

MERS? It May Have Swallowed Your Loan

By MICHAEL POWELL and GRETCHEN MORGENSON
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FOR more than a decade, the American real estate market resembled an overstuffed novel, which is to say, it was an engrossing piece of fiction.



Christophe Voret

Mortgage brokers hip deep in profits handed out no-doc mortgages to people with fictional incomes. Wall Street shopped bundles of those loans to investors, no matter how unappetizing the details. And federal regulators gave sleepy nods.

That world largely collapsed under the weight of its improbabilities in 2008.

But a piece of that world survives on Library Street in Reston, Va., where an obscure business, the [MERS Corporation](#), claims to hold title to roughly half of all the home mortgages in the nation — an astonishing 60 million loans.

Never heard of MERS? That's fine with the mortgage banking industry — as MERS is starting to overheat and sputter. If its many detractors are correct, this private corporation, with a full-time staff of fewer than 50 employees, could turn out to be a very public problem for the mortgage industry.

Judges, lawmakers, lawyers and housing experts are raising piercing questions about MERS, which stands for Mortgage Electronic Registration Systems, whose private mortgage registry has all but replaced the nation's public land ownership records. Most questions boil down to this:

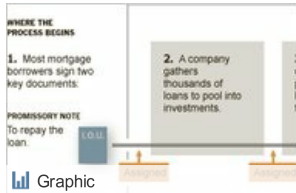
How can MERS claim title to those mortgages, and foreclose on homeowners, when it has not invested a dollar in a single loan?

And, more fundamentally: Given the evidence that many banks have cut corners and made colossal foreclosure mistakes, does anyone know who owns what or owes what to whom anymore?

The answers have implications for all American homeowners, but particularly the millions struggling to save their homes from foreclosure. How the MERS story plays out could deal another blow to an ailing real estate market, even as the spring buying season gets under way.

MERS has distanced itself from the dubious behavior of some of its members, and the company itself has not been

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Daniel Rosenbaum for The New York Times
R. K. Arnold, who had been with MERS since its founding, resigned as C.E.O. this year.

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accused of wrongdoing. But the legal challenges to MERS, its practices and its records are mounting.

The Arkansas Supreme Court ruled last year that MERS could no longer file foreclosure proceedings there, because it does not actually make or service any loans. Last month in Utah, a local judge made the no-less-striking decision to let a homeowner rip up his mortgage and walk away debt-free. MERS had claimed ownership of the mortgage, but the judge did not recognize its legal standing.

“The state court is attracted like a moth to the flame to the legal owner, and that isn’t MERS,” says Walter T. Keane, the Salt Lake City lawyer who represented the homeowner in that case.

And, on Long Island, a federal bankruptcy judge ruled in February that MERS could no longer act as an “agent” for the owners of mortgage notes. He acknowledged that his decision could erode the foundation of the mortgage business.

But this, Judge Robert E Grossman said, was not his fault.

“This court does not accept the argument that because MERS may be involved with 50 percent of all residential mortgages in the country,” he wrote, “that is reason enough for this court to turn a blind eye to the fact that this process does not comply with the law.”

With MERS under scrutiny, its chief executive, R. K. Arnold, who had been with the company since its founding in 1995, resigned earlier this year.

A BIRTH certificate, a marriage license, a death certificate: these public documents note many life milestones.

For generations of Americans, public mortgage documents, often logged in longhand down at the county records office, provided a clear indication of homeownership.

But by the 1990s, the centuries-old system of land records was showing its age. Many county clerk’s offices looked like something out of Dickens, with mortgage papers stacked high. Some clerks had fallen two years behind in recording mortgages.

For a mortgage banking industry in a hurry, this represented money lost. Most banks no longer hold onto mortgages until loans are paid off. Instead, they sell the loans to Wall Street, which bundles them into investments through a process known as securitization.

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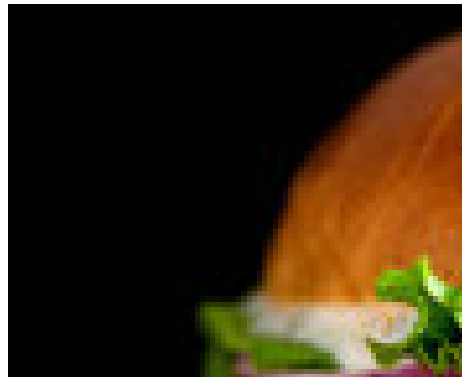
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