

Thursday, February 24, 2011, 11:24am

Essex Register: MERS May Owe Mass. \$200M

By Colleen M. Sullivan
Banker & Tradesman Staff Writer

South Essex Register of Deeds John O'Brien has accused the Mortgage Electronic Registration Service (MERS) of defrauding taxpayers "out of \$22,299,450 in Southern Essex County alone," and said the firm may owe more than \$200 million to registries of deeds across the commonwealth.

O'Brien has submitted his estimates to Attorney General Martha Coakley's office in hopes of getting some of the money back through the courts. O'Brien has been pushing for the attorney general to investigate the firm's practices since November.

The \$22 million figure is based on the register's estimate that, based on MERS's reported practices, the 148,663 MERS-registered documents filed in South Essex County since 1998 would each have been reassigned at least twice over the life of the loan. Since South Essex is one of 21 registries of deeds throughout the commonwealth, O'Brien's office estimates that the statewide figure in lost fees may be north of \$200 million.

MERS was formed by a consortium of large banks and Fannie and Freddie in the late 1990s as a private deed registry which would enable them to transfer notes among themselves without having to publicly register each transfer, this saving the member firms millions in registry fees.

"When Wall Street and these major lenders joined together in creating MERS, they plunged us into a housing nightmare with little or no regard for their actions," O'Brien said in a statement. "It's obvious that their only motivation was to manufacture huge profits off the backs of homeowners and taxpayers. They should all be ashamed of themselves and step up to the plate and do the honorable thing and make the taxpayers' whole."

"We've followed this whole MERS thing for a number of years, and we've always been concerned, not only money but for the impact on title," said John Buckley, Jr., register of deeds for Plymouth County. Buckley said his office also plans to send a letter to the attorney general to spur an investigation of MERS.

Kevin Harvey, first assistant register in South Essex also said that O'Brien's office had been in touch with the registers in other Massachusetts counties they were taking the allegations against MERS seriously.

Amie Breton, a spokeswoman for Coakley's office, said the matter is under review. Breton declined to state whether the attorney general's office agreed with the estimate of fees lost put forth by O'Brien.

In response to O'Brien's claims, MERS released a statement, saying in part: "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. We believe it is wrong and unethical to seek money for services that were never rendered, and in fact, MERS greatly reduces the workload of county recorders, resulting in lower operating expenses for the county recorder's office."

MERS' role in the recording process has been under attack in other venues, with foreclosure defense attorneys arguing that by removing recording from the public record, the firm has created problems with the chain of title for many properties. While some state and federal courts have upheld the firm's right to foreclose, others have disputed it. Last week, MERS moved to change its rules requesting that its members cease to initiate foreclosures in its name. More than half of U.S. mortgages are registered in the MERS system.