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TitleTRACK

MERS II – Act proposes replacement system

U.S. Sen. Bob Corker, R-Tenn., a member of the Banking, Housing and Urban Affairs Committee, has introduced the Residential Mortgage Market Privatization and Standardization Act, that among other provisions, proposes a replacement for the Mortgage Electronic Registration System, called MERS 2, which would be overseen by the Federal Housing Finance Agency. This provision is entitled Residential Mortgage Market Uniformity.

MERS is described as a privately held company that operates an electronic registry designed to track servicing rights and ownership of mortgage loans in the United States. MERS was created by mortgage industry participants to streamline the mortgage process by eliminating the need to prepare and record paper assignments of mortgages. Fannie Mae was a founding member of MERS when MERS was launched in 1997.

MERS acts as nominee in the local land records for the lender and servicer. Loans registered with MERS are protected against future assignments because MERS remains the nominal mortgagee no matter how often servicing is traded between MERS members.

MERS maintains that its process eliminates the need to file assignments in the county land records, which lowers costs for lenders and consumers by reducing county recording fee expenses resulting from real estate transfers and provides a central source of information and tracking for mortgage loans.

Continued fallout from the subprime mortgage crisis has put MERS at the center of several legal challenges disputing the company's right to initiate foreclosures.

This new act would seek to create a uniform pooling and servicing agreement and a new electronic registration system, where all loans are transferred under one system regulated by the FHFA and requires that federal regulators establish uniform practices and streamline mortgage regulations.

Corker hopes to create a new mortgage registration system to streamline the transfer of mortgages nationally. Corker said the registry would function similar to MERS by creating a single, nationally recognized system for the transfer of loans.

Mortgage Technology reported in its May cover story titled "MERS 2.0 vs. Life After MERS," that while changes are clearly coming to MERS, industry participants don't all agree on what the

future of the loan registry should look like.

Some in the industry challenge the idea that anything should or could replace MERS, given the numerous legal complaints now surrounding the system.

The National Association of Independent Land Title Agents has announced that it is opposed to the proposed creation of a new national mortgage registry.

In its position paper on the Corker bill, Senate Bill 1834, NAILTA says that it "is opposed to any reconstituted MERS system because the MERS model is a deeply flawed system that continues to harm consumers, small business owners, and county governments across the United States."

According to NAILTA, "Any consideration of creating a new MERS without having successfully resolved the well-known flaws and inadequacies of the previous MERS system is a foolhardy exercise." NAILTA claims that MERS, a system "built by the mortgage industry, for the mortgage industry" according to its founders, has harmed the land title industry in particular by shifting the business of title insurance away from title professionals and toward banks.

NAILTA says that MERS has also damaged land title records and deprived local governments of fees used for general purposes such as public safety.

NAILTA characterizes MERS 2 as a Federal Torrens title system — subject to the considerable expense and difficulty of reconciling states' differing recording and foreclosure laws into one system. MERS failed because of the same pitfall, and consumers, county governments, and title agents have borne this expense while only the owners of MERS have benefited, according to NAILTA.

NAILTA has contacted Corker's office and requested a meeting with the senator, to express its "deep reservations and opposition concerning MERS and the specific problem we have with [the MERS 2] provision."

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