



Welcome to the Machine

A Working Man's Guide to MERS and the Shadow
Banking Systemⁱ

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A story is breaking upon the nation as I write this. It is a story I have been forced to live for the last year and a half. In that year and a half I have come to learn a lot of confusing truths about the way the money in this world really works. The mainstream media is talking more and more about the foreclosure scandal and at the heart of it all is MERS. Mortgage Electronic Registry Service. It's the biggest littlest company you have never heard of before and in the thirteen years of its existence, it has utterly destroyed the real property ownership records system in every county in the United States.

The purpose of The Working Joe's Guide to MERS & Mortgage Banking is to provide the every day average Joe & Joie the information they need to understand this tremendous scandal unfolding ahead. More importantly, use this information to arm yourself with truth so you can cry BULLSHITTE when the talking heads try to spin the story for you. And they will.

Be warned. The story has so many facets that to sit down and take it from one end to the other leaves one a bit befuddled. Smoke comes out of your ears, if you know what I mean. Thinking and operating in the world of MERS is a testament to the infinite adaptability of the human condition. I recall when I first came to the realization of the Meaning of MERS and the smoke started to pour from my ears. It was late at night and I had been researching what had happened to me about a week earlier.

I had just invoked the "Produce the Note" defense in court and had won a stay on the sale in the foreclosure of my house. After the euphoria wore off, I really started to wonder what had just happened. I was geeking out trying to understand. It was late at night. I had been finding and reading court cases for about a week, the lights were out except for the screen, the kids were all asleep, and I sat bolt upright in my chair when the realization struck. "My God, they can't deliver clear title~!" I blinked into the darkness for about five minutes as the full impact of that washed over me. That was almost a year ago and I have managed to withstand the MERS monster's siege upon my castle since then (not to worry, still plenty of food & water).

Living and thinking in a MERS world is common for me now. Newcomers look at their surroundings as if it were their first foray into Toon Town, the refuge of Roger Rabbit when he was running from the law.ⁱⁱ I've been here for a while and I'm used to it. 'Oh, yeah,' I tell them, 'that happens all the time.'

In order to really get into what is going on, you have to pile through a lot of boring mundane stuff. PJ O'Rourke calls it 'Dictatorship by Tedium'. Any time regular people try to figure out what's going on they feel like they are back in High School Algebra class and not having a clue as to what is going on. That's how "they" get away with it. It's not that you can't understand. You can. It's that they make it so boring, you don't want to. In today's specialized world, to a certain extent, you have to trust that "they" who are "the experts" are as well studied in their subject matter as you are in yours. Leave all that to people who are interested.

This is a complicated story. It is actually six stories interwoven into a larger narrative. Part of the problem is it is so easy to get caught up with one or two pieces of the story and miss the real story. It goes deeply into the arcane runes of the financial world. To tell it in detail would leave you glassy eyed and wondering what you were doing for lunch. So I leave a lot of details out and as a result, it may seem overly simple. That's because it is. But it's not.

This is a quick tour so you can understand the big picture. You will, no doubt, find various aspects of it curious and you will want to go back to explore more. All the subjects in here are

available for further study through the internet. That's what I did. This whole story is pulled together from late night google searches.

In order to make this easy, let's start out with the shockers.

- If you have MERS on your mortgage, unless you take action to quiet title, you will NEVER see clear title to your house.
- If MERS is on the title history of a house you are thinking about buying, you need to know there is an immense cloud on that title and you will never own what you think you are buying.
- If your mortgage is securitized, meaning it was used as part of a securitization vehicle, you are paying rent to the Shadow Banking System (SBS) no part of which has an enforceable encumbrance upon your house.
- And finally, if you have MERS on your mortgage, and there are over 62 MM of us, your house has become the gold coin of the shadow banking system.

I'll say that last one again because it really needs to soak in.

Your house is the gold coin of the Shadow Banking System. (SBS)

It's very complicated, but it's very simple. Let me tell you what was really going on in the entire mortgage banking collapse of 2007 - ???

Factoring is a time honoured business practice. Wikipedia defines factoring as a financial transaction whereby a business sells its accounts receivable (i.e., invoices) to a third party (called a factor) at a discount in exchange for immediate money with which to finance continued business.ⁱⁱⁱ

In this case, the mortgage originators (the banks who originated the loan) were factoring their paper to the SBS so they could make more loans so they could factor more paper all to feed the insatiable appetite of the SBS for the security of their periodic, temporary, large cash positions as well as to give pension funds, sovereign wealth funds, and money market funds a place where they could receive "an above average return with little to no risk".

All of it, the entire scandal destroying the world today boils down to one word.

Factoring.

Welcome to the Rabbit Hole.

Chap 2

This is not your father's mortgage even though it looks like it and to all appearances acts like it. Well, it may be your father's – depends on how old you are, but it certainly isn't your grandfather's.

Think about what happens when you sit down to sign a mortgage. You are in a room with a very nice escrow officer who is all smiling at you. They place documents in front of you to read if you feel like but you know the reason you are there is to sign. You are apprehensive because this is probably the largest ceremony you have ever gone through and it's probably the biggest financial commitment of your life. You pretty much understand what all of the documents are but some of them are confusing. You know you can stop and read it if you want to, but these people are so nice and you are only booked for half an hour. Someone else is waiting and you don't want to inconvenience them. Surely they know what they are doing? Surely there is a lawyer in the title company who has a vested interest to make sure the process is completed properly? Besides, you reason with yourself, it isn't as if you are going to make any changes at the last minute which the other side will accept on the spot. Mom & the kids are waiting.

So you sign.

And you sign more. An efficient assistant whisks documents underneath your nose as fast as you can fiddle the pen. Make sure it is blue ink because blue ink doesn't show up right when copied.

When you are done, they hand you an unsigned copy of all of the documents you just signed all gathered up in a nice folder, smile, shake your hand, say thank you, and show you the door where mama and the kids are waiting with a moving van full of your stuff ready to move into your new house. Thirty days later you write the first of many checks to whomever they tell you to write the check to and you do it every month for the next thirty years. The files you took home gather dust.

Look's like dad's mortgage? Yep. You've become your parents. Looking like gramps? Yep, you are on your way. Life is good and you have a pretty good expectation of what's to come. To all intents and purposes, your life is on the same mortgage, family and children trajectory you watched your own parents go through only now you have a whole new appreciation of just who they are and what they went through. Yep, it looks like dad's & grand dad's mortgage.

But it's not.

It is radically different.

The way it is supposed to work and the way it worked for your Grandfather is that when you sign documents three things happen. You get the right of possession, you acknowledge the indebtedness, and you grant the mortgage to the one you are indebted to. All these documents are then registered at the courthouse and the person who is registered on the mortgage can now sell the house and put you to the street should you fail to meet your mortgage obligations.

But this is not your Grandfather's mortgage.

The change happens the moment you sign the documents and they are taken away to be entered into the system of securitization^{iv}. While you, mama and the kids are having a rapturous time unloading the van and moving into your new home, your mortgage is undertaking a strange metamorphosis.

It used to be the institution with whom you signed the documents would hold on to the mortgage and the deed, sometimes even tied together with a ribbon, until such time as the obligation was complete. Then you would cut the ribbon separating the two, register the

cleared deed at the county courthouse and hold a mortgage burning party with all of your friends commemorating a long commitment complete. Freedom was yours with the flick of a Bic. Fire destroyed all evidence of an encumbrance on what had become your property.

Those days are long gone. Today, there is no ribbon and the deed is immediately separated from the debt. The payment stream is sliced and diced and sold many times over into the overnight Repo market. It is no longer a mortgage, it is a tranche, or in reality, a part of a tranche, or several tranches. It is a critical part of the SBS. It is an attempt to create a readily marketable security of known value and quality. Parts are parts; no difference between them, it isn't a mortgage, it's a tranche – with known values. And for a long time, it has worked.

Still don't understand it? It's kind of like this.

Who owns any single random barrel of oil in an oil pipeline?

The question is so out of touch with reality as to totally baffle those in the know because the answer is, no one owns a single random barrel of oil in a pipeline.

What is owned is the oil going into the pipeline and the rights to withdraw a given amount of oil from the pipeline. The pipeline is merely transport. The owners of the pipeline don't own the oil, they charge a transport fee. While it is in transit, there is no identifiable person who owns a specific barrel of oil because you don't know where it is going to go. You might could guess, but you don't know.

And that's what's happened. Sixty two million mortgages have been bundled together, their payment streams intermixed and thrust into a pipeline of money which the investor class, pension funds, sovereign wealth funds, insurance funds ... collectively the SBS, uses to park short term cash. Our houses insure what are essentially checking accounts for large monied players. We put our property up as security and the cash flow into the pipeline, the SBS buys the right to extract part of the cash flow using our property as security.

And nobody asked if they could do that. They just did it.

Chap 3

There is an old Southern expression that goes "You ain't who you is, you is who you was." What that means is the only creature ever to come forth fully formed was Athena from the forehead of Zeus and in order to understand who you are, you must first come to understand where we have been. That applies to people, it also applies to institutions and their systems.

The current banking crisis is a direct outgrowth of the Savings and Loan scandals of the 80's. Indeed, when you look at it, things couldn't have developed any other way.

In 1980, Ronald Reagan defeated Jimmy Carter for a lot of reasons not the least of which was to get government out of the way. "Government IS the problem" the president famously proclaimed. De-regulation and cutting taxes was the name of the game and one of the first industries they de-regulated was the Savings & Loan industry. Congress did this with the Garn - St. Germane Act.

Prior to the 80's, Savings and Loans pretty much were the mortgage banking industry and as such were limited in what they could loan their money upon. It was boring and you weren't ever supposed to get rich running one. The Garn-St. Germain Act, signed into law in 1981 by Ronald Reagan, allowed (among other things) S&L's to greatly expand the type of projects they could get involved in and removed the caps to the interest rate they could pay for deposits^v. In the Four years after the passage of Garn St. Germane, TX S&L's grew from \$36.6B in assets to \$97.3B^{vi}, almost all of it with brokered deposits from Wall St.

The problem was further compounded when the FSLIC (Federal Savings & Loan Insurance Corporation) raised the Government backed insurance levels on each account from \$25,000 to \$100,000. The guarantee was per account and included all interest as well as principle. In the hands of the Wahoo Cowboys like Don Dixon and Charles Keating who came to control the S&L business, this was a license for explosive growth. They didn't care what happened to the money. Why should they? It was all insured by the government and getting more from Wall St. wasn't difficult.

Prior to 1980, the average sum in an S&L account was less than \$6,000. In the forensic accounting after the crash, the average account had over \$80,000 in it, most of it brokered deposits from Wall St. The clean up has cost the government over \$400B over past twenty years, all of it paid for by the people.

The S&L Industry created a machine which readily accepted sophisticated debt instruments from Wall Street. The only winners in the S&L crisis were the mainline banks whose Federally Insured deposits were made whole.

What happened twenty years later was the mortgage securitization system which grew out of the S&L period and could even be credited (if that is the right word) with saving (again if that is the right word) the financial system from total failure in the 90's, took over the mortgage market and turned America's housing market and its equity value into the gold coin of the shadow banking system.

Let me say that again to make sure the import of that statement has a moment to sink in.

Your house, through securitization, has become the gold coin of the shadow banking system and it is a direct outgrowth of the government imposed system of housing finance which replaced the S&L system in the late 1980's.

So what happened in the 80's that caused the S&L system to crash so hard and cost taxpayers so much then and now?

A lot of things came into play to keep the S&L problem hidden from prying eyes for most of the go go years of the Reagan era. First and foremost had to be the general hostile attitude of the administration towards any regulations. It was time for Government to get out of the way and let good ol' American Ingenuity get creative. Garn St. Germane was the enabling legislation which set up the fire.

Oversight offices were defunded and the number of inspectors cut to the point where it might be several years between any given S&L's audit cycle. Jurisdiction became a big issue, is it state law is it federal? Do they take part in the Federal Insurance program? The S&L's would reconstitute themselves or would change charters which would allow them to dodge the regulators. Who had jurisdiction?

The Big 8 accounting firms gorged at the plate with the S&L's. It was well known that if the fee were large enough the Big 8 firm would give you a pass or even change the "best practices" so the rules could stretch to cover a multitude of sins.

The Big Eight accounting firms were:

- Arthur Andersen
- Arthur Young & Co.
- Coopers & Lybrand
- Ernst & Whinney (until 1979 Ernst & Ernst in the US and Whinney Murray in the UK)
- Deloitte Haskins & Sells (until 1978 Haskins & Sells in the US and Deloitte Plender Griffiths in the UK)
- Peat Marwick Mitchell, later Peat Marwick, then KPMG
- Price Waterhouse
- Touche Ross

Lawyers who took the law & regulatory environment as a challenge to their creativity and cleverness pushed the edges as far as the accounting firms would let them. What do you, as a regulator, say to an S&L owner when he points out to you as you are shutting him down that just last week he had been pronounced the most profitable company in the nation by one of the most respected accounting firms in the world?^{vii}

The appraisers gave the developers and loan officers the kind of appraisals they needed to get the job done. The appraisers were constantly inflating values. It was well known that if you didn't bring in the numbers the loan officer needed, your services weren't used again. But if you did, you could be assured of continued work.

And then there was Wall Street with their brokered deposits. The Wahoo cowboys of Texas, Arizona and California met the White Shoe Boys from Salomon Brothers and Goldman Sachs and it is hard to say who took advantage of whom. Ultimately, the boys from the street took the Wahoo Cowboys because the cowboys went broke and the Wall St. Boys stayed whole. It was all insured by the Government. And the people paid.

And then, of course, there was the Congress who was dependent upon the campaign contributions raised by the Wall St. Banks^{viii}, the ratings agencies, and the shadow bankers for their hold on power. They turned a blind eye to most all of the shenanigans of the new gilded age until it became too over the top. Finally, when they finally had to act, like Captain Renault in Casablanca they were "shocked" to find gambling going on at the S&L's.

So the people paid. Over \$400BB. Horrifying then, almost quaint now.

The similarities to what happened through the 90's and the 00's to what happened in the late 70's & early 80's are amazing. Once again, enabling legislation, this time Graham Leach, passed in 1999 at the hand of Bill Clinton, destroyed all of the firewalls which had been in place since the 30's and the passage of Glass Steagall. Graham Leach allowed Investment Banks to merge with retail banks and insurance companies to become financial behemoths so they could "be competitive in world markets".

Once again, the appraisers gave the developers and loan officers the kind of appraisals they needed to get the job done. It was well known that if you didn't bring in the numbers the loan

officer needed, your services weren't used again. But if you did, you could be assured of continued work.

Once again, oversight offices were defunded and the number of inspectors cut to the point where auditors would leave their resumes with the companies they were supposed to be auditing.

Jurisdiction became a big issue, is it state law is it federal?

Once again, there were lawyers who took the law & regulatory environment as a challenge to their creativity and cleverness who pushed the regulatory environment as far as the accounting firms would let them

Once again there was the supine Congress who was dependent upon the campaign contributions raised by the Wall St. Banks, the ratings agencies & the loan originators for their hold on power.

And once again, there were The White Shoe Boys^{ix} of Wall Street with their sophisticated debt products and their campaign contributions.

What makes this time different though is that the source of the sophisticated debt products, the original manufacturer, if you will was not Wall St, but the Quasi Federally backed organizations, FannieMae & FreddieMac w/ their sister GinnieMae. Wall Street merely took what these Quasi Govt Entities did and did it better because anything Government can do, private industry can do better, right?

Probably the best description of these Government Sponsored Enterprises (GSE's) came into being is by Martin Mayer in his 1990 book, "The Greatest Ever Bank Robbery – The Savings and Loan Scandal"

The Federal National Mortgage Association (FNMA) was created in the thirties as a way to off load straight amortizing loans from the banks. The purpose of doing this was to create more money in the system by decreasing loans and increasing the capital the banks carried on their books. FNMA itself was funded by the sale of tax free bonds into the private market. In 1968, because the Comptroller General said the operation had to be put on the books, Lyndon Johnson privatized FNMA (somewhat) into one of what has come to be called a Government Sponsored Enterprise (GSE)

Until the 1970's, Fannie Mae dealt only with Government Insured mortgages like FHA or VA originated loans. As time went on, it functioned less as a source of liquidity for S&L's and more as a point of entry for a new breed of "mortgage bankers". These people had relatively little money at their disposal and lived by taking the fees for originating such investments rather than by collecting interest payments.

"Every week, Fannie Mae held "auctions" for these new Mortgage Bankers in which they could buy an option to sell mortgages to FNMA thirty or sixty days hence at the final bid interest rate. If rates went up before the mortgage banker closed his deals with homebuyers, he could exchange their mortgage for his FNMA commitment at the lower rates and take the profits. If they went down, he could drop the option and do business with the homebuyer at market rates. Or he could, without risk to himself, guarantee the homebuyer a rate before the transaction closed- a significant advantage in what became a cut throat competition for the fees and service

contracts that sweetened the origination of mortgage loans. Fannie Mae got a fee for these options, which over time more than paid out the occasions when the mortgage brokers won their bet. In periods of volatile mortgage interest rates, such fees rose considerably. But because Fannie Mae funded its own activity with the sale of paper that expired before the mortgages did, the agency remained at risk- like an S&L- that rates would rise dramatically, lifting its cost of funds without lifting the return of its long term mortgages.”^x

This new way of funding the Mortgage Markets spawned the Government National Mortgage Association (GNMA or “GinnieMae”). Instead of issuing bonds for money that would be used to buy mortgages, the GNMA would issue “pass through certificates” which were sold on the street. The buyers would buy proportionate rights to the cash flow generated by but not ownership of the mortgages which passed through the GinnieMae to them. All the mortgages were FHA or VA insured so they buyers knew they were protected in the event of default of the underlying loans.

The market loved the product. Because securitization brought standardization, the buyers knew what they were getting. It also brought a great variety of sophisticated players, especially the aggressive Wall Street bond traders at Salomon Brothers into what had up until then been a sleepy business.

“Involving them and their customers was, as we shall see, the social reason for the development of the instruments, but there was no social reason, except greed, for the proliferation of profitable bells & whistles that the investment banking houses and the finance professors were able to hang on Collateralized Mortgage Obligations (CMO’s) and Real Estate Mortgage Investment Conduits (REMIC’s).”^{xi}

And from this rose the repo market. An S&L needing cash immediately to originate mortgages or to gamble in the paper market could borrow through selling pass throughs under an agreement to buy them back later at a discount. Thus, the paper recycled through Wall Street, making money for its creators not only on the day of the sale but days afterward as well.

The enormous success of GinnieMaes quickly absorbed the supply of fixed-interest FHA- and VA-insured mortgages to be “securitized” and sold on the market. This is why the violent shrinkage of the S&L industry had so little effect on the availability or price of mortgages. By then, a large majority of the new mortgages written every year were being securitized and distributed, mostly through the alphabet agencies with the help of Wall Street investment houses and big commercial banks. They sold this securitized paper back to the S&L’s and banks not as the mortgages themselves but as various tranches whose value was derived by the underlying mortgage. Because it is liquid and resaleable, it became a source of necessary flexibility for the industry.

In 1990, Martin Mayer, author of “The Greatest Ever Bank Robbery” writing from the vantage point of two years past the worst of the S&L clean up had this to say about the securitization situation.

“But without the trading market for bonds and certificates Collateralized by individual mortgages- and the remarkable bank board regulations that encouraged S&L’s to buy the risks of that market – we would not have seen so deep a collapse or so immense a hole for the Government to fill. The bail out bill Congress passed in the summer of 1989 prevents S&L’s from using insured deposits to buy corporate junk bonds (bonds that have not received an investment grade rating from one of the major rating services) but does little to control their gambling propensities in

the mortgage paper market, which probably means that the carousel will come around again and the taxpayer will have to buy many more brass rings.”^{xii}

Does any of this sound like terms you are hearing about today? It should. because it is.

So here is the situation at the close of the 1980's. No one really feels the hangover of the S&L wreckage because the system of securitization of mortgages and the selling of these standardized financial assets into the SBS through the Repo market picked up the demand for quality assets the vaporized S&L industry wasn't able to provide. Government, or rather Government Sponsored Enterprises (GSE's – read FannieMae, FreddieMac & GinnieMae) picked up the slack and rescued the country from the financial perditions of a self appointed elite.

In order for this sector of the financial market (the Repo market) to truly help the country recover from the S&L mess, certain problems related to the securitization process needed to be resolved. Those problems revolved around the high cost of processing loans for securitization and the high cost of processing loan originations. Both of these operations were labour and time intensive and consequently ripe targets for the “paperless world” which awaited us all in the 1990's.

Chap 4 – The Rise of the Shadow Banking System

The Shadow Banking System (SBS) is a direct outgrowth of the S&L period and a direct result of changes in the banking system made during the time of the S&L.

The SBS is based upon repurchase agreements where one party sells another a security (specifically a pass through certificate) in a tranche of an asset backed security at a discount to face value in exchange for the promise to repurchase (repo) the same security at a date certain in the future for face value. The difference between the discount and face value is called the haircut. The period of time at risk is called the Sunshine risk.

The rise of deposit insurance for retail deposits in the S&L's and the retail banking system did not apply to large commercial, state and institutional accounts. If you are a large company or an institutional investor, you might have several hundred thousand if not millions of dollars held in cash accounts to meet flowing expenses. If you place those funds in a bank and the bank fails, all of your money is gone. There are no insured accounts for amounts that big.

The rise of the repo market was a response to this need of large commercial accounts, pension funds, insurance agencies and anyone else who was looking for security for their short term but necessary cash positions to have a safe place to park their money which would bear interest.

Enter the securitization market discussed in the previous section. GinnieMaes fulfilled the needs of these large account holders for security of their cash positions and there quickly began a market (the SBS) for these Repos facilitated by Wall St. who collected fees.

The securitization process brought (perceived) consistency to the value of the tranche's pass through certificates so that a GinnieMae@ 6% was a GinnieMae@ 6% was a GinnieMae @ 6% irrespective of the quality of the individual underlying loans or the GinnieMae tranche it came from. Parts were parts. They were safe, they were liquid, and the large account holders couldn't get enough of them.^{xiii}

Why would banks want to securitize their loan portfolio?

Securitization allows them to move their loans off balance sheet meaning they still make a profit from administering them but it wasn't counted as part of their portfolio for minimum capital requirements. Remember, banks can leverage their deposits and they do that by making loans (fractional reserve banking) so if the loans are no longer on the books, they can then make more loans and collect more fees for origination of the loans and administering the portfolio.

There are two aspects to the Repo market which are important to understand. The first is that the asset is bankruptcy remote^{xiv} which means in the event there is a bankruptcy by the person issuing the security, it has no affect upon the person holding the security. So, if I sell you a GinnieMae on a 10 day contract and I go belly up in those 10 days, those GinnieMaes cannot be clawed back by my creditors to satisfy their claims. Once they are sold, if they are not repurchased as per agreement, they are gone. This makes them liquid.

The second aspect which is important to understand is that since the security in the tranche is bankruptcy remote, it can be re-hypothecated meaning it can be used for other transactions while it is in your possession. That means that for the 10 days you own the securities, you can use them as you wish. If you want to exchange them back for cash during those 10 days, you can, as long as you have it back for the original repo at the end of the 10 day period. Some of the re-hypothecations could and would occur several times in the course of an intra-day bank trades.^{xv}

The Repo market, which grew out of a need to provide security for people who need a safe place to park large parcels of temporary cash, morphed into a sophisticated checking account system for large, non-public consumers of banking services. You may remember them as Money Market Funds where you got a pretty good return on your checking account but had limited checks or if you have ever had a business checking account of sufficient size, you know banks offer to "sweep" your account of everything but a token amount at night while you sleep so you can collect a small amount of interest from "the system" for the over night use of your money (the Sunshine risk).

The enormous demand for securitized debt products for the overnight repo market put enormous pressure upon Wall St. to find more quality collateral which could be securitized. Securitization brought uniformity of asset class. They securitized auto loans, student loans, agency mortgage loans and non-agency mortgage loans (mortgage loans which did not have FHA or VA guarantees).

It was the effort to meet the demand for quality collateral which could be used for securitization to the SBS which led to and caused the sub-prime mortgage mess.

Factoring.

Chapter 5

As the mortgage banking industry moved into the 1990's, Wall Street created high value collateral for the SBS as fast as they could. They used student loans, credit card loans, auto loans, anything, but the mother load was Mortgages. It isn't that home loan securitization

wasn't happening, it's just that it cost so much to prepare a portfolio of loans for the SBS as to make them expensive, slow to produce and difficult to resell the servicing rights to.

The securitizer, officially called the depositor, would receive a bundle of 5000 or so loans each of whose title report had to be verified and brought up to date before the loan could be put in the pool and then certificates sold off to the SBS. This was labour intensive work. If they could figure out a way to reduce or eliminate the time and paperwork involved in the process of securitization and lower the costs, they could bust open the biggest watermelon of all time.

In 1993, the Mortgage Bankers Association commissioned Ernst & Young to look at the problem. Ernst & Young produced a white paper which is much talked about but difficult to find. In that white paper, Ernst & Young supposedly suggested a MERS like system, it might even have been called MERS, it is unclear. The upshot of that initial report was a commitment of funds from Fannie & Freddie along with the MBA and some of their larger members to hire EDS (post Ross Perot) to figure out a way to keep track of ownership and servicing rights.^{xvi}

The basic problem: the highest cost associated with securitizing mortgages was making sure the title was clear at the county courthouse. The basic premise of the solution was this: If the originator assigns the mortgage to a ... (oh, I don't know what we should call it, it isn't an agent ... It's um ... *snap* !~I Know~!) nominee like MERS to hold the mortgage for some future assignee at the county courthouse, the ownership of the mortgage could be nailed in place while the debt itself could be securitized. Because the ownership was nailed in place with the "nominee", there would no longer be a need to record the change of ownership of the debt at the county courthouse. They separated the deed from the debt.^{xvii}

So that's what they did. They didn't really ask anybody – as in county or state governments who were taking these recordings, they just did it. After a few tweaks suggested by Moody's Rating Service, the most interesting of which was the demand the whole system be bankruptcy remote, industry proclaimed it ready for market.

In 1872 the US Supreme Court said the mortgage can't stand separate from the debt.^{xviii} The issue has never been visited again. It seems the Wizzards overlooked that part when they implemented their system.

In May of 2000, only three years after MERS was launched full on, Carson Mullen of CBS News^{xix} wrote a piece wherein she asks in the second paragraph:

"The term "Best Execution" has special meaning for the mortgage industry. But, in general, it can be defined as the most desirable and valuable way of doing things with the highest degree of skill. Has MERS (Mortgage Electronic Registration Systems) provided the industry with that kind of value? Let's take a look at a little history and at the various lenders and servicers using MERS today."

Ten years later, the answers to that question are much clearer than it was in May of 2000, but this glowing puff piece from CBS News is good for a quite a few nuggets from the early years of MERS:

MERSCORP, Inc., was formed by Mortgage Bankers Association of America (MBA) member companies as a central electronic loan registry in an ambitious attempt to help lenders

streamline the lending process and eliminate the need to record assignments when selling loans to other mortgage companies.

As you read this, nearly 1.5 million loans will have been registered on the MERS System. More than 100 companies use MERS, with registrations occurring every day. Six of the top 10 mortgage originators (according to Inside Mortgage Finance) are originating or purchasing MERS-registered loans. Other major originators and aggregators, representing 20 of the nation's top 30 lenders, are integrating MERS into their operations this spring and summer. The participation in MERS by these lenders, plus its acceptance by Fannie Mae, Freddie Mac, Ginnie Mae, Federal Home Loan Bank, VA, FHA and major Wall Street rating agencies, means that all lenders and investors can accept MERS-registered loans.

The rising tide of paper that was choking mortgage loan productivity in the early 1990s provided the impetus for an industry task force to recommend the establishment of MERS in an effort to eliminate the need to prepare and record assignments. MERS would allow mortgage lenders and servicers to cooperate to reduce or eliminate their paperwork burdens and bring a higher level of efficiency to secondary market sales and trades between trading partners. Because secondary market transactions involving the sale of both beneficial rights as well as servicing rights generated a flood of paper mortgage loan assignments, MERS took up the task of providing an alternative to using paper for tracking these transfers between trading partners.

The Depository Trust Corporation (DTC), New York City, provided a good model. DTC had long ago enabled the national securities markets to eliminate the need for paper stock certificates to record the purchase and sale of stocks, bonds and other securities. DTC is a participant-owned corporation that records securities transactions electronically, eliminating the need to pass paper stock certificates or other security certificates back and forth. It is difficult to imagine accommodating the current volume of securities trading on the national exchanges if stock traders were required to use paper certificates to pass ownership rights.^{xx}

The MERS System was designed to perform similar functions for mortgage lenders, but with a difference: MERS would first concentrate on eliminating mortgage loan assignments by providing an electronic registry to track the many transfers that occur in our active markets today. Although many lenders are using assignments to make MERS the mortgagee of record, the maximum cost reductions for lenders occur when MERS appears in the security instrument. This concept is known as MERS as Original Mortgagee (MOM).

MERS received approval from Fannie Mae and Freddie Mac in 1997 to act as mortgagee of record on uniform security instruments. This approval meant that MERS could be named in the mortgage or deed of trust as mortgagee and nominee for the lender at the outset. Then once the security instrument was recorded, transfers of beneficial rights and servicing rights could be tracked on the MERS electronic database, eliminating the need for any recorded assignments between trading partners. Approved Fannie Mae/Freddie Mac security instruments became available in late spring 1998 from document vendors

Mortgage lenders can be reluctant to embrace change, especially to their business processes. While naming MERS as mortgagee on the security instrument seems a fairly straightforward

change, loan origination systems and servicing systems needed to be modified. Several large mortgage lenders and servicers that could see the immediate benefits of eliminating assignments from their operations began to make the necessary system changes..

In February 1999, Lehman Brothers took the first step in the securities market by including MERS-registered loans in a jumbo mortgage-backed security (MBS). This security gave the rating agencies the chance they had waited for--an opportunity to rate a MERS package. Standard & Poors, Duff & Phelps and Fitch IBCA have rated securities containing loans that name MERS as mortgagee of record without hurting the security's rating.

Moody's Investors Service took the opportunity to issue an independent Structured Finance special report entitled "Mortgage Electronic Registration Systems, Inc. (MERS): Its Impact on the Credit Quality of First-Mortgage Jumbo MBS Transactions" in April 1999. The report states that the "impact on the credit quality of jumbo first-mortgage MBS transactions will be negligible." The report also identified areas that would not be harmed: the legal mechanism to put creditors on notice of a mortgage is valid; the ability to foreclose and take real estate owned (REO) will not be materially affected; and credit enhancement levels for first-mortgage jumbos will not be increased as a result of the use of MERS. (Any nonstandard could add credit enhancement; MERS does not).

However, the most significant finding in the report specified that in transactions where the securitizer used MERS, there would be no need for new assignments of mortgages to the trustee of MBS transactions.

Rick Scogg, president of Aurora Loan Services, Aurora, Colorado, says his company saves hundreds of thousands of dollars a year. "We have already benefited and will benefit considerably more in the future," he says. "We buy and sell servicing frequently. When we buy portfolios, there are payoffs and foreclosures the next day and therefore there is a delay in the lien-release process [for non-MERS loans]. With MERS, we don't need to get attorneys to correct these, and that saves us thousands of dollars a year.

"Truly, the foreclosure and release process is the biggest pleasant surprise for us," Scogg says. "It has had a major impact on our efficiency after acquisitions."

The electronic tracking agreement has emerged as the best and most comfortable solution for these lenders and for MERS and its members. It gives everyone a contract that all parties agree to, which requires MERS, upon notice, to become the nominee for the interim funder in the public land records. That means the security interest of the interim funder is automatically perfected without any further action if there is a default by the MERS member who is also the interim funder's customer.

In 1999, Old Kent Mortgage Company, Grand Rapids, Michigan, became the first nationwide company to implement MERS companywide for correspondent, wholesale and retail

origination channels. Old Kent registers loans in two ways: by using MOM and by assigning closed loans- either purchased or in portfolio-to MERS.

After one full year of experience with MERS, Old Kent has realized many benefits. Says Michelle Genrich, vice president of operations for Old Kent, "There is no doubt that the savings identified in the cost benefit [analysis] are now a reality. The registered loans have not gone to final payoff yet, but we expect even greater benefits at that time. The next refi period will be the true test, and we have no doubt the savings will be there also."

Old Kent has benefited from streamlining the origination process through the elimination of the assignments. The \$3.50 registration fee is paid by the borrower and is shown on the HUD-i for conventional loans. "MERS is a win-win [situation]," says Genrich. When lenders originate loans using "MERS as Original Mortgagee (MOM), the need for an assignment is eliminated-creating a cost savings of about \$22 per loan. Old Kent has listed the \$3.50 charge on the HUD-i and the borrower has paid the \$3.50 instead of paying the \$22 for an assignment.

Remember those numbers when you hear someone extol all the wonderful things MERS does and how much money they save homeowners. \$18.50. That's how much they save the homeowner.

They bought all of us lunch. How nice of them. How much did they save industry? Given that these pass through certificates changed hands sometimes multiple times a day all over the world and that each of those changes would have to be registered at multiple county courthouse across multiple mortgages for at least \$22/recording, there is no way of knowing.

The piece goes on and is a wealth of information about some of the early days of MERS. The things which they extol as virtues are the things we know now are horrors. Clearly the intent of MERS from the very beginning was to circumvent the time honoured way of recording land title and to cheat the counties of recording fees by not filing changes.

What they don't talk about in this puff piece is what the unintended consequences of this electronic registry would be.

Chapter 6

It's hard to say exactly when the first hint of trouble manifested itself but from the way things played out, the event horizon was probably not too long after the puff piece came out. The event was clear. The Nebraska Department of Banking and Finance ruled that MERS was a mortgage banker and needed to pay fees associated with being a mortgage banker in that state.

MERS objected.

There was a hearing.

The state ruled in favor of the state and decreed that MERS was a mortgage banker and should pay the fees.

MERS objected again and appealed the administrative decision to the administrative review panel who agreed with the state auditors that MERS was indeed a mortgage bank and therefore had to pay the fees.

MERS kept objecting and eventually, in 2005, the Nebraska State Supreme Court agreed that MERS was not a mortgage banker and was not responsible for the fees required to operate in the state of Nebraska.^{xxi}

But what is interesting in the case are the arguments and admissions, descriptions if you will of just how MERS views themselves.

Again, a few nuggets:

At the hearing before the director of the department, the parties narrowed the issue to whether MERS directly or indirectly “acquires” mortgage loans within the meaning of the act.

The Department argues that MERS, through the assignment of lender’s interest in mortgage loans indirectly acquires mortgage loans and therefore fall within the scope of the act. The department further asserts that a loan and corresponding mortgage or deed of trust are inextricably intertwined and that accordingly the interests acquired by MERS are interest in mortgage loans making MERS a mortgage banker and subject to the requirements of the act.

At the initial hearing, MERS described their function as:

Mortgage lenders hire MERS to act as their nominee for mortgages, which allows the lenders to trade the mortgage note and servicing rights on the market without recording subsequent trades with the various register of deeds throughout Nebraska (The cheekiness~! Standing in front of a state official and declaring your whole business model is to cheat the various counties out of millions of dollars in registry fees~!)

MERS explained that MERS does not take applications, underwrite loans, make decisions on whether to extend credit, collect mortgage payments, hold escrows for taxes and insurance, or provide any loan servicing functions whatsoever. MERS merely tracks the ownership of the lien and is paid for its services by membership fees charged to its members.

The lenders retain the promissory notes and servicing rights to the mortgages while MERS acquires legal title to the mortgage for recordation purposes.

So they won the right to be described as having no interest in title. They are a database, that’s all. A database who stands in place of person or institutions to be named at a future date on the mortgage. They are a database which has no actionable interest in title; a database which claims it doesn’t have to register its information at the county courthouse yet demands their information has parity, if not supremacy over the records at the recorder’s office when it comes to official filings.

The next rumble on the horizon came in Suffolk County NY in Merscorp, Inc. V Edward P. Romaine, where MERS sued the Suffolk County Recorder to force him to take MERS as a valid recordation arguing the recorder is merely a clerk and is not qualified to determine what makes

a valid recordation. The Appellate court agreed and ordered Romaine (the county recorder) to accept a MERS recordation on a Deed of Trust.

One cute little nugget from a concurring judge who noted:

I concur with the majority that the Clerk's role is merely ministerial in nature and that since the documents sought to be recorded appear, for the most part, to comply with the recording statutes, MERS is entitled to an order directing the clerk to accept and record the subject documents. I wish to note, however, that to the extent that the County and various amici argue that MERS has violated the clear prohibition against separating a lien from its debt and that MERS does not have standing to bring foreclosure actions, those issues remain for another day (see e.g. Merritt v Bartholick, 36 NY 44, 45 [1867]["a transfer of the mortgage without the debt is a nullity, and no interest is acquired by it"]).^{xvii}

The case he references in his observations is from 1867. Then there was SCOTUS in 1872. It hasn't been overturned.

Those two cases spawned the "produce the note" foreclosure defense in courts all over the country. State Courts and Federal Bankruptcy Courts are pointing out that MERS has no actionable interest in title. At this writing, the large banks are halting foreclosure actions while they review their "paperwork irregularity". The momentum is growing irresistibly to full disclosure of what you are reading about in here. Whether the story is allowed to unfold all the way remains to be seen. Will they tell you that you are renting your house from persons unknown? Who knows?

Remember our friend from earlier in this story? The one who was signing his life away while mama & the kids were waiting to move in? So imagine this. He's sitting on the floor of the living room of his new house eating pizza w/ the wife and kids after moving in half his truck. They are eating pizza because the kitchen isn't quite set up yet but the TV is and already, that which cannot be imagined by rational mind has happened.

He's screwed. His debt has been separated from his deed and it is floating away ... slowly towards the knives of the sausage machine and before three days are up, ownership of his debt will have vanished into the netherworlds of the overnight repo market, gobbled up, like so many others.

He's screwed and he hasn't even thrown away the pizza box from his first dinner in his new house yet because the deed has been separated from the debt and the debt was securitized and sent to the SBS.

He's screwed and unless he takes action to quiet title, he will never see clear title to his house. Thirty years wasted. If MERS is on your mortgage, unless you take action to quiet title, you will never see clear title to your house. It is gone forever.

This ain't your grandfather's mortgage and you aren't in Kansas anymore.

Chapter 7

MORPHEUS: Let me tell you why you are here. You're here because you know something. What you know you can't explain, but you feel it. You've felt it your entire life. There's something wrong with the world. You don't know what it is, but it's there, like a splinter in your mind, driving you mad. It is this feeling that brought you to me. Do you know what I'm talking about?

NEO: The Matrix?

MORPHEUS: Do you want to know what it is?

Neo nods.

MORPHEUS: The Matrix is everywhere. It is all around us, even now in this very room. You can see it when you look out your window, or when you turn on your television. You can feel it when you go to work, when you go to church, when you pay your taxes. It is the world that has been pulled over your eyes to blind you from the truth.

NEO: What truth?

MORPHEUS: That you are a slave, Neo. Like everyone else, you were born into bondage, born into a prison that you cannot smell or taste or touch. A prison for your mind.

What we are dealing with comes straight out of the S&L crisis. This is the second time in the last 30 years the White Shoe Boys of Wall St. have fleeced the country with their horrific losses from gambling with insured money on real estate.

It was the seeming salvation of GinnieMaes which kept the world alive and afloat after the entire S&L sector imploded in the late 80's.

Anything government can do, private industry can do better.

MERS accomplished what for 143 years has always been considered a concept no rational mind could comprehend. It doesn't matter that what they did was disastrous. They did it. And it has been allowed to go on and grow for the last thirteen years. Over 400 years of land records have been destroyed to solve an insurance problem for wealthy customers in the banking industry.

Put it all together and it is a machine which can feed the voracious appetite of the SBS for quality security their large secure cash positions demand. It doesn't matter there is a fatal flaw in the machine, the machine works. It securitizes home loans cheaply. It's the mother lode.

Everyone knows "they" made sausage of the payment streams. Before we can really get into the fun stuff, we have to examine the blades. It consists of two documents, the Pooling and Servicing Agreement (PSA) and the Prospectus. If you could find out what tranche your loan belonged to, you could find the PSA & prospectus which applies to you, but you can't ... or at least it seems you can't.

The prospectus is an intimidating document about 6 inches thick with 3 point type. It goes into great detail into deal construction. It is mind numbing in its mendacity (the Dictatorship by Tedium) but it describes the tranches which must be filled with individual mortgages. In places it reads like Boolean logic. You will find descriptions of credit enhancements (i.e. insurance - -

from the mono-line insurers). You will also find odd verbiage commanding participants to answer any prying questions with “I cannot talk about that” and gives them a contact referral.

But probably the oddest turn of phrase in the prospectus is language that allows the originator to sell, transfer, or pledge the asset to the trust in setting up the structured vehicle.^{xxiii} Sell has very clear connotations and there should be clear records of that. Transfer is also quite clear in its meanings and should also have clear records. Pledge is a totally different matter. One can own an asset and pledge a piece of it, like the cash flow, while still retaining ownership.

The PSA is an equally intimidating document only about 3 inches thick again, with 3 point type. The PSA explains in rather exact detail the process of how a note gets plugged into a tranche. The architect or engineer of the vehicle would specify so many loans that are traditional with this down and this APR, this many with a 2/28 ARM ... you get the idea are needed to fill this vehicle. Main street would provide them and he would take the loans and plug them in.

Here’s a curious thing about a PSA. If the loan fell out of the tranche before 90 days, meaning the borrow defaults before 90 days, the depositor could, at his option, buy out the place for the value of the fallen out note, or replace it with one of like characteristics usually without a cumulative defect of 10% from the one fallen out. Ultimately, this capability is a main reason they scraped the barrel so deeply and badly. What this also means is the perps had more time to keep the Ponzi scheme going.

Chapter 8

Everything was indeed going fine as long as they used FHA & VA insured loans in the GinnieMaes. The average default rate on those loans was less than 2% in bad times. But the demand for highly liquid securitized assets was too much. There weren’t enough of those good loans to go around.

So they started building these things out of non-agency loans ... ones made by banks but not insured by a government type mortgage insurance scheme. They would over pledge the collateral and pack it full of credit enhancements (read the monocline insurance players) and it was just as good. And things kept going because that opened up a whole new group of qualified borrowers.

Then they ripped through all of those people and they had to dig deeper into the barrel to where all they had left was Jose the hedge trimmer. The lower tranches started to default as loans would fall out before the 90 day limit and it became harder and harder to hide it. Finally, in June/July of 2007 someone on the other end of an Repo swap got nervous about what was in that “standardized security product” and forced the owner to take a deeper haircut.

And that is when the machine started to freeze. The reason they recall millions of pounds of ground beef when there is a small e coli outbreak is because no one knows where the e coli is. You can’t be overly careful in things like that. The same thing happened in the Repo market. As one wag was quoted in the papers at the time, “No one knew who had a turd in their briefcase.”

Each of us has our event horizon when we came to the realization this was bad and it wasn’t going away anytime soon. In 2008 the banking system nearly ground to a halt. In 2008 the “Produce the Note” defense was presented and was successful. Since that time, there have been

a series of court decision supporting the fact that MERS has no actionable interest in title and the movement has grown.

What no one is talking about is that because MERS has no actionable interest in title, not only can they not foreclose, they can't deliver clear title at sale, nor at the completion of a mortgage obligation. They have no actionable interest in title and the true owner of the debt can't be found. And it may not matter because he may have been paid off through TARP bailout money.

Chapter 9

Do you see now this is so much more than Jose the Hedge-trimmer bought a house or that greedy people fell for the siren's song of cheap and easy money? It wasn't that. They used that. But it wasn't that. They needed Jose's signature to help keep the game going. They played the Siren's song to the greed in man's heart because the SBS, which has an insatiable appetite, played its Siren's song of greed. It had to be fed like Audrey II in "Little Shop of Horrors".^{xxiv}

If you have gotten this far, you should understand pretty well how the machine works. Clearly, it's not your grandfather's mortgage. Those three words in the prospectus, sell, transfer, or pledge ... Each has very distinct meanings and ramifications for the machine. Sell and transfer are pretty straight up.

But if it is pledged ...

Pledged can have a lot of meanings and when one starts to explore this line of thought, a lot of things which manifest themselves in the daily reality we face in the foreclosure meltdown start to make sense.

If it is pledged.

If it is pledged - more than once ? MERS provides a shield behind which anything can happen ... just like the DTC after which it was modeled. Could there be naked shorts^{xxv} inside of MERS like there seems to be with the DTC? The possibility is certainly there. You can't know unless you know first: Were the mortgages sold ... or pledged?

We don't know. We just know something is terribly wrong. Anything or anyone who tells you it's this way or that way doesn't really know because until there is a full forensic accounting no one knows what happened.

There sure is a lot of evidence pointing to a lot of really bad things happening though. And when you hear about them, always put it into the context of what you learn here. If you have a hard time understanding how someone could do something if a property was sold or transferred, think about it in terms of what might happen if the mortgage were pledged.

Here are a few random thoughts.

The Chinese and the Saudis own most of the paper supported by MERS based securitized mortgage system. Some of it is owned in Europe, but most of it is in China & the oil soaked middle east.

The Federales took over FNMA so now we the people own MERS.

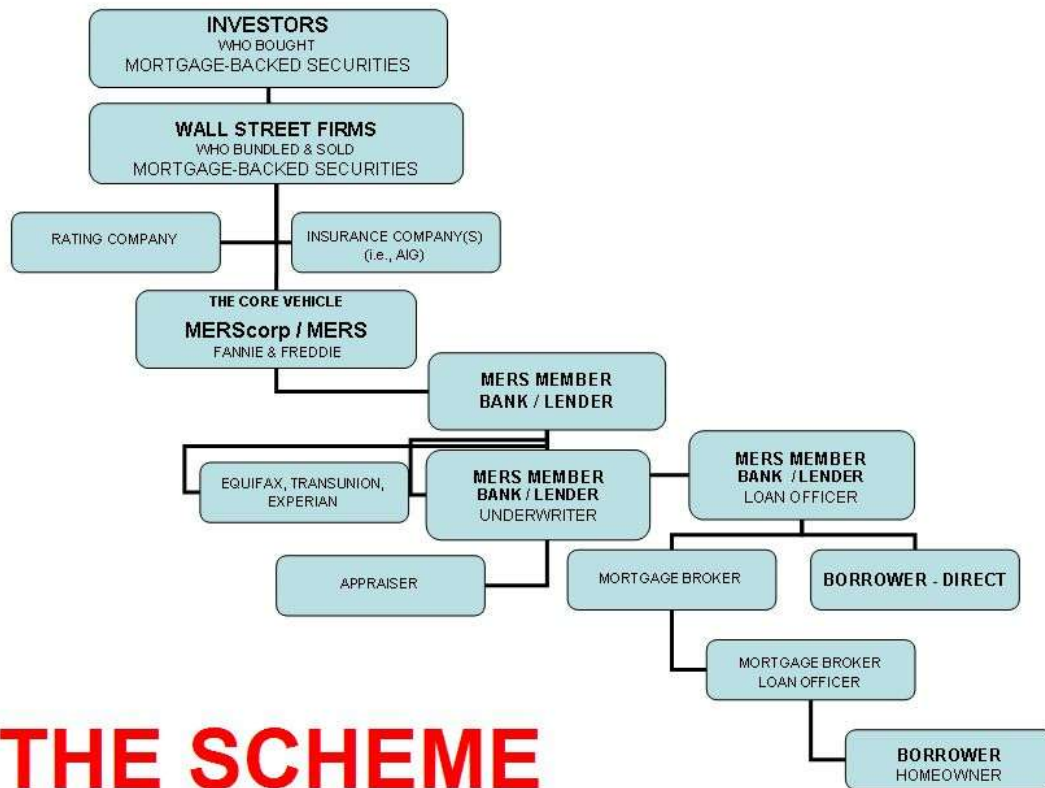
FNMA was used as the vehicle through which TARP money was channeled to buy these assets from the gamblers who were stuck holding them when the music stopped playing. Now FNMA owns them. Which means we the people own all the bad mortgages ... and MERS. Which means the people are holding the whole bag ... again and the banks want the people to pay ... again.

If they are pledged, and you can replace loans in the vehicles as they fall out then it makes sense why they don't assign an individual mortgage to a trust until it defaults. They need to assign the losses to the correct BBB tranche and they don't know where it will need to be until it actually defaults.

Pledged or not, think on this one. If MERS has no right to assign, as many courts have concluded, then the debt never left the hands of the originator ... who is now bankrupt~!
 AAAAAAAAAAAAAAAAAHHHHHHHHHHHHHHHHHHHHHHHHHHHHHH~!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Are we having fun yet?

Notice the choke hold MERS has on the entire flow of money and information



Chapter 10

That's pretty much it. That pretty much explains MERS, what it is, where it came from, what it means, why it means it. Now when the talking head starts spinning about MERS you won't be buffaloed.

In the thirteen years of its existence, MERS has destroyed over 400 years of property ownership records and they cannot be put back together again. No one knows who owns what. No one can tell who owes what to whom. For 62MM homeowners, there is no clear title to be had.

How can you ask a homeowner to "modify his mortgage" and continue to pay into known fraud, one where he ends up getting absolutely nothing for his money – even at a reduced rate? MERS is on his mortgage. The deed and the debt are still split. That which a rational mind cannot conceive has happened. Does he still owe money? Yes. But who does he pay? More importantly, why does he pay? Why should he?

The ownership records are obliterated or if they aren't obliterated, MERS isn't forthcoming with replacement information. With all that is at stake, you would think they would but they don't. The only logical conclusion is that the cost of transparency is higher than the cost of obtuseness. Which brings us back to: Was it pledged? You don't know. No one knows.

Where do we go from here? The only things I hear people suggesting is using this to negotiate with the banks and modify loans. That's a fallacy. There is no one to negotiate with. The banks don't own these loans. They don't have the right to negotiate. No one knows who owns these loans. There is no one who can negotiate.

The current system we have, this MERS Monstrosity, cannot be allowed to continue. It is an abomination. It is a privately held database of property ownership demanding parity, if not supremacy to the records at the county courthouse.

'Trust us' they say.

These records have proven misleading in the past. Already there is a court case out of Florida where an "unrecorded assignment" created havoc in a real estate transaction.^{xxvi}

The only argument MERS has on their side is the moral hazard argument of 'we can't let people not pay their debts' and yes, that is a powerful argument. But what is the larger moral hazard? People getting their houses for free or a private system of property ownership registration with known flaws and providing demonstrably incorrect information being allowed to continue?

Hernando de Soto is a Peruvian Economist who wrote a book called "The Mystery of Capital".^{xxvii} In it, he makes the argument that the reason Capitalism fails in places other than the West is that the West has standardized recording laws. Without those laws, the Third World cannot convert the tangible assets into cash money. With those laws, the true value of those tangible assets can be tapped to its fullest potential.

That's the legacy of MERS and the securitization of debt. How ironic. In thirteen years the Masters of the very height of the Art of Capitalism have turned us into a Third World nation.

What to do? The first thing you should do is go to your county courthouse and look in the recorder's office to see if you have MERS on your Mortgage. If you do, then you have to start making some choices.

The world is at a cross roads and you, the American citizen command the choices. The system of high finance has crashed and in the process has crashed everything with it. If MERS is allowed to continue, we have lost the country to a group of business men, bankers really, who have imposed their will upon us all. They are like John Candy teaching the boys how to play poker in the barracks during basic training in "Stripes"^{xxviii}. "NEW RULE" he would shout when his two pair beat a full house. And he is allowed to get away with it.

The banking system is in flames and it is time to choose the Phoenix egg which goes into the fire. The last time we were here, we took that which we were given and the whole securitization process grew. Look where it got us or as Dr. Phil says, 'How's that working for you?'. Now, with the system fully engulfed, Dodd/Frank is in the flames, warming, who knows what Phoenix will hatch from the flames?

It doesn't have to be this way. There are alternatives. Public banking as they do in North Dakota offers some exciting examples of what can be. Alone among the 50 states they survive the rampaging fires of this crisis with a budget surplus and the lowest unemployment rate. It is easy to make the correlation between their prosperity, or perhaps better put, their relative lack of austerity and their public banking system.

On an individual basis, you can strike back. You aren't helpless. You don't need Obama, you don't need a congressman or Senator. You just need to be willing to act. Let every American who has MERS on their mortgage strike back by starting a quiet title action. While the action is underway pay your mortgage to the court in an interpleader agreement. While your case works its way through the finely grinding wheels of justice, you starve their machine of money.

How can the banks object? Their position is secured in the event of decision in their favour. You can't object because if decision is your way, you get your money back and if it goes their way, the money is already knocked back. While these things are happening, the machine is starved of money which will bring it crashing in upon itself.

But while we are having a party, we need to be paying careful attention to the Phoenix egg in the flames. As you have seen from this long tome, if we don't pay close attention now, it will happen again. Right now, Dodd/Frank is warming in the flames. It hasn't hatched yet, but it has had a few months to get warm in the flames of the death of the latest old order. We don't know what it will turn out to be but it is from "them" so why should we want it?

Martin Mayer, the man who wrote about the S&L's from the vantage point of 1990, also took a look ahead and his vision is illuminating.

The S&L story is desperately important not for the reasons usually given but because its development maturity and crisis raise profound questions about American society. In the light of this bonfire, we must ask whether our great professions are still capable of self regulation, of giving honest service and of accepting fiduciary duties in an age when all costs and benefits are reduced to monetary measurements and all conduct that is not specifically prohibited has become permissible. Watching the obedient dance of our officials and politicians when their patrons pipe a tune un-rebuked by a public that attends the show as it might any other, we

must ask ourselves whether this generation of Americans remains capable of self government.^{xxx}

Market economies perform better than command economies because those who make mistakes lose their money and failure stops them from frittering away a nation's resources. If the state takes away the market discipline that compels the recognition of mistakes – which is what deposit insurance can do especially if it is taken as insurance for the bank or S&L itself rather than for the depositors – capitalism can generate losses and misallocations of resources even faster than socialism^{xxx}

This current economic crisis is the third time in my lifetime this sort of outrageous swindle has happened. The first time was the S&L crisis. The bangstas and their customers walked away whole. And the people paid. The second time was the dot commie crash which was really a swindle – chumming a feeding frenzy. The bangstas and their chosen friends walked away whole. And the people paid ... again. This time the bangstas came back to real estate and it was The Greatest Ever Bank Robbery Ever~! And it will be ... until the next one.

And the people pay.

When do we say no more?

It is the sovereign's duty to produce the coin of the realm. The sovereign in this country are the people as represented by their critters in Congress. The power to produce the coin of the realm was abdicated to a group of men for their private profit nearly 100 years ago. This power must be reclaimed by the sovereign.

There can be no fractional reserve banking. You can't sell what you ain't got.

All levels of the sovereign must accept only the sovereign's coin as payment in taxes.

There are other ways.^{xxxi}

ⁱ The Shadow Banking System (SBS) isn't shadowy as in nefarious but shadowy as in working outside the limelight of retail banking. The shadow banking system or the shadow financial system consists of non-bank financial institutions that play an increasingly critical role in lending businesses the money necessary to operate. There are little to no controls upon it.

http://en.wikipedia.org/wiki/Shadow_banking_system

ⁱⁱ "Who Framed Roger Rabbit" 1988 Robert Zemeckis

ⁱⁱⁱ [http://en.wikipedia.org/wiki/Factoring_\(finance\)](http://en.wikipedia.org/wiki/Factoring_(finance))

^{iv} Securitization is the process of bundling up your mortgage with thousands more and putting them into a trust which issues certificates (supposedly of standardized value) whose value is derived from the cash flow the actual mortgage generates. These certificates are then sold into the SBS.

^v " ... more than 2/5 of FCA's (Financial Corporation of America) deposits ... paid an interest rate higher than 16% and almost 82% of them were from institutional investors." The Greatest Ever Bank Robbery p 105

^{vi} The Greatest Ever Bank Robbery page 227

^{vii} " ... the Senators were nonplussed. Patriarca at one point gave a typical example of Lincoln's procedures: a loan w recourse (i.e. the buyer could sell it back at the same price at any time) that Lincoln treated as a final sale booking a \$12MM profit. The buyer exercised his rights and Lincoln bought the loan back for the same price – but never expunged the profit. Arthur Young, as outside accountants, found nothing wrong. DeConcini pulled Atchison's letter:

Why would Arthur Young say these things?"

“They have a client” Patriarca said

“You believe they would prostitute themselves for a client?”

Absolutely,” said Mike Patriarca from the well of experience, “It happens all the time.” The Greatest Ever Bank Robbery p 200

viii “Larry Taggart as a Texas Lobbyist writing to Don Regan warning him ‘Actions being done to the industry by the current chief regulator of the Federal Home Loan Bank Board are likely to have a very adverse impact on the ability of our party to raise needed campaign funds in the up coming election.’”

The Greatest Ever Bank Robbery p 10

ix A delightful term coined by Gerald Celente of Trends Research

x The Greatest Ever Bank Robbery Pages 38-44

xi Ibid

xii Ibid

xiii Mutual Money Market Funds (MMMF’s) growth really took off in the mid 1980’s, growing fro \$76.36B in 1980 to \$1.85T in 2000. MMMF’s reached a peak of \$3.8T in 2008, making them one of the mot significant financial product innovations of the last fifty years. Ibid - Pg 6

xiv In 2005 the Bankruptcy Reform Act was passed. This act expanded the definition of a “repurchase agreement” to make transactions based on any stock, bond, mortgage or other securities eligible for bankruptcy safe harbor protection Ibid – page 16

xv ...high levels of velocity in repo markets. This occurs when a single piece of collateral is used to effect settlement in a number of contracts on the same day. It allows the daily repo trading volume of a particular note issue to exceed the outstanding issue, as participants are able to borrow and lend a single piece of collateral repeatedly over the course of a day. Ibid – pg 16

xvi Servicing rights were another data set mangled by the S&L crisis. They were called LSBO – Loans Serviced By Others and sometimes the others were never determined

xvii Clarification of terms. Deed: Registry of ownership Debt: borrowed money Mortgage (or Deed of Trust) the instrument which binds the deed & the debt together.

xviii All the authorities agree that the debt is the principal thing and the mortgage an accessory. Equity puts the principal and accessory upon a footing of equality, and gives to the assignee of the evidence of the debt the same rights in regard to both. There is no departure from any principle of law or equity in reaching this conclusion. There is no analogy between this case and one where a chose in action standing alone is sought to be enforced. The fallacy which lies in overlooking this distinction has misled many able minds, and is the source of all the confusion that exists. The mortgage can have no separate existence. When the note is paid the mortgage expires. It cannot survive for a moment the debt which the note represents. This dependent and incidental relation is the controlling consideration, and takes the case out of the rule applied to choses in action, where no such relation of dependence exists. Accessorium non ducit, sequitur principale. Carpenter v. Longan, 83 U.S. 16 Wall. 271 271 (1872)

xix http://findarticles.com/p/articles/mi_hb5246/is_8_60/ai_n28785333/

xx The DTC is accused by Michael Birne of Overstock dot com of knowingly facilitating naked shorts

<http://blogmaverick.com/2006/02/15/naked-shorting-the-real-bad-guys/>

xxi MERS v. Nebraska Dept of Banking and Finance – 2005. Cite as 270 Neb 529

<http://dcwintonlaw.com/wp-content/uploads/2009/12/s04-786.pdf>

xxii MERS v. Romaine - 2006 NY Int. 167 http://www.law.cornell.edu/nyctap/I06_0167.htm

xxiii I cannot say every prospectus has that in it, but there is an awful lot of boilerplate between these documents. I have seen that very language in a prospectus for one of these vehicles

xxiv “Little Shop of Horrors” Jack Nicholson & Jonathan Haze, 1960

<http://www.imdb.com/title/tt0054033/>

xxv Shorts are where you borrow a stock to sell into the market betting it will go down. Then you buy it back and give the stock back to the guy you borrowed it from. A naked short is doing all of that but neglecting to borrow the stock ... which of course means you don’t have to return it either.

xxvi JP Morgan Chase v New Millenial et. al. - FL Appellate which clearly demonstrates the chaos which can ensue when there is a failure to register changes of ownership at the county recorder's office.

Everyone operates in good faith, then out of nowhere, someone shows up waving a piece of paper. The MERS system, while not explicitly named, is clearly the culprit of the chaos. 2009

<http://mattweidnerlaw.com/blog/wp-content/uploads/2010/02/JP-MORGAN-CHASE-v.pdf>

^{xxvii} such countries have yet to establish and normalize the invisible network of laws that turns assets from "dead" into "liquid" capital. In the West, standardized laws allow us to mortgage a house to raise money for a new venture, permit the worth of a company to be broken up into so many publicly tradable stocks, and make it possible to govern and appraise property with agreed-upon rules that hold across neighborhoods, towns, or regions. This invisible infrastructure of "asset management"--so taken for granted in the West, even though it has only fully existed in the United States for the past 100 years--is the missing ingredient to success with capitalism. The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else - Hernando De Soto <http://www.amazon.com/Mystery-Capital-Capitalism-Triumphs-Everywhere/dp/0465016146>

^{xxviii} "Stripes" Bill Murray, John Candy 1981 <http://www.imdb.com/title/tt0083131/>

^{xxix} The Greatest Ever Bank Robbery Martin Meyer – pg 28

^{xxx} Ibid Pg 27.

^{xxxi} <http://publicbanking.wordpress.com/>