

Response to Request from John O'Brien (Essex, Mass. Co. Register of Deeds) to Mass. AG Martha Coakley to Investigate MERS

In response to questions regarding the letter from Essex Co. (Mass.) Register of Deeds John O'Brien to the Hon. Martha Coakley, Attorney General for the Commonwealth of Massachusetts, MERS has not seen the letter nor have we been contacted by the Massachusetts attorney general. We will fully cooperate with any inquiries from appropriate authorities.

It is not the case that recording fees are somehow owed or outstanding. MERS pays recording fees when the mortgage is recorded. Fees are paid for a service performed, and if a document is eliminated because it is no longer necessary, no fee is due because there is nothing to record. In fact, MERS greatly reduces the workload of county recorders, resulting in lower operating expenses for the county recorder's office. Moreover, it would be the borrower, and not the lender, who ultimately pays the costs of recording assignments, either directly or indirectly.

When servicing rights or promissory notes are sold for loans where MERS is not the mortgagee, the usual practice is for the seller to execute and record an instrument assigning the mortgage lien to the purchaser (commonly referred to as an "assignment"). In general, the primary reason assignments are recorded (in cases where MERS is not the mortgagee), stems from the need of servicers to be in the land records to fully administer the loan on behalf of the mortgage loan owner. In which case, the servicer will be assigned the mortgage lien (thus becoming the mortgagee) in order to receive the service of process related to that mortgage loan. When Mortgage Electronic Registration Systems, Inc. is the mortgagee (i.e., holds the legal title to the mortgage lien), there is no need for an assignment of the mortgage lien between its members because MERS remains the mortgagee holding legal title to the mortgage as the common agent for them. It is not the case that the assignments are now being done electronically through the MERS® System instead of being recorded in the land records. The need for an assignment is eliminated because title to the mortgage lien has been grounded in MERS. Moreover, transfers of mortgage notes and servicing rights are not recordable transactions (and have never been reflected in the land records) because they are not a conveyance of an interest in real property that is entitled to be recorded; only the transfer of the lien is a conveyance. The only reason servicers needed to appear in the county land records before MERS was so they could receive legal notices pertaining to the property. Now, MERS as their common agent receives the legal notices. The chain of title starts and stops with Mortgage Electronic Registration Systems, Inc. as the mortgagee. MERS, as the agent for the note-owner, holds legal title for the note-owner in the land records.

The use of MERS is in compliance with the statutory intent of the state recording acts. When MERS is the mortgagee, the mortgage is recorded at the county land records, thereby putting the public on notice that there is a lien on the property. The MERS® System also complements the county land records by providing additional information that was never intended to be recorded at the county level, namely the information about the mortgage loan servicer, and now, with the addition of MERS® InvestorID, the name of the investor.