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Register targets Bank of America on fees, CPA funds

By Times Staff

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There are almost 150,000 mortgages on record at the Southern Essex County Registry of Deeds with cloudy ownership due in large part to an alleged scheme by a mortgage transfer company to avoid paying millions of dollars in fees, officials say.

And local Register of Deeds John O'Brien, who estimates Cape Ann's four communities alone have been shortchanged some \$400,000 in potential revenue, is calling for the state to pull all of its accounts out of Bank of America due to its alleged role in the scheme.

The transfer company — Mortgage Electronic Registration System, which is partly owned by Bank of America — transferred thousands of mortgages in recent years without paying state-mandated transfer fees, according to O'Brien, the Southern Essex County Register of Deeds.

O'Brien, whose Salem office oversees mortgages for most of southern Essex County, including all of Cape Ann, said the practice has been known about for some time, but came into sharper focus with a "60 Minutes" broadcast Sunday night highlighting some of the problems associated with MERS and Bank of America.

Kevin Harvey, the county's First Assistant Register, said that it's not just a matter of unpaid fees at stake.

There are 148,000 mortgages on record at the Southern Essex County Registry of Deeds with cloudy ownership, Harvey said — in large part because of the way MERS documented, or failed to document, the transfers.

"We have a forensic mortgage auditor looking at their records," Harvey said. "Once we have that, we may find that their records aren't accurate."

"There may be fraudulent assignments, and a significant amount of assignments that are not filed," Harvey added. "They'd file the original transfer, but after that, they never recorded the assignments because they didn't want anybody to know what they were doing behind the scenes."

O'Brien estimates that the county as a whole has lost more than \$22 million in unpaid mortgage transfer fees, and maybe much more.

That money goes into the state general fund, and is also used to make payments to communities that have adopted the Community Preservation Act — including all of the communities on Cape Ann.

O'Brien's office has estimated that the scheme has cost Gloucester more than \$244,440 in potential CPA funds, while Rockport has been denied \$64,400; Manchester has lost \$52,760, and Essex never saw \$33,800.

O'Brien said that the money taken in from each \$75 mortgage transfer fee is deposited into a Bank of America account.

The Southern Essex County Registry of Deeds alone deposits \$25 million a year into that account, while the 12 other registry districts also deposit to the same account.

O'Brien said the state should stop doing business with Bank of America until the company cleans up its act.

"Perhaps when these lenders lose millions of dollars in deposits, they may begin to understand the seriousness of their actions," he said. "It seems to me that their business model, which has been referred to as 'fees for thee, not for me,' needs to be abolished."

While O'Brien is calling for all deposits to be withdrawn from Bank of America, a spokesman for state Treasurer Stephen Grossman said hundreds of millions of dollars have already been withdrawn from the big bank.

"Former Treasurer Tim Cahill moved \$200 million out of Bank of America in a dispute over credit card fees," said Treasury spokesman Al Gordon. "There's not much money left to move."

Further, Gordon said, Grossman is keeping his campaign promise to rebid all of the banking contracts the state has with its vendors.

"In the interest of transparency and open government, he promised he'd put all contracts

up to bid, and core banking services are part of that," he said.