

## **Myths vs. Facts**

### **Setting the Record Straight about the Bank Foreclosure Settlement**

**Myth #1:** The settlement lets the banks off easy. The states should have done more.

**Facts:** The state Attorneys General managed to secure the second largest monetary settlement in history -- \$25 billion. Reaching this amount required tenacious negotiations with the country's five largest bank servicers, but the number was arrived at through an analysis of actual damages caused by the banks' use of robo-signing in foreclosures. It is easy to say the number should be larger, but legally damages must be directly related to the conduct being sued over. The \$25 billion settlement will provide help to distressed borrowers, allowing them to stay in their homes and start to stabilize the housing market.

The Attorneys General also succeeded in overhauling mortgage servicing standards nationwide to ensure past abuses are not repeated. The new rules require servicers to fairly treat distressed borrowers throughout all steps of the process from consideration of a loan modification to foreclosure.

The settlement is huge by any historic standard, and will provide immediate help that is needed now by people who have lost or are at risk of losing their homes.

**Myth #2:** The settlement grants wrongdoers immunity from criminal prosecution.

**Facts:** This simply is not true and was never a part of the settlement negotiations. No immunity from criminal prosecution was ever considered in the negotiations. Any criminal violation still can be investigated and prosecuted.

**Myth #3:** The settlement releases state securitization claims.

**Facts:** The settlement contains a specific provision that preserves state securitization claims. The Illinois Attorney General steadfastly refused to consider releasing securitization claims. The release is narrow and is limited to servicing, foreclosure and origination claims. It still allows states to pursue criminal, securitization, fair lending, MERS or any other claims that borrowers choose to bring against the banks.

On January 27, 2012, AG Madigan and U.S. Attorney General Eric Holder along with Housing and Urban Development (HUD) Secretary Shaun Donovan, Securities and Exchange Commission (SEC) Director of Enforcement Robert Khuzami and New York Attorney General Eric Schneiderman announced the formation of the Residential Mortgage-Backed Securities Working Group. The Financial Fraud Enforcement Task Force's Residential Mortgage-Backed Securities working group will investigate those responsible for misconduct contributing to the financial crisis through the pooling and sale of residential mortgage-backed securities.

**Myth #4:** The multi-state investigation should have been broader, investigating every impropriety engaged in by the big banks and every aspect of the financial meltdown.

**Facts:** This investigation grew out of fraudulent activities in document execution practices in foreclosures and expanded to encompass loan servicing abuses. By resolving these matters in this negotiated settlement, the Attorneys General were able to secure \$25 billion in relief for distressed homeowners without facing years of litigation with unsure results.

In addition, delaying homeowners relief until every aspect of the financial crisis could be investigated would have cost hundreds of thousands of more people their homes and further damaged our battered housing market. Keeping people in their homes was central to this action, and the settlement will do just that. Stemming the tide of unnecessary foreclosures is vital to helping the housing market recover. The housing sector is one portion of the economy that has yet to show signs of improvement, in large part because so many homeowners are stuck in underwater mortgages with no hope of refinancing. The settlement provides \$17 billion to assist struggling homeowners and should start to stabilize the housing market by keeping individual homeowners in their homes paying their mortgages.

The settlement also preserves the states' rights to continue to litigate and investigate other players who contributed to the housing and economic collapse. Attorney General Madigan has investigated and successfully settled many cases, including: a \$335 million settlement with Countrywide/Bank of America in conjunction with the U.S. Department of Justice for discriminating against thousands of Illinois borrowers of color during the height of the subprime mortgage lending spree; a nationwide \$8.7 billion settlement in 2008 over Countrywide's predatory loan practices; a \$39.5 million settlement with Wells Fargo over the banks deceptive marketing of risky loans and more than \$10 million in restitution for Illinois homeowners as part of a \$325 million multi-state settlement with Ameriquest over its deceptive sales of predatory subprime loans. Attorney General Madigan continues to pursue improprieties that lead to the financial crisis as witnessed by her recent lawsuit filed against Standard & Poor's rating agency for its role in enabling the financial meltdown and her lawsuit against National Title Clearing Inc., which prepares documents for mortgage servicers to use against borrowers who are in default, foreclosure or bankruptcy, as one of the key contributors to the mortgage crisis by undermining the integrity and accuracy of the mortgage servicing and foreclosure process. Madigan is also pursuing further action as part of a collaborative effort with the U.S. Department of Justice's Financial Fraud Enforcement Task Force. Attorney General Madigan serves as a chief member of three Working Groups within the Task Force: Non-Discrimination, Consumer Protection and Residential Mortgage-Backed Securities.

**Myth #5:** The settlement will prohibit states from investigating other violations.

**Facts:** Not true. The settlement only releases civil claims for servicing, foreclosure and origination. States still can investigate and pursue any and all criminal violations and other civil claims including securitization, fair lending and MERS. In addition, borrowers remain able to bring any claims they choose against the banks.

**Myth #6:** Total damage to the housing market is estimated at \$700 billion. The Attorneys General settlement should have been closer to that figure.

**Facts:** The \$25 billion settlement is based on conduct related solely to faulty servicing and foreclosure practices. It is the second highest damage award ever negotiated by state Attorneys General. There is no legal basis to seek \$700 billion based on the underlying conduct. The settlement does not preclude future lawsuits that could lead to additional compensation. However, damages must be directly related to the conduct being sued over. Many other factors contributed to the housing bubble and eventual crash of the housing market, making it impossible to place \$700 billion worth of blame solely on the mortgage servicers' inappropriate conduct.

**Myth #7:** The bulk of the settlement is not direct payments to home owners.

**Facts:** Loan servicers will pay \$1.5 billion in direct payments to homeowners who lost their homes to foreclosure, while \$17 billion will be used to assist borrowers who are struggling to stay in their homes. Much of this money will be used for principal reductions on first and second liens. Another \$3 billion is reserved to provide refinancing for borrowers who are current on their loans but whose mortgages are underwater – meaning the outstanding loan balance is more than the current appraised value of the home. Keeping borrowers in their homes and stemming the tide of foreclosures will also help stabilize the housing market, which is the sector of the economy that has shown no sign of recovery. A strong enforcement component is in place, and servicers can face \$1 million and \$5 million penalties for not abiding by the settlement terms.