

## MERS Admits NO Interest in Mortgage and No Loss on Default

Arnold admitted MERS does not have a beneficial interest in any mortgage; does not loan money; does not suffer a default if monies are not paid; etc.. The internal agreement used by MERS expressly disavows any beneficial interest.

On September 25, 2009, R.K. Arnold, the President and CEO of MERSCORP, Inc. — the parent corporation of Mortgage Electronic Registration Systems, Inc. was deposed in Alabama. Arnold is also an Officer of MERS. Arnold admitted MERS does not have a beneficial interest in any mortgage; does not loan money; does not suffer a default if monies are not paid; etc. etc. On November 11, 2009, William C. Hultman was deposed in Alabama and made the same admissions. **And, of course, the internal agreement used by MERS expressly disavows any beneficial interest.**

One tactic, if confronted with a foreclosure in Nevada, is to elect mediation. At the mediation, demand the assignments, i.e., the assignments which would cure the problem (according to Judge Riegler's March 31, 2009, opinion, as affirmed by Judge Dawson on December 4, 2009). MERS and/or the lender have been unable to produce any such assignments — because they almost certainly do not exist.

Request the Mediator to check the appropriate box, i.e., the box which memorializes a failure by the lender to produce all required documents (all assignments must be produced per AB 149 — incorporated into Chapter 107 of the Nevada Revised Statutes). The requisite Certificate will not issue as a result. The Notice of Default is effectively negated. The “lender” must thereupon issue a new Notice and the borrower is again at liberty to elect mediation within 30 days of receipt thereof. The borrower should pay his or her taxes, and insurance, but not the mortgage — especially if upside down. It is an effective stopgap measure.

If the courts continue to follow the reasoning of Judge Riegler and Dawson a borrower may, if otherwise eligible, declare bankruptcy; bring an adversary proceeding within the bankruptcy; and discharge the “mortgage” debt (which re a MERS mortgage is not really a mortgage but rather an unsecured debt — per Judge Riegler).

Or the borrower may initiate litigation based on causes of action for breach of contract, fraud by omission and racketeering (Chapter 207 of the Nevada Revised Statutes). By conducting systemic predatory lending, and coupling predatory lending with credit default swaps, i.e., bets homes would be foreclosed upon, the lenders breached the implied duty of good faith and fair dealing — the duty to refrain from frustrating the purpose of the contract. Borrowers generally harbored two main purposes — to secure a place to live and to safeguard/create an investment. By engaging in systemic predatory lending the banks frustrated the second purpose. They devalued the collateralized asset and breached the lending contract. Because this information was not disclosed, fraud by omission occurred. A series of fraudulent act constitutes racketeering, which gives rise to a claim for treble damages, plus fees and costs. Those are the theories.