



Media Alert

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WAYNE COUNTY SHERIFF BENNY N. NAPOLEON HALTS MERS FORECLOSURES

Recent ruling by Michigan Court of Appeals prompts action.

Wayne County (May 19, 2011)—Due to the Michigan Court of Appeals ruling in the matters of *Residential Funding Cooperation v Gerald Saurman* and *Bank of New York Trust Company v. Corey Messner*, Wayne County Sheriff Benny N. Napoleon has issued an order, effective immediately, that the WCSO will ONLY process foreclosures submitted by the Mortgage Electronic Registration Systems, Inc (MERS) that comply with MCLA 600.3204(1)(d) which requires:

- First, if MERS is or appears to be the only foreclosing party/opening bidder, it must prove by documentation that it owns:
 - A financial interest in the notes including either:
 - A right to possess the debt
 - OR
 - A right to the money paid on the debt
- Second, if MERS is not the sole foreclosing party (which shall be disclosed on the Affidavit of Publication and/or the Sheriff's Deed) the document must list the name of the lender—a mortgage company, bank or similar entity that has an interest in the debt.

The Sheriff revised procedures immediately following the Michigan Court of Appeals published ruling which determined that the MERS foreclosures were invalid. The court concluded that “MERS did not own the indebtedness, own an interest in the indebtedness secured by the mortgage, or service the mortgage.” In essence, MERS “owned no financial interest in the notes”...nor “[any] right to possess the debt, or the money paid on it.” Therefore, if MERS is the sole foreclosing party and does not hold an interest in the mortgage note or debt, the foreclosure fails to comply with MCLA 600.3204(1)(d) and will not be processed.

Under the former law, “MERS was permitted to foreclose on the properties, leaving the borrowers obligated under the note to potential double exposure for the debt. That is, having lost their property to MERS, they could still be sued by the noteholder for the amount of the debt because MERS does not have the authority to discharge the note.” The current ruling prevents MERS from foreclosing, because it would put

borrowers at risk of being foreclosed but still owing the noteholder the full amount of the loan.

Sheriff Benny N. Napoleon intends to comply with the ruling until such time as the matter has been appealed and overturned by the State of Michigan Supreme Court.

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