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November 5, 2013

Mr. William R. Breetz, Jr., Chairman  
Uniform Law Commission Drafting Committee  
on Home Foreclosure Procedures Act  
University of Connecticut School of Law  
Knight Hall, Room 202  
35 Elizabeth Street  
Hartford, CT 06105

Re: Home Foreclosure Procedures Act (“Act”), draft dated June 4, 2013

Dear Bill:

I have a conflict that will prevent me from attending the morning session of the upcoming drafting meeting on November 15, 2013, but I plan on attending the remainder of the two-day meeting.

After reviewing the current draft of the Act, I would like to raise an issue that the Committee might wish to consider. As we have discussed, MERSCORP Holdings, Inc. operates the MERS® eRegistry, which is an electronic registry of certain transferable records (as defined under Section 201 of the federal Electronic Signatures in Global and National Commerce (“E-SIGN”) Act and Section 16 of the model Uniform Electronic Transactions Act (“UETA”), as adopted by certain states).

As I read the definition of “mortgage registry” in Section 102(14) of the Act, the MERS® eRegistry does not meet the requirements of that section where it operates under the authority of a state statute (i.e., UETA), which would be the case in most jurisdictions. As a result, a person seeking to enforce a transferable record registered in the MERS® eRegistry would not be able to rely on Section 401(b)(3) of the Act to demonstrate that person’s right to foreclose. Instead, that person would need to prove it was the “owner” of the obligation represented by the transferable record. While in practice, most courts have accepted some form of certificate to determine a person’s right to foreclose a mortgage securing a transferable record, there is still wide latitude for each court to insist on different requirements of proof; thus diminishing some of the advantages of using an electronic registry. The Committee may want to consider if this was their intention, or should Section 401(b) be expanded to explicitly encompass transferable records in some fashion.

Respectfully,

William C. Hultman  
Vice President, Legislative Affairs  
MERSCORP Holding, Inc.