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Last modified: Monday, November 22, 2010 11:32 PM EST

Banks accused of failing to pay fees; Register of deeds requests investigation

By Thor Jourgensen / The Daily Item

SALEM — Essex County Register of Deeds John O'Brien has asked Attorney General Martha Coakley to determine if a group of banks failed to pay required recording fees.

He wants Coakley to determine if a lawsuit should be filed against Mortgage Electronic Registration Systems, Inc. (MERS) to recover lost fee money.

O'Brien said the unpaid fees, if they are verified through an investigation, could amount to hundreds of thousands of dollars of lost state tax dollar revenue.

MERS spokeswoman Karmela Lejarde on Monday said MERS is not aware of O'Brien's request to Coakley and has not been contacted by the Attorney General.

"We will fully cooperate with any inquiries from appropriate authorities" Lejarde wrote in a statement responding to O'Brien's accusations.

The mortgage industry created MERS as a way to gradually convert paper documents generated by mortgages into electronically filed documents.

O'Brien said MERS, which includes Bank of America, Countrywide Home Loans, Wells Fargo Bank and other loaning institutions, "intentionally failed to pay recording fees and failed to disclose the transfer and assignments of interest in property, solely to avoid and decrease the recordation fees owed to the counties and the state."

"As the keeper of the land records in Essex County, it troubles me greatly that these major lenders may have devised a scheme to avoid paying what the average citizen is legally required to pay," O'Brien wrote in a statement.

The fees are paid at the Salem registry and similar locations across the country when a lender assigns a mortgage to another entity.

"In many cases MERS has assigned homeowners' mortgages dozens of times to various MERS-related entities thereby avoiding recording the proper assignments in the respective registries of deeds," O'Brien stated.

Lejarde said MERS has not tried to avoid paying fees and said the electronic filing system "greatly reduces the workload of county recorders, resulting in lower operating expenses for the county recorder's office."

"Fees are paid for a service performed," Lejarde stated, adding, "If a document is eliminated because it is no longer necessary, no fee is due because there is nothing to record."

She also disputed O'Brien's claim that MERS has tried to avoid paying recording fees. Lejarde said MERS takes different approaches to recording requirements depending on if it holds the title to the mortgage or is not the holder.