

## National Mortgage Settlement Consent Judgments Filed with U.S. District Court of D.C.

### Monetary Relief for Homeowners, Foreclosure Prevention Programs and Servicing Reforms to be Implemented

Earlier this month, the federal government and state attorney generals of 49 states (not including Oklahoma) and the District of Columbia filed Consent Judgments in the United States District Court for the District of Columbia (the “Court”), setting forth details of the unprecedented National Mortgage Settlement announced on February 9<sup>th</sup> (“Settlement”), involving the five largest servicers of residential mortgages (Bank of America, Citi, Ally/GMAC, JPMorgan and Wells Fargo, the “Servicers”). The Consent Judgments will be effective once a final non-appealable order has been entered by the Court. Complete copies of each Consent Judgment are available [here](#).

The Settlement creates a fund of approximately \$25 billion dollars to be allocated among individual homeowners, states and the federal government, to provide relief to homeowners and to fund counseling, refinancing and other foreclosure prevention programs. This amount could potentially increase if other mortgage servicers join the Settlement. The Settlement also sets forth guidelines for comprehensive reforms of mortgage loan servicing practices, including more stringent documentation, processing and oversight requirements. While the primary impact of the Settlement will fall on the Servicers and on borrowers, third-party purchasers of residential mortgage loans will also be affected by the Settlement, as described further below.

#### Primary Matters Addressed by the Settlement

The Settlement addresses matters grouped into six basic categories:

1. **Principal Reduction for Delinquent Borrowers.** Reduction of principal on first and second lien mortgages for qualified delinquent homeowners at risk for foreclosure, whose property is subject to a mortgage with an LTV in excess of 100%;
2. **Loan Refinancing for Underwater Borrowers.** Refinancing of first lien mortgages for qualified homeowners who are current in their mortgage payments, but whose property is subject to a mortgage with an LTV in excess of 100%;
3. **Damages to Borrowers.** Direct individual payments of approximately \$2000 to borrowers who lost their homes to foreclosure between January 1, 2008 and December 31, 2011;
4. **Damages to States.** Direct payments to the 49 states (and the District of Columbia) that accepted the Settlement, to be used to fund, among other things, (i) state and local foreclosure and mediation programs, (ii) housing remediation and anti-blight projects, and (iii) training and staffing of financial fraud or consumer protection enforcement efforts;
5. **Reforms in Servicing Standards and Practices**<sup>1</sup>. Reforms in mortgage servicing standards and practices. Under the Settlement, the Servicers are, among other things, required to:
  - a. Implement specific standards and training procedures for their mortgage service department employees, including, specific procedures to ensure the accuracy of borrower account information;

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<sup>1</sup> A more complete summary of the servicing standard requirements included in the Settlement can be found [here](#).

- b. Provide borrowers with a single point of contact;
- c. Continue any loss mitigation program for which a borrower is under application, in an effort to avoid foreclosure actions on any such mortgage;
- d. Notify borrowers 14 days in advance that foreclosure proceedings may be instituted against them;
- e. Eliminate “robo-signing” and institute processes that ensure proper ownership of notes;
- f. Conduct quarterly self-monitoring reviews to confirm that the Servicer’s behavior is in compliance with the law and the Settlement; and
- g. Provide heightened oversight of third-party service providers including “foreclosure firms, law firms, foreclosure trustees, subservicers and other agents, independent contractors, entities and third parties...that provide foreclosure, bankruptcy or mortgage servicing activities.” Among other things, the Servicers are required to:
  - i. review fees and costs assessed by third party providers that are to be paid by borrowers;
  - ii. review the security of original loan documents maintained by third party providers;
  - iii. where borrowers are in bankruptcy, assess whether attorneys are timely determining whether a borrower has made a payment curing any motion for relief from stay delinquency within two business days prior to the scheduled hearing date;
  - iv. require a certification process for law firms;
  - v. ensure that attorneys are qualified to practice in the relevant jurisdiction and have adequate experience and competency; and
  - vi. ensure that foreclosure and bankruptcy counsel and foreclosure trustees have an appropriate Servicer contact.

6. **Monitoring and Enforcement.** Monitoring and enforcement for compliance with the Settlement by an independent monitor with penalties up to \$1,000,000 per occurrence for any uncured violation, and up to \$5,000,000 for additional occurrences of the same uncured violation.

### Impact of Settlement on Third-Party Purchasers of Residential Mortgage Loans

Purchasers of mortgage loans that are not parties to the Settlement will nevertheless be impacted by certain terms. For example, anyone purchasing residential mortgage loans or pools of residential mortgage loans from the Servicers should be aware that the Servicers are required to adhere to the following requirements:

- a. At the time of transfer or sale, each Servicer must inform any successor Servicer whether a loan modification is pending;
- b. Any contract for the transfer or sale of servicing rights shall obligate the successor Servicer to accept and continue processing pending loan modification requests;
- c. Any contract for the transfer or sale of servicing rights shall obligate the successor Servicer to honor trial and permanent loan modification agreements entered into by the prior Servicer; and

- d. Any contract for the transfer or sale of servicing rights shall designate that borrowers are third party beneficiaries under (b) and (c) above.

### Timing and Enforcement of Consent Judgments

The Consent Judgments have not yet been signed by a United States District Judge, and are therefore not yet “effective.” However, the website and the Consent Judgments provide guidance on the implementation of the Settlement. Each of the Consent Judgments will remain in effect for a term of 3½ years following the date the Settlement is declared effective (the “Term”), and though the Servicers will have no further obligations six months after the expiration of the Term, enforcement is available for any violation that has occurred but not been cured during the Term. Generally, the Settlement will be implemented throughout the Term; however, within six to nine months after the commencement of the Term, an independent Settlement administrator will work with the state attorneys general and the Servicers to identify eligible homeowners. The Servicers’ failure to comply with the terms of the Settlement is subject to monitoring, enforcement and penalties as noted above.

For more information, please contact a member of Ropes & Gray’s [real estate](#) team or your regular Ropes & Gray attorney.

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