

Business

REGISTRAR VS. ROBOSIGNERS

The head of the Registry of Deeds in Salem is challenging lenders' handling of mortgage records; some say he's overstepping his authority

By Jenifer B. McKim

GLOBE STAFF

A county registrar doesn't usually take on major US lenders, send out rapid fire press releases, and investigate the home loans of celebrities such as Sarah Palin. But John O'Brien Jr., head of the Southern Essex District Registry of Deeds in Salem, says he's on a mission to protect the integrity of property records.

O'Brien, 59, is gaining national recognition among housing advocates, and ranking local real estate attorneys, for his aggressive actions — which most recently included the rejection of property documents signed by alleged “robosigners.”

He also has called his registry a “crime scene” riddled with fraudulent paperwork, and last month O'Brien alleged that Palin unknowingly bought an Arizona home whose paperwork was signed by robosigners — bank representatives who didn't properly review mortgage documents. (Palin did not respond to a request for comment.)

“Banks have participated in a national epidemic of fraud that has clouded or damaged the chain of title of hundreds of thousands of American homeowners all across the country,” O'Brien said in one of his many press releases. “It would be a dereliction of my duties as the keeper of the records to record these documents and any other documents that contain questionable signatures.”

To some, O'Brien — who was first sworn in to his elected post in 1977 — is the champion of homeowners battling lenders who act as if they are above the law. But others say he has gone too far, using flawed analysis to overstep his authority as an official recorder of property documents. His tactics have left local real estate attorneys, and even colleagues, scrambling for guidance from state authorities.

“The real estate bar is very upset about what is going on,” said Edward Bloom, president of the Real Estate Bar

REGISTRY, Page B7

JOHN O'BRIEN ON THE BEHAVIOR OF BANKS

“My Registry will not be a knowing participant in this fraud against homeowners. From today forward (June 7), lenders be on notice, the Southern Essex District Registry of Deeds will not record robo-signed documents.

These banks have participated in a national epidemic of fraud that has clouded or damaged the chain of title of hundreds of thousands of American homeowners all across the country.

Knowing what I now know, it would be a dereliction of my duties as the keeper of the records to record these documents and any other documents that contain questionable signatures. To do so, would make me a willing participant in a continuing scheme which has corrupted the chain of title of thousands of Essex County property owners.

I am stunned and appalled by the fact that America's biggest banks have played fast and loose with people's biggest asset — their homes. This is disgusting, and this is criminal.

”



STEVE HAINES FOR THE BOSTON GLOBE

Registrar takes a stand against robosigning

► REGISTRY

Continued from Page B5

Association for Massachusetts. Bloom said O'Brien is creating a “media circus” over alleged robosigners, something he doesn't have authority to police.

“That's a matter to be determined in court, whether something is a forgery or not a forgery,” Bloom said. He called O'Brien's antifraud campaign unprecedented.

“We are all wondering what is going on and what we can do about it,” Bloom said.

O'Brien said he finds his new activism invigorating, citing collaborations with county recorders across the country and correspondence with homeowners thanking him for his support.

The registry's website, www.salemdeeds.com, looks more like a political blog, with links to media coverage and tips on how to demand mortgage documents from lenders.

Concerned about what kind of role registers should play in the foreclosure debacle, the Mas-

sachusetts Registers of Deeds Association last week sent a letter to Attorney General Martha Coakley seeking advice. Barry Amaral, the association's newly elected president, said county recorders want information on what to do about alleged robosigners, as well as other issues related to possible mortgage fraud. Coakley's office said it is agreeable to a meeting.

But that does not mean Amaral — who heads the Northern Bristol County Registry of Deeds in Taunton — is critical of O'Brien's efforts. “John is working hard to protect the rights of homeowners,” he said. “He deserves to be commended on his work.”

O'Brien said he is buoyed by outrage across the country over the way lenders carry out foreclosures. After robosigning entered the national lexicon last year, federal regulators launched investigations into foreclosure practices, and homeowners flooded courts with legal challenges.

In November, O'Brien claimed that a Virginia-based company created and owned by major US lenders owed Essex County more than \$22 million because it failed to record mortgage transfers locally, thus bypassing the accompanying fee — \$75 per transaction.

The company, Mortgage Electronic Registration Systems Inc., or MERS, oversees a database of 32 million active mortgages, about 60 percent of the loans in the United States. Because it purports to be the legal owner of loans in its database, the company asserts that it doesn't need to record every loan transfer between investors in a county registry of deeds.

O'Brien joins a loud chorus of local attorneys, housing advocates, and officials who say MERS is robbing municipalities of much-needed revenue. In April, he asked the state treasurer to transfer registry deposits from Bank of America Corp. into a local bank that is not a MERS member — a process still in the

works. The funds could amount to about \$25 million a year, according to O'Brien.

He also recently said that he would not accept mortgage documents filed by 30 alleged robosigners named in a report by an Orleans mortgage fraud investigator he contracted — at no charge — to comb through Essex County records. In her report, investigator Marie McDonnell, president of McDonnell Property Analytics Inc., maintains that 75 percent of 565 mortgage transfers recorded in the registry that she examined were invalid because they contained “false statements, misrepresentations or omissions of material fact in order to deceive or defraud.”

O'Brien posted on his website the names of 30 alleged robosigners whose signatures were on county documents, including Linda Green, an employee of a Georgia foreclosure document processing company profiled in a “60 Minutes” expose about mortgage fraud. He also named Andrew Harmon, an attorney at

Newton-based Harmon Law Offices, which specializes in foreclosure law. McDonnell said Harmon is on the list because several of his signatures look different. Also, she said, Harmon signed mortgage documents he knew or should have known included false information.

Harmon denies any wrongdoing. “This allegation is baseless and utterly false,” he said. “It is totally irresponsible for a public official to make such an accusation.”

Indeed, even some attorneys who work to help homeowners avoid foreclosure say McDonnell's declaration of widespread fraud is overstated. Boston attorney Gary Klein said some mortgage documents known as assignments — which record a loan transfer — may appear invalid on the surface, but turn out to be properly prepared.

“The problem of faulty assignments is a real one, but [the report's] numbers are not likely to be accurate, because in some cases you need to have access to

the underlying records,” he said.

So far, O'Brien has refused to accept 14 mortgage documents, nine of them from Bank of America, until the lenders or their attorneys include a notarized affidavit certifying the authenticity of all signatures on the paperwork. Bank of America instead sent six new documents with different signatures, he said. Bank officials insist they did nothing wrong, but decided to submit documents signed by different bank representatives to speed the recording process.

But O'Brien believes the new signatures amount to an admission that the initial documents were faulty. “The bank's actions speak louder than words and show their consciousness of guilt,” he said. It's the kind of result that motivates him to keep crusading.

“The banks are very powerful,” he said. “I'm out there swinging away.”

Jenifer B. McKim can be reached at jmckim@globe.com.