



Commercial Real Estate/Multifamily Finance Board of Governors (COMBOG)

**LOAN ORIGINATION COMMITTEE**

Informational Conference Call

Wednesday, March 24, 2004

3:00 p.m. – 4:00 p.m., Eastern

Chair: Deborah Schiavo, Bear Stearns & Co., Inc.  
Vice Chairs: Frank Fonda, CDC Mortgage Capital Inc.  
Debra Hausser, Zurich North America  
Charles Perry, Environmental Assurance Group  
Patrick Sargent, Andrews & Kurth L.L.P.  
MBA Staff Representative: Katie Schwarting  
(202) 557-2742 kschwarting@mortgagebankers.org

Guest Speakers –

Mary Anne Ashmore, Senior Vice President, LaSalle Bank,  
Susan Sagouspe, Vice President, Wells Fargo Capital Markets  
Patrick Sargent, Partner, Andrews & Kurth, LLP  
Deborah Schiavo, Managing Director, Bear, Stearns & Co. Inc.,

MERS representatives:

Dan McLaughlin, Bill Hultman, Doug Danko and Marc Higgenbotham

**MEETING NOTES – MERS Commercial**

**Background – Mortgage Electronic Registry System (MERS) Creation**

- Reduce cost to prepare, record and track assignments
- Reduce risk of repurchase threat by investors in CMBS loans
- MERS acts as the mortgagee of record for the life of the loan – so there is no need to do any assignments of documents

**Cost / Benefit Analysis and Membership**

How to become a member?

Visit MERS website at: [Mersinc.org](http://Mersinc.org)

Application process: Review membership agreement and the Rules and Procedures Agreement – suggest that you start this process early in order to have the documents reviewed by counsel

Once the application comes in to MERS and is properly approved, then a MERS person is assigned to walk you through the procedures and set up. This includes on site visits to your office.

Fees and levels of membership:

General Member – \$7500 annual

Correspondent member – \$1,000 annual

“correspondent” is defined: one lender primarily sell loans to another lender and does not retain the loans on their books

Patron member - \$1,000 annual

“patron” is defined as a non-lending institution (law firm or technology member)

\$250 per loan cost – which is for the life of the loan

#### Cost / Benefit Analysis

Annual fee and compare to costs to assign (which each assignment is by property, not by loan). Example:

Once you complete 22 loans or 22 properties per year, you break even on cost

Calculated? Divide your membership fee by the number of properties you close annually. That prorated amount plus \$250 registration fees is the cost PER LOAN. Compare that to the PER PROPERTY costs for assigning the documents into the Trust.

\*\* More loans you close, the greater the savings you get

Servicers/Trustees:

Your time is no longer spent in fire drills and contacting lenders/issueers to track down assignment documents.

Also it removes the time and cost of doing searches for verification of recorded documents.

Amount of loans with document defects should go down, which will remove some of the threat of repurchase

#### Loan Documentation Steps

Modify form documents

This part can be time consuming, especially if you have multiple layers of approval required in your office.

Law firms have different views on how to write MERS into documents

Questions to ask:

- incorporate MERS on: all documents in the deal  
only assignable documents
  
- notice provisions: sent to MERS  
or MERS and your company  
or just your company

\*these questions will all affect the managing of the flow of paper

Mail – each company sets up a separate e-mail address to receive mail from MERS.  
MERS will open everything it receives, scan it and then send email to the owner  
with the scanned document attached

Drafting documents:

MERS offers form documents with incorporation language to serve as guidance  
There's no one exact way to write the documents

Options for placement of MERS language:

- granting clause
- assignment of leases and rents
- include language in one general paragraph that encompass all the documents that are designated for recording

To consider:

- The title policy should go directly to the beneficiary and not to MERS
- Actual stamped original documents go back to lender and not to MERS
- MIN number needs to be on all recordable documents & the promissory note.
- Large deals – based on the pricing and deal terms - cover in your commitment letter, application or term sheet that you have ensured someone is paying the per loan fee (borrower, lender or servicer)

## Operational Decisions for Lenders

Wells Fargo walks us through their process of getting set up on MERS

- Currently, every new loan booked is registered on MERS (since February 2004)
- First steps: looked at the entire process – all points in the life of a loan where MERS is involved:
  - closing, real estate transactions, payoff
  - anytime there is an assignment

Steps:

- 1) Reserve a MIN number- Wells: this is done in-house (very quick process, less than one minute)
  - Need to communicate to your attorney the MIN
    - add MIN to the term sheet or print MIN certificate and fax to attorney

[MERS upgrade coming: e-mail the MIN directly to your attorney]
- 2) Loan Closing: Enter key information on the loan into MERS database
  - Question: have this done by internal or external source at your company
  - Look at time to complete the process to determine
  - Wells created a link between their databases and MERS – to simply upload information
- 3) Sale Transaction: once completed, record new information on MERS system (new parties, dates, any other changes)
  - It takes a minute or less per loan to transfer the loan into the Trust

[MERS upgrade: ability to do group updates – highlight a list of loans affected and then enter the new information just once and select for the update to happen on all highlighted loans]

- 4) Assumption, Consents, Partial Releases, Loan Payoffs – Process
  - All transfers will involve an update on MERS
    - Any parties or borrower changes
    - Any property changes
- 5) Look at Internal vs. External Work Allocation
  - If work is done internally, then you maintain the same amount of employees, but with a reallocation of their job description – instead of looking for documents and doing record searches, they are setting up loans on MERS and creating MINs.
- 6) Example of Reports available on MERS:
  - List of loans registered in a month
    - Can review to ensure no duplication – data integrity
  - Itemized payment by loan
- 7) Mailbox
  - Mail, reports and system updates/communication – sent to mailbox (email address)
  - Designate a person who is dedicated/responsible to view mail and set up a person as their backup to ensure timely review and process of all mail received
- 8) Training (crucial)
  - MERS comes to your office and does hands-on training
- 9) System administrator
  - Designate someone as the main contact with MERS – set up company IDs, passwords, coordinate with MERS on system upgrades

**Question:** How many loans are currently on the MERS Commercial system?  
43 loans currently fully registered

## Securitization Steps

### Role of MERS:

Different process: if there is a loan default and a need to foreclose or serve process arises (which is done in the name of trust), in order to properly effectuate the process, all parties must be members of MERS

The party who acts on behalf of the trust (typically the servicer) will sign documents as an officer of MERS through a corporate resolution from MERS – this includes any transaction: assumption, consents, payoffs, foreclosure, etc. The corporate resolution is similar to a power of attorney, however, it actually makes the officers of the MERS member an officer of MERS for the sole purpose of signing documents on behalf of MERS.

### Role of Trustee:

Lender can tag a loan in the MERS database or show the MIN on a report of the loans – the trustee can then get a report of all the changes you made on system and can then review the loans to ensure they were accurately updated.

The trustee then can focus on getting the recorded original document in office

Closing date is typically when the loans are transferred on MERS

Questions:

- 1) What do we need to do to increase MERS participation?  
Education: investors need to understand the role of MERS and how it is written in the Pooling and Servicing Agreement  
loan closers/lenders – need to understand to be able to explain it to the borrowers what is involved with MERS and how it will be written into their loan documents
- 2) Borrower responses to change in loan documents to incorporate MERS?  
- Very little to date; Dechert has not received any comments from the changes

**New Developments**

November 2003 – 2.0 updates:

- a) XML interface added (creates ability to interface your company system with MERS computer software systems)
- b) Member lockout function (allows MERS if there is a dispute between 2 companies over ownership to lock out anyone from making any changes on the system until the issue is resolved)

May 24, 2004 – 3.0 updates:

- a) Group update function—mass updates, also can enter a future date when the transfer is scheduled to happen and the changes occur automatically on the designated date (sits in a pending status) – you can make additional changes all the way up to the date of the transaction.
- b) Errors – when you receive an error messages, the system will bring up the specific page where there is an error and will describe the error to be fixed.
- c) Multifamily Mortgages – agency requested additions:
  - a. Agency ID field
  - b. MIN by trustee or pool guarantor
  - c. Update Noteholder
  - d. Deactivation transaction by reason of sale to a non-MERS member

MERS encourages anyone to submit enhancement requests; next update is after May is planned for November 2004

Electronic notes (E-Notes) will be addressed at Asset Administration and Technology Conference on May 12-14, in Nashville, Tennessee.

Dechert offered to share copies of their standard form documents incorporating MERS.  
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