

MERS PROCEDURE NOT VIOLATION OF ALABAMA LAW

In its recent opinion in [*Deutsche Bank National Trust Company v. Walker County*](#), the Alabama Supreme Court held Alabama **Code § 35-4-50 does not impose a mandatory duty to record assignments of beneficial interests in residential mortgages**. In the underlying action, Walker County brought suit against Deutsche Bank National Trust Company, Mortgage Electronic Registration Systems, Inc. (“MERS”), and CIS Financial Services, Inc., after the Bank allegedly relied on Walker County’s real property recording system, but used MERS to record subsequent transfers of the beneficial interests in residential mortgages.

The County argued that Alabama law, specifically Alabama Code § 35-4-50, required all real property transactions, including mortgage assignments, to be recorded. The County claimed that, because the bank utilized the MERS system rather than the county probate court to record its mortgage assignments, it was violating Alabama law. The trial court agreed with the County and held § 35-4-50 required the Bank to record residential mortgage transfers in the probate court. The trial court’s based its holding on “basic rules of grammar” and the location of commas in the statute.

§ 35-4-50 merely tells you where to file documents that must be recorded but does not impose a recording requirement

On appeal, the Supreme Court of Alabama reversed. The Court emphasized that “prior case law has criticized the strict application of punctuation in interpreting older statutes”—of which § 35-4-50 was one. The Court also considered Alabama cases stating that while “there are certain benefits” from recording certain real property transactions, **“Alabama has no law which requires a mortgagee to record his mortgage.” To the contrary, the Court noted that Alabama law recognizes that a “deed that is unrecorded is good between the grantor and grantee, but is void against bona fide purchasers for value . . . without notice.” Thus, § 35-4-50 does not require subsequent transfers of an interest in a mortgage to be recorded.**

Based on these interpretive rules, the Alabama Supreme Court concluded § 35-4-50 merely provides that a county probate court is the correct location to record conveyances that are otherwise required by law to be recorded, **but does not impose an independent duty to record conveyances.**