



Statement from MERSCORP Holdings, Inc. on the Aequitas Report Released by the San Francisco Assessor-Recorder's Office on MERS and the MERS® System:

The report released on February 15, 2012 by the Assessor-Recorder of San Francisco and Aequitas Compliance Solutions contains fundamental misunderstandings and misrepresentations regarding Mortgage Electronic Registration Systems (MERS), the public land records and the operation of the nation's mortgage finance system. Specifically, the report contains three main inaccuracies. The report:

- Wrongly characterizes MERS' role in the mortgage process;
- Misunderstands the purpose of public land records; and
- Mischaracterizes the assignment process.

Each of these points is discussed in detail below, but it is also worth noting the report did not produce evidence that a borrower who is current with their payments has been wrongfully foreclosed upon.

The Report Wrongly Characterizes MERS' Role in the Mortgage Process

The reports' authors believe that only the owners of a loan can foreclose on a borrower. However, loan owners are not required to conduct foreclosures; instead they can delegate that authority to their agents (like MERS or a loan servicer).

Here is how MERS works as an agent:

- At closing, the homeowner designates MERS as the beneficiary of the deed of trust, and the homeowner acknowledges that MERS is the agent for the original lender and any subsequent purchasers of the loan.
- That deed of trust is recorded in the public land records and the appropriate recording fees are paid.
- When the loan is sold by the original lender, MERS remains the beneficiary and becomes the agent in turn for each subsequent purchaser who is a member of the MERS® System.
- As long as the loan is within the MERS® System, MERS remains the beneficiary of the deed of trust and ensures that the chain of title will not be broken because title to the lien remains with MERS from closing to the payoff of the loan.
- MERS is not a replacement for county recorders. The deed of trust must be recorded in the land records pursuant to the MERS System Rules of Membership,

The Report Misunderstands the Purpose of Public Land Records

Implicit throughout the report is the theme that each owner of a loan must appear in the public land records. This is not the case. The long standing purpose of recording a lien in the land records is to

establish the owners' rights and to put others on notice of the existence of the lien – not to provide information to borrowers.

The ownership of a loan is represented by the promissory note, which is a negotiable instrument (i.e., personal property), and is not a conveyance of an interest in real property. Thus, the transfer of the loan is reflected by the endorsement and delivery of the physical instrument, and not by a recording of the assignment of the note in the land records.

- Loan information is readily available to homeowners through other means, including the MERS® System:
 - By federal law, within 30 days of when a loan is sold, the homeowner is provided with the name of the purchaser.
 - By federal law a servicer must disclose the name of the owner of the loan to the homeowner within 10 days of receipt of a written request for such information.
 - When MERS is the beneficiary of a loan, the homeowner may call a toll-free number and access the Internet to find the name and contact information of their servicer and the name of the note owner. About 98% of the over 32 million active loans on the system contain this information.

The Report Mischaracterizes the Assignment Process

The report wrongly concludes that assignments were improper merely because a person employed by the trustee, servicer or assignee executed the assignments.

- All loan owners have the right to appoint an employee or other person to be an officer of the entity that owns the loan. Likewise, the owner of the loan may have granted a power of attorney that authorizes a person to execute the assignment on their behalf as an agent. The agent may also appoint employees or non-employees to serve as officers of the agent for the purpose of executing assignments.
- Both practices are legitimate and have been validated by the courts. There is nothing deceptive in such business practices and it is commonplace for a corporation to appoint officers or grant a power of attorney to persons who are not employees of the corporation.

Conclusion

Aequitas' San Francisco foreclosure audit contains many erroneous claims concerning MERS' role in the mortgage process, an inaccurate understanding of the purpose of public land records and a gross mischaracterization of the assignment process.

The MERS business model has been consistently validated in all 50 states, and as people understand more about MERS and the role it plays, they will see that MERS adds great value to our nation's system of housing finance in ways that benefit not just financial institutions, the broader economy and the government, but—most of all—real people.