

## **Suing MERS: Calif Case Reaches Supreme Court and States, Counties Pursue Claims for Lost Fees - But Whose Pockets Would Pay Their Damage Claims?**

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Last November, we posted about the inevitability of lawsuits being filed against **MERS** (Mortgage Electronic Registration Systems) although last fall discussions surrounded things like what causes of action could be pursued, and what parties would have standing to do so. (See, [The MERS Mess: A Pandora's Box of Legal Issues](#).)

One big factor here: *who really owns MERS*, because those are the deep pockets that any lawsuit will have to depend upon to pay any resulting judgment, should there be victory for the plaintiff. And MERS isn't its own independent entity: MERS is privately owned by a number of leading national banks and mortgage processing companies ([identified here](#)) that include [Fannie Mae](#), [Freddie Mac](#), [Bank of America](#), [CitiMortgage](#), [Merrell Lynch](#), and [Wells Fargo](#).

Now, consider this.

### *Private Citizens Seek Claims Against MERS for Due Process Violations in Faulty Foreclosure Actions*

This week, a California man named Jose Gomes has filed a petition for writ of certiorari with the United States Supreme Court, Case No. [11-195](#) styled *Gomes v. Countrywide* ([check docket here](#)), asking that the highest court in the land review lower court decisions in California who have not found that Mr. Gomes was denied his constitutionally protected due process when MERS foreclosed upon his home without the proper paperwork to legally support MERS' authority to do so.

### *States and Counties Consider Claims Against MERS for Unpaid Filing Fees*

Add to that a wave of news stories where budget-strapped jurisdictions are considering all the filing fees that they did not receive when MERS did not file paperwork with the local real property records, and it seems that there will soon be countless other lawsuits filed by places like Dallas County, Texas, as well as [the states of Delaware, Massachusetts, and New York](#).

The Attorneys General of **Delaware**, **Massachusetts**, and **New York** are each investigating MERS, looking into MERS' business practices and whether or not governmental fees due these states were circumvented (and therefore made the basis of claims to be asserted).

The District Attorney of **Dallas County**, Craig Watkins, is telling the media that [he believes millions and millions of dollars in damages have been sustained by Dallas County \(and its taxpayers\) because of MERS' failure](#) to follow traditional Texas filing procedures, including paying established filing fees.

*So, the question becomes: how will those who own MERS (Bank of America, Fannie Mae, Freddie Mac, Wells Fargo, CitiMortgage, and their fellow owners) be affected if MERS is required by the courts to pay for lost filing fees in jurisdictions across the country as well as for private due process violation claims? And if the courts rule that MERS must do this, then what does that do to our precarious financial climate?*