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## Our View: Avoiding another mortgage mess

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They did such a good job depressing the housing market and sending the economy into a tailspin, why not trust the banking cabal with keeping track of all property titles?

John O'Brien, the Essex County register of deeds, isn't buying it, and neither should you.

O'Brien, of Lynn, is in the forefront of a national effort to challenge the policies and practices of the Mortgage Electronic Registration Systems Inc. (MERS). The agency was established in 1995 by a group of banking conglomerates including Bank of America, Countrywide Home Loans and Wells Fargo, to keep track of loans issued against property titles — a task previously performed by the public registries of deeds.

In a Nov. 18 letter to Attorney General Martha Coakley, O'Brien alleged that MERS "has failed to pay the proper recording fees required under Massachusetts statute when a lender assigns a mortgage to another entity." And this week Coakley announced that she will join her colleagues in several other states in an investigation to see whether MERS is skirting laws regarding such transactions.

No question, O'Brien and others in his field are concerned about loss of revenue. There's a fee that's supposed to be paid whenever there's a change in ownership or a transfer of interest in a property and O'Brien estimates that the loss to the commonwealth as a result of these transactions being recorded in-house rather than through a public entity like his, has amounted to hundreds of thousands of dollars.

The banking industry contends that MERS has made the recording of such instruments easier and cheaper to track and thus reduced the cost of loans to the consumer. But this argument is belied by the many questions that have been raised over the cost and legality of home foreclosures in recent years.

There's also the issue of fairness.

According to O'Brien: "Every day hard-working people come into the Registry (located at Salem's Shetland Park) to record their documents, and they pay the proper fees. It troubles me greatly that these major lenders may have devised a scheme to avoid paying what the average citizen is legally required to pay."

In a memo titled "The Big Lie: MERS Mortgages in Massachusetts," Nantucket lawyer Jamie Ranney contends, "By effectively eliminating the transparency required on the public land records for the disclosure of encumbrances on real property in Massachusetts, MERS mortgages have sown massive confusion, serious incidences of fraud and perhaps billions of dollars of liabilities into a land recording system that — although perhaps ancient and out-dated in many respects — has consistently served the fundamental purpose(s) for

which it was formed: to promote transparency as to ownership interests in land and to provide 'actual notice' to parties reviewing the public land records of the current ownership and existence of encumbrances on real property."

Ranney, whose clients includes several dozen homeowners whose properties are in foreclosure, asserts that the MERS recordings are not valid in Massachusetts.

With more than 66 million mortgages in its database, some say MERS is too big too fail. Funny, that's what they said about the banks that control the agency.

States, including Massachusetts, would do well to act now before we find ourselves staring at another big industry bailout.