members, and bring these institutions into compliance with existing laws.

2. Enforce RCW 40.16.030

RCW 40.16.030 – Offering false instrument for filing or record, makes it a felony to file false or forged documents in any public office. This offense is punishable by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars (\$5,000.00), or by both.

By enforcing this law, authorities can effectively: a) deter the filing of false title documents by identifying and holding the perpetrators accountable; b) maintain the integrity of the public land records and the sanctity of the courts; c) protect the public interest; d) impose fines that support the clean-up and other local government initiatives.

During the course of our examination, Real Estate Services and Technology was able to identify 195 Alpha Assignments and 623 related documents that potentially violate RCW 40.16.030. At \$5,000.00 per infraction this amounts to potential fines of up to \$4,090,000.

For a list of the entities involved in the creation of these false instruments, go to the Statistical Analysis, Objective #2, Table 1: Qualitative Analysis of MERS Assignments.

We recommend that the Seattle City Council submit our report and appendices to the Washington State Attorney General's Office and request that they open an investigation, or at the very least, render a legal opinion with respect to whether MERS Assignments and Substitutions of Trustee are valid and in compliance with Washington laws.

3. Place Restrictions on What MERS Can Record

One sure, simple, and swift way to bring MERS and its members into compliance with Washington statutes and case law, and at the same time allow MERS to function according to its own rules, is to restrict the type of documents it can record in the county land records.

Our research and analysis further support the Washington State Supreme Court's decision in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 285 P.3d 34 (Wash., 2012) and demonstrate that MERS is not a beneficiary within the meaning of RCW 61.24.005(2). Therefore, MERS should not be allowed to assign beneficial interests it does not possess; nor should it be allowed to appoint successor trustees, which is a privilege and duty reserved exclusively for the beneficiary pursuant to RCW 61.24.010(2).

MERS claims to hold bare legal title to the security instruments that its members have registered in the MERS® System. Whereas that may be true for a mortgage, it is not true where a deed of trust is concerned. Deeds of trust introduce a third party to the transaction, the trustee, who holds legal title to the deed of trust on behalf of the parties.⁵⁰ MERS has no legal ability as nominee to assign a deed of trust:

[T]he trustee under a deed of trust holds legal title to the lien, and the beneficiary holds equitable title to that lien. It follows that, because Mortgage Electronic Registration Systems, Inc. is neither the trustee nor the beneficiary, it holds no interest at all in the lien conveyed by the trust deed.

Brandrup v. ReconTrust Company, N.A., 353 Or. at 704, 303 P.3d at 320.

MERS is required by its membership rules and procedures to record assignments of deeds of trust to or from MERS, but MERS's membership rules are not laws.

Therefore, MERS should not be permitted to record any title documents such as an Assignment Deed of Trust/Mortgage or an Appointment of Successor Trustee when a deed of trust is involved. If the deed of trust is to be assigned, the lender or the lender's successor or assignee should be the one to do so. If a trustee is to be appointed, the law is clear; the beneficiary is the only one authorized to do so under RCW 61.24.010(2).

MERS should be permitted to assign legal title to the mortgagee of a mortgage so that the bundle of rights already held by the noteholder can be perfected prior to a termination event such as a discharge of the mortgage obligation or the institution of a foreclosure proceeding.

Following these recommendations would eliminate confusion and contentious litigation over what MERS can and cannot do in Washington State. It would also preserve the integrity of land titles which is fundamental to safeguarding property rights.

⁵⁰ *Steinberger v. McVey ex rel. Cnty of Maricopa*, 234 Ariz. 125, 140, 318 P.3d 419, 434 ¶ 65 (Ct. App. 2014).

We recommend, therefore, that the Seattle City Council work with its state representatives to sponsor this important piece of consumer protection legislation immediately. Such legislation would be further strengthened by establishing that any misinformation contained in the recorded document would be subject to RCW 40.16.030. Further RCW 40.16.030 should be amended to contain a private right of action which, if proven at law, constitutes a per se violation of the Consumer Protection Act.

4. Enact a Residential Mortgage Fraud Statute

Some years ago, a number of states throughout the union (including California, Arizona, Nevada, Georgia, and Massachusetts to name a few) enacted residential mortgage fraud statutes⁵¹ to deter, for the most part, mortgage fraud schemes perpetrated against financial institutions that generally employed some type of material misstatement, misrepresentation, or omission relating to the property or potential borrower which was relied upon by an underwriter or lender to fund, purchase, or insure a mortgage loan.

Most of these laws include a prohibition against the recording of a false document in the public land records. As an example, the following summary explains why the Massachusetts General Assembly enacted a residential mortgage fraud statute, and provides the relevant excerpt.

On August 7, 2010, Massachusetts Governor Deval Patrick signed into law a package of comprehensive foreclosure initiatives to keep people in their homes and stabilize neighborhoods across the Commonwealth. The legislation, "*An Act Relative to Mortgage Foreclosures*," expands help for homeowners facing possible foreclosure, creates new protections for tenants renting apartments in foreclosed buildings and establishes mortgage fraud as a crime. Specifically and on point, General Law Chapter 266 was expanded as follows:

M.G.L. Chapter 266 § 35A(b)(4)

(b) Whoever intentionally:... (4) files or causes to be filed with a registrar of deeds any document that contains a material statement that is false or a material omission, knowing such document to contain a material statement that is false or a material omission, shall be punished by imprisonment in the state prison for not more than 5 years or by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not more than \$10,000 in the case of a natural person or not more than \$100,000 in the case of any other person, or by both such fine and imprisonment.

Any person who engages in a pattern of residential mortgage fraud shall be punished by imprisonment in the state prison for not more than 15 years or by a fine of not more than \$50,000, in the case of a natural person,

⁵¹ See National Conference of State Legislatures: <http://www.ncsl.org/research/financial-services-and-commerce/mortgage-fraud-state-statutes-and-resources.aspx>.

or not more than \$500,000 in the case of any other person, or by both such fine and imprisonment.

If Washington had a residential mortgage fraud statute on its books with penalties as high as Massachusetts, the potential recovery associated with our audit would increase exponentially from \$4,090,000 to \$81,800,000 calculated as follows: 818 false documents x \$100,000 = \$81,800,000.

A necessary component of this statute would be to give consumers who are being harmed by the filing of false documents a private right of action, thereby reducing the burden on the Attorney General's Office by creating "an army of private attorneys general" similar to the federal Truth in Lending Act.

By enacting a residential mortgage fraud statute with teeth, the Washington State Legislature can effect self-correction within the marketplace and bring rogue mortgage lending and servicing entities into compliance. We understand that former Governor Chris Gregoire formed a *Washington Task Force For Homeowner Security* who prepared a report on December 21, 2007,⁵² recommending among other things, that legislation be drafted to define and enact into law the felony crime of mortgage fraud, together with adopting appropriate penalties.

Therefore, we recommend that the Seattle City Council submit our report to Governor Jay Inslee and ask him to renew the effort to pass a Residential Mortgage Fraud statute similar to the Massachusetts version and appropriate the necessary funding to prosecute these crimes; or otherwise, lobby the Legislature to propose the bill.

5. Require All Assignments Be Recorded⁵³

Under the federal Truth in Lending Act, as amended by Section 404 of *The Helping Families Save Their Homes Act of 2009* ("the Act"),⁵⁴ borrowers must be notified within 30 days whenever ownership of their mortgage loan is transferred. The Act applies to all mortgages secured by the consumer's principal dwelling. The new notice requirement became effective when enacted on May 20, 2009.

Nothing embodies our national housing policy more clearly than the Truth In Lending Act, which now mandates that there be a written paper trail documenting every transfer of a mortgage note. It would not be overly burdensome for the mortgagee to record an assignment of the mortgage in tandem with issuing its notice to the borrower. In this way, the uncertainty of ownership interests in the mortgage note and the security instrument can be eliminated; and the transparency, accuracy and reliability of the public land records restored.

⁵² See <http://www.dfi.wa.gov/sites/default/files/reports/homeownership-task-force-report.pdf>.

⁵³ We note here that on January 23, 2014, House Bill 2657 was introduced by Representative Zach Hudgins. The modifications to RCW 61.24.030 suggested in this Bill should be redrafted to reflect our recommendation that all transfers of the ownership of the mortgage note must be recorded.

⁵⁴ See 15 U.S.C. § 1641(g)(1)(A)-(E).

This ministerial task involves no greater effort than preparing and recording a satisfaction piece after the debt has been paid; and it is far more cost effective for the mortgage industry than a \$5,000.00 penalty for recording a false document in the public land records.

We recommend, therefore, that the Seattle City Council work closely with its delegates to the Washington State Legislature to enact a law that requires the recordation of all transfers of mortgage notes whether they be secured by residential, commercial, industrial or agricultural real property within 45 days of the transfer. This comports with best practices as recommended in Washington Appleseed's *Foreclosure Manual for Judges*.⁵⁵

Legislation requiring that all transfers of mortgage notes be recorded in the public land records would balance the equities between lenders and borrowers and ensure that the first and third purposes of the Deed of Trust Act are carried out: ***"First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles."*** (See Bain at [285 P.3d 39])

Therefore, we recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

6. Establish a Gatekeeper

The law of negotiable instruments with respect to mortgage notes is well settled: if a borrower pays a fraudster and the genuine owner shows up with the original wet ink mortgage note, the borrower is obligated to pay the real owner even if that means he pays two times over.

The baseline principle of our system of property regarding transfers of ownership is *nemo dat quod non habet* – "no one can give that which he does not have." Regarding real property rights we would add the cardinal law – "thou shalt not steal."

A simple analogy illustrates the moral and legal concepts here well. Consider for a moment what would happen to someone (a "fraudster") who tried to enter a movie theater without presenting a ticket to prove he paid the price of admission. Clearly, the fraudster would be turned away. He would not be able to get the benefit of the bargain (see the movie) without demonstrating he had paid consideration, which is a necessary element of contract formation.

As astonishing as this may sound, it is easier for a fraudster to foreclose under the non-judicial process than it is to get through a security guard at a movie theater. This is because, there is no burden of proof placed upon the foreclosing beneficiary to "turn over the ticket" i.e., the mortgage note to a gatekeeper before the process can move forward.

Lost note affidavits, photoshopped and forged notes, and document preparation companies who advertise that they can "recreate" an entire collateral file are legendary; yet, many courts are not

⁵⁵ *Foreclosure Manual for Judges: a reference guide to foreclosure law in Washington State.* (See 2.3 Assignments - Page 57).

requiring foreclosing mortgagees to produce the mortgage note (“the ticket”) that entitles them to foreclose upon real property. That’s just not right; and it sets up a host of future problems that may plague the parties for many years.

The Washington Legislature can bar the door to imposters by requiring the beneficiary to turn over the mortgage note to an independent third party keeper of the records (“gatekeeper”) prior to instituting a non-judicial foreclosure sale.

Since RCW 61.24.030(7)(a) requires a declaration by the beneficiary made under the penalty of perjury that the beneficiary is the actual **holder** of the promissory note; it should not be unduly burdensome to produce that note and hand it over to the gatekeeper prior to instituting a non-judicial foreclosure. This is sound public policy, and it would eliminate the guesswork over whether the foreclosing entity has authority. If the mortgage note has been lost, stolen or destroyed, the foreclosure can proceed judicially where the burden of proof can be established by the beneficiary in other ways.

By enacting a law that requires the foreclosing beneficiary to surrender the mortgage note before instituting a non-judicial foreclosure, the State Legislature can balance the equities between lenders and borrowers and ensure that the second purpose of the Deed of Trust Act is fulfilled: *“First, the nonjudicial foreclosure process should remain efficient and inexpensive. **Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure.** Third, the process should promote the stability of land titles.”* (*See Bain* at [285 P.3d 39])

We understand that enacting such a law on a statewide basis will be hotly contested and will, most likely, be interminably delayed. Nevertheless, we recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

In the meantime, the Seattle City Council should consider enacting a resolution that requires trustees to submit the original note to the City Auditor’s Office prior to instituting a non-judicial foreclosure within the Seattle city limits, or within the context of foreclosure mediation. Other municipalities around the country have enacted similar resolutions that may serve as a model for the City of Seattle.

7. Require the Declaration of Beneficiary to be Recorded

RCW 61.24.030(7)(a) requires the beneficiary to provide the trustee with a declaration made under the penalty of perjury stating that the beneficiary is the actual holder (which now means owner, *Trujillo v. Nw. Tr. Servs., Inc.* (Wash., 2015)) of the promissory note or other obligation secured by the deed of trust. The importance of this declaration is that the trustee is entitled to rely on the beneficiary’s declaration as proof and may then proceed with a non-judicial foreclosure.

In most cases, an officer of the mortgage servicer will be signing the declaration that has no personal knowledge of who the legal owner of the promissory note truly is; or where the promissory note is physically located (this is the classic definition of a robo-signer).

Because the trustee has no duty to verify the information contained in the declaration, this poses an open invitation to create declarations that contain false statements, misrepresentations, and omissions of material facts. We have several recommendations that will remedy this risk:

- a) Require the beneficiary to turn over the mortgage note to an independent third party gatekeeper prior to instituting a non-judicial foreclosure action.
- b) Require that the declaration of beneficiary be recorded, and therefore, subject to RCW 40.16.030.
- c) Require that RCW 40.16.030 contain a private right of action which, if proven at law, constitutes a per se violation of the Consumer Protection Act.
- d) If the beneficiary wishes to authorize an agent to prepare such declarations, it should do so under a power of attorney that should be recorded in the county where the land lies. It should also be referenced in every document prepared by the agent to establish its authority.

We recommend that the Seattle City Council work with its representatives to the State Legislature to sponsor such a bill.

8. Reintroduce House Bill 2659 ⁵⁶

A bill was introduced to the House on January 23, 2014 titled, “*An act relating to the restraint of a sale by a trustee; and amending RCW 61.24.130.*” This bill would change the mandatory bond requirement and make it discretionary for the court to decide whether or not, and in what amount, a bond should be required. We recommend that the Seattle City Council request the State Legislature to take a second look at the merits of this bill.

9. Review King County Recorder’s Office Grantor/Grantee Index

As we were in the process of identifying MERS Assignments with the characteristics specified in the RFQ, we noticed that the Recorder’s Office did not always index Mortgage Electronic Registration Systems, Inc. as a Grantor when, in fact, MERS was the Grantor.

We didn’t know what the impact of this inconsistency would be until the audit was complete. For reasons yet unexplained, we ended up with a skewed population of MERS Assignments broken down as follows:

- Out of 211 assignments that were executed by Signing Officers of Mortgage Electronic Registration Systems, Inc., 147 (70%) were assigned to Bank of America, N.A.

⁵⁶ See House Bill 2659: <http://lawfilesexternal.leg.wa.gov/biennium/2013-14/Pdf/Bills/House%20Bills/2659.pdf>

- Out of 195 Alpha Assignments involved in the study, as many as 166 (86%) involved assignments that were prepared to satisfy the debt and reconvey the property.
- Out of 193 properties involved in the study, 20 (10%) had a Notice of Trustee's Sale in the recorded chain of title.
- Out of 193 properties involved in the study, only 1 had a Trustee's Deed in the recorded chain of title.

To better understand why we found only one (1) Trustee's Deed recorded during the first six months of 2013 relating to properties situated within the five (5) Seattle zip codes suffering the highest rates of foreclosure, MPA conducted a spot check of 45 Notices of Sale using the following parameters and investigative techniques:

- (1) Login to the King County Recorder's Office online records search engine at: <http://www.kingcounty.gov/depts/records-licensing/Recorders-Office/records-search.aspx>.
- (2) Search for document type "Notice of Trustee Sale" from 01/01/2013 through 06/30/2013.
- (3) Select "Instrument Number" relating to the Notice of Trustee Sale.
- (4) Select "Deed of Trust" noting whether Mortgage Electronic Registration Systems, Inc. is indexed as a Grantee.
- (5) Select the first "Assignment Deed of Trust/Mortgage" in the chain of title.
- (6) Download the Assignment and determine whether it was executed by a MERS Signing Officer.

We found that there were 4,695 Notices of Trustee Sale filed with the Recorder's Office during this time period in all of King County. Following protocols #1 through #4 above, we found that the Recorder's Office is highly inconsistent with respect to whether or not Mortgage Electronic Registration Systems, Inc. will be indexed as a Grantee of the Deed of Trust.

For example, out of the 45 Notices of Trustee's Sale, we found 33 related to Deeds of Trust that involved Mortgage Electronic Registration Systems, Inc. After doing the research, we found that MERS was indexed as a Grantee in only 7 of the 33 Deeds of Trust.

When we examined the Grantor/Grantee Index for the 33 MERS Assignments we found only 2 instances where MERS was indexed as the Grantor when MERS was the Grantor in the Assignment.

By this process of reverse engineering the chain of title to properties in foreclosure that relate back to a MERS Assignment, we were able to draw a number of important findings:

- A. The population of MERS Assignments is far greater than those we were able to identify based on the King County Recorder's Office's Grantor/Grantee Index.
- B. The negative impact of MERS's unlawful practices is borne primarily by residents who are facing foreclosure.
- C. Our audit was hampered to some extent by the King County Recorder's Office's inconsistent cataloging of MERS in its Grantor/Grantee Index.
- D. The Seattle City Council has been deprived of one of its main goals in commissioning this audit, which was to have a better understanding of the extent to which MERS purports to assign beneficial interests as a precursor to the institution of non-judicial foreclosures under the Deed of Trust Act.

There were a number of other issues Real Estate Services and Technology discovered as it went about the process of gathering documents and data from the King County Recorder's Office and the Assessor's Office. Those issues are set forth in Appendix III: Real Estate Services and Technology's Methodology.

10. Commission a Foreclosure Forensics Audit

The Seattle City Council, in collaboration with other stakeholders, would be well advised to commission a dedicated Foreclosure Forensics Audit to further develop intelligence on how non-judicial foreclosures are being prosecuted unlawfully, and by whom.

Respectfully submitted,



Marie McDonnell, President & CEO
Mortgage Fraud and Forensic Analyst
Certified Fraud Examiner



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(v) 774-323-0892 | (f) 774-323-0894
Marie@mcdonnellanalytics.com

Statistical Analysis – Objective #1

Table 1: Quantitative Analysis of MERS Alpha Assignments

	Objective #1: Sub-Categories	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
1.01	Determine the number of Alpha Assignments that contain a reference to Mortgage Electronic Registration Systems, Inc. (“MERS”). ⁵⁷	184	94%
DTA 1.1	Determine the number of assignments that were executed by officers of Mortgage Electronic Registration Systems, Inc. ⁵⁸	175	90%
DTA 1.1	Determine the number of assignments in which Mortgage Electronic Registration Systems, Inc. claims to be the Beneficiary.	9	5%
1.02	Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in its sole capacity without naming the principal on whose behalf MERS purports to act.	121	62%
1.03	Determine the number of assignments that were executed by Mortgage Electronic Registration Systems, Inc. as “Assignor” in a nominee capacity for a named principal.	54	28%
1.04	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. contain the unique 18-digit Mortgage Identification Number as required by MERS.	174	89%
1.05	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. do not contain the unique 18-digit Mortgage Identification Number as required by MERS.	1	1%
1.06	Determine how many assignments executed by MERS purport to assign only the Deed of Trust.	47	24%

⁵⁷ In addition to identifying 184 assignments that contained a reference to MERS within the body of the assignment itself; the REST System was also able to identify 11 Alpha Assignments within the covered period that did not contain a reference to MERS, but related to a deed of trust that was registered in the MERS® System. Only one (1) Alpha Assignment was indexed incorrectly: the Recorder’s Office listed Mortgage Electronic Registration Systems, Inc. as a Grantor when it should not have done so. We elected to “kick-out” that anomaly and its related documents from our count which reduced the population of Alpha Assignments from 196 to 195.

⁵⁸ In the total population of assignments, of which there were 242, we found 211 where MERS was a “Transacting Party.” This means that there were 36 MERS assignments ($211 - 175 = 36$) in the chain of title that were outside of our examination period, i.e., the first half of 2013.

Statistical Analysis – Objective #1 (Cont.)

	Objective #1: Sub-Categories	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
1.07	Determine how many assignments executed by Mortgage Electronic Registration Systems, Inc. purport to assign the Note as well as the Deed of Trust.	128	66%
1.08	Determine how many MERS assignments involved a securitized trust.	10	5%
1.08(a)	If a Non-MERS assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from the originating Lender directly to the Trustee for the securitized trust?	N/A	0%
1.08(b)	If the assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from MERS as beneficiary to the Trustee for the securitized trust?	1	1%
1.08(c)	If the assignment involved a securitization, how many times did the Assignor purport to assign the Deed of Trust from MERS in its capacity as nominee for the originating Lender to the Trustee for the securitized trust?	9	5%
1.09	Determine, if possible, how many times the assignments purport to convey the Deed of Trust to a servicer, e.g., Nationstar Mortgage, Ocwen Loan Servicing, LLC, Select Portfolio Servicing, Inc., Specialized Loan Servicing, LLC, etc. rather than the mortgage owner.	170	87%
1.10	Determine whether the officer who executed the assignment is on the Essex Southern District Registry of Deeds' robo-signer list.	1	1%

~ Continued Below ~

Statistical Analysis – Objective #2

Table 2: Qualitative Analysis of MERS Assignments

	Questions Posed for Examination	Quantity	Percent
	Total Number of Assignments of Deed of Trust/Mortgage Examined	242	100%
2(a).12	Determine who is responsible for creating and executing the assignments. “Transaction Parties” ⁵⁹		
	MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.	211	87%
	BANK OF AMERICA, N.A.	147	61%
	GMAC MORTGAGE, LLC	15	6%
	OCWEN LOAN SERVICING, LLC	14	6%
	JPMORGAN CHASE BANK, N.A.	11	5%
	WELLS FARGO BANK, N.A.	11	5%
	NATIONSTAR MORTGAGE, LLC	7	3%
	U.S. BANK NATIONAL ASSOCIATION	7	3%
	FEDERAL NATIONAL MORTGAGE ASSOCIATION	6	2%
	THE BANK OF NEW YORK MELLON, N.A.	6	2%
	CITIMORTGAGE, INC.	5	2%
	FLAGSTAR BANK, FSB	5	2%
	EVERBANK	4	2%
	NORTH AMERICAN MORTGAGE COMPANY	4	2%
	THE BANK OF NEW YORK MELLON	3	1%
	CHARLES SCHAWB BANK	3	1%
	GREEN TREE SERVICING, LLC	3	1%
	ALLY BANK	2	1%
	AURORA BANK, FSB	2	1%
	AURORA LOAN SERVICING LLC	2	1%

⁵⁹ These figures add up to 272, but REST says there were 242 assignments in all. This apparent duplication suggests that one or more of these entities were, at times, a Grantor and at others, a Grantee.

Statistical Analysis – Objective #2 (Cont.)

	Questions Posed for Examination	Quantity	Percent
	Total Number of Assignments of Deed of Trust/Mortgage Examined	242	100%
	HSBC BANK USA, NATIONAL ASSOCIATION	2	1%
	MCM CAPITAL PARTNERS, LLC	2	1%
	OHA NEWBURY VENTURES, LLC	2	1%
	THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT	2	1%
	Miscellaneous Entities	16	7%
2(a).12	Determine who is responsible for creating and executing the assignments. "Supporting Party"		
	RECONTRUST COMPANY, N.A.	127	52%
	CORELOGIC	22	9%
	INDECOMM GLOBAL SERVICES	13	5%
	JPMORGAN CHASE BANK, N.A.	8	3%
	NORTHWEST TRUSTEE SERVICES, INC.	8	3%
	WELLS FARGO BANK, N.A.	8	3%
	CT LIEN SOLUTIONS	5	2%
	OCWEN LOAN SERVICING LLC	5	2%
	BISHOP, WHITE, MARSHALL & WEIBEL, P.S.	3	1%
	GREEN TREE SERVICING LLC	3	1%
	QUICKEN LOANS INC.	3	1%
	BANK OF AMERICA, N.A.	2	1%
	EVERBANK	2	1%
	ONEWEST BANK, FSB	2	1%
	PEIRSONPATTERSON, LLP	2	1%
	SECURITY CONNECTIONS, INC.	2	1%
	Miscellaneous Entities	27	11%

Statistical Analysis – Objective #2 (Cont.)

Table 3: Patterns and Practices

	Questions Posed for Examination	Quantity	Percent
	Number of Alpha Assignments of Deed of Trust/Mortgage Examined	195	100%
2(a).14	Determine how many Signing Officers were employed by the Assignor.	12	6%
2(a).15	Determine how many assignments contain false statements, misrepresentations and omissions of material fact made with the intent to deceive. ⁶⁰	195	100%
2(b)	Determine how many assignments are invalid in light of the 2012 Washington State Supreme Court ruling that deemed certain MERS practices to be invalid. ⁶¹	195	100%
2(c).23	Determine how many assignments relate to properties that had no evidence of foreclosure in the chain of title. ⁶²	166	86%
2(c).24	Was it possible to determine the true, current owner of the mortgage note as of the date the assignment was executed?		
	YES	0	0%
	NO	195	100%
2(c).25	How many assignments contained skips and gaps in the chain of title?	195	100%

⁶⁰ The criteria for determining whether an assignment tests positive for this issue is as follows:

- 1) When MERS executes an Assignment of Deed of Trust or an Appointment of Successor Trustee, especially after the *Bain* decision was handed down on 08/16/2012;
- 2) When the answer is “Yes” to any of the following Audit IDs: DTA 1.1; 1.02; 1.03; 1.06; 1.07; 1.08a; 1.08b; 1.08c;
- 3) When the answer is “No” to any of the following Audit IDs: 1.05; 2.11a;
- 4) When a forensic examination establishes facts that demonstrate the document contains false statements, misrepresentations and omissions of material fact made with the intent to deceive

⁶¹ For detailed explanation of why we found the assignments to be invalid, refer to Appendix II: *Examination of Assignments Deed of Trust/Mortgage*.

⁶² We found twenty-nine (29) Notices of Trustee’s Sale in the chain of title encumbering twenty (20) properties.

Table of Exhibits & Appendices

EXHIBITS

Exhibit A -	Excerpt of Fannie Mae's Selling Guide for 2007
Exhibit B -	Excerpt of Fannie Mae's Selling Guide for 2015
Exhibit C -	Corporation Assignment Deed of Trust, 04/29/2015
Exhibit D -	Substitution of Trustee and Full Reconveyance, 05/01/2015
Exhibit E -	Excerpt Deed of Trust, 12/06/2004
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Exhibit G -	Substitution of Trustee, 04/28/2015
Exhibit H -	Excerpt Deed of Trust, 06/01/2007

APPENDICIES

APPENDIX - I.	Definitions of Terms
APPENDIX - II.	Examination of Assignments Deed of Trust/Mortgage
APPENDIX - III.	Real Estate Services and Technology's Methodology
APPENDIX - IV.	Deed of Trust Act Compliance Checklist
APPENDIX - V.	Forensic Title Examination of Kristin Bain's Property

EXHIBIT “A”

You are viewing: IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

[◀ Previous](#) | [Next ▶](#) [View Full Screen](#)

Reference

2007 Selling Guide

Part IV: Mortgage Documents

IV, Chapter 1: Security Instruments (07/31/03)

IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

IV, 103: Naming MERS as Nominee for Beneficiary (06/30/02)

A lender that wants to register a newly originated mortgage (but not a cooperative share loan) with the Mortgage Electronic Registration System (MERS) may prefer to designate MERS as the nominee for the beneficiary in the security instrument, thereby eliminating the need for a subsequent assignment of the security instrument should the lender sell (or transfer servicing of) the mortgage to another lender that is a member of MERS. In such cases, the applicable security instrument must be appropriately modified to show MERS as the nominee for the lender, to define and name the originating lender, and to obtain the borrower's acknowledgment of MERS' role in the mortgage transaction. (Changes that must be made to create a standard MERS' security instrument for each jurisdiction may be found on our Web site.) The lender will be responsible for the accurate and timely preparation and recordation of the security instrument (and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times). We consider a uniform security instrument that has been modified by insertion of MERS-related language to be the equivalent of a uniform security instrument that does not include such language.

Even when MERS is named as the nominee for the beneficiary in the security instrument, it will have no beneficial interest in the mortgage.¹ All actions that MERS takes with respect to a mortgage will be based on the instructions initiated by the originating lender, Fannie Mae, or the mortgage servicer. The originating lender remains responsible for complying with all applicable laws and regulations—including the disclosure requirements of Regulation X (which implements RESPA), Regulation Z (which implements the Truth in Lending Act), and the Comprehensive Environmental Response, Compensation, and Liability Act—and for complying with all provisions of its Mortgage Selling and Servicing Contract and the Fannie Mae Guides. In addition, the lender will be solely responsible for any failure to comply with the provisions of its MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae

¹ Fannie Mae's 2007 Selling Guide: Glossary defines the term "Mortgage" as follows:

Mortgage. Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a cooperative share loan); an individual secured loan that is sold to us for retention in our portfolio or for inclusion in a pool of mortgages that backs a Fannie Mae-guaranteed mortgage security. The term includes a participation interest where context requires.

incurs as a result of the registration of the mortgage with MERS or any specific MERS transaction. (emphasis supplied)

A lender may register a mortgage with MERS before or after the mortgage is sold to Fannie Mae. If a lender decides to register a mortgage with MERS before it delivers the mortgage to us, the lender must report the MERS' registration by entering the applicable MERS Identification Number (MIN) on the *Loan Schedule* ([Form 1068](#) or [1069](#)) or *Schedule of Mortgages* ([Form 2005](#)). After we purchase or securitize the mortgage, we will notify MERS to update its records to reflect our ownership interest in the mortgage. If a lender waits until after we have purchased or securitized a mortgage to register it with MERS, the lender must **not** report the MIN on the *Loan Schedule* or *Schedule of Mortgages*. In this case, the lender must notify MERS about our ownership interest in the mortgage after we purchase or securitize it.

For each MERS-registered mortgage, the lender generally should indicate the MIN on all documents related to the mortgage, regardless of whether the lender retains the documents or sends them to Fannie Mae or a document custodian. Because the status of a MERS-registered mortgage can change, a lender may prefer not to include the MIN on the mortgage note. That is acceptable to us; however, a lender will still be responsible for making sure that the document custodian has sufficient information to determine whether or not a mortgage that is included in a subsequent transfer of servicing is registered with MERS at the time of the transfer. This may be accomplished by:

- placing the MIN on the note when the mortgage is registered with MERS and, if the MERS' registration is subsequently terminated for any reason, notifying the document custodian to delete the MIN from the note;
- waiting to advise the custodian of the status of the MERS' registration for a mortgage until a change in status actually occurs and, at that time, providing the custodian with a copy of the original *Schedule of Mortgages* ([Form 2005](#)), which it has appropriately annotated to indicate that a mortgage originally registered with MERS is no longer registered (by deleting the MIN that was originally reported) or to indicate that an unregistered mortgage has subsequently been registered with MERS (by inserting the applicable MIN); or
- notifying the custodian about the status of the MERS' registration for a mortgage at the time of a servicing transfer by providing the custodian with a listing of all MERS-registered mortgages that are included in the transfer and a certification that any and all other mortgages included in the transfer are not currently registered with MERS. (The listing may be prepared by the lender, or with the lender's authorization, by MERS.) If there are more MERS-registered mortgages included in the transfer than there are unregistered mortgages, the listing may instead identify the unregistered mortgages—and, in that case, the certification should state that any and all other mortgages included in the transfer are currently registered with MERS.

EXHIBIT “B”

Selling Guide

Published August 25, 2015

B8-7-01: Mortgage Electronic Registration Systems (MERS) (04/15/2014)

This topic contains information about MERS, including:

- [Naming MERS as the Nominee for the Beneficiary in the Security Instrument](#) >
 - [Use of MERS Rider in Specified Geographic Areas](#) >
 - [MERS Registration](#) >
 - [Use of the MIN](#) >
 - [Mortgage Assignment to MERS](#) >
-

Naming MERS as the Nominee for the Beneficiary in the Security Instrument

A lender that wants to register a newly originated mortgage (but not a co-op share loan) with MERS may prefer to designate MERS as the nominee for the beneficiary in the security instrument, thereby eliminating the need for a subsequent assignment of the security instrument should the lender sell (or transfer servicing of) the mortgage to another lender that is a member of MERS. In such cases, the applicable security instrument must be modified to:

- show MERS as the nominee for the lender,
- define and name the originating lender, and
- obtain the borrower's acknowledgment of MERS' role in the mortgage transaction.

Changes that must be made to create a standard MERS security instrument for each jurisdiction may be found in the Instructions document for each state-specific security instrument (see [Security Instruments](#)), with the exception of loans secured by property located in certain geographic areas. As described below, a *Mortgage Electronic Registration Systems, Inc. Rider* (MERS Rider) ([Form 3158](#)) must be used in these jurisdictions, and the security instruments must be changed in accordance with the Instructions to the MERS Rider, which is posted on [Fannie Mae's website](#). As the MERS Rider must be used in these specified states, post-closing assignments into MERS are prohibited.

The lender is responsible for the accurate and timely preparation and recordation of the security instrument and the MERS Rider, when applicable, and must take all reasonable steps to ensure that the information on MERS is updated and accurate at all times.

Even when MERS is named as the nominee for the beneficiary in the security instrument, it has no beneficial interest in the mortgage.¹ All actions that MERS takes with respect to a mortgage are based on the instructions initiated by the originating lender, Fannie Mae, or the

¹ See Fannie Mae's 2015 Selling Guide, E-3-13, Glossary of Fannie Mae Terms: M (06/30/2015)

Mortgage – Collectively, the security instrument, the note, the title evidence, and all other documents and papers that evidence the debt (including the chattel mortgage, security agreement, and financing statement for a co-op share loan).

servicer. The originating lender remains responsible for all of its Contractual Obligations and any liability that it or Fannie Mae incurs as a result of the MERS registration or any MERS transaction. In addition, the lender is solely responsible for any failure to comply with the provisions of its MERS Member Agreement, Rules, and Procedures and for any liability that it or Fannie Mae incurs as a result of the registration of the mortgage with MERS or any specific MERS transaction. (emphasis supplied)

Use of MERS Rider in Specified Geographic Areas

In the states listed below, lenders must use the MERS Rider (Form 3158) when a newly originated mortgage loan (but not a co-op share loan) will be registered with MERS. Lenders must also follow the Instructions to the MERS Rider to make changes to the standard security instruments for the following states:

- Montana,
- Oregon, and
- Washington.

As the MERS Rider must be used in these specified states, post-closing assignments into MERS are prohibited.

EXHIBIT “C”

20150504000534

CORP SERVICE CO

ADT

14.00

Page 001 of 001

05/04/2015 11:20

King County, WA

Recording requested by:
Mortgage Electronic
Registration Systems, Inc.,
as designated nominee for
AMERICA'S WHOLESALE LENDER,
beneficiary of the security
instrument, its successors
and assigns

When recorded mail to:
PO BOX 619040
TX2-979-01-19 REL
DALLAS, TX 75261-9943
Attn: ASSIGNMENT TEAM

CORPORATION ASSIGNMENT OF DEED OF TRUST

Doc. ID# 57408541478294396
Commitment# 805090

For Value Received, Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns, 1901 E VOORHEES ST, STE C, DANVILLE, IL 61834, hereby assigns and transfers to BANK OF AMERICA, N.A. 1800 TAPO CANYON ROAD, SIMI VALLEY, CA 93063 all its rights, title and interest in and to a certain Deed of Trust dated 12/06/04, executed by: VAROUJ AKOPIAN and KARMEN MKRTCHYAN, Trustor as per TRUST DEED recorded as Instrument No. 20041214001943 on 12/14/04 in Book N/A Page N/A of official records in the County Recorder's Office of KING County, WASHINGTON.
Original Mortgage \$249,000.00
13024 111TH AVENUE NORTHEAST, KIRKLAND, WA 98034

Dated: 04/29/2015

Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns

By Lorena Malaquias
LORENA MALAQUIAS, ASSISTANT VICE PRESIDENT

State of Arizona
County of Maricopa

On 04/29/2015, before me, ROBERT NUNEVILLER, Notary Public, personally appeared LORENA MALAQUIAS, ASSISTANT VICE PRESIDENT of Mortgage Electronic Registration Systems, Inc., as designated nominee for AMERICA'S WHOLESALE LENDER, beneficiary of the security instrument, its successors and assigns, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be and whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year last written.

Signature: Alt M
ROBERT NUNEVILLER, Notary Public

Prepared by: AUSTIN FALK
2595 W CHANDLER BLVD
CHANDLER, AZ 85224
Phone#: (800) 669-6607

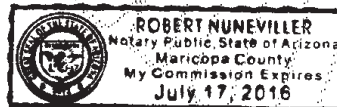


EXHIBIT “D”

20150504000533

CORP SERVICE CO

AST

86.00

Page 001 of 001

05/04/2015 11:20

King County, WA

VAROUJ AKOPIAN, KARMEN MKRTCHYAN
2508 Montrose Ave Apt C
Montrose, CA 91020

Above Space for Recorder's Use

UID: 16194c02-4c98-48b7-8b66-a27872c4bb60

DOCID_7388541478273898



SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

WHEREAS, VAROUJ AKOPIAN, KARMEN MKRTCHYAN, was the original trustor, Mortgage Electronic Registration Systems, Inc. was the original beneficiary and PACIFIC NORTHWEST TITLE COMPANY was the original trustee ("Original Trustee"), under that certain Deed of Trust dated 12/06/2004 and recorded 12/14/2004, in Book N/A, Page N/A, Doc #20041214001943 of Official Records of the County of KING, State of Washington.

WHEREAS, Bank of America, N.A. is the current beneficiary of record ("Beneficiary") of the Deed of Trust and the investor is Federal National Mortgage Association ("Investor").

WHEREAS, Beneficiary desires to substitute a new trustee under the Deed of Trust in the place and stead of the Original Trustee.

NOW THEREFORE, Bank of America, N.A., acting on behalf of the Investor as its servicer, hereby substitutes ReconTrust Company, N.A. as new trustee ("Trustee") under the Deed of Trust, and Trustee does hereby reconvey, without warranty, to the person or persons legally entitled thereto, the estate now held by it under said Deed of Trust.

Dated: 05/01/15

Bank of America, N.A.

ReconTrust Company, N.A.

By: 
Deborah Hogan
Assistant Vice President

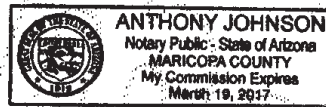
By: 
Trisha Baca
Assistant Vice President

STATE OF ARIZONA,
COUNTY OF MARICOPA

On 5-1-15, before me, Anthony Johnson, Notary Public, personally appeared Deborah Hogan, Assistant Vice President of Bank of America, N.A. and Trisha Baca, Assistant Vice President of ReconTrust Company, N.A., whose identities were proven to me on the basis of satisfactory evidence to be the persons they claim to be and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or entity upon behalf of which the persons acted, executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last written.


Anthony Johnson
Notary Public for said State and County



Recording Requested By And
When Recorded Return To:
ReconTrust Company, N.A./Lien Release
TX2-979-01-19 REL, P.O. BOX 619040
Dallas, TX 75261-9943
(800) 540-2684

EXHIBIT “E”

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423



Assessor's Parcel or Account Number: 375650006006
Abbreviated Legal Description:
SEE ATTACHED

Lt 6 Juanita Hills VCA pg 27

[Include lot, block and plat or section, township and range]
Full legal description located on page 12

Trustee:
PACIFIC NORTHWEST TITLE COMPANY

Additional Grantees located on page

[Space Above This Line For Recording Data]

AKOPIAN
[Escrow/Closing #]

0008541478212004
[Doc ID #]

DEED OF TRUST

16/\$ 35

MIN 1000157-0004499949 4

*PNWT
581459-6*

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 DECEMBER 06, 2004, together with all Riders to this document.

(B) "Borrower" is

VAROUJ AKOPIAN, AND KARMEN MKRTCHYAN, HUSBAND AND WIFE

Borrower is the trustor under this Security Instrument.

(C) "Lender" is

AMERICA'S WHOLESALE LENDER

Lender is a CORPORATION

organized and existing under the laws of NEW YORK

WASHINGTON State Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page * of * 1

Km

Initials

U.A.

VMP -5A(WA) (0012).0*

CHL (08/02)(d)

VMP MORTGAGE FORMS (800)521-729*

Form 3048 1/01

CONV/VA



DOC ID #: 0008541478212004

Lender's address is
P.O. Box 10219, Van Nuys, CA 91410 0219

(D) "Trustee" is
PACIFIC NORTHWEST TITLE COMPANY
215 COLUMBIA STREET SEATTLE WA 98104

(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 06, 2004. The Note states that Borrower owes Lender TWO HUNDRED FORTY NINE THOUSAND and 00/100

Dollars (U.S. \$ 249,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 01, 2035.

(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.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point of sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, 'RESPA' refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

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

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

km Initials U.A.

DOC ID #: 0008541478212004

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

which currently has the address of

13024 111TH AVENUE NORTHEAST, KIRKLAND

[Street/City]

Washington 98034-6306 ("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.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the

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Initials U.A.

EXHIBIT “F”

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, IN AND FOR
SEMINOLE COUNTY, FLORIDA

BANK OF AMERICA, N.A., SUCCESSOR
BY MERGER TO BAC HOME LOANS
SERVICING, LP, FKA COUNTRYWIDE
HOME LOANS SERVICING, LP,

CASE NO. 59-2011-CA-004389
DIVISION: 14-K

Plaintiff,

vs.

LINDA A. NASH, et al.,

Defendants.

COPY

FINAL JUDGMENT

THIS ACTION came on for Trial on September 15, 2014. All parties appeared and announced to the Court that they were ready for Trial. Plaintiff presented its case in full. After Plaintiff completed presentation of its case, and Defendant completed cross examination of Plaintiff's sole witness who was Plaintiff's representative, Chad Anderson, the Court announced that it was prepared to enter a Final Judgment based upon the evidence presented by Plaintiff, consisting of the following: a). Exhibit 1- Note, b). Exhibit 2- Mortgage, c). Exhibit 3- Notice of Intent to Accelerate, and d). Exhibit 4- Payment History, and Defendants cross examination and presentation of its Exhibit 1, the Assignment of Mortgage, without the necessity of Defendant presenting its witness and testimony,

The Courts finds as follows:

1. The Mortgage dated May 24, 2005 was executed by the Borrower, Linda A. Nash, payable to the alleged Lender, America's Wholesale Lender, which was recited to be a New York Corporation. The Mortgage recited that: "the Note states that Borrower owes Lender \$58,500.00.
2. The Note was in the amount of \$58,500.00, reciting that the alleged Lender "is America's Wholesale Lender".
3. The Note bears an endorsement -in-blank on page 3 thereof as follows: "pay to the order of () without recourse" and underneath that statement, the Note purported to be endorsed by "Countrywide Home Loans, Inc., a New York Corporation doing business as America's Wholesale Lender."
4. The Plaintiff's sole witness testified that the Assignment of Mortgage presented as

Defendant's documentary evidence at the Trial, a copy of which was attached to Plaintiff's Complaint, was the only document he was aware of which purported to transfer any interest in the Mortgage, or the Note, except for the blank endorsement on page 3 of the Note, as set forth above.

5. Plaintiff's witness acknowledged that he knew of no other documents purporting to transfer any interest in the Note, or the Mortgage, which were in existence relative to any transfer of ownership interest in the Note, or the Mortgage, which Plaintiff sought to foreclose in this action.

6. On cross examination, Plaintiff's witness confirmed that he knew of no evidence of transfer of the ownership interest in the Note, other than the blank endorsement on page 3 thereof, signed on behalf of Countrywide Home Loans, Inc., DBA America's Wholesale Lender.

7. Plaintiff's witness testified that he was aware that America's Wholesale Lender was not incorporated in the year 2005 when the Note and Mortgage were signed, and that no such corporation was subsequently formed by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities or agents. Plaintiff's witness also confirmed that he was aware that America's Wholesale Lender did not ever have a Lender's license in the State of Florida and did not have authority to do business in Florida, as a New York Corporation, under Florida Statute 607.1506.

8. Plaintiff's witness also testified that he has no knowledge of the existence of any document transferring any interest in the subject Mortgage Note or Mortgage from the Lender to Fannie Mae, who is alleged in the Plaintiff's Complaint to have been the owner of the Note at the time the Mortgage Foreclosure Complaint was filed.

9. The Court finds that:

- a.) America's Wholesale Lender, a New York Corporation, the "Lender", specifically named in the mortgage, did not file this action, did not appear at Trial, and did not Assign any of the interest in the mortgage.
- b.) The Note and Mortgage are void because the alleged Lender, America's Wholesale Lender, stated to be a New York Corporation, was not in fact incorporated in the year 2005 or subsequently, at any time, by either Countrywide Home Loans, or Bank of America, or any of their related corporate entities or agents.
- c.) America's Wholesale Lender, stated to be a corporation under the laws of New York, the alleged Lender in this case, was not licensed as a mortgage lender in Florida in the year 2005, or thereafter, and the alleged mortgage loan is therefore, invalid and void.

- d.) America's Wholesale Lender, stated to be a New York Corporation, did not have authority to do business in Florida under Florida Statute 607.1506 and the alleged mortgage loan is therefore invalid and void.
- e.) Plaintiff and its predecessors in interest had no right to receive payment on the mortgage loan because the loan was invalid and therefore void because the corporate mortgagee named therein, was non-existent, and no valid mortgage loan was ever held by Plaintiff or its predecessors in interest.
- f.) The alleged Assignment of Mortgage which purported to transfer interest in this mortgage to BAC Home Loans Servicing, LP, FKA Countrywide Home Loans Servicing, LP, as assignee, was invalid because Mortgage Electronic Registrations Systems, Inc. (MERS), as nominee for America's Wholesale Lender had no authority to assign the ownership interest of said mortgage, because MERS was not the owner of the subject mortgage and was only a nominee for America's Wholesale Lender, an alleged New York Corporation which was a non-existent Corporation. Said purported assignment was without authority, and therefore invalid.
- g.) Plaintiff's witness had no knowledge of who or what entity might have instructed MERS as nominee, to attempt to assign or transfer any interest in said mortgage, which in any event would have been invalid because that entity (MERS) had no ownership interest in the mortgage and was merely named as a nominee for the non-existent corporate mortgagee..

10. Based upon the foregoing, the Plaintiff, Bank of America, NA, has no standing to bring this action. The Plaintiff has no legal right to attempt to claim ownership of the subject Note and Mortgage, or any right as servicer, for some other unknown entity, and is without any legal basis to attempt to foreclose the subject Mortgage, or to collect on the Mortgage Note, because America's Wholesale Lender, a New York Corporation, did not exist in 2005, and was never formed as a Corporation by Plaintiff or its predecessors in interest. The collection of mortgage payments by the Plaintiff and its predecessors in interest, was therefore illegal and they were without any legal right to receive and use or disburse the funds therefrom on behalf of any owner of the Note and Mortgage, or any other party.

11. Defendant is therefore entitled to recover from Plaintiff, all funds reflected on Plaintiff's Exhibit 4 which Plaintiff's witness testified reflected the payment history of monies paid by Defendant to Plaintiff or its predecessors in interest, because the subject note and mortgage were invalid because the alleged mortgage lender did not exist and did not have the legal right to receive and retain or disburse said funds.

12. Defendant is also entitled to recover from Plaintiff, all costs and attorney's fees incurred by Defendant in this action pursuant to the terms and conditions of the subject Mortgage Note and Mortgage upon which Plaintiff based this action, and pursuant to the terms of Florida Statute 57.105, as the prevailing party.

13. The Court finds that the principal and interest paid by Defendant to Plaintiff, or its predecessors in interest, in the amount of \$55,680.28, as shown on Plaintiff's Exhibit 4, presented at Trial, is recoverable by Defendant from Plaintiff and Defendant is entitled to Judgment against Plaintiff in that amount of \$55,680.28, plus interest on the amount of each respective payment at the statutory rate for each year in question from the year 2005 through the date of Defendant's last payment in October, 2010, in the amount of \$8,206.87 and continuing to the date of this Final Judgment. Defendant has presented to this Court, a computation of the amount of said payments and the interest due thereon from the date of each respective payment to September 30, 2014 in the aggregate amount of \$20,000.44 with per diem at the rate of \$8.86 per day thereafter. Judgment is therefore entered for Defendant and against Plaintiff in the amount of \$55,680.28, plus interest in the amount of \$20,000.44 through September 30, 2014 for a total amount of \$75,680.72.

14. The amount of Defendant's recovery of costs and attorney's fees for which Defendant is entitled, shall be determined by this Court at a Hearing separate from the Trial, and a Supplemental Final Judgment shall be entered for such amount against Plaintiff and in favor of Defendant.

15. The Court does hereby retain jurisdiction of this case to enter Supplemental Final Judgments or Orders as this Court may deem appropriate.

DONE and ORDERED in chambers at Sanford, Seminole County, Florida, this 16th day of October, 2014.

Robert A. Lewis
Circuit Judge
Senior

Copies furnished to:

John G. Pierce, Esquire, 800 N. Ferncreek Ave, Orlando, FL 32803

Ryan M. Sciortino, Esquire, 3815 S. Conway Road, Suite E, Orlando, FL 32812

Debbie Whitehead
Judicial Asst/Attorney

EXHIBIT “G”

20150429000586

SIMPLIFILE

AST

14.00

Page 001 of 001

04/29/2015 01:21

King County, WA

Return To:
 Green Tree Servicing LLC
 C/O Nationwide Title Clearing,
 Inc. 2100 Alt. 19 North
 Palm Harbor, FL 34683

Loan #: 89865444

SUBSTITUTION OF TRUSTEE

WHEREAS, MATTHEW MACARIO AND DANA MACARIO was the original Trustor, RAINIER TITLE was the original Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. was the representative of the original Beneficiary under that certain Deed of Trust dated 06/01/2007, in the amount of \$70,000.00, and recorded in KING County, Washington, under Auditor File # 20070608001991, LOT 71, TALUS DIV. 5D Parcel ID #: 856274-0300:

WHEREAS, the undersigned is the designated nominee of the present Beneficiary under said Deed of Trust and WHEREAS, the undersigned desires to substitute a new Trustee under Deed of Trust in place and stead of said original Trustee thereunder.

NOW, THEREFORE, the undersigned hereby substitutes NATIONWIDE TITLE CLEARING, INC., a Washington State corporation, as Trustee under said Deed of Trust.

Dated this 28th day of April in the year 2015
 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS DESIGNATED
 NOMINEE FOR COUNTRYWIDE BANK, FSB, BENEFICIARY OF THE SECURITY INSTRUMENT,
 ITS SUCCESSORS AND ASSIGNS



JESSICA BARRERES

ASST. SECRETARY

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

STATE OF FLORIDA
 COUNTY OF PINELAS

The foregoing instrument was acknowledged before me on this 28th day of April in the year 2015, by Jessica Barreres as ASST. SECRETARY of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ('MERS') AS DESIGNATED NOMINEE FOR COUNTRYWIDE BANK, FSB, BENEFICIARY OF THE SECURITY INSTRUMENT, ITS SUCCESSORS AND ASSIGNS, who, as such ASST. SECRETARY being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



ALYSSA VILLALOBOS - NOTARY PUBLIC

COMM EXPIRES: 10/02/2018



ALYSSA VILLALOBOS
 NOTARY PUBLIC
 STATE OF FLORIDA
 Comm# FF165490
 Expires 10/2/2018

GTSRC 26079835 2@ 100133700022322989 MERS PHONE 1-888-679-6377 DOCR T2715044511 [C-1]
 ERCNWA1



D0010171931

EXHIBIT “H”

CERTIFIED COPY - 09/08/2015

Countrywide Home Loans
 PO Box 10423
 Van Nuys, CA 91410-0423



20070608001991
 40.00

RAINIER TITLE DT
 PAGE 001 OF 008
 06/08/2007 13:47
 KING COUNTY, WA

After Recording Return To:
 COUNTRYWIDE HOME LOANS, INC.
 MS SV-79 DOCUMENT PROCESSING
 P.O.Box 10423
 Van Nuys, CA 91410-0423

Assessor's Parcel or Account Number: 856274-0300
 Abbreviated Legal Description: Lot 71, Talus Div. 50
 SEE ATTACHED

[Include lot, block and plat or section, township and range]

Full legal description located on page 1

Grantee(s):
 RAINIER TITLE

Other names listed on page 2.

[Space Above This Line For Recording Data]

00016991689606007

(Doc ID #)

DEED OF TRUST

MIN 1001337-0002232298-9

THIS DEED OF TRUST is made this FIRST
 Grantor,

day of JUNE, 2007

, among the

MATTHEW MACARIO, AND DANA MACARIO, HUSBAND AND WIFE

41-78
 Said document(s) were filed for
 record by Rainier Title
 as accommodation only. It has not
 been examined as to proper execution
 or as to its effect upon title.

(herein "Borrower"),

423844-E

WASHINGTON - SECOND MORTGAGE - 1/80 - FNMA/FHLMC UNIFORM INSTRUMENT WITH MERS

Page 1 of 8

VMP -76N(WA) (0308).03 CHL (07/06)(d)

Form 3848
 Amended 2/99



* 2 3 9 9 1 *



* 1 6 9 9 1 6 8 9 6 0 0 0 0 1 0 7 6 N *

CERTIFIED COPY - 09/08/2015

DOC ID #: 00016991689606007

RAINIER TITLE

1501 4TH AVENUE #308 SEATTLE, WA 98101-

(herein "Trustee"), and the Beneficiary, 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.

Countrywide Bank, FSB.

A FED SVGS BANK

is organized and existing under the laws of THE UNITED STATES
address of

, ("Lender")

, and has an

1199 North Fairfax St. Ste.500, Alexandria, VA 22314

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of KING, State of Washington:

LOT 71, TALUS DIV. 5D, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 208 OF PLATS, PAGE 23 THROUGH 29, INCLUSIVE, RECORDS OF KING COUNTY, WASHINGTON.

which has the address of

527 WILDERNESS PEAK DR NW, ISSAQUAH

, Washington

[Street, City]

98027-5621 [ZIP Code], (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; 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 or canceling this Deed of Trust.

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note dated JUNE 01, 2007 and extensions and renewals thereof (herein "Note"), in the principal sum of U.S. \$ 70,000.00, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on JULY 01, 2032; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

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 covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.