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**Written Testimony before the Senate Judiciary Committee
in Opposition to Senate Bill 1556**

Chair Prozanski, Vice-Chair Thatcher, and Senators Bentz, Dembrow, Gelser, and Linthicum,

The Oregon Association of County Clerks (OACC) is opposed to Senate Bill 1556.

Real Property Public Records: Oregon County Clerks have the [legal responsibility](#) to record, preserve, and provide access to recorded real property transactions in Oregon.

MERS Background: In 1995, large lenders created their own private mortgage registration system to avoid paying recording fees and subvert Oregon recording requirements – most notably, assignments of lending instruments. This system, known as [MERS](#) (Mortgage Electronic Registration System – owned and operated by MERSCORP Holdings Inc.), is utilized to repackage mortgages for the sale and transfer to note holders/servicers en masse. Information about these security transactions are not transparent or made readily available. As a result, MERS does not notify property owners or have a public record component to inform Oregonians about the status of their home loan.

MERS fails to comply with Oregon’s statutory recording requirements, by [obfuscating](#) Oregon real property records. MERS contributed to [confusion in the courts](#) during the recent foreclosure crisis, denies state and county programs vital recording fee funds and poses [serious risks](#) to economic stability if MERS were to ever get hacked, go bankrupt, lose mortgage data, or suffer data corruption.

Two of the largest players in the mortgage industry, [Fannie Mae](#) and [Freddie Mac](#), allow for both MERS and Non-MERS registered mortgages. Both provide lenders with guidance (FMae’s guidelines pg. 613 & FMac’s guidelines pg. 333) on recording documents with and without MERS.

Court cases in Texas, Kentucky, Ohio, [New York](#), Illinois, South Carolina, and Delaware were brought against MERS where individual banks were also named. To date, Kentucky, [Multnomah County \(Oregon\)](#), St. Claire County (Illinois) and [New York State](#) have reached settlement agreements in their respective MERS cases. At least three of those cases specifically included both MERS and banks as settling parties.

Additional Concerns:

- Oregon case law (Niday and Brandrup – June 2013) has determined MERS is not qualified as a beneficiary under the Deed of Trust Act.¹
- MERS, as “beneficiary,” has continued to appoint trustees to re-convey properties. MERS does not provide a transparent public record to Oregon property owners.
- MERS’ own legal counsel, R.A. Arnold, maintained that MERS is “fictional.”²
- During the recent recession, original property owners were evicted, but foreclosure processes were not properly completed or initiated. Ownership of the abandoned property could not be determined creating public nuisances referred to as “zombie houses.” These properties became magnets for squatters who damaged and participated in illegal activity on properties.

Position on MERS: We strongly urge you to oppose the attempt to legitimize MERS.

¹ “...appointments of successor trustee may only be made by the trust deed beneficiary, ORS 86.790(3) and, as discussed, MERS is not, and never has been the beneficiary of the trust deed for purposes of the ODTA”? (In Re Niday, Page 22).

² “MERS becomes a ‘mortgagee of record’ even though its ownership of the mortgage is fictional.” University of Cincinnati Law Review, “Foreclosure, Subprime Mortgage Lending and the Mortgage Electronic Registration System”, Vol 78, No 4, Page 1370.