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AG takes up O'Brien's fight against big banks

By SEAN LEONARD

THE DAILY ITEM

SALEM — Attorney General Martha Coakley on Monday informed Lynn native and Southern Essex Register of Deeds John O'Brien that her office is investigating alleged fraudulent foreclosure practices by the nation's major lenders which, O'Brien maintains, has tainted the chain of title to thousands of properties and cheated public deeds registries in Massachusetts out of hundreds of millions in recording fees.

O'Brien has been on a personal crusade against the lenders — and the Reston, Va.-based Mortgage Electronic Registration Systems Corp. (MERS) — since last October, and urged Coakley in a July 8 letter to investigate and not to sign off on any multi-state out-of-court settlement with the banks until a thorough investigation reveals the extent of damages.

In a letter to O'Brien Monday, Coakley wrote, "We are currently investigating creditor misconduct in connection with unlawful foreclosures, including failure to establish the right to start a foreclosure as well as filing false or misleading documents with registries in the Commonwealth. We have focused particularly on creditors' reliance on MERS and whether MERS conforms to the requirements of Massachusetts law, in the context of foreclosures and otherwise."

She continued, "In the next week, we plan to send civil investigative demands (CID) to Registers in order to gather critical information to our investigation and appreciate your continuing cooperation in this process."

Coakley noted in the letter she plans to meet with O'Brien and

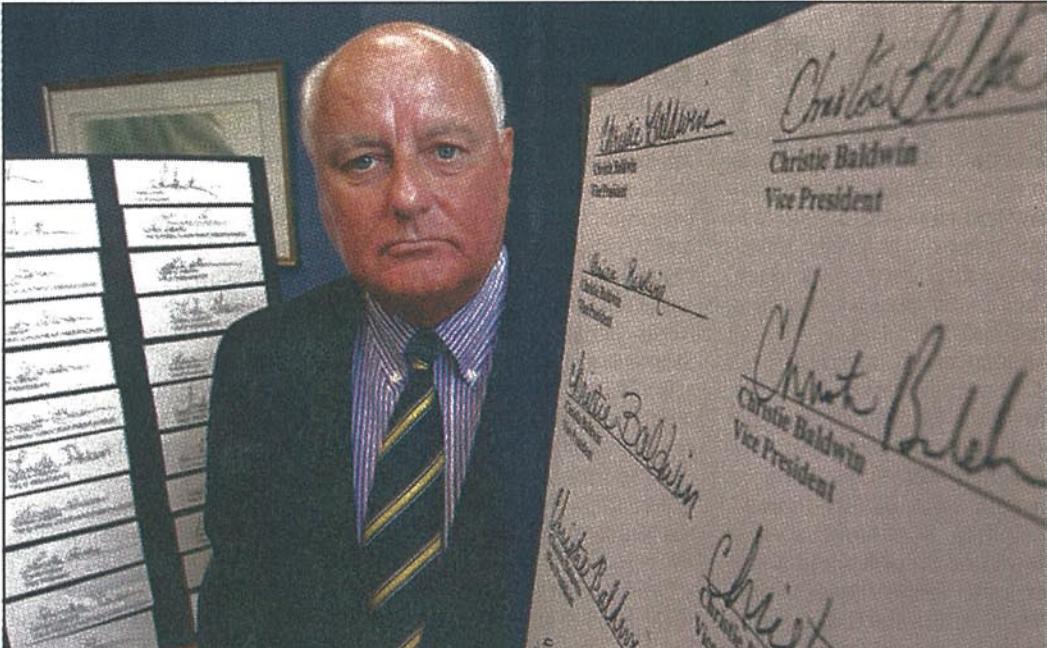


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Southern Essex Register of Deeds John O'Brien stands near copies of robo-signed signatures at his office, in Salem, Monday, July 18. O'Brien said an investigation of more than 710,000 documents in his office found that 25,187 homeowners in the county, or about 3.5 percent, have paperwork on file with signatures he believes are fraudulent.

his colleagues around the commonwealth at her office on Aug. 11 to discuss the investigation.

MERS is a private corporation established by a consortium of big banks and regional banks — including Bank of America, Chase, Citi, Wells Fargo and many others — in the late 1990s to act as a mortgage holding company, or mortgagee, on all properties acquired by its member banks.

MERS maintains when its member banks sell mortgages to one another, MERS technically continues as the mortgage holder and thus no public assignment recording of the mortgage transfer is necessary.

As O'Brien sees it, however, MERS was created solely as a

vehicle for banks to avoid paying public mortgage assignment recording fees. The fee is \$75 at the Southern Registry, \$20 of which is earmarked for community preservation in cities and towns and another \$5 for computer system upgrades at the registry.

O'Brien estimates the Southern Registry has been cheated out of upward of \$22 million in recording fees since 1998 and the public deeds registries across the Commonwealth have lost more than \$250 million in fees.

What's worse, O'Brien argues, is that the chain of title for thousands of properties has been broken and MERS-affiliate banks have produced robo-signed, or in his mind fraudu-

lent, documents as proof of mortgage ownership to initiate foreclosures.

Paperwork did not keep pace with the rapid-fire sale of bundled mortgages as securities between big banks in the decade leading up to the recession and housing market bust.

As a result lenders have scrambled to re-create documents and many homeowners across the nation — including some foreclosed upon and in the process of foreclosure — were left in the dark as to who held their mortgage. In some cases banks have foreclosed on properties for which they did not hold the mortgage.

The robo-signed documents, including many O'Brien has discovered at his public regis-

try in Salem, are from different banks but have the signature of the same person claiming to be a high-ranking executive at each.

After receiving Coakley's letter, O'Brien on Monday said, "This is a great day."

He added, "I am very pleased. The attorney general has always been very consumer-oriented and I'm delighted she has chosen to pursue this investigation and not participate in any sort of settlement until the extent of damage is known."

O'Brien continued, "This is even bigger than the Savings and Loan Scandal. Banks are going to court with fraudulent documents to take people's homes and that's not what America is about."

O'Brien said foreclosures should be halted until "we make sure every document is legitimate." He said officials across the country "will have to sit down and review property records to determine the chain of title and the damage that has been done ... That's an awesome task that will take tons of people."

Janis Smith, vice president of corporate communications for MERS, responded Monday to news of the investigation of MERS by Coakley.

"The assertions about MERS are without merit," Smith said in a prepared statement. "We will cooperate with the investigation and look forward to the opportunity to respond to the Massachusetts Attorney General's request. The use of MERS has been litigated in Massachusetts Courts and judges have upheld the legality of the MERS business model in the Commonwealth."