

Wednesday 15th February

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The Good, the Bad and the Ugly in the Mortgage Settlement

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By now if you haven't already heard that the 50 State AGs reached a settlement with the five major banks, then you've either been adrift at sea, or perhaps you're just now coming out of a coma.

If either situation is true, I envy you. Personally, had you asked me last Thursday morning, I would have willingly agreed to have any one of a number of organs removed that day in order to have had a failsafe way to avoid the administration's fustian charade of a press conference followed by the punditry's entirely uninformed blather on the so-called "landmark" settlement to the yearlong negotiations.

I feel differently about things today though.

After spending my entire Saturday reading just about every article I could find claiming to analyze the terms of the settlement, I came away about as confused as a Christian Scientist with appendicitis.... or, how about a chameleon sitting on top of a big pile of Skittles. (*See how confused I am? I can't even decide which folksy phrase to use.*)

First of all, let's understand the bad news...

The deal, for the most part, provides the banks/servicers with a free pass as related to three categories of prior bad acts: Robo-signing, Servicer fraud, and Origination fraud. Now, as I understand it, criminal charges brought in the future are not included, New York Attorney General Schneiderman's lawsuit remains in force, as does Delaware Attorney General Biden's. Nevada Attorney General Mastow's criminal indictments remain as well. But the rest... I believe, is history.

So, what did we get in exchange for letting the banks off the hook for accusations of forgery and rampant fraud in the foreclosure process? Well, it depends on who you ask. No final settlement agreement has been released, and they won't release one until very last minute and only after it's been approved by the court. There's no two ways about it, they don't want this to become any sort of public debate.

For letting the banks off the hook, we got a settlement for \$25 billion, which I think is said to be the second largest such settlement in U.S. history, not that I care where its ranked, as far as that goes. It's not enough by a long shot.

If you don't already know the supposed breakdown of the \$25 billion, it's best to just keep it simple by only dividing it into its basic categories... \$5 billion, \$3 billion, and \$17 billion.

There's \$5 billion that will be paid to states and federal government... \$4.25 billion to states and the \$750 million balance to the federal government to resolve its claims. Included in the states' \$4.25 billion, is \$1.5 billion that is to compensate homeowners who lost homes to foreclosure between the beginning of 2008 and the end of 2011 and the consensus is that this is going to end up being \$1500 – \$2,000 per foreclosed borrower. And no one likes that.

There's also \$3 billion that's supposed to be devoted to the refinancing of underwater but current mortgages, but this fund will only apply to mortgages owned by one of the five banks involved in the settlement... Bank of America, JPMorgan Chase, Wells Fargo, Citibank, and Ally Bank/GMAC... and then, only to those *current* on their mortgage payments.

The remaining \$17 billion is said to fund the exceedingly ambiguous, “Commitment to Foreclosure Relief Efforts,” portion of the settlement agreement. According to the government's “[National Mortgage Settlement](#)” website...

“The servicers collectively agree to commit a minimum of \$17 billion directly to borrowers through foreclosure relief effort options, including principal reduction for qualifying borrowers, short sales, anti-blight measures, and enhanced homeowner transition programs.

The principal reduction program will target homeowners who cannot afford their current payment but could make reasonable payments if the loan amount were reduced.”

Pardon me... I don't want to be a spoilsport here, but aren't those, for the most part anyway, the same sorts of things already supposed to be offered by the HAMP loan modification program? And doesn't HAMP still have almost \$35 billion left unspent?

It's rhetorical, the answer to both questions is yes, so it's beyond me why anyone would look at this and think that anything's going to change this time around. It's true there are some monetary penalties and increased oversight also described in the proposed settlement draft, but one such penalty I saw mentioned was \$5 million... and well, it reminded me of Dr. Evil in the movie, "*Austin Powers*" when he was going to hold the world hostage for... **ONE MILLION DOLLARS!** (*Click that link... it'll be fun.*)

There's a lot I don't understand about the thinking behind the principal reduction aspect of this settlement. The word on the street is that it's going to help 500,000 homeowners, a figure I find to be... well, both nutty and chewy.

There's the obvious questions like how could this meager amount of money make any difference whatsoever as far as helping anyone stay in their home? I mean, a few thousand bucks per falls kind of short, wouldn't you think? And how are servicers going to determine who gets what and when and why?

But, beyond those sort of inquiries, I think it's fascinating that the principal reductions only apply to portfolio loans, which are those on bank balance sheets, and some percentage of investor owned loans. As I understand it, Fannie, Freddie, FHA... the government owned loans have decided that they won't participate in principal reductions... period. Not even a little bit.

And look... we've asked them to participate in such principal reductions several times now, and they keep saying no. I think we had better stop asking because I think we're taking a major risk... what if they get angry at us, or even just become annoyed with us for asking? I shudder to think what they might do to punish us... I mean look at what Greece's creditors are making those people go through over there. I mean, what if they did that to us... like they are now?

More than just money...

In addition to the \$25 billion, the servicers are also agreeing to a new set of loan servicing and

foreclosure standards. With the actual agreement still being withheld from the public, it's impossible to know the ultimate outcome here, but there is an outline on the government's Mortgage Settlement website of what is intended to be involved... and if you'd like, you can review it [HERE](#).

However, if you want to keep things simple for the moment, I've summarized what I think are the most important components in my own Reader's Digest version that follows:

On the issue of legal "standing"...

- Puts an end to "*robo-signing*," which is defined as "*signing affidavits filed with the court without personal knowledge*."
- Pre-foreclosure referral notice to borrowers, "*14 days before a delinquent loan is referred to a foreclosure attorney*."
- Bank/Servicer shall properly document their authority to file foreclosure action, their right to ultimately foreclose, the basis for the authority to foreclose, and all of this is to be disclosed to the borrower in the 14-day notice mention above.

On the loan modification process...

- No more "*dual tracking*." Notify homeowners of all loss mitigation options, and upon receipt of application for loan modification, evaluate for all available modification options prior to referral to foreclosure.
- Servicer shall offer loan modification if NPV positive. (I'll have to address this one in greater detail separately.)
- Homeowners may reapply for HAMP if first time around was under old methods that didn't include a pre-qualification process, and trial modifications are to be promptly converted to permanent modifications.

On the timing involved...

- Determine if homeowner is approved for loan modification within 30 days of receipt of completed loan modification application, and follow either HAMP or GSE timelines related to the loss mitigation process, whichever is shorter, for all loans. These include: time within which servicer must inform borrower that loan modification application has been received and whether any documentation is missing, and how quickly borrower is to be informed of approval/denial decision.

On post-foreclosure referral...

- Even after a loan has been referred to foreclosure, the borrower has 30 days after attorney letter is sent, to submit a loan modification application, in which case servicer must not seek a foreclosure judgment or sale until it completes review and determination of the application. If servicer offers a loan modification, it must

continue to delay any action in the foreclosure proceedings until borrower accepts or denies offer, and if the borrower accepts, servicer must continue to delay any action until borrower fails to perform on the loan modification. And homeowners may accept verbally, in writing or by making first trial payment.

On servicer communication...

- Continues the Single Point of Contact (SPOC) rules, and talks about servicer ensuring timely and accurate communication of homeowner's status to its foreclosure attorneys and/or court mediators.
- Servicers will be required to communicate with a homeowner's authorized representative upon receipt of written request by borrower.
- Servicers must cease all collections efforts while reviewing a completed loan modification application, or which borrower is making timely trial payments under the terms of a trial modification.
- Banks/servicers shall develop loan portals so that at no cost, borrowers can check... the status of their loan modification application, and the status of applications must be updated every 10-business days.

On denials for modification...

- Denials for loan modifications shall contain the reasons for denial and a notice to borrower that he or she has 30-days to rebut the denial.
- If reason for denial involves the investor, the servicer must disclose the name of the investor and summarize reason for denial.
- If modification is denied for being NPV negative, servicer shall disclose in the denial notice, the gross income and property value used in the calculation.
- All denials for modifications must be submitted for additional independent internal review.

On the appeals process...

- There is now to be a detailed appeals process. After denied, homeowners have 30-days to appeal decision, UNLESS... the denial is ineligible mortgage, ineligible property, offer was not accepted by borrower, loan was previously modified.
- If denied for negative NPV, borrower can contest property value used in calculation by requesting a full appraisal.
- Banks/servicers shall respond to all homeowner appeals within 30-days.
- If homeowner is denied after appeal, the denial letter shall include a description of other available loss mitigation options.

On general requirements for servicers related to loss mitigation...

- There is language about the requirement that servicers maintain adequate staffing and systems for tracking documents submitted by homeowners, and maintain adequate staffing and caseload limits for SPOCs and employees handling loss mitigation.

- No compensation structures that encourage foreclosure over loss mitigation, no fees are to be charged for loan modifications, and homeowners shall not be required to waive any claims and defenses as condition of loan modification unless done to settle litigation.

On proprietary or “in-house” FIRST & SECOND LIEN loan modifications...

- All information related to applying for “in-house” or proprietary loan modifications, whether FIRST OR SECOND LIENS shall be made public.
- All such programs shall be designed to produce sustainable loan modifications and affordable payments.
- As related to FIRST LIENS ONLY, banks/servicers shall track the outcomes, characteristics, and performance of proprietary loan modifications.

On short sales...

- Banks/servicers must make information on all short sale requirements publicly available., and servicers shall develop a process for short sales that allows homeowners to obtain a short sale evaluation in advance of putting home on the market.
- The letter confirming receipt of an application for loan modification shall include information on the servicer’s short sale process, and the servicer shall send the homeowner written notice of any missing documents within 30-days of receipt of application.
- In the event of a transfer/sale of a loan, servicer shall inform the successor servicer if a loan modification is pending, and all contracts for sale of loans must obligate the successor to accept and continue processing loan modification requests AND to honor trial and permanent loan modification agreements.
- Any contract for sale or transfer of a loan shall designate the homeowner as a third-party beneficiary. *(I don’t see any language about “private rights of action” and will discuss this further below.)*

On bankruptcy and loss mitigation...

- Banks/servicers cannot deny loss mitigation to a borrower on the basis of he or she being a debtor in a bankruptcy proceeding.

On fees charged related to default, foreclosure and bankruptcy...

- There is language restricting both internal and third-party fees charged to borrowers related to default, foreclosure and bankruptcy, stating that such fees shall be bona fide (which means, made in good faith without fraud or deceit), reasonable as to their amount, and disclosed to homeowners.
- Fee schedules shall be kept current and schedules shall explain each fee, state its maximum, and describe how each fee is calculated.
- Servicers may collect default-related fees if for reasonable and appropriate services, disclosed to homeowners and nor otherwise prohibited by law, the loan

instrument or settlement agreement.

On attorneys fees charged to homeowners in foreclosure...

- Attorneys fees are also limited to work actually performed and shall not exceed what is considered “reasonable and customary.” When foreclosure action is terminated prior to final judgment, homeowner shall only be liable for work performed.

On late fees charged to homeowners...

- If a homeowner is two payments delinquent, but then makes a full payment that is applied to the current payment, the bank or servicer cannot charge a late fee on the older delinquent amount.
- And banks/servicers shall not collect late fees while borrower is under consideration for a loan modification... which borrower is making timely trial payments... or while short sale is being evaluated.

On third-party fees...

- Banks /servicers shall not impose unnecessary or duplicative fees on homeowners related to property inspections, property preservation, or property valuation.
- There is language limiting other categories of fees charged to homeowners, including preservation fees, inspection fees, BPO valuation fees, price of fees charged, referral fees, and mark-ups.

On forced-placed insurance...

- Banks/servicers shall not obtain forced-placed insurance without reasonable cause to believe a homeowner has failed to pay for property insurance.
- If homeowner pays into an escrow account, bank/servicer shall continue to advance payments to the insurer REGARDLESS of homeowner payments.
- Written notices shall be sent to homeowners reminding homeowner that obligation is due and payment has not been made, that bank/servicer may obtain coverage at homeowner's expense, and cost may be significantly higher and only protect the mortgage holder.
- Forced-placed insurance must be purchased at a commercially reasonable price in all cases.

On community blight and tenant's rights...

- There is language related to bank/servicer responsibilities and community blight, and requirements to comply with applicable state and federal laws related to tenant's rights and foreclosed properties.
- Should a servicer make a decision not to pursue foreclosure, the servicer must notify the borrower and local authorities of the decision to release the lien and not pursue foreclosure on the property.

- Servicers must implement policies to ensure that REO properties do not become blighted.

If I set aside my cynicism, I have to say that those new servicer guidelines sound nothing short of awesome. But, the thing is... they also seem... hmmm... what's the word I'm looking for... oh yeah... I know... IMPOSSIBLE. Like, when would those rules apply, exactly?

And I'll tell you what... even though a huge part of me would like to see all of those new rules implemented for homeowners by the day after tomorrow, at the same time... I'd be on FIRE if servicers could comply with the new rules quickly because that would mean they could have done so all along.

Anyway, I'm not actually worried about that happening because there's just not a chance in the world of that happening.

As I understand it, the settlement gives the banks three years to reach certain laudable goals. So, is that the plan here? Are we settling now and hoping that things get better by three years from now? Because that just isn't going to work for anyone. And how will foreclosures and loan modifications and short sales go between now and then? More of the same? Not good.

A fair number of the articles published since the announcement of the settlement three days ago say that we should expect foreclosures to increase significantly now that the negotiations between the AGs and the bankers have settled. From an article in [U.S. News & World Report](#)...

Yesterday's foreclosure settlement is a little like saltwater in the wound, says Scott Ryles, CEO of Home Value Protection, a California-based insurance provider. "[Home] seizures have been stalled awaiting this settlement," he says. "The homes in the foreclosure pipeline are four times the REO [current bank-owned properties], and yesterday's settlement is going to accelerate the seizure process. They have a total green light to seize those homes that are in the foreclosure process."

Does this mean that the new servicing rules won't apply to all of the homes already in the foreclosure process? Does it mean that robo-signing is still okay? If it is, there's no way that the administration isn't going to suffer significantly in the 2012 elections as a result.



The President's National Mortgage Settlement Press Conference...

Watching President Obama's press conference announcing the mortgage settlement four days ago, many people came away exuberant over what he had to say. I even had a friend call me bursting at the seams to tell me that Obama had just locked in his reelection in 2012 by virtue of that televised speech. Standing behind him on the podium were those that he was congratulating for helping to get the AG-Bank settlement in the can.

If you could have watched me while I was LISTENING to President Obama pontificate on how the settlement, *"will speed relief to the hardest hit homeowners,"* and also how it will, *"end some of the most abusive practices of the mortgage industry,"* I must have looked like someone being sprayed in the face with an aerosol can of Lysol disinfectant from seven or eight inches away.

Obama went on to say that also because of the settlement, we were *"beginning to turn the page on an era of recklessness that has left so much damage in its wake,"* and it was all I could do to suppress the urge to run screaming into oncoming traffic.

You see... I've watched this president closely these past three plus years. In fact, I've watched him so closely that were I any closer, I'd essentially be sitting on his lap. And he has, thus far, never failed to disappoint. At the State of the Union speech a few weeks ago, I really got angry at his utterly pointless rhetoric... so angry that I was ready to vote for Romney... or Mickey and Friends, for that matter... as long as it wasn't him.

I don't care what anyone says about Obama... he blew it when he spent a year debating what turned out to be a mediocre health care bill and ignoring the plight of homeowners. And his overall performance has left me with no expectations whatsoever whenever he speaks.

Then, however, the president started explaining that millions of Americans who had done ***“the right thing and the responsible thing by buying homes they could afford”*** and making their payments on time, were nonetheless ***“hurt badly”*** by the ***“irresponsible actions” of others.***

I was now on the edge of my seat... just who was it that so screwed over these fine people... let's round them up and put them in prison, right?

On Obama's list of those that caused the responsible ones such harm were, ***“lenders who sold loans to people who couldn't afford them,”*** followed by, ***“buyers who KNEW they couldn't afford them.”***

Oh good Lord, I thought to myself, does the man have a learning disability?

But, next came ***“speculators looking to make a quick buck.”*** And, glory be to God, his list ended with ***“the banks.”*** I swear to you, Obama said that it was banks that caused such harm by packaging risky loans and ***“trading them off for large profits.”***

He went on to say that *“it was wrong,”* and that *“it cost four million people their homes.”*

It was getting better by the moment. He explained that, ***“Many companies that handled these foreclosures didn't give people a fighting chance to hold onto their homes. In many cases they didn't even verify that these foreclosures were legitimate.”***

Obama was explaining robo-signing and he was calling it a crime. He was admitting that what had happened was wrong. I have to tell you that I got teary-eyed a couple of times. My heart was beating faster and faster.

“Some of them didn't read what they were signing at all. We have to think about that.”

You work your whole life to buy a home. That's where you raise your family, it's where your kids memories are formed... that's your stake, your claim on the American dream... and the person signing the document couldn't even take the time to make sure that the foreclosure was legitimate."

The president's speech was the best one he's ever given. He even explained why helping homeowners wasn't just good for the homeowners but for everybody... in fact for our national economy. He even said that we're Americans and we watch each other's backs. We help those in trouble. We care about each other.

The bottom-line is, I could have literally written the speech President Obama gave last Thursday. And that realization is something new for me. I've sure as hell never thought such a thing before... that much is certain.

Attorney General Eric Holder followed the president, and then Shaun Donovan from HUD. Here's AG Holder...

"Our investigations revealed disturbing practices. Far too often, we saw that servicers pushed borrowers into foreclosure even though federal regulations required servicers to try other alternatives first.

These servicers didn't just hurt borrowers who might have been able to afford modified mortgages. They fueled the downward spiral of our economy and of communities nationwide. They eroded faith in our financial system. And they punished American taxpayers who have had to foot the bill for foreclosures that could have been avoided."

And here's something from HUD Secretary Shaun Donovan...

"It will also provide immediate relief to homeowners. Forcing banks to reduce principal on loans refinance loans for underwater borrowers and pay billion of dollars to states that can be used for direct help to consumers struggling today."



In conclusion...

This is not the only piece I'm going to be posting today having to do with the mortgage settlement agreement between state AGs and the bankers from the five largest banks. I'm posting more than one because I think you need to absorb the whole picture from every angle.

There is no question that the utter mayhem in the housing market is Barack Obama's personal failure. There's also no question that the speech he gave at the press conference last Thursday was the first thing anyone has done to fight back against the "deadbeat homeowner" stereotype.

So, although I know there are many who find the settlement agreement a terrible travesty, I guess I'm not quite ready to go quite that far. Because as I've always said, if we could change the perception of the "irresponsible borrower," as the cause of this crisis, we would find out fast that there are solutions all around us.

The settlement agreement is supposed to help one million households by reducing their loan balance reduced. There's no way is there enough money in this settlement to do all that much for anyone. But Obama has said it's a first step, and I'm willing to walk with him for a few more steps before I throw in the towel.

An additional 750,000 families or individuals who lost their homes to foreclosure will receive checks for about \$2,000 each. Those who receive these restitution payouts do not give up their right to participate in future lawsuits. And I'm as offended by that idea just as much as if my own home had been stolen.

I also agree with some of what Yves Smith from Naked Capitalism wrote yesterday in her, [“Top 12 Reasons Why You Should Hate the Mortgage Settlement.”](#) For example, she’s undeniably right that if the mortgage task force announced during the State of the Union was serious, they wouldn’t have settled. No one settles and then investigates, so fair enough.

But, I suppose the truth is that I’ve never been as driven to see prosecutions as I have to see homeowners be treated fairly, presented options, and whenever possible, remain in their homes with payments that are affordable.

Nothing is going to take the situation we face in this country and set it right. And nothing is going to turn our economy around any time soon. I’m afraid we’ve let it go too far down for either of those things to even be possibilities.

So, I guess I’m choosing to believe that this can be a beginning for something good to build on, and that President Obama didn’t just give a speech for political reasons, but that he believed what he said, and it was all he could do.

Not that it doesn’t also suck. Not that there isn’t a lot wrong. But regardless... I started my blog to break the “irresponsible borrower” stereotype and last Thursday the nation moved in the direction I’ve hoped against hope that it would go.

So, I’m choosing to be happier about tomorrow than I was the day before. There is more to come...

Mandelman out.



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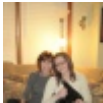




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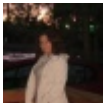
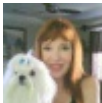


Stuff Ex-Homeowners Can Buy for \$2,000

The monetary terms aspect of the mortgage settlement agreement is completely worthless to everyone. Three billion to provide refinancing for underwater

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