

# John O'Brien: Taking on Bank of America

## *John vs. Goliath*

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The registry of deeds is supposed to be a sleepy place where you go to record your mortgage or look up how much your neighbors paid for their homes.



But at the Southern Essex District Registry of Deeds in Salem, haymakers are being thrown in a bare knuckles brawl featuring Register John O'Brien in one corner and Bank of America Corp. and other large banks in the other.

In O'Brien's mind, big U.S. banks created a bogeyman called the Mortgage Electronic Registration Systems to dodge paying recording fees when a mortgage is assigned. Early estimates indicate Massachusetts taxpayers have been deprived of anywhere from \$200 million to \$400 million-plus in lost revenue. O'Brien says his office alone has lost more than \$22 million, but he calls that a conservative estimate.

"Taxpayers have been cheated out of revenue and denied the right to know who owns their mortgage," O'Brien said during a recent interview. "... MERS should absolutely be out of business."

A MERS spokeswoman said O'Brien's premise is unfounded.

O'Brien, the pride of Lynn, came out slugging recently when he asked and received permission from State Treasurer Steve Grossman to yank about \$25 million in deposits from Bank of America. He's moving that money to Medford's Century Bank and Trust, a non-MERS bank. Many community banks in Massachusetts belong to MERS, whose largest shareholders include Fannie Mae, Freddie Mac. Bank of America owns a small stake in MERS.

"This is not a discussion we're going to have with Mr. O'Brien through the media," Bank of America spokesman T.J. Crawford said.

O'Brien, meanwhile, is encouraging registers throughout the state and the country to pull their deposits from MERS-related banks. He also has a forensic auditor examining mortgage assignments to help determine the amount of lost revenue for his office.

Nationwide, the estimate for MERS-related penalties on unpaid mortgage assignment fees has been pegged at tens of billions of dollars.

O'Brien turns 60 in August. He has been the register for Southern Essex County since 1977. He was only 19 when he entered his first political battle. He banded together with other Lynn residents to block a connector road proposed for the Lynn Woods Reservation. At the ripe old age of 20, he became a member of Lynn's city council.

MERS has been around for more than a decade, but the housing and foreclosure crisis has put the bank-created venture in the spotlight as Americans digest the concept of robo-signing and all-around shoddy mortgage paperwork produced by lenders.

When banks teamed up with Wall Street to bundle thousands of mortgages into securities for institutional investors, MERS served a ready purpose. Its motto is simple, "Process loans, not paperwork."

When a mortgage is originated, MERS records it for the banks and the local registry of deeds gets a fee. The dispute, however, centers on whether the banks or MERS should pay a fee each time that original mortgage is reassigned as a result of the securitization process. MERS' website plainly states it eliminates the need to prepare and record assignments when trading residential and commercial mortgage loans.

"Any loan registered on the MERS System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times servicing is traded," according to its website.

Mortgages can be sold several times over, but MERS says no fee is required each time because if no service is needed, then no fee is appropriate. In fact, MERS officials have said the organization has saved billions of dollars in recording costs.

MERS spokeswoman Janis Smith said MERS has filled an information void in the county recording system.

But O'Brien will have none of that. He said MERS has created a shadow registry system, primarily to sidestep recording costs. As a result, he says the chain of custody for titles has been disrupted. He points out that Salem is home to the oldest continuous land records in the country.

"The banks don't have the right to say who and who doesn't have to pay fees," O'Brien said.

One of the next developments to watch in the dispute is whether Massachusetts Attorney General Martha Coakley files a lawsuit against MERS.

Her office has been weighing the matter at the urging of O'Brien. During an interview with the Boston Business Journal, O'Brien also questioned whether the absence of recording assignments gave rise to securities fraud.