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Register of Deeds takes on Bank of America over mortgage fees

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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.

The 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 John O'Brien, the Southern Essex County Register of Deeds.

Yesterday, O'Brien called on the Massachusetts treasurer to pull all of the state's money out of Bank of America because of the bank's connection to the alleged scheme.

O'Brien, whose Salem office oversees mortgages for most of southern Essex County, 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, 1st Assistant Register, said that it's not just unpaid fees at stake. There are 148,000 mortgages on record at the Southern Essex County Registry of Deeds with cloudy ownership 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 yesterday. "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. 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 has lost over \$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, such as Newburyport.

O'Brien said that the money taken in from each \$75 mortgage transfer fee is deposited into a Bank of America account. Southern Essex County Registry of Deeds alone deposits \$25 million a year into that account. The 12 other registry districts also make deposits into that 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 cards 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.

That may not be enough for O'Brien, who is also calling for an investigation by the attorney general.

O'Brien and others have called for state deposits to be put into accounts held by local and regional banks not affiliated with MERS.

Calls to Bank of America and MERS were not immediately returned.

The state attorney general did not confirm or deny the existence of any investigation into either MERS or Bank of America.