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Counties Seek Millions From Mortgage Giant

MERS under fire for unpaid fees

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Most Americans have never heard of it, but this mortgage industry holds interests in 50 percent of all U.S. home loans.

No, not Fannie Mae, or Freddie Mac either.

Mortgage Electronic Registration Systems, otherwise known as MERS, is a private firm that tracks ownership in hundreds of thousands of home loans. The computerized network allows banks to buy and sell mortgages without having to record the transfers at the county level.

An added bonus for the banks is the avoidance of county fees. When MERS is used to turn a regular mortgage into an investment, financial institutions don't pay "recording fees," which are usually small charges of between $50 and $100, to the counties where the underlying properties are physically located.

This has some county clerks upset.

"The average Joe who comes into my building, hard working people, have to pay the fees," said John O'Brien, register of deeds in Southern Essex, Massachusetts.

"Why in God's name can't banks and Wall Street lenders do the same thing? Play by the same rules!"

O'Brien has officially requested that Massachusetts Attorney General Martha Coakley file suit against MERS, seeking $22 million in unpaid recording fees associated with home loans that were bought, sold, and securitized since 1998.

"I have challenged them to open their books and show me how many times they have moved people's mortgages around," O'Brien said.

In Suffolk County, former county clerk Ed Romaine is making a similar request.

Now serving as a county legislator, Romaine has asked the Suffolk County attorney explore a lawsuit against MERS that he says would claw back more than $100 million for taxpayers.

Romaine unsuccessfully tried to block MERS from doing business in Suffolk County back in 2001.

“I saw a problem because we would not know who would be the owner of these mortgage notes because they would be sold in a private system and not recorded in a public system,” Romaine said.

The prediction wasn’t far off.

Mortgage industry insiders say a major reason many of the nation’s foreclosures are stalled or progressing at a slow pace is the inability of MERS to identify what parties actually hold title to distressed mortgage loans.

The problem has led housing advocates to begin demanding foreclosure agents show proof of which investors actually hold legal claim on properties.

The Neighborhood Assistance Corporation of America, a nonprofit dedicated to fighting foreclosures, recently began advising many clients to file “lender accountability forms.” The documents are legal requests for information that was never filed on the county level.

Leonel Quintana, a utility worker seeking a loan modification from Chase, filed a NACA lender accountability form in the event he has to go to court to save his Teaneck, N.J. house.

“You have an investor that owns half of your property and half of the other property. Well who owns the other half?” Quintana said.

“It has definitely trickled down to the homeowner himself, who is unsure as to who owns his house.”

Another homeowner under threat of foreclosure, John Thomas of Brooklyn, is working with NACA to determine if the mortgage on his home was securitized and sold to investors after the original lender, IndyMac, failed.

“I specifically asked them who owns the note on my property and they were not able to. They refused to give that information to me,” said Thomas, who works in the finance department of an airline.

“If I can’t actually know who owns my loan, I can’t figure out who to petition for a loan modification.”

Courts around the nation have treated challenges to the MERS business model differently, in part because different states have different rules about how mortgages should be recorded.

In the Eastern District of New York, U.S. Bankruptcy Judge Robert Grossman explicitly declared the MERS database to be illegal in a February decision:

“MERS and its partners made the decision to create and operate under a business model that was designed in large part to avoid the requirements of the traditional mortgage recording process. This Court does not accept the argument that because MERS may be involved with 50% of all residential mortgages in the country, that is reason enough for this Court to turn a blind eye to the fact that this process does not comply with the law.”

Although MERS executives refused to answer questions from NBC New York, press releases on the company’s website point out the firm has won victories in California, New Hampshire, and Kansas, where judges have upheld the company’s right to transfer mortgages and act as an agent for lenders.

With regard to the issue of county recording fees, MERS publicly claims its private database is not a scheme to avoid traditional surcharges associated with home loans.

“It is not the case that recording fees are somehow owed or outstanding,” wrote MERS spokeswoman Karmela Lejarde.

“Fees are paid for a service performed, and if a document is eliminated because it is no longer necessary, no fee is due because there is nothing to record. We believe it is wrong and unethical to seek money for services that were never rendered, and in fact, MERS greatly reduces the workload of county recorders.”

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