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Center for New York City Neighborhoods (CNYCN)

Considerations for Settlement Solutions and Increased Accountability

Recent acknowledgement by major servicers that foreclosure affidavits and other important procedural records were not properly promulgated will doubtless lead to settlement negotiations in order to avoid costly and lengthy lawsuits. While speedy action is laudable for many reasons, we would sound a note of caution. "Standing" and other title-related issues are not the only document deficiencies we have witnessed. The mortgage lending industry and speculative housing bubble grew in an environment where due diligence, closing procedures, title transfers and other critical practices were routinely truncated, omitted, mishandled, and even manipulated. A lengthier investigation of mortgage documentation from inception would discover (as CNYCN has in many individual cases) numerous issues requiring clarification, emendation, punishment and restitution.

A settlement now does not eliminate the need for further investigation, nor limit the scope of future corrective action.

In addition, it is important to note that any settlement is occurring in an environment where the infrastructure to repair the crisis is inadequate at best. HAMP and other modification strategies remain the single most effective solution, but they are accomplishing far less than they could. We lack basic oversight and enforcement structures and capacity. Any settlement must take this into account to be meaningful. Without putting a more effective structure of accountability in place, we not only risk achieving the full benefit of any settlement reached, but we damage our ability to provide for protections going forward in what will remain a volatile and complex area of crucial economic activity. We have therefore noted below a number of issues that we hope can be addressed in the settlement process.

It is our recommendation that any settlement between the multi-state Attorneys General coalition and the lenders should include the following provisions:

1. A freeze on foreclosure actions where procedural issues are in question.

- Arrearages, late fees and legal fees should neither accrue nor be charged to the borrower either during the freeze or after;
- Any freeze should not stall pending settlement conference or mediation negotiations;
- If the foreclosure action is reinstated, the lender should certify that loss mitigation has been conducted in good faith, including principal mechanisms where appropriate for "underwater" borrowers;
- Servicers identified as having a record of improper documentation should be barred from filing new cases and filing motions in pending cases until they do a thorough investigation with oversight by relevant state Attorneys General;
- **Going forward, all foreclosure actions should certify they have been filed by the correct party, that all terms of the foreclosure action, including complete payment histories and amounts needed to cure are stated clearly for the benefit of the borrower, and that all reasonable steps to avoid foreclosure have been taken;**
- **Plaintiffs should be required to demonstrate ownership by attaching the mortgage and note to the foreclosure action, or specifically pleading when they obtained possession of the note or were assigned the mortgage;**



- **In addition, indemnification language should be incorporated into all settlement agreements, protecting homeowners for any damages they may incur should they enter into a settlement agreement unknowingly with the wrong party. Any plaintiff that proceeds with a foreclosure on a property that it does not own must cover the costs of the defendant if another party sues for foreclosure in the future.**
- 2. An independent audit by a certified third party should determine the scope of loans affected by robo-signing and unclear title chains:**
- Forensic audits should be paid for by the lenders, and should cover all affiliates and related parties, including foreclosure mills and other contractors hired to process large numbers of documents;
 - Files should be examined to identify homeowners affected by problematic paper work not just at foreclosure, but reaching back to origination and through multiple assignments for those sold into securities.
- 3. Any homeowner whose foreclosure action has been or is currently identified as having problematic or unlawful procedures should be immediately identified and reported to state authorities for outreach and support. In addition, the settlement should provide solutions as follows:**
- For those already foreclosed upon and removed from their homes:
 - **A check must be conducted to determine if the plaintiff was the rightful owner at the time of the action.** If it is found they were not, the sale should be reversed, the judgment vacated, and the case dismissed. Any new owner of the property should be promptly notified of this action and provided compensation;
 - In addition, homeowners should receive:
 - Damages as appropriate to cover legal costs, wrongful eviction, relocation assistance, and personal distress;
 - Funding for housing and financial counseling in order to repair credit and assist with relocation;
 - An “Improper Foreclosure Letter” should be issued to the homeowner and credit rating agencies to correct their credit file.
 - For delinquent homeowners still living in the home:
 - Funding for legal representation including presenting legal defenses to the foreclosure action and recording of proper assignments on all property documentation;
 - Mandatory loss mitigation through a dedicated team at the responsible servicing entity established expressly for the purpose, including:
 - Opportunities for principal reduction in order to achieve affordability;
 - Waiver of trial period requirements for loan modifications already fully documented;
 - Relocation assistance if the homeowner cannot keep the home and all home retention solutions have been evaluated to the fullest extent;
 - Funding for housing counseling and credit repair.
 - For homeowners with no delinquency still living in the home:
 - Funding for legal representation to pay for file repair, including recording of proper assignments all property documentation;
 - Provision of mandatory loss mitigation if the homeowner is experiencing hardship or in risk of imminent default;
 - Principal reduction for current, underwater homeowners.

4. Mandate an official appeals process both within the servicing entity and also through an external third party with the authority to settle loss mitigation claims (perhaps through federal or state banking regulators, or federal or state consumer protection agencies):

- Servicers should create an escalation and appeals team dedicated to dealing with homeowners affected specifically by identified procedural difficulties;
 - Staff must be assigned to follow each file to solution;
- Federal or state enforcement should have the ability to monitor, enforce and discipline further identified errors or difficulties at the level of the individual transaction;
- Enforcement agencies should be compensated by lenders so that additional staff needed to implement the appeals and oversight process can be hired;
- Servicers must meet established timelines for modification processing or face additional sanctions;

5. Require banks to provide funding for state and local mortgage assistance programs to assist homeowners in achieving sustainable long-term modifications:

- CNYCN estimates that:
 - Intakes cost approximately \$250 per homeowner; Modifications cost approximately \$3,000 per homeowner;
 - Full representation costs approximately \$10,000 homeowner.
 - Based on these estimates, funding for CNYCN's network at current service levels costs approximately \$6 million per year.
- CNYCN services some 4,000 homeowners in mortgage distress. Statewide, there approximately 40,000 homeowners with a notice of foreclosure filed against them. Therefore, a suitable estimate for foreclosure prevention services in **New York State would be approximately \$60 million annually**, assuming we were attempting to replicate CNYCN's service model.