

COA Opinion: Previous decision that MERS may not foreclose by advertisement when it does not own the underlying note applies retroactively

15. August 2011 By Sarah Lindsey

In *Residential Funding Co. v. Saurman*, Nos. 290248, 291443, ___ Mich. App. ___ (April 21, 2011), discussed [here](#), the Michigan Court of Appeals held that Mortgage Electronic Registration Systems, Inc. (MERS) did not have authority under MCL 600.3204(1)(d) to foreclose by advertisement when it did not own the underlying note secured by the mortgage. In *Richard v. Schneiderman & Sherman, P.C.*, No. 297353, published on August 11, 2011, the Michigan Court of Appeals determined that *Saurman* applied retroactively. Concluding that *Saurman* interpreted a statute and did not establish a new principle of law, the court also held that *Saurman* should be given full retroactivity, i.e., it applies to all cases pending at the time the decision is issued, regardless of whether the issue had been raised and preserved.