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Mass Register John O'Brien's Presentation Draws Crowd of Recorders in Atlantic City

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Registers, registrars and recorders from across the country gathered in Atlantic City on Tuesday for the Annual Conference of The International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT).

Several of those attending made the trip specifically to see Massachusetts Register John O'Brien's presentation on his findings of massive fraud he and Marie McDonnell of [McDonnell Property Analytics](#), uncovered at the Massachusetts Southern Essex County Registry of Deeds

According to O'Brien, McDonnell discovered that 75 percent of the assignments in the registry are fraudulent.

The audit examined assignments of mortgage recorded in the Essex Southern District Registry of Deeds issued to and from JPMorgan Chase Bank, Wells Fargo Bank, and Bank of America during 2010. In total, 565 assignments related to 473 unique mortgages were analyzed.

McDonnell's Report includes the following key findings:

- Only 16% of assignments of mortgage are valid
- 75% of assignments of mortgage are invalid.
- 9% of assignments of mortgage are questionable
- 27% of the invalid assignments are fraudulent, 35% are "robo-signed" and 10% violate the Massachusetts Mortgage Fraud Statute.
- The identity of financial institutions that are current owners of the mortgages could only be determined for 287 out of 473 (60%)
- There are 683 missing assignments for the 287 traced mortgages, representing approximately 180,000 in lost recording fees per 1,000 mortgages whose current ownership can be traced.

You can Download the PDF of the report at http://www.homepreservationnetwork.com/cat_view/132-press-releases-and-memos or request a copy at www.mcdonnellanalytics.com

"My registry is a crime scene as evidenced by this forensic examination," O'Brien said. "This evidence has made it clear to me that the only way we can ever determine the total economic loss and the amount damage done to the taxpayers is by conducting a full forensic audit of all registry of deeds in Massachusetts. I suspect that at the end of the day we are going to find that the taxpayers have been bilked in this state alone of over 400 million dollars not including the accrued interest plus costs and penalties. "

After the presentation O'Brien was inundated by nearly 150 recorders asking questions and wanting to conduct investigations of their own.

"I'm a hard person to please," said Kevin Harvey, O'Brien's first Assistant. "This was nothing short of extraordinary."

Jeff Thigpen, the register of deeds for Guilford County, North Carolina is another

early trail blazer in this effort. While he did not attend the conference, I spoke with him on Wednesday.

"What [O'Brien] is pointing out in a fundamental way is that the assignments are fraudulent and people need to look at the findings. It goes to the heart of where we are in all this, Thigpen said, "These institutions were once transparent and trusted, we now have a system that stacks the deck in favor of the financial services industry."

The report, along with the overwhelming response to it, comes in the midst of [settlement talks with banks by the 50 attorney's general](#). A settlement that to many homeowner advocates is unacceptable and premature based on how little is actually known about the overall depth and impact of the fraud.

New York Attorney General Eric Schneiderman is expected to lead opposition to what he called a "quick, cheap settlement" of the 50-state investigation into foreclosure practices.

Schneiderman launched his own investigation in April and has found the problem is much deeper. He said he was "stunned" to find the multi-state probe so lacking that no documents or witness depositions had been obtained.

"We have no leverage," Schneiderman said in an interview with the [Democrat and Chronicle](#).

O'Brien's report could represent the catalyst to gaining that leverage.

Earlier this month O'Brien vowed [not to record fraudulent documents](#), so the banks started submitting replacement documents, including five from Bank of America, all with new signature and notaries. An obvious and sloppy whitewash of the documents O'Brien initially refused.

"These lenders chose not to sign my affidavit, but rather to submit completely new documents," O'Brien said. "I believe the Bank's actions speak louder than words and show their consciousness of guilt."

O'Brien also told homeowners in his district to check the [records at his website](#) to see if their home mortgage documentation has been robo-signed. He's facilitating consumer protection complaints through the Massachusetts AG. He has provided letters that homeowners can print out and send to their servicers, demanding their

full chain of title pursuant to federal law.

In an [article today in the Boston Herald](#) Edward Bloom of the Massachusetts Real Estate Bar Association said it's not clear that robo-signed documents are invalid -- or that O'Brien can legally reject them.

"Mr. O'Brien is grinding the real estate business to a halt and he doesn't have any right to do that," Bloom said.

But according to Nantucket attorney Jamie Ranney, [who points out in a 15 page memo citing Massachusetts law](#), O'Brien not only has every right to refuse fraudulent assignments, he has a duty to his constituents to do so.

It is without question that a Register of Deeds has an important and fiduciary relationship and responsibility -- especially in the Commonwealth where his position is elected -- to all of his constituents, as well as to the public at large, all of whom rely and who should be able to rely on the Register's efforts, supervision, and oversight in assuring, maintaining and promoting the integrity, transparency, accuracy, and consistency of a County's land records.

The Register's work and supervision of his registry most often revolves around tasks and responsibilities that are generally ministerial in nature. The Register is typically concerned with the daily task of recording of legal document(s) and/or instrument(s) affecting real property where such document(s) and/or instrument(s) are properly presented to the registry for recording on the public land records.

However, the Register's fiduciary duty goes well beyond these usual ministerial acts in circumstances where the Register has actual knowledge or a subjective good-faith belief/basis for believing that document(s) and/or instrument(s) being presented for recording or registration in the registry for which he has responsibility are fraudulent or otherwise not executed or acknowledged under applicable law. In such cases the Register may lawfully refuse to record such document(s) and/or instrument(s).

O'Brien is calling on the Massachusetts Attorney General to look into his finding and many of the attendees at last weeks conference are planning to do the same.

In a press release Wednesday, O'Brien said:

Once again I am asking Attorney General Martha Coakley and the other state Attorney's General to follow the lead of New York Attorney General Eric Schneiderman and stop any settlement talks with the banks. The results of this report are only for my registry, but I can assure you that this type of criminal fraud is rampant across the nation. This leaves me to question why anyone would consider settling with these banks until we know the full extent of the damage that they have caused to the homeowners chain of title across this country and the amount of money they have bilked the taxpayers for their failure to pay recording fees.

Fortunately, as [Georgetown Law Professor Adam Levetin points out in a recent piece at Credit Slips](#) Massachusetts AG Martha Coakley has no problem going after banks and mortgage servicers. In fact Levetin says, "These settlements have received very little notice in the press, but I think they provide a real template for future AG settlements and are worth examining."

As with any settlement, one has to be a bit a skeptical when multi-billion dollar industries are willing to part with substantial chunks of change. And since the settlement with the AGs looks like it would release lenders from future claims and hinder law suits on the part of the individual states, O' Brien's and Thigpen's efforts in raising the awareness of this to the other recorders across the country couldn't come at a better time.

Much like the [\\$8.5 billion settlement with investors Bank of America is willing to part with](#) that doesn't really settle anything, whatever amount they're willing to pay the AGs doesn't look like it's going to come near what's really owed to the counties, states, and certainly not to the American people.

"I am stunned and appalled by the fact that America's biggest banks have played fast and loose with people's biggest asset -- their homes. This is disgusting, and this is criminal," O'Brien said.

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