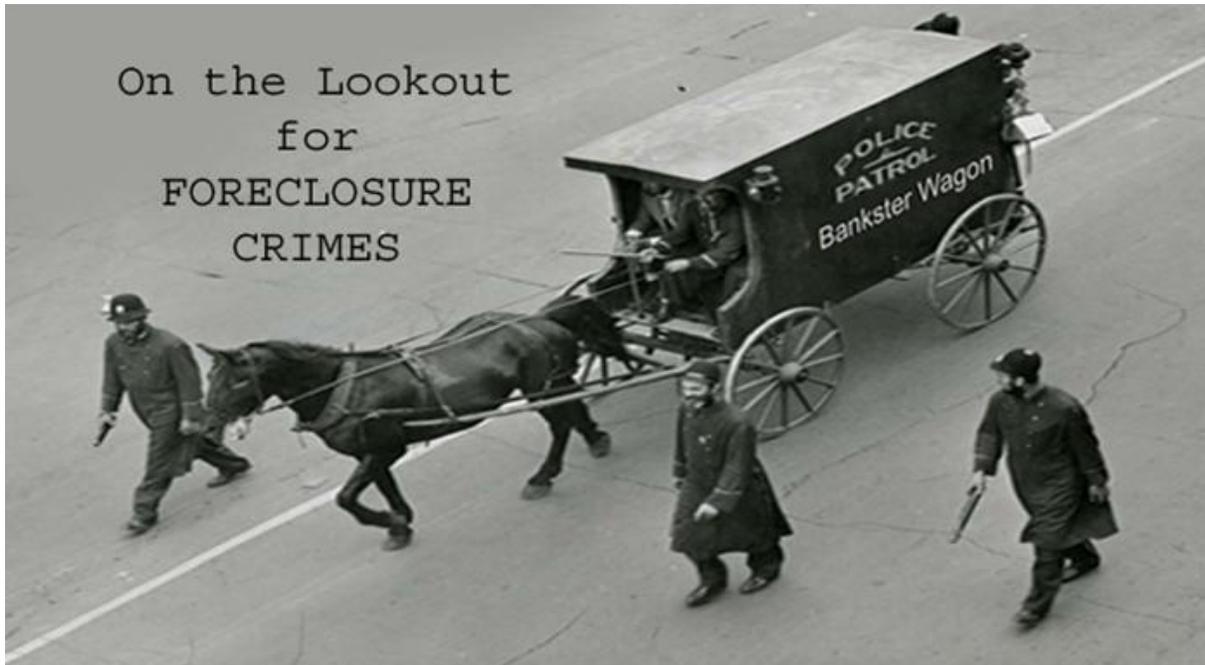


## **MERS Is Dead: Can Be Sued For Fraud: WA Supreme Court**



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### **State Court Ruling Deals Body Blow to MERS**

([Reuters](#)) - The highest court in the state of Washington recently ruled that a company that has foreclosed on millions of mortgages nationwide can be sued for fraud, a decision that could cause a new round of trouble for the nation's banks.

The ruling is one of the first to allow consumers to seek damages from Mortgage Electronic Registration Systems, a company set up by the nation's major banks, if they can prove they were harmed.

Legal experts said last month's decision from the Washington Supreme Court could become a precedent for courts in other states. The case also endorsed the view of other state courts that MERS does not have the legal authority to foreclose on a home.

"This is a body blow," said consumer law attorney Ira Rheingold. "Ultimately the MERS business model cannot work and should not work and needs to be changed."

Banks set up MERS in the 1990s to help speed the process of packaging loans into mortgage-backed bonds by easing the process of transferring mortgages from one party to another. But ever since the housing crash, MERS has been besieged by litigation from state attorneys general, local government officials and homeowners who have challenged the company's authority to pursue foreclosure actions.

A spokeswoman for MERS said the company is confident its role in the financial system will withstand legal challenges.

The Washington Supreme Court held that MERS' business practices had the "capacity to deceive" a substantial portion of the public because MERS claimed it was the beneficiary of the mortgage when it was not.

This finding means that in actions where a bank used MERS to foreclose, the consumer can sue it for fraud. If the foreclosure can be challenged, MERS' involvement would make repossession more complicated.

On top of that, virtually any foreclosed homeowner in the state in the past 15 years who feels they have been harmed in some way could file a consumer fraud suit.

"This may be the beginning of a trend," says Elizabeth Renuart, a professor at Albany Law School focusing on consumer credit law.

The company's history dates back to the 1990s, when banks began aggressively bundling home loans into mortgage-backed securities. The banks formed MERS to speed up the handling of all the paperwork associated with recording the filing of a deed and the subsequent inclusion of a mortgage in an entity that issues a mortgage-backed security.

MERS allowed the banks to save time and money because it permitted lenders to bypass the process of filing paperwork with the local recorder of deeds every time a mortgage was sold.

Instead, banks put MERS' name on the deed. And when they bought and sold mortgages, they just recorded the transfer of ownership of the note in the MERS system.

The MERS' database was supposed to keep track of where those loans went. The company's motto: "Process loans, not paperwork."

But the foreclosure crisis revealed major flaws with the MERS database.

The plaintiffs in the Washington case, homeowners Kristin Bain and Kevin Selkowitz, argued that the problems with the MERS database made it difficult, if not impossible; to determine who really owned their loan. It's an argument that has been raised in numerous other lawsuits challenging the ability of MERS to foreclose on a home.

"It's going to be very easy for consumers to say they were harmed because it's inherently misleading," says Geoff Walsh, an attorney with the National Consumer Law Center. If consumers can't identify who owns their loan, then they don't know whom to negotiate with, and can't even be certain of the legitimacy of the foreclosure.

In a statement, MERS spokeswoman Janis Smith noted that banks stopped using MERS' name to foreclose last year. She added that the opinion will "create confusion" for homeowners in the state of Washington while the trial courts consider its effect on pending cases.

Meanwhile, MERS is attempting to remake itself. The company has a new chief executive and a new branding campaign. In Washington D.C. federal lawmakers have recognized the need to create a national mortgage-recording database that would track all U.S. mortgages. MERS is lobbying to build it.

The case is Bain (Kristin), et al. v. Mortg. Elec. Registration Sys., et al., Washington Supreme Court, No. 86206-1.