

MERS may owe commonwealth \$200 million

Phillip Bantz 02-23-2011

The Mortgage Electronic Registration System, better known as MERS, perhaps one of the most recognizable players in the foreclosure mess, may owe the commonwealth hundreds of millions of dollars.

The revelation surfaced following an investigation by John O'Brien, register of deeds in Southern Essex County. O'Brien and his staff found that the Salem registry alone had recorded more than 148,600 MERS mortgages since 1998, and that each mortgage had been assigned to other entities at least twice.

MERS was supposed to pay a \$75 recording fee for each assignment, but that never happened, according to O'Brien.

He believes Southern Essex County lost more than \$22 million in fees because of MERS's misdeeds. And that's a conservative estimate, said Kevin R. Harvey, first assistant register in South Essex.

In some cases, MERS may have assigned mortgages to up to four other entities, based on a review from a nationally-renowned MERS expert who assisted in the investigation, Harvey said.

Statewide, the loss could total more than \$200 million.

O'Brien said in a statement that MERS is "one of the greediest schemes perpetrated on the American people." He has notified Attorney General Martha Coakley, who has agreed to investigate, Harvey said.

"We feel very confident that Attorney General Coakley is someone who is an advocate for the consumer," he said. "We're comfortable with her looking into this and hopefully she will be going after this aggressively in the future."

Meanwhile, MERS recently announced several major policy changes. The electronic clearinghouse said it will now be recording assignments in the county land records throughout the country and that it will no longer foreclose under its name.

"I am pleasantly surprised that MERS appears to recognize at long last that what they're doing is illegal," said Northampton foreclosure attorney Michael Pill of Green, Miles, Lipton & Fitz-Gibbon.

Pill suspects that MERS lacks the assets to pay the recording fees it allegedly owes to the commonwealth and, most likely, registries throughout the country. But he said the mortgage lenders behind MERS have very deep pockets.

"MERS was organized by these large lenders and was never more than a front," he said. "My position is that the burden for illegal conduct should fall on those who are guilty of the relevant misconduct. That would be the lenders."

—Phillip Bantz