

A foreclosure defense theory: attacking the MERS signatory.

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Businesses that sell “mortgage securitization audits” or “mortgage audits” or “forensic mortgage audits” promote many arguments to consumers that are attempting to defend against foreclosure. One of the arguments presented by these companies is that the assignment of the mortgage and/or note did not properly transfer the title. Specifically, the person that executed an assignment for MERS was really an employee for the mortgage company or mortgage servicer. (It is presented as if a great hidden wrong was uncovered.) The argument continues, therefore, the assignment was somehow fraudulent or wrongful in some sense and did not properly transfer title/ownership of the mortgage and/or note. The claim goes on that there is a break in the chain of title of the mortgage and/or note, and now the entity that is foreclosing is not the proper party to do so.

One problem with the argument is that it is misleading. It is presented as if there was outright fraud at hand when there was not. Specifically, it does not inform that the person signing the assignment actually is also an authorized signatory for MERS. And further, that this is quite common, if not the norm.

The other more significant problem with this argument is that it simply is not viable. For example, just days ago the United States Court of Appeals for the First Circuit decided this issue in *Culhane v. Aurora Loan Services of Nebraska*. No. 12-1285 (decided Feb. 15, 2013). The court described the argument as “unedifying.” It stated the argument that the duality of the person (acting for the servicer and MERS at the same time) would somehow invalidate the assignment was a “little more than wishful thinking.”

The point here is that there are entities willing to dispense poor advice, with good intentions or not, in the foreclosure defense area and one must be careful. One seeking to defend against a foreclosure typically needs help traversing the legal landscape and must avoid latching on to a blind guide. There may be legitimate grounds for defending against foreclosure. But it just is not with this argument, so do not give up hope.

In the event that you seek to retain your home and desire to obtain quality legal advice, please feel free to give this office a call.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (508) 769-1359 or (413) 746-8008

Email: gbourguignon@bourguignonlaw.com

Website: <http://www.bourguignonlaw.com>