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Business: Register of Deeds O'Brien takes on big banks **B1**

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MORTGAGE CRISIS

ITEM PHOTO / REBA M. SALDANHA

Southern Essex Register of Deeds and Lynn native John L. O'Brien is shown Monday at the Registry of Deeds in Salem's Shetland Park. O'Brien claims the nation's largest banks conspired to avoid paying millions in recording fees at public registries of deeds throughout the nation.

O'Brien takes on big banks

Claims Southern Essex Registry of Deeds cheated out of millions

By Sean Leonard
The Daily Item

Southern Essex Register of Deeds John L. O'Brien has, since last fall, been going after the nation's largest banks like an attack dog that won't loosen its bite on its target.

The 59-year-old Lynn native claims the nation's largest lenders have cheated the Southern Registry out of upward of $22 million in mortgage assignment recording fees and billions from public deeds registries throughout the country. And he's hardly stewing over this quietly.

O'Brien this month requested permission from state Treasurer Steve Grossman, and is awaiting the treasurer's response, to pull all of the Southern Registry's revenue — more than $25 million annually — out of Bank of America and into a bank not affiliated with the Virginia-based Mortgage Electronic Registration Systems Inc. (MERS).

Last November, O'Brien sent a letter to state Attorney General Martha Coakley urging her office to investigate MERS for what O'Brien contends is the intentional hiding of mortgage transfers to avoid paying local assignment recording fees, which he says has corrupted the chain of title for potentially tens of thousands of properties.

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'I've been here 34 years and this is the first time during my tenure that if someone comes into my office to ask who owns their mortgage, I can't give them an honest answer. The chain of title has been broken.'

John L. O'Brien
Southern Essex Register of Deeds

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MERS is a private corporation established by a consortium of big banks, including Bank of America, in the late 1990s to act as a mortgage title holding company, or mortgagee, on all properties acquired by its member banks.

As O'Brien sees it, MERS was created solely as a vehicle for the banks to avoid paying public mortgage assignment recording fees; the fee is $75 at the Southern Registry, $20 of which is earmarked for community preservation in cities and towns and another $5 for computer system upgrades at the registry.

With the rapid-fire sale of bundled mortgages as securities in the decade leading up to the recession and housing market bust, many homeowners — including many foreclosed upon and many in the process of foreclosure — were left in the dark as to who held their mortgage.

"I've been here 34 years and this is the first time during my tenure that if someone comes into my office to ask who owns their mortgage, I can't give them an honest answer," O'Brien said Friday. "The chain of title has been

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broken ... That's why I'm taking a lead on this."

A spokeswoman for MERS, contacted by phone on Monday for comment, issued an email statement to the Item from Janis L. Smith, vice president of corporate communications for MERSCORP Inc.

"Mr. O'Brien's premise is unfounded," Smith wrote. "As we have said before, all MERS mortgages are recorded in the public land records and MERS members pay recording fees when the mortgage is recorded ... The use of MERS is in compliance with the purpose and intent of the state recording acts."

A more lengthy response by MERS to the letter O'Brien wrote to Coakley was posted on MERS' company Web site last December, which states, "MERS pays recording fees when the mortgage is recorded. 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. In fact, MERS greatly reduces the workload of county recorders, resulting in lower operating expenses for the county recorder's office."

The statement goes on to explain that if a mortgage is transferred from one MERS-member bank to another, MERS continues as the mortgagee and thus there is no need for a public mortgage assignment recording.

O'Brien, meanwhile, is also vocal on alleged fraudulent foreclosure practices by banks, proof of which he said he has at the Southern Registry.

O'Brien referred to a 60 Minutes segment the CBS news show aired on April 1, "Mortgage paperwork mess: Next housing shock?" in which it showed how a forgery mill was set up in Georgia to generate fraudulent paperwork to replace lost mortgage transfer documents as a means to establish the title holder. The mill, Doc X, hired people off the street to produce fraudulent paperwork for major banks including Wells Fargo, HSBC, Deutche Bank, Citibank, U.S. Bank and Bank of America, 60 Minutes reported. And tens of thousands of those documents had the signature of Linda Green, who the documents identify as a bank executive at 20 or more banks, yet 60 Minutes located and identified as a former auto parts store clerk in rural Georgia.

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Geoff Greenwood
Spokesman for Iowa Attorney General Tom Miller

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O'Brien said since the 60 Minutes report, he's discovered 286 documents on foreclosed properties in Essex County with the name Linda Green. He has forwarded copies of these to state and federal authorities, he said.

Meanwhile, attorneys general in all 50 states, along with a number of federal agencies including the FDIC, are investigating this so-called "robo-signing" of foreclosure documents for the nation's biggest banks.

Iowa Attorney General Tom Miller has been tasked by his colleagues to lead the probe and this week O'Brien and Gilford County, N.C. Register of Deeds Jeff Thigpen publicly asked Miller to halt settlement negotiations with the banks, following up on a letter they sent to Miller in early April asking the same. They also demand that public registers of deeds have a seat at the table in negotiating with the banks.

O'Brien said he is leery that a settlement will end up being pennies on the dollar.

"How can the consumers be fully protected when the extent of the damages are still unknown?" he asked. "We need to bring our knowledge of the land recordation system and consumer's problematic chain of title issues to the table."

O'Brein wants MERS to be investigated as part of the probe into the big banks' so-called document robo-signing practices and he said the government should halt foreclosures in any case where it's unclear who holds the title.

Geoff Greenwood, spokesman for Iowa Attorney General Miller's office, told the Item Monday that MERS is, at least to date, not part of the probe spearheaded by his boss.

The investigation, he said, was launched last October into the foreclosure practices of Bank of America, Wells Fargo, Citibank, JP Morgan Chase and Ally. All of those banks are members of MERS.

"Together these banks control 59 percent of the (mortgage) market," Greenwood said. "We're working on this case every day and we are attempting to settle this without going through litigation. We believe, because there is such a broad impact on homeowners, these businesses and investors, and on the housing market, it's important that we seek to resolve this as soon as possible."

Greenwood said there has been no dollar amount discussed about concerning a possible settlement with the five banks.

"We have many concerns about past practices and we are looking for a fundamental change in how the banks handle these cases," he said. "We are attempting to make dysfunctional system functional."