

GloucesterTimes.com, Gloucester, MA

March 10, 2011

City, towns lose \$400k for CPA

By Jonathan L'Ecuier
Staff Writer

—

Essex County's register of deeds says that Gloucester and Cape Ann's three towns have been shortchanged nearly \$400,000 in money that should have been earmarked for their Community Preservation Act funds, thanks to a business set up by major banks and mortgage lenders to track of millions of mortgages across the country and bypass the system.

Register of Deeds John O'Brien says the Mortgage Electronic Registration System, or MERS, has cheated taxpayers out of at least \$22 million across Essex County alone. He is asking for the help of the attorney general's office to recover that money — and upward of \$200 million he believes is owed to county registries across the state.

The Community Preservation Act pairs revenue from a local property tax surcharge with state matching funds that come from transaction fees at the Registry of Deeds.

According to estimates, the mortgage scheme costs Gloucester more than \$244,440 in CPA funds, O'Brien says, while Rockport has been denied \$64,400; Manchester has lost \$52,760, and Essex never saw \$33,800.

When a property is bought, sold, mortgaged or refinanced, that transaction is supposed to be recorded at the county registry of deeds. Each time that mortgage is transferred or "assigned" to a new holder, whether it's a bank or, say, an investment fund, there's a \$75 fee.

Major banks and mortgage companies who granted mortgages to homebuyers would record the initial transaction. But then those mortgages would often be sold off, sometimes two, three or four times, to other banks or investors, usually as part of a pool.

Those sales of the mortgages would not be reported to the registry; instead, MERS would keep tabs on the mortgage, essentially creating a private registry and avoiding the fees.

O'Brien, who said he is committed to pursuing MERS, and its lender members — including JP Morgan Chase, Bank of America and CitiMortgage — for failing to pay recording fees, acknowledged that \$20 of the \$75 fee for an assignment should have been deposited into each Cape Ann community's CPA fund.

"I know that this important act provides communities such as Gloucester and Rockport with funds to preserve open space and historical sites along with creating affordable housing and recreational facilities," O'Brien said in a prepared statement. "The fact that these banking conglomerates have created a scheme which has seriously damaged the integrity of the land recordation system in Massachusetts and the other 49 states, while at the same time thumbing their nose at the laws that everyone else must follow, is truly reprehensible."

After a series of court rulings in foreclosure cases found that MERS does not have the authority to do that, MERS issued a memo last month ordering employees to stop using the MERS name in foreclosure proceedings.

MERS also acknowledged that transfers or assignments of mortgages should be recorded.

First Assistant Register Kevin Harvey said that, while the big national banks and mortgage lenders benefited from MERS, smaller community banks continued paying the fees.

Harvey said that, aside from the avoidance of fees, MERS created a system in which homeowners had no idea who actually held the mortgages on their property.

O'Brien arrived at his \$22 million countywide figure by estimating that, if each of the 148,663 MERS mortgages recorded at the registry since 1998 had been transferred just twice (something O'Brien calls a "conservative" estimate), it would have generated \$22.2 million in fees, just in southern and eastern Essex County.

"People have a right to know who owns their mortgage, and the taxpayers have a right to be reimbursed for the fees that should have been paid," O'Brien said. "MERS' deliberate attempt to keep their actions secret and to deprive communities the funds necessary to continue the great work of the CPA is something that I will not tolerate."

O'Brien, who wrote this past week to Mayor Carolyn Kirk and Rockport Town Administrator Linda Sanders about the loss of funds, has requested that Attorney

General Martha Coakley institute a lawsuit against MERS to recoup the money.

Amie Breton, a spokeswoman for Attorney General Martha Coakley, has said the office has received O'Brien's request and is looking into it.

Meanwhile, MERS has denied any wrongdoing with regard to its state recording practices.

"The use of MERS is in compliance with the purpose and intent of the state recording acts," Karmela Lejarde, spokeswoman for MERS, said in a prepared statement. "MERS intends to fully defend itself against these unfounded allegations.

"It is not the case that recording fees are somehow owed or outstanding. All MERS mortgages are recorded in the public land records, and MERS members pay recording fees when the mortgage is recorded," Lejarde said. "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."

Jonathan L'Ecuyer can be reached at 978-283-7000 x 3451 or jlecuyer@gloucestertimes.com.