10 Headaches for MERS

Here is a list of ten legal issues relating to MERS with which courts are wrestling or will be likely to confront in the near future. One needs to examine these issues in connection with the affected audience, investor, owner in foreclosure, investor and trustee of a mortgage backed securities trust.

1. Assignments were made by "officers" of MERS using delegations of authority of no longer existing MERS predecessor corporations.
2. The MERS Assignment is deficient because it omits an assertion that the assignor is the holder under the MERS registry for the MIN number of the mortgage being assigned and the transfer is being recorded on the MERS registry.
3. An interest in a mortgage cannot be conveyed by an endorsement of the mortgage note in blank.
4. The Officers of MERS who are allegedly authorized to sign documents on behalf of MERS are not "officers" of the corporation as the term officer of a corporation is legally defined.
5. Because MERS is a mere custodian with no legal or beneficial interest in the mortgage note, MERS cannot assign a mortgage note to an assignee.
6. Because MERS is a mere custodian with no legal or beneficial interest in the mortgage note, the mortgage has been divided from the note rendering the mortgage unenforceable.
7. MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities trust is a violation of REMIC requirements.
8. MERS holding of the note endorsed in blank as nominee of a mortgage sold to a mortgage backed securities trust is a violation of warranties and representation contained in the master pooling and servicing agreement and prospectus.
9. MERS was created to perform a service with an illegal purpose, namely to circumvent the recordation of assignments and payment of recording fees. The issuance of assignments in furtherance of such an illegal purpose is unenforceable.
10. An assignment of the mortgage note from MERS to the servicer of a note is of either of no legal effect or an illegal conversion of the note.