

## **MERSCORP IS VICTORIOUS IN APPELLATE COURTS**

[MERSCORP](#) was victorious in two recent appellate court decisions: one in the Tenth Circuit Court of Appeals in a Wyoming bankruptcy court that rejected the “split the note” theory and one in the Appellate Division of the Fourth Judicial Department in New York that rules a MERS mortgage was valid. In the Wyoming case, [Barney v. Bank of America](#), a bankruptcy trustee argued that a mortgage once assigned to MERS and subsequently assigned to BAC Home Loans was unenforceable because neither MERS nor BAC Home Loans held the note at the time each entity was the mortgagee identified in the local land records, according to MERS.

The Tenth Circuit Court cited a ruling in a previous case which held that “The Trustee has pointed to no Wyoming authority that prohibits the loan originator from agreeing to have someone other than the beneficial owner of the debt hold the mortgage and enforce the debt as its agent. We note that Wyoming has a statute that contemplates conveying real estate to a mortgagee in a representative capacity, which suggests that Wyoming allows original parties to a note and mortgage to name someone other than the noteholder as the mortgagee.”

“We are pleased that the U.S. Court of Appeals for the Tenth District affirmed the Wyoming bankruptcy court’s order,” said MERSCORP Holdings Vice President for Corporate Communications Janis Smith. “This holding is consistent with prior rulings and is another example of unsuccessful reliance on the ‘split the note’ theory.”

The New York Appellate Court overturned a previous decision by a trial court which had declared a MERS mortgage invalid. In the case of [J.P. Morgan Chase Bank v. Koebe](#), a trial court in New York originally denied Chase’s motion for summary judgment to its foreclosure complaint, ruling that the bank lacked standing to foreclose as the assignee of a mortgage for which MERS was the original mortgagee.

Citing an earlier case, the appellate court ruled that the trial court erred in declaring the mortgage invalid and granted the bank’s summary judgment in its foreclosure action.

“We are pleased that the Appellate Court re-affirmed the validity of a MERS mortgage under New York law,” Smith said. “The appellate courts in New York routinely recognize MERS’ role as a valid mortgagee as a nominee for the lender, and also recognize that MERS has legal authority to act on behalf of the lender.”