

Joint Federal-State Mortgage Servicing Settlement

Talking Points

Connecticut Attorney General George Jepsen was part of a bipartisan negotiating team of state Attorneys General and the Department of Justice that produced a national joint-federal mortgage foreclosure settlement totaling as much as \$25 billion in relief to distressed borrowers and direct payments to states and the federal government. The agreement settles state and federal investigations finding that the country's five largest loan servicers routinely signed foreclosure related documents outside the presence of a notary public and without really knowing whether the facts they contained were correct. Both of these practices violate the law.

1. Why is the Settlement Good For Homeowners?

Immediate aid to homeowners needing loan modifications now, including first and second lien principal reduction. The servicers are required to work off a minimum of \$17 billion in principal reduction and other forms of loan modification relief nationwide.

The state Attorneys General anticipate the settlement's requirement for principal reduction will show other lenders that principal reduction is one effective tool in combating foreclosure and that it will not lead to wide spread defaults by borrowers who really can pay.

- Immediate aid to borrowers who are current, but underwater. Borrowers will be able to refinance at today's historically low interest rates. Servicers will have to provide \$3 billion in refinancing relief nationwide, including nearly \$36 million for homeowners in Connecticut.
 - Immediate payments to borrowers who lost their homes to foreclosure with no requirement to prove financial harm and without having to release private claims against the servicers or the right to participate in the OCC review process. \$1.5 billion will be distributed nationwide to some 750,000 borrowers. The more than 7,500 Connecticut borrowers who lost their home to foreclosure from January 1, 2008 through December 31, 2011 and suffered servicing abuse would qualify for an estimated \$1,500 in cash payments.
 - Immediate payments to signing states to help fund state foreclosure prevention programs. My office will be working to ensure that these funds go to fund additional staff for the Department of Banking's foreclosure hotline, hire HUD approved housing counselors, fund the judicial branch's mediation program,

fund legal aid groups helping homeowners and fund CHFA loan mod programs.

- First ever nationwide reforms to servicing standards; something that no other federal or state agency has been able to achieve. These servicing standards require single point of contact, adequate staffing levels and training, better communication with borrowers, and appropriate standards for executing documents in foreclosure cases, end improper fees, and end dual track foreclosures for many loans.
- State AG oversight of national banks for the first time. Something no court could award. National banks will be required to regularly report compliance with the settlement to an independent, outside monitor that reports to state AG's.
- Servicers will have to pay heavy penalties for non-compliance with the settlement.

2. ***What Does the Settlement NOT Do?***

- Release any criminal liability.
- Release any private claims by individuals or any class action claims.
- Release claims related to the securitization of mortgage backed securities that were at the heart of the financial crisis.
- Release claims against MERS or MERSCORP.
- End state attorneys general investigations of Wall Street related to financial fraud or the financial crisis. The agreement settles only some aspects of the banks conduct related to the financial crisis (foreclosure practices, loan servicing, and origination of loans) in return for the second largest state attorneys general recovery in history and direct relief to distressed borrowers while they can still use it.

My cases against the rating agencies and bid rigging in the municipal bond market continue. Claims and investigations against MERS and how Wall Street packaged mortgages into securities also continue.

3. ***Responses to FAQ's***

The Settlement is not enough: There is no court in the country and no state law that would allow state attorneys general to hold banks legally responsible for all the damage they have done to the economy or to pay for the \$700 billion in underwater homes across the country. I am equally frustrated and angry with the banks and the problems they have caused.

But that frustration and anger does not change the law and what the law allows my office to win in court. Changing how banks operate and treat their customers is ultimately a public policy issue that must be dealt with by Congress, the President, and state legislatures. I support strong, sensible regulations of banks. That is why I supported creation of the Consumer Financial Protection Bureau and got legislation passed in Connecticut ensuring that the Connecticut Attorney General has full authority to enforce federal financial reform laws (Dodd Frank).

The banks will never make the modifications required by the Settlement: The banks will face penalties and enforcement actions if they do not live up to their commitments. The settlement requires the banks to work off a minimum of \$17 billion in principal reductions, refinancing and interest rate reductions, forbearance agreements, short sales and other assistance to borrowers. An independent monitor will supervise this process and regularly report to the Attorneys General to ensure that this assistance to borrowers is actually provided. If banks fail in their commitments, they are required to pay \$1.40 for every \$1 they fall short on their commitment. The Attorneys General also retain the right to sue to enforce the settlement.

There wasn't a full investigation. The state attorneys general partnered with federal authorities to do a thorough investigation of the banks foreclosure and loan servicing practices. That investigation included interviewing bank employees and reviewing individual borrower files. The state/federal investigation confirmed that banks routinely executed foreclosure documents outside the presence of a notary public, which is against the law, and without knowing if the facts in the documents were correct, which is also against the law. The investigation also confirmed that the banks did an extraordinarily bad job servicing distressed loans and helping borrowers get loan modifications. The amount of the settlement and the servicing reforms the settlement requires are based on these facts. A trial would not provide any more than we already know about the banks' conduct and would only delay relief to homeowners who need help now.

No full accounting of financial crisis. The foreclosure settlement is not the end of my office's investigation of illegal behavior on Wall Street and the financial industry. My cases against the rating agencies and municipal bond buyers remain. Investigations into other types of financial fraud continue. But I cannot turn my back on the thousands of Connecticut homeowners that this settlement will help now, just because my office may bring other law suits in the future. The multi-state settlement will provide millions of dollars in loan modifications, principal reduction, refinancing, direct payments, and reformed loan servicing standards to Connecticut consumers who need it now. It will also fund state foreclosure prevention programs, enabling these programs to be more effective and reach more troubled borrowers.

No one is going to jail. The settlement does not release any criminal liability. Criminal authorities are still fully capable to prosecuting bank misconduct where they find it. The Connecticut Attorney General does not have criminal authority.

CT should join NY/DE/CA/MA: Each of these states has joined the multistate settlement. Like Connecticut, they have legal claims not released in the settlement which they will continue to pursue.

NY and DE are investigating claims related to how mortgage backed securities were created. These claims are not released in the multi-state settlement and, in any event, any recovery from these claims will likely be paid to large investors like hedge funds, not individual homeowners. If we had delayed the settlement of foreclosure and loan servicing issues, in the hope of also getting a settlement of securitization issues, it would have only delayed relief to consumers who need help now. Regardless, state Attorneys General, including Connecticut, can still sue banks over improper securitization practices.

MA is pursuing unique MA claims that CT cannot make. MA law requires that documents related to a mortgage be filed on the land records and that only a mortgage holder may foreclose. There is no requirement that a mortgage or related documents be recorded in CT and CT law allows any person entitled to payment under the note to file for foreclosure. Also, the Connecticut Supreme Court recently ruled that naming MERS as the “nominee” of a mortgagee is not illegal in CT. (RMS Residential Properties, LLC v. Miller).

4. ***What would happen if CT did not sign the multistate settlement?***

- Federal law and US Supreme Court precedent hold that a state attorneys general cannot subpoena a national bank. Investigating a national bank without federal help would be very difficult.
- Litigating a case against the major banks would take at least 5 years, by which time thousands of Connecticut homeowners will have already lost their homes. The states of Nevada and Arizona sued Bank of America over a year ago and are still at very preliminary stages in their cases.
- Litigating five cases against the major banks would divert limited Attorney General resources for years from other important financial fraud cases. With our resources focused on foreclosure litigation, other financial fraud cases would be difficult, if not impossible, to prosecute.
- Litigating a case against major national servicers would mean that other, smaller servicers that still make up about 35% of the market would likely escape

prosecution and reform entirely.

- Even after years of litigation, there was a risk that the states might not win.
- Even if the states won, any financial relief would likely go directly to states – not borrowers or homeowners -- in the form of penalties for violating court rules on the proper execution of affidavits and other foreclosure documents.
- Even if the states won, there is no authority for a judge to order the kind of relief that the multi-state settlement offers: national servicing standards, loan modifications including principal reduction, refinance programs for underwater borrowers, or a monitor that reports to the state attorneys general.