

# Gregory V. Alkema, REALTOR®, CRB

## Investigative REALTOR® Services

Member of the National, Michigan, and West Central Association of REALTORS®  
2458 W Collier Ave SE, Grand Rapids MI 49546  
(616) 942-0200 - Office (866) 642-0344 - Fax (616) 560-7588 - Cellular

May 9, 2011

Senator Darwin Booher, Chairman  
Banking and Financial Institutions Committee  
Michigan State Senate  
PO Box 30036  
Lansing, MI 48909-7536

Dear Senator Booher:

What can only be compared to an F-5 TORNADO has swept the United States and has caused horrific damage to every state, county, city, and village in our country. That F-5 TORNADO is known as Mortgage Electronic Registration System or MERS, an entity created by big banks to cover up the biggest fraud ever perpetrated on "we the people" of the United States.

The damage is in the billions, if not the trillions, of dollars. Pension funds have been decimated. States, and perhaps the USA itself, face bankruptcy because of it. Our economy is in turmoil and 25% of Americans own houses they can't sell because their mortgages are up-side-down and millions more Americans are facing foreclosure because of the "economic storm" that hit them.

**And the worst CRIME of all is the banks are unlawfully stealing the homes of millions of Americans, Americans who have been hurt as a result of an F-5 TORNADO named MERS.**

And it is my understanding the "big banks" are now lobbying and pressuring the Michigan Senate to give them a "legislative fix" so they can continue their crimes, a "fix" they are finding more and more Judges across the USA are refusing to give them based on the crimes committed.

Therefore, as a REAL ESTATE BROKER of 35 years, I have traveled from Grand Rapids to Lansing today to appeal to each and every one of you to STUDY before you allow MERS to influence a decision you'll later regret. Please help "we the people" instead of the big banks!

Here is a Wall Street Journal article: **Oregon Judge Denies Foreclosure, Challenges MERS.**

<http://blogs.wsj.com/developments/2011/05/26/oregon-judge-denies-foreclosure-challenges-mers/>

Here is another Wall Street Journal article: **Mortgage Recording 'Fix' Falls Short in Oregon.**

An effort by the financial services industry to pass a law rewriting mortgage recording requirements in Oregon has died in a state House committee.

<http://blogs.wsj.com/developments/2011/06/02/mortgage-recording-fix-falls-short-in-oregon/>

I have attached a report by Nye Lavalley, a loyal American who has helped expose MERS as the criminal organization it is; and, you can Google "**MERS MORTGAGE FRAUD**" for more.

And, if anyone would choose to attack me as the messenger, please understand I got into my investigation of mortgage fraud when a bank almost tricked one of my real estate clients into

leaving their home based on their erroneous belief the bank "owned the note" and actually had the authority to foreclose on their home. I have limited what I do to helping two of my real estate clients (for free) and working hard to expose MERS and stop the ILLEGAL foreclosures.

Like Nye Lavallo, I have spent countless hours and my own money to expose MERS and the banks that are the real culprits behind MERS, banks that have LOOTED THE USA.

In addition to <http://www.GregAlkema.com> and my testimony before this Senate Committee today, I have testified at two House Committee hearings and you can find my testimony here ...

<http://house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee3-5-19-2011.pdf>

... and here ...

<http://house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee3-5-25-2011-1.pdf>

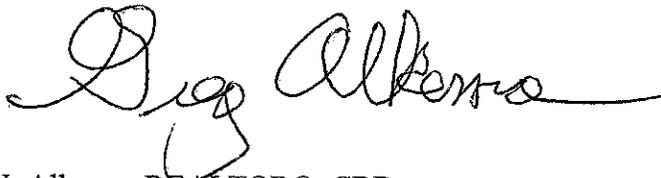
... and it is my prayer you will all read what I have reported about MERS before you even consider giving them a legislative fix, a fix more and more Courts are refusing to give them.

Instead of a "legislative fix" for the banks, it is my prayer you'll make it a higher level (jail time) crime and strengthen laws now on the books, namely MCL 750.274 which makes it a FELONY to attempt to collect a NOTE they don't own.

It is my prayer you'll consider even stronger legislation and make it a high level (jail time) crime to file FALSE REPORTS at the Register of Deeds office and demand MERS restore the "chain of title" at the Register of Deeds offices, which is where it belongs under current Michigan law.

Thank you for your time and may the Lord of Hosts and the God of Israel bless and guide you.

Sincerely yours,

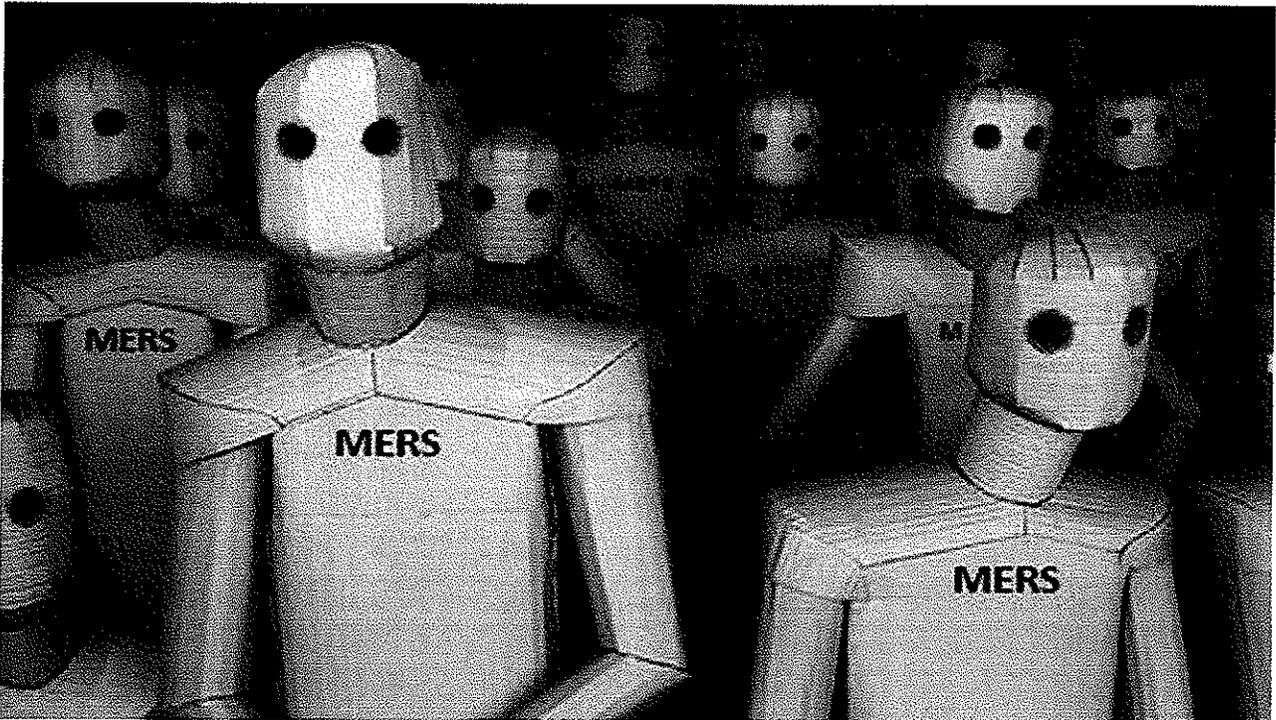


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Enclosed: A Report on MERS by Nye Lavallo ... <http://4closurefraud.org/2011/02/17/mers-paper-affidavit-highlighting-issues-with-mers-foreclosure-mills/>

## **MERS Paper & Affidavit Highlighting Issues with MERS & Foreclosure Mills**

Posted by [Foreclosure Fraud](#) on February 17, 2011 · [3 Comments](#)



## **MERS Paper & Affidavit Highlighting Issues with MERS & Foreclosure Mills**

Dear Friends, Fellow Colleagues, & MERS' Victims,

The recent week's events concerning MERS continue to provide me great delight and satisfaction. Vindication, after all these years, helps soothe the many wounds inflicted upon me and others by MERS and their Conhorts. It's lovely to have federal judges uphold your decade-old arguments and validate your prior testimony. However, I am angry, very angry!

I am angry because of the time it took for these changes to occur and for state and federal courts to recognize the massive fraud perpetrated upon ALL of us (borrowers, shareholders, investors, courts, taxpayers, and homeowners) by MERS, Wall St. firms, ratings agencies, lenders and banks. How many homes, lives, and psyches could have been saved? How many homeless could have remained in homes? The foreclosure atrocities occurred because of collective arrogance, ignorance for the law, greed, and criminality!

Certain local judges across America were bought and paid for by the foreclosure bar, Wall St. Firms, insurers, and banks. They are equally to blame for not only turning a willful blind eye to foreclosure fraud, but in aiding and abetting the fraud with not only their bias and prejudice, but tacit participation. Incompetence is one thing, corruption is another! The judges who willingly participated in these frauds must be pushed off the bench. We must expose those who participated in the concealment and cover-up. However, this is for another day.

Today, I want to trumpet the horns and release the hounds to dig deeper into who knew; when they knew, who was warned, what they did or didn't do; and why they didn't stop this debacle earlier when they had clear and precise warnings. Warnings not only by me, but by honest and concerned judges such as Florida Judges Logan in Pinellas County and Gordon in Miami/Dade. We all sounded the alarms, but MERS and the lenders only ignored our warnings and created other tactics to get around and conceal that the mighty emperor was not only naked, but impotent as well.

Protecting the emperor was a group of foreclosure bar law firms and lawyers supported by more white-collar crime protectors such as Robert Brochin, of Morgan Lewis, who concealed and covered-up the frauds with unethical and even illegal legal practices. Today, we know those practices to be under various civil and criminal investigations.

If as these cases are going, MERS and the servicers illegally and wrongfully foreclosed on properties, all of those in judicial and non-judicial states have remedies. In addition, anyone with a MERS' mortgage in their "title chain" would be best served by instigating a quiet title action to cleanse the title going forward or on preventing MERS, as an agent or nominee, from further effecting transfers and assignments of notes and mortgages without court approval.

Today, we now know the significance and importance of dotting the i's and crossing the t's. There are not mere technicalities as many in the lending industry are prone to say, they are legal requirements that go back hundreds of years as the recent U.S. Bank/Ibanez decision illustrates.

Yet, despite the diligent work of myself and fellow colleagues and advocates such as Tom Ice, Matt Weidner, Chip Parker, April Charney, Max Gardner, Neil Garfield, Carol Asbury, Jennifer Brunner, Lisa Epstein, Michael Redman, Lynn Szymoniak, Jack Wright, and Michael Olenick in exposing pervasive criminality, relative slaps on the wrist are forthcoming.

In the coming days, in order to protect consumer confidence and runs on the bank and massive sell-offs of bank stocks, our state and federal government will whitewash these frauds and abuses. They will simply impose minimal fines and new regulations as was always expected by the banks, Wall St. and their lawyers. After all, it's the cost of doing business for them and the consequence of bringing our nation to the precipice of financial annihilation is inconsequential to their greed, corruption, and arrogance.

If you or I rob a bank, we go to jail. If banksters rob other banks and our nation's treasury and taxpayers, they get a sizable Swiss bank account and a villa in the Riviera. Until we get tough with criminal prosecutions and taking their homes away, new cons will continue to permeate our system until they have not only robbed its nation of its wealth, but its dignity and freedom as well.

We can only hope that two of our four estates, the judicial branch of our state and federal governments as well as our local and national media expose and stop the greed so that no other American will suffer the indignities forced upon them via the rape of their American Dream.

Yet, today we rejoice over the events of the past week. First, a gutsy and strong decision by the Hon. Robert E. Grossman, United States Bankruptcy Judge in New York set the banking world on fire.

In his learned opinion[1], Judge Grossman stated: *"The Court recognizes that an adverse ruling regarding MERS's authority to assign mortgages or act on behalf of its member/lenders could have a significant impact on MERS and upon the lenders which do business with MERS throughout the United States. However, the Court must resolve the instant matter by applying the laws as they exist today. It is up to the legislative branch, if it chooses, to amend the current statutes to confer upon MERS the requisite authority to assign mortgages under its current business practices. MERS and its partners made the decision to create and operate under a business model that was designed in large part to avoid the requirements of the traditional mortgage recording process. This Court does not accept the argument that because MERS may be involved with 50% of all residential mortgages in the country, that is reason enough for this Court to turn a blind eye to the fact that this process does not comply with the law."*

Following Judge Grossman's decision in New York was another decision by a Federal bankruptcy judge in Massachusetts. Judge Melvin Hoffman ruled[2] that MERS had no interest to assign and was not an agent for the lender. Hoffman opined that *"CitiMortgage may not rely on the recorded assignment of the plaintiffs mortgage from MERS to CitiMortgage as evidence that the note was transferred to it. While the assignment purports to assign both the mortgage and the note, MERS, which is a registry system that tracks the beneficial ownership and servicing of mortgages, was never the holder of the note, and therefore lacked the right to assign it. While MERS was the mortgagee of record, it was acting only as nominee for Allied, its successors and assigns. MERS is never the owner of the obligation secured by the mortgage for which it is the mortgagee of record. See, e.g., Landmark Nat. Bank v. Kesler, 289 Kan. 528, 536, 216 P.3d 158, 164 (2009) (providing a profile of MERS)."*

In the Arizona Senate, a bill[3] to prove up ownership that would greatly affect MERS' role in the state of Arizona was voted out of committee 4-0. The bill, if passed, could put an absolute stop to any mortgage foreclosure where the transfers of promissory notes were not conducted properly and would render as void upon suit, foreclosures where it was discovered that the promissory note was never properly conveyed.

And... as if this weren't enough, just today, I was informed that today, on my mother's birthday, MERS had long overdue, changed its membership rules and policies to prevent servicers from foreclosing in MERS' name.[4]

In the announcement, MERS stated the following "MERS is planning to shortly announce a proposed amendment to Membership Rule 8. The proposed amendment will require Members to not foreclose in MERS' name." They also said "no foreclosure may be processed in MERS' name without first obtaining this verification. We encourage Members to bring foreclosures only in the name of the holder of the note, in the name of the trustee or the servicer of record acting on behalf of the trustee."

While our victories are mounting, we cannot ignore the decades old deception and fraud that MERS and the foreclosure bar has permeated throughout our courts and land title records. To that end, I want to document my involvement for all to know since I believe that new lawsuits and pleadings must include allegations of title fraud, slander of title, state RICO actions, and requests for special and punitive damages.

My belief is that only large damage awards are going to cause the industry to change its modus operandi. In order to do this, we must come to learn about the legal term "scienter."

Scienter is a legal term that refers to intent or knowledge of wrongdoing. This means that an offending party has knowledge of the "wrongness" of an act or event prior to committing it. For example, if a man sells a car to his friend with brakes that do not work, and he does not know about the problem, then the man has no scienter. If he sells the car and knew of the problem before he sold the car, he has scienter. The word has the same root as science, the Latin scienter (knowingly), from scire (to know; to separate one thing from another).[5]

Scienter is also an element in breach of contract causes of action, wherein the aggrieved party alleges some destruction of the meeting of the minds, also known as mutual assent, due to fraud, misrepresentation or duress per minas. It can also be used as a defense to a breach of contract lawsuit.

Damages will require us to show and prove scienter and that is what I intend to do in this paper so that victims and their lawyers can plead their causes of action and defenses with more specificity and import. As such, I want to illustrate some warnings and even attach a marked up and unexecuted copy of an affidavit I prepared against MERS around 2005 when I was in the midst of exposing the MERS fraud and scam to America.

I personally began to sound the bell about MERS in 2000 and 2001 at National Consumer Law Conferences and National Association of Consumer Advocate meetings. Only one bright lawyer then, my long-term colleague Max Gardner, heeded my warnings. Even consumer lawyers and class action law firms that I approached with my warnings and evidence refused to believe how pervasive and significant these frauds were.

However, in 2003, I began to get more aggressive with my warnings with a series of public web forum posts and replies with MERS' general counsel and CEO which are located at:

<http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=93>

<http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=96>

<http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=99>

<http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=100>

<http://www.mersinc.org/forum/viewreplies.aspx?id=13&tid=154>

Just a couple years later, a couple of judges in Florida began to question the practices and “sham pleadings” appearing in their courts with MERS as a plaintiff.

In September of 2005, the Hon. Jon Gordon of Miami/Dade County had these prophetic remarks after his sua sponte hearing into the widespread fraudulent use of MERS as foreclosure Plaintiffs “owning and holding” promissory notes:

***“It truly concerns me, however, that thousands and thousands — thousands and thousands of mortgage foreclosure actions have been filed with these allegations. I am not certain what remedy, if any, these people would have were it to be determined that MERS was not ever the proper party notwithstanding that these folks [might] have been in default what their recourse, if any, would be. I’m not certain with the satisfaction of mortgages that have been filed on behalf of MERS how good those are and I am not certain how good title to property is that people bought at these foreclosure sales if it turns or becomes established that MERS was indeed not only not the right party, but misrepresented by way of their pleadings and affidavits that they held something they didn’t own, so I’m not certain of the consequences but it seems vast.”***

Judge Gordon’s concern came at the same time Fannie Mae had launched an independent counsel investigation into my allegations against servicers, MERS, and foreclosure mill lawyers. Of special importance is Judge Gordon taking judicial notice of my warnings to MERS on their website.

On pages 13 to 23 of the transcript below, you will see Judge Gordon interrogate MERS general counsel and lawyers about the frauds and abuses I warned them of on their website. Ms. Nye and the Pew reference are all me.

<http://www.msfraud.org/LAW/Lounge/MERS1.pdf>

You can also find Judge Gordon’s concerns, questions, and warnings in the completion of the transcript at the link below.

<http://www.msfraud.org/LAW/Lounge/MERS2.pdf>

Judge Gordon’s called MERS’ pleadings a sham in his order found at <http://www.msfraud.org/LAW/Lounge/MERS%20is%20a%20SHAM.pdf> and put a freeze on MERS foreclosing in its name. Soon thereafter, MERS stopped foreclosures in its name in the state of Florida, but allowed servicers to use MERS as the foreclosing entity in hundreds of thousands of foreclosures across America. In Georgia, for example, only a secured creditor may conduct a non-judicial foreclosure action.

At the same time, I was asked by a MERS victim to testify and give a deposition in a case in Orange County Florida where MERS claimed to own and hold a promissory note and was foreclosing on an individual. MERS’ own lawyer testified on the record that it owned and held the borrower’s note.

In that case, I provided the Defendant with an extensive affidavit about MERS that has been posted on the Internet at [www.msfraud.org/law/lounge/MERSAffidavit.doc](http://www.msfraud.org/law/lounge/MERSAffidavit.doc). I have attached a marked up copy of this affidavit to highlight the warnings I gave MERS/ This affidavit was provided to MERS prior CEO, R.K. Arnold, its general counsel, Sharon Horstkamp, and its legal counsel, Robert Brochin.

In my attached affidavit, which I hope my fellow colleagues will post on their blogs and sites, I have highlighted key issues and warnings I made to MERS and their executives and legal counsel. Of particular importance, please see the bold and red highlighted testimony. In some sections, I warn Fannie Mae of the illegal and unethical practices of the foreclosure bar lawyers in Florida that are currently under investigation. In fact, in an exhibit, I provide the names of the law firms to Fannie's independent counsel who are under investigation.

I have requested that the Defendant secure a copy of my actual affidavit and exhibits to my affidavit so that they can be scanned and provided to everyone for the record. MERS was so concerned about this one case and my involvement that they and the servicer spent hundreds of thousands in legal fees over a \$50,000 home and mortgage. In addition, a day prior to my deposition my computer systems and their hard drives were wiped out. The day that I appeared at the Defendant's deposition, my portable computer's hard drive was wiped out immediately after the deposition. We also tracked that MERS was planting viruses on our computers.

Why you may ask? Well, my colleagues and I were onto MERS before the judges and regulators were onto the scams, schemes and frauds that they helped mask and perpetrate against millions of Americans by unlawfully and fraudulently foreclosing on their homes. The net result of their actions has clouded the title of hundreds of thousands, if not millions of American properties. Yet, MERS until yesterday allowed servicers to unlawfully foreclose in its name, when it had no admitted interests in promissory notes.

As judge Gordon opined six years ago, "*I'm not certain of the consequences, but it seems vast.*"

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Author contact information:

Nye Lavalley  
[mortgagefrauds@aol.com](mailto:mortgagefrauds@aol.com)  
561/860-7632