

# PIERCING THE CORPORATE VEIL?

A fundamental principal of corporate law is that a corporation is regarded as a legal entity separate from its shareholders. It may be best to review a few definitions to better understand what the MERS<sup>1</sup> corporation is when piercing the corporate veil?

MERSCORP Holdings, Inc. owns and operates the MERS System, a national electronic registry system that tracks the changes in servicing rights and beneficial ownership interests in mortgage loans that are registered on the registry.

Merriam-Webster defines;

**electronic** as: (1) operating through the use of many small electrical parts (such as microchips and transistors); (2) produced by the use of electronic equipment; (3) operating by means of a computer : involving a computer or a computer system

**registry** as: (1) a place where official records are kept; (2) a book or system for keeping an official list or record of items

**system** as: (1) a group of related parts that move or work together

MERSCORP Holdings is the parent company of Mortgage Electronic Registration Systems, Inc. a computer system for registering eNotes.

A **parent company** is a company that owns enough voting stock in another firm to control management and operations by influencing or electing its board of directors; the second company being deemed as a subsidiary of the parent company. The definition of a parent company differs by jurisdiction, with the definition normally being defined by way of laws dealing with companies in that jurisdiction. - Wikipedia

Mortgage Electronic Registration Systems, Inc., the MERS system, a computer system, a registered corporation name revived by MERS Holdings, Inc. Mortgage Electronic Registration Systems, Inc. as an obscured robot corporation even though human intervention derived for the creation of such corporation by MERSCORP Holdings, Inc. or its previous names. It is astounding as to how a system designed to meet the guidelines of E-SIGN and UETA could logically determine itself to be a corporation?

Legal personality is a prerequisite to legal capacity, which is the ability of any legal person to amend, enter into, transfer, etc, rights or obligations.

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<sup>1</sup> Mortgage Electronic Registration Systems, Inc. MERS SPE, Inc. MERS System

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To have legal personality means to be capable of having legal rights and duties within a certain legal system. The certain legal system is E-SIGN and UETA. The certain rights are provided through MERS agreements.

E-SIGN and UETA exclude the Uniform Commercial Code, the standard language regarding commercial transactions. Electronic law of agency is not the same as Law of Agency conducted by humans with the legal personality and legal capacity to conduct such commercial transactions.

The MERS eRegistry, a part of the MERS system, is the legal system of record that identifies the owner (Controller) and custodian (Location) for registered eNotes and that provides greater liquidity, transferability and security for lenders.

The definition of legal from Merriam-Webster's;

1: of or relating to law

2a : deriving authority from or founded on law : de jure b : having a formal status derived from law often without a basis in actual fact :

titular <a corporation is a legal but not a real person> c : established by law; especially : statutory

3: conforming to or permitted by law or established rules

4: recognized or made effective by a court of law as distinguished from a court of equity

5: of, relating to, or having the characteristics of the profession of law or of one of its members

6: created by the constructions of the law <a legal fiction>

Definition of system

1. a group of related parts that move or work together;

The term “*system of records*” is defined in the Privacy Act of 1974 as; “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual”.

According to Texas UETA, MERS is profiled as; (1) computer program; (2) electronic agent; (3) Information processing system. Functionality of MERS is profiled as (1) electronic; (2) record; (3) transaction. The closest thing to “security” is the definition of security procedure; and the mention thereof in UETA.

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So to understand “*The MERS eRegistry is the legal system of record*”, there are two distinct parts; the “legal” part deriving from E-SIGN and UETA, and the “system of record” part deriving from the MERS eRegistry, a system for tracking beneficial interests in eNotes, designed to meet the guidelines of E-SIGN and UETA, hence a computer system consisting of an illusionary “legal system of record”.

Business dictionary defines a computer system as<sup>2</sup>; A system of interconnected computers that share a central storage system and various peripheral devices such as a printers, scanners, or routers. Each computer connected to the system can operate independently, but has the ability to communicate with other external devices and computers.

The MERS system contains several software components such as MERS eRegistry, MERS eDelivery, and MERS Online to name a few. The software components such as the MERs system were designed to meet the guidelines of E-SIGN and UETA.

<b><i>MERS System Components<sup>3</sup></i></b>	<b><i>Intended Use</i></b>
<b><i>Software Component</i></b>	
MERS System	System used to register and track loans.
MERS OnLine	Browser-based access to the MERS System available from the MERSCORP Holdings member website. Click the <b>MERS System</b> tab and then the Sign On button.
MERS Link	Browser-based access to the MERS System for title companies and county recorders available from the ALTA web site at <a href="http://www.alta.org">www.alta.org</a> or from the MERSCORP Holdings member website. Also available to MERS Link subscribers. Click on the <b>MERS Link</b> tab and then the Sign On button.
MERS ServicerID	Browser-based access to servicer information on the

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<sup>2</sup> Read more: <http://www.businessdictionary.com/definition/computer-system.html#ixzz2muqkbKhc>

<sup>3</sup> MERS Integration Handbook, Volume I, Business Integration Environment, Release 23.0, December 10, 2012

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MERS System available to the general public from the MERSCORP Holdings web site.

From the MERSCORP Holdings member website, click on the MERS ServicerID tab and then the Sign On button.

MERS legal personality or legal capacity derives from E-SIGN and UETA, a limited agency capacity because agency relationship derives from electronic contracts or agreements between the parties whom expressly agree to use electronic contracts as transferable records as expressed by using MERS as the “electronic agent” as noted in various MERS electronic tracking agreements.

The misnomer in regards to the borrower agreeing to use MERS, by MERS members is a deceptive tactic since it is noted in the MERSCORP Holdings, Inc. Rules of membership, section 5(a);

“Each member, at its own expense, shall cause “Mortgage Electronic Registration Systems, Inc” to appear in the appropriate public records as mortgagee of record with respect to each mortgage loan that the members registers on the MERS system MERS SPE Inc. is a wholly owned subsidiary of MERSCORP Holdings created for the purpose of serving as the mortgagee of record in the appropriate public records.”

The originating or broker was most likely a MERS member since a MIN number may be found on some originating documents. Does MERS SPE, Inc. reveal MERS Special Purpose Entity, Inc.?

Investopedia defines 'Special Purpose Vehicle/Entity - SPV/SPE'

1. Also referred to as a "bankruptcy-remote entity" whose operations are limited to the acquisition and financing of specific assets. The SPV is usually a subsidiary company with an asset/liability structure and legal status that makes its obligations secure even if the parent company goes bankrupt.
2. A subsidiary corporation designed to serve as a counterparty for swaps and other credit sensitive derivative instruments. Also called a "derivatives product company."

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MERS is supposed to be considered a bankruptcy remote, but that involvement would be on the intangible side of the secondary “*payment intangible*” market, and not the tangible side of the real estate mortgage loan market where the claimant of a real estate mortgage loan debt is responsible for adhering to the laws that govern that paper promissory Note and deed of trust lien to obtain the ability to lawfully enforce the instruments which such entity is claiming to be enforcing.

Failure to bypass laws to increase monetary gain can be fatal when enforcement can only be obtained by using the laws which the party chose to bypass.

How does a “legal system of record” become a “holder of a security instrument” when the *legal system of record* is governed by laws other than real property laws?

E-SIGN, UETA excludes the Uniform Commercial Code. The Uniform Commercial Code excludes liens and the creation of interest in liens. See § 9.109(d)(2),(11)

Electronic promissory Notes are governed by 15 U.S.C. 7021; section § 322.016, Texas UETA, Tex. Bus. Com. Code.

This MERS issue still cannot explain where the paper promissory Note is. MERS does not track paper promissory Notes.

### **Don't Blame the Clerk**

The county clerk's first task as recorder is to determine whether the instrument presented for filing and recording should be accepted. County clerks have a ministerial duty to accept documents for filing and recording if a statute authorizes, requires or permits the document to be filed or recorded. See County Clerks Manual (Texas).

It should be understood that the Clerk of the County was only doing his/her job when these “intangible” instruments began to surface in public records. Many Clerks' came into position well after the process began. The intentional introduction of a new industry standard deceived many because the actors never disclosed the

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true definition of MERS. It is the submitter of the document whom chose to attempt to record a fraudulent document through the misconception of an electronic transaction completely unrelated to an actual real estate mortgage loan thus deceiving the innocent Clerk of County records.

Many did not know MERS was an electronic agent with limited capacity to only operate in electronic transactions.

From reading past articles of those claiming to educate the educated about MERS, it is easier to see how many were deceived. Many were introduce to “industry standard” forms like a MERS deed of trust, purported MERS assignment, or MERS release of Lien.

Since many were mislead by MERS members use of UCC, we turn to Chapter VII, Texas County Clerks Manual to see reasons to refuse a filing. The introduction (A) somewhat explains why the UCC applies to security interests when a debtor borrows money from a creditor and pledges personal property to secured the debt. And after revisions to UCC 9, it is noted that most financing statements will be filed with the Secretary of State’s office. But also notes a misnomer that “financing statements to perfect security interests in real-estate related collateral are required to be filed in the office of the county clerk where the real property is located.” A financing statement is usually a UCC-1 statement, a legal form that a creditor files to give notice that it has an interest in the personal property of a debtor.

Nevertheless, section B<sup>4</sup> provides for the types of collateral in which a financing statement may be proper to file with the county clerk.

## B. INITIAL FILINGS

### 1. Types of Collateral

The county clerk’s office is the proper office in which to file financing statements if (1) the collateral is as-extracted collateral or timber to be cut or (2) if the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures. In all other cases, the secretary of state’s office is the proper office in which to file.

## 2. Reasons to Refuse a Filing<sup>5</sup>

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<sup>4</sup> County Clerks Manual (Texas)

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A clerk's office must refuse to accept a record for initial filing for the following reasons:

- The record is not communicated by a method or medium of communication authorized by the clerk's office.
- An amount equal to or greater than the applicable filing fee is not tendered.
- The clerk's office is unable to index the record because:
  - The record does not provide a first and last name for the debtor.
  - The record does not provide a sufficient description of the real property to which it relates.
- The record does not provide a name and mailing address for the secured party of record.
- The record does not:
  - Provide a mailing address for the debtor.
  - Indicate whether the debtor is an individual or an organization.
  - If the debtor is an organization, provide:
    - A type of organization for the debtor
    - A jurisdiction or organization for the debtor
    - An organizational identification number for the debtor or indicate that the debtor has none
  - The record is not on an industry-standard form.

A MERS "Assignment of Note and Deed of Trust" is neither a conveyance of real property nor a financing statement according to E-SIGN or UETA. It is an electronic transaction between the parties whom expressly agreed to conduct transactions electronically, not parties to real estate mortgage loan contracts.

Laws are laws, Constitutions are Constitutions and failure to adhere to either hold consequences.

It appears to become publicly known that a "Government officer may be sued only if he acts in excess of his statutory authority or in violation of the Constitution

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<sup>5</sup> County Clerks Manual, page 160, 161 of 270

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for then he ceases to represent the government.” See *United States v. Stewart*, 234 F. Supp. 94 - Dist. Court, Dist. of Columbia 1964.<sup>6</sup>

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<sup>6</sup> Writer’s opinion- This would be a personal capacity claim, and not a claim against an office or chair.