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***MERS Southeast Law Seminar***  
*November 10, 2004*



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## **MERS<sup>®</sup> Residential**



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

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## **MERS<sup>®</sup> Commercial**



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

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## ***Future of Mortgage Banking: **MERS**<sup>®</sup>*** ***The MERS<sup>®</sup> eRegistry***

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

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## ***Agenda***



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

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## *What is MERS?*



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

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## ***MERS Basics***



- Registration vs. Recording. MERS is not a system of legal record nor a replacement for the public land records. Mortgages must be recorded in the county land records.
- MERS is a tracking system. No interests are transferred on the MERS® System, only tracked.

Source: <http://www.mersinc.org/files/filedownload.aspx?id=63&table=DownloadFile>

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# MERS® System



MERS OnLine - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites Media Print

Address <https://www.mersonline.org/mers/security/loginframe.htm> Go Links

**MERS OnLine**  
www.mersinc.org

**"Every Loan Needs a MOM"**

**MERS® OnLine**

Please enter your log-on credentials below.

Organization ID:

User ID:

Password:

Log-In

If you have any Questions pertaining to MERS® OnLine , please contact the MERS Help Desk at 1-888-680-6377 or via E-Mail to [helpdesk@mersinc.org](mailto:helpdesk@mersinc.org) . Please include your name and telephone number with the E-Mail.

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Other products or company names are or may be trademarks or registered trademarks and are the property of their respective holders.

Microsoft Internet Explorer

MERS Internet Application is best viewed with IE

EDS

Web site created and supported by EDS

Start | Internet

Sam... Ama... Micr... New... MER... Inbo... 3:34 PM

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Address [https://www.mersonlinetraining.org/merstraining/global/frame.jsp?env=Training&aux=1000001ROBYNP\\_107249&lg\\_n\\_dt=09/14/2004-12:06:20&pswd\\_exp\\_days=176&new\\_ms](https://www.mersonlinetraining.org/merstraining/global/frame.jsp?env=Training&aux=1000001ROBYNP_107249&lg_n_dt=09/14/2004-12:06:20&pswd_exp_days=176&new_ms) Go Links

**MERS**  
OnLine  
www.mersinc.org

**"Every Loan Needs a MOM"**

Training  
1000001

MIN Information  
1001475-0000005555-9

[Loan](#)

[Borrower Details](#)

[Property](#)

[Legal Description](#)

[Assignment](#)

[Miscellaneous](#)

[Security Inst.](#)

[Mod Agree](#)

[Milestones](#)

**Summary**

1001475-0000005555-9	Active (Registered)	MOM: Y	QR: N
123 W ANYWHERE ST		Reg Date:	02/25/2002
JACKSONVILLE, FL 32225		First Lien	
<b>Borrower</b>	FLINTSTONE, FRED		
<b>SSN</b>	123-45-6788		
<b>Pool Number</b>	N/A	<b>Investor Loan Number</b>	N/A
<b>Note Amount</b>	\$275,000.00	<b>Note Date</b>	02/22/2002
<b>Servicer</b>	1001453 - Matrix Financial Services Corporation		
<b>Custodian</b>	N/A		
<b>Investor</b>	1001453 - Matrix Financial Services Corporation		
<b>Subservicer</b>	N/A		
<b>Interim Funder</b>	N/A		

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## ***MERS History***



- Inter-Agency Technology Task Force in 1991.
- MERS was incorporated in 1995.
- EDS selected as technology provider in 1996.
- MERS® System operational in 1997.
- First MOM (MERS as Original Mortgagee) loans registered in 1998.

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## *Corporate Structure*



- **MERSCORP, Inc.** – The operating company that owns the MERS® System. Owned by 28 leading mortgage industry companies.
- **Mortgage Electronic Registration Systems, Inc. (“MERS”)**: A bankruptcy-remote subsidiary of MERSCORP, Inc. whose sole purpose is to serve as mortgagee in the land records for loans registered on the MERS® System.

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## ***Governing Documents***



- Each Member enters into a Membership Agreement with MERSCORP, Inc.
- Agreement consists of Membership Application that incorporates Terms and Conditions, Rules of Membership and the Procedures Manual.
- All documents can be downloaded from MERS website: [www.mersinc.org](http://www.mersinc.org).
- Member agrees that MERS shall serve as their nominee as the mortgagee in the land records in exchange for the Member registering the mortgage on the MERS® System.

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## *Two Ways for MERS to Become Mortgagee*



- **MERS as Original Mortgagee (“MOM”).** Use Deeds of Trust or Mortgages with MERS as Original Beneficiary or Mortgagee using standard language approved by Fannie Mae, Freddie Mac, FHA and VA.
- **Assignment to MERS.** Use an assignment to MERS for an existing non-MOM mortgage.

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## *MERS as Original Mortgagee* **MERS**<sup>®</sup>

### **Changes to Security Instrument**

- **Definition Section** - “**MERS**” is defined in subsection (C) as the Mortgagee.
- **Granting Clause** – Borrower mortgages, grants and conveys the Property to MERS.
- **Disclosure Section** – Borrower agrees that MERS holds legal title and acknowledges that MERS has right to exercise rights of mortgagee, including foreclosing.

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## ***Certifying Officers***



- MERS executes documents through Certifying Officers who are employees of the members.
- Corporate Resolution v. Power of Attorney
- What powers do Certifying Officers have?

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## *Issuing a Title Policy*



- We recommend that MERS be a named insured on title policies when a MOM is used.
- Note owner is always an insured party.
- MERS cannot fix problems in the chain of title that occurred prior to becoming mortgagee.

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## *Payoffs*



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

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## *Lien Releases*



- When Servicer receives payoff, an officer of MERS executes lien release.
- If Lender executes the lien release instead of MERS, it will cloud title.

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## ***Modification Agreements***



- Modifies the mortgage and note, which means both MERS and Lender should sign Agreement.

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## *Service of Process*



- How does MERS receive mail?
  - Address on MOMs and Assignments
  - MERS Mailroom
  - MERS Corporate Headquarters
  - Registered Agents
  - Delaware Secretary of State
- All mail received is electronically scanned and forwarded to the current Servicer

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## ***Foreclosures***



- MERS provides Recommended Foreclosure Procedures as a guideline.
- Status of foreclosing in MERS name in Florida.
- Use of Connecticut cases by Borrowers' counsels in challenging MERS standing is misleading to the Court.

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## ***Bankruptcy***



- MERS holds an “in rem” interest and such an interest constitutes a claim under the Bankruptcy Code.
- Motions for Relief from Automatic Stay should be brought in MERS name as a creditor and mortgagee.

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## ***Suffolk County Litigation***



- Began with a 2001 Attorney General Opinion that deals with how to index documents.
- Resulted in a 2004 decision confirming that county clerks are obligated to record and index mortgages and assignments naming MERS as mortgagee.
- Case is currently on appeal on collateral issues raised by the Court.

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## *Georgia Intangible Tax*



- To receive exemption, the mortgage lender must be the original lender and cannot have assigned the mortgage loan at any time prior to refinancing the mortgage loan.
- Department of Revenue's position on exemption when using MOM mortgages.
- Revisiting issue to clarify exemption when original loan is non-MOM for Lender ABC and refinanced loan is MOM for Lender ABC.

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## **MERS® Link**



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

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***MERS® Link***



## Live Demonstration

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