



***State-by-State***

# **MERS Recommended Foreclosure Procedures**

**Updated 2002**

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## **Introduction**

MERS has put together this Foreclosure Manual to provide a state by state guideline for our Members to follow when foreclosing a mortgage loan in the name of MERS. Each state's procedure was developed jointly with local counsel in that respective state. There may be future versions of this Manual if needed. If you have any questions about this Foreclosure Manual, please contact MERS.

Sharon McGann Horstkamp  
Corporate Counsel

## **What is MERS?**

MERS serves two purposes. First, it is a national electronic registry for tracking servicing rights and beneficial ownership interests in mortgage loans. Second, MERS acts as nominee (a form of agent) for the servicer and beneficial owner of a mortgage loan in the public land records. MERS is designed to operate within the existing legal framework in all U.S. jurisdictions and did not require any changes to existing laws.

How is this made possible? Its members appoint MERS as the mortgagee of record on all loans that they register on the MERS System. This appointment eliminates the need for any future assignments when servicing rights are sold from one MERS Member to another. Instead of preparing a paper assignment to track the change in the county land records, all subsequent transfers are tracked electronically on the MERS System.

MERS does not create or transfer beneficial interests in mortgage loans or create electronic assignments of the mortgage. What MERS does do is eliminate the need for subsequent recorded assignments altogether. The transfer process of the beneficial ownership of mortgage loans does not change with the arrival of MERS. Promissory notes still require an endorsement and delivery from the current owner to the next owner in order to change the beneficial ownership of a mortgage loan.

MERS is a Delaware corporation with a broad base of ownership from the mortgage industry. American Land Title Association is among our owners and has a seat on the MERS Board of Directors. Other owners with substantial investments in MERS include the Mortgage Bankers Association of America (MBA), Fannie Mae, and Freddie Mac. These parties, along with Ginnie Mae, decided several years ago that MERS would be a major benefit to the mortgage industry and worked together to create the MERS of today.

## **How does MERS become the Mortgagee of Record?**

MERS is put in this position in one of two ways: the first is by an assignment from a lender or servicer to MERS. This method is usually associated with bulk transfers of servicing. The second way is with the lender naming MERS as the mortgagee of record as nominee for itself (and its successors and assigns) in the original security instrument at the time the loan is closed. We call this second option “MOM”, which stands for MERS as Original Mortgagee.

“MOM” was a significant milestone for MERS and the mortgage industry. Fannie Mae, Freddie Mac, and Ginnie Mae have each approved the use of MERS as original mortgagee as nominee for a lender on the security instrument for loans sold to them and registered on the MERS System.

In order to make MOM work, changes were made by Fannie Mae and Freddie Mac to their uniform security instruments allowing MERS to be named as the mortgagee in a nominee capacity for the lender. First, to reflect the interrelationship of the promissory note and mortgage and to ensure these two instruments are tied together properly, the recital paragraph names MERS, solely as nominee for Lender, as beneficiary. Second, it is made clear that the originating lender rather than MERS is defined as the “Lender”. This change was made so that everyone understands that MERS is not involved in the loan administration process. Third, as mortgagee of record, MERS needs to have the authority to release the lien of security instrument, or if necessary, foreclose on the collateral on behalf of the lender. Such authority is provided by adding a paragraph to the security instrument informing the borrower that MERS holds only legal title to the interests granted by the borrower. It also informs the borrower that, if necessary to comply with law or custom, MERS may exercise the right to foreclose and sell the property and may take any action required of the Lender to release or cancel the security instrument.

Once MERS is named in the original security instrument or by way of an assignment, the document is then recorded in the appropriate public land records. From this point on, no subsequent assignments of the mortgage to a MERS member needs to be recorded. MERS remains in the land records, as mortgagee, throughout the life of the loan so long as servicing is not sold to a non-MERS member. All subsequent transfers of ownership in mortgage loans and servicing rights for that loan are tracked electronically between MERS members through the MERS System. This process eliminates the opportunity for a break in the chain of title.

Moreover, unless a MERS member transfers servicing rights to a loan registered on the MERS System to a non-MERS member, the loan stays on the system until it is paid off. The process to transfer servicing rights between MERS members requires an electronic confirmation from the buyer. It begins with the seller entering loan transfer information into the system, including the Mortgage Identification Number (explained below), the new servicer organizational identification number, the sale date, and the transfer effective date. The buyer then must submit a confirmation acknowledgment to the system. The old servicer and the new servicer are still required to notify the homeowner in writing when loan servicing is traded as required under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 et seq. A loan is de-registered from the system only if its servicing rights to a loan are transferred to a non-MERS member.

With every new loan that is registered on the MERS System, it becomes more likely that you will come in contact with a mortgage loan having MERS as the mortgage holder in the chain of title. MERS is put in this position in one of two ways: the first is by an assignment from a lender or servicer to MERS. This method is usually associated with bulk transfers of servicing. The second way is with the lender naming MERS as the mortgagee of record as

nominee for itself (and its successors and assigns) in the original security instrument at the time the loan is closed. We call this second option “MOM”, which stands for MERS as Original Mortgagee.

“MOM” was a significant milestone for MERS and the mortgage industry. Fannie Mae, Freddie Mac, and Ginnie Mae have each approved the use of MERS as original mortgagee as nominee for a lender on the security instrument for loans sold to them and registered on the MERS System.

In order to make MOM work, changes were made by Fannie Mae and Freddie Mac to their uniform security instruments allowing MERS to be named as the mortgagee in a nominee capacity for the lender. First, to reflect the interrelationship of the promissory note and mortgage and to ensure these two instruments are tied together properly, the recital paragraph names MERS, solely as nominee for Lender, as beneficiary. Second, it is made clear that the originating lender rather than MERS is defined as the “Lender”. This change was made so that everyone understands that MERS is not involved in the loan administration process. Third, as mortgagee of record, MERS needs to have the authority to release the lien of security instrument, or if necessary, foreclose on the collateral on behalf of the lender. Such authority is provided by adding a paragraph to the security instrument informing the borrower that MERS holds only legal title to the interests granted by the borrower. It also informs the borrower that, if necessary to comply with law or custom, MERS may exercise the right to foreclose and sell the property and may take any action required of the Lender to release or cancel the security instrument.

Once MERS is named in the original security instrument or by way of an assignment, the document is then recorded in the appropriate public land records. From this point on, no subsequent assignments of the mortgage to a MERS member needs to be recorded. MERS remains in the land records, as mortgagee, throughout the life of the loan so long as servicing is not sold to a non-MERS member. All subsequent transfers of ownership in mortgage loans and servicing rights for that loan are tracked electronically between MERS members through the MERS System. This process eliminates the opportunity for a break in the chain of title.

Moreover, unless a MERS member transfers servicing rights to a loan registered on the MERS System to a non-MERS member, the loan stays on the system until it is paid off. The process to transfer servicing rights between MERS members requires an electronic confirmation from the buyer. It begins with the seller entering loan transfer information into the system, including the Mortgage Identification Number (explained below), the new servicer organizational identification number, the sale date, and the transfer effective date. The buyer then must submit a confirmation acknowledgment to the system. The old servicer and the new servicer are still required to notify the homeowner in writing when loan servicing is traded as required under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 et seq. A loan is de-registered from the system only if its servicing rights to a loan are transferred to a non-MERS member.

### **Why Foreclose in the Name of MERS**

The mortgage establishes the remedy to foreclose and sell the property if the borrower does not pay back the amount loaned to the borrower according to schedule. Typically, the loan servicer, as the mortgagee of record, is the party that initiates the foreclosure proceedings on behalf of the investor. When MERS is the mortgagee of record, the foreclosure can be commenced in the name of MERS in place of the loan servicer. For another entity to foreclose, an assignment is required from MERS to the other entity.

Establishing MERS as mortgagee of record will not cause any significant changes to current foreclosure practices in any state when the beneficial owner wants to proceed with foreclosures in the name of MERS. Just take a look at the recommended procedures.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR ALABAMA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are foreclosed non-judicially under power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. Notice of the foreclosure sale is published with Mortgage Electronic Registration Systems, Inc. (MERS) named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require the promissory note be endorsed in blank when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, we have been advised that sometimes there is an endorsement of the promissory note to the servicer prior to foreclosure. We recommend that the agencies' policies be followed.

At the foreclosure sale, the certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then the auctioneer will be instructed to deed the property directly to the investor. We have been advised that this is the same procedure followed when foreclosing in the name of the servicer. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the auctioneer deed can be issued to the servicer. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR ALASKA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are typically used and are foreclosed non-judicially by the power of sale contained therein. MERS local counsel advises that a foreclosure can be done in the name of MERS. Local counsel confirmed with First American Title Insurance Company that with a few minor caveats, foreclosing in the name of MERS should not present any problems.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the substitution of trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies' policy is that the promissory note is endorsed in blank when the seller/servicer sells the loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes the Note is endorsed to the servicer prior to the foreclosure, but unless it is legally required, the Note should remain endorsed in blank. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The trustee, who is typically a title company, commences the foreclosure by executing and recording the Notice of Default. The Notice of Default is filed and published the same way with the same required information except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing

entity. At the foreclosure sale, an “offset bid” is entered on behalf of MERS who is acting in the capacity as “agent” for the servicer. Local counsel advises that the Beneficiary’s Declaration of Default can be modified to describe the relationship of MERS and the Servicer. This should enable the servicer, instead of MERS, to be the named grantee of the Trustee’s Deed. The servicer can then issue a deed to the investor. This procedure is consistent with the current two-deed foreclosure practice.

While initially there may be some hesitation to accept an “offset bid” by the servicer, MERS local counsel states that usually a title company is willing to recognize the substance of who actually owns the loan rather than the form of the record ownership.<sup>1</sup> In that instance, if the servicer is successful at the foreclosure sale, the trustee’s deed will be issued directly to the servicer.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer, by being the grantee of the trustee’s deed, is able to commence the eviction. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer’s address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>1</sup> If the “offset bid” is not accepted, then the trustee’s deed may need to be granted to MERS. If MERS takes title to the property, a subsequent deed should be executed to the investor as soon as possible.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR ARIZONA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the deed of trust that gives the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are generally foreclosed non-judicially under a power of sale in the security instrument. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Trustee's Sale is filed and published the same way it is when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity. It is important to note that the same procedures and state requirements that are required when foreclosing in the servicer's name still must be followed when foreclosing in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS. The substituted trustee is typically the foreclosing attorney.

The agencies (Fannie Mae, Freddie Mae and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells the loan to them. The note is to remain endorsed in the blank when a servicer commences foreclosure. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS for the investor. This is the same process that is used today when foreclosing in the servicer's name. We have been advised that the

current foreclosure procedure is a one-deed process with the investor directly taking title from the Trustee's Deed. Therefore, the MERS recommended procedure is the same as when foreclosing in the name of the servicer. The bid is made on behalf of the investor so that the Trustee's deed will be issued directly to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan, then the trustee's deed is not recorded to the investor until after the eviction is completed. The eviction is conducted the same way it would be conducted if the servicer forecloses.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR ARKANSAS**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like a servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are generally foreclosed non-judicially under a power of sale in the security instrument. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Default is filed and published the same way it is when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS. The substituted trustee is typically the foreclosing attorney.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. The Trustee's deed will be issued directly to the assignee of the bid. We have been advised that the current foreclosure procedure is a two-deed process with the servicer taking title and then executing a subsequent deed to the investor. Therefore, the MERS recommended procedure is the same as the current practice of assigning the bid to the servicer. Because the MERS recommended procedure follows the same procedure that is used when the servicer

forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer, by being the grantee of the trustee's deed, can commence the eviction. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## MERS RECOMMENDED FORECLOSURE PROCEDURE FOR CALIFORNIA

A deed of trust in which the Mortgage Electronic Registration Systems, Inc. (MERS) is named as beneficiary requires special non-judicial foreclosure procedures. MERS was created to avoid the cost and delays caused by assignments of mortgages and deeds of trust. To avoid the need to prepare and record an assignment with the County Recorder's office, MERS holds title as nominee for the true mortgagee/beneficiary of the mortgage/deed of trust and as transfers occur, they are recorded on the MERS computer in a book entry systems similar to the transfer of stocks.

The MERS procedure for tracking the ownership of mortgages has a direct effect on the foreclosure process. On MERS loans, MERS is shown as the record beneficiary and therefore a MERS foreclosure is brought in the name of MERS. However, at the time of sale the true beneficiary is determined by MERS and the Trustee's Deed Upon Sale is recorded in the name of that true beneficiary. There are no assignments, additional taxes or costs when foreclosing under the MERS' foreclosure procedures.

To achieve this result, the following non-judicial foreclosure guidelines are recommended:

On MERS loans, MERS will show as the beneficiary of record. Foreclosures should be commenced in the name of MERS. To effectuate this process, MERS has allowed each servicer to choose a select number of its own employees to act as officers for MERS. Through this process, appropriate documents may be executed at the servicer's site on behalf of MERS by the same servicing employee that signs foreclosure documents for non-MERS loans.

Until the time of sale, the foreclosure is handled in same manner as non-MERS foreclosures. At the time of sale, if the property reverts, the Trustee's Deed Upon Sale will follow a different procedure. Since MERS acts as nominee for the true beneficiary, it is important that the Trustee's Deed Upon Sale be made in the name of the true beneficiary and not MERS. Your title company or MERS officer can easily determine the true beneficiary. Title companies have indicated that they will insure subsequent title when these procedures are followed.

Normally, where the name of the grantee under the Trustee's Deed Upon Sale is different than the name of the foreclosing entity, the Trustee's Deed Upon Sale states that the "Grantee was not the foreclosing beneficiary." This designation triggers the imposition of transfer taxes on the sale. It is important to note that in a MERS foreclosure sale, even where the property reverts, the name of the grantee will be different than the name of the entity foreclosing. Nonetheless, the Trustee's

Deed Upon Sale should state that “The Grantee was the foreclosing beneficiary.” This is because MERS merely holds title as nominee for the true beneficiary; it is the true beneficiary that has actually foreclosed and acquired title.

Finally, should a bankruptcy be filed, servicers should use the same procedures they use for other investor loans. Motions for Relief from Stay should be brought by the real party in interest, namely “Mortgage Electronic Registration Systems, Inc. as record holder and nominee for the true beneficiary \_\_\_\_\_.” On Proofs of Claim, both the servicer and Mortgage Electronic Registration Systems, Inc. should be jointly named. The address to be used is the servicer’s address so that all trustee payments go directly to the servicer.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR COLORADO**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. (MERS) has been around since 1998. The reason why it works is because when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the Deed of Trust that gives MERS the authority to foreclose. However, because Colorado differs from other states in that the Promissory Note controls, and MERS is not the beneficial note holder, we recommend foreclosing in the servicer's name by endorsing the Note to the servicer.

We are amending our prior recommended Procedure to foreclose in MERS name due to recent changes in the Colorado Foreclosure Statute. This revision was developed in conjunction with experienced foreclosure counsel. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are generally foreclosed non-judicially pursuant to a power of sale. In Colorado, the deed of trust names a Colorado public trustee rather than a private trustee. Local counsel advises that a foreclosure can be brought in the name of MERS. However, because the endorsement on the Note controls, and MERS holds the mortgage lien on behalf of the Note Holder, it is a better practice to foreclose in the Note Holder's name. That may be the servicer of the loan.. This does not impact MERS position as the mortgagee and no assignment from MERS to the servicer is necessary to initiate the foreclosure and the mortgage loan should remain registered on the MERS® System.

Keep in mind that the agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. However, in Colorado, the requirement is that the promissory note needs to be endorsed to the foreclosing entity, which is usually the servicer. Therefore, the note should be endorsed to servicer.

This switch in our recommendation is also predicated on the change in the Colorado Foreclosure Statute that now allows for a copy of the Note rather than the original Note to be produced together with a Certificate that can be filed by certain entities of which MERS does not fit into in its current corporate structure. The certificate states that the foreclosing entity is the owner of the Note/debt and is a qualified entity under the Statute to use a copy of the Note. Please consult with your own counsel on how this change impacts your current foreclose procedure.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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## MERS RECOMMENDED FORECLOSURE PROCEDURE FOR CONNECTICUT

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. When the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that the authority is given to MERS to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially either by strict foreclosure or by a power of sale. MERS local counsel advises that a loan can be foreclosed in the name of MERS. It is up to the judge to decide which method will be used. The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity, and not just the preferred method.<sup>3</sup> If it is required to endorse the promissory note to the foreclosing entity, then the note may need to be endorsed to MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the

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<sup>3</sup> Local Counsel advises us that certain judges take the position that the note and mortgage must be held by the same entity. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

same individual that signs the documents today for the servicer will continue to sign the documents, but now as an officer of MERS.

In a strict foreclosure, once the Judgment of Strict Foreclosure is entered, and the applicable redemption period has expired, a certificate of Foreclosure is filed on the land records that will reflect MERS as the property owner. MERS should remain in the land records for as short a time as possible. A subsequent deed should be prepared from MERS to the investor.<sup>4</sup> Alternatively, at the time of the entering of the judgment, if an assignment of judgment is executed by MERS, judgment could automatically be entered into the investor's name.

In a foreclosure by sale, a motion should be submitted to the judge requesting the judge that the servicer be allowed to bid at the auction. If it is the highest bid, then after approval of the sale by the Court, a closing will be scheduled whereby title should vest in the servicer.<sup>5</sup>

Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name for the investor, no additional taxes or recording fees are incurred.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the title holder. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the name of the title holder. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>4</sup> Some Connecticut Revenue Officers have taken the position that a state conveyance tax is due on the subsequent deed from the servicer to the investor. MERS local counsel is currently appealing this issue.

<sup>5</sup> If a judge will not allow the servicer to "credit" bid, then a bid may be entered on behalf of MERS. Title will then vest with MERS momentarily until the deed to the investor is executed and recorded.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR DELAWARE**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The same procedures and requirements that are followed when foreclosing in the name of the servicer are still followed when foreclosing in the name of Mortgage Electronic Registration Systems, Inc. The major difference is that the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>6</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method.<sup>7</sup>

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<sup>6</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

<sup>7</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a sheriff's sale is held. The certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If it is the successful bid, the sheriff will be instructed to execute a deed directly to the investor. This is the same method that is used when the servicer forecloses in its name. The sheriff then issues a sheriff's deed directly to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR DISTRICT OF COLUMBIA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Sale is sent, filed and published the same way it is when foreclosing in the name of the servicer with the same required information except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. This is the same requirement when foreclosing a loan in the name of the servicer. We have found that it is not legally required to have the note endorsed to MERS prior to the foreclosure.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then an unrecorded assignment of the deed of trust to the investor is given to the trustee prior to the sale. This assignment allows the Trustee's Deed to be issued directly to the investor. We have been advised that this is the procedure used when foreclosing in the name of the servicer. Because the MERS recommended procedure follows the same

procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the eviction can be brought in the name of MERS. At this point, MERS holds only equitable title. Once the eviction is completed, then the investor can be substituted in as the party to receive the Trustee's Deed. Again, the same procedures should be followed as you do when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## MERS RECOMMENDED FORECLOSURE PROCEDURE FOR FLORIDA

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the mortgagee of record. It is the mortgage that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will be the ultimate owner of the note.<sup>8</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method. If it is required to endorse the promissory note to the foreclosing entity, then the note may need to be endorsed to MERS. However, we have not found it a requirement in Florida that the Note needs to be endorsed to the foreclosing entity.<sup>9</sup>

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<sup>8</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

<sup>9</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a foreclosure judgment to MERS is entered, a public sale is held. The Plaintiff (MERS) has the option of assigning the foreclosure bid either prior to the foreclosure sale or in the ten (10) day period between the sale and the issuance of the Certificate of Title. The assignment is done with a motion filed with the court, and a court order is entered. If the bid is assigned, the certificate of title is issued directly to the assignee. This is the same method that is used when the servicer forecloses in its own name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, then proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR GEORGIA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Security Deeds are used and are generally foreclosed non-judicially pursuant to a power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. It is important to note that the same procedures and state requirements that are required to be followed when foreclosing in the servicer's name still must be followed when foreclosing in the name of MERS. The foreclosure proceeding is commenced by advertising the foreclosure in the official county newspaper once a week for four consecutive weeks prior to the date of the foreclosure sale. A notice is mailed to the debtor's residence at least 15 days prior to the sale date. You will continue to do everything that you normally do when foreclosing a mortgage in the servicer's name. The only difference is that the foreclosing entity is Mortgage Electronic Registration Systems, Inc.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents today for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the sale, the certifying officer will instruct the foreclosing attorney to enter a bid on behalf of the servicer. This is the same process that is used today when

foreclosing in the servicer's name. If it is the successful bid, then the attorney will be instructed to execute the deed under power directly to the servicer. We have been advised that the current foreclosure procedure is a two-deed process with the servicer taking title and then executing a special warranty deed to the investor. Therefore, the MERS recommended procedure would conform to the current practice. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. The servicer is issued the deed under power and therefore commences the eviction in the servicer's name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of Mortgage Electronic Registration Systems, Inc. or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR HAWAII**

Foreclosing a loan in the name of MERS is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially<sup>10</sup>. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The same procedures and state requirements that are followed when foreclosing in the name of the servicer are still followed when foreclosing in the name of Mortgage Electronic Registration Systems, Inc. The major difference is that the caption of the complaint will state Mortgage Electronic Registration Systems, Inc. in place of the servicer's name.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. A secondary market investor will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

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<sup>10</sup> Freddie Mac has initiated a non-judicial program in Hawaii effective January 1, 1998.

After a foreclosure judgment to MERS is entered, a public auction is held. A bid is entered on behalf of MERS, and if the successful bid, then the Commissioner will be instructed that MERS has selected a nominee to be the ultimate purchaser of the property. (The nominee can be the servicer or the investor).

After the hearing to confirm the sale and the confirmation order, a deed is executed directly to the nominee. This is the same method that is used today when the servicer forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording fees or taxes are incurred by foreclosing in the name of MERS. A conveyance tax and recording fee is paid on the transfer of the property from the commissioner to the nominee of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure had been filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR IDAHO**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Trust Deeds are used and are generally foreclosed non-judicially pursuant to a power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. It is important to note that the same procedures and requirements that are followed when foreclosing in the servicer's name must still be followed when foreclosing in the name of MERS. The Trustee must still file and record the Notice of Default and provide the grantor with a Notice of Sale. The Notice of Sale is published the same way as it is when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. The note should remain endorsed in blank when the servicer commences foreclosure. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have not found that it is legally required that the note be endorsed to the foreclosing entity.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If it is the highest bid, then the trustee will be instructed by an instruction letter to execute the Trustee's Deed directly to the

investor. We have been advised that the current foreclosure procedure is a one-deed process with the trustee executing the Trustee's Deed directly to the investor. The MERS recommended procedure is the same procedure followed when foreclosing in the name of the servicer. Therefore, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan, then the Trustee's Deed may be issued to the servicer in order for the servicer to commence the eviction. Another option may be that the trustee's deed is not recorded to the investor until after the eviction is completed. The eviction should be conducted the same way it would be conducted if the servicer commenced the foreclosure.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR ILLINOIS**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer.

MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>11</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend the agencies' policies be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying

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<sup>11</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having its employees become certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered and the applicable redemption period expires, a foreclosure sale is held. A bid is entered on behalf of MERS, and if the successful bid, then the Certificate of Sale would be assigned to the investor. This assignment is not normally recorded. A confirmation hearing will be held confirming the sale. This is the same method that is used when the servicer forecloses in its name for the investor. After the entry of the Order of Confirmation, the holder of the Certificate of Sale is entitled to a deed. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the deed is not recorded until after the eviction is completed. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR INDIANA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note.<sup>12</sup> An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

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<sup>12</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having its employees become certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a foreclosure judgment to MERS is entered, MERS will assign the judgment and the right to bid to the servicer. This assignment of the judgment is filed with the Clerk of the Court in which the judgment is pending. A sheriff's sale is scheduled as a result of the filing of a praecipe for sale. The servicer will enter a bid as the bid assignee and if the highest bidder, the Return of Sale will reflect this. The assignment of the judgment allows the servicer to bid so that title can be taken directly by the servicer. The servicer can then convey a subsequent deed to the investor. Because the MERS recommended procedure closely follows the same procedure that is used when the servicer forecloses in its name, no additional transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. Because the foreclosure judgment is assigned to the servicer, the eviction can be brought in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR IOWA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Generally, mortgages are used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The caption of the petition of foreclosure should name Mortgage Electronic Registration Systems, Inc. (MERS) as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement when a seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the substitution of trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After the foreclosure judgment to MERS is entered, there is a sheriff's foreclosure sale. At the sale, a bid would be entered on behalf of MERS, and if the bid is successful, MERS will receive a certificate of purchase which it will assign to the

servicer or the investor.<sup>13</sup> The sheriff's deed is then issued directly to the servicer or investor. Because the MERS recommended procedure follows the procedures used when foreclosing in the name of the servicer, no additional transfer taxes are incurred.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>13</sup> On a foreclosure without the right of redemption, there is no Certificate of Purchase issued. Instead, the foreclosure judgment should be assigned to the servicer or investor. To whom the judgment is issued will depend upon the instructions given from the servicer or investor. If the judgment is not assigned from MERS, this may cause title to be issued directly to MERS if a bid is entered on the behalf of MERS at the sheriff's sale. If title is then subsequently passed to a private investor, revenue stamps may be incurred.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR KANSAS**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require that the promissory note be endorsed in blank when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method. We have been advised that sometimes there is an endorsement of the note to the servicer prior to the foreclosure. However, we recommend that the agencies' requirements be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, and the district court issues an order of sale, a notice of the sheriff's sale is published and a sale is then held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS.

If the successful bid, the sheriff will issue a certificate of purchase to MERS. This certificate will then be assigned from MERS to the investor. This is the same method that is used when the servicer forecloses in its name. After the applicable redemption period, a deed will be issued directly to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR KENTUCKY**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a foreclosure sale is held. The certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If it is the successful bid, it will be assigned to the investor by simple documentation that is signed by the foreclosing attorney. The bid assignment does

not need to be recorded. This is the same method that is used today when the servicer forecloses in its name.

The Motion to Confirm the sale is filed, and after the sale is confirmed, a deed will be prepared by the Master Commissioner to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording fees or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## MERS RECOMMENDED FORECLOSURE PROCEDURE FOR LOUISIANA

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are employed in Louisiana in real estate transactions and must be foreclosed judicially, usually by a proceeding known as “Executory Process.” MERS local counsel advises that Louisiana law does not prohibit a loan from being foreclosed in the name of MERS.<sup>14</sup> When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender, its successors and assigns. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS becomes the mortgage holder.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>15</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them.<sup>16</sup> Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, it seems to be the standard practice that the blank endorsement is cancelled and the note is endorsed to the servicer to

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<sup>14</sup> Please Note: Fannie Mae’s foreclosure regulations require an assignment from MERS to Fannie Mae in the Parish of Orleans. This means that Fannie Mae will be the foreclosing entity. This is the same requirement that exists when the servicer is the record mortgage holder.

<sup>15</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

foreclose. If it is required to endorse the promissory note to the foreclosing entity, then the note may need to be endorsed to MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After the Petition is filed and the judge signs an order of executory process, the writ of seizure and sale is issued by the clerk and is served by the sheriff upon the mortgagor. After the foreclosure is published for the required amount of time, a sheriff's sale is held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS. If it is the successful bid, then the sheriff will issue a deed to MERS. MERS will then issue a subsequent deed to the investor.<sup>17</sup> This is the same method that is used when the servicer forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>17</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of

<sup>17</sup> MERS should remain as the titleholder for as short of time as possible.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR MAINE**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS.<sup>18</sup> The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>19</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to the foreclosure. However, we recommend adhering to the agencies' policies.

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<sup>18</sup> We have been advised that the named plaintiff in the foreclosure action should be both the record holder of the mortgage and the holder of the promissory note. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

<sup>19</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered and the redemption period has expired, a public auction is held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS. If the successful bid, then MERS will assign its bid and any deficiency judgment to the investor. This is the same method that is used when the servicer forecloses in its name. The foreclosure deed will issue directly to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR MARYLAND**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the mortgagee of record. It is through the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The foreclosure is filed and placed on the docket of the applicable circuit court with the same required information except that Mortgage Electronic Registration Systems, Inc. (MERS) will be the named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, we have been advised that there is sometimes an endorsement to the servicer in order to foreclose. We have not found this to be a legal requirement, and therefore, the agencies' policies should be followed.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then before ratification, a motion to substitute interests will be filed so that the deed is issued directly to the investor. We have been advised that this is the procedure used when foreclosing in the name of the servicer. Because the MERS recommended procedure follows the

same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be substituted as the interested party. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR MASSACHUSETTS**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are used and are foreclosed using the mortgage power of sale together with a Land Court Judgment. MERS local counsel advises that a loan can be foreclosed in the name of Mortgage Electronic Registration Systems, Inc. Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes the Note is endorsed to the servicer prior to the foreclosure. However, we recommend that the agencies' policies be followed.

MERS stands in the same position as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>20</sup>

At the foreclosure auction, MERS can waive the requirement of a deposit as to the investor. This way, the servicer can enter a bid on behalf of the investor without the

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<sup>20</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights of the promissory note.

investor needing to produce any funds. If it is the highest bid, the foreclosure deed can be issued directly to the investor. We have been advised that this procedure is the same procedure used when Freddie Mac or Ginnie Mae are the investors. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR MICHIGAN**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are foreclosed non-judicially usually by a power of sale contained in the mortgage. Local counsel advises that a foreclosure can be brought in the name of MERS. The foreclosure is advertised by publishing the notice for four (4) consecutive weeks. The attorney should follow the same procedure followed when foreclosing in the name of the servicer except that the foreclosing entity is Mortgage Electronic Registration Systems, Inc. (MERS).

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. The endorsement is to remain in blank even if the servicer commences foreclosure. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, we have been advised that sometimes there is an endorsement of the promissory notes to the servicer to foreclose. However, we recommend that the agencies' policies be followed. We have not found an endorsement to the foreclosure entity to be a legal requirement, and therefore, the note should not be endorsed to MERS prior to the foreclosure.

At the auction, the certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then a deed may be issued to MERS. However, when the role of MERS, the servicer and the

investor is explained and understood, the servicer may be allowed to bid on its own behalf without having to produce any funds at the sale. This would be the preferred method to use if at all possible. This way, the deed is executed directly to the servicer. If this is not possible, and MERS must take title, then title should be held by MERS for as short of time as possible. A subsequent deed from MERS to the investor should be executed immediately so that MERS remains in the chain of title only for an instant. We have been advised that the current practice used when foreclosing in the name of the servicer, is for the servicer to take title and then execute a subsequent deed to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR MINNESOTA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are used and are typically foreclosed non-judicially. MERS local counsel advises that a loan can be foreclosed in the name of Mortgage Electronic Registration Systems, Inc. Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the power of attorney to foreclose the mortgage, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that currently sign the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

At the foreclosure sale, the certifying officer will instruct the foreclosing attorney to enter a bid on behalf of MERS. A sheriff's certificate is issued to the highest bidder. If MERS is the highest bidder, then the Sheriff's certificate will be issued to MERS. The sheriff's certificate operates as the conveyance of title. The certificate is executed and recorded during the redemption period. At the end of the redemption period, a deed will be issued from MERS to the investor.<sup>21</sup> However, not every

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<sup>21</sup> During the redemption period, MERS will be considered to be titleholder. However, at the end of the redemption period, a deed to the investor should be executed as soon as possible so that MERS remains in the chain of title for as short a time as possible.

foreclosure counsel follows this procedure currently when foreclosing mortgage loans in the name of the servicer. If your current practice is to assign the sheriff's certificate to the investor, then this is also an acceptable option.<sup>22</sup>

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the eviction can be brought in the name of MERS if MERS is the sheriff's certificate holder. However, if you use the option of assigning the sheriff's certificate, then the certificate is assigned to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>22</sup> The difference between the two options is that some counsels prefer a one-deed process implementing an assignment of the sheriff's certificate to the investor. Other counsels use a two-deed process with the servicer first taking title, and then executing a subsequent deed to the investor. Counsel should continue to follow the instructions given to them by the servicer of the mortgage loan.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR MISSISSIPPI**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The foreclosure is advertised with the same required information except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Deed of Appointment substituting Trustees, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is a blank note endorsement to the servicer prior to foreclosure. We have not found this to be a legal requirement, and therefore, the note should not be endorsed to MERS prior to the foreclosure.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then MERS can assign the bid to the investor. This assignment is simply a paragraph incorporated in the substitution of trustee document authorizing the substituted trustee to convey the property directly to the investor in the Substituted Trustee's Deed. We have been

advised that this procedure is the same procedure used when foreclosing in the name of the servicer. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be assigned the bid. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR MISSOURI**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially under a power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. A notice of sale is published and the borrower is notified along with all parties entitled to notice under state laws. A sale is then held. The same requirements continue to be followed except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require that the promissory note be endorsed in blank when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced. We have been advised that sometimes there is an endorsement of the note to the servicer prior to the foreclosure. However, we recommend that the agencies' requirements be followed.

At the trustee sale, the certifying officer will instruct the trustee by a written bid letter that the bid is being assigned to the investor and that title should vest with the investor. We have been advised that this procedure is the same procedure used when foreclosing in the name of the servicer. Therefore, no additional fees are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be the assignee of the bid. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR MONTANA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Sale includes the same required information as when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer. The Notice of Sale is recorded in the county where the property is located and is published in a newspaper of general circulation.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells the loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then a trustee's deed will be issued to MERS. Title should only remain with MERS for as short of time as possible. A certifying officer of MERS will subsequently execute a Grant Deed to the investor. We have been advised that this procedure is the same procedure used when foreclosing in the name of the servicer. Because the MERS recommended

procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

**MERS RECOMMENDED FORECLOSURE PROCEDURE  
FOR NEBRASKA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

If a mortgage is used, it is foreclosed judicially. If a deed of trust is used, it can be foreclosed non-judicially under power of sale. Regardless of the type of security instrument used, MERS local counsel advises that a loan can be foreclosed in the name of MERS.

In a judicial foreclosure, when MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer].<sup>23</sup> The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. However, it is advised that a paragraph be inserted that explains that the servicer is the entity that is servicing the loan. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

In a non-judicial foreclosure, a notice of default is filed and recorded with the register of deeds in the county in which the property is located. The same procedures that are followed when foreclosing in the name of the servicer should continue to be followed except that Mortgage Electronic Registration Systems, Inc. will be named as the foreclosing entity.

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<sup>23</sup> We have been advised that the named plaintiff in the foreclosure action should be both the record holder of the mortgage and the owner and holder of the promissory note. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having its employees become certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan. Therefore, MERS is both the mortgage holder and the note holder as nominee for the current servicer.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method.<sup>24</sup>

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents today on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered in a judicial foreclosure, a foreclosure sale is held. The certifying officer enters a bid on behalf of MERS. If it is the successful bid, then the bid will be assigned to the investor. The sheriff's deed will be issued directly to the investor. This is the same method that is used when the servicer forecloses in its name. Because the MERS recommended procedure is the same as when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commenced the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship between MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>24</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR NEVADA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are generally foreclosed non-judicially pursuant to a power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. It is important to note that the same procedures and state requirements that are required to be followed when foreclosing in the servicer's name must still be followed when foreclosing in the name of MERS. The Trustee must still record the Notice of Default and Election to Sell the Property. After the expiration of the three-month period, the Notice of Trustee's Sale is filed and published the same way it is when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS. The substituted trustee is typically the foreclosing attorney.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. The note should remain endorsed in blank when the servicer commences the foreclosure. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS for the investor. This is the same process that is used

when foreclosing in the servicer's name. If it is the successful bid, then the trustee will be instructed to execute the Trustee's Deed directly to the investor. Therefore, the MERS recommended procedure is the same as the current practice of bidding on behalf of the investor so that the Trustee's Deed is issued directly to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS. Furthermore, there will not be a transfer tax when the trustee's deed is issued directly to Fannie Mae, Freddie Mac, VA or HUD.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan, then the deed is not recorded to the investor until after the eviction is completed. The eviction is conducted the same way it is conducted when the foreclosure is brought in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR NEW HAMPSHIRE**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. (MERS) is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are used and are generally foreclosed non-judicially under a power of sale in the security instrument. Local counsel advises that a foreclosure can be brought in the name of MERS.<sup>25</sup> The Notice of Sales must be published with all required information except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies' (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the foreclosure auction, the certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, MERS will assign the bid to the investor so that the foreclosure deed is issued directly to the investor. We have been advised that the current foreclosure procedure is a one-deed process with the investor taking title. Therefore, the MERS

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<sup>25</sup> Please Note: Fannie Mae's foreclosure regulations require an assignment from MERS to Fannie Mae in New Hampshire. This means that Fannie Mae will be the foreclosing entity. This is the same requirement that exists when the servicer is the record mortgage holder.

recommended procedure is same the as the current practice with an assignment of the bid to the investor. Therefore, no additional taxes are incurred by foreclosing in the name of MERS in place of the servicer.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer may be assigned the bid so that the servicer is the grantee of the foreclosure deed. This way, the servicer is able to commence the eviction. The servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name. After the eviction is completed, the servicer will then issue a deed to HUD.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR NEW JERSEY**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS become the mortgage holder.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>26</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to the foreclosure. However, we recommend following the agencies' policies.

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<sup>26</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a sheriff's sale is held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS. If it is the highest bid, then the sheriff would be instructed that MERS has assigned its bid to the investor. This is the same method that is used when the servicer forecloses in its name. The sheriff would issue a sheriff's deed directly to the investor. Local counsel advises that only VA and HUD are exempt from transfer taxes on the sheriff's deed. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR NEW MEXICO**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same position as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>27</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.<sup>28</sup> We have not found it to be a requirement in New Mexico that the Note be endorsed to the foreclosing entity.

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<sup>27</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights of the promissory note.

<sup>28</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution from MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a foreclosure judgment to MERS is entered, a Notice of Sale is published. The certifying officer will instruct the attorney regarding the bid to be entered on behalf of MERS. After the sale, a Report of Special Master is filed and an Order approving Sale and Special Master's Report is filed. If MERS bid is the highest bid, then the Special Master's Deed is recorded conveying the title to MERS. The title should only be held by MERS momentarily. A second deed should be prepared as soon as possible conveying the property from MERS to the investor. This is the same method that is used when the servicer forecloses in its own name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR NEW YORK**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender, its successors and assigns. In that case, the caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how did MERS become the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

Employees of the servicer will be authorized to sign any necessary documents as a certifying officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. This typically will be the same individual that signs the documents for the servicer, but now will be signing as an officer of MERS.

A foreclosure judgment to MERS would be entered. At the foreclosure sale the certifying officer will instruct the foreclosing attorney regarding the bid to be entered on behalf of MERS. If it is the successful bid, MERS will assign the bid to the investor. The assignment of the bid is a simple one-sentence reference that is submitted to the referee that states MERS assigns the bid to investor. The referee's deed would be directly issued to the investor. This is the same method that is used when the servicer forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is for the servicer so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR NORTH CAROLINA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially under power of sale. Local counsel advises that a foreclosure can be brought in the name of MERS. Notices are sent to all interested parties, and a hearing is scheduled with the Clerk of Superior Court. The same process followed when foreclosing in the name of the servicer continues to be followed except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, we have been advised that sometimes there is an endorsement of the note to the servicer prior to the commencement of the foreclosure. We have not found this to be a legal requirement, and therefore, the agencies' requirements should be followed.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then MERS will assign its bid to the investor. We have been advised that this procedure is the same

procedure followed when foreclosing in the name of the servicer. Because it is the same procedure, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid can be assigned to the servicer. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship between MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR NORTH DAKOTA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through this instrument that the authority is given to MERS to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS.<sup>29</sup> When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. However, it is advised that a paragraph be inserted that explains that the servicer is the entity that is servicing the loan. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>30</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to

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<sup>29</sup> We have been advised that the named plaintiff in the foreclosure action should be both the record holder of the mortgage and the holder of the promissory note. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

<sup>30</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method. If it is required to endorse the promissory note to the foreclosing entity, then the note may need to be endorsed to MERS. However, we have not found it a requirement in North Dakota that the Note be endorsed to the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents today on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a sheriff's sale is held. A bid is entered on behalf of MERS, and if the successful bid, then the certificate of sale can be issued to MERS. At the sale, only the party who conducted the foreclosure is entitled to "credit." At this point, one of two options can be followed. One is to assign the certificate of sale to the servicer or the investor. This way, the sheriff's deed will be issued directly to the assignee. The other is the sheriff's deed can be issued to MERS, and a Grant Deed will be subsequently issued to the investor. The latter option is the same method that is used when the servicer forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is for the servicer so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR OHIO**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. The caption should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a sheriff's sale is held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS. If it is the successful bid, then MERS will assign its bid to the investor. The deed will then be issued directly to the investor. This is the same method that is used

when the servicer forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## MERS RECOMMENDED FORECLOSURE PROCEDURE FOR OKLAHOMA

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS, so long as MERS is the record mortgage holder and the holder of the promissory note (even if not the beneficial owner of the promissory note). The caption should reflect Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note.<sup>31</sup> An investor, typically a secondary market investor, will still be the beneficial owner of the promissory note.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them.<sup>32</sup> Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. However, we have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

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<sup>31</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

<sup>32</sup> If the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a Special Execution and Order of Sale is issued. The party instituting a foreclosure action must send a notice of the sheriff's sale date to the borrower and all other persons that have a recorded interest or other known interest in the property that will be extinguished by the sale. This would include any junior lienholders, current owners or tenants and the holders of any other encumbrances on the property. The notice must be executed by the county sheriff and must contain a legal description of the property, as well as the date, time and place of sale. This notice must be sent at least 10 days prior to the date of sale. The attorney for the foreclosing party must execute and file an affidavit of compliance with these notice rules.

In addition, the party instituting a foreclosure action must publish notice of public sale for two successive weeks in the newspaper of the county in which the property is situated. The notice must also be executed by the sheriff and must state the names of persons having an interest in the property that will be extinguished by the sale. If the county does not have a newspaper, then a notice must be published on the court house, in 5 other public places in the county, as well as in any general circulation paper distributed in the county. If the county has a population of 110,000 as of the latest federal census, then the notice of sale must be published in a newspaper in the city or township in which the property is situated, or if no such paper exists, then the notice must be published in some newspaper published in the county. Okla. Stat. Tit. 12, section 764 (1995).

The sale is conducted by the county sheriff and must be held not less than 30 days after the date of the first publication or posting of the sale notice. Okla. Stat. Tit. 12, section 764 (1995). The sale is conducted through a public auction and the property is awarded to the highest bidder.

The certifying officer will instruct the foreclosing attorney to enter a bid on behalf of MERS. If it is the highest bid, then in the motion to confirm sale, MERS will request that the sheriff's deed be issued to the investor. Upon the entering of the order confirming sale, the sheriff's deed will be executed in favor of the investor. The MERS recommended procedures do not cause any additional taxes to be incurred.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to

disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR OREGON**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are foreclosed non-judicially by conferring a power of sale on the trustee in the event of default by the borrower. MERS local counsel advises that a loan can be foreclosed in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the substitution of trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The only change to the foreclosure procedure is to name Mortgage Electronic Registration Systems, Inc. in the foreclosure notices as the beneficiary instead of to name the servicer. At the trustee's sale, a bid will be entered on behalf of MERS. The bid is entered the same way it is entered for the servicer when foreclosing in the servicer's name. If the bid is the highest bid, then the trustee's deed can be issued directly to the investor. The Trustee's deed will identify the investor as the grantee under the trustee's deed and will recite that MERS, as nominee, successfully bid for the property at the trustee's sale. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR PENNSYLVANIA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS will be the record mortgage holder. It is through the mortgage that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer or the investor to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. The caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer or investor. A paragraph should be added that MERS, is or will be, the owner of legal title to the mortgage that is the subject of this action, and nominee for the [insert name of investor, or name of current servicer, if investor is Fannie Mae or Freddie Mac], which is the owner of the entire beneficial interest in the mortgage.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

After the foreclosure judgment is entered in favor of MERS, the sheriff's sale is scheduled. The servicer provides bidding instructions to the foreclosure attorney. After the sale, assuming that the foreclosure attorney was the successful bidder, the

attorney instructs the sheriff, in writing, to assign the bid to the investor and to name the investor as grantee on the sheriff's deed.<sup>33</sup>

The name of MERS must not appear on any post-sale documents, including sheriff's deeds and complaints in ejectment. For FHA-insured loans that require evictions, the attorney must instruct the sheriff, in writing, to assign the bid to the investor, instead of to HUD, and to name the investor as grantee on the sheriff's deed. The servicer, on behalf of the investor, proceeds with the eviction and deeds the property to HUD once the eviction is completed.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>33</sup> MERS local counsel has contacted and received a letter from the Department of Revenue of the Commonwealth of Pennsylvania that indicates the investor can use the foreclosing mortgagee transfer tax exemption by showing that MERS participated in the sheriff's sale merely as an agent of the investor.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR RHODE ISLAND**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are used and are foreclosed non-judicially. MERS local counsel advises a loan can be foreclosed in the name of Mortgage Electronic Registration Systems, Inc.<sup>34</sup> The foreclosure is advertised with Mortgage Electronic Registration Systems, Inc. as the named foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents on behalf of the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS. We have been advised that sometimes there is an endorsement of the Note to the servicer prior to foreclosure. However, we recommend that the agencies' policies be followed.

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<sup>34</sup> Please Note: Fannie Mae's foreclosure regulations require an assignment from MERS to Fannie Mae in Rhode Island. This means that Fannie Mae will be the foreclosing entity. This is the same requirement that exists when the servicer is the record mortgage holder.

MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>35</sup>

At the foreclosure auction, MERS can waive the requirement of a deposit as to the investor. This way, the servicer can enter a bid on behalf of the investor without the investor needing to produce any funds. If it is the highest bid, the foreclosure deed can be issued directly to the investor. We have been advised that this procedure is the same procedure used when Freddie Mac or Ginnie Mae are the investors. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>35</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial right to the promissory note.

**MERS RECOMMENDED FORECLOSURE PROCEDURE**  
**FOR SOUTH CAROLINA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS.<sup>36</sup> When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender, its successors and assigns. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. However, it is advised that a paragraph be inserted that explains that the servicer is the entity that is servicing the loan. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>37</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require that the promissory note be endorsed in blank when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure

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<sup>36</sup> We have been advised that the named plaintiff in the foreclosure action should be both the record holder of the mortgage and the holder of the promissory note. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

<sup>37</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

is commenced in the name of MERS unless it is legally required to be endorsed to the foreclosing entity and not just the preferred method. We have been advised that sometimes there is an endorsement of the note to the servicer prior to the foreclosure. However, we recommend that the agencies' requirements be followed.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a foreclosure sale is held. A bid is entered on behalf of MERS, and if the successful bid, then the bid will be assigned to the investor by using a one-page form instructing the sheriff of the assignment of bid. This is the same method that is used when the servicer forecloses in its name. The master in equity or the special referee would issue a deed directly to the investor. Local counsel advises that Fannie Mae, Freddie Mac, VA and HUD are exempt from transfer taxes on the sheriff's deed. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR SOUTH DAKOTA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS become the mortgage holder.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer in relation to not being the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>38</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the

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<sup>38</sup> Even though the servicer has physical custody of the note, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial right to the promissory note.

same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a judgment to MERS is entered, a sheriff's sale is held. The certifying officer will instruct the foreclosing attorney as to the bid to be entered on behalf of MERS. If it is the successful bid, then one of two options can be followed<sup>39</sup>. The first is that the Certificate of Sale may be assigned from MERS to the investor. This way, upon expiration of the redemption period, the sheriff's deed will issue directly to the investor. There is a recording cost for the Certificate of Sale. The second option is that upon the expiration of the redemption period, MERS is issued the sheriff's deed by virtue of being the holder of the Certificate of Sale. If this option is followed, MERS should only remain in the chain of title for as short of time as possible. A subsequent deed will then be executed from MERS to the investor. We have been advised that this latter option is the method that is used when the servicer forecloses in its name. Typically the servicer is issued the sheriff's deed, and then issues a subsequent deed to the investor. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>39</sup> MERS prefers to not take title to the property, so the Certificate of Sale should be assigned if possible. However, either option is acceptable.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR TENNESSEE**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, in place of the servicer, will be the record mortgage holder. It is the mortgage or deed of trust that gives MERS the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are generally foreclosed non-judicially under a power of sale in the security instrument. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Default is filed and published the same way it is when foreclosing in the name of the servicer except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Appointment of Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. In the Trustee's Deed, the bid will be assigned to the investor, unless the certifying officer instructs the trustee to assign the bid to the servicer. We have been advised that the current foreclosure procedure is a one-deed process with the investor directly taking title upon the conclusion of the trustee's sale. Therefore, the MERS recommended procedure is the same as the current practice of assigning the bid to the investor. Because the MERS recommended

procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan, the eviction may need to be brought in the name of MERS. Therefore, MERS may need to be the grantee of the trustee's deed. After the eviction is completed, MERS will then issue a deed to HUD.<sup>40</sup>

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>40</sup> MERS should only be in the chain of title for as short of a time as possible. As soon as the eviction is completed, the deed to HUD should be recorded.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR TEXAS**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the mortgagee or beneficiary of record in the chain of title. It is through the power of sale in the deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The foreclosure is commenced the same way as if it were being brought in the servicer's name except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named the foreclosing entity as the mortgagee or beneficiary of record as the nominee for the current servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Appointment of Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS as the mortgagee of record. If the bid is the highest bid, then the trustee's deed is issued to MERS as the mortgagee of record and as the nominee for the current servicer. The servicer, as a duly appointed officer of MERS, can then convey the property by deed to the investor which is the same as the current practice that is used when foreclosing in the name of the servicer as mortgagee or

beneficiary of record. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of MERS and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR UTAH**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The Notice of Default and Election to Sell is filed with the county recorder. Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

After the reinstatement period expires, the Notice of Sale is published for the required length of time. Once this is completed, the foreclosure sale is held. The certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, the certifying officer will instruct the trustee to deed the property directly to the investor. We have been advised that this procedure is the same procedure used when foreclosing in the name of the servicer. Therefore, no additional taxes are incurred by foreclosing in the name of MERS in place of the servicer.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be substituted as the interested party.<sup>41</sup> This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

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<sup>41</sup> MERS local counsel advises that an eviction is brought in the name of the party that takes title to the property following the foreclosure sale.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR VERMONT**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. When the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. MERS local counsel advises that a loan can be foreclosed in the name of MERS. Over 90% of the foreclosures are by strict foreclosures. When MERS has been assigned the mortgage, the caption of the complaint should state Mortgage Electronic Registration Systems, Inc. as the plaintiff. However, this changes slightly if MERS is the original mortgagee of record, meaning that MERS is named on the mortgage in a nominee capacity for the originating lender, its successors and assigns. The caption should then state Mortgage Electronic Registration Systems, Inc. as nominee for [insert name of the current servicer]. The key is how MERS is named as the mortgagee of record.

The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. An investor, typically a secondary market investor, will still be the ultimate owner of the promissory note.<sup>42</sup>

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS unless it is legally required to be endorsed to the

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<sup>42</sup> The servicer usually has physical custody of the note at the time of the foreclosure with a blank endorsement. This makes the servicer the noteholder for the purposes of foreclosing. However, custom in the mortgage industry is that the investor (Fannie Mae, Freddie Mac, Ginnie Mae or a private investor) owns the beneficial rights to the promissory note.

foreclosing entity. If it is required to endorse the promissory note to the foreclosing entity, then the note may need to be endorsed to MERS. Local counsel has advised that it is essential that the Promissory Note be held in the name of the mortgage holder.<sup>43</sup>

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

Because the majority of the foreclosures are by strict foreclosure, title will vest in MERS momentarily.<sup>44</sup> The certifying officer will submit an affidavit of amounts due to the Clerk of Court, after which a default or summary judgment will be issued by the Court. The Clerk will prepare an accounting. Once the accounting is received, a judgment is prepared and served. The judgment is then signed by the Court. After the redemption period expires, a Certificate of Non-Redemption and Writ of Possession will be issued by the Court to MERS. The property will then be deeded from MERS to the investor. This is the same process that occurs when the servicer of the mortgage loan forecloses in its name. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional taxes are incurred by foreclosing in the name of MERS.

An alternative option is to file a Motion for Substitution of Parties after the judgment to MERS is entered. At this time, an unrecorded assignment of the mortgage needs to be shown to the judge. It should be noted that certain courts are not staffed with full time judges and there may be a slight increase in time before this Motion can be decided. It is recommended that this Motion be filed as soon as possible after the judgment is entered so that it is completed prior to the expiration of the redemption period. At the end of the redemption period, a Certificate of Non-Redemption is recorded which transfers the title. Prior to the Certificate being issued, the assignment of the mortgage is recorded.

Local counsel advises that Fannie Mae, Freddie Mac, VA and HUD are exempt from transfer taxes on the sheriff's deed.

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<sup>43</sup> We have been advised that the named plaintiff in the foreclosure action should be both the record holder of the mortgage and the holder of the promissory note. This is typically considered to be the servicer because if the promissory note is endorsed in blank and the servicer has physical custody of the note, the servicer will technically be the note holder as well as the record mortgage holder. By virtue of having the servicer's employees be certifying officers of MERS, there can be an in-house transfer of possession of the note so that MERS is considered the note holder for purposes of foreclosing the loan.

<sup>44</sup> MERS should only remain the titleholder for as short as time as possible. A subsequent deed should be executed to the investor immediately.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR VIRGINIA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially by a power of sale given to the Trustee upon default. Local counsel advises that a foreclosure can be brought in the name of MERS.<sup>45</sup> The same procedure that is followed when foreclosing in the name of the servicer is followed when foreclosing in the name of MERS except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Because the original note is required to be shown to the Commissioner at the time of the final accounting, the note is usually endorsed to the servicer when foreclosing in the name of the servicer. Therefore, local counsel advises that the note may need to be endorsed to MERS as the foreclosing entity. The endorsement of the note to the servicer is the same procedure that is followed when foreclosing in the name of the servicer.

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<sup>45</sup> Local Counsel advises that the promissory note is endorsed to the servicer prior to commencing a foreclosure so that the servicer becomes the noteholder. In order for a foreclosure to be brought in the name of MERS, the note should be endorsed to MERS so that MERS is the noteholder.

At the trustee sale, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then the trustee will be instructed to deed the property directly to the investor. We have been advised that this procedure is the same used when foreclosing in the name of the servicer. Therefore, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be deeded the property so that the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR WASHINGTON**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are used and are foreclosed non-judicially by conferring a power of sale on the trustee in the event of default by the borrower. MERS local counsel advises that a loan can be foreclosed in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the substitution of trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

The only change to the foreclosure procedure is to name Mortgage Electronic Registration Systems, Inc. as the foreclosing entity. The Notice of Default and Notice of Trustee's Sale is still required to be sent and published and all requirements related to these Notices must be followed. At the trustee's sale, a bid will be entered on behalf of MERS. The bid is entered the same way it is entered for the servicer when foreclosing in the servicer's name. If the bid is the highest bid, then the trustee's deed can be issued directly to the investor. This is the same procedure that is followed when commencing a foreclosure in the name of the servicer. The Trustee's deed will identify the investor as the grantee under the trustee's deed and will recite that MERS, as nominee, successfully bid for the

property at the trustee's sale. Because the MERS recommended procedure follows the same procedure that is used when the servicer forecloses in its name, no additional recording or transfer taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to HUD. This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR WEST VIRGINIA**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Deeds of Trust are foreclosed non-judicially. Local counsel advises that a foreclosure can be brought in the name of MERS. The notice of sale is served on the grantor of the Deed of Trust by certified mail. The foreclosure sale is published according to the same requirements followed when foreclosing in the name of the servicer. Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents, such as the Substitution of Trustee, as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the trustee auction, the certifying officer will instruct the trustee regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then the certifying officer will instruct the trustee on how to deed the property. A three-party deed can be used with the trustee transferring the property to the investor. MERS simply signs the deed and states that it has assigned its right in its bid to the investor. We have been advised that this procedure is the same procedure used when foreclosing

in the name of the servicer. Therefore, no additional taxes are incurred by foreclosing in the name of MERS.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the property can be deeded to the servicer. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE** **FOR WISCONSIN**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like a servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed in conjunction with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are typically used and are foreclosed judicially. The caption of the complaint should name Mortgage Electronic Registration Systems, Inc. (MERS) as the plaintiff. The body of the complaint should be the same as when foreclosing in the name of the servicer. MERS stands in the same shoes as the servicer to the extent that it is not the beneficial owner of the promissory note. A secondary market investor will still be the owner of the promissory note. A paragraph can be added to the complaint to explain the role of MERS as being the mortgagee of record with the authority to foreclose.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when a seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

After a foreclosure judgment in favor of MERS is entered and after expiration of the redemption period, a foreclosure sale is held. The certifying officer will provide local counsel with bid instructions. A bid will be entered on behalf of MERS, and if it is the highest bid, MERS will assign its bid to the investor and the investor can appear as the grantee on the Sheriff's Deed. The Sheriff's deed is then issued

directly to the investor. The assignment of the bid is the method that is being used when the servicer forecloses in its name. The sheriff's deed is exempt from transfer tax as are sheriff's deeds following an assignment of bid. Certain other transfers, as between "principal and agent for no consideration may also be exempt from transfer tax. Because the MERS recommended procedure follows the procedure used when foreclosing in the servicer's name, no additional taxes are incurred.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the bid assignment is given to the servicer instead of to the investor (HUD). This way, the servicer will proceed with the eviction the same way it would if the foreclosure were filed in its own name.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.

## **MERS RECOMMENDED FORECLOSURE PROCEDURE FOR WYOMING**

Foreclosing a loan in the name of Mortgage Electronic Registration Systems, Inc. is something new in the foreclosure arena. However, when the role of MERS is examined, it becomes clear that MERS stands in the same position to foreclose as the servicer. MERS, like the servicer, will be the record mortgage holder. It is through the mortgage or deed of trust that MERS is given the authority to foreclose.

To help make a smooth transition from foreclosing loans in the name of the servicer to foreclosing loans in the name of MERS, we have developed state by state recommended guidelines to follow. These guidelines were developed with experienced foreclosure counsel in your state. We have been able to keep the MERS recommended procedures consistent with the existing foreclosure procedures. The goal of the recommended procedures is to avoid adding any extra steps or incurring any additional taxes or costs by foreclosing in the name of MERS instead of the servicer.

MERS will continually review the guidelines and, if necessary, will issue revisions. The recommended guidelines to follow in your state are as follows:

Mortgages are foreclosed non-judicially by a power of sale contained in the mortgage. Local counsel advises that a foreclosure can be brought in the name of MERS. Notice of the sale is recorded in the real estate records and mailed by certified mail to all interested parties. The same procedures followed when foreclosing a mortgage loan in the name of the servicer is followed when foreclosing in the name of MERS except that Mortgage Electronic Registration Systems, Inc. (MERS) will be named as the foreclosing entity instead of the servicer. Publication of the sale occurs ten (10) days after the recording and mailing of the Notice.

Employees of the servicer will be certifying officers of MERS. This means they are authorized to sign any necessary documents as an officer of MERS. The certifying officer is granted this power by a corporate resolution of MERS. In other words, the same individual that signs the documents for the servicer will continue to sign the documents, but now as an officer of MERS.

The agencies (Fannie Mae, Freddie Mac and Ginnie Mae) require a blank endorsement of the promissory note when the seller/servicer sells a mortgage loan to them. Therefore, the note should remain endorsed in blank when the foreclosure is commenced in the name of MERS.

At the sheriff's sale, the certifying officer will instruct the sheriff regarding the bid to be entered on behalf of MERS. If the bid is the highest bid, then MERS will be issued a Certificate of Purchase. The Certificate of Purchase will be assigned to the investor. We have been advised that this is the same procedure used when foreclosing in the name of the servicer. Because the MERS recommended procedure

follows the same procedure that is used when the servicer forecloses in its name, no additional recording costs are incurred by foreclosing in the name of MERS. Wyoming does not have transfer taxes.

Evictions are handled the same way they are handled when the servicer commences the foreclosure as the foreclosing entity. If it is an FHA-insured loan and an eviction is necessary, then the servicer can be assigned the Certificate. This way, the eviction can be brought in the name of the servicer. Once the eviction is completed, then the servicer can issue a deed to HUD. Again, you should follow the same procedures you follow when foreclosing in the name of the servicer.

If the debtor declares bankruptcy, the proof of claim should be filed jointly in the name of Mortgage Electronic Registration Systems, Inc. and the servicer. It is advised to file in both names in order to disclose to the court the relationship of MERS and the servicer. The address to be used is the servicer's address so that all trustee payments go directly to the servicer, not to MERS. The Motion for Relief from Stay may be filed either solely in the name of MERS or jointly with the servicer. If MERS is the foreclosing entity, then it is MERS that needs the relief from the bankruptcy.