



# Training Bulletin

Number 2008-06

**To: All MERS Members**

**August 25, 2008**

Re: Reminder of Requirements Regarding Motions for Relief from Stay and Proofs of Claim filed by MERS

Motions for Relief for Stay and Proofs of Claim can be filed by Mortgage Electronic Registration Systems, Inc. (MERS). Each MERS member, through its duly appointed MERS officer(s), is responsible to ensure that outside counsel that files pleadings on behalf of MERS properly describes MERS and attaches all necessary proof to show MERS has standing at the time the pleading is filed.

This means that if MERS is the movant on a motion for relief from stay, in addition to being the mortgagee, MERS will need to be the note-holder for a particular loan transaction prior to filing a motion for relief from stay. Endorsing a promissory note in blank and delivering it to a duly appointed MERS officer is sufficient to make MERS the note-holder entitled to enforce the note. A copy of the note with the blank endorsement needs to be attached to the motion as an exhibit. Also, any transfers of the note must be disclosed in the motion for relief from stay. If the MERS member decides not to make MERS the note-holder, then MERS will not file the motion for relief from stay in MERS' name. As assignment of the mortgage lien from MERS to the applicable note-holder must then be executed and recorded in the applicable land records.

When MERS files proofs of claim, MERS does so as the mortgagee of record pursuant to either a recorded MOM (MERS as Original Mortgagee) mortgage or an assignment. MERS holds an "**in rem**" mortgage interest in the property on behalf of the note-owner. Under the United States Bankruptcy Code, such an interest constitutes a claim in bankruptcy, and as such, MERS qualifies as a creditor for purposes of filing a Proof of Claim. A proof of claim filed in MERS' name is based upon the mortgage lien. Therefore, the claim is considered a secured claim. If the proof of claim is seeking more than the right to enforce the mortgage, and is also seeking to collect against the borrower personally, in what is known as an "**in personam**" claim, then the lender will need to be added to the claim for full disclosure.

Each member's duly appointed MERS officer(s) that is designated by the member to be responsible to oversee and supervise the compliance of MERS filings shall conduct an audit on all active bankruptcy cases by reviewing all Proofs of Claims and Motions for Relief from Stay to be sure that the above guidelines are being met. If a duly appointed MERS officer fails to make sure that the above guidelines are followed by the MERS member and retained outside counsel, MERS will revoke that officer's authority and MERS will no longer file motions for relief from stay or proofs of claim for mortgage loans serviced or owned by the applicable MERS member.

If you have any questions regarding this Bulletin, please contact the MERS' law department at (703) 761-1270.