

VIDEOTAPED DEPOSITION OF WILLIAM C. HULTMAN
CONDUCTED ON WEDNESDAY, NOVEMBER 11, 2009

1 CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA 1
2
3 DEBRA HENDERSON, :
4 Plaintiff, :
5 vs. :
6 MERSCORP, INC.; MORTGAGE : Case No.
7 ELECTRONIC REGISTRATION SYSTEM, : CV 2008-900805
8 INC., Solely as Nominee for GMAC :
9 Mortgage, LLC, Successor by Merger :
10 with GMAC Mortgage Corporation, :
11 et al., :
12 Defendants. :
13
14 VIDEOTAPED 30(b)(6) DEPOSITION OF WILLIAM C. HULTMAN
15
16 Washington, D.C.
17 Wednesday, November 11, 2009
18 9:12 a.m.
19
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22 Reported by: Janet A. Steffan, RDR

3
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2
1 VIDEOTAPED 30(b)(6) DEPOSITION OF WILLIAM C.
2 HULTMAN, held at the office of:
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7 Morgan, Lewis & Bockius
8 1111 Pennsylvania Avenue, N.W.
9 Washington, D.C. 20004
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19 Pursuant to Notice, before Janet A. Steffan,
20 Registered Diplomate Reporter and Notary Public in and for the
21 District of Columbia.
22

4
1 A P P E A R A N C E S (continued)
2
3 ALSO PRESENT:
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11 DANA CAMPBELL, Videographer
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VIDEOTAPED DEPOSITION OF WILLIAM C. HULTMAN
 CONDUCTED ON WEDNESDAY, NOVEMBER 11, 2009

<p style="text-align: right;">5</p> <p style="text-align: center;">INDEX</p> <p>1 EXAMINATION OF WILLIAM C. HULTMAN PAGE</p> <p>2 By Mr. Wooten..... 9</p> <p>3</p> <p style="text-align: center;">EXHIBITS</p> <p>4 (Attached to the transcript)</p> <p>5 Deposition Exhibit</p> <p>6 No. 1 MERS Corporate Resolution - web page..... 29</p> <p>7 No. 2 Mortgage document - Debra Henderson..... 46</p> <p>8 No. 3 MERSCORP, INC. Rules of Membership..... 73</p> <p>9 No. 4 Mortgage Electronic Registration Systems.....131</p> <p>10 Inc. Corporate Resolution</p> <p>11 No. 5 Agreement for signing authority.....143</p> <p>12 No. 6 Disclosure statement about MERS (blank).....159</p> <p>13 No. 7 Affidavit of William C. Hultman.....164</p> <p>14 (Civil Action No. 08-CV-305 JNE/JJG)</p> <p>15 (US District Court for the District of MN)</p> <p>16 No. 8 "Structured Finance" publication from.....192</p> <p>17 Moody's Investors Service - Authored by</p> <p>18 Andrew Lipton, VP, Senior Credit Officer</p> <p>19 No. 9 MERS - Terms and Conditions.....223</p> <p>20 No. 10 Corporate Assignment of Mortgage - Prince.....225</p>	<p style="text-align: right;">7</p> <p style="text-align: center;">PROCEEDINGS</p> <p>1 -----</p> <p>2</p> <p>3 THE VIDEOGRAPHER: We're going on record. The time</p> <p>4 is 9:12:45. Here begins tape number one in the 30(b)(6)</p> <p>5 deposition of William C. Hultman as corporate representative</p> <p>6 of MERSCORP, Incorporated in the matter of Debra Henderson</p> <p>7 versus MERSCORP, Incorporated, et al., in the Circuit Court of</p> <p>8 Montgomery County, Alabama, case No. CV 2008-900805.</p> <p>9 Today's date is November 11th, 2009. The time is</p> <p>10 the 9:13:16. The video operator today is Dana Campbell of LAD</p> <p>11 Reporting/Merrill Legal Solutions. This video deposition is</p> <p>12 taking place at the offices of Morgan, Lewis & Bockius, 1111</p> <p>13 Pennsylvania Avenue, Northwest, Washington, D.C., and was</p> <p>14 noticed by Nicholas Wooten, counsel for the plaintiffs.</p> <p>15 Would counsel please identify themselves and state</p> <p>16 whom they represent.</p> <p>17 MR. RAGSDALE: I'm Barry Ragsdale. I'm with Sirote</p> <p>18 & Permutt in Birmingham, Alabama. I represent the defendants</p> <p>19 MERSCORP, Inc., and Mortgage Electronic Registration System,</p> <p>20 Inc.</p> <p>21 MR. BROCHIN: Bobby Brochin, Morgan Lewis. I'm</p> <p>22 representing Bill Hultman.</p>
<p style="text-align: right;">6</p> <p style="text-align: center;">EXHIBITS (continued)</p> <p>1 No. 11 Richmond Monroe - Assignment Services.....227</p> <p>2 No. 12 Search result from MERS Servicer.....240</p> <p>3 Identification System</p> <p>4 No. 13 Transfer of Beneficial Rights to Member.....240</p> <p>5 Investors</p> <p>6 No. 14 Business Procedure - Members.....248</p> <p>7 Business Procedure - MERS</p> <p>8 No. 15 MERS Registered Loans in Rated Securities....246</p> <p>9 No. 16 Account history - GMAC Mortgage, LLC.....255</p> <p>10 For Debra A. Henderson</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 MS. HORSTKAMP: Sharon Horstkamp, general counsel</p> <p>2 with MERS.</p> <p>3 MR. WOOTEN: I'm Nick Wooten, and I represent the</p> <p>4 plaintiff in this action.</p> <p>5 THE VIDEOGRAPHER: The court reporter today is Jan</p> <p>6 Hamilton of LAD Reporting. Would the court reporter please</p> <p>7 swear in the witness.</p> <p>8 -----</p> <p>9 WILLIAM C. HULTMAN,</p> <p>10 a witness herein, being duly sworn, testified as follows:</p> <p>11 -----</p> <p>12 EXAMINATION</p> <p>13 -----</p> <p>14 BY MR. WOOTEN:</p> <p>15 Q. Mr. Hultman, if you will state your full name for</p> <p>16 the record, please.</p> <p>17 A. William C. Hultman.</p> <p>18 Q. Mr. Hultman, how are you presently employed?</p> <p>19 A. I'm sorry. I can't hear you.</p> <p>20 Q. How are you presently employed, sir?</p> <p>21 A. I work for MERSCORP, Inc.</p> <p>22 Q. And how long have you been so employed?</p>

9

1 **A. It will be 13 years in February of next year.**
2 Q. So you've been working for this corporation since
3 approximately 1996 or 7?
4 **A. 1998.**
5 Q. '98, okay. What was your initial hiring position
6 with the firm?
7 **A. Vice president and corporate group manager.**
8 Q. Prior to coming to work for this company where did
9 you work, sir?
10 **A. I worked for Barnett Banks, Inc. in Jacksonville,**
11 **Florida.**
12 Q. I'm sorry. The name of that company again?
13 **A. Barnett Banks, Inc., in Jacksonville, Florida.**
14 Q. And what was your position with that company?
15 **A. I was the director of asset liability management.**
16 Q. What did that position entail?
17 **A. I was the, essentially was responsible for managing**
18 **the interest rate risk and liquidity risk for both the holding**
19 **company and the various banks in the system.**
20 Q. How long were you employed in that position?
21 **A. About four years.**
22 Q. Tell me, if you will, a little bit about your

10

1 education, please, sir. Where did you go to college at?
2 **A. I went to Buffalo State University.**
3 Q. All right. And did you obtain a degree?
4 **A. Yes, I did.**
5 Q. And what is that degree in?
6 **A. Physics.**
7 Q. Physics?
8 **A. Mm-hmm.**
9 Q. You made it all the way to mortgage banking?
10 **A. We're not really a mortgage banker.**
11 Q. All right. And what year was your degree, please?
12 **A. 1973.**
13 Q. And beyond your four-year degree did you obtain any
14 other college degrees?
15 **A. I have a Master's science degree in statistics that**
16 **I was, I got in 1976 and a Juris Doctorate from the State**
17 **University of New York at Buffalo in 1977.**
18 Q. Were you pursuing your law degree at the same time
19 you were pursuing your Master's degree?
20 **A. I went to graduate school for a year and then went**
21 **to law school and finished while I was in, my Master's degree**
22 **while I was in law school.**

11

1 Q. Did you say who your law school degree was from?
2 **A. State University of New York at Buffalo.**
3 Q. And did you then become involved in the practice of
4 law?
5 **A. I did.**
6 Q. And how long did you practice actively?
7 **A. I was engaged in full time practice of law for about**
8 **ten years.**
9 Q. And was that with one firm or was that with several
10 firms?
11 **A. I had three different positions.**
12 Q. All right. And what was your emphasis in your area
13 of practice?
14 **A. It changed from time to time.**
15 Q. Okay. What was your first position when you came
16 out of law school?
17 **A. I worked as an associate for Latona & Worthington in**
18 **Buffalo, New York.**
19 Q. And what was the focus of that practice?
20 **A. Primarily small business representation.**
21 Q. And then what was your next position?
22 **A. I was staff attorney with Forest Oil Corporation in**

12

1 **Bradford, Pennsylvania.**
2 Q. All right. And how long were you employed in that
3 position?
4 **A. Which one?**
5 Q. The Bradford, Pennsylvania position.
6 **A. About two and a half years.**
7 Q. Were you the only attorney on staff or --
8 **A. No.**
9 Q. -- one of many?
10 **A. No. I was not the only attorney.**
11 Q. Okay. And after you left the oil company where did
12 you go next?
13 **A. I went to a firm called Moot & Sprague in Buffalo,**
14 **New York.**
15 Q. Moot & Sprague. How do you spell Moot, please?
16 **A. M-O-O-T.**
17 Q. And what was the focus of that practice?
18 **A. Primarily corporate and securities law.**
19 Q. Is there a particular area in securities law that
20 you worked in during that time?
21 **A. I did a lot of different things. It was -- I**
22 **participated in most of the securities acts, so we did 34 Act**

<p style="text-align: right;">13</p> <p>1 reporting, did 41 investment company. I did registration 2 statements under article, or regis- -- 33 Act. So I did -- 3 and I represented broker dealers. 4 Q. And how long were you employed with Moot & Sprague? 5 A. About six years. 6 Q. And where did you go after you left Moot & Sprague? 7 A. I went to work for Empire of America Federal Savings 8 Bank in Buffalo, New York. 9 Q. How long were you with Empire of America? 10 A. About four years. 11 Q. And what was your position with them? 12 A. I had several different positions. 13 Q. Do you remember what you were hired in at? 14 A. I was the manager of wholesale funding and an 15 administrative vice president. 16 Q. The manager of wholesale funding was not practicing 17 law. That was dealing with lending; is that correct? 18 A. We -- more we were borrowing. 19 Q. Borrowing? 20 A. We were borrowers, not lenders. The bank lends, but 21 I was primarily borrowing money on a wholesale basis for the 22 bank.</p>	<p style="text-align: right;">15</p> <p>1 A. It was insolvent, yes. 2 Q. And you were the treasurer when the bank was 3 insolvent? 4 A. Yes. 5 Q. And that was I'm assuming around the late '80s when 6 all the federal savings and loans were failing; is that right? 7 A. It, it failed in 1990. 8 Q. Okay. So would this Empire of America have been 9 considered to be a savings and loan? 10 A. It was a federal savings bank. 11 Q. As part of the bank failure with you, was there any 12 inquiry into your actions as a bank officer as part of that 13 bank's failure? 14 A. No. 15 Q. No charges against any other officers of that bank? 16 A. No. 17 Q. Do you recall the reason that the bank became 18 insolvent? 19 A. The bank had a series of acquisitions in the '80s 20 and '90s and had supervisory good will that counted as 21 capital, and when FIRREA was enacted in 1988 or 1989 that law 22 changed the capital requirements, and those supervisory acqui-</p>
<p style="text-align: right;">14</p> <p>1 Q. Was that for the purpose of securing capital to make 2 the loans the bank wanted to make? 3 A. Essentially, yes. 4 Q. And how long did you have that position? 5 A. About, probably about a year and a half, two years, 6 something like that. 7 Q. Where did you move to and within that bank after 8 that position? 9 A. I became the treasurer. 10 Q. And that was a corporate officer for that 11 institution -- 12 A. Yes, it was. 13 Q. -- right? And how long were you in that position? 14 A. Another two years. 15 Q. When you left Empire of America, why did you leave? 16 A. The bank was sold. 17 Q. Who was it sold to? 18 A. Well, it, it was -- it had been taken over by the 19 Resolution Trust Corporation, and then the bank was sold in 20 parts to four separate institutions. 21 Q. So the bank failed in effect, or Resolution Trust 22 took it over?</p>	<p style="text-align: right;">16</p> <p>1 -- the capital from the supervisory acquisitions were no 2 longer counted, so were technically fell below the capital 3 limits. 4 Q. Okay. Now, when, when you mentioned good will, 5 that's a, sort of an accounting estimate of the value of your 6 relationship with your clients and customers and investors, 7 that sort of thing; is that right? 8 A. That's not the -- that's not the -- I don't think I 9 would agree with that characterization. 10 Q. Explain what good will is. 11 A. Good will is the difference between the value of the 12 asset acquired and the current value on a practical basis. 13 Q. So is that some measure of the cash or the assets of 14 the bank? 15 A. No. It's primarily the premium paid for an asset. 16 Q. Okay. And you're saying that as Empire acquired 17 other entities it was booking this good will value from these 18 other entities, and then when the rules were changed that good 19 will no longer counted as the bank had valued it? 20 A. It was no longer included in the capital calculation 21 that the regulators required us to meet. 22 Q. So in other words, when the good will calculation</p>

<p>17</p> <p>1 was taken out, you didn't have enough money left or assets to 2 be solvent under their calculations; right? 3 A. Correct. 4 Q. When you left Empire of America, what was your next 5 position? 6 A. I was employed by the Federal Deposit Insurance 7 Corporation and assigned to the RTC as a managing agent to 8 manage banks in conservatorship. 9 Q. And how long did you work for the FDIC? 10 A. About 17 months. 11 Q. And then where did you go next? 12 A. I was a vice president at Marine Midland Banks in 13 Buffalo, New York. 14 Q. When you worked for Marine Midland as vice 15 president, what were your duties? 16 A. I was the manager of asset liability management. 17 Q. Explain what that means in layman's terms, if you 18 can. 19 A. I was similar to the Barnett position in that I 20 managed the interest rate risk, liquidity risk for both the 21 holding company and the banks that made up the system, and we 22 also were responsible for monitoring the capital levels of the</p>	<p>19</p> <p>1 A. Yes. 2 Q. And then you went directly from there to MERS? 3 A. Yes. 4 Q. What was your hiring position at MERS? 5 A. Vice president and corporate group manager. 6 Q. And how long did you hold that position? 7 A. I don't recall exactly. It was probably one or two 8 years. 9 Q. And what was your next position after that changed? 10 A. Senior vice president and corporate group manager. 11 Q. What is the corporate group? 12 A. The corporate group is the division of the company 13 that is responsible for law, finance and corporate services. 14 Q. Responsible for -- what was -- 15 A. Law, finance, accounting, corporate services. 16 Q. That's sort of like part of your job's hiring the 17 law firms that work for MERS and that sort of thing? 18 A. I don't do that directly, but the people underneath 19 me are responsible for that function. 20 Q. Is that also the portion of the company that 21 addresses the legal issues that arise regarding your business? 22 A. Yes.</p>
<p>18</p> <p>1 holding company. 2 Q. Did that involve things like derivatives and swaps 3 and that sort of investment? 4 A. That was involved in the job, yes. 5 Q. And how long did you say you were with Marine 6 Midland? 7 A. About three years. 8 Q. Is that the position that you left to go to work 9 with MERS or with Barnett? 10 A. Barnett Banks. 11 Q. Okay. You say you left Buffalo and went to 12 Jacksonville. 13 A. That's correct. 14 Q. And were you an officer of Barnett at the time that 15 you were employed by them? 16 A. I was not an officer. 17 Q. And how long were you with Barnett? 18 A. About four years. 19 Q. So you were initially hired in as a manager? 20 A. Director of asset liability management. 21 Q. Then did you occupy that same position the whole 22 time you were employed by Barnett?</p>	<p>20</p> <p>1 Q. And what -- when were you hired in to your 2 employment with MERS? 3 A. February of 1998. 4 Q. When did you become a senior vice president? 5 A. Somewhere like two years after that. 6 Q. So sometime in 2000? 7 A. Probably 1999, 2000, somewhere in that time frame. 8 I just don't remember. 9 Q. All right. And then what was your next promotion, 10 please, sir? 11 A. I've been in that position ever since. 12 Q. Okay. When did you become an officer of Mortgage 13 Electronic Registration System, Inc.? 14 A. Probably within a month or two at the first board 15 meeting after I became an employee. 16 Q. How did you become aware that there was a position 17 at MERS that you felt qualified to become hired for? How did 18 you make that connection from Barnett to MERS? 19 A. The president of the company called me. I had known 20 him socially in Jacksonville when he was employed in 21 Jacksonville. 22 Q. So you had a personal relationship with Mr. Arnold?</p>

<p style="text-align: right;">21</p> <p>1 A. Yes.</p> <p>2 Q. You two never worked together previously?</p> <p>3 A. No.</p> <p>4 Q. Do you know where Mr. Arnold was employed when you</p> <p>5 met him?</p> <p>6 A. AT&T Universal Card.</p> <p>7 Q. Was that a position he was a general counsel for?</p> <p>8 A. I don't think he was a general counsel. He was in</p> <p>9 the general counsel's office. I'm not sure what exactly his</p> <p>10 position was there.</p> <p>11 Q. In addition to your duties as senior vice president,</p> <p>12 and we talked about the fact that you're the corporate</p> <p>13 secretary, what are your duties and obligations as a corporate</p> <p>14 secretary?</p> <p>15 A. I attend the board meetings. I keep the minutes of</p> <p>16 the board meetings and whatever other assignments are given to</p> <p>17 me by the board.</p> <p>18 Q. Was one of your duties to file affidavits in</p> <p>19 litigation around the country?</p> <p>20 A. I -- from time to time I do sign affidavits on</p> <p>21 behalf of the company as an officer.</p> <p>22 Q. Any other officer you're aware of sign these</p>	<p style="text-align: right;">23</p> <p>1 description of the business of the corporation, and then</p> <p>2 there's other factual matters that I may be asked to give an</p> <p>3 affidavit on.</p> <p>4 BY MR. WOOTEN:</p> <p>5 Q. Is it also your job to appoint certifying officers</p> <p>6 of MERS?</p> <p>7 A. That authority to appoint the certifying officers</p> <p>8 has been delegated to me by the board of directors.</p> <p>9 Q. When did that happen, please, sir?</p> <p>10 A. Probably in 1998.</p> <p>11 Q. Was there a specific board resolution delegating</p> <p>12 that authority to you?</p> <p>13 A. I believe there is.</p> <p>14 Q. Are you aware of whether or not that resolution's</p> <p>15 been produced during discovery in this case?</p> <p>16 A. I have no idea.</p> <p>17 MR. WOOTEN: Off the record for a second.</p> <p>18 THE VIDEOGRAPHER: Going off record at 9:36:04.</p> <p>19 (Discussion off the record.)</p> <p>20 THE VIDEOGRAPHER: We're back on record at 9:36:42.</p> <p>21 BY MR. WOOTEN:</p> <p>22 Q. Were you present at the meeting where you were</p>
<p style="text-align: right;">22</p> <p>1 affidavits routinely?</p> <p>2 A. From time to time if I'm not available, one of the</p> <p>3 other officers may sign an affidavit.</p> <p>4 Q. That -- would you agree that that's generally part</p> <p>5 of your job duties to file these affidavits in the various</p> <p>6 courts around the country?</p> <p>7 A. I don't know if it's, if that's specifically part of</p> <p>8 my job, but it's something that I do do from time to time.</p> <p>9 Q. Is it fair to say that affidavits such as the one</p> <p>10 filed in the Henderson case are informational affidavits that</p> <p>11 your company uses to try to describe what it does do to the</p> <p>12 various courts where these lawsuits are filed?</p> <p>13 MR. RAGSDALE: Object to the form.</p> <p>14 THE WITNESS: I'm sorry. I don't understand your</p> <p>15 question.</p> <p>16 BY MR. WOOTEN:</p> <p>17 Q. Would you characterize these affidavits in general</p> <p>18 as informational or descriptive as an attempt to explain to</p> <p>19 the court what your company's function and purpose is?</p> <p>20 MR. RAGSDALE: Object to the form.</p> <p>21 THE WITNESS: There are aspects of some of the</p> <p>22 affidavits from time to time that there does contain a general</p>	<p style="text-align: right;">24</p> <p>1 appointed or given this or delegated this responsibility?</p> <p>2 A. Yes.</p> <p>3 Q. So you heard the discussion and rationale for making</p> <p>4 that decision?</p> <p>5 MR. RAGSDALE: Which decision?</p> <p>6 BY MR. WOOTEN:</p> <p>7 Q. To appoint you or delegate that authority to you?</p> <p>8 A. I don't recall the specifics of the meeting at, at,</p> <p>9 at that time.</p> <p>10 Q. You would have made the minutes of that meeting,</p> <p>11 wouldn't you?</p> <p>12 A. I would have, yes.</p> <p>13 Q. Would those minutes have contained that information?</p> <p>14 A. Possibly. I don't recall.</p> <p>15 Q. Do you make any recording or in any way preserve</p> <p>16 those meetings so that you can later type your minutes or</p> <p>17 prepare your minutes?</p> <p>18 A. Generally I take notes at the meeting, and the</p> <p>19 minutes are produced from my notes.</p> <p>20 Q. And then the minutes are approved at the next</p> <p>21 meeting; is that correct?</p> <p>22 A. Yes, it is.</p>

25

1 Q. As we sit here today, do you have any idea how many
2 people have been appointed officers or certifying officers of
3 MERS?
4 **A. I do not have a count.**
5 Q. Do you have an approximation?
6 MR. RAGSDALE: Do you mean over the long period of
7 time or that are currently officers?
8 BY MR. WOOTEN:
9 Q. Currently.
10 **A. I don't have any -- I've never stopped to count them**
11 **up.**
12 Q. Is there a computer program or system that monitors
13 that information for your company?
14 **A. We do have a system that monitors who are the**
15 **certifying officers, yes.**
16 Q. Is that broken down by corporation or entity
17 requesting that information, or is that just an alpha list A
18 through Z of everybody who's ever been appointed?
19 **A. It's generally by the member's organizational ID**
20 **that's assigned by our company.**
21 Q. And does it -- does this system also track changes
22 to those certifying officers such as additions and deletions?

26

1 **A. We do have records of the additions and deletions.**
2 Q. Is it fair to say that currently there are thousands
3 of active certifying officers of MERSCORP or MERS?
4 **A. I think it's fair to say there's probably more than**
5 **a thousand, yes.**
6 Q. So -- and maybe I didn't speak up. I said is it
7 fair to say that there are currently thousands of certifying
8 officers of MERS?
9 **A. There are thousands of officers, but I don't know**
10 **how many.**
11 Q. Okay. With respect to the certifying officer
12 process, who may be a certifying officer of MERS?
13 **A. Who may be a -- they need to be officers of members**
14 **of MERS.**
15 Q. Let's talk about that designation. Officers of
16 members of MERS. That's a recent development, isn't it?
17 MR. RAGSDALE: Object to the form.
18 THE WITNESS: By recent, how, how much -- what do
19 you mean?
20 BY MR. WOOTEN:
21 Q. Last year or so you've changed from just employees
22 of members of MERS to officers of members of MERS; right?

27

1 **A. I would say that it was our expectation throughout**
2 **the history of MERS that generally certifying officers would**
3 **be officers of our members. However, it's only been in the**
4 **last 18 months or two years that we changed, made that a**
5 **specific requirement.**
6 Q. So I'm assuming that there would have been a
7 significant drop in the number of certifying officers of MERS
8 when you instituted that requirement, wouldn't there?
9 MR. RAGSDALE: Object to the form.
10 THE WITNESS: I don't know.
11 BY MR. WOOTEN:
12 Q. Your records would indicate that, wouldn't it?
13 **A. Our records would indicate what the change was. I**
14 **don't know if it was a drop, increase or stayed the same.**
15 Q. When you speak of officers, you're generally
16 speaking of corporate officers; right?
17 **A. We're talking about officers of a corporation, yes.**
18 Q. All right. And you're not talking about -- I mean
19 you're talking about people who are designated to act on
20 behalf of the corporation?
21 **A. People who are elected officers of the respective**
22 **organizations.**

28

1 Q. And prior to this change it was pretty much anyone
2 that the member designated, wasn't it?
3 MR. RAGSDALE: Object to the form.
4 THE WITNESS: I would have no idea what, to
5 generalize that, that characterization of what they were.
6 BY MR. WOOTEN:
7 Q. You have a form that's available online to request
8 appointment of certifying officers; isn't that correct?
9 **A. There is a process to supply us the names of the**
10 **people that the member would like to be elected officers of**
11 **Mortgage Electronic Registration Systems, Inc. that is on our**
12 **web site, yes.**
13 Q. And that web site information is sort of a fill-in-
14 the blank, isn't it?
15 **A. I'm sorry. I don't understand.**
16 Q. Basically the web site form, the member, if I'm
17 correct, basically fills in their membership ID number, their
18 name, the persons they'd like to be appointed; right?
19 **A. In addition to -- that infor- -- yes, that**
20 **information is requested, but we also request the officer**
21 **position they occupy at their member organization.**
22 MR. WOOTEN: Do you have labels?

<p style="text-align: right;">29</p> <p>1 THE REPORTER: Yes.</p> <p>2 MR. WOOTEN: Grab a handful of them. I'm going to</p> <p>3 mark this as Deposition Exhibit 1.</p> <p>4 (Hultman Deposition Exhibit No. 1 was marked for</p> <p>5 identification.)</p> <p>6 MR. WOOTEN: I hope I did a little bit better job of</p> <p>7 making copies today, Barry, than the last time we were up</p> <p>8 here.</p> <p>9 BY MR. WOOTEN:</p> <p>10 Q. Look at this, please, sir. Is this the corporate</p> <p>11 resolution form that we were just discussing?</p> <p>12 A. Yes.</p> <p>13 Q. Is this the current state of the form?</p> <p>14 A. Yes.</p> <p>15 Q. On the second page which on, this is front and back</p> <p>16 copied, it -- as I was mentioning earlier, it's sort of a</p> <p>17 fill-in-the blank page, indicates there's a box for the</p> <p>18 applicant to indicate who it's -- who it is. It states that</p> <p>19 the attached list of candidates are employees of that member.</p> <p>20 That's at the top under corporate resolution; is that right?</p> <p>21 A. I'm sorry. Where are you referring to?</p> <p>22 Q. Top of the page where it says corporate resolution</p>	<p style="text-align: right;">31</p> <p>1 it.</p> <p>2 Q. I mean some of these companies may ask 20 or 30</p> <p>3 people at a time or even more; right?</p> <p>4 A. Yes.</p> <p>5 Q. And that's not an uncommon occurrence, is it?</p> <p>6 A. For the larger members it generally has more than</p> <p>7 just ten, ten officers, yes.</p> <p>8 Q. Sure. Can you tell me where on this form it says</p> <p>9 that there is a requirement that these persons be named, be</p> <p>10 officers of the member?</p> <p>11 A. It's not on the form. It's in our rules.</p> <p>12 Q. Okay. And I just want to make sure I'm clear about</p> <p>13 something. In all of the work that MERS does for its members,</p> <p>14 MERS is allegedly acting as an agent; right, or a nominee?</p> <p>15 MR. RAGSDALE: Object to the form.</p> <p>16 MR. BROCHIN: Object to the form.</p> <p>17 THE WITNESS: I'm sorry. Could you und -- restate</p> <p>18 the question, please?</p> <p>19 BY MR. WOOTEN:</p> <p>20 Q. Sure. Generally in all the work that MERS is doing</p> <p>21 for its members you're acting as a nominee or limited agent or</p> <p>22 agent; is that right?</p>
<p style="text-align: right;">30</p> <p>1 there's a fill-in-the-blank?</p> <p>2 A. Yes. That's the --</p> <p>3 Q. -- where the member's --</p> <p>4 A. That's the name of the member, yes.</p> <p>5 Q. -- supposed to go?</p> <p>6 A. Yes.</p> <p>7 Q. Then down at the bottom it has some slots to at</p> <p>8 least initially looks like enter up to eight names; is that</p> <p>9 right?</p> <p>10 A. Well, ten.</p> <p>11 Q. Bottom of that same page?</p> <p>12 A. Well, it's ten.</p> <p>13 Q. It carries over?</p> <p>14 A. Right.</p> <p>15 Q. So is there a capacity to put more than ten in? If</p> <p>16 a person fills that, does it give them another prompt where</p> <p>17 they can add more names than just ten?</p> <p>18 A. I don't know how they handle -- there are times when</p> <p>19 they do ask for more than ten. I'm not sure what the process</p> <p>20 is about getting the other names beyond this page.</p> <p>21 Q. Is it --</p> <p>22 A. But I know that they do it. There's a way of doing</p>	<p style="text-align: right;">32</p> <p>1 MR. RAGSDALE: Object to the form.</p> <p>2 THE WITNESS: I wouldn't characterize all the work</p> <p>3 that we do in that fashion. We are an agent when we serve as</p> <p>4 mortgagee for our members.</p> <p>5 BY MR. WOOTEN:</p> <p>6 Q. And your authority to act flows through your</p> <p>7 membership agreement; right?</p> <p>8 A. Among other things, yes.</p> <p>9 Q. Other than your membership agreement where do you</p> <p>10 obtain authority to act?</p> <p>11 A. The security instrument.</p> <p>12 Q. Well, let's talk about that since you mention it.</p> <p>13 The security instrument is a standard form; right?</p> <p>14 A. It's a uniform instrument.</p> <p>15 Q. Right. And it's typically a form. More or less</p> <p>16 most of them are approved by the lender, but it generally is</p> <p>17 basic -- the language was the language agreed upon by MERS and</p> <p>18 its members; right?</p> <p>19 A. No.</p> <p>20 Q. Okay. Where did the appointing language come from?</p> <p>21 A. The uniform instrument is a uniform instrument that</p> <p>22 was promulgated by primarily Fannie Mae and Freddie Mac for</p>

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1 **use for loans that would be sold to those institutions.**
2 Q. Okay. And that is when you look across the bottom
3 of a mortgage and it says this is a Fannie/Freddie uniform
4 instrument with MERS; is that right?
5 **A. There are lots of different forms of the uniform**
6 **instrument. When that designation is put on there, there is**
7 **language in there that relates to MERS serving as mortgagee,**
8 **yes.**
9 Q. Sure. And so that is a -- the choice of the wording
10 of that language according to MERS is Fannie and Freddie's
11 language; is that right?
12 MR. RAGSDALE: Object to the form.
13 MR. BROCHIN: Object to the form.
14 THE WITNESS: I'm not sure I understand the
15 question.
16 BY MR. WOOTEN:
17 Q. The enabling language or the nominating language was
18 not determined by MERS?
19 MR. RAGSDALE: Same objection.
20 THE WITNESS: The language in the uniform
21 instruments or uniform form of instruments is language that
22 was developed primarily by Fannie Mae and Freddie Mac and

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1 their legal counsel.
2 BY MR. WOOTEN:
3 Q. And what responsibility or role or right did MERS
4 have in that language?
5 **A. I believe that we were --**
6 MR. RAGSDALE: Object to the form.
7 THE WITNESS: -- we reviewed the language with them
8 from, and they, we were able to give them comments, but the
9 ultimate decision was theirs.
10 BY MR. WOOTEN:
11 Q. Do you recall when this language was promulgated?
12 **A. Which language are we speaking about?**
13 Q. The language in the uniform instrument nominating
14 MERS as the original mortgagee.
15 **A. I'm not following your question.**
16 Q. At some point -- let's just back away for just a
17 second to make this clear. The original concept of MERS was
18 to take an assignment of the original lien to MERS so that
19 there didn't have to be any further assignments recorded;
20 right?
21 MR. BROCHIN: Object to the form.
22 MR. RAGSDALE: Same objection.

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1 THE WITNESS: I believe that prior to the agencies
2 permitting us to serve as original mortgagee in the security
3 instrument the process envisioned that an assignment would be
4 made from a MERS member to MERS, yes.
5 BY MR. WOOTEN:
6 Q. Okay. And so originally there were no MERS as
7 original mortgagee mortgages?
8 **A. Originally in what time frame?**
9 Q. When MERS first organized and became a corporation.
10 **A. Well, even today there are times when MERS is not**
11 **the mortgagee on the original mortgage.**
12 Q. Sure. That -- I don't disagree with that. I'm just
13 saying that when the company was formed, MERS as original
14 mortgagee was not the original concept, was it?
15 **A. Okay. I can accept that characterization.**
16 Q. Okay. And at some point after that someone came up
17 with the concept of MERS being the original mortgagee so that
18 no assignments would ever be filed; right?
19 **A. I wouldn't say that no assignments would ever be**
20 **filed, but that there was a -- there did come a time when the**
21 **idea of MERS serving as the original mortgagee in the security**
22 **instrument was proposed to Fannie Mae and Freddie Mac and**

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1 **Ginnie Mae.**
2 Q. And do you have an idea of when that proposal was
3 made?
4 **A. I believe it was in the fall of 1997.**
5 Q. Are you familiar with who made that proposal to
6 Fannie Mae now, the GSE? I mean who in MERS came up with the
7 idea?
8 **A. I'm not -- I wasn't there at the time. So I wasn't**
9 **part of those discussions.**
10 Q. Do you know if Mr. Arnold was part of that group?
11 **A. Yes, he was.**
12 Q. And when did Fannie or Freddie approve the use of
13 MERS as original mortgagee?
14 **A. I believe it was in the spring of 1998.**
15 Q. And were you employed with MERS --
16 **A. I was.**
17 Q. -- at that time? Were you part of any of the
18 discussions of how this would take place?
19 **A. I'm not sure I understand your question.**
20 Q. Were you part of any of the discussions of how the
21 MERS as original mortgagee instrument would be implemented?
22 **A. I was part of some of those discussions, yes.**

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1 Q. Were there any corporate records made of those
2 meetings and discussions?

3 **A. I would have to go back and look.**

4 Q. Would there be any entries in the minutes of the
5 board of directors where this was discussed?

6 **A. I would have to review the minutes from that time
7 frame to answer the question.**

8 Q. Sure. I understand that Fannie and Freddie were
9 instrumental in the formation of MERS in the beginning. Is
10 that a fair characterization?

11 MR. RAGSDALE: Object to the form.

12 THE WITNESS: I'm not sure I understand your
13 question.

14 BY MR. WOOTEN:

15 Q. Fannie and Freddie were both original members of
16 MERS when it was incorporated, weren't they?

17 **A. Yes.**

18 Q. And they both invested in MERS, didn't they?

19 **A. The, the original MERS was not a stock corporation.
20 It was a membership corporation, and they did make
21 contributions to that organization.**

22 Q. Sure. And that was back when the company was

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1 initially formed in the mid '90s; right?

2 **A. I'm sorry?**

3 Q. That was back when MERS was originally formed in the
4 mid '90s; correct?

5 **A. They made those contributions in 1996 and 1997.**

6 Q. And MERS converted to a stock corporation in 1998;
7 is that right?

8 **A. Yes.**

9 Q. Do you know when the first MERS as mortgagee
10 mortgage was actually issued?

11 MR. RAGSDALE: You mean as original mortgagee?

12 BY MR. WOOTEN:

13 Q. Yeah, MERS as original mortgagee.

14 **A. I'm sorry. Would you repeat the question.**

15 Q. Sure. Do you know when the first -- how about this.
16 Your company refers to MERS as original mortgagee as a MOM
17 mortgage; is that right?

18 **A. Right.**

19 Q. Can we refer to it as a MOM mortgage to save my
20 voice?

21 **A. Fair enough. Sure.**

22 Q. Do you know when the first MOM mortgage was issued?

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1 **A. I don't know the exact date, but it was probably in
2 the summer of 1998.**

3 Q. And how long before it was widely used?

4 **A. If you could tell me what you mean by widely used.**

5 Q. How long before there were a hundred thousand MOM
6 mortgages? Do you have an idea?

7 **A. Probably within the first 18 months.**

8 Q. Do you know how long it took for you to reach a
9 million?

10 **A. I do not recall that time frame.**

11 Q. Did you track MOM mortgages as opposed to mortgages
12 which had been assigned to MERS?

13 **A. Yes.**

14 Q. Okay. And in, at 1998 when there were, or when
15 there were approximately a hundred thousand MOM mortgages do
16 you have an idea of how many mortgages had been assigned to
17 MERS?

18 **A. At that time? I don't recall.**

19 Q. Would it have been more --

20 **A. Absolutely.**

21 Q. -- or less? So there would have been more mortgages
22 assigned to MERS than MOM mortgages in 1998?

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1 **A. Yes.**

2 Q. Do you still keep separate records of mortgages that
3 are assigned to MERS as opposed to MOM mortgages?

4 **A. Yes.**

5 Q. Okay. Do you know what the current numbers are as
6 for MOM mortgages?

7 **A. I believe that the ratio is probably about 97
8 percent to three percent.**

9 Q. Ninety-seven percent MOM?

10 **A. Yes.**

11 Q. And that is out of --

12 **A. Excuse me. It's more like probably 94 percent.**

13 Q. Ninety-four percent MOM mortgages?

14 **A. Yes, yes.**

15 Q. And that is -- when we took Mr. Arnold's deposition
16 on the 25th, I believe he testified that the last numbers he
17 had seen there were about 62 million MERS mortgages on
18 September 25th. Does that sound about right?

19 **A. There were 62, approximately a little more than 62
20 million mortgages that had been registered on the MERS system.**

21 Q. And your testimony is that 94 percent of those
22 approximately would be MOM mortgages?

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1 **A. Around, a little more than three million of those**
2 **were not MOM mortgages.**
3 Q. Okay.
4 **A. So whatever that ratio works out to be.**
5 Q. Sure. Do you have any statistics as to the
6 percentage of mortgages which are originated which are not
7 either MOM mortgages or assigned to MERS?
8 **A. I'm sorry. Could you repeat the question?**
9 Q. Sure. Do you have an estimate or any statistics on
10 the approximate number of mortgages that are originated which
11 are either not a MOM mortgage or are not assigned to MERS?
12 MR. RAGSDALE: Do you mean the number of mortgages
13 that aren't registered on the MERS system?
14 BY MR. WOOTEN:
15 Q. Right.
16 **A. We do have some information about that.**
17 Q. Okay. Do you have an idea of approximately what
18 that number is? On a -- do you -- and let me -- maybe I
19 should ask it a different way. How do you gather that
20 information? Is that based on originations?
21 **A. There are industry available dollar figures of**
22 **originations during each quarter that we have access to.**

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1 Q. Okay. And does that dollar value also extrapolate
2 the approximate number of mortgages?
3 **A. Those estimates do not.**
4 Q. There's some other tool that you all use to come up
5 with the number of mortgages based on that quarterly
6 information?
7 **A. Yes.**
8 Q. And then from that you're able to extrapolate
9 approximately how many are not on the MERS system?
10 **A. Yes.**
11 Q. What percentage would you say are on the MERS system
12 currently?
13 **A. Currently? Are on the system or --**
14 Q. Yeah. What percentage are on the system?
15 MR. RAGSDALE: Just so we're clear, we're talking
16 about what percentage of the total number of mortgages are on
17 the MERS system, if you know.
18 THE WITNESS: Well, are you talking about active
19 loans on the system or how many loans are registered during a
20 given period of time?
21 BY MR. WOOTEN:
22 Q. How do you all track it?

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1 **A. Both.**
2 Q. Both, okay. Well, let's start with how many are on
3 the system.
4 **A. There are currently about 31 million active loans on**
5 **the system.**
6 Q. Okay. And then under the other category you
7 indicated talking about the total number, what was the other
8 measurement that you used?
9 **A. We look at how many loans that are registered during**
10 **a given period of time as to how many loans were originated.**
11 Q. Okay. And so would you have that information --
12 **A. Yes.**
13 Q. -- currently for 2009?
14 **A. Yes.**
15 Q. And what is that?
16 **A. Somewhere in excess of 50 percent.**
17 Q. And of that 50 percent, would that percentage of MOM
18 mortgages hold that we discussed earlier would be 94 percent?
19 **A. It's in the high 90s percentage.**
20 Q. Now, we talked a little bit about this agency
21 language that was inserted in these uniform instruments, and
22 you indicate that that language, the enabling language,

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1 nominating language, grants you independent authority to act;
2 is that correct?
3 MR. RAGSDALE: Object to form.
4 THE WITNESS: I'm not sure I understand your
5 question.
6 BY MR. WOOTEN:
7 Q. Well, let's just talk about in this context. Can
8 MERS go out at any time and foreclose on any MERS mortgage
9 that's in its name?
10 **A. No.**
11 MR. BROCHIN: Object to the form.
12 BY MR. WOOTEN:
13 Q. So when we start talking about the enabling
14 language, vis-a-vis your status as an agent of the lender;
15 right?
16 **A. I'm sorry. I don't understand your question.**
17 MR. RAGSDALE: Object to form.
18 BY MR. WOOTEN:
19 Q. Well, I wasn't quite through with it.
20 **A. Okay. Sorry.**
21 Q. I'm sorry. We talked about the fact that you're
22 acting generally according to the language of the instrument

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1 as nominee of the lender.
2 MR. RAGSDALE: Object to the form.
3 BY MR. WOOTEN:
4 Q. Right?
5 **A. Again, I, I don't understand your question.**
6 Q. Have you looked at the uniform instrument,
7 Mr. Hultman?
8 **A. I have.**
9 Q. Okay. And you understand that all the uniform
10 instruments say that MERS will be the mortgagee as nominee of
11 the lender; right?
12 **A. I would -- that's a generalization, yes.**
13 Q. Okay. Are there any -- does it say anything else?
14 **A. If you're talking about the uniform instruments,**
15 **that's generally the language, but there are other mortgages**
16 **that where MERS has been made mortgagee that may have**
17 **different language in it.**
18 Q. Sure. I'm talking about the MOM mortgage right now.
19 **A. MOM is a concept about us being the mortgagee in the**
20 **security instrument, and there are multiple forms of security**
21 **instruments that are used that are not necessarily uniform**
22 **instruments and may have different language.**

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1 Q. With respect to the MERS as mortgagee language in a
2 MOM mortgage, is there any language other than the standard
3 language that we went over and every MERS mortgage that we
4 went over previously in Mr. Arnold's deposition?
5 MR. BROCHIN: Object to the form of the question.
6 MR. RAGSDALE: Objection.
7 THE WITNESS: Again, I don't understand your
8 question because I'm --
9 BY MR. WOOTEN:
10 Q. Sure. Let's go off the record for just a second.
11 THE VIDEOGRAPHER: Going off record at 10:05:46.
12 (A recess was taken.)
13 (Hultman Deposition Exhibit No. 2 was marked for
14 identification.)
15 THE VIDEOGRAPHER: We're back on record at 10:23:12.
16 BY MR. WOOTEN:
17 Q. Mr. Hultman, we took a small break to get a copy of
18 this mortgage. That's Deposition Exhibit No. 2. I'll
19 represent to you that that is a copy of my client's mortgage,
20 and specifically paragraph C says that MERS is Mortgage
21 Electronic Registration Systems, Inc. MERS is a separate
22 corporation that is acting solely as a nominee for lender and

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1 lender's successors and assigns. MERS is the mortgagee under
2 the security instrument. MERS is organized and existing under
3 the laws of Delaware and has an address and telephone number
4 of P.O. Box 2026, Flint, Michigan, and then it gives a
5 telephone number; right?
6 **A. That's what it says.**
7 Q. Now, the enabling language with respect to
8 foreclosure is also contained in this instrument; correct?
9 **A. I believe so.**
10 Q. Give me just a second. We're dealing with some
11 small language.
12 MR. WOOTEN: Barry, is this a complete copy of this?
13 MR. RAGSDALE: You know, I would hope so, but I
14 don't know. It's the only copy I have.
15 MR. WOOTEN: I hope so, too. I know we went over
16 this in the other deposition, and I thought it had other
17 attachments.
18 MR. RAGSDALE: I may have another copy on my
19 computer if we need to --
20 BY MR. WOOTEN:
21 Q. On, there's a fax line across the top. It says page
22 08 out on the top right. Do you see that?

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1 **A. I do.**
2 Q. And then under the heading there that says transfer
3 of rights and property, do you see that section?
4 **A. Yes.**
5 Q. Under, I would call that Roman numeral 2, it says
6 performance as far as covenants and agreements under this
7 security instrument and the note, and then it says for this
8 purpose borrower irrevocably mortgages, grants and conveys to
9 MERS solely as nominee for lender and lender's successors and
10 assigns and to the successors and assigns of MERS the power of
11 sale of the following described property; right? Is that what
12 that says?
13 **A. That's what it says there.**
14 Q. And that's part of the enabling language that you
15 were talking about on the uniform instruments; correct?
16 **A. I don't know that I was talking about it, but that**
17 **is the conveyance to MERS, yes.**
18 Q. All right. And then down below the legal
19 description there is a section down there, and it looks like
20 it's about the third sentence, that sentence says borrower
21 understands and agrees that MERS holds only legal title to the
22 interest granted by borrower in this security instrument, but

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1 if necessary to comply with the law or custom MERS as nominee
2 for lender and lender's successors and assigns has the right
3 to exercise any or all of those interest including, but not
4 limited to, the right to foreclose and sale of the property
5 and to take any action required of lender including, but not
6 limited to, releasing and cancelling the security instrument;
7 right?

8 **A. What's the question?**

9 Q. That's, that's, that's, that's the language, those
10 two sections are all of the language that we talked about
11 that's the enabling language for your actions in these
12 instruments; right?

13 MR. RAGSDALE: Object to form.

14 MR. BROCHIN: Object to the form.

15 THE WITNESS: I would agree that that's the
16 operative language that conveys the property interest to MERS.
17 BY MR. WOOTEN:

18 Q. Okay. Now, there is no other language in any
19 instrument, be it the debt instrument or the security
20 instrument, that deals with MERS rights, is there?

21 MR. RAGSDALE: Object to the form.

22 THE WITNESS: Are you talking about this particular

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1 form, the mortgage?

2 BY MR. WOOTEN:

3 Q. Yes.

4 **A. I don't know. I haven't looked through the whole**
5 **thing recently.**

6 Q. Is the language to your knowledge in a MERS as
7 original mortgagee mortgage different in any other uniform
8 instrument than the language that is here?

9 **A. Yes.**

10 Q. Okay. And where would that be different?

11 **A. Well, if we're talk -- I mean there are multiple**
12 **different forms of instruments where MERS has been made the**
13 **mortgagee. They're not all consistent. These forms have**
14 **changed over time. There are other forms that relate to where**
15 **if it's not a VA loan, where it's an FHA loan or where it's a**
16 **loan that goes to Fannie, Freddie or Ginnie or -- excuse me --**
17 **Fannie or Freddie, there are different versions of the**
18 **language for different states. So it's hard to characterize**
19 **or generalize how much this language is different or not.**

20 Q. Is there any language in any instrument you're aware
21 of that authorizes MERS to act in any capacity other than as
22 nominee for the lender?

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1 MR. RAGSDALE: Object to the form.

2 THE WITNESS: There are language -- there are other
3 forms of instruments that have, I have seen where they use a
4 different word than nominee. They might use the word agent or
5 they may use for the benefit of the lender. So there are
6 other language that they may use, but it generally is
7 reflective of a nom-, an agency capacity for, on behalf of the
8 holder or the beneficial owner of the loan.

9 BY MR. WOOTEN:

10 Q. Let's talk about this agency capacity. I mentioned
11 earlier, for instance, in the Henderson case, you can't just
12 go out and foreclose on Miss Henderson just on a whim; right?

13 MR. BROCHIN: Object to the form of the question.

14 THE WITNESS: I don't understand what you mean.

15 BY MR. WOOTEN:

16 Q. I mean you've got a mortgage that says MERS is the
17 mortgagee. There has to be a reason for a foreclosure; right?

18 MR. RAGSDALE: Object to the form.

19 THE WITNESS: If you mean that can we foreclose if
20 the borrower is not in default, I would say we cannot.

21 BY MR. WOOTEN:

22 Q. Yeah. And just so we're clear, with respect to Miss

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1 Henderson's loan, there has never been a lien recorded by a
2 lender, has there?

3 **A. I have no idea of what has or hasn't been done in**
4 **her case other than what's here.**

5 Q. Right. And she -- this is a MERS as original
6 mortgagee loan; correct?

7 **A. It's a loan where MERS is the mortgagee.**

8 Q. It's a MOM loan?

9 **A. That's what I said.**

10 Q. Right, okay. And other than the lien filed by MERS
11 there's been no other lien in association with this mortgage
12 loan?

13 **A. I don't understand what you mean.**

14 Q. No one other than MERS has a lien filed with respect
15 to this mortgage note?

16 **A. I don't know that.**

17 Q. When you look back at the beginning of this form, it
18 says that the, on the page that is numbered 07 on the top on
19 the fax line it says lender is GMAC Mortgage Corporation. Do
20 you see that under paragraph D?

21 **A. I do see it.**

22 Q. As far as the records that you have shown, have been

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1 shown as far as records that are here, there's never been a
2 lien filed in the name of GMAC Mortgage Corporation, has
3 there?
4 **A. I wouldn't char -- I wouldn't accept that**
5 **characterization.**
6 Q. There is no mortgage where GMAC is the mortgagee, is
7 there?
8 **A. MERS is the mortgagee of this mortgage. Whether**
9 **there's another mortgage where GMAC is the mortgagee I don't**
10 **know.**
11 Q. Right. That's my point. MERS is the mortgagee with
12 respect to this loan; right?
13 **A. Yes.**
14 Q. And MERS has never loaned them any money?
15 **A. No.**
16 Q. And MERS is not owed any money?
17 **A. I don't know that I would accept that**
18 **characterization.**
19 Q. Has Miss Henderson ever made a payment to MERS?
20 **A. Not that I'm aware of.**
21 Q. Is she required to make any payments to MERS?
22 **A. No. She has to pay the lender.**

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1 Q. Right. And the lender is GMAC or their designated
2 agent; right?
3 **A. I believe so, yes.**
4 Q. And isn't it true that in all 62 million MERS as
5 mortgagee mortgages that there is no requirement of any of
6 those borrowers to make any payments to MERS?
7 **A. I wouldn't accept that characterization.**
8 Q. Does MERS have a servicing department?
9 **A. No.**
10 Q. Does MERS accept payments?
11 **A. We do get payments from time to time.**
12 Q. Is there any contract between MERS and any lender to
13 receive payments on their behalf?
14 **A. I don't know that I can answer that question.**
15 MR. RAGSDALE: We're talking about mortgage
16 payments, right?
17 BY MR. WOOTEN:
18 Q. Mortgage payments. Mortgage payments.
19 **A. In what circumstances?**
20 Q. In any circumstance.
21 **A. There are times when and if we foreclose, they are**
22 **required to remit the payment to us.**

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1 Q. And you're not entitled to any of the proceeds of
2 those payments, are you?
3 **A. I don't -- I don't understand what you mean.**
4 Q. You don't put those payments into a MERS bank
5 account, do you?
6 **A. If we were to receive the funds, sometimes they go**
7 **into our bank account, but if you mean if we ultimately remit**
8 **the payment to the beneficial owner, that's what we would do.**
9 Q. That's my point, Mr. Hultman. Whether or not
10 someone mistakenly makes a check out to MERS, MERS is not
11 entitled to any money from any loan in any mortgage where it
12 serves as mortgagee, is there?
13 MR. RAGSDALE: Object to form.
14 THE WITNESS: Again, I wouldn't agree with that
15 characterization.
16 BY MR. WOOTEN:
17 Q. Are you familiar with a lawsuit in Florida named
18 Sandy Trent versus MERS --
19 **A. Yes.**
20 Q. -- a few years ago? Are you familiar with the fact
21 that Mr. Arnold gave a deposition in that case --
22 **A. I --**

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1 Q. -- as the CEO and 30(b)(6) representative of MERS?
2 **A. I'm aware of that fact, yes.**
3 Q. And you're also aware that Mr. Arnold was deposed in
4 this lawsuit; right?
5 **A. Yes.**
6 Q. Does MERS own any promissory note in any mortgage
7 where it serves as the mortgagee?
8 **A. I'm sorry. I don't understand your question.**
9 Q. Does MERS own any promissory note in which MERS
10 serves as mortgagee of record?
11 **A. Would -- if you can explain to me what you, define**
12 **what you mean by own.**
13 Q. Well, let's talk about that. What I mean by own,
14 sir, is we've already established that MERS is never a lender
15 under any of these mortgages; correct?
16 **A. Under which mortgages are we speaking?**
17 Q. Under any MERS as mortgagee mortgage MERS has never
18 served as a lender, has it?
19 **A. I agree.**
20 Q. And you've told the State of Nebraska that in a
21 lawsuit involving their determination initially that you were
22 a mortgage broker; right?

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1 MR. RAGSDALE: Objection.
2 MR. BROCHIN: Object to the form of the question.
3 THE WITNESS: I don't recall what your -- I don't
4 understand what you mean.
5 BY MR. WOOTEN:
6 Q. Do you remember the litigation in the State of
7 Nebraska about whether or not MERS should register as a
8 mortgage broker?
9 **A. I remember that we had litigation.**
10 Q. Okay. And do you remember that the contention of
11 the State of Nebraska was that MERS should qualify as a
12 mortgage broker because it acquired loans because of its
13 nominee status?
14 MR. RAGSDALE: Let me at this point interpose this
15 objection, Nick. I'm going to instruct him not to answer the
16 question to the extent that he learned that from his legal
17 counsel, but if he has independent personal knowledge other
18 than what he might have derived from his legal counsel, then
19 you can answer that question.
20 THE WITNESS: I don't recall the exact
21 characterization that the state made in that case.
22 BY MR. WOOTEN:

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1 Q. All right. And you would agree that MERS filed an
2 appeal of that trial court's decision that it was a mortgage
3 broker?
4 **A. We did file an appeal.**
5 Q. Okay. And would you agree that the reason for that
6 appeal was that MERS disagreed with its trial court's
7 determination that it was a mortgage broker?
8 MR. RAGSDALE: Object to the form.
9 THE WITNESS: My, my recollection of that case is
10 that MERS was not required, it was our position that MERS was
11 not required to get a license to be a mortgage broker in the
12 State of Nebraska.
13 BY MR. WOOTEN:
14 Q. And that was because in the State of Nebraska MERS,
15 as in every other state, MERS does not acquire mortgage loans?
16 MR. RAGSDALE: Object to the form.
17 THE WITNESS: I don't remember what the, what the
18 definition was in that state.
19 BY MR. WOOTEN:
20 Q. Okay. And you would agree with me that your status
21 as mortgagee of record in a nominee capacity is not acquiring
22 a mortgage loan, is it?

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1 MR. RAGSDALE: Object to form.
2 THE WITNESS: I would not agree with that
3 characterization.
4 BY MR. WOOTEN:
5 Q. Hmm. Okay. So it is your testimony then that by
6 virtue of being a mortgagee you are acquiring a mortgage loan?
7 **A. I didn't say that.**
8 MR. BROCHIN: Object to the -- excuse me. Object to
9 the form of the question.
10 BY MR. WOOTEN:
11 Q. What exactly is it, Mr. Hultman, that MERS believes
12 it has when it has the status of mortgagee of record in a
13 nominee capacity?
14 **A. We're the mortgagee. We're the beneficial owner of
15 the note.**
16 Q. I'm sorry. Can you repeat that?
17 **A. MERS is the mortgagee as agent or nominee for the
18 benefit of the holder or owner of the beneficial interest in
19 the loan.**
20 MR. WOOTEN: Can you repeat his previous answer?
21 Can you read that back, please? Not that answer but the one
22 before it.

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1 THE REPORTER: "We're the mortgagee. We're the
2 beneficial owner of the note."
3 MR. RAGSDALE: I don't think that's what he said. I
4 think he said "for the beneficial owner."
5 MR. WOOTEN: No. That was two questions, two
6 answers back. That was the first answer he gave, then I asked
7 him to repeat it, right? Well, what you just read, read that
8 again, and then read the next.
9 THE REPORTER: Okay.
10 MR. RAGSDALE: Could you also read the question and
11 the answer.
12 THE REPORTER: Okay. The question, "What exactly is
13 it, Mr. Hultman, that MERS believes it has when it has the
14 status of mortgagee of record in a nominee capacity?
15 "Answer: We're the mortgagee. We're the beneficial
16 owner of the note.
17 "I'm sorry. Can you repeat that?
18 "Answer: MERS is the mortgagee as agent or nominee
19 for the benefit of the holder or owner of the beneficial
20 interest in the loan."
21 MR. BROCHIN: I don't believe he said --
22 MR. RAGSDALE: I don't think he said "we're the

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1 beneficial owner," but this might be a good time. We didn't
2 talk about usual stipulations in this case. I do believe,
3 with all due respect, that Mr. Hultman would like to read and
4 sign this deposition.
5 MR. WOOTEN: I'm sure he would now.
6 BY MR. WOOTEN:
7 Q. Mr. Hultman, I understand that the party line for a
8 long time has been that you are the mortgagee of record as a
9 nominee for the beneficial owner of a promissory note. Is
10 that a fair statement?
11 MR. RAGSDALE: Object to the form.
12 MR. BROCHIN: I object to the form.
13 MR. RAGSDALE: You can ignore the part about --
14 THE WITNESS: I don't know what you mean by party
15 line.
16 MR. RAGSDALE: You can ignore that part.
17 BY MR. WOOTEN:
18 Q. You can ignore that part. That's just commentary.
19 MR. RAGSDALE: It is.
20 THE WITNESS: Again, MERS serves as mortgagee as
21 nominee or agent for the benefit of the owner holder of the
22 beneficial interest in the loan.

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1 BY MR. WOOTEN:
2 Q. Okay. And again, you are not the owner of or the
3 beneficial owner of any promissory note, are you?
4 A. **We do own promissory notes.**
5 Q. In what capacity?
6 A. **In our investment portfolio.**
7 Q. And that is not in the course of your business as
8 serving as mortgagee of record, is it?
9 A. **Well, I mean we have cash that is thrown off by the**
10 **business that needs to be invested, and to that extent we do**
11 **invest in notes and bonds.**
12 Q. And that is part of short term investments of excess
13 cash of the company; right?
14 MR. RAGSDALE: Object to the form.
15 THE WITNESS: Sometimes they're long term also.
16 BY MR. WOOTEN:
17 Q. Sure. And with respect to Miss Henderson's loan,
18 you are not either the owner or the beneficial owner of her
19 promissory note, are you?
20 A. **I would concede that we're not the beneficial owner**
21 **of the -- let me say that again. We are not the beneficial**
22 **owner of her loan.**

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1 Q. And you are never entitled to the payment of any
2 funds on her promissory note, are you?
3 A. **I would disagree with that.**
4 Q. Tell me what every item that MERS is due under her
5 promissory note.
6 A. **Well, today we're the holder of her note. So that**
7 **if we chose to enforce that note, she would have to pay us.**
8 Q. Let me make sure that I'm real clear about this.
9 With respect to your claim that you are the holder of her
10 promissory note, is that because there is a person who is a
11 certifying officer of your company who has the right to obtain
12 physical possession of her promissory note?
13 A. **No. We actually have physical possession right now.**
14 Q. Okay. And is that a result of your efforts to
15 foreclose upon Miss Henderson?
16 A. **Yes.**
17 Q. And isn't it a fact that your possession of that
18 promissory note did not occur until after this lawsuit was
19 filed?
20 A. **I don't recall that.**
21 Q. You don't have that information, do you?
22 A. **I don't have -- I just don't remember. It could be**

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1 **true. It could not be true. I don't know.**
2 Q. And isn't it true that your form policy is that in a
3 nonjudicial foreclosure state you will not obtain possession
4 of the note unless it is required by a court action?
5 A. **I don't know that that's our policy.**
6 Q. When we deposed or when I deposed Mr. Arnold a few
7 weeks ago, we talked about the various interest in a mortgage
8 that your company recognizes. What are those interests,
9 please, sir?
10 A. **I don't understand your question.**
11 MR. BROCHIN: I object to the form.
12 BY MR. WOOTEN:
13 Q. Most people consider a mortgage to have two parts:
14 A promissory note and a security instrument. Is that a fair
15 characterization?
16 A. **I don't know.**
17 Q. You don't know. How -- what does MERS consider a
18 mortgage loan to have?
19 A. **What does MERS consider?**
20 Q. What are the parts of a mortgage loan for MERS for
21 your purposes?
22 A. **For our purposes? The mortgage loan consists of a**

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1 **promissory note, a security instrument. There's a credit**
2 **file. There is a title policy. There may be credit**
3 **applications. There may be appraisals. There may be other**
4 **indicia of the creditworthiness of the borrower, and all of**
5 **those are part of the loan.**
6 Q. Okay. And that's typically what most folks in
7 mortgage securitization and mortgage lending and mortgage
8 banking would call a mortgage file; right?
9 MR. RAGSDALE: Object to the form.
10 THE WITNESS: I don't know what most people would
11 consider a mortgage file.
12 BY MR. WOOTEN:
13 Q. Is that what you would consider a mortgage file?
14 **A. With, with other documentation, if you're talking**
15 **about securitization.**
16 Q. Sure. And with respect to that, you're not a
17 custodian of any securitization documents, are you?
18 **A. That's correct.**
19 Q. And you are not a custodian of any of the promissory
20 notes which are allegedly secured by a MERS as original
21 mortgagee mortgage, are you?
22 **A. We are not as a regular part of our business a**

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1 **custodian in the sense that I think you're using, but there**
2 **are times when we do have custody of the promissory note.**
3 Q. And that is usually as an instant to a foreclosure
4 action; correct?
5 **A. Generally, yes.**
6 Q. You do not serve as a document custodian for any
7 securitization or any entity where you obtain all of the
8 mortgage loan files for a pool or group of loans in any
9 setting, do you?
10 MR. RAGSDALE: Object to form.
11 THE WITNESS: If I understand your question, we do
12 not serve as a document custodian for a securitized pool.
13 BY MR. WOOTEN:
14 Q. And you don't serve as a document custodian for
15 Fannie or Freddie or Ginnie either, do you?
16 **A. That's correct.**
17 Q. When you say that you're the mortgagee of record as
18 nominee, explain to me exactly what that is.
19 **A. I wouldn't say that I -- I wouldn't use that term.**
20 Q. Okay. What would you use?
21 **A. I would say we're the mortgagee.**
22 Q. Okay. And the mortgagee is the person who is the

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1 holder of the lien securing the underlying debt; right?
2 **A. Yes.**
3 Q. And is it fair to say that you would own that lien
4 or have control of that lien once the mortgage is instituted
5 by the borrower?
6 **A. I'm sorry. I don't understand your question.**
7 Q. In Alabama we're a conveyance state which means the
8 mortgage is a conveyance of the property subject to the right
9 of redemption. So when GMAC made this loan, Miss Henderson
10 made a mortgage conveyance to MERS, not to GMAC; correct?
11 MR. RAGSDALE: Object to the form.
12 MR. BROCHIN: Object to the form.
13 THE WITNESS: I would agree.
14 BY MR. WOOTEN:
15 Q. And MERS is not and has never been beneficial owner
16 of Miss Henderson's mortgage note, is she (sic)?
17 **A. I would agree.**
18 Q. And there has never been a conveyance of a mortgage
19 to GMAC with respect to this promissory note, has there?
20 MR. RAGSDALE: Object to the form.
21 THE WITNESS: I don't understand the question.
22 BY MR. WOOTEN:

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1 Q. There has never been a mortgage conveyance to GMAC
2 from Debra Henderson with respect to this mortgage loan which
3 was made as a result of her signing a promissory note in this
4 case?
5 MR. RAGSDALE: Object to form.
6 THE WITNESS: Again, I'm not a lawyer in Alabama,
7 but I wouldn't necessarily agree that there hasn't been a
8 conveyance to GMAC because there's been a conveyance to MERS
9 on behalf of GMAC, and whether that's a conveyance for Alabama
10 purposes I'm not in a position to decide.
11 BY MR. WOOTEN:
12 Q. Once this MERS mortgage was conveyed MERS is the
13 only entity that has the right to change or assign this
14 mortgage to any other entity; correct?
15 **A. It -- I don't understand your question.**
16 Q. Let me back up and just ask this a different way.
17 First of all, Mr. Hultman, what does MERS understand the
18 purpose of a mortgage assignment to be?
19 **A. Are you using it as a noun or a verb?**
20 Q. You're probably better at the English language than
21 I am being that you went to school in New York, but when you
22 assign a mortgage to another entity, why do you make a

69

1 mortgage assignment?

2 MR. RAGSDALE: Object to the form.

3 THE WITNESS: To transfer the --

4 MR. BROCHIN: Object to the form.

5 THE WITNESS: -- legal title.

6 BY MR. WOOTEN:

7 Q. What is the legal title?

8 **A. The title that was conveyed to us by the borrower.**

9 Q. And the legal title, whatever was conveyed to you;

10 right?

11 **A. Correct.**

12 Q. And you would agree with me that the purpose of

13 granting MERS a mortgage in this transaction was security for

14 the promissory note; right?

15 **A. If you mean the security made by Mrs. Henderson to**

16 **GMAC, yes.**

17 Q. And the form of the mortgage was chosen by the

18 lender in this case?

19 **A. I don't have any idea.**

20 Q. No?

21 **A. I don't know what the lender did.**

22 Q. So if this is the mortgage that was conveyed to MERS

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1 that we've already marked as Exhibit 2, as far as you know,

2 that would have been the mortgage that was requested that

3 Miss Henderson sign; correct?

4 MR. RAGSDALE: Object to the form.

5 THE WITNESS: If you mean this is the mortgage that

6 conveyed the security interest in Mrs. Henderson's house, I

7 would agree that that's the case.

8 BY MR. WOOTEN:

9 Q. And with respect to this particular loan, as far as

10 you know, there was no other security instrument other than

11 this one with respect to this particular promissory note;

12 right?

13 MR. RAGSDALE: Object to form.

14 THE WITNESS: Yes.

15 BY MR. WOOTEN:

16 Q. And you said that when an assignment of mortgage is

17 made from MERS to some other entity, your purpose is to

18 transfer legal title?

19 **A. Are you asking me a question?**

20 Q. Yes.

21 **A. And what's the question?**

22 Q. When MERS makes a mortgage assignment of a MERS as

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1 mortgagee mortgage to another entity, the purpose of that

2 assignment is to transfer legal title; correct?

3 **A. Yes.**

4 MR. BROCHIN: Object to the form.

5 BY MR. WOOTEN:

6 Q. Who has the right to transfer the security

7 instrument which secures the payment of a promissory note?

8 **A. Who has the right? In what sense?**

9 Q. Well, let's just hypothetically speaking take for

10 example Miss Henderson's loan. I understand that there's

11 currently not a mortgage assignment filed for MERS to any

12 other entity; correct?

13 **A. I'm not aware of it.**

14 Q. So if MERS today decided that they wanted to assign

15 this MERS mortgage to Aquin or SPS Loan Servicing, could MERS

16 just go out and do that?

17 **A. No.**

18 Q. And why not?

19 **A. Because we're an agent. We need to take**

20 **instructions from our principal.**

21 Q. Okay. And who's the principal?

22 **A. GMAC.**

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1 Q. And why are they the principal in this case?

2 **A. Because they own the promissory note.**

3 Q. They originated the promissory note; right?

4 **A. I believe they own it right now.**

5 Q. Have you looked at the, MERS own reports and

6 documents about that?

7 **A. I have.**

8 Q. And do they indicate that this loan was sold to a

9 Ginnie Mae loan trust shortly after it was originated?

10 **A. They do.**

11 Q. And with respect to that, one more question about

12 assignments generally. Isn't it, in fact, a policy of MERS

13 that whenever a promissory note is transferred to an entity

14 which is not a member of MERS that the MERS member who makes

15 that transfer is supposed to assign that mortgage out of the

16 MERS system to the nonmember?

17 **A. I'm not sure I can -- if you would rephrase the**

18 **question, I might be able to answer it.**

19 Q. Sure. Isn't it a fact that you do not hold MERS

20 mortgages for non-MERS members?

21 **A. No.**

22 Q. Who would you hold a mortgage for that is not a MERS

73

1 member?

2 **A. The holder of the note, or the owner of the note.**

3 Q. So you would hold a MERS mortgage for someone that

4 you had no agency agreement with?

5 **A. We have an agency agreement by virtue of the**

6 **mortgage even if there's not a membership agreement.**

7 Q. Can you show me anywhere in your MERS membership

8 rules that allow you to serve as mortgagee for someone who is

9 not a member of MERS?

10 **A. Yes.**

11 Q. Huh?

12 **A. Yes.**

13 Q. What part of the membership agreement?

14 **A. Well, it's either in the terms and conditions or**

15 **it's in the rules. I'd have to look at them.**

16 MR. RAGSDALE: When you say show him, do you have

17 the rules? Because that might help him show you.

18 BY MR. WOOTEN:

19 Q. We'll mark this as Exhibit 3. I'll represent to you

20 that I believe this is a copy of your rules of membership.

21 (Hultman Deposition Exhibit No. 3 was marked for

22 identification.)

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1 BY MR. WOOTEN:

2 Q. Ask you to take a look at that. Tell me if you can

3 identify that as a copy of your rules of membership.

4 **A. It is a copy of the rules of membership, although**

5 **it's not the current version.**

6 Q. Okay. What version is that?

7 **A. This is the June 2008 version.**

8 Q. And would that have been the version in effect when

9 Miss Henderson's loan was in foreclosure?

10 **A. It could have been, yeah.**

11 Q. All right. With respect to those membership rules

12 is there a portion of those membership rules which state that

13 MERS may act as agent of someone who is not appointed it as

14 its agent?

15 **A. I don't -- I don't understand your question.**

16 Q. Generally when someone acts as an agent it's because

17 they have an agreement to act as an agent; right?

18 MR. BROCHIN: Object to the form.

19 THE WITNESS: There's an agreement, yes.

20 BY MR. WOOTEN:

21 Q. Okay. Can you show me anywhere in those rules that

22 says that MERS has the right to act as an agent for someone

75

1 who has not appointed it as its agent?

2 MR. RAGSDALE: Object to the form.

3 THE WITNESS: If you mean -- other than by the

4 security instrument?

5 BY MR. WOOTEN:

6 Q. Well, here's the security instrument. Let's talk

7 about that. You indicated since you made that decision --

8 that's Exhibit 2, Deposition Exhibit 2. Show me where in the

9 mortgage instrument it says that you have the right to serve

10 as agent for someone who has not signed an agency agreement

11 with you.

12 MR. RAGSDALE: Object to the form.

13 MR. BROCHIN: Object to the form.

14 THE WITNESS: It says that the mortgage is granted

15 to MERS as nominee for the lender and the lender's successors

16 and assigns and successors and assigns of MERS, and someone

17 who is a, who is not necessarily a member of MERS could be a

18 successor and assign of the lender and we would still be their

19 agent for the purpose of enforcing and carrying out the terms

20 of the mortgage.

21 BY MR. WOOTEN:

22 Q. Now, tell me again what part of that? You said

76

1 that's the part under paragraph Roman numeral 2 under transfer

2 of rights on the property?

3 **A. It's in the transfer of rights to the property**

4 **clause, yes.**

5 Q. And that would be the sentence we talked about

6 earlier that says for this purpose borrower irrevocably

7 mortgages, grants and conveys to MERS solely as nominee for

8 lender and lender's successors and assigns?

9 **A. I'm sorry. Is that a question?**

10 Q. Is that the sentence you're relying on?

11 **A. Yes, sir.**

12 Q. That sentence -- you say that sentence authorizes

13 you to act on behalf of someone who has not appointed you as

14 its agent?

15 MR. RAGSDALE: Object to the form.

16 MR. BROCHIN: Object to the form.

17 THE WITNESS: The appointment is that -- that's the

18 language of appointment, that by taking the note they take

19 subject to the mortgage.

20 BY MR. WOOTEN:

21 Q. Well, now, it's interesting that you say that

22 because the typical rule is that the mortgage follows the

77

1 note; right?

2 **A. Are you asking me the question?**

3 Q. Isn't that --

4 **A. That's a general statement that I hear people make,**

5 **yes.**

6 Q. Right. Are you familiar with that statement?

7 **A. Yeah.**

8 Q. Did you study that in law school when you were in

9 law school?

10 **A. That's 35 years ago. I don't really remember.**

11 Q. Are you aware it comes from an 18, 19 -- 1890-

12 something Supreme Court case; right?

13 **A. I am not aware of that.**

14 Q. So who typically has a right to change the ownership

15 of a mortgage? Is it the mortgagee or is it the person who

16 owns the debt that the mortgage is secured by?

17 MR. BROCHIN: Object to the form.

18 MR. RAGSDALE: Object to the form.

19 THE WITNESS: I don't know what you mean by typical.

20 BY MR. WOOTEN:

21 Q. Well, you -- we talked about earlier that you can

22 only assign a mortgage at the direction of your principal who

78

1 is the lender; right?

2 **A. I believe that's what my testimony was.**

3 Q. All right. And you testified that you don't have a

4 right to foreclose independent of the direction from your

5 principal; right?

6 MR. RAGSDALE: Object to the form.

7 THE WITNESS: I don't believe we asked -- I don't

8 know that I said that.

9 BY MR. WOOTEN:

10 Q. Well, in the normal setting you would not have any

11 idea that any borrower on a MERS as mortgagee mortgage has

12 defaulted?

13 **A. Are you talking about me personally?**

14 Q. I'm talking about MERS.

15 **A. I don't -- I don't know that I can generalize to**

16 **that extent.**

17 Q. Tell me how MERS typically becomes aware of a

18 borrower's default.

19 **A. Through the certifying officer.**

20 Q. Okay. Who is an employee of whom?

21 **A. Generally the servicer.**

22 Q. Okay. And the certifying officer is not an employee

79

1 of MERS; right?

2 **A. That's correct.**

3 Q. How many employees of MERS are there?

4 **A. When we mean MERS, what do you mean?**

5 Q. I mean MERS, how many employees of MERS --

6 **A. There's two corporations.**

7 MR. RAGSDALE: Yeah. Do you mean MERSCORP or -- go

8 ahead.

9 BY MR. WOOTEN:

10 Q. Well, let's start with Mortgage Electronic

11 Registration Systems.

12 **A. There are no employees.**

13 Q. How many certifying officers of MERS are there?

14 **A. I told you before I don't remember the number.**

15 Q. In the thousands?

16 **A. I don't know the number.**

17 Q. In the thousands?

18 **A. Yes.**

19 Q. So there are thousands of people signing documents

20 for a corporation with no employees?

21 MR. RAGSDALE: Object to the form.

22 THE WITNESS: Yes.

80

1 BY MR. WOOTEN:

2 Q. As far as MERSCORP, how many employees do you have?

3 **A. I think there's 46 or 47. I don't -- we just hired**

4 **two new lawyers, so I don't remember exactly the number.**

5 Q. You said two new lawyers?

6 **A. Two new lawyers.**

7 Q. I hope that ain't all my fault.

8 MR. RAGSDALE: Don't give yourself too much credit,

9 Nick.

10 BY MR. WOOTEN:

11 Q. Yeah. I'm sure I'm not the only person that's

12 keeping you all busy. 46 or 47 employees, are they certifying

13 officers of MERSCORP?

14 **A. That term's not applicable to MERSCORP.**

15 Q. Do you have any process or procedure by where you

16 verify the representations made in these requests for

17 appointment of certifying officers by your members?

18 **A. We do have procedures.**

19 Q. Tell me every one of those procedures to verify that

20 information.

21 **A. They're all included in our rules.**

22 Q. Okay. Going back earlier to my earlier question.

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1 I'll give you a minute to look at those rules. Where in those
2 rules does it authorize you to act for a nonmember?
3 **A. If you look at Section 4, paragraph A on page 10.**
4 Q. Run those numbers by me again, please.
5 **A. Section 4 -- well, excuse me. It's Rule 2, Section**
6 **4(A), the last sentence, and that's on page 10 of this**
7 **version.**
8 Q. Read that into the record, please.
9 **A. The transfer to a nonmember of a beneficial interest**
10 **in a mortgage loan registered on the MERS system shall not**
11 **require the deregistration of such mortgage loan from the MERS**
12 **system unless the servicer is a nonmember of MERS or such**
13 **nonmember beneficial owner shall require deactivation.**
14 Q. So if I understand that correctly, you're saying
15 that if the note is transferred to a nonmember but the
16 servicer is a member, it does not require deactivation?
17 **A. That's correct.**
18 Q. That's, that's your rationale for saying that you
19 have a right to act for a nonmember?
20 **A. That and the mortgage.**
21 MR. BROCHIN: Object to the form of the question.
22 MR. RAGSDALE: Objection.

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1 BY MR. WOOTEN:
2 Q. So when you have that situation, do you get approval
3 for the nonmember to continue to act on their behalf in some
4 form other than a membership agreement?
5 **A. Sorry. I don't understand your question.**
6 Q. It seems to me, sir, that that statement doesn't
7 take into account what the new owner's interest in your
8 involvement might be.
9 MR. BROCHIN: Object to the form.
10 THE WITNESS: Are you asking me a question?
11 BY MR. WOOTEN:
12 Q. Yeah.
13 **A. Then I don't understand your question.**
14 Q. You said that it doesn't require deregistration if
15 the servicer who is a contract employee or contractor of the
16 owner is a MERS member.
17 **A. That's one of the two reasons.**
18 Q. Right.
19 **A. The other would be is if that nonmember holder of**
20 **the, owner of the note requires us to take it off the system.**
21 **So they have the capability of telling us to take it off.**
22 Q. Right, but again, the statement that if the servicer

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1 is a MERS member it doesn't require deregistration does not
2 provide any mechanism to determine what the owner's interest
3 are in MERS continuing to be the mortgagee of record?
4 **A. I wouldn't agree with that characterization.**
5 Q. Well, what part of that sentence says to you that
6 MERS considers the interest of the new owner who is not a MERS
7 member?
8 **A. Well, it says if the member asks us to deactivate**
9 **it, we'll deactivate it.**
10 Q. The member or the new owner?
11 **A. The nonmember beneficial owner.**
12 Q. How do you describe the beneficial owner? What -- I
13 mean how do you define that term?
14 **A. I don't -- I'm not sure that it's defined.**
15 Q. Is that the same as the person who owns the
16 promissory note?
17 **A. People would characterize that to be the same.**
18 Q. What about MERS? Would you characterize it to be
19 the same?
20 **A. Generally, yes.**
21 Q. Yeah. And when we talked to Mr. Arnold, we talked
22 about he indicated that MERS recognized three interests, one

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1 of which was the beneficial ownership. The other was the
2 servicing rights, and the other was the mortgagee interest.
3 Is that a fair assessment of how MERS views a mortgage loan in
4 this scenario?
5 MR. BROCHIN: Object to the form of the question.
6 THE WITNESS: Are you asking MERS's position on
7 that?
8 BY MR. WOOTEN:
9 Q. Yes.
10 **A. Those are three interests in the loan, yes.**
11 Q. And when MERS identifies those three interests, that
12 record is maintained in MERS' data base; right?
13 MR. RAGSDALE: Object to the form.
14 THE WITNESS: I'm sorry. Could you rephrase that
15 question?
16 BY MR. WOOTEN:
17 Q. In your, in your electronic, your data base, the
18 MERS registry, you're tracking the servicing interest and the
19 beneficial ownership; right?
20 **A. Among other things.**
21 Q. What else are you tracking?
22 **A. We can track who the custodian is. We can track a**

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1 number of relationships that people might have with respect to
2 the loan, whether there's -- there's a whole category of
3 associated members that may have some relationship with that
4 loan that we also track; for example, warehouse lenders, FHLB
5 banks. There's other categories that might be there. I just
6 don't remember off the top of my head.
7 Q. Other than employees of mortgage companies who else
8 can serve as a certifying officer of MERS?
9 A. Sorry?
10 Q. Tell me every group of people or category of people
11 who can serve as a certifying officer of MERS.
12 A. Anyone that we approve.
13 Q. And you approve those people as certifying officers
14 so that they can execute documents in the name of MERS; right?
15 A. Among other things.
16 Q. Tell me everything that a certifying officer is
17 authorized to do for MERS.
18 A. Well, in general there are seven things that a
19 certified officer is entitled to do under the corporate
20 resolution. One is to assign the mortgage interest. One is
21 to release the mortgage interest. One is to commence
22 foreclosures. One is to institute proceedings in bankruptcy.

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1 One is to modify or restructure the loan. One is to endorse
2 checks, and then there is a general catchall that says
3 anything that's incident to the servicing the mortgage that
4 they might need to do because the mortgage is in our name,
5 they also have the authority to do that.
6 Q. And that's what we see in this corporate resolution
7 that we marked as Exhibit 1; right?
8 A. Those -- that's where the -- that's the formal
9 enunciation. There are other rules and procedures that exist
10 that would amplify on, on what people can do and not do.
11 Q. Where are those at?
12 A. They're in the rules and procedures.
13 Q. That's what we marked as Exhibit 3?
14 A. Well, that's -- those are the rules. There are also
15 procedures.
16 MR. WOOTEN: Would you produce the procedures to us
17 in this case?
18 MR. RAGSDALE: Yes.
19 BY MR. WOOTEN:
20 Q. Is that the little two or three page form --
21 A. No.
22 Q. -- that's a single page type?

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1 A. No. That's the terms and conditions. It's another
2 long document.
3 Q. Would you agree with me, Mr. Hultman, that in the
4 typical MERS situation promissory notes are solely transferred
5 meantimes while the lien remains in the name of MERS?
6 MR. RAGSDALE: Object to the form.
7 THE WITNESS: Again, I'm not -- could you rephrase
8 that question?
9 BY MR. WOOTEN:
10 Q. Sure. Your company considers mortgage promissory
11 notes to be liquid like cash; right?
12 A. I don't -- the -- the mortgage itself and the terms
13 of the note make it, not because we think it is.
14 Q. Are promissory notes bought and sold every day and
15 they're secured by mortgages?
16 A. Yes.
17 Q. And I'm assuming since 50 percent of all those notes
18 according to your estimates are on a MERS as mortgagee form,
19 that means that somewhere out there someone is buying
20 promissory notes secured by MERS mortgages pretty much every
21 day; right?
22 A. I would agree to that.

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1 Q. And again my question is, that is occurring without
2 any indication in any public record that the ownership of the
3 promissory note is changing hands?
4 A. No. I wouldn't agree with that.
5 Q. What is filed in the public record to indicate that
6 a promissory note changes hands when it is secured by a MERS
7 mortgage?
8 A. There is nothing.
9 Q. So promissory notes are being bought and sold every
10 day where MERS is the mortgagee and there are no records in
11 the public records indicating a transfer of the ownership of
12 the promissory note secured by a MERS mortgage?
13 A. If you mean by public records the land records held
14 by the county clerk or the recorder of deeds, I would agree.
15 Q. Right. And you would agree that when the mortgage
16 assignments are recorded from MERS to another entity for
17 whatever reason that that assignment evidences a transfer of
18 the ownership of that debt on that day?
19 MR. RAGSDALE: Object to form.
20 THE WITNESS: No, I would not agree.
21 MR. RAGSDALE: Object to form.
22 BY MR. WOOTEN:

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1 Q. Is it MERS' position that a MERS assignment can be
2 made at any time to anyone else involved in the ownership of
3 the promissory note and that the date the actual ownership
4 changed hands is irrelevant?
5 MR. BROCHIN: Object to the form.
6 MR. RAGSDALE: Object to the form.
7 THE WITNESS: I can't understand your question.
8 BY MR. WOOTEN:
9 Q. Sure. Let's talk about prior to the existence of
10 MERS. Okay? Prior to the existence of MERS when a promissory
11 note that's secured by a mortgage was sold, how was that
12 typically documented in the public land records?
13 A. **It is not. It was not.**
14 Q. So your testimony is that whenever the ownership of
15 a promissory note secured by a mortgage changed hands there
16 was never a mortgage assignment filed to indicate in the
17 public land records that there was a change in the ownership
18 of the debt, and, therefore, the mortgage was assigned to the
19 entity which was the new owner of that debt?
20 MR. BROCHIN: Object to the form.
21 MR. RAGSDALE: Object to the form.
22 THE WITNESS: I don't your question.

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1 MR. BROCHIN: Mischaracterizes his testimony.
2 BY MR. WOOTEN:
3 Q. When I deposed Mr. Arnold a few weeks ago, he
4 indicated that mortgage assignments were filed typically to
5 indicate a transfer of servicing rights. Would you agree with
6 that assessment?
7 MR. BROCHIN: Object to the form to the extent it
8 attempts to characterize --
9 THE WITNESS: I wouldn't necessarily agree with that
10 characterization.
11 MR. BROCHIN: Excuse me. Let me finish.
12 THE WITNESS: I'm sorry.
13 MR. BROCHIN: -- to the extent it tends to
14 characterize Mr. Arnold's testimony.
15 MR. RAGSDALE: Same objection. Go ahead.
16 THE WITNESS: Could you repeat the question?
17 BY MR. WOOTEN:
18 Q. Why don't you just tell me what MERS thinks the
19 purpose of a mortgage assignment is.
20 A. **Transfer of a legal title to the mortgage lien.**
21 Q. And why would you do that, Mr. Hultman?
22 A. **There could be multiple reasons why.**

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1 Q. Tell me every reason you know.
2 A. **I'm sorry?**
3 Q. Tell me every reason you know that would be done.
4 A. **Would it would be conveyed? Well, it could be -- it**
5 **could be because --**
6 MR. RAGSDALE: Can I stop? Because this may be a
7 good time before he gives a lengthy -- or, you've got five
8 minutes. Never mind. Sorry.
9 THE WITNESS: I'm sorry.
10 BY MR. WOOTEN:
11 Q. Go ahead.
12 A. **Whenever we're -- are you talking about MERS or are**
13 **you talking in general?**
14 Q. In general.
15 A. **Whenever the owner of the promissory decided they**
16 **needed to change the legal title.**
17 Q. Any other reasons other than that?
18 A. **No. I think that, that's a generalization that**
19 **covers it.**
20 Q. Would the servicer who does not own the promissory
21 note have any right to change the legal title to a given
22 mortgage?

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1 A. **Without the consent of the holder of the note or the**
2 **owner of the note?**
3 Q. Correct.
4 A. **Probably not.**
5 Q. Would MERS have a right to change the owner of the
6 legal title without the consent of the owner of the promissory
7 note?
8 A. **If the servicer has been delegated the authority to**
9 **take care of those kind of things, our rules permit us to take**
10 **instructions from the servicer unless the owner contradicts**
11 **them.**
12 Q. At the end of the day the general rule is you would
13 follow the instructions of the beneficial owner of the loan;
14 right?
15 A. **Generally speaking, yes.**
16 Q. And I think your rules actually say that you will
17 follow the instructions of the servicer unless there are
18 contrary instructions from the beneficial owner?
19 A. **That's correct.**
20 Q. And that would be because the servicer is registered
21 on your system as being appointed to act by the beneficial
22 owner; right?

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1 **A. Generally speaking, yes.**
2 Q. And you would agree with me that typically changing
3 legal title requires -- let me just strike that. I'm not
4 going to ask that question right now.
5 With respect to the mortgagee interest, are you
6 asserting that it is more than merely the right to appear in
7 the land records of the county where the property is located
8 that is mortgaged?
9 MR. RAGSDALE: Object to the form.
10 THE WITNESS: Sorry. I don't understand your
11 question.
12 BY MR. WOOTEN:
13 Q. Well, I've seen a lot of testimony and affidavits
14 from your company around the country, and I'm just trying to
15 make sure I understand your position with respect to this
16 issue. Is it your position that MERS has more than the right
17 to appear as the mortgagee in the land records on any given
18 mortgage?
19 MR. RAGSDALE: Object to the form.
20 THE WITNESS: It's our position that as mortgagee
21 we're entitled to exercise all the rights that are incident to
22 that status, whatever they may be under state law and our

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1 agreements with our members.
2 THE VIDEOGRAPHER: We have one minute left on tape.
3 MR. WOOTEN: Let's stop. Let her change the tape.
4 THE VIDEOGRAPHER: This marks the end of tape number
5 one in the 30(b)(6) deposition of William C. Hultman. Going
6 off record at 11:28:53.
7 (Discussion off the record.)
8 (A recess was taken.)
9 THE VIDEOGRAPHER: We're back on record at 11:36:55.
10 Here begins tape number two in the 30(b)(6) deposition of
11 William C. Hultman.
12 BY MR. WOOTEN:
13 Q. Mr. Hultman, we took a little break to change the
14 tape. We were talking about reasons for mortgage assignment,
15 and you indicated that the only reason you were aware of was
16 that the owner of the promissory note secured by the mortgage
17 wished to change the legal title; correct?
18 **A. That's correct.**
19 Q. Are you familiar with situations where a promissory
20 note has been sold and prior to MERS and the mortgage
21 assignment was never recorded to transfer legal title to the
22 new owner and the previous owner released the mortgage before

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1 an assignment was filed?
2 **A. I'm not -- I don't understand your question about**
3 **who -- when you were referring to owner, owner of what?**
4 Q. Owner of the promissory note.
5 **A. Maybe you should rephrase the question for me,**
6 **please.**
7 Q. Sure. You were in banking a long time prior to
8 being involved with MERS. Do you have any experience in your
9 work life with a situation where a mortgage loan is sold, a
10 note is sold but no mortgage assignment was recorded and the
11 previous owner subsequently released the prior mortgage and
12 the new owner now was unsecured because of that?
13 **A. I'm aware that that has happened.**
14 Q. And is that one of the reasons that the MERS system
15 was created to try to avoid those types of situations?
16 **A. Among other things.**
17 Q. And is that a reason why people prior to MERS
18 recorded mortgage assignments was to prevent the possibility
19 that that type of thing might happen?
20 **A. Potentially, yes.**
21 Q. Some of this may seem redundant from Mr. Arnold's
22 prior testimony, but since he was not serving as corporate

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1 representative I want to make sure there's no -- I've covered
2 these bases.
3 You have MERS as mortgagee or original mortgagee
4 mortgages recorded in all 50 states?
5 **A. Do we have them recorded?**
6 Q. Yes.
7 **A. They are recorded in all 50 states and including the**
8 **District of Columbia and some of the territories.**
9 Q. Is a fact that MERS does not take applications or
10 underwrite or negotiate mortgage loans, isn't it?
11 **A. I don't mean -- what do you mean negotiate?**
12 Q. You don't negotiate the terms of mortgage loans?
13 **A. That's correct.**
14 Q. MERS does not make, originate mortgage loans to
15 consumers, do they?
16 **A. We do not.**
17 Q. MERS does not extend any credit to consumers, do
18 they?
19 **A. We do not.**
20 Q. MERS does not have any role in the origination or
21 original funding of any mortgage loan or deed of trust where
22 MERS serves as the nominee on either the mortgage or the deed

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1 of trust?

2 **A. Not -- I -- the -- I don't understand your question.**

3 Q. MERS does not act as an originator for any mortgage

4 loan, does it?

5 **A. That's correct.**

6 Q. And MERS does not provide any funding for any

7 mortgage loan where MERS is the mortgagee or the beneficiary

8 of a deed of trust?

9 **A. That's correct.**

10 Q. MERS does not service any mortgage loan, does it?

11 **A. I'm sorry?**

12 Q. MERS does not service any mortgage loans, does it?

13 **A. When you say servicing, what do you mean?**

14 Q. It does not collect and distribute payments? It

15 does not pay escrow items. It does not maintain escrow

16 accounts. It does not hold client funds on deposit. Doesn't

17 pay insurance for clients, for borrowers. Doesn't pay

18 insurance or it doesn't pay taxes for borrowers, nothing like

19 that; right?

20 **A. We do -- we do not do any of those things. That's**

21 **correct.**

22 Q. And you're not hired as a mortgage servicer for any

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1 securitization or government sponsor enterprise; right?

2 **A. That's correct.**

3 Q. You do not -- MERS does not sell mortgage loans,

4 does it?

5 **A. Do we sell mortgage loans? No, we do not.**

6 Q. MERS is not an investor who acquires mortgage loans

7 on the secondary market, is it?

8 **A. That's correct.**

9 Q. MERS does not process mortgage applications for

10 either itself or any other lender, does it?

11 **A. That is correct.**

12 Q. MERS is not a lender, is it?

13 **A. That's correct.**

14 Q. The MERS system is not a vehicle for creating or

15 transferring interest in mortgage loans, is it?

16 **A. The MERS system? That's correct.**

17 Q. In fact, even a MERS assignment is without effect

18 unless the underlying promissory note and mortgage agreed with

19 the ownership change indicated by a MERS assignment; right?

20 MR. RAGSDALE: Object to the form.

21 THE WITNESS: I don't understand your question.

22 MR. BROCHIN: Object to the form.

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1 BY MR. WOOTEN:

2 Q. For a MERS assignment to go from MERS to some other

3 entity there should also be an underlying transfer of the

4 promissory note to that entity; right?

5 **A. No, I would not agree with that.**

6 Q. Is it your testimony that MERS may assign its

7 mortgage interest to someone who does not own the debt which

8 is secured by the mortgage?

9 **A. I don't think I testified to that.**

10 Q. Is it your position that MERS may do that?

11 **A. Do what?**

12 Q. Transfer the mortgage interest to someone who is not

13 the owner of the promissory debt secured by that mortgage?

14 **A. If we were instructed by the owner of the debt to**

15 **transfer the legal title to another entity who doesn't own**

16 **that debt, we would do so.**

17 Q. Only on the direction of the actual owner of the

18 debt?

19 **A. That's correct.**

20 Q. MERS is not a party to any promissory note which is

21 secured by a mortgage in its name; is that correct?

22 **A. When you mean party, what do you mean?**

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1 Q. MERS name does not appear at all on the promissory

2 note, does it?

3 **A. The MERS name does not appear on the promissory**

4 **note.**

5 Q. And so when a loan is originated, you will never see

6 a promissory note that says pay to the order of MERS and GMAC

7 or MERS and Wells Fargo?

8 **A. Unless somebody made a mistake.**

9 Q. Right. That's certainly not outside of error that

10 would be the only way that MERS name would appear on the

11 promissory note in that capacity?

12 **A. Well, we've had instances where people may have**

13 **become confused and they have, may have endorsed the note to**

14 **us or they may have made notes out in our name, but that would**

15 **be outside the MERS procedures.**

16 Q. Would you agree with me that MERS is never the owner

17 of the promissory note which it is trying, which is when it

18 seeks to foreclose on a promissory note?

19 **A. I would not agree with that characterization.**

20 Q. Have you spent much time dealing with

21 securitization, Mr. Hultman?

22 **A. In what sense?**

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1 Q. The process of it, transferring assets into a
2 securitization trust, the process of selling loans from
3 origination to Wall Street. Have you had much experience in
4 that?
5 **A. I have had some experience in that.**
6 Q. You're familiar with the concept of bankruptcy
7 remoteness; right?
8 **A. Generally speaking, yes.**
9 Q. And you're familiar with at least part of the
10 rationale for securitization is the creation of an SPV, a
11 special purpose vehicle which is designed to hold assets in a
12 bankruptcy remote setting?
13 **A. I don't understand your question.**
14 Q. Are you familiar with the concept of selling assets
15 into a bankruptcy remote vehicle such as a trust for the
16 benefit of the investors in the assets of that trust?
17 **A. If you're asking me am I familiar with how special
18 purpose vehicles are used in the securitization process, the
19 answer's yes.**
20 Q. And you're familiar with the concept of a true sale
21 which involves the actual sale for value of assets to those
22 special purpose vehicles to create the bankruptcy remote

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1 entity; right?
2 **A. Again your, your question is convoluted. I can't --
3 I'm not sure I can answer it the way you've phrased it.**
4 Q. All right. Have you heard of the term bankruptcy
5 remoteness?
6 **A. Yes.**
7 Q. How do you understand that term?
8 **A. It generally means that there are provisions in the
9 charter of that corporation or entity that require more than
10 the usual types of authority before that entity can file for
11 bankruptcy.**
12 Q. Are you familiar with the concept of a true sale?
13 **A. Yes.**
14 Q. What is that?
15 **A. A true sale is from a legal perspective when the,
16 the, all material aspects of incidence of ownership are
17 transferred from one party to another.**
18 Q. So with the sale of mortgage loans to a securitized
19 trust it would be necessary for there to be a true sale to
20 that trust for that trust to be funded; correct?
21 **A. Not necessarily.**
22 Q. Okay. With respect to typical securitization trust

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1 for mortgage securitizations, are you familiar with the REMIC
2 provisions of the IRS tax code regarding the acquisition and
3 sale of assets by a recommend might being trust?
4 **A. I don't understand your question.**
5 Q. Are you familiar with the REMIC provisions of the
6 IRS tax code?
7 **A. I have looked at them, yes.**
8 Q. Okay. And they deal specifically with assets which
9 are secured by real estate?
10 **A. They do.**
11 Q. So generally they would be dealing with mortgage
12 loans and the property secured by those mortgage loans?
13 **A. When you say "this," what do you mean?**
14 Q. REMIC provisions of the tax code dealing with those
15 assets which are secured by real estate.
16 **A. The REMIC aspect. The REMIC provisions are
17 provisions that relate to the taxation of the entity that may
18 be holding mortgage loans that are secured by real estate.**
19 Q. Right. And to qualify for the tax treatment under
20 the REMIC provisions of the tax code the assets of that trust
21 or corporation typically have to be secured by assets which
22 are guaranteed by real estate; correct?

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1 **A. I wouldn't characterize it that way.**
2 Q. Okay. How would you characterize it?
3 **A. I would characterize it that the assets of the trust
4 or the -- excuse me. Let me restate that. The financial
5 assets or promissory notes that are the assets of the trust
6 are secured by mortgages, and the collateral is real estate
7 related.**
8 Q. And you're familiar with the very specific
9 provisions by which assets may be acquired by a REMIC vehicle
10 or a trust?
11 **A. Am I -- am I -- are you asking me if I'm familiar
12 with the circumstances on how that's done?**
13 Q. Yes.
14 **A. Generally, yes.**
15 Q. Are you familiar with the limitations on that?
16 **A. Which limitations?**
17 Q. The limitations imposed by the REMIC portions of the
18 tax code.
19 **A. I'm not expert in -- I'm not a tax expert in every
20 aspect of the REMIC regulations, if that's what you're asking
21 me.**
22 Q. What about the requirements to disburse assets from

<p style="text-align: right;">105</p> <p>1 a REMIC trust? Are you familiar with the limitations on 2 disposing of assets that are in a REMIC trust? 3 A. I have some knowledge of that. 4 Q. What is your understanding of that? 5 A. I'm sorry. 6 Q. What's your understanding of the rights of a REMIC 7 trust to dispose of its assets? 8 A. It -- there's general -- the only thing I can recall 9 right now is that there's generally a limitation. It has to 10 be de minimis amount before the trust can be dissolved and 11 wound up. 12 Q. All right. And is it your understanding that 13 typically a REMIC trust is formed around a static pool of 14 assets which are backed or guaranteed by real estate? 15 A. I'm not -- I don't know what, what you mean by 16 static pool. 17 Q. A defined pool at a given time which remains 18 basically stable? 19 A. Again, you know, what's the -- I'm not familiar 20 enough with the REMIC regulations to tell you when assets can 21 be substituted or taken in and out of the pools. 22 Q. Right. And are you familiar at all with the New</p>	<p style="text-align: right;">107</p> <p>1 Q. -- by a servicer, wouldn't it? 2 A. I don't have any specific knowledge about that. 3 Q. You would agree with me that not every REMIC trust 4 that's ever been formed in the last 10 or 15 years is a member 5 of MERS; right? 6 A. Would you rephrase that question, please. 7 Q. You're familiar with the fact that these trusts 8 which own these securitized loans are recognized as separate 9 legal entities under New York law; right? 10 A. They could be or they may not be. 11 Q. Okay. And do you know whether every trust that's 12 been formed in the last 10 or 15 years to hold securitized 13 mortgage loans is a member of MERS or not? 14 A. I do not know that. 15 Q. Do you know if those trusts require that the 16 promissory note be endorsed into their name upon the 17 acquisition of that asset? 18 A. I am familiar that in the pooling service agreements 19 to the extent that I have reviewed them generally require that 20 notes be endorsed to the trustee of trusts or of any other 21 vehicle that's used to securitize loans. 22 Q. Right. And if a, if a promissory note is endorsed</p>
<p style="text-align: right;">106</p> <p>1 York corporate trust law issues with respect to these 2 securitizations and the limits that they set on acquiring and 3 disposing of assets? 4 A. I am not. 5 Q. When you set your membership rules or making 6 mortgage assignments by servicers or attorneys or anyone else 7 who's a certifying officer of MERS, have you considered at all 8 the implications of those actions on the REMIC structure of 9 the trust which hold these promissory notes? 10 A. I'm not understanding your question. 11 Q. Has anyone at MERS considered the impact of 12 assigning the illegal title of assets either into or out of 13 REMIC trusts for the purposes of foreclosure? 14 A. I don't know. 15 Q. Okay. And those acts would typically be taken by 16 the servicer in the context of foreclosure, would they not? 17 MR. RAGSDALE: What acts? 18 BY MR. WOOTEN: 19 Q. The assignment of a legal title of a mortgage from 20 MERS to a REMIC trust or from a REMIC trust to MERS, that 21 would typically be done -- 22 A. I don't have any --</p>	<p style="text-align: right;">108</p> <p>1 to a trust and then later endorsed in blank for the purposes 2 of foreclosure, that would be a transfer of that promissory 3 note after it is endorsed in blank; right? 4 MR. BROCHIN: Object to the form. 5 MR. RAGSDALE: Object to the form. 6 THE WITNESS: I don't -- I don't know. It depends 7 on facts and circumstances. 8 BY MR. WOOTEN: 9 Q. Typically your company seeks to hold the promissory 10 note with a blank endorsement at the time of foreclosure, does 11 it not? 12 A. That's part of our rules, yes. 13 Q. Have you considered whether or not there are any tax 14 consequences to transferring a promissory note from a specific 15 endorsement to a blank endorsement after that promissory note 16 has been acquired by a particular trust? 17 A. Again, I'm, I'm not following your question. 18 Q. Has your company considered whether the requirement 19 to endorse the promissory note in blank has -- is in effect a 20 transfer of ownership of that promissory note when the note is 21 endorsed from the trustee to a blank endorsement? 22 MR. RAGSDALE: Object to the form.</p>

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1 THE WITNESS: Again, maybe if you -- it would help
2 me if you parsed out your question a little bit.
3 BY MR. WOOTEN:
4 Q. Sure. We're talking about the fact that the
5 securitizations typically require the promissory notes to be
6 endorsed to the trust or the trustee, and that's a specific
7 endorsement to a specifically identifiable person; right?
8 A. Yes.
9 Q. And then that typically is supposed to occur when
10 the trust is funded with the assets at the time that the trust
11 is formed?
12 A. **If you mean when -- if the -- typically the, the**
13 **notes are delivered to the trustee specifically endorsed at**
14 **the time of the sale of the assets, then I would agree that**
15 **that's the case.**
16 Q. Right. And then that trust its pooled assets is
17 identified at the time that sale takes place?
18 A. Yes.
19 Q. And then when a foreclosure takes place sometime
20 later, your company typically wants the promissory note to be
21 endorsed in blank; correct?
22 A. **It's not that we want it; it's that if they want to**

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1 **foreclose in our name, that is a requirement for us.**
2 Q. Okay. And my question was whether or not you have
3 considered whether that blank endorsement for the foreclosure
4 be in your name is a transfer of ownership of that asset from
5 the trust to either your company or the servicer?
6 A. **If, if there has been -- if the trustee has endorsed**
7 **the note in blank and the trustee has transferred that asset,**
8 **or excuse me. Let me say it a different way.**
9 **If the trustee has endorsed the note in blank and**
10 **delivered the note to MERS for the purposes of foreclosure, I**
11 **would not necessarily agree that is a transfer at that point.**
12 Q. Would you agree that the person who is entitled to
13 foreclose is the owner of the indebtedness secured by the
14 mortgage?
15 A. No.
16 MR. RAGSDALE: Object to the form.
17 BY MR. WOOTEN:
18 Q. When exactly would you believe that MERS becomes an
19 owner of a promissory note for which it seeks to foreclose?
20 MR. RAGSDALE: Object to form.
21 MR. BROCHIN: Object to the form.
22 THE WITNESS: I don't think I've ever said that I

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1 believe that to be the case.
2 BY MR. WOOTEN:
3 Q. Would you agree that if you are attempting to
4 foreclose in your name for a securitized trust in the context
5 that we were just discussing that the beneficial owner of that
6 indebtedness is not MERS?
7 A. **If what you're saying is if MERS is the holder of**
8 **the note on behalf of the beneficial owner who's a securitized**
9 **trust, then I would agree with what you said.**
10 Q. Isn't it true that MERS never pays any money to any
11 lender for the blank endorsement that is made for the purposes
12 of foreclosure?
13 MR. RAGSDALE: Objection.
14 THE WITNESS: I'm sorry. I don't understand your
15 question.
16 BY MR. WOOTEN:
17 Q. You don't buy a promissory note from any lender or
18 any investor such as a securitized trust for the purposes of
19 foreclosure, do you?
20 A. No.
21 Q. And when the promissory note is transferred in
22 blank, you do not pay anything for that transfer, do you?

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1 A. **The note is transferred to MERS for the purposes of**
2 **doing the foreclosure. It's not really -- excuse me.**
3 **Transfer is probably not the correct word. The note has been**
4 **negotiated to MERS for the purposes of conducting the**
5 **foreclosure. There's been not a transfer of any beneficial**
6 **interest in that note at that point.**
7 Q. The note has been negotiated to MERS, but there has
8 been no transfer of any beneficial ownership; is that right?
9 A. **That's what I said.**
10 Q. If no one made any payment on any of the 62 million
11 mortgages that presently exist in MERS' name or registered on
12 the system, if no one on any of those mortgages ever made
13 another payment, tell me every thing that MERS would loss.
14 A. **I'm sorry. I don't understand your question.**
15 Q. Would you lose a dollar --
16 MR. RAGSDALE: Object to the form.
17 MR. BROCHIN: Object to form.
18 BY MR. WOOTEN:
19 Q. -- if anyone failed to pay any mortgage that's
20 listed on your system?
21 MR. BROCHIN: Object to the form.
22 A. **What do you mean lose a dollar?**

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1 Q. Just a second.

2 MR. WOOTEN: Are you caught up?

3 THE REPORTER: I think --

4 MR. RAGSDALE: Wait for us to say what we're going

5 to say --

6 THE WITNESS: Oh, I'm sorry.

7 MR. RAGSDALE: -- before you talk.

8 THE WITNESS: Okay. Sorry.

9 BY MR. WOOTEN:

10 Q. You don't have any of these mortgages booked as

11 assets of MERS, do you?

12 **A. That's correct.**

13 Q. If they were written off to zero, you wouldn't take

14 a tax loss on them, would you?

15 **A. I'm sorry?**

16 Q. If all 62 million of these mortgages were written

17 off to zero as total losses, you wouldn't take a tax loss,

18 would you?

19 **A. Are you speaking of the 62 million dollars or 62**

20 **million loans registered on the MERS system?**

21 Q. Yes.

22 **A. That's correct.**

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1 Q. And if there was not another payment made on those

2 62 million dollar, 62 million mortgages registered on the

3 system, MERS would not suffer any financial loss, would it?

4 MR. RAGSDALE: Object to form.

5 THE WITNESS: From -- not from those notes, no.

6 BY MR. WOOTEN:

7 Q. You would not experience a default if there were no

8 payments made on any of those mortgages, would you?

9 **A. Well, we're the mortgagee, so there is a default.**

10 Q. Tell me where in the mortgage instruments it calls

11 for a default to MERS. Show me an exhibit.

12 **A. Well, if the mortgagee defaults, or if the borrower**

13 **defaults, then underneath the promissory note, then that is a**

14 **default for the purposes of the mortgage, and we're the holder**

15 **of the mortgage.**

16 Q. Show me where in Exhibit 2 it says that MERS will

17 suffer a default if the borrower fails to pay.

18 **A. I didn't -- you didn't ask me that question.**

19 Q. I'm asking you now.

20 **A. There is nothing in there about that.**

21 Q. That's right, because default is defined in the

22 note; right?

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1 **A. No. There's defaults in the -- there's a default --**

2 **it talks about defaults in mortgages.**

3 Q. Where in -- where in Exhibit 2 does it say that MERS

4 will have a default?

5 MR. BROCHIN: Object to the form.

6 THE WITNESS: We have the right to exercise any and

7 of all of those interests including our right to foreclose and

8 sell the property and take any action required of the lender.

9 MR. RAGSDALE: You just killed her.

10 THE WITNESS: Oh, I'm sorry. There's a sentence in

11 the, under transfer of rights in the property that says that

12 MERS has the right to exercise any and of all those interests

13 including but not limited to the right to foreclose and sell

14 the property and take any action required of the lender.

15 BY MR. WOOTEN:

16 Q. Does that say that MERS will experience a default if

17 the borrower fails to pay?

18 **A. I don't understand your question.**

19 Q. I asked you to show me where in the mortgage

20 instrument it says that MERS will experience a default.

21 **A. I don't understand what you mean by MERS**

22 **experiencing a default.**

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1 Q. The section that you're referring to under transfer

2 of rights in the property says this security instrument

3 secures to lender.

4 **A. That's right.**

5 Q. You're not the lender.

6 **A. I agree.**

7 Q. And it says it secures to lender the repayment of

8 the loan and all renewals, extensions and modifications of the

9 note.

10 **A. I agree.**

11 Q. And you're not a party to the note?

12 **A. I agree.**

13 Q. And it says the performance of borrower's covenants

14 and agreements under this security instrument and the note;

15 right?

16 **A. Where do you see that?**

17 Q. Roman numeral 2.

18 **A. Right.**

19 Q. Transfer of rights in the property.

20 **A. Okay.**

21 Q. Right?

22 **A. Right.**

VIDEOTAPED DEPOSITION OF WILLIAM C. HULTMAN
CONDUCTED ON WEDNESDAY, NOVEMBER 11, 2009

30 (Pages 117 to 120)

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1 MR. BROCHIN: Oh --
2 MR. WOOTEN: Oh, okay. Off the record for just a
3 second.
4 THE VIDEOGRAPHER: Going off record at 12:07:05.
5 (Discussion off the record.)
6 (A lunch recess was taken from 12:08 p.m. to 12:48
7 p.m.)
8 THE VIDEOGRAPHER: We're back on record at 12:48:46.
9 BY MR. WOOTEN:
10 Q. Mr. Hultman, we left off to take a lunch break. We
11 were talking about the mortgage instrument, and we were
12 talking about where in the mortgage instrument it says that
13 MERS experiences a default if the borrower doesn't pay on the
14 mortgage note, and we talked about the language in the
15 transfer of interest and property section. Other than that
16 section is there any other portion of the security instrument
17 that you contend states that MERS experiences a default if the
18 borrower fails to pay?
19 MR. RAGSDALE: Object to the form.
20 THE WITNESS: If I can -- if I understand your
21 question correctly, here's, here's what I think my response is
22 to your question. It's the borrower who defaults in the

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1 payment of the note, and that default triggers a actions,
2 could trigger actions under the mortgage by MERS to foreclose
3 the mortgage. So in that sense it's my testimony that we
4 experience a default.
5 BY MR. WOOTEN:
6 Q. And we talked about the fact that MERS is not a
7 party to the note; right?
8 A. **Did we talk about it? Yes. We talked about it.**
9 Q. And you agree that MERS is not a lender and is not
10 the party to the note?
11 A. **Yes.**
12 Q. The borrower does not pay their mortgage payments to
13 MERS; correct?
14 A. **Not normally.**
15 Q. Tell me what situations they would make their normal
16 monthly mortgage payment to MERS.
17 A. **If the note was transferred to -- or excuse me. If**
18 **the note was negotiated to MERS and MERS was the holder, at**
19 **that point payments would be due to MERS as holder of the note**
20 **for the benefit of the beneficial owner.**
21 Q. But MERS still wouldn't be entitled to that money,
22 would they?

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1 A. **The proceeds would be remitted to the beneficial**
2 **owner. That's correct.**
3 Q. That's why your corporate resolution under No. 6
4 says endorse checks made payable to MERS to the member
5 received by the member for payment on any mortgage loan
6 registered on the MERS system that is shown to be registered
7 to the member; right?
8 A. **That's one of the reasons.**
9 Q. And you don't claim those payments as income on the
10 taxes of MERS, do you?
11 A. **No, we do not.**
12 Q. You don't even reflect those payments as accounting
13 entries on the books and records of MERS, do you?
14 A. **Well, they may pass through our back account and as**
15 **a result of that they may be shown as, as, as entries in our**
16 **books and records, but it is certainly not recorded as income.**
17 Q. And the money would pass through some type of
18 restricted account to go to the beneficial owner?
19 A. **It depends on, it depends on how we get the money.**
20 **There's no restricted accounts. It just depends on how we get**
21 **the money. Sometimes we'll just forward the checks to the**
22 **servicer if we get them. Sometimes we'll run them, you know,**

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1 **they get cashed inadvertently and then they just, we just**
2 **issue a check to the servicer or investor.**
3 Q. And is that part of the mail room function that EDS
4 or your electronic or your information technology mail room
5 vendor takes --
6 A. **It can be.**
7 Q. -- takes care of for MERS?
8 A. **Sometimes they come to our office.**
9 Q. In Virginia?
10 A. **Yes.**
11 Q. Is it your testimony that when MERS undertakes a
12 foreclosure that it is MERS which is undertaking that act?
13 A. **I'm sorry. I don't know that I've testified to**
14 **that.**
15 Q. When MERS undertakes a foreclosure, is it MERS which
16 is taking that action or is it someone taking that action in
17 the name of MERS?
18 MR. RAGSDALE: Object to form.
19 THE WITNESS: It's MERS.
20 BY MR. WOOTEN:
21 Q. It is MERS?
22 A. **Yes.**

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1 Q. And explain to me who at MERS is responsible for
2 foreclosures?
3 **A. In what sense?**
4 Q. Well, you said there are no employees of MERS;
5 right?
6 **A. They're officers of MERS. There's no employees, but**
7 **they're officers.**
8 Q. Which officers are you referring to? You're
9 referring to executive officers or certifying officers?
10 **A. Well, to the certain extent that the, I mean to the**
11 **extent that the corporate officers of MERS exercise oversight**
12 **over everything that that company does, to a certain extent**
13 **they would be considered participating in that process, but**
14 **generally speaking it would be the certifying officers of the**
15 **servicer for the beneficial owner who has instructed that the**
16 **foreclosure move forward.**
17 Q. So it would be employees of the servicer who you've
18 authorized to sign MERS name who would be doing the
19 foreclosure?
20 MR. RAGSDALE: Object to the form.
21 THE WITNESS: It's -- I think it's a
22 mischaracterization to just say we authorize them to execute

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1 documents. There are other things that they do under the
2 corporate resolutions. They take actions. They take -- they
3 don't just sign documents.
4 BY MR. WOOTEN:
5 Q. Would you refer back to the, I believe it's Exhibit
6 2, the mortgage of Debra Henderson, please.
7 **A. What are we looking at? Exhibit 2?**
8 Q. Exhibit 2.
9 **A. Okay.**
10 Q. And if you'll look at the page across the fax line
11 says 21 in the top right?
12 **A. I'm there.**
13 Q. Paragraph 22 says acceleration and remedies; right?
14 **A. Is that a question?**
15 Q. Is that what the heading is for paragraph 22?
16 **A. It says acceleration, remedies.**
17 Q. Does that paragraph say that the lender shall give
18 notice to the borrower prior to acceleration following
19 borrower's breach of any covenant or agreement in this
20 security instrument?
21 **A. That's part of that sentence, yes.**
22 Q. Take a second and read that paragraph. Tell me

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1 anywhere in there that it mentions MERS.
2 **A. There, there is no reference to MERS --**
3 Q. All right.
4 **A. -- in that paragraph.**
5 Q. The next paragraph says if the lender invokes the
6 power of sale, lender shall give a copy of the notice to
7 borrower in the manner provided in Section 15. Lender shall
8 publish the notice of sales once a week for three consecutive
9 weeks in a newspaper published in Montgomery County, Alabama.
10 That doesn't say if MERS invokes the power of sale, does it?
11 **A. I'm sorry?**
12 MR. BROCHIN: Object to the form of the question.
13 BY MR. WOOTEN:
14 Q. That paragraph says if lender invokes the power of
15 sale, not if MERS invokes the power of sale; right?
16 **A. That's what it says.**
17 Q. Is there a power of sale in the promissory note?
18 **A. I'd have to look at the note.**
19 Q. Typically is there a power of sale of real estate in
20 a promissory note?
21 **A. I don't know what's typical.**
22 Q. How long have you worked in the mortgage industry?

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1 **A. I've never actually worked in the mortgage industry.**
2 **I've worked for companies that have activities in the mortgage**
3 **industry.**
4 Q. Does anywhere in the rest of that paragraph under
5 paragraph 22, does it mention to, does it mention MERS?
6 **A. In which paragraph?**
7 Q. The rest of the balance of paragraph 22.
8 **A. I believe not.**
9 Q. Does MERS have any records available to it in its
10 separate data bases dealing with the payments which were made
11 by Deborah Henderson?
12 **A. I'm sorry?**
13 Q. Does MERS have any information in its own records,
14 not the records of GMAC or any servicer, in its own records,
15 does it have any information related to the payment history of
16 Debra Henderson and her mortgage loan?
17 **A. Only to the extent that the system indicated that a**
18 **foreclosure was initiated against her on two separate**
19 **occasions.**
20 Q. There's nothing in that indication in your system
21 with respect to her payment history, is there?
22 **A. I'm sorry? Is that a question?**

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1 Q. There's nothing in your system, in MERS own
2 information through its technology indicating what her payment
3 history is, is there?
4 **A. If you mean by, if you mean by that is it in one of**
5 **our systems that we operate, the answer's no.**
6 Q. Right. That information would be in the hands of
7 either the servicer or the owner of the debt if they were
8 servicing their own loan; right?
9 **A. No. The information could be given to MERS**
10 **vis-a-vis the certifying officer in a different format.**
11 Q. I'm saying the records of payment as they are
12 maintained in the ordinary course of business are not MERS
13 records. They come from the servicer or whichever entity is
14 designated to receive and process those payments; right?
15 MR. RAGSDALE: Object to form.
16 THE WITNESS: That's correct.
17 BY MR. WOOTEN:
18 Q. If prior to this foreclosure GMAC had assigned this
19 mortgage from MERS to itself and foreclosed in its own name,
20 MERS would have had no problem whatsoever with GMAC doing
21 that, would it?
22 MR. RAGSDALE: Object to the form.

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1 MR. BROCHIN: Object to form.
2 THE WITNESS: I'm sorry. I don't understand your
3 question.
4 MR. WOOTEN: Are you all right on that?
5 BY MR. WOOTEN:
6 Q. My question was this. If MERS had chose -- I mean
7 if GMAC had chosen to assign this MERS mortgage into its own
8 name prior to foreclosure, MERS would have had no problem with
9 GMAC making that decision, would it?
10 **A. If, if you mean if MERS was requested by GMAC to**
11 **assign the mortgage lien back to GMAC, we would have done**
12 **that, and then GMAC could have foreclosed however they wanted**
13 **to.**
14 Q. Now, when you say MERS assigning the lien back, that
15 would be because GMAC could not have gone out and foreclosed
16 in its own name without an assignment from MERS to GMAC;
17 right?
18 MR. BROCHIN: Object to the form of the question.
19 THE WITNESS: I, I don't know how -- I'm not expert
20 in foreclosure law in the State of Alabama, so I can't answer
21 that question.
22 BY MR. WOOTEN:

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1 Q. Isn't it part of your agreements with your members
2 that they may choose to foreclose in a name other than MERS?
3 **A. Yes.**
4 Q. And that's in rule 8; right?
5 **A. Yes.**
6 Q. And so my point being is whether in this case GMAC
7 had chosen to assign the lien out of the MERS system or anyone
8 else who has a lien registered on the MERS system chooses to
9 assign it out, MERS has no problem with the member choosing to
10 do that; right?
11 **A. If the member would like to foreclose in their name**
12 **or in the name of some other entity other than MERS, that's**
13 **their decision to make.**
14 Q. Are you aware of any of your members requesting that
15 their lawyers make legal determinations about whether it is
16 advisable legally to assign the lien out of MERS and to
17 someone else's name prior to foreclosure?
18 MR. RAGSDALE: Object to form.
19 THE WITNESS: I'm not privy to any of those
20 conversations.
21 BY MR. WOOTEN:
22 Q. Are you familiar with whether or not there have been

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1 any conversations with servicers about making those
2 determinations prior to beginning foreclosure proceedings?
3 **A. Which determinations are you speaking of?**
4 Q. Whether to assign the lien out of the MERS system
5 prior to foreclosure.
6 **A. I'm aware that, that members do assign, or do**
7 **request an assignment of the mortgage to themselves and they**
8 **do foreclose in their name.**
9 Q. Will you look at your rules of membership. I
10 believe we marked them as Exhibit 3; is that right?
11 **A. Yes.**
12 Q. Rule 8 dealing with foreclosure?
13 **A. Do you want me to go there?**
14 Q. Please.
15 **A. Okay.**
16 Q. Page 25 I think.
17 **A. I'm on page 26.**
18 Q. Okay. We talked about the fact that, this is
19 paragraph A in Section 1 of Rule 8 says that either the
20 beneficial owner or its servicer shall determine whether
21 foreclosure proceedings with respect to such mortgage loan
22 shall be conducted in the name of MERS, then servicer, or the

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1 name of a different party designated by the beneficial owner?
2 That's what we just talked about being the decision of the
3 beneficial owner or its servicer; correct?
4 MR. BROCHIN: Object to the form of the question.
5 THE WITNESS: That's what it says.
6 BY MR. WOOTEN:
7 Q. Right. And again, under your rules, you let your
8 members make that determination; right?
9 A. Yes.
10 Q. Subpart D of that rule says that if the beneficial
11 owner or its servicer determines the foreclosure proceedings
12 shall be conducted in the name of the party other than MERS,
13 the servicer designated on the MERS system shall cause to be
14 made an assignment of the mortgage from MERS to the person
15 designated by the beneficial owner and such beneficial owner
16 shall pay all recording costs. Do you have any checks in
17 place to determine whether or not the servicer actually has
18 the authority to make the assignments?
19 A. **We have contracts that require, that, you know, our**
20 **membership that they're a servicer and they have the ability**
21 **to do that.**
22 Q. Does anyone verify that that's actually taking

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1 place?
2 A. **Verify what?**
3 Q. That the servicer actually has the right to make the
4 assignments.
5 A. **MERS is making the assignments.**
6 Q. Why does this rule say the servicer designated on
7 the MERS system shall cause to be made an assignment then?
8 A. **They need to instruct us to make the assignment.**
9 Q. Okay. And who actually makes the assignment at that
10 point?
11 A. **MERS.**
12 Q. And when you say MERS, that's the company with no
13 employees but thousands of certifying officers; right?
14 A. **That's correct.**
15 MR. RAGSDALE: Object to the form.
16 BY MR. WOOTEN:
17 Q. So what you're actually saying is is that in that
18 situation the servicer through the persons you have designated
19 to sign MERS name make an assignment; right?
20 MR. BROCHIN: Object to the form.
21 THE WITNESS: I'm not sure I understand your
22 question.

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1 BY MR. WOOTEN:
2 Q. So where it says the servicer shall cause to be made
3 an assignment, what's actually happening is the certifying
4 officers of the servicer are signing the document?
5 MR. BROCHIN: Object to the form.
6 BY MR. WOOTEN:
7 Q. Of the mortgage assignment; right?
8 MR. RAGSDALE: Object to the form.
9 MR. BROCHIN: Object to the form to the extent it
10 said certifying officer of the servicer.
11 THE WITNESS: If -- what happens is the ser- -- in
12 their capacity as the servicer who have the, been delegated
13 the authority under the seller servicer agreements and the
14 pooling servicer agreements to do the, conduct the
15 foreclosure, they would instruct the MERS certifying officer
16 to create and record that assignment to the party that they
17 wanted to do the foreclosure.
18 (Hultman Deposition Exhibit No. 4 was marked for
19 identification.)
20 BY MR. WOOTEN:
21 Q. I show you what I marked as Exhibit 4. This appears
22 to be a corporate resolution signed by you in October of 2001

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1 designating some lawyers in a law firm who appear to be MERS
2 members assistant secretaries and vice presidents and
3 authorizing them to do a few things less than what is in a
4 standard corporate resolution we've been talking about
5 earlier; correct?
6 MR. BROCHIN: Object to the form of the question.
7 THE WITNESS: Are you asking me what this is?
8 BY MR. WOOTEN:
9 Q. Yeah.
10 A. **Yeah. They have a limited -- they have more limited**
11 **authority to do things as certifying officers.**
12 Q. Right. And one of which, number 1, is execute any
13 and all documents necessary to foreclose upon the property
14 securing any mortgage loan registered on the MERS system. Is
15 that the same language that's in the corporate resolution
16 form --
17 A. **I would have to --**
18 Q. -- we marked earlier?
19 A. **I would have to compare them. It is similar, but it**
20 **is not exactly the same.**
21 Q. It's similar to paragraph 3 of your corporate
22 resolution; right?

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1 A. **What is similar to it?**
2 Q. Paragraph 1 of Exhibit 4.
3 A. **Paragraph 1 of Exhibit 4 and paragraph 3 of the**
4 **corporate resolution in Exhibit 1 are, are --**
5 Q. Similar?
6 A. **-- similar.**
7 Q. And so you've given a law firm the right to execute
8 documents in your name including assignments of mortgage or
9 deeds of trust; right?
10 A. **No, I would not agree with that characterization.**
11 Q. Read paragraph 1 for me, please, into the record.
12 A. **Be it resolved that Mark P. Harmon, Thomas J. Walsh**
13 **and Andrew S. Harmon, Francis J. Nolan and Marsha A. Greeley**
14 **as employees of the Harmon Law Offices, P.C., the member, a**
15 **member of Mortgage Electronic Registration System, are made**
16 **assistant secretaries and vice presidents of MERS and as such**
17 **are authorized to, colon, and then those three par- -- four**
18 **paragraphs.**
19 Q. Okay. And under paragraph number 1 it says execute
20 any and all documents necessary to foreclose upon the property
21 securing any mortgage loan registered on the MERS system
22 including, but not limited to, and then it has A through J;

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1 right?
2 A. **Are you asking me if that's what it says?**
3 Q. Right.
4 A. **Yes. That's what it says.**
5 Q. In paragraph 3 of the corporate resolution it has A
6 through H on -- that's Exhibit 1; right?
7 A. **Yes.**
8 Q. Okay. Now, A on Exhibit 4 is assignments of
9 mortgage or deeds of trust; right?
10 A. **I'm sorry.**
11 MR. RAGSDALE: Exhibit 4?
12 BY MR. WOOTEN:
13 Q. Exhibit 4 --
14 A. **I'm getting confused.**
15 Q. Number A.
16 A. **What's the question?**
17 Q. Paragraph 1(A) you've authorized these lawyers and
18 their employees to sign as assistant secretaries and vice
19 presidents of MERS, and you've authorized them in paragraph
20 1(A) to execute assignments of mortgage or deeds of trust;
21 right?
22 A. **We have authorized the named individuals in this**

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1 **resolution as officers of Mortgage Electronic Registration**
2 **Systems, Inc. to execute those assignments, yes.**
3 Q. Okay. And you have authorized them also to do
4 substitution of trustee on deeds of trust in B?
5 A. **Those named officers, yes.**
6 Q. And you've authorized them to do foreclosure deeds
7 on behalf of MERS?
8 A. **Yes.**
9 Q. Affidavits in the name of MERS?
10 A. **Affidavits of nonmilitary status. Well, I guess**
11 **there's other affidavits, too.**
12 Q. Right.
13 A. **Okay. The ones that are in there, whatever's listed**
14 **there we've authorized them to do.**
15 Q. And number F or letter F is affidavits of debt. How
16 would an employee of a law firm execute an affidavit of debt
17 to MERS when MERS is not owed any money?
18 A. **I don't think that's what that says.**
19 Q. What is an affidavit of debt then?
20 A. **I'm assuming it's an affidavit about the status of**
21 **the borrower's debt.**
22 Q. You would agree that that information would be the

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1 servicer's information; correct?
2 A. **I would agree that in most cases the servicer is the**
3 **custodian of those records, yes.**
4 Q. Okay. So you're authorizing the law firm to make
5 affidavits of debt in the name of MERS; right?
6 A. **It depends on what their, the purpose of the**
7 **affidavit were. Could be.**
8 Q. And you would agree with me that like MERS itself
9 the law firm would have none of its own business records
10 regarding the payment history and status of the indebtedness
11 of a mortgage borrower; correct?
12 A. **I don't know about every law firm. I'd say it's**
13 **probably not typical.**
14 Q. You don't know of any law firms that serve as
15 servicers and accept and apply and distribute payments of
16 regular mortgage payments for borrowers, do you?
17 A. **I have no knowledge either way.**
18 Q. Is this the standard affidavit that you, or standard
19 corporate resolution that you use for every law firm that is a
20 MERS member?
21 A. **No.**
22 Q. Is there a special category of membership in MERS

<p style="text-align: right;">137</p> <p>1 for law firms?</p> <p>2 A. No. Not every, not every -- if they were a regular</p> <p>3 member of MERS, they would have, and they had reason to have</p> <p>4 a, the regular certifying officer resolution, they would have</p> <p>5 it.</p> <p>6 Q. Subparagraph H of paragraph 1 says affidavits</p> <p>7 regarding lost promissory notes. What would a law firm, what</p> <p>8 firsthand knowledge would they have of a document custodian</p> <p>9 having lost a promissory note?</p> <p>10 MR. RAGSDALE: Objection.</p> <p>11 THE WITNESS: That would depend on the facts and</p> <p>12 circumstances surrounding their affidavit.</p> <p>13 BY MR. WOOTEN:</p> <p>14 Q. And you're authorizing this law firm to make</p> <p>15 endorsements of promissory notes to the VA or HUD on your</p> <p>16 behalf?</p> <p>17 A. If the note was endorsed to MERS for some reason,</p> <p>18 they would have the reason, they could endorse the note if --</p> <p>19 strike that. If the note was delivered to MERS as holder and</p> <p>20 it was endorsed in blank and the requirements under the seller</p> <p>21 servicer guide for VA or HUD required and permitted the</p> <p>22 servicer and/or its designee to endorse those notes</p>	<p style="text-align: right;">139</p> <p>1 would not typically know what the amount of a proof of claim</p> <p>2 is, would they?</p> <p>3 A. I don't --</p> <p>4 MR. BROCHIN: Object to the form of the question.</p> <p>5 THE WITNESS: I don't think that I testified to that</p> <p>6 effect.</p> <p>7 BY MR. WOOTEN:</p> <p>8 Q. Would you agree that having the information in its</p> <p>9 own records of any borrower's payment history or any</p> <p>10 borrower's amount of delinquency from its own internal records</p> <p>11 would be unlikely the context of a mortgage borrower?</p> <p>12 A. I don't understand your question.</p> <p>13 Q. Do you know if this law firm in the ordinary course</p> <p>14 of its business engages in servicing mortgage loans?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you know if this law firm in the ordinary course</p> <p>17 of its business engages in servicing defaulted mortgage loans?</p> <p>18 A. I do not know.</p> <p>19 Q. Is it fair to say that this is similar to what we</p> <p>20 talked about earlier in that anyone who has or feels the need</p> <p>21 to sign documents in the name of MERS can request that power</p> <p>22 and it will be granted by MERS?</p>
<p style="text-align: right;">138</p> <p>1 specifically to HUD, then that would authorize them to do so</p> <p>2 for us if we're the holder.</p> <p>3 Q. And then you have J which says such other documents</p> <p>4 as may be necessary and proper to carry into effect the powers</p> <p>5 granted herein; right?</p> <p>6 A. That's what it says.</p> <p>7 Q. Paragraph 2 you authorize these folks to execute all</p> <p>8 documents necessary to protect the interest of the beneficial</p> <p>9 owner of such mortgage loan or MERS in any bankruptcy</p> <p>10 proceeding including executing proofs of claim in affidavits</p> <p>11 of movement under Section 501, 502 and Bankruptcy Rule 3001</p> <p>12 through 3003. Did -- do you know if this law firm prepared</p> <p>13 this corporate resolution and asked you to sign it or is this</p> <p>14 something that MERS does?</p> <p>15 A. No. This is something -- this is a form that MERS</p> <p>16 uses.</p> <p>17 Q. What knowledge would MERS have about the amount of a</p> <p>18 proof of claim?</p> <p>19 A. If that information was given to one of our</p> <p>20 certifying officers, we would have knowledge of it.</p> <p>21 Q. And you agree that the lawyers, as we talked about</p> <p>22 earlier, like they would not typically have a payment history,</p>	<p style="text-align: right;">140</p> <p>1 MR. BROCHIN: Object to the form of the question.</p> <p>2 THE WITNESS: I do not agree that that's the case.</p> <p>3 BY MR. WOOTEN:</p> <p>4 Q. We testified earlier about own, beneficial owner of</p> <p>5 the mortgage debt or the promissory note having a right to</p> <p>6 direct the transfer of the mortgage lien; correct?</p> <p>7 MR. RAGSDALE: Object to the form.</p> <p>8 THE WITNESS: I don't remember exactly saying it in</p> <p>9 that, that framework, but --</p> <p>10 BY MR. WOOTEN:</p> <p>11 Q. Is that wrong?</p> <p>12 A. If you rephrase the question, maybe I'll be able to</p> <p>13 answer it.</p> <p>14 Q. Isn't it true that the beneficial owner is the party</p> <p>15 who may direct that the security instrument be assigned by</p> <p>16 MERS to some other entity?</p> <p>17 MR. RAGSDALE: Object to the form.</p> <p>18 THE WITNESS: Yes, unless they've delegated that</p> <p>19 power to the servicer and then the servicer would also have</p> <p>20 that authority.</p> <p>21 BY MR. WOOTEN:</p> <p>22 Q. And that would be because of a grant of authority to</p>

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1 the servicer by the owner?

2 **A. By the beneficial owner of the loan, yes.**

3 Q. So ultimately it is the owner who is controlling

4 when the mortgage interest is conveyed?

5 **A. Generally, yes.**

6 Q. Tell me when that is not true.

7 **A. When they've delegated it.**

8 Q. But when they've delegated it, they still control

9 it; right?

10 **A. Depends on the form of the delegation.**

11 Q. So why would a law firm need the right to assign a

12 mortgage or deed of trust from the MERS system?

13 **A. They may have been delegated the authority by the**

14 **investor.**

15 Q. They're certainly not the servicer; right?

16 **A. They're not the servicer? That's correct, or they**

17 **may be. We don't know.**

18 Q. Other than your corporate resolution form do you

19 have any documents signed by any member affirming that the

20 persons who are signing documents in the name of MERS are

21 actually officers of the corporation?

22 **A. Would you rephrase that question, please.**

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1 Q. Once a corporate resolution is entered granting

2 employees of servicer the right to sign in your name, is there

3 any further action taken by MERS to verify that the people who

4 are signing in your name are actually officers of the member

5 which you have granted them authority to sign as certifying

6 officers on behalf of?

7 MR. RAGSDALE: Object to the form.

8 THE WITNESS: If I understand your question, there,

9 there are occasions when we have had to audit members to

10 ensure that we've had a question about an instrument or we've

11 had some question about something and there have been times

12 that we've audited a member or asked questions of members to

13 ensure that our rules and procedures have been followed.

14 BY MR. WOOTEN:

15 Q. Are you familiar with a company called Fidelity

16 National Foreclosure and Bankruptcy Solutions?

17 **A. I have some knowledge of that company.**

18 Q. Are you familiar with the fact that company is now

19 named LPS or Lender Processing Solutions?

20 **A. I don't know if that's the name of that division of**

21 **that company.**

22 Q. What is the name of that division of that company?

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1 **A. I don't know.**

2 Q. Is it possible that it's Lender Processing Solutions

3 Default or LPS Default?

4 **A. I, I don't know. I didn't -- I haven't looked at,**

5 **at the membership log to see what their name is.**

6 **(Hultman Deposition Exhibit No. 5 was marked for**

7 **identification.)**

8 **BY MR. WOOTEN:**

9 Q. I show you what I've marked as Exhibit 5. Again

10 this is a front and back copy, and again there is a corporate

11 resolution after these recitals on page 1 authorizing the

12 attached list of candidates who are employees of Fidelity

13 National Foreclosure and Bankruptcy Solutions appointing them

14 as assistant secretaries and vice presidents of Mortgage

15 Electronic Registration Systems, and it runs through this list

16 of documents A through H that looks very similar to paragraph

17 number 3 of Exhibit 1.

18 Do you know what Fidelity National Foreclosure and

19 Bankruptcy Solution's role is in the foreclosure and

20 bankruptcy process?

21 **A. I don't know specifically what they do, no.**

22 Q. Did you undertake any investigation into their role

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1 in this process prior to granting them signing authority?

2 **A. Me personally?**

3 Q. Or MERS?

4 **A. I'm not sure what MERS did or didn't do in this**

5 **case.**

6 Q. Does MERS undertake to investigate the role of any

7 applicant for certifying officer status in the administration

8 of the loans that are registered on the MERS system or does

9 MERS simply take the corporate resolution that they've offered

10 and sign it?

11 MR. BROCHIN: Object to form.

12 MR. RAGSDALE: Object to form.

13 THE WITNESS: MERS has procedures that they follow

14 when someone applies to be a member, and there are things that

15 we do to validate information about the members who make

16 application to be members, and incident to membership is the

17 right to request a certifying officer certificate, and what we

18 do in each case may not always be the same. So there's things

19 that we do differently depending on the facts and

20 circumstances surrounding things that we, agreements we enter

21 into and things that we delegate authority for.

22 BY MR. WOOTEN:

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1 Q. Do you know if there are concurrent positions of
2 assistant secretary and assistant vice president with Fidelity
3 National Foreclosure and Bankruptcy Solutions?
4 **A. I do not.**
5 Q. Do you know if any of the people listed as
6 certifying officers on this document are actually officers of
7 Fidelity National Foreclosure Bankruptcy and Bankruptcy
8 Solutions?
9 **A. I don't know. I didn't investigate that.**
10 Q. Who would be in charge of investigating that for
11 MERS?
12 **A. Someone in the legal department.**
13 Q. And MERS -- you said someone in the legal
14 department. That would not be MERS legal department, would
15 it?
16 **A. No. It would be someone in the MERS legal**
17 **department.**
18 Q. Huh?
19 **A. Someone in the MERS legal department.**
20 Q. I thought you said MERS didn't have any employees.
21 **A. I misspoke. It was the MERSCORP legal department.**
22 Q. So again, with respect to all this foreclosure

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1 activity being taken in the name of MERS, there aren't any
2 employees of MERS to monitor the foreclosure activity being
3 conducted in MERS name, is there?
4 **A. There are no employees but there are officers.**
5 Q. And how much money does MERS pay in payroll salary
6 or benefits or compensation of any type to their certifying
7 officers?
8 **A. We do not pay the certifying officers anything.**
9 Q. Okay. Who pays the certifying officers?
10 **A. No one pays them.**
11 Q. No one pays?
12 **A. They're employees of a separate company.**
13 Q. Who at MERS audits the activities of the certifying
14 officers to ensure that these activities are being taken
15 within the powers granted by the corporate resolution?
16 MR. RAGSDALE: Object to the form.
17 THE WITNESS: I'm not understanding your question.
18 BY MR. WOOTEN:
19 Q. Is there anyone at MERS who verifies that the acts
20 being undertaken in the name of MERS by its certifying
21 officers are acts which are authorized by this corporate
22 resolution?

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1 **A. There's no one at MERS other than the officers who**
2 **generally oversee the activities of the certifying officers.**
3 **However, there are employees of the parent corporation**
4 **MERSCORP that regularly audit the activities of our members to**
5 **ensure that they are complying with our rules and procedures**
6 **in our agreement with them.**
7 Q. Who are those employees?
8 **A. They are the people who work in the law department**
9 **and the people who work in the products performance division**
10 **-- department.**
11 Q. How many of those people are they?
12 **A. I think there is, there are seven in the law**
13 **department, and product performance department's probably, and**
14 **that -- I don't know off the top of my head because I haven't**
15 **looked at the org chart lately, but there's probably seven or**
16 **eight or nine people there.**
17 Q. Well, let's just go with the highest number. Seven
18 in law and nine in product performance. So 16 people out of
19 47?
20 **A. Give or take, yeah.**
21 Q. And you say those 16 people are involved in auditing
22 the thousands of transactions executed daily by the thousands

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1 of certifying officers of MERS?
2 **A. I didn't say that.**
3 MR. RAGSDALE: Object to form.
4 MR. BROCHIN: Object to form.
5 MR. RAGSDALE: Sorry.
6 BY MR. WOOTEN:
7 Q. Okay. How much time in a typical day do those 16
8 people spend auditing the activities of certifying officers?
9 **A. I have no idea.**
10 Q. You are in charge of the law department, aren't you?
11 **A. No.**
12 Q. You are in charge of what department?
13 **A. I'm in charge of the corporate group or the**
14 **corporate division.**
15 Q. Does that include the law department?
16 **A. It does.**
17 Q. Who's in charge of the law department?
18 **A. Sharon Horstkamp.**
19 Q. Does Sharon Horstkamp report to you?
20 **A. She does.**
21 Q. Okay. Do you receive reports on the frequency of
22 audits undertaken by her department?

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1 **A. I do not.**
2 MR. BROCHIN: To the extent that answer calls for
3 communications between you and Miss Horstkamp, you should not
4 answer that question.
5 THE WITNESS: Okay.
6 MR. BROCHIN: In terms of it being privileged.
7 BY MR. WOOTEN:
8 Q. Well, then let me be clear. I'm talking about
9 auditing activities conducted in the normal course of
10 business, not legal communications concerning legal advice.
11 I'm assuming that auditing the activities of your certifying
12 officers is part of your daily business routine, is it not?
13 **A. There are functions that they do on a daily basis,**
14 **yes.**
15 Q. Okay. And is that a part also of the products
16 performance department?
17 **A. Yes.**
18 Q. And to the extent that you conduct those activities,
19 that is not a matter of legal strategy or technique. That is
20 a matter of verifying that your members are doing what they
21 have told you they will do; right?
22 **A. They are looking at and making sure that the members**

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1 **are in compliance with our agreement, our membership rules and**
2 **our procedures.**
3 Q. Right. And so again my question is there are 16
4 people designated to look at that issue, and you have
5 thousands of certifying officers; correct?
6 **A. Are you asking me if I have thousands of certifying**
7 **officers?**
8 Q. Yes.
9 **A. Yes.**
10 Q. You have 16 people who look at their compliance with
11 this resolution?
12 **A. Generally, yes.**
13 Q. And do you have any idea daily how many transactions
14 are taken in the name of MERS by these thousands of corporate
15 certifying officers?
16 **A. Generally, no.**
17 Q. Okay. Is there any way that MERS is able to track
18 every transaction conducted in the name of MERS by a
19 certifying officer?
20 **A. Only to the extent that it's reported to us either**
21 **systematically or it's reported to a certifying officer within**
22 **the organi- -- the servicing organization.**

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1 Q. Well, if the certifying officer is undertaking the
2 activity, well then obviously they would know that it's being
3 undertaken; right?
4 **A. Sure.**
5 Q. So I mean I guess again my point is there are
6 thousands of transactions on a daily basis that MERS has no
7 record of; right?
8 **A. I don't know that there are thousands of**
9 **transactions being taken daily by the certifying officers.**
10 Q. Well, let's just talk about this affidavit we were
11 discussing with respect to the Harmon Law Offices. Do you
12 have any records in MERS system of the number of affidavits of
13 nonmilitary status executed on a daily basis?
14 **A. In which systems are we speaking?**
15 Q. In MERS system.
16 **A. In the MERS, the computer automated systems?**
17 Q. In any method of storage, retrieval, archiving that
18 is available to you and that you use, do you have any record
19 of the number of affidavits of nonmilitary status executed by
20 a certifying officer on a daily basis in this country?
21 **A. Only to the extent that that information has been**
22 **reported to another certifying officer of the servicer.**

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1 Q. Okay. And how would you obtain that information?
2 **A. I would call the servicer up.**
3 Q. Okay. So that is not a MERS record?
4 **A. Well, to the extent that it's in the custody of the**
5 **MERS certifying officer we would consider that a MERS record.**
6 Q. Outside of the servicer's own system -- well, first
7 of all, let me ask it this way. Is the servicer required to
8 report these activities to you on a daily, weekly, monthly
9 basis?
10 **A. Which services?**
11 Q. Affidavits of nonmilitary status.
12 **A. They are not required to report that to us.**
13 Q. Do they report that to you?
14 **A. They do not.**
15 Q. Okay. And on your own systems do you have any
16 records of the number of affidavits of nonmilitary status that
17 are executed on a daily basis?
18 **A. If you're talking about the MERS system, no.**
19 Q. Okay. What about any other system owned or operated
20 by MERS?
21 **A. Generally, no.**
22 Q. Okay. What about assignments of mortgage or deeds

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1 of trust?

2 **A. What about them?**

3 Q. Do you have any idea how many of those are done on a

4 daily basis by MERS certifying officers?

5 **A. I do not.**

6 Q. Do you have access to that through the MERS system

7 or any other system maintained, owned, controlled and operated

8 by MERS?

9 **A. Only to the extent that we ask the servicer they**

10 **provide that information to us.**

11 Q. So they do not put that information on the MERS

12 system as a matter of course?

13 **A. Put what stuff on?**

14 Q. I'm sorry. Let me try to ask a better question.

15 Assignments of a mortgage or a deed of trust are not generally

16 reported to MERS on a daily basis, are they?

17 **A. Correct.**

18 Q. And MERS has no records of its own about how many

19 mortgage assignments or assignments of deeds of trust are

20 undertaken in its name on a daily basis, does it?

21 **A. Only to the extent that that information is not in**

22 **the hands of the MERS certifying officer for a particular**

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1 **servicer.**

2 Q. If you wanted to stop this deposition and go call

3 someone at MERS and say how many assignments have been done in

4 our name today of a mortgage or deed of trust, you could not

5 get that information that simply, could you?

6 **A. I could get the information, but it might take some**

7 **time.**

8 Q. So there's nothing in your system that catalogs how

9 frequently that occurs?

10 **A. There's nothing in the MERS system or the automated**

11 **systems that we operate for our members that has that**

12 **information readily available.**

13 Q. And you rely on the servicers to keep any records of

14 that if any records are kept?

15 **A. Yes.**

16 Q. How about foreclosure deeds? Do you have any record

17 of how many foreclosure deeds are executed in the name of MERS

18 on a daily basis in this country by certifying officers?

19 **A. No.**

20 Q. The same situation, if that data is available, it

21 would only be because the servicer kept that information?

22 **A. Which -- excuse me. I'm getting confused again.**

155

1 **Which, which, which are we talking about?**

2 Q. Foreclosure deeds.

3 **A. The deeds themselves? Yes, that's probably correct.**

4 Q. What about affidavits in general in the name of

5 MERS? Do you have any idea how many affidavits are executed

6 on a daily basis in the name of MERS by a certifying officer?

7 **A. The only ones I can testify to are the ones that I**

8 **sign personally.**

9 Q. Do you have to sign affidavits every day?

10 **A. Not every day but frequently.**

11 Q. How much time in a week do you spend signing

12 affidavits?

13 **A. A few hours.**

14 Q. How about affidavits of debt? Do you have any idea

15 how many affidavits of debt are executed in the name of MERS

16 on a daily basis?

17 **A. No.**

18 Q. Do you have any idea of the contents of those

19 affidavits of debt?

20 **A. No.**

21 Q. Do you have any idea whether those affidavits of

22 debt allege that a borrower owes MERS money?

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1 **A. Do I have what?**

2 Q. Do you have any idea whether or not those affidavits

3 allege or assert that any mortgage borrower owes MERS money?

4 **A. I do not.**

5 Q. Is there a form affidavit of debt that you have

6 approved for your members to sign and file in the name of

7 MERS?

8 **A. I don't believe so.**

9 Q. Do you have any idea how many affidavits regarding

10 lost promissory notes are prepared and filed on a daily basis

11 in this country in the name of MERS?

12 **A. There shouldn't be any.**

13 Q. If there shouldn't be any, why would you grant the

14 authority of a member or certifying officer to execute those

15 documents?

16 MR. BROCHIN: Object to the form of the question.

17 THE WITNESS: What? I'm sorry. What's the

18 question?

19 BY MR. WOOTEN:

20 Q. I asked you do you have any idea how many affidavits

21 regarding lost promissory notes are executed in the name of

22 MERS on a daily basis in this country? And you answered that

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1 there shouldn't be any.

2 **A. That's because we passed a rule saying that MERS**

3 **foreclosures should not be done using lost note affidavits.**

4 Q. And that's been in place a long time, hasn't it?

5 **A. What's a long time?**

6 Q. I thought that I read something that said that that

7 had always been the rule.

8 **A. It's not always been the rule.**

9 Q. When did that rule go in place?

10 **A. If it's not in the rule here, which I'm checking, I**

11 **don't know the answer to it. It was probably contemporaneous**

12 **with June of 2006.**

13 Q. And is that when MERS entered the moratorium on

14 foreclosures in Florida?

15 **A. That's the date, yes.**

16 Q. And is that because there were so many lost note

17 counts being filed in Florida?

18 **A. Among other reasons.**

19 Q. And so subpart 3 of Section 2(A) of Rule 8 says if

20 the note is lost or cannot be located, the member shall not

21 commence foreclosure action in the name of MERS, but rather

22 must assign the mortgage out of MERS?

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1 **A. I'm just having trouble finding that language.**

2 **Which paragraph are you?**

3 Q. It might be on 27 on your document. As you said,

4 you were a page longer than me, but it is Section 2, Sub A,

5 Roman numeral 3.

6 **A. That's correct. That's what it says.**

7 Q. So there shouldn't be any recent mortgage or

8 corporate resolutions authorizing a member to do an affidavit

9 regarding a lost promissory note?

10 MR. RAGSDALE: Objection.

11 THE WITNESS: I'm not saying that the resolutions

12 have been changed. What I'm saying is the rule supersedes

13 whatever provisions that's in the resolution.

14 BY MR. WOOTEN:

15 Q. And as you said, no affidavits should be being

16 executed in the name of MERS saying that MERS lost a

17 promissory note; is that right?

18 **A. That's what I'm saying, yes.**

19 Q. Do you have any idea how many endorsements of

20 promissory notes are executed in this country on a daily basis

21 on behalf of MERS?

22 **A. How many have been endorsed?**

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1 Q. On a daily basis --

2 **A. No.**

3 Q. -- I mean do you have any idea how many endorsements

4 are done in the name of MERS?

5 **A. No, I do not.**

6 Q. Do you have any idea how many proofs of claim are

7 filed in the name of MERS on a daily basis?

8 **A. I do not.**

9 Q. And you would agree that MERS is never the creditor

10 in a mortgage loan; right?

11 **A. I would not agree with that characterization.**

12 Q. Do bankruptcy trustees send monthly trustee payments

13 to MERS currently?

14 **A. We do get some occasionally, but that's not what**

15 **they're -- that's not the procedure that's supposed to be**

16 **followed.**

17 **(Hultman Deposition Exhibit No. 6 was marked for**

18 **identification.)**

19 **BY MR. WOOTEN:**

20 Q. I show you what I marked as Plaintiff's Exhibit 6.

21 Have you ever seen that form or a form like it before?

22 **A. Nope.**

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1 Q. Is this a form that was promulgated or propagated by

2 MERS to your knowledge?

3 **A. I don't have any -- I have no knowledge of this**

4 **form.**

5 Q. Have you ever seen that form before with respect to

6 any loan document where it was delivered as part of a closing

7 package?

8 **A. As I said, I have never seen the form before.**

9 Q. Would you agree with the contents of this disclosure

10 statement?

11 MR. BROCHIN: Object to the form of the question.

12 MR. RAGSDALE: You're asking if he agrees with the

13 statements?

14 MR. WOOTEN: Right.

15 MR. RAGSDALE: Object to the form.

16 BY MR. WOOTEN:

17 Q. I'm just asking you to read through it. Tell me if

18 you see anything that you think is inaccurate in this

19 statement.

20 **A. I don't understand what it says it's a company that**

21 **provides an alternative means of registering your mortgage**

22 **lien in the public records. That would not be language that**

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1 **we would ever authorize.**
2 Q. Okay. Anything else?
3 **A. The language about record the mortgage in the public**
4 **land records to protect its lien against your property is not,**
5 **again, language that I personally would use but --**
6 Q. But other than that everything else is --
7 **A. The other statements are --**
8 Q. You could --
9 **A. -- correct to the extent that, unless they were**
10 **taken out of context.**
11 Q. Sure. Mr. Hultman, you're familiar with the -- are
12 you familiar with the litigation that occurred in the United
13 States District Court for the District of Minnesota regarding
14 a lawsuit styled Jeweleen Jackson and others versus MERS and
15 others regarding -- it was a class action complaint involving
16 your company up there?
17 **A. I'm aware of the lawsuit, yes.**
18 Q. Did you file an affidavit in that lawsuit?
19 **A. I don't recall specifically, but I could have.**
20 Q. Do you remember what the contentions were in that
21 lawsuit?
22 **A. Contentions by who?**

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1 Q. The plaintiffs --
2 MR. RAGSDALE: And at this point --
3 BY MR. WOOTEN:
4 Q. -- in that action?
5 MR. RAGSDALE: -- let me also say any knowledge that
6 you have about that lawsuit that you derived from your legal
7 counsel I would instruct you not to disclose that or to
8 discuss it, but to the extent you have knowledge outside of
9 discussions with your legal counsel you can answer that
10 question.
11 BY MR. WOOTEN:
12 Q. And, and I don't want you discussing things that
13 your lawyer told you or that you conversed with them. I mean
14 you're an attorney and you understand privilege; right?
15 **A. Yes, sir.**
16 Q. So please don't violate your privilege with your
17 lawyers. I'm asking you what you know about this litigation
18 based on your employment as an officer of this corporation and
19 your involvement in testifying by affidavit in this case.
20 Okay?
21 **A. Okay.**
22 Q. What is your understanding of this litigation?

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1 **A. My understanding is that the plaintiffs' contention**
2 **was that before a nonjudicial foreclosure could be prosecuted**
3 **in the State of Minnesota that assignments of -- or excuse me**
4 **-- not assignments -- but transfers of the promissory note**
5 **would require some kind of recordation in the county land**
6 **records prior to the initiation of the nonjudicial**
7 **foreclosure.**
8 Q. Okay. Was it your understanding that the plaintiffs
9 contended that every time a promissory note changed hands that
10 there was in effect an unrecorded assignment of mortgage?
11 **A. Frankly I'm not sure that I could say what their**
12 **contention was because the language they use was often**
13 **confusing.**
14 Q. And at some point you prepared an affidavit for use
15 in that litigation?
16 **A. I'm sure I did. Well, I didn't prepare it, but it**
17 **was prepared for me which I read and signed in conjunction**
18 **with the litigation.**
19 Q. Of course, we all agree, I mean you understand that
20 an affidavit is equivalent of testimony under oath except it's
21 not subject to cross-examination; right?
22 **A. I understand that, that I need to be truthful when I**

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1 **sign the affidavits. Regardless of what they do with it, I**
2 **don't know.**
3 Q. Right.
4 (Hultman Deposition Exhibit No. 7 was marked for
5 identification.)
6 BY MR. WOOTEN:
7 Q. Let me hand you, I've marked that Plaintiff's
8 Exhibit 7, and it is your affidavit or one of your affidavits
9 from that litigation, ask you to turn to paragraph 7 of that
10 affidavit, please, sir. You indicate in your affidavit that
11 once MERS becomes the mortgagee of record that you remain the
12 mortgagee of record when beneficial ownership interest or
13 servicing rights are sold from one MERS member to another and
14 the transfer is tracked electronically on the MERS system;
15 correct?
16 **A. What -- am I -- is that what it says or is that what**
17 **I believe?**
18 Q. Is that what you believe?
19 **A. Yes.**
20 Q. And that's what it says?
21 **A. And that's what it says.**
22 Q. And that was your affidavit testimony --

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1 **A. That was my testimony.**
2 Q. -- in that case?
3 **A. Yes, sir.**
4 Q. When you speak of the sale of beneficial ownership
5 interest, what you were speaking of is the sale of promissory
6 notes for value; correct?
7 MR. RAGSDALE: Object to the form.
8 MR. BROCHIN: Object to the form.
9 THE WITNESS: It could include that, but it may also
10 include the sale of the loan itself without necessarily
11 transferring the benefi-, the note interest.
12 BY MR. WOOTEN:
13 Q. Now, you got me there. You're going to have to
14 explain that. Try that one more time.
15 MR. BROCHIN: Object to the form of the question.
16 BY MR. WOOTEN:
17 Q. I mean you can sell the note without selling the
18 beneficial ownership interest?
19 **A. What I -- no, I didn't say that.**
20 Q. Okay.
21 **A. What I said was generally the holder of the note and**
22 **the owner of the beneficial interest are the same, and all I'm**

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1 **saying is is that there are times when the note may be in the**
2 **possession of someone else but the loan interest has been sold**
3 **accept -- has been sold to some other, some party, and that**
4 **would entitle that purchaser to the benef- -- the note**
5 **interest or to get the note when it needed to.**
6 Q. So what you're talking about is where the notes are
7 sold, but potentially the notes may be held by a custodian
8 somewhere else? Is that an example of that?
9 **A. Well, no. What I'm talking about is often in, in**
10 **the mark-, in the secondary market the note is sold, or the**
11 **loan is sold, consideration is paid, and it takes some time**
12 **for the note to actually arrive at the purchaser's possession.**
13 Q. Right. And so anybody with possession of it who was
14 not the purchaser would basically be, I guess we would call it
15 a bailee or simply the person required to deliver it to the
16 true owner; right?
17 **A. There's different terms that could be used for that**
18 **situation.**
19 Q. Right. But in general when we talk about the
20 selling of mortgage loans in the context in which your company
21 is involved, typically that is the process of transferring
22 that loan from origination to securitization through the sales

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1 that take a loan from the closing table to some investment
2 trust or some secondary market purchaser; right?
3 MR. RAGSDALE: Object to the form.
4 THE WITNESS: Again, if you mean that in many
5 instances the transfer of the beneficial ownership interest is
6 synonymous with the note, I would agree. All I'm saying is I
7 can't say whether that's typical or not typical.
8 BY MR. WOOTEN:
9 Q. Servicing rights are not rights that are set forth
10 within the instruments, either the note or the mortgage, are
11 they?
12 **A. In the uniform instruments that I'm aware of they**
13 **generally are not.**
14 Q. Servicing rights are typically contract rights
15 between the owner of the beneficial interest and the entity
16 they've designated to receive, collect and disburse payments;
17 right?
18 **A. Among other things, yes.**
19 Q. And you'd agree with me that servicing rights have
20 never been tracked by assignments of mortgages; right?
21 **A. I don't understand that characterization.**
22 Q. Well, typically when servicing changed hands, you

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1 have what's called a hello and good-bye letter that's required
2 under federal law called RESPA; right?
3 **A. I'm familiar with that law, yes.**
4 Q. And so typically when servicing changes from one
5 service to the other, the servicer that's releasing the loan
6 sends a good-bye letter and the servicer that's getting the
7 loan sends a hello letter, and they call that the hello/good-
8 bye letter under RESPA; right?
9 **A. I'm familiar with that, yes.**
10 Q. Typically the person who gets the servicing rights
11 does not run down to the county land record and record an
12 assignment of mortgage?
13 **A. I think it's actually the other way around. When,**
14 **when servicing rights are traded between people who are not**
15 **members of MERS, the selling is often obligated under the**
16 **purchase and sale agreement for the servicing rights to**
17 **deliver a recordable assignment to the new servicer, and**
18 **that's so they can get the mail.**
19 Q. When servicing rights are sold, not ownership of the
20 debt, is it your belief that -- you said the servicer who sold
21 the loan is typically required to file an assignment to the
22 servicer who accepts the servicing?

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1 **A. If, if that servicer is in the county land records**
2 **which is generally the, generally what happens outside the**
3 **MERS system.**
4 Q. Are you speaking in the context of loans which are
5 originated by a company and then they sell them on the
6 secondary market but retain their own servicing rights?
7 **A. That's one instance.**
8 Q. Okay. Because I saw that fairly recently with
9 option one, but I haven't seen that much otherwise lately.
10 **A. That's because of MERS.**
11 Q. Yeah. Well, there also have been some -- for a
12 while there there were a lot more secondary market
13 participants who were just engaged in a portion of the
14 business rather than origination to the grave; right?
15 **A. I'm not sure I would, could generalize on that, on**
16 **that level.**
17 Q. What about those instances when the servicer is not
18 named in the land records but the lender and beneficial owner
19 is and they've designated someone else to service?
20 MR. BROCHIN: Object to the form of the question.
21 BY MR. WOOTEN:
22 Q. Is there a reason for the new servicer to make an

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1 assignment at that time?
2 MR. BROCHIN: Object to the form.
3 THE WITNESS: Only if the, if the lender wanted the
4 or the owner of the indebtedness wanted the new servicer to be
5 responsible for receiving the mail in the service of process.
6 BY MR. WOOTEN:
7 Q. I have seen it said in a number of places that MERS
8 claims to immobilize the lien in its name. Is that a fair
9 statement of what your company is trying to do?
10 MR. RAGSDALE: Object to the form.
11 THE WITNESS: Well, I think what, that's a shorthand
12 way of saying that MERS is the mortgagee despite the number of
13 transfers of the beneficial interest and remains the mortgagee
14 throughout the life of the loan.
15 BY MR. WOOTEN:
16 Q. So you would agree with me that even though the
17 ownership of the debt could change hands numerous times, MERS
18 will be the only person to have a lien recorded in its name
19 unless there is a request by an owner to have the MERS lien
20 assigned out of its name?
21 MR. RAGSDALE: Object to the form.
22 THE WITNESS: If you mean MERS remains the mortgagee

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1 when the note interest transfers from a purchaser, or seller
2 to purchaser, yes.
3 BY MR. WOOTEN:
4 Q. Flip over to page 4 of your affidavit, please,
5 paragraph 10. It says in the third sentence consumers are
6 benefiting because originating lenders typically pass the cost
7 of assignments on to the borrowers to the extent they know in
8 advance that the loan will be sold immediately subsequent to
9 the closing. That is the initial assignment if the loan is
10 sold immediately after origination that you're referring to?
11 **A. No.**
12 Q. Tell me what you're referring to.
13 **A. Prior to MERS when, when a correspondent or broker**
14 **closed the loan in their name and they knew that they were**
15 **selling that loan shortly after closing to an aggregating**
16 **entity that was purchasing these loans to pool them up for**
17 **securitization, it would be routine in states that permitted**
18 **it for them to charge the borrower the cost of preparing and**
19 **recording the assignment including the assignment, the**
20 **recording fees.**
21 Q. Okay.
22 **A. As part, and it would be disclosed on the HUD 1.**

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1 Q. Right. Now, after that initial assignment all the
2 subsequent assignments that were prepared in that chain of
3 securitization, those would be borne by the industry, not by
4 the consumer; correct?
5 MR. RAGSDALE: Object to the form.
6 THE WITNESS: To the extent that everything
7 ultimately flows into the interest rate, yeah.
8 BY MR. WOOTEN:
9 Q. So when you're talking about this assignment,
10 there's some qualifications to the concept or the notion that
11 it absolutely inures to the benefit of the consumer. One is
12 that the lender must know that there's going to be a
13 subsequent sale; right?
14 **A. It has to be the originating lender and the -- yes,**
15 **because they can't charge if they know they're not going to**
16 **pay it.**
17 Q. Right. Because that would be a violation of RESPA;
18 right?
19 **A. Probably, yeah.**
20 Q. Okay. And then there also has to be the need for
21 the assignment. In other words, if the originator is not also
22 the entity that is aggregating; in other words, the loan could

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1 be made in the name of an entity such as Countrywide where
2 they're going to aggregate their own loans; right?
3 **A. I'm not sure -- again, you need to rephrase your**
4 **question. I'm not sure what you're asking me.**
5 Q. Sure. Well, your testimony here is that consumers
6 gain because of this system, and what I'm saying is there are
7 a couple qualifications to that. One is the lender must know
8 that there's going to be a subsequent assignment and they must
9 know approximately what that cost because they have to charge
10 what it actually cost on the HUD 1; right?
11 **A. Yes. They need to know what it is, yes.**
12 Q. All right. And then two, there has to be a
13 requirement that the lender's actually going to sell that loan
14 to another entity so that there is the need for that
15 assignment?
16 **A. Yes.**
17 Q. So that's not an absolute certainty that the
18 consumer is going to automatically benefit by the existence of
19 your system in that scenario; right?
20 MR. RAGSDALE: Object to form.
21 THE WITNESS: For that reason? There are other
22 benefits though.

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1 BY MR. WOOTEN:
2 Q. Sure. But I'm just saying when you talk about that
3 reason, that's not absolute?
4 **A. It doesn't occur in every case. I would agree with**
5 **that.**
6 Q. Right. But if a loan is sold four or five times
7 during the securitization process and the MERS members do not
8 feel required to prepare and record assignments because of the
9 MERS system, then the savings to the members of MERS or the
10 industry is substantial; right?
11 **A. There is a savings that they, they render. The**
12 **substantiality is probably, needs to be decided by them.**
13 Q. And you also say a little further down that MERS
14 benefits consumers by enabling the consumer to easily and
15 instantly determine which lending institution owns or services
16 his or her mortgage loan; right?
17 **A. That's what it says.**
18 Q. Your company does not provide the name of the owner
19 of any mortgage promissory note secured by a MOM mortgage to a
20 consumer through the use of this toll-free number on the web
21 site, does it?
22 **A. Not through that, but there's another way we do it.**

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1 Q. And that is as a result of the amendments to the
2 Truth in Lending Act that have come out of the recent economic
3 turmoil; right?
4 **A. If you mean the TL Section 404, that's correct.**
5 Q. Right. And that is something that has come into
6 existence in the last year or so?
7 **A. Since May.**
8 Q. All right. And prior to that MERS would not under
9 any circumstances disclose the name of the owner of the debt,
10 would it?
11 **A. No, that's not true.**
12 Q. How would it disclose that to a consumer?
13 **A. Sometimes when consumers would call us up and they**
14 **would have questions about things, on occasion I have even**
15 **told the borrower who their investor is.**
16 Q. If a borrower goes on the web site and enters their
17 loan information, they do not get the owner's information, do
18 they?
19 **A. Today they do not. That is correct.**
20 Q. They get the servicer's information?
21 **A. They get the servicer's information.**
22 Q. And that is how it has been --

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1 **A. Now, that may be the owner of the note, too.**
2 Q. Could be, but typically it's the servicer; right?
3 **A. It's always the servicer, but the servicer could**
4 **also be the investor.**
5 Q. And that's -- but that's we know is not always the
6 case?
7 **A. That's true.**
8 Q. And there's no indication to the consumer whether or
9 not that is the case?
10 **A. I'm sorry?**
11 Q. There's no indication to the consumer from the MERS
12 web site or the use of the 800 number whether or not the
13 servicer is the actual owner of the debt, indebtedness?
14 **A. If you mean there's no, we don't, we don't**
15 **distinguish, we don't tell them that they have dual status.**
16 **That is correct.**
17 Q. But this information that Truth in Lending
18 amendments now require you to disclose, you could have
19 disclosed voluntarily during the whole time that the MERS
20 system has been in existence, couldn't you?
21 **A. No.**
22 MR. BROCHIN: Object to the form of the question.

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1 BY MR. WOOTEN:
2 Q. No?
3 A. No.
4 Q. You have that information for every loan, don't you?
5 A. We do.
6 Q. And you could have told any borrower who their owner
7 was, couldn't you?
8 A. **That's not what, the way the members have asked us**
9 **to manage the system.**
10 Q. And again, so my point, that you will tell the
11 borrower who the servicer is, but you won't tell the borrower
12 who the owner is until these recent amendments to Truth in
13 Lending; right?
14 MR. RAGSDALE: Object to the form.
15 MR. BROCHIN: Object to the form.
16 THE WITNESS: No. As I said, on occasion when
17 circumstances warranted it we would tell the borrower. We
18 just wouldn't do it necessarily -- we wouldn't do it over the
19 web or the toll-free number.
20 BY MR. WOOTEN:
21 Q. Okay. And what circumstances warrant disclosing the
22 owner of the debt?

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1 MR. RAGSDALE: Object to the form.
2 THE WITNESS: There are a lot of different
3 circumstances. Sometimes they were involved in foreclosure.
4 Sometimes they didn't know, they were trying to do something
5 that they needed to reach out to the investor. So there were
6 times that was appropriate for me to disclose it to them.
7 BY MR. WOOTEN:
8 Q. Okay. When you say you disclose it --
9 A. **Because I take, I generally take the borrower calls**
10 **because in this environment we didn't want the legal**
11 **department to take those calls.**
12 Q. How many calls a day are coming in --
13 A. **I probably --**
14 Q. -- in this environment?
15 A. **I probably get four or five or six a week.**
16 Q. And that has happened -- how long has that been the
17 case that you've gotten four or five or six calls --
18 A. **Me personally? I've only -- we've been doing it now**
19 **for about eight months.**
20 Q. Prior to that did you take any calls?
21 A. **I did not.**
22 Q. Okay. Prior --

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1 A. **Someone else might have in the company.**
2 Q. Prior to that did you disclose the investor or owner
3 of the debt?
4 A. **In some circumstances we would have.**
5 Q. Do you have any records of how many times you've
6 done that for a consumer?
7 A. No.
8 Q. Okay. Would there be any way for you to extrapolate
9 or guess how many times that might have occurred?
10 A. No.
11 Q. Is it fair to say that it would have been
12 insignificant in respect to the number of persons who had
13 inquired as to who their servicer is on the MERS system?
14 MR. RAGSDALE: Object to form.
15 THE WITNESS: I don't have any idea.
16 BY MR. WOOTEN:
17 Q. You all don't keep records of that either?
18 A. **No. Well, I mean -- excuse me. If you mean do we**
19 **keep rec- -- there's an audit trail how many times people made**
20 **a call into the system or logged on to the web site, but I**
21 **don't know what those numbers are.**
22 Q. Isn't it a fact that a consumer will know who their

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1 servicer is by their monthly mortgage statement?
2 A. **Is it a fact? They should, but they don't always.**
3 Q. Isn't it a fact that the federal law requires the
4 monthly mortgage statement to provide both phone numbers and
5 addresses for the borrower to communicate with the servicer
6 regarding the status of their loan?
7 MR. BROCHIN: Object to the form of the question.
8 THE WITNESS: I'm going to have to look at that
9 statute.
10 BY MR. WOOTEN:
11 Q. Let me ask you this, Mr. Hultman. Let's assume that
12 a promissory note is sold to a securitization in let's say
13 2005. Loan's originated in 2005. Loan's sold through this
14 process in 2005. Would MERS' authority allow an assignment to
15 be prepared in the name of a company who was not involved in
16 the securitization to the securitization trust in 2009?
17 A. **I don't know what you mean.**
18 Q. Well, let's say this. The originator makes a loan
19 in 2005. Okay?
20 A. **Mm-hmm.**
21 Q. Just any originator.
22 A. **Okay.**

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1 Q. Just hypothetical. And that originator then sells
2 the loan into the secondary market in 2005, and allegedly the
3 loan is purchased by a securitization trust in 2005. Will the
4 MERS authority that you grant on a MOM mortgage to your
5 certifying officers to sign, would that authority be broad
6 enough to allow a certifying officer to make an assignment
7 from that originator to that securitization trust in 2009?
8 MR. BROCHIN: Object to the form of the question;
9 calls for speculation.
10 MR. RAGSDALE: Same objection.
11 THE WITNESS: If you're asking me that it's a MERS
12 mortgage that was in the records and remained in the records
13 and then for some reason in 2009 the trustee of the trust
14 decided that it wanted to have an assignment, they could
15 instruct their servicer to create that assignment and record
16 it from MERS to the trustee.
17 BY MR. WOOTEN:
18 Q. Irrespective of the ownership of the promissory
19 note?
20 A. **They own the promissory note, so they have the**
21 **authority to do it.**
22 Q. So if they can prove they own the promissory note,

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1 MERS would have no problem with the assignment in that
2 situation?
3 A. **Correct.**
4 Q. And that again is contingent on proofs that they own
5 the promissory note; right?
6 A. **Well, that -- assuming -- yeah.**
7 MR. WOOTEN: Let's pause for her to change the tape.
8 THE VIDEOGRAPHER: This marks the end of tape number
9 two in the 30(b)(6) deposition of William C. Hultman. Going
10 off record at 14:14:33.
11 (A recess was taken.)
12 THE VIDEOGRAPHER: We're back on record at 14:29:19.
13 Here begins tape number three in the 30(b)(6) deposition of
14 William C. Hultman.
15 BY MR. WOOTEN:
16 Q. Mr. Hultman, we took a break to change that tape,
17 and we were talking about your affidavit from the State of
18 Minnesota. We were talking about these assertions of benefits
19 of the MERS system to consumers. You indicate in paragraph 12
20 that the land records in Minnesota did not reflect the name of
21 the servicer but rather the entity that initially held the
22 mortgage lien that may or may not be the current lienholder or

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1 current loan servicer. Is that not typically the way that the
2 land records would have existed prior to the MERS as original
3 mortgagee mortgage?
4 A. **Are you asking me about the language here or are you**
5 **asking me a separate question?**
6 Q. I'm asking you -- I mean this was your language that
7 you chose for this affidavit; right?
8 A. **I haven't read it in a long time, so --**
9 Q. Take a second.
10 A. **-- can I take a second and read it?**
11 Q. Sure. Look at paragraph 12.
12 A. **Okay.**
13 Q. Second sentence is what I'm talking about.
14 A. **So you're talking about this sometimes can be a time**
15 **consuming frustrating task because the land records throughout**
16 **Minnesota do not reflect the name of the servicer but rather**
17 **the entity held the mortgage lien that may or may not be the**
18 **current lienholder or the current loan servicer.**
19 Q. Right. And my question was kind of a general
20 question, and that is, is that not typically the state of all
21 land records when MERS as original mortgagee mortgages are not
22 involved? Are they not typically recorded in the name of the

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1 original lender?
2 A. **The mortgages always originate or -- excuse me. The**
3 **mortgages are always recorded in the name of the original**
4 **lender when MERS is not involved. In most jurisdictions when**
5 **the loan servicing interest was transferred the, there would**
6 **be a requirement in the purchase and sale agreement of the**
7 **servicing to transfer the servicing from the old servicer to**
8 **the new servicer. I believe in Minnesota that was not the**
9 **practice because Minnesota did not have a requirement that**
10 **assignments be recorded, and so that many, many of the lenders**
11 **did not record assignments, or excuse me, the servicer, the**
12 **originating lenders did not record assignments even though**
13 **they sold the beneficial interest in the servicing rights.**
14 Q. Well, let's, let's be real careful and not confuse
15 terms, okay, because you just said the beneficial interest in
16 the servicing rights.
17 A. **Then I misspoke. What I meant to say --**
18 Q. We're talking about the two different --
19 A. **I meant the two different: The beneficial interest**
20 **in the note and the servicing interest, the right to collect**
21 **the payments.**
22 Q. Okay.

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1 **A. So I misspoke.**
2 Q. Okay. And I just want to be clear because this is
3 new to a lot of people, and I don't want it to be confusing
4 any more than it already is, but I guess my point being is is
5 that if you went to any state and looked at the land records
6 and you weren't dealing with a MERS original mortgagee
7 mortgage, you would most likely see the initial filing would
8 be the mortgage executed at origination to the originating
9 lender; correct?
10 **A. The first instance of the recording?**
11 Q. Right.
12 **A. Yes.**
13 Q. And then if there were any assignments that were
14 recorded, there should be a chain of title; right?
15 **A. If -- well, I mean if the assignments were recorded,**
16 **there would be a chain of title. If they weren't recorded,**
17 **then you would just see the originating lender.**
18 Q. Right. And you mentioned a term a while ago and I
19 don't want to confuse it either, but you mentioned the term
20 pooling and service agreement. Do you understand that the
21 pooling and servicing agreement for a securitized trust is not
22 simply a contract but is the trust agreement which creates the

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1 trust that holds the assets?
2 MR. RAGSDALE: Object to form.
3 THE WITNESS: I believe that there's actually two
4 separate documents.
5 BY MR. WOOTEN:
6 Q. Right.
7 **A. There's a trust agreement that actually creates the**
8 **certificates that are actually sold to investors, and that's**
9 **what the trustee gets his vested rights in the, the notes, and**
10 **then accompanying that agreement there's a pooling and**
11 **servicing agreement that calls for the pooling and the**
12 **transfer of the servicing interest to a servicing company to**
13 **service those loans.**
14 Q. Okay. Well, and I know you're not that familiar
15 with the process, and I know that's what we talked about
16 earlier. So I don't, and I'm not -- please don't take this as
17 quibbling because it's very similar terms -- but there is a
18 servicing agreement between the trust and the servicer that is
19 typically a separate contract that is typically not filed with
20 the SEC filings and that controls the servicing rights between
21 the trust and the servicer, and they typically call that a
22 servicing agreement.

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1 **A. It got --**
2 MR. BROCHIN: Wait a minute. Is that a question?
3 MR. WOOTEN: And I -- well, I was about halfway
4 through, Bob, when you broke in.
5 BY MR. WOOTEN:
6 Q. The pooling and servicing agreement is actually the
7 trust document, and that is typically filed as Exhibit 4.1 to
8 the 8-K where the trust is created with the SEC. And I don't
9 want to confuse those two terms because it's very easy to.
10 So, but I agree with what you're saying. There's a separate
11 agreement for servicing, and then there's a trust agreement.
12 So maybe it's better if we refer to them in terms of a trust
13 agreement and a servicing agreement. Okay? Is that all right
14 with you?
15 **A. If you're asking me if it's okay to refer to two**
16 **separate agreements, I would agree.**
17 Q. Sure. Because the names are too similar, and I
18 don't want anybody to be confused about what you and I are
19 talking about. Okay?
20 But the servicing agreement is, as we're discussing
21 it, relates to the agreement where the beneficial owner of the
22 note after it's been sold into the secondary market designates

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1 someone to receive and collect and apply payments on the
2 mortgage loans in the trust; right?
3 **A. Generally speaking, yes.**
4 Q. And that is again a contract right set up with the
5 owner of the debt through for a servicer?
6 **A. Yes.**
7 Q. Okay. And then the trust agreement is typically the
8 agreement that forms the trust that owns these assets, and
9 that is typically where the assignments which delineate the
10 chain of title would have been found as those assets moved
11 from origination to that trust; correct?
12 **A. I think more correctly speaking it's from the**
13 **depositor or the issuer of the securities to the trustee.**
14 Q. Right. Because there would be typically the
15 origination, and then there would be an aggregator who would
16 then sell to a depositor who would then tell to the trust;
17 right?
18 MR. BROCHIN: Object to the form.
19 THE WITNESS: I don't know what typical is in this
20 industry where there's a lot of different things, but that is
21 one way that it would happen.
22 BY MR. WOOTEN:

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1 Q. Right. And what your company's function was in this
2 process was to get the lien into one name so that the
3 intervening assignments between these, where all these various
4 sales took place became unnecessary; right?
5 MR. RAGSDALE: Object to the form.
6 THE WITNESS: Well, again, the goal of our company
7 was to remain the mortgagee from the time the loan was
8 originated until the time that it was paid off.
9 BY MR. WOOTEN:
10 Q. What would happen in those circumstances where the
11 purchaser of the loan in this chain of securitization was not
12 a MERS member and there was at that point no servicer
13 designated? Would that loan be required to be assigned out of
14 MERS and then back in to MERS, or would you simply leave that
15 lien in the name of MERS?
16 A. **It would depend on -- I would need to know more**
17 **information about what the actual facts and circumstances were**
18 **before I could answer that question.**
19 Q. We're aware the originator was a MERS member, but
20 for instance the, and the aggregator was a MERS member.
21 According to your rules there would be no problem with those
22 two entities maintaining the lien in MERS name; right?

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1 A. **That's correct.**
2 Q. Assume the depositor was not a MERS member and they
3 purchased the loans from the aggregator and there was no
4 servicer designated yet. Would the lien need to be assigned
5 out of the MERS system to that depositor?
6 A. **If the, if the MERS, if there was still a MERS**
7 **member in the servicer field and they were responsible for the**
8 **MERS piece of it, it would not require an assignment.**
9 Q. Now, what about in the context of the securitization
10 where there is no servicer designated at that point, you're
11 simply selling the loan into the secondary market?
12 A. **I have never seen anything like that, so I wouldn't**
13 **be able to answer the question.**
14 Q. Is it, is it because you're just not familiar with
15 that system, or are you just saying that of the deals that
16 you've looked at there was never a deal structured in that
17 way?
18 A. **In all the securitization documents that I've looked**
19 **at, and I've looked at a lot of them, I've never seen a deal**
20 **where there wasn't a servicer dele- -- designated.**
21 Q. And you've never seen a period of time where the
22 loans were being sold prior to the designation of a servicer

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1 by the ultimate trustee?
2 A. **I didn't say that.**
3 Q. So I'm, again, I acknowledge that somewhere down the
4 line once the trust has acquired the assets there might be a
5 servicer who is a MERS member, but prior to the trust
6 acquiring the asset how did you deal with the situation where
7 the owner was not a MERS member?
8 A. **Well, as in our rules, as I showed you before, as**
9 **long as someone was in the servicing field collecting those**
10 **payments, which someone is always collecting the payments,**
11 **there was no need, if, and if the beneficial note or the**
12 **beneficial interest in the note had moved to a non-MERS**
13 **member, we would not have required that the loan be assigned**
14 **out of MERS.**
15 Q. Is that because of the opinion that Moody's issued
16 in 1999 regarding your company and its status as mortgagee of
17 record?
18 A. **I don't think I would characterize that --**
19 MR. BROCHIN: Object to the form.
20 THE WITNESS: -- as an opinion.
21 BY MR. WOOTEN:
22 Q. What would you characterize that as?

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1 A. **It was an article that Moody's wrote.**
2 Q. Let me mark this as --
3 A. **8.**
4 Q. -- Exhibit 8.
5 (Hultman Deposition Exhibit No. 8 was marked for
6 identification.)
7 MR. WOOTEN: I don't have any copies of it, Barry.
8 I'm just going to ask.
9 BY MR. WOOTEN:
10 Q. If you'll take a look at that, Mr. Hultman. Is
11 that, in fact, a copy of the 1999 Moody's article about your
12 company and its interest as the mortgagee of record?
13 A. **Yes.**
14 Q. At the time that article was written do you know if
15 Moody's was a member of MERS?
16 A. **They were not.**
17 Q. Do you know if Moody's had any affiliation or
18 investment in MERS?
19 A. **They did not.**
20 Q. Do you know who sought out Moody's opinion regarding
21 MERS?
22 A. **I do.**

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1 MR. BROCHIN: Object to form.
2 BY MR. WOOTEN:
3 Q. Huh?
4 A. I do.
5 Q. Who was that?
6 A. It was MERS.
7 Q. Okay. And what was the purpose of seeking Moody's
8 opinion or article regarding MERS status as mortgagee of
9 record?
10 A. We didn't seek the opinion.
11 Q. Okay. How did you make the determination to
12 approach them about that?
13 A. I'm not -- I don't understand your question.
14 Q. What was the purpose of going to Moody's about MERS
15 and the system?
16 A. So that they would rate securities where MERS loans
17 appear in the, in the pools.
18 Q. Were they not rating securities prior to 1999?
19 A. They were not.
20 Q. Were there any MERS loans being securitized prior to
21 1999?
22 A. I have no way -- I mean if they were, it was

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1 inadvertent.
2 Q. And then you say 1998 --
3 A. And we're talking about, there were MERS loans in
4 agency, Ginnie Mae, Fannie Mae and Freddie Mac securitized
5 pools, and I was assuming your question was about the private
6 rated securities market outside the agency products.
7 Q. Right.
8 A. Okay.
9 Q. Well, that was the ones that Moody was rating
10 anyway; correct?
11 A. Yes, it is.
12 Q. Because --
13 A. I just want the record to be clear.
14 Q. It had an implicit guarantee on the agency bonds;
15 right?
16 A. Well, whatever the certificates were; they could be
17 bonds. They could be MBSs.
18 Q. Right. But that was typically, more or less we were
19 dealing with the implicit guarantee of the federal government
20 on those investments; right?
21 A. Again, investors invested in it because of the
22 guarantee of Freddie and Fannie and Ginnie.

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1 Q. Right. I'm saying with respect to Moody's the
2 purpose of going to them was because they rated private label
3 securitizations?
4 A. Yes.
5 Q. Okay. And, and so were you involved in going to
6 Moody's about this?
7 A. Yes.
8 Q. Okay. Other than you who else was involved in that?
9 A. RKR and two of our members and --
10 Q. Who were your members?
11 A. At the time Norwest which is now Wells Fargo and RFC
12 which is, was an affiliate of GMAC.
13 THE REPORTER: Say again?
14 THE WITNESS: RFC.
15 BY MR. WOOTEN:
16 Q. Residential Funding?
17 A. Yes, which is an affiliate of GMAC.
18 Q. What about Countrywide?
19 A. Countrywide did not participate in that process.
20 Q. Who for Norwest participated with you?
21 A. I think a gentleman named Pat Green.
22 Q. Do you know if he's still employed with Wells Fargo?

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1 A. The last time I talked to him about six or seven
2 months ago he was, but I don't know that he still is.
3 Q. What was his position when you talked to him last?
4 A. I don't know what his position was when I talked to
5 him last. At the time we did this he was in the
6 securitization group.
7 Q. And for Residential Funding who, who was involved?
8 A. There were two women. One was their general counsel
9 Lorna something whose name I forget, and the other woman's
10 name I don't remember. They were -- but she was in their
11 securitization group.
12 Q. And how many meetings did you all have with Moody's
13 about this prior to issuing that letter?
14 A. I believe there was probably, that I participated
15 in, there was one meeting. I believe that RK had been to
16 Moody's with some of the other officers prior to being
17 employed by MERS, and I think there was a follow-up meeting
18 where some of our technical people went down and did a
19 demonstration of the system to the Moody's office, Moody's
20 analyst.
21 Q. Did you make any records or corporate minutes about
22 those meetings with Moody's?

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1 **A. There may be. I may have made notes at the time**
2 **which I don't know if I still have them or not.**
3 Q. With respect to that opinion that was issued by
4 Moody's, would you agree that that letter or directive or
5 opinion, however you want to term it, was one of the critical
6 factors to the acceptance of the MERS as mortgagee mortgage in
7 the secondary RBS/MBS market?
8 MR. RAGSDALE: Object to the form.
9 THE WITNESS: It was, it was part of it, but at the
10 time Moody's actually wasn't rating many of these
11 transactions.
12 BY MR. WOOTEN:
13 Q. Okay. But that is the opinion that we were
14 discussing --
15 MR. RAGSDALE: Object to --
16 BY MR. WOOTEN:
17 Q. -- the critical opinion that came from all those
18 meetings; right?
19 MR. RAGSDALE: Object to the form.
20 THE WITNESS: Actually it wasn't the critical part.
21 BY MR. WOOTEN:
22 Q. What was, what was the critical part?

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1 **A. The critical part was their acknowledgement to us**
2 **that they, if they were presented a transaction that they**
3 **would rate it without impairing the credit enhancement that**
4 **would be assigned to the deal.**
5 Q. Okay. And when you say impairing the credit
6 enhancement, that's going to get foreign to a lot of people.
7 Can you explain that in layman's terms the best of your
8 ability?
9 **A. In order for the transactions to be rated investment**
10 **grade there has to be a certain level of credit enhancement**
11 **built into the trust, and into the deal, and one of the things**
12 **that our objectives were when talking to the rating agencies**
13 **was to make sure that the fact that MERS loans being in the**
14 **pool would not require additional credit enhancement to be**
15 **assigned to that, those transactions.**
16 Q. And credit enhancement is, is it fair to say that
17 that's sort of a form of overfunding when you put excess
18 assets in to cover perceived shortcomings?
19 **A. That's one way that it could be accomplished.**
20 Q. Right. What -- other than overfunding I call that
21 overcollateralization; right?
22 **A. Right.**

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1 Q. Other than overcollateralization what other methods
2 of credit enhancement did you use or would you use to cover
3 that?
4 **A. Would I use?**
5 Q. Or are available.
6 **A. Or issuers use?**
7 Q. Issuers.
8 **A. They could keep additional cash within the trust and**
9 **build up a cash reserve account. Sometimes they would ask for**
10 **surety bonds from a bond insurer like MGIC or FIG -- FGIC or**
11 **AMAC, and those would be alternative types of**
12 **collateralization.**
13 Q. Okay.
14 **A. And then different structures within the deal**
15 **depending on how the payments went out. Different tranches in**
16 **the deal would get different ratings because the allocation of**
17 **payments within the trust.**
18 Q. All right. And you mention the tranches and various
19 payment structures. Typically there is a class of the
20 certificates which are held by the trustee with the
21 understanding that that class of certificate will pay
22 defaults, and if there's any money that's not used to pay the

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1 defaults that will revert to the trustee; right?
2 **A. There can be.**
3 Q. And that's another form of, of credit enhancement
4 that is available for use?
5 **A. It's just, it's just further overcollateralization.**
6 Q. All right. And you're right; that is considered an
7 overcollateralization mechanism; right?
8 **A. Yes.**
9 Q. Are you familiar with whether or not there was any
10 existing law in Minnesota regarding the separation of the
11 mortgage lien from the mortgage note?
12 MR. BROCHIN: Object to the form of the question.
13 THE WITNESS: I was not familiar with -- my
14 knowledge of the case doesn't go that deep.
15 BY MR. WOOTEN:
16 Q. Do you know if other than this affidavit if there
17 was any testimony by any employee or officer of MERS in the
18 Minnesota litigation?
19 **A. Which affidavit are we talking about?**
20 Q. Your affidavit --
21 **A. Exhibit 7?**
22 Q. Yes, Jewellean Jackson.

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1 **A. Am I aware that, if there were other --**
2 Q. If there was any other testimony in that Minnesota
3 case other than the affidavits, anyone gave a deposition?
4 **A. I don't believe there were any depositions but I, I**
5 **just don't remember.**
6 Q. Okay. You understand that that litigation was an
7 attempt more or less to stop MERS from conducting foreclosures
8 in Minnesota absent the recording of additional information in
9 the public land records?
10 MR. RAGSDALE: Object to the form.
11 THE WITNESS: I -- if your, if your question is were
12 they trying to get us to record something to reflect the
13 transfers of the beneficial interest, I believe that was the
14 case. I don't think they necessarily were trying to stop
15 foreclosures.
16 MR. RAGSDALE: Still awake?
17 THE WITNESS: Hmm?
18 MR. RAGSDALE: Still awake?
19 BY MR. WOOTEN:
20 Q. We talked about mortgage promissory note being
21 endorsed in blank and MERS obtaining possession of it for the
22 purposes of foreclosure earlier today? Do you remember that?

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1 **A. Yes.**
2 Q. Is it your testimony that when MERS receives that
3 promissory note endorsed in blank that it becomes the legal
4 owner of that promissory note?
5 **A. It -- when we, when we received the promissory note**
6 **endorsed in blank to us, we become the holder of the note for**
7 **the benefit of the beneficial owner of the mortgage interest,**
8 **or the loan interest.**
9 Q. And at that time assuming that a court allows you to
10 conduct a foreclosure and money is paid for that foreclosure,
11 you do not retain that money for MERS, do you?
12 **A. If money, if money is, is paid to MERS as a result**
13 **of the sale of the property or any other part of the**
14 **foreclosure proceeding, we would remit it to the beneficial**
15 **owner of the note.**
16 Q. And you would not deposit it in your own accounts
17 and use it for your own benefit; right?
18 **A. We would not use it for our own benefit. Whether we**
19 **moved it through our own account or not would depend on the**
20 **circumstances, but it would not become an asset of the**
21 **corporation.**
22 Q. And you would not claim to be entitled to that money

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1 legally?
2 **A. That's correct.**
3 Q. And in effect by obtaining the promissory note and
4 presenting it to the court you are in effect completing a task
5 for the beneficial owner of the promissory note; correct?
6 MR. BROCHIN: Object to the form of the question.
7 THE WITNESS: I don't know what you mean by task.
8 BY MR. WOOTEN:
9 Q. I mean you're completing a job that you were
10 assigned to do as part of your agency agreement with the owner
11 of the promissory note?
12 **A. We're enforcing rights that were granted to us in**
13 **the mortgage.**
14 Q. With respect to the assertion that you're enforcing
15 your rights in the promissory or the security instrument,
16 would you agree with me that the general proposition of law is
17 that the person who is entitled to a lien on a piece of
18 mortgage property is the person who has loaned the money for
19 that property?
20 MR. BROCHIN: Object to the form.
21 MR. RAGSDALE: Object to the form.
22 THE WITNESS: No, I would not agree with that.

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1 BY MR. WOOTEN:
2 Q. And that is because your system is set up which
3 establishes you as the nominee of the lender who is the person
4 who has made the loan; correct?
5 MR. RAGSDALE: Object to the form.
6 THE WITNESS: I don't understand your question.
7 BY MR. WOOTEN:
8 Q. I mean part of your legal position is is that you
9 are the nominee of the mortgage and you hold the mortgagee
10 interest; correct?
11 MR. BROCHIN: Object to the form of the question.
12 THE WITNESS: Again I, I don't -- I wouldn't agree
13 with that characterization of MERS.
14 BY MR. WOOTEN:
15 Q. Do you own the lien?
16 **A. We are the holder of the mortgage interest, or the**
17 **mortgage lien interest which was granted to us by the**
18 **borrower.**
19 Q. So was there a mortgagee interest granted to anyone
20 other than MERS?
21 MR. RAGSDALE: Are you talking about a particular
22 mortgage or --

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1 BY MR. WOOTEN:
2 Q. Let's talk about Miss Henderson's case. You're
3 talking about being granted by the borrower. Did she grant
4 anyone else an interest --
5 **A. Well --**
6 Q. -- in the mortgage --
7 **A. -- the promissory note --**
8 THE REPORTER: I'm sorry. I didn't hear all the --
9 I didn't hear --
10 MR. WOOTEN: Do you need me to repeat the question?
11 THE REPORTER: I didn't hear all of the question --
12 MR. WOOTEN: I'm sorry. Let me start over.
13 BY MR. WOOTEN:
14 Q. With respect to Miss Henderson's mortgage loan is
15 there anyone else who is granted a lien on her property other
16 than MERS?
17 **A. By virtue of being the holder of the note GMAC also**
18 **had equitable title to the mortgage lien. We had legal title.**
19 **They had equitable title.**
20 Q. Isn't it fair to say, Mr. Hultman, that GMAC has
21 never recorded a lien in its own name in that property?
22 MR. BROCHIN: Objection. Asked and answered.

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1 THE WITNESS: Not that I'm aware of.
2 BY MR. WOOTEN:
3 Q. Huh?
4 **A. Not that I'm aware of.**
5 Q. Okay. So at the very instant in which this mortgage
6 loan was created there was a divergence of the mortgage lien
7 and the promissory note into two separate entities; correct?
8 MR. RAGSDALE: Object.
9 MR. BROCHIN: Object to the form of the question.
10 THE WITNESS: There was a promissory note made out
11 paid to, payable to GMAC Mortgage Corporation, whatever the
12 entity was at that time, and there was a mortgage lien granted
13 and conveyed to MERS for the benefit of GMAC.
14 BY MR. WOOTEN:
15 Q. And if and when, assuming, which obviously we've
16 never conceded, that Miss Henderson defaulted on her note to
17 GMAC, the default was to GMAC and not to MERS; is that
18 correct?
19 MR. RAGSDALE: Object to the form.
20 THE WITNESS: As I said before, the borrower
21 defaults. That triggers certain rights under the notes, and
22 it triggers certain rights under the mortgage, and to the

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1 extent that MERS is the mortgagee the default happened.
2 BY MR. WOOTEN:
3 Q. What legal interest does MERS acquire in Miss
4 Henderson's promissory note by virtue of being the nominee of
5 the mortgage?
6 MR. RAGSDALE: Object to the form.
7 THE WITNESS: We're not the nominee of the mortgage.
8 BY MR. WOOTEN:
9 Q. What are you then?
10 **A. We're the mortgagee as nominee for the holder or**
11 **owner of the beneficial interest in the loan or the promissory**
12 **note.**
13 Q. Tell me when MERS became aware that there was
14 alleged to be a default with Miss Henderson's mortgage loan.
15 **A. Are you talking about when -- you mean MERS**
16 **corporate or MERS certifying officers?**
17 Q. MERS. Do you know when MERS certifying officers
18 alleged to become aware that there was a default?
19 **A. Well, they know when someone becomes defaulted.**
20 **Someone would have told them.**
21 Q. Do you know?
22 **A. Me personally? No.**

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1 Q. I mean you're testifying today as a 30(b)(6)
2 representative of MERS. When did MERS know that its
3 certifying officer became aware that there was alleged to be a
4 default on Miss Henderson's loan?
5 **A. MERS became aware of the default at the time that**
6 **the servicer would have told a MERS certifying officer that,**
7 **that that loan had been in default, or we could have known by**
8 **the fact that a foreclosure was initiated and registered on**
9 **the system.**
10 Q. Is there an appointment in your agreement with your
11 members which makes MERS legally interested in the promissory
12 note?
13 MR. RAGSDALE: Object to the form.
14 THE WITNESS: I'm sorry. I don't understand your
15 question.
16 BY MR. WOOTEN:
17 Q. Is there any portion of your membership agreement
18 which appoints MERS to any legal interest in the promissory
19 note?
20 MR. RAGSDALE: Object to form. You may answer, if
21 you can.
22 THE WITNESS: Without kind of walking through the

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1 agreement I don't know that there is or isn't, but certainly
2 the mortgage by virtue of the fact that we're the mortgagee
3 for the benefit of the note holder there is some kind of
4 interest there.
5 BY MR. WOOTEN:
6 Q. Have you ever heard the statement the debt is the
7 thing?
8 A. No.
9 Q. You would agree that a mortgage is antecedent to the
10 debt that it secures; right?
11 A. **I would agree that the mortgage secures the**
12 **repayment of the debt.**
13 Q. Does MERS receive any of the interest revenue
14 associated with the mortgage indebtedness for which it serves
15 as a nominee?
16 A. No.
17 Q. Does MERS reflect in its bookkeeping or accounting
18 records any interest revenue from any loan which it serves as
19 nominee?
20 A. No.
21 Q. Is the mortgage indebtedness for which MERS serves
22 as the nominee reflected as an asset on MERS financial

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1 statements?
2 MR. BROCHIN: Objection; asked and answered.
3 BY MR. WOOTEN:
4 Q. You can answer.
5 A. **Are you -- again, you need to rephrase your question**
6 **because I don't think we serve as mortgagee of the**
7 **indebtedness.**
8 Q. Okay. Does MERS reflect as an asset in any of its
9 financial statements any mortgage which it serves as nominee?
10 MR. RAGSDALE: Object to the form.
11 THE WITNESS: Again, we don't serve as nominee for a
12 mortgage. I'm unable to answer the question because I don't
13 understand what serving as mortgagee or as a nominee for the
14 mortgage, I don't understand that part of the question.
15 BY MR. WOOTEN:
16 Q. Okay. So let me ask it this way. For all the 62
17 million mortgages for which MERS claims to be the mortgagee of
18 record as nominee for the various lenders, are any of those
19 mortgages reflected as assets of MERS on any of its financial
20 statements or reports?
21 A. **You mean the mortgage loans, no.**
22 Q. Are any portion of the mortgage loans reflected as

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1 an asset on MERS financial statements?
2 A. **You're talking about the 62 million registered**
3 **loans? No.**
4 Q. If any amount of any of the 62 million mortgages
5 which are registered on the MERS system is not collected, will
6 that result in a loss to MERS?
7 A. **I'm not sure I understand the question.**
8 Q. If there is a failure to collect the outstanding
9 balance of any mortgage loan registered on the MERS system,
10 will MERS suffer a financial loss or an accounting loss?
11 A. No.
12 Q. Isn't it true, sir, that when a foreclosure is
13 completed that MERS never actually retains or enjoys the use
14 of any of the proceeds from a sale of the foreclosed property?
15 MR. BROCHIN: Objection; asked and answered.
16 THE WITNESS: If you're saying if after a
17 foreclosure sale and we get monies from the sale, we remit
18 them to the beneficial owner of the loan.
19 BY MR. WOOTEN:
20 Q. And that would be the party who is truly interested
21 in repayment of that debt as the beneficial owner of the
22 indebtedness; correct?

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1 MR. RAGSDALE: Object to the form.
2 THE WITNESS: I guess so.
3 BY MR. WOOTEN:
4 Q. Is MERS financially at risk in any way for the
5 payment or nonpayment of any mortgage or deed of trust
6 registered on its system?
7 A. **Could you rephrase it?**
8 Q. I can try. Let me see if I can ask it this way.
9 A. **Excuse me.**
10 Q. Is MERS financially at risk on a payment or
11 nonpayment of any mortgage or deed of trust registered on its
12 system?
13 A. **Well, to the extent that we're a junior or senior**
14 **lien and a mortgage that's first is also registered senior or**
15 **junior to us and we received service of process, if we don't**
16 **handle it properly we could be at risk.**
17 Q. And that is in your capacity as administrating that
18 loan in your capacity as mortgagee of record as nominee for
19 the lender?
20 A. **I'm not -- it's, it's as part and parcel as our duty**
21 **as mortgagee, yes.**
22 Q. Right. But that, that duty is separate from the

<p style="text-align: right;">213</p> <p>1 financial risk associated with making the loan?</p> <p>2 A. If you're saying are we at risk for not getting</p> <p>3 repayment on a particular mortgage loan, I would agree.</p> <p>4 Q. That was what I was asking. Tell me every way in</p> <p>5 which MERS is injured by the failure of any particular</p> <p>6 borrower to make payment on a particular promissory note</p> <p>7 whereby MERS is the mortgagee of record for a mortgage or deed</p> <p>8 of trust which secures that note.</p> <p>9 MR. BROCHIN: Object to the form of the question.</p> <p>10 MR. RAGSDALE: Objection.</p> <p>11 THE WITNESS: I don't understand your question.</p> <p>12 BY MR. WOOTEN:</p> <p>13 Q. For any of the 62 million mortgages which are</p> <p>14 registered on the MERS system tell me every way that MERS is</p> <p>15 injured if a particular borrower fails to pay the promissory</p> <p>16 note as agreed for any of those registered mortgages.</p> <p>17 A. Well, again, as I said to you before, where we're a</p> <p>18 junior or senior lien to a MERS registered loan or we hold the</p> <p>19 junior or senior lien to another MERS loan that defaults,</p> <p>20 we're obligated to process the service of process if we</p> <p>21 receive it and if we mishandle that, we could be at risk in</p> <p>22 that regard.</p>	<p style="text-align: right;">215</p> <p>1 Q. Does MERS hold any of the promissory notes</p> <p>2 registered on its system to these 62 million mortgage liens in</p> <p>3 its usual ordinary course of business?</p> <p>4 A. Yes.</p> <p>5 MR. WOOTEN: Did you want to make --</p> <p>6 MR. BROCHIN: I did. Objection; asked and answered.</p> <p>7 BY MR. WOOTEN:</p> <p>8 Q. And that is your definition of the ordinary course</p> <p>9 of business is the notes that MERS holds while the process of</p> <p>10 foreclosure is underway?</p> <p>11 A. That's correct.</p> <p>12 Q. And those notes are held by the certifying officers?</p> <p>13 A. Yes.</p> <p>14 Q. They're never transferred to a facility where MERS</p> <p>15 is physically located?</p> <p>16 MR. RAGSDALE: Object to the form.</p> <p>17 THE WITNESS: I can't say we've never gotten a note</p> <p>18 in our corporate offices, but generally not.</p> <p>19 BY MR. WOOTEN:</p> <p>20 Q. Okay. And that would be because there's not any</p> <p>21 employees of MERS that could keep track of those notes at the</p> <p>22 corporate offices; right?</p>
<p style="text-align: right;">214</p> <p>1 Q. But that risk does not arise out of the payment or</p> <p>2 nonpayment of that promissory note; right?</p> <p>3 A. That's correct.</p> <p>4 Q. So that's an administrative risk for failing to</p> <p>5 notify the lender; correct?</p> <p>6 A. It's, it's, again, it's part of our duties as the</p> <p>7 mortgagee.</p> <p>8 Q. And that's based on your contract with your</p> <p>9 principal?</p> <p>10 A. Correct.</p> <p>11 Q. Who do you hold legal title to these mortgages which</p> <p>12 are registered for, on your system for the benefit of?</p> <p>13 MR. BROCHIN: Objection; asked and answered.</p> <p>14 THE WITNESS: The beneficial owner -- the beneficial</p> <p>15 owner of the indebtedness.</p> <p>16 MR. RAGSDALE: You know, we shouldn't feel compelled</p> <p>17 to go until 5:00.</p> <p>18 MR. WOOTEN: I'm not. I'm just running through a</p> <p>19 couple things I need to make sure are clear since he's the</p> <p>20 corporate rep. I don't want you all to come back to</p> <p>21 Montgomery and say that RK can't bind you all.</p> <p>22 BY MR. WOOTEN:</p>	<p style="text-align: right;">216</p> <p>1 MR. BROCHIN: Objection; asked and answered.</p> <p>2 THE WITNESS: We're not -- I mean we're not equipped</p> <p>3 to take care of these things, and if it was there, it was</p> <p>4 probably because it was involved in some litigation.</p> <p>5 BY MR. WOOTEN:</p> <p>6 Q. There's been mention in the past of the holder of</p> <p>7 the note being the person entitled to go get the note out of</p> <p>8 the vault or to go get the note from the custodian. I mean do</p> <p>9 you consider having the contractual right to go and fetch the</p> <p>10 note from the vault the same as being in physical possession</p> <p>11 of the note?</p> <p>12 A. I don't know that I understand your question.</p> <p>13 Q. Mr. Arnold in some of the testimony that we had</p> <p>14 before said that being the holder of the note was equivalent</p> <p>15 of having the right to go to the custodian and get the note</p> <p>16 out of the vault. I mean would you agree with that concept?</p> <p>17 A. I think there are circumstances where that might be</p> <p>18 applicable.</p> <p>19 Q. Is that similar to the Fannie designations, Fannie</p> <p>20 and Freddie designations saying that when a foreclosure</p> <p>21 started we'll say you're the holder even though you never</p> <p>22 obtained physical possession?</p>

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1 **A. Well, I don't -- I wouldn't characterize it quite**
2 **that way. What I, what I think the position that Fannie and**
3 **Freddie would take is that by designating the servicer or**
4 **MERS, then the custodian now is holding that note for the**
5 **servicer or MERS as opposed to holding it for Fannie Mae which**
6 **doesn't disrupt their beneficial ownership of that instrument.**
7 Q. And you agree with me that when these alleged
8 exchanges of the promissory note take place that there is no
9 consideration or compensation paid between the holder and MERS
10 for that transferring custody?
11 **A. I would agree that there's no exchange of money.**
12 **Whether there's consideration or not is a legal question.**
13 Q. There's no payment of any type?
14 **A. I said there was no passing of funds.**
15 Q. When MERS has physical control of the promissory
16 note, does MERS have actual authority to control the
17 foreclosure or the legal actions which are undertaken in its
18 name?
19 **A. Subject to the right of the beneficial owner to**
20 **override us.**
21 Q. Does MERS pay the attorneys who bring foreclosure
22 actions in MERS name?

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1 **A. Does MERS pay the attorneys? MERS does not advance**
2 **any funds to attorneys doing foreclosures in our name or on**
3 **our behalf.**
4 Q. In fact, that's paid by the servicer or the
5 beneficial owner, isn't it?
6 **A. No. I think actually it's paid by the borrower**
7 **under the terms of the mortgage.**
8 Q. It's advanced by the servicer or the beneficial
9 owner and assessed to the borrower's account?
10 **A. I would -- I think that's probably a better assess,**
11 **better characterization.**
12 Q. Does MERS as a corporation maintain any archive or
13 repository of the documents which are produced in its name
14 with respect to any of the mortgage liens that are registered
15 on its system?
16 **A. I don't understand your question.**
17 Q. Is there somewhere where MERS has an archive or
18 repository of the various mortgage security instruments which
19 it is named as mortgagee of record?
20 **A. If you're asking me do we maintain copies or**
21 **original mortgages where we serve as mortgagee, the answer is**
22 **no.**

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1 Q. Tell me about the eRegistry system, Mr. Hultman.
2 MR. BROCHIN: Object to the form of the question.
3 THE WITNESS: What is it you need me -- what would
4 you like me to tell you?
5 BY MR. WOOTEN:
6 Q. The eRegistry system, describe its purpose, please.
7 **A. The MERS eRegistry system, that's what you're asking**
8 **about, is a national registry of transferrable records under**
9 **eSigner UITA representing the indebtedness secured by a**
10 **mortgage loan where the controller of the transferrable record**
11 **and the location of the authoritative copy are denoted on the**
12 **system, and it's a system of record basically to tell who owns**
13 **the electronic promissory note which is the shorthand name for**
14 **transferrable record under the statutes.**
15 Q. Now, is this a situation where somebody out in the
16 world scans this wet signed promissory note by a particular
17 borrower which is secured by one of these 62 million mortgages
18 registered on your system, and then they maintain a copy of
19 that scan and that's the official record of the indebtedness?
20 **A. No.**
21 Q. Okay. Tell me about the difference between that and
22 the eRegistry system. I mean is eRegistry some other type of

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1 indebtedness other than mortgage indebtedness?
2 **A. It can be.**
3 Q. How do you currently use the eRegistry system? Is
4 it not to track the actual promissory notes that underlie
5 these mortgages?
6 **A. No. We -- the more -- transferrable records which**
7 **are digital representations of the indebtedness, the eRegistry**
8 **transfers the party who is in control of that transferrable**
9 **record and tracks the location of the authoritative copy of**
10 **that transferrable record.**
11 Q. How does that relate to the mortgage notes which are
12 registered on the MERS system?
13 **A. Mortgage -- there are no mortgage systems registered**
14 **on the -- there's no promissory notes registered on the MERS**
15 **system.**
16 Q. Right. Are the notes which are registered on the
17 eRegistry system related to or do they correlate to the
18 mortgages maintained on the MERS system?
19 **A. A mortgage securing the repayment of the**
20 **transferrable record registered on the MERS eRegistry can be**
21 **registered on the MERS system.**
22 Q. Is that the case with all, all of the 62 million

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1 mortgages which have been assigned or which are registered on
2 the MERS system?
3 **A. I don't understand your question.**
4 Q. Is there a record on the MERS eRegistry which
5 correlates to a mortgage which is registered on the MERS
6 system?
7 **A. There can be.**
8 Q. But that is not necessarily the case?
9 **A. What's not necessarily the case?**
10 Q. That there is an eRegistry entry for an electronic
11 record which is referenced to a mortgage on the MERS system?
12 **A. There are transferrable records on the MERS**
13 **eRegistry that are secured by mortgages registered on the MERS**
14 **system, and there are also transferrable records registered on**
15 **the MERS eRegistry that have mortgages that are not registered**
16 **on MERS where MERS is not the mortgagee.**
17 Q. I'm trying to be clear, and I hope that I don't
18 sound too redundant in asking this. I'm just trying to make
19 sure I understand. Is there or is there not an eRegistry
20 entry for each mortgage loan which is registered on the MERS
21 system?
22 **A. There is not.**

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1 Q. But there are eRegistry entries for some?
2 **A. There are 120, 130,000 transferrable records**
3 **registered on the MERS eRegistry. The bulk of those are**
4 **secured by mortgages registered on the MERS system but not all**
5 **120 or 130,000 of them.**
6 Q. So there's -- so that is the sum total of all the
7 records currently on the eRegistry system is about 130,000?
8 **A. Give or take, something like that, yeah. There**
9 **might be 135. I haven't looked at the number recently.**
10 Q. And is, is a transferrable record on the eRegistry
11 system created by scanning a promissory note that was signed
12 with a wet signature by a borrower?
13 **A. No, it is not.**
14 Q. That is an electronic signature?
15 **A. There is no scanned -- transferrable records are not**
16 **scanned images of paper notes. They are digital**
17 **representations of the indebtedness that are executed with an**
18 **electronic signature by the borrower.**
19 Q. Okay.
20 **A. Can we take a break? I'd like to get some more**
21 **water.**
22 Q. Sure.

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1 THE VIDEOGRAPHER: Going off record at 15:26:12.
2 (A recess was taken.)
3 THE VIDEOGRAPHER: We're back on record at 15:35:18.
4 BY MR. WOOTEN:
5 Q. Mr. Hultman, we were talking before we went on break
6 about some of these issues. Earlier today we mentioned the
7 terms and conditions of MERS, and that was part of your
8 agreements with your members; correct?
9 **A. I would agree that the terms and conditions is part**
10 **of the agreement with our members, yes.**
11 **(Hultman Deposition Exhibit No. 9 was marked for**
12 **identification.)**
13 Q. I show you what I've been marked -- what I've marked
14 as Deposition Exhibit 9, and I don't have copies of that, but
15 is that a copy of your terms and conditions?
16 **A. Yes.**
17 Q. Number 4 deals with the directions; is that correct?
18 **A. I'm sorry?**
19 Q. What is number 4? Doesn't that deal with the
20 directions from the owner of the promissory note; is that
21 correct?
22 **A. No. It looks like it has to do with data**

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1 **information supplied to us.**
2 Q. Let me look at it, and I apologize. I wrote down
3 the wrong thing. Number 3, I apologize. That says that
4 you'll deal with, comply with the directions of the holder of
5 the note; correct?
6 **A. That's correct.**
7 Q. And if there's not a holder of the note indicated or
8 they don't provide you directions, you'll take your directions
9 from the servicer; correct?
10 **A. I think it's actually the other around, that what we**
11 **do is we normally take our direction from the servicer and**
12 **it's, unless the note holder or beneficial owner gives us**
13 **contrary instructions, and this section's elaborated more in**
14 **the rules.**
15 Q. Okay. Now, when you start talking about the rules,
16 that's what we're referring to earlier in one of the earlier
17 exhibits; correct?
18 **A. Exhibit 3.**
19 Q. Right. And what rule deals with the instructions
20 regarding ownership of the promissory note?
21 **A. It's Rule 2, Section 4(B), and on my copy it's on**
22 **page 11, and then also on Section 6 of the same section.**

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1 Q. Okay. Those deal with your response to the
2 instructions of the holder of the mortgage loan promissory
3 notes; correct?
4 A. I'm sorry?
5 Q. Those sections deal with your response to the holder
6 of the mortgage promissory note, your responsibilities with
7 respect to that, who you were actually acting on behalf of?
8 A. Well, it, it further elaborates on the provisions in
9 the mortgage and the provisions in the terms and conditions
10 and further elaborates on the relationship between MERS as the
11 mortgagee and, and the owner of the indebtedness.
12 Q. And Section 4(A) is a section we talked about that
13 deals with transfer to a nonmember of servicing rights with
14 respect to the mortgage loan?
15 A. Right. I think it actually deals with the transfer
16 of the beneficial interest to a non-MERS member. As long as
17 there's a servicer we don't have to -- that loan does not need
18 to come out of the system.
19 Q. I show you a document I'm going to mark as Exhibit
20 10.
21 (Deposition Exhibit No. 10 was marked for
22 identification.)

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1 BY MR. WOOTEN:
2 Q. I represent to you that that is a copy of an
3 assignment in the name of MERS involving a securitized loan
4 and ask you to take a minute and look over that document.
5 Have you ever seen that document before today?
6 A. No.
7 Q. Who is the entity making that assignment in that
8 document?
9 A. Mortgage Electronic Registration Systems, Inc.
10 Q. And who are they assigning that lien to?
11 A. US Bank National Association as trustee on behalf of
12 the holders of the Home Equity Assets Trust 2007-2, Home
13 Equity Pass-Through Certificate Series 20007-2.
14 Q. What is the date of that assignment?
15 A. It looks like it was dated July 8th, 2008.
16 Q. That particular document, do you know who that
17 document was prepared by?
18 A. I do not. Well, hold on. There's a notation on
19 here that it was prepared by Jeff Prose of Richmond Monroe
20 Group in Branson, Missouri, but I would have no way of
21 verifying that.
22 Q. Have you ever heard of Richmond Monroe Group?

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1 A. Yes.
2 Q. Are they a MERS member?
3 A. I know at one time they were. I don't know whether
4 they still are.
5 Q. Do you know if they're a law firm?
6 A. I believe they're a, a lien release or assignment
7 company that provides lien release and title or assignment
8 services to participants in the mortgage industry.
9 (Hultman Deposition Exhibit No. 11 was marked for
10 identification.)
11 BY MR. WOOTEN:
12 Q. I show you a document I marked as Plaintiff's
13 Exhibit 11. I represent to you that that's a page from
14 Richmond Monroe Group's web site describing some of the
15 services that they prepare or they perform. Does it indicate
16 that they perform assignments or prepare assignments of
17 mortgages?
18 MR. BROCHIN: Objection. The document speaks for
19 itself.
20 THE WITNESS: There is a statement here that says
21 assignment preparation.
22 BY MR. WOOTEN:

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1 Q. Okay. Up at the top the first two paragraphs of
2 text, I believe it's the second paragraph of text, what does
3 that second paragraph of text state?
4 A. Do you want me to read it?
5 Q. Please.
6 A. Our highly qualified team also specializes in
7 correcting intervening chain of assignment problems. We can
8 locate hard to find authorized signers and recreate missing
9 mortgage assignments issued by failed, merged, acquired or
10 unknown financial institutions.
11 Q. And let me see Exhibit 10, if you don't mind, and
12 11.
13 Is MERS' address 3815 Southwest Temple, Salt Lake
14 City, Utah, 84115?
15 A. I'm assuming that's the address of the certifying
16 officer.
17 Q. Is that a MERS address?
18 A. To the extent that the certifying officer is there,
19 yes.
20 Q. Do you know who the note holder was with respect to
21 this particular mortgage loan?
22 A. Not without looking at the system records.

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1 Q. Was MERS the original note holder?

2 **A. Were we the original note holder? I have no idea**

3 **what the status of the note was without looking at the system**

4 **records.**

5 Q. You weren't the lender at origination, were you?

6 **A. No. We were not the lender. That's correct.**

7 Q. You would agree with me that as a general

8 proposition you cannot assign what you don't own, can you?

9 MR. BROCHIN: Object to the form of the question.

10 THE WITNESS: I'm not sure I understand what you

11 mean.

12 BY MR. WOOTEN:

13 Q. You can't assign what you don't own. You can't

14 transfer ownership of something that you don't own, can you?

15 MR. BROCHIN: Object to the form of the question.

16 MR. RAGSDALE: Objection.

17 THE WITNESS: If you're asking me if could, if I

18 sign an assignment and I turn out to be wrong, yeah, I can

19 sign that. It may not be effective.

20 BY MR. WOOTEN:

21 Q. Sure.

22 **A. But --**

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1 Q. Will you look at this paragraph where it begins know

2 by all these presents. Does that assignment paragraph seem to

3 indicate that the certifying officer is attempting to transfer

4 not only the mortgage but the note in that case?

5 MR. RAGSDALE: Object to the form.

6 MR. BROCHIN: Object to the form.

7 THE WITNESS: It says what it says.

8 BY MR. WOOTEN:

9 Q. Okay. And does it say that it is transferring the

10 mortgage along with the indebtedness evidenced thereby?

11 THE WITNESS: That's what it says.

12 BY MR. WOOTEN:

13 Q. Okay. And you'll agree with me that MERS is not the

14 owner of the indebtedness?

15 **A. Well, I agree that we're not the beneficial owner of**

16 **the indebtedness. Whether we actually held the note at that**

17 **point in time I wouldn't know without looking and doing**

18 **further investigation.**

19 Q. And according to that assignment it's not even an

20 assertion that MERS does hold, that that assignment is by SPS

21 through a certifying officer; right?

22 **A. No.**

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1 MR. BROCHIN: Object to the form of the question.

2 THE WITNESS: The assignor is Mortgage Electronic

3 Registration Systems, Inc.

4 BY MR. WOOTEN:

5 Q. And it was prepared by SPS as the --

6 **A. It doesn't say that.**

7 Q. -- certifying officer; right?

8 **A. No, it doesn't say that.**

9 Q. Up at the top right?

10 **A. It says recording requested by Select Portfolio**

11 **Servicing. When recorded return to Bill Koch, Select**

12 **Portfolio Servicing 1318, or 3815 Southwest Temple, Salt Lake**

13 **City, Utah, 84115.**

14 Q. Okay. And down at the bottom is it signed by Bill

15 Koch or Koch, whatever his name is?

16 **A. I'm assuming he's a certifying officer who's**

17 **employed by Select Portfolio Servicing.**

18 Q. Okay. And 3815 Southwest Temple is the address

19 listed in that document for MERS; right?

20 **A. As I said, if that's where the certifying officer**

21 **is, that's the MERS address.**

22 Q. So MERS is wherever any of its certifying officers

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1 are?

2 **A. Sure.**

3 Q. If the securitization document said that on March

4 the 1st of 2007 that that particular note had been sold four

5 times and that RESMA was not the owner of the note, nor was

6 SPS, nor was MERS, could SPS transfer the note by executing

7 that assignment of mortgage?

8 MR. BROCHIN: Object to the form of the question.

9 THE WITNESS: I don't understand your question.

10 MR. BROCHIN: Excuse me. Object to the form of the

11 question; calling for speculation.

12 MR. RAGSDALE: Same objection.

13 MR. BROCHIN: Hypothetical.

14 MR. RAGSDALE: Objection.

15 THE WITNESS: And I don't understand what you were

16 saying. It was too convoluted.

17 BY MR. WOOTEN:

18 Q. Sure. The securitization agreement says that on

19 March 1st, 2007, that the note which is secured by that

20 mortgage had been sold four times between four other entities,

21 ultimately to the trust that is named in that assignment in

22 2008, the mortgage note having been sold in 2007 by some other

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1 entity not named in that assignment could not then be sold in
2 2008 by an entity that did not own the note?
3 MR. RAGSDALE: Object to form.
4 MR. BROCHIN: Object to form; calls for speculation;
5 hypothetical.
6 THE WITNESS: Again, you know, I don't have all the
7 facts and circumstances, so I don't believe I can answer the
8 question.
9 BY MR. WOOTEN:
10 Q. Have you undertaken any investigation to verify any
11 assignments made by any certifying officer in any circumstance
12 where MERS has become embroiled in litigation as a result of a
13 claim that a mortgage assignment is improper or void or
14 unenforceable or illegal that has been undertaken in MERS'
15 name?
16 MR. BROCHIN: Object to the form of the question.
17 MR. RAGSDALE: Same objection.
18 THE WITNESS: Again, the question is more convoluted
19 than I'm capable of answering.
20 BY MR. WOOTEN:
21 Q. How many lawsuits are you aware of right now
22 involving MERS where there is an assertion that there is an

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1 assignment that is either in error or illegal in the name of
2 MERS which is being used for the purpose of trying to
3 foreclose?
4 **A. I have no idea.**
5 Q. Do you have any system within MERS by which you keep
6 records of those types of things?
7 **A. I'm sure the legal department does have; the law**
8 **department has those records.**
9 Q. You would agree with me as a general proposition
10 that MERS cannot assign a promissory note unless it has an
11 ownership interest in it?
12 **A. No, I would not agree with that.**
13 MR. BROCHIN: Object to the form.
14 BY MR. WOOTEN:
15 Q. A promissory note. You are saying that MERS may
16 assign a promissory note that it does not own?
17 **A. If we're the holder.**
18 Q. I'm not talking about MERS acting as agent for a
19 member. I'm saying that MERS cannot assign a mortgage
20 promissory note that it does not own?
21 MR. RAGSDALE: Object --
22 BY MR. WOOTEN:

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1 Q. Or that its principal does not own?
2 MR. BROCHIN: Object to the form of the question.
3 THE WITNESS: And I don't agree with that, that
4 characterization.
5 BY MR. WOOTEN:
6 Q. So if you have a mortgage promissory note just
7 sitting out there, MERS is nowhere involved at all in any
8 shape, form or fashion? Some certifying officer can go out
9 and make a MERS mortgage assignment that claims to move the
10 promissory note and the mortgage even though MERS is not
11 involved in any way? You think that's okay?
12 MR. RAGSDALE: Object to the form.
13 THE WITNESS: I didn't say that.
14 MR. BROCHIN: Object to the form.
15 BY MR. WOOTEN:
16 Q. That was my question.
17 **A. But that doesn't sound like the question that I**
18 **heard.**
19 Q. Okay. Well, the question is when you don't own
20 anything and you're not working on behalf of someone who owns
21 anything, you're completely strange to the transaction, you
22 have no connection to it whatsoever --

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1 **A. I'm not the holder.**
2 Q. -- not the holder, not acting for the holder, not
3 acting for anyone with an interest, you cannot assign a
4 promissory note that you or your principal does not have an
5 interest in, can you?
6 MR. BROCHIN: Object to the form of the question.
7 MR. RAGSDALE: Same objection.
8 THE WITNESS: If you're saying that, that MERS is
9 not the holder and does not own the promissory note and is not
10 the mortgagee, is not the agent of somebody, you're -- it
11 probably is not an assignment that we could do.
12 MR. RAGSDALE: We getting close to wrapping it up?
13 MR. WOOTEN: Well, I'm getting close to having to
14 stop. I'm not getting close to wrapping it up.
15 MR. RAGSDALE: I mean we've been-- let's see. We've
16 been to Utah, Missouri, Rhode Island. I mean I feel like I
17 ought to get frequent flyer miles for this deposition. Very
18 little of it's had to do with Miss Henderson obviously, but as
19 I told you, we need to finish this up pretty quickly.
20 MR. WOOTEN: Well, I'm going to go till I get done.
21 I have a point to stop because we're out of time. We'll stop
22 because we're out of time.

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1 MR. RAGSDALE: I want to make sure that you
2 understand we're not adjourning the deposition. As you've
3 indicated and frankly exhibited, a lot of your, 90 percent of
4 your questions have had to do with things unrelated to Miss
5 Henderson's case, and we've been very tolerant of that.
6 MR. WOOTEN: What we're dealing with is establishing
7 a pattern of conduct, Barry.
8 MR. RAGSDALE: Well, I know that's what you think
9 you're trying to do, but the truth is a lot of these questions
10 have no possible relevancy to Miss Henderson's case, frankly,
11 even under your theories, Nick, and we've been very tolerant
12 of that, but I think we've run out of patience about that. So
13 why don't you wrap it up.
14 MR. WOOTEN: Barry, I'm going to wrap up when I'm
15 done, and if you need a protective order, you need to suspend
16 the deposition and apply for one --
17 MR. RAGSDALE: No, no. That's not how it's going to
18 work.
19 MR. WOOTEN: -- you weren't present at the hearing.
20 MR. RAGSDALE: That's not how it's going to work.
21 MR. WOOTEN: You weren't present at the hearing.
22 MR. RAGSDALE: But I know Judge Hobbs well enough

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1 that I would love to have you explain to him why an assignment
2 of a mortgage in Salt Lake City to a securitized trust has
3 anything remotely to do with Miss Henderson's loan which was
4 not assigned, not securitized and as far as I know never found
5 its way to Utah. So it -- I'm comfortable with the fact that
6 we've tolerated this far-ranging exposition as long as we need
7 to do. If you have any other questions about Miss Henderson's
8 case, go ahead and ask them, but if not, I think we're done.
9 MR. WOOTEN: Well, here's the problem with that,
10 Barry, which you apparently don't know because you weren't at
11 the last deposition and you just entered the case. Miss
12 Henderson's loan was sold, and it was sold to securitization,
13 and when your client started foreclosure on it, they did not
14 own the note. It was owned by securitized trust. So it is
15 relevant. It's relevant to the rights to transfer the
16 interest. It's relevant to the rights to transfer the note.
17 MERS' name is not simply a tabula rasa upon which somebody may
18 write their name for the right to foreclose. Somewhere along
19 the way somebody has to have an ownership interest that they
20 have an enforceable right to change the ownership of the
21 mortgage lien.
22 MR. RAGSDALE: With all due respect, Nick, I've

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1 heard this speech before.
2 MR. WOOTEN: Okay.
3 MR. RAGSDALE: And I mean I know you're entitled to
4 it, and I'm glad that you have it, and I hope you get to make
5 it again, but let's do this. Let's stop here for a second and
6 let me talk to my co-counsel, if that's all right.
7 MR. WOOTEN: Sure. That will be fine.
8 THE VIDEOGRAPHER: Going off record at 16:01:12.
9 (A recess was taken.)
10 THE VIDEOGRAPHER: We're back on record at 16:05:33.
11 MR. WOOTEN: Barry, you've had a chance to meet with
12 your client. Anything else you want to put on the record?
13 MR. RAGSDALE: Just this. I do think that we have
14 been incredibly indulgent, but we, I think we'll indulge a
15 little bit more. We would like you to start the process of
16 wrapping it up and to try to focus your questions a little bit
17 more on Miss Henderson's case.
18 MR. WOOTEN: With all due respect, I'm not trying to
19 be difficult, but I'm going to have to complete my deposition,
20 and if you feel it's improper, you're welcome to move for a
21 protective order.
22 MR. RAGSDALE: I understand that, Nick, and I'm

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1 trying to avoid that. I expect Judge Hobbs doesn't want to
2 get involved in our spats. So let's see if we can't focus it
3 a little bit and get it resolved quickly.
4 (Hultman Deposition Exhibit No. 12 and 13 were
5 marked for identification.)
6 BY MR. WOOTEN:
7 Q. You reviewed Miss Henderson's records in your system
8 regarding her loan, Mr. Hultman?
9 A. **Is that a question?**
10 Q. Have you reviewed Miss Henderson's records in your
11 system?
12 A. **I have.**
13 Q. Was there ever a period of time when Miss
14 Henderson's loan was not registered on the MERS system since
15 the loan has been instituted?
16 A. **I do not believe that it -- I think that it -- let
17 me say since the loan was registered it hasn't been taken off
18 the system, and it looked like it was registered close to the
19 time that it was originated.**
20 Q. I show you a document I marked as Deposition Exhibit
21 12. I represent to you that that is a search of the MERS
22 servicer identification system by VA number which indicated

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1 that there was no MIN associated with Miss Henderson's VA case
2 number. It's the black box on the second page outlined with a
3 black sharpie?
4 **A. I'm sorry. What was your question?**
5 Q. On the second page highlighted in the black box --
6 **A. Yes.**
7 Q. -- there was a search conducted by the VA case
8 number, and the search result was that no MINS can be located
9 that match the search criteria entered. Would the MIN also be
10 linked to Miss Henderson's VA case number?
11 **A. If, if the VA case number was correctly entered here**
12 **or in the system and it was in the system, then there would be**
13 **a record of it with Mrs. Henderson's or Miss Henderson's loan.**
14 Q. So there's a possibility of an error either in the
15 entry of a number on the web search or an entry of the number
16 in the MERS system?
17 **A. That looks like what probably is the case here.**
18 Q. Mr. Hultman, what evidence is in MERS' own records
19 and documents indicating that Miss Henderson is in default of
20 her mortgage loan?
21 **A. I think there were two entries where foreclosures**
22 **were initiated against Miss Henderson.**

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1 Q. Is there any entry other than the fact that
2 foreclosures were initiated?
3 **A. There was a reinstatement in between the two**
4 **initiations.**
5 Q. Other than those documents is there any other entry
6 evidencing proof of an actual default in Miss Henderson's
7 loan?
8 **A. Not in the MERS system.**
9 Q. And you would not have access to that system?
10 **A. I'm sorry?**
11 Q. And you wouldn't have access to that information
12 either except through the servicer's records; correct?
13 **A. Or the MERS certifying officer.**
14 Q. Who is a servicer employee; right?
15 **A. Probably, yes.**
16 Q. Do you have any verification of the information on
17 the servicer system?
18 **A. Any verification? Other than we're entitled to rely**
19 **on the servicer because they have an obligation to give us**
20 **truthful information.**
21 Q. Do you agree with the statement that although MERS
22 tracks changes in ownership of the beneficial rights for loans

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1 registered on the MERS system MERS cannot transfer the
2 beneficial rights to the debt?
3 **A. Yes.**
4 Q. Do you agree with the statement that the debt can
5 only be transferred by properly endorsing the promissory note
6 to the transferee?
7 **A. No.**
8 Q. Let me show you what I marked as Deposition Exhibit
9 13, please, sir. What is that?
10 **A. Looks like it's part of the MERS procedural manual.**
11 Q. What does the second highlighted sentence say?
12 **A. Are you talking about the pink language?**
13 Q. Yeah.
14 **A. The debt can only be transferred by properly**
15 **endorsing the promissory note to the transferee.**
16 Q. Properly endorsing the promissory note to the
17 transferee; right?
18 **A. Yeah.**
19 Q. And that's MERS' procedure manuals?
20 **A. Yeah.**
21 Q. Release 18.0 June 8, 2009; right?
22 **A. Yes.**

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1 Q. Would you look back at Exhibit 10 for me, please?
2 **A. Okay.**
3 Q. That's a mortgage assignment; right?
4 **A. It's an assignment of the mortgage lien, yes.**
5 Q. And it is not endorsement of promissory note, is it?
6 **A. I would agree.**
7 Q. And does that assignment contradict the document in
8 Exhibit 13 which says that transfer of the debt is
9 accomplished by endorsement of the promissory note?
10 **A. They say two different things.**
11 Q. That's correct. Document 10 which is a mortgage
12 assignment attempts to transfer the indebtedness by virtue of
13 the mortgage assignment; correct?
14 MR. BROCHIN: Object to the form of the question.
15 MR. RAGSDALE: Same objection.
16 THE WITNESS: It says what it says.
17 BY MR. WOOTEN:
18 Q. Okay. And your own procedures for your members say
19 that transfer of the debt occurs by negotiation through an
20 endorsement of the promissory note; correct?
21 **A. That's correct.**
22 Q. Do you make any effort to police the actions of your

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1 members and your certifying officers with respect to the
2 preparations of documents such as Exhibit 10 where those
3 documents are used to foreclose on homeowners?
4 MR. RAGSDALE: Object to the form.
5 THE WITNESS: If you are asking me whether when we
6 see that there are issues that things were not done according
7 to our procedures do we investigate them and do we take
8 appropriate actions under our rules and procedures, the answer
9 is yes.
10 BY MR. WOOTEN:
11 Q. How do you typically find out there is a problem
12 with a particular member or their certifying officers?
13 A. **I don't think there's a typical way that we would
14 find that out.**
15 Q. Does it often arise through litigation where your
16 company is named a defendant?
17 A. **No. I would say more often it comes to because
18 somebody shows us something or we see something in the mail or
19 documents come across our desk or some member calls us up or a
20 borrower calls us up. I would say more often than not it's
21 really somebody alerting us that there's been a problem as
22 opposed to somebody suing us.**

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1 Q. In the MERS system do you provide an identification
2 number for each securitization which is placed in the pool
3 number field on the MERS system?
4 A. **I don't know -- I don't understand your question.**
5 Q. Typically when a loan is registered to a
6 securitization on the MERS system, you provide a pool number?
7 A. **First of all, we don't register securitizations. We
8 register loans. If the securitization trust -- if the loan
9 has been -- if the beneficial ownership interest has been
10 transferred to a securitization trustee, the servicer can but
11 is not required to enter the pool number into the record
12 associated with that loan.**
13 **(Hultman Deposition Exhibit No. 15 was marked for
14 identification.)**
15 BY MR. WOOTEN:
16 Q. Let me show you what I marked as Deposition Exhibit
17 15, please.
18 A. Okay.
19 MR. RAGSDALE: You skipped one.
20 THE WITNESS: I think you skipped 14.
21 BY MR. WOOTEN:
22 Q. 14 was that document, highlight the --

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1 A. **That's 12.**
2 Q. I skipped 13 then.
3 A. **That's 13.**
4 Q. 13. I'm sorry. I did skip 14. Let me show you 15,
5 and I'll come back to 14. The portion highlighted in blue at
6 the bottom is a note entry from your business procedures.
7 What does that entry say?
8 A. **The securitization serial number must be placed in
9 the pool number field on the MERS system for MINS involved.**
10 THE REPORTER: For --
11 THE WITNESS: The securitization --
12 MR. RAGSDALE: For MINS involved.
13 THE WITNESS: For MINS involved, excuse me.
14 BY MR. WOOTEN:
15 Q. That's a MIN, for the benefit of folks, Mr. Hultman,
16 who aren't familiar with your company, MIN is a mortgage
17 identification number; right?
18 A. **That's correct.**
19 Q. And that's a unique number that MERS has set up for
20 each loan that's registered on the system?
21 A. **Well, it's generated typically by the party
22 registering the loan according to an algorithm that we provide**

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1 **to the ser-, the originators and the loan origination systems
2 and the servicing systems.**
3 Q. And it is designed to prevent duplicative mortgage
4 identification numbers; right?
5 A. **It's supposed to be the unique number for that
6 mortgage, yes.**
7 Q. So when we use the term MIN, M-I-N, that's what
8 we're referring to?
9 A. **Yes.**
10 Q. And that entry says that the servicer must enter the
11 securitization serial number in the pool field; right?
12 A. **For rated securities.**
13 Q. For rated securities. You would agree with me that
14 most of the securities are rated; correct?
15 A. **No, I wouldn't agree to that.**
16 Q. Okay. So that deals only with rated securities?
17 A. **That's what it says.**
18 **(Hultman Deposition Exhibit No. 14 was marked for
19 identification.)**
20 Q. 14 is another entry from your business procedures,
21 and the green portion highlighted deals with the issuer's
22 responsibilities; is that correct?

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1 **A. That's what it says.**
2 Q. And you're familiar with the procedures manual,
3 aren't you?
4 **A. I have looked at it.**
5 Q. And does number 5 in that entry indicate that the
6 securitization on the pool field will be entered with the
7 securitization serial number?
8 **A. Yes.**
9 Q. It doesn't say might be or could be; it says shall
10 be?
11 **A. Well, it says update the pool number with the**
12 **securitization serial number.**
13 Q. You would agree with me that as your procedure said
14 that it's not merely enough to register a transfer of
15 beneficial ownership on your system to actually create a
16 transfer of ownership, but the promissory note must be
17 negotiated through an endorsement to the new owner; correct?
18 MR. RAGSDALE: Object to the form.
19 THE WITNESS: I'm sorry. I don't understand your
20 question.
21 BY MR. WOOTEN:
22 Q. The registration of a transfer of beneficial

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1 ownership in your system is not a transfer of ownership;
2 correct?
3 MR. BROCHIN: Object to the form of the question.
4 THE WITNESS: If you're asking, it's a reflection of
5 what has transpired outside the system.
6 BY MR. WOOTEN:
7 Q. Correct. Which is, as has been, it is a negotiation
8 through a transfer endorsement of the promissory note?
9 **A. That's the normal way that it would happen, yes.**
10 Q. Do you have any records in MERS' possession of Miss
11 Henderson's payment history in this case?
12 **A. We have received a copy of it as part of the**
13 **pleadings, and I'm assuming that it was also given to the MERS**
14 **certifying officers at GMAC.**
15 Q. And with respect to that, has anyone attempted to
16 verify the accuracy of those records which were provided to
17 MERS?
18 MR. RAGSDALE: You mean anyone with MERS?
19 BY MR. WOOTEN:
20 Q. Yes.
21 **A. I'm not, I'm not aware of what the certifying**
22 **officer did or didn't do at this point.**

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1 Q. Is there ever an attempt by MERS to verify the
2 allegations of default with respect to a foreclosure by the
3 servicer?
4 **A. I'm sure there is.**
5 Q. And that is again the servicer foreclosing through a
6 certifying officer in the name of MERS; right? From the
7 foreclosure being conducted in MERS' name?
8 **A. I am not -- I'm confused about your question.**
9 Q. I'm sorry. When the foreclosure's being conducted
10 in MERS' name as it was in Miss Henderson's case, that is the
11 servicer foreclosing in the name of MERS through a certifying
12 officer?
13 **A. MERS is conducting the foreclosure relying on**
14 **information that it's being supplied to from the servicer.**
15 Q. If Miss Henderson contacted MERS and said that she
16 was not in default, how would MERS verify or attempt to verify
17 that information for her?
18 **A. We would ask Miss Henderson to contact the servicer**
19 **and work it out with them.**
20 Q. So once you received the word to foreclose you just
21 foreclose unless the servicer tells you to stop?
22 **A. Yes, unless we were to find something defective in**

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1 **the process.**
2 Q. Who could I depose who works for MERS who could
3 verify the accuracy of Homecoming records with respect to Miss
4 Henderson's loan?
5 **A. You would have to ask the -- you would have to**
6 **depose somebody at the servicer.**
7 MR. RAGSDALE: Which I don't believe is Homecoming.
8 Is it?
9 THE WITNESS: Homecoming is an affiliate of GMAC.
10 Whether -- I don't know how they're involved in this case.
11 BY MR. WOOTEN:
12 Q. Are you aware that Miss Henderson's loan was
13 guaranteed by the VA?
14 **A. From the mortgage I assume so.**
15 Q. Are you aware of any special protections or,
16 provided to Miss Henderson as a veteran through the VA
17 guarantee?
18 **A. I'm not that familiar with the VA regulations.**
19 Q. With respect to the allegations of default in Miss
20 Henderson's case have you reviewed any of the financial
21 records provided to MERS?
22 **A. Have I? I looked at the payment history that was**

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1 **attached to one of the pleadings or some, some part of the,**
2 **the pleadings or summary judgment motions or answers. I**
3 **recall that there was a, an accounting attached to it.**
4 Q. Are you familiar with the documents that were filed
5 by your attorneys in this case regarding the allegations of
6 default?
7 **A. I saw an affidavit from one of the litigation**
8 **specialists that works for GMAC.**
9 Q. With respect to that allegation of default are you
10 familiar with any of the documents which were filed in
11 response to that motion by me on behalf of Miss Henderson?
12 **A. I read a mo- -- or response to the motion for**
13 **summary judgment which I believe was filed by you.**
14 Q. Are you familiar with the fact that approximately 30
15 to 45 days prior to foreclosure Miss Henderson received in the
16 mail a statement indicating that she was not in default and
17 had no delinquency?
18 **A. I'm not -- I saw some letters that were sent out by**
19 **Barry's firm, but I don't remember particularly which one**
20 **you're referring to.**
21 Q. Does MERS have any independent agreements with a
22 company known as LPS Default Solutions?

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1 **A. If they're a member, that would be the only one that**
2 **I'm aware of, and I don't, I don't recall whether that**
3 **company, that particular company's a member or not.**
4 Q. Do you know if they had any involvement in Miss
5 Henderson's loan?
6 MR. RAGSDALE: They being LPS?
7 BY MR. WOOTEN:
8 Q. LPS or Fidelity?
9 **A. I don't recall.**
10 Q. The court case up in Minnesota there was a certified
11 question to the state Supreme Court about MERS' conduct and
12 the way it handled its business up there. Just a blurb from
13 the ruling said that by acting as the nominal mortgagee of
14 record for its members MERS had essentially separated the
15 promissory note in a security instrument allowing to debt to
16 be transferred without an assignment of the security
17 instrument. Would you agree with that characterization of the
18 purpose of what you --
19 **A. I'd have to read it.**
20 MR. BROCHIN: Object to the form of the question.
21 MR. RAGSDALE: Object.
22 BY MR. WOOTEN:

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1 Q. Have you read the opinion of the Supreme Court of
2 Minnesota?
3 **A. I skimmed through it.**
4 Q. Do you recall that portion of it?
5 **A. I do not.**
6 Q. Is that the position that you've advocated that by
7 being nominal mortgagee you separate the promissory note and
8 the security instrument allowing the debt to be transferred
9 without assignments?
10 MR. BROCHIN: Object to the form of the question.
11 MR. RAGSDALE: Same objection.
12 THE WITNESS: I would never characterize the MERS
13 process as separating the note interest from the mortgage
14 lien.
15 (Hultman Deposition Exhibit No. 16 was marked for
16 identification.)
17 BY MR. WOOTEN:
18 Q. Does this look like the payment history that you
19 referred to earlier of Miss Henderson's loan?
20 **A. Yes.**
21 Q. All right. And you reviewed that during preparation
22 for this deposition; is that correct?

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1 **A. I looked at it, yes.**
2 Q. Did you understand the entries in it?
3 **A. Some of them I can. Some of them I can't.**
4 Q. Did you understand the entries with respect to
5 payments, application of payments, that sort of thing?
6 **A. As I said, there's some things I -- it looks -- it's**
7 **fairly clear of what it means. Other things are not so clear.**
8 Q. If you will let me take a look at that.
9 Have you asked anyone employed by you or have you
10 personally undertaken any effort to try to determine the
11 entries with respect to this payment history?
12 **A. No.**
13 Q. As we sit here today, are you able to ascertain from
14 this record, Deposition Exhibit 16, whether or not there is a
15 default on Miss Henderson's loan?
16 **A. Are you asking me if from that piece of paper could**
17 **I tell whether there's a current default?**
18 Q. Or could you tell whether there was a default
19 demonstrated by this document?
20 **A. I cannot.**
21 Q. Is there anyone working for you at MERSCORP who
22 could look at that document and make that determination?

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1 **A. Perhaps if they had enough time and they had access**
2 **to people at GMAC who could explain the system to them.**
3 Q. Are you familiar with the fact that Miss Henderson
4 paid \$6,400 on her mortgage payment in September of 2007?
5 MR. RAGSDALE: Object --
6 BY MR. WOOTEN:
7 Q. Or 2000 -- November of 2007?
8 MR. RAGSDALE: Object to form.
9 THE WITNESS: I'm familiar that that statement was
10 in some papers that I saw. I don't know whether that's true
11 or not.
12 BY MR. WOOTEN:
13 Q. Do you know if there's anyone at MERSCORP who could
14 verify that by any of the records that you had access to?
15 **A. We would have to talk to GMAC and find out.**
16 Q. Are you familiar with any of the documents mailed to
17 Miss Henderson with respect to her mortgage loan from the
18 mortgage company? Do you remember?
19 **A. I'm aware that there were letters that were sent**
20 **from GMAC to Miss Henderson prior to the loan being referred**
21 **for foreclosure, and I've seen some correspondence between**
22 **Barry's office and your client.**

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1 Q. I'm not going to mark this because it's already
2 attached as an exhibit to your summary judgment motion
3 responded to. I'll represent to you that that is a mortgage
4 statement mailed to my client by GMAC in May of 2008. Does
5 that statement to the best of your knowledge indicate that
6 there is any amount due on a regular monthly mortgage payment?
7 MR. RAGSDALE: Object to the form.
8 THE WITNESS: I'm sorry. What was the question?
9 I'm sorry. I was reading the document.
10 BY MR. WOOTEN:
11 Q. Sure. Take a second and read it over and tell me if
12 there's any portion of that document indicates there is a
13 default on Miss Henderson's loan or that she is due for any
14 amount other than her monthly mortgage payment as of May the
15 1st, 2008.
16 MR. RAGSDALE: Object to the form.
17 THE WITNESS: It looks like there's a -- there --
18 they're looking for a post petition payment, mortgage payment
19 of \$696.93.
20 BY MR. WOOTEN:
21 Q. Okay. Does it indicate that there is any amount
22 past due?

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1 **A. I do not see anything to that effect.**
2 Q. Does that statement indicate that there's any other
3 amount due other than that monthly mortgage payments?
4 **A. It says what it says.**
5 Q. There's a -- do you believe Miss Henderson should be
6 entitled to rely on the mortgage statement she receives from
7 her mortgage servicer?
8 MR. BROCHIN: Object to the form of the question.
9 MR. RAGSDALE: Objection.
10 THE WITNESS: I'm sorry. I don't understand what
11 you asked me.
12 BY MR. WOOTEN:
13 Q. I said do you believe Miss Henderson should be able
14 to rely on the accuracy of the mailings she receives from her
15 mortgage servicer?
16 MR. RAGSDALE: Object to the form.
17 THE WITNESS: Well, I believe that Miss Henderson
18 should read her mortgage statement, and if she has a problem
19 with it, she should contact her servicer.
20 BY MR. WOOTEN:
21 Q. Who is the entity who is accepting her payments and
22 disbursing her payments; right?

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1 **A. Correct.**
2 Q. Not MERS?
3 **A. Correct.**
4 Q. MERS does not have access to those records?
5 **A. I never said that. We, if we asked GMAC for them,**
6 **I'm sure they would give them to us.**
7 Q. Okay. Did MERS have access to those records prior
8 to the time that it filed this foreclosure action?
9 **A. No.**
10 Q. Did MERS review those records prior to filing this
11 foreclosure action?
12 **A. I don't know what the certifying officer actually**
13 **did.**
14 Q. Do you know who the certifying officer was who was
15 responsible for this foreclosure?
16 **A. I do not.**
17 Q. Do you know if the certifying officer was actually
18 the person who made the decision to foreclose?
19 **A. The default manager of the department is a MERS**
20 **certifying officer, so I assume she had some involvement in**
21 **it.**
22 Q. Do you know who that person is?

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1 **A. I don't recall her name.**
2 Q. Have you seen anything in this case to indicate who
3 made the decision to file foreclosure against Miss Henderson?
4 **A. In the records that I have seen I do not.**
5 THE VIDEOGRAPHER: We have one minute left on tape.
6 MR. WOOTEN: Go ahead and change it. I'm about
7 done. I just want to --
8 THE VIDEOGRAPHER: This marks the end of tape number
9 three in the 30(b)(6) deposition of William C. Hultman. Going
10 off record at 16:41:13.
11 (A recess was taken.)
12 THE VIDEOGRAPHER: We're back on record at 16:45:30.
13 Here begins tape number four in the 30(b)(6) deposition of
14 William C. Hultman.
15 BY MR. WOOTEN:
16 Q. Mr. Hultman, tell me exactly how MERS relayed the
17 determination to begin foreclosure proceedings against Miss
18 Henderson.
19 **A. We would have received a referral from the servicer.**
20 Q. What does a referral consist of?
21 **A. I think the way that GMAC has structured its default**
22 **arrangement there are a number -- there -- the normal policy**

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1 **is if the MERS mortgage -- if the mortgage -- excuse me. If**
2 **the promissory note is secured by a MERS mortgage, generally**
3 **all of their foreclosures are done in the name of, are**
4 **executed through MERS with the exception of certain**
5 **jurisdictions where they have decided that they would opt out**
6 **and have it assigned to a GMAC entity and foreclose through**
7 **that, an entity.**
8 Q. What constitutes the referral? I mean is that an
9 e-mail? Is that a phone call?
10 **A. I think what happens is it comes, it goes from one**
11 **part of GMAC to another part. There's, there's a part that is**
12 **involved with the collection notices prior to the decision to**
13 **make a, to foreclose, and then once it's foreclosed it goes**
14 **over to another section within the default area of GMAC for**
15 **processing.**
16 Q. Does MERS -- I mean you said MERS gets a referral.
17 I mean --
18 **A. Well, I --**
19 Q. That's transferred between the departments of GMAC
20 you're discussing.
21 **A. That's right, because they had set up a policy where**
22 **basically most mortgages that are, are referred for**

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1 **foreclosure are foreclosed in the name of MERS. That's their,**
2 **that's their procedure that they've established.**
3 Q. And I guess maybe I'm asking a poor question. I
4 know it's kind of toward the end of the day, but I mean what
5 is contained in the referral? I mean is there an e-mail? Is
6 it documents? Is it a phone call?
7 **A. I don't know what their -- I don't know what their**
8 **-- I mean we listen to the process, and that's the way it was**
9 **described to us.**
10 Q. Well, now you all are part of the process; right?
11 **A. Sure. The MERS certifying officer, as I said, the**
12 **MERS certifying officer is the default manager. So I assume**
13 **she set up a process or was part of the process when it got**
14 **set up.**
15 Q. What part does MERS play in that other than someone
16 at GMAC who has been authorized to sign MERS name?
17 **A. We're the legal entity that would do the**
18 **foreclosure. So, for example, I think in this case the**
19 **acceleration notice and the, the notice of sale was, was, MERS**
20 **was shown as the foreclosing entity.**
21 Q. Did you hire the Sirote firm to do this?
22 **A. We've delegated that to the servicer.**

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1 Q. Did you communicate with the Sirote firm about that?
2 **A. About what?**
3 Q. The foreclosure.
4 **A. Well, I'm assuming that they were told that the**
5 **foreclosure would be instituted by MERS and they have**
6 **processes and procedures they've done before and they know how**
7 **to do that.**
8 Q. When did -- what -- where in your system would there
9 be any record that a foreclosure was taking place other than
10 just simply the little entry on the MERS milestone?
11 **A. That's the, that's the way that we're, that's the**
12 **way that we have a record of it in our MERS system, and**
13 **basically what happens is in the servicing system which is**
14 **automated and linked to our system, when the flag is flipped**
15 **inside the servicing system that this thing has gone into**
16 **foreclosure and it's been referred to the attorneys to take**
17 **care of it, there's a, there's a transaction that gets**
18 **generated and a record gets created on the MERS system from**
19 **the servicing system.**
20 Q. And so you get this automated process where the
21 servicer flips a flag, and then the servicer in the name of
22 MERS sends it to an attorney?

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1 **A. On behalf of MERS. I would say the servicer sends**
2 **it to the attorney on behalf of MERS.**
3 Q. And at that point has MERS not been paid any money
4 that it's owed?
5 MR. RAGSDALE: Object to the form.
6 THE WITNESS: Depends whether we're the holder or
7 not.
8 BY MR. WOOTEN:
9 Q. Would you be the holder at that point?
10 **A. In nonjudicial foreclosures, probably not.**
11 Q. In fact, you would potentially complete a
12 nonjudicial foreclosure without ever obtaining possession of
13 the note; correct?
14 **A. It's possible, yes.**
15 Q. And if this note were endorsed to Ginnie Mae, then
16 it's possible that everything you did up until I filed this
17 lawsuit the note was not even endorsed in blank; right?
18 MR. BROCHIN: Object to the form of the question.
19 MR. RAGSDALE: Same objection.
20 THE WITNESS: Are you asking me whether the note was
21 endorsed in blank?
22 BY MR. WOOTEN:

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1 Q. Yeah.
2 **A. It was.**
3 Q. Okay. And you have information in your system about
4 which securitization with Ginnie Mae that this loan was sold
5 into; correct?
6 **A. There may be a record in there. I don't remember.**
7 **I don't know if I've looked at that particular field or not.**
8 **There was a point at which case Ginnie Mae was reflected as**
9 **the investor in the system.**
10 Q. And there was also a pool field identified with the
11 securitization serial number?
12 **A. I'd have to look at the audit files to see whether,**
13 **whether that was put in or not.**
14 Q. And so you don't have any idea whether that
15 securitization required that that note be transferred into
16 Ginnie Mae's name as part of that securitization or not, do
17 you?
18 **A. Actually I do.**
19 Q. Okay. And what is it?
20 **A. The seller servicer guide for Ginnie Mae requires**
21 **that the notes be delivered to Ginnie Mae's trustee endorsed**
22 **in blank.**

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1 Q. All right. And it says they are delivered to her
2 trustee endorsed in blank?
3 **A. On behalf of Ginnie Mae.**
4 Q. I'm speaking of the actual securitization documents.
5 You don't have any idea whether or not they require that once
6 the trustee receives it in blank that the trustee endorse it
7 to Ginnie Mae or to a securitization or anything like that, do
8 you?
9 **A. My understanding of the practice of Ginnie Mae is**
10 **that the notes are never endorsed to the trustee.**
11 Q. So you have a trustee of a securitization with notes
12 that are not identifiable as being assets of the
13 securitization?
14 **A. I didn't say that.**
15 Q. If they're endorsed in blank, anybody who picks up
16 one can basically take it and say it belongs in another place;
17 right? I mean --
18 **A. I don't think that -- no, I wouldn't agree with that**
19 **characterization either.**
20 Q. I mean a blank endorsement is a blank check; I mean
21 isn't that correct?
22 **A. A blank endorsement means the holders presumptively**

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1 **has the right to enforce the note.**
2 Q. And when you say presumptively, I mean if you show
3 up in court with a blank endorsement and you tell the judge,
4 judge, we've got this note and it's endorsed in blank, you're
5 telling the judge you have the right to enforce it; right?
6 **A. You are, but if, if someone shows up with superior**
7 **rights, like if you sold that note, you would not have the**
8 **right to enforce it.**
9 Q. That's correct. And so without the actual
10 securitization documents indicating whether the note was sold
11 for value to another party and whether that sale required that
12 that note be endorsed in blank or endorsed to a specific
13 trust, there would be no way for any court looking at a blank
14 endorsement to know if that blank endorsement's proper or not?
15 MR. BROCHIN: Object to the form of the question.
16 MR. RAGSDALE: Objection.
17 THE WITNESS: I would not agree with that
18 characterization.
19 BY MR. WOOTEN:
20 Q. If you walked into a vault full of notes and every
21 one of them just laying there endorsed in blank and somebody
22 said, hey, Mr. Hultman, every note in here belongs to a

VIDEOTAPED DEPOSITION OF WILLIAM C. HULTMAN
CONDUCTED ON WEDNESDAY, NOVEMBER 11, 2009

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1 securitization, you got to figure out which ones it goes to;
2 if they're all endorsed in blank, how would you figure that
3 out?
4 **A. I'm sure that Ginnie Mae --**
5 MR. BROCHIN: Object to the form of the question.
6 THE WITNESS: -- had systems that show which pool
7 each note belongs to.
8 BY MR. WOOTEN:
9 Q. Obviously there was some system in place here
10 because your company identified a securitization pool; right?
11 **A. If you say so. Again, I don't remember looking at**
12 **the record. I'll assume you're correct.**
13 MR. WOOTEN: Barry, I cannot finish. It's 5:00. I
14 know that you all probably are going to have a problem with
15 that. If we need to go back to Judge Hobbs and hash it out,
16 we can, but I don't want to drag you out here, and both of us
17 have to get to the airport or have other engagements. Tell me
18 what you want to do.
19 MR. RAGSDALE: Let's stop for a minute.
20 THE VIDEOGRAPHER: Going off record at 16:55:26.
21 (Discussion off the record.)
22 (Whereupon, signature having not been waived, the

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1 30(b)(6) deposition of WILLIAM C. HULTMAN was adjourned at
2 5:10 p.m.)
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1 * * *
2 ACKNOWLEDGMENT OF DEPONENT
3 I, WILLIAM C. HULTMAN, do hereby acknowledge that I
4 have read and examined the foregoing testimony, and the same
5 is a true, correct and complete transcription of the testimony
6 given by me, and any corrections appear on the attached Errata
7 sheet signed by me.
8
9
10
11 (DATE) (SIGNATURE)
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1 CERTIFICATE OF SHORTHAND REPORTER
2 I, Janet A. Steffan, Registered Diplomate Reporter
3 and Notary Public before whom the foregoing deposition was
4 taken, do hereby certify that the foregoing transcript is a
5 true and correct record of the testimony given; that said
6 testimony was taken by me stenographically and thereafter
7 reduced to typewriting under my direction and that I am
8 neither counsel for, related to, nor employed by any of the
9 parties to this case and have no interest, financial or
10 otherwise, in its outcome.
11 IN WITNESS WHEREOF, I have hereunto set my hand this
12 26th day of November, 2009.
13
14
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16
17
18 Registered Diplomate Reporter
19
20
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22

VIDEOTAPED DEPOSITION OF WILLIAM C. HULTMAN
CONDUCTED ON WEDNESDAY, NOVEMBER 11, 2009

<p style="text-align: right;">273</p> <p>1 ERRATA SHEET 2 IN RE: HENDERSON vs. MERSCORP 3 RETURN BY: 4 ===== 5 PAGE LINE CORRECTION AND REASON 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 (DATE) (SIGNATURE) 22</p>	
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<p style="text-align: right;">274</p> <p>1 ERRATA SHEET 2 IN RE: HENDERSON vs. MERSCORP 3 RETURN BY: 4 ===== 5 PAGE LINE CORRECTION AND REASON 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 (DATE) (SIGNATURE)</p>	
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