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Official slams a 'scheme' to avoid paying mortgage fees

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SALEM — A business set up by major banks and mortgage lenders to keep track of millions of mortgages across the country as they were bought and sold has cheated taxpayers out of at least $22 million in Essex County alone, one local official says.

Now, John O'Brien, who is the Essex South register of deeds, is asking for the help of the attorney general to recover that money — and upward of $200 million he believes is owed to county registries across the state.

The business, Mortgage Electronic Registration Systems, usually known as MERS, was described by O'Brien as conducting "one of the greediest schemes" he's come across.

But a series of recent court rulings around the country could be the beginning of the end of the company, which last week ordered its employees to stop initiating new foreclosures in its name.

Here's how it works: 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.

During foreclosures, MERS would step in and act as an agent for the owner of the mortgage.

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 week ordering employees to stop using the MERS name in foreclosure proceedings.

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

"MERS has now finally acknowledged that their business model was flawed," O'Brien said.

"If they had followed the law, the public would know who was buying and selling their mortgage, and it would have been an open, honest and transparent process."

Instead, they created a "for profit" registry of their own to avoid paying those registration fees.

As a result, the public was left largely in the dark as an entire industry of buying and selling mortgages was built and then began to collapse.

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 came to his $22 million 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.

Harvey said that while it's doubtful that anyone's going to be getting a check for $22 million, it's possible that the most recent acknowledgements by MERS could result in a settlement with the lenders if legal action is pursued.

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

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