Firm may skirt millions in property fees

By Jenifer B. McKim

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Attorney General Martha Coakley is trying to determine whether a lender-created company that tracks mortgage loan data has failed to pay millions of dollars in property recording fees in Massachusetts.

Coakley is taking aim at the little-known but powerful Reston, Va., company whose members include Bank of America Corp., JPMorgan Chase, and other major lenders.

The company, Mortgage Electronic Registration Systems Inc., oversees a database of about 31 million mortgages, about half of the active loans in the United States.

As concern about foreclosure practices mounts across the country, Mortgage Electronic Registration Systems is increasingly being questioned by regulators, lawyers, and housing advocates about the way it operates.

Essex County's register of deeds, John L. O'Brien Jr., last month asked Coakley to investigate the company, known as MERS. He said that by using its own database for property transfers, MERS does not pay recording fees or disclose the transactions, as Massachusetts law requires.

O'Brien estimated that in Essex County alone, $10 million was lost over the past decade because MERS failed to pay a $75 fee each time a mortgage was transferred between lenders.

"They created their own registry of deeds," he said. "They have to record these assignments. The taxpayers deserve these fees."

A spokeswoman for Coakley said her office is looking at the issues O'Brien raised.

Critics of the company say that in addition to skirting fees, it has illegally foreclosed upon some homeowners and helped to obscure the identities of mortgage holders.

"The MERS problem is part of a broken mortgage system," said Ira Rheingold, executive director of National Association of Consumer Advocates, a Washington, D.C., nonprofit whose goal is to protect consumers from unfair business practices. "It is about the industry being sloppy and cheap."

MERS officials say the company, started in 1995, aims to improve the unwieldy mortgage process and reduce costs by eliminating the need to record every loan transfer. They maintain the system helps county governments by reducing workloads.

"Fees are paid for a service performed, and if a document is eliminated because it is no longer necessary, no fee is due because there is nothing to record," reads a statement on the MERS website.

The company has about 50 employees and is funded by its 3,000 members.

Traditionally, after a bank grants a mortgage loan to a borrower, the transaction is recorded at a county registry of deeds. If the lender sells the mortgage, that transaction is also recorded.

As large institutional investors began to trade loans at a rapid-fire pace, MERS was created to replace the formal recording process. By establishing itself as the official holder of loans, the company argues, property transfers between banks technically remain within MERS and thus do not have to be recorded every time one changes hands.

But questions about that setup are mounting.

In April, the State of Tennessee sued MERS, alleging it had created a "scheme to deprive county and state governments of revenue." In August, the Maine Supreme Judicial Court concluded the company did not have standing to foreclose upon a family because it was not the true mortgage holder, as defined by state law. In November, acting Comptroller of the Currency John Walsh said federal regulators were examining whether the system provides a way for lenders to cut corners on crucial paperwork.

R.K. Arnold, chief executive of MERS, said it relies on members' employees, called certifying officers, to carry out foreclosures. Earlier this year, he said, the company determined that some officers were "robosigners" — bank employees who signed thousands of documents without reviewing them.

"We suspended their authority until they could be retrained and retested," Arnold said. "We are asking our members to provide us with specific plans outlining how they intend to prevent such actions."

Christopher Peterson, a law professor at the University of Utah, said Tennessee is just one of several states contesting the loss of recording fees, and that more suits are in the works. That could potentially mean billions of dollars in penalties for the company and its bank members.

"MERS is a cause and a symptom of the document problems that are creating so many headaches for the lending industry," said Peterson, a specialist in mortgage issues. "With a motto like 'Process loans, not paperwork,' should we be surprised they are having a hard time bringing together the paperwork to complete foreclosures?"

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