Mortgage settlement leaves New Yorkers on hold

Attorney General vows action against financial institutions as borrowers complain of delays

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On Monday New York Attorney General Eric Schneiderman announced his intention to sue the financial institutions Wells Fargo and Bank of America for what he called a "persistent pattern of non-compliance" with a 2012 agreement to improve their interactions with mortgage borrowers.

Among the customers who've seen the wrong side of the lenders' practices are Staten Island residents Laurel and Victor Walton, who made timely payments until medical bills from chronic health problems piled up and Victor's hours driving an ambulance were cut short.

"It was the most horrible experience we ever went through," said Walton, 61. "I was so frazzled."

After trying for years to change the terms of their mortgage with Bank of America, the Waltons enlisted the help of Staten Island Legal Services in October — the same month the lenders' agreement to better serve borrowers went into effect.

Even then, neither the Waltons nor their paralegal succeeded in their attempts to contact a bank representative to check the status of their case. The bank also took three months to notify the couple that they were missing a single form in their application — something that was supposed to take no more than five days under the guidelines agreed to by the mortgage companies.

The couple finally received a trial modification in April, after six months of legal wrangling. The couple will get reassessed in June for a permanent interest-rate reduction on the mortgage, but there's still no guarantee they'll receive the adjustment.

Homeowners and their advocates joined Attorney General Eric Schneiderman to announce plans to take action against two financial institutions. Photo: Office of the Attorney General

The Waltons are among the thousands of New York homeowners facing foreclosure who have battled with their lenders' representatives to change the terms of their mortgage loans. A $25 billion national settlement in 2012 against the nation's five biggest mortgage servicers — representatives for lenders that manage transactions with borrowers — is supposed to change their prospects.

The settlement, signed with Wells Fargo, JPMorgan Chase, Bank of America, Citigroup, Allied Financial and 49 attorneys general, sought to head off chronic and sometimes illegal mistreatment of customers. Overwhelmed and under-resourced in the foreclosure crisis, servicers sometimes moved foreclosures through with or without proper paperwork, or falsified documents, in a practice known as "robosigning." More routinely, they made it difficult for customers to negotiate modifications that would help them pay their mortgages.

Under the settlement, banks must follow stringent timeframes in considering homeowners' applications for loan modifications, and send prompt written acknowledgment of customers' paperwork, including notification if anything is missing. They are also required to provide homeowners with a single point of contact — a representative whom the homeowner can call directly to check on the status of his or her case. The banks also cannot deny modifications to homeowners on technicalities related to paperwork.

Since the start of the settlement, according to data collected by a **national monitor**, more than 8,500 New York borrowers have seen some kind of relief on their mortgage payments under the settlement, with another 2,100 or so in the works.

But many other borrowers complain they're still getting the cold shoulder from servicers. A disproportionate share of the complaints to the attorney general's office concerned two of the five companies.

In this week's action, New York State Attorney General Eric Schneiderman **notified** the 14 state attorneys general on a committee monitoring the agreement that his office sought to take action to ensure Wells Fargo and Bank of America comply with the settlement. Schneiderman charged that Wells had violated the agreement in 210 instances documented by attorneys and counselors working with borrowers, while Bank of America customers presented evidence of violations in 129 cases.

"Today, my office has notified all relevant parties that we will be filing a lawsuit in the U.S. District Court in Washington D.C. against Wells Fargo and Bank of America for their repeated and persistent failures to comply with the servicing standards in the national mortgage servicing settlement that we entered in last year," Schneiderman said.

"Two participating servicers, Wells Fargo and Bank of America, have flagrantly violated their obligations under the settlement."

Bank of America released a written statement in response to Schneiderman's warning. "Through March we have provided relief for more than 10,000 New York homeowners through the National Mortgage Settlement, totaling more than $1 billion," stated Bank of America. "Attorney General Schneiderman has referenced 129 customer servicing problems which we take seriously and will work quickly to address. This agreement has been good for New York, and we continue using these beneficial programs to assist troubled homeowners in New York and nationally."

Wells Fargo did not make a statement on Monday.

The complaints **gathered by Schneiderman's office** include accounts from homeowners who say they did not receive written notification of a receipt of a loan modification application within three business days; failed to get notice of omissions in their application within five business days; were not given 30 days to correct faulty documents or replace missing ones; or did not get a decision on a loan modification within 30 days. All are violations of the **servicing standards**.

"The key here is time," Schneiderman said. "If you are a homeowner facing foreclosure, time is your greatest enemy. Every day wasted waiting for the banks to respond is a day homeowners fall further behind, accumulate more fees and more interest. These delays often make the difference between a family staying in their homes or being displaced."

Schneiderman was able to amass the paper trail with the help of a network of attorneys and housing counselors paid using a portion of the settlement funds. (Schneiderman's office declined to share the documentation publicly because it contains private borrower information.)

New York State received more than $600 million in the settlement, most of it going directly to the cost of modifying loans — including reducing unpaid principal — and payments for borrowers who have already lost their homes to foreclosure. Schneiderman elected to use $60 million to hire lawyers and housing counselors at 94 organizations around the state to make sure that homeowners could get free assistance in dealing with the servicers.

So far, more than 7,400 homeowners have worked with the groups, and about one-third of them have a modification in the works or granted, according to Schneiderman's office. Still, lawyers and counselors say that getting results remains an uphill battle six months after the settlement with the servicers.

"We're not seeing an increase in modifications as a result of the national mortgage settlement," said Elizabeth Lynch, an attorney with MFY Legal Services Inc., one of dozens of organizations around the state assisting homeowners under Schneiderman's program. "It's still the same pace as it was before."

Lynch said that MFY will only take on clients who are eligible for modifications, but that the banks' drawn-out process complicates each case. "The longer the delay is, the more difficult it is for the homeowner to get a modification because their arrears build," she explained. "The bank is profiting from the delay."

While the financial institutions must provide a certain volume of mortgage relief in each state, they are under no obligation to reveal which customers or communities have benefited. New York City's relatively healthy real estate market makes the potential value of foreclosure to lenders greater in many cases than working out a modification with a borrower.

MFY is able to squeak out gains for some clients. In April, Melissa Jaime, a 40-year-old single mother, finally received a loan modification on her two-family home in Glendale, Queens, which lowered her interest rate and added principal to the payments, which had been interest-only.

Jaime and her lawyers had first asked Wells Fargo for a loan modification in 2010, on a mortgage that originated with subprime lender New Century in 2006.

"It was one thing after another," Jaime said of the drawn-out process that involved a cabinet full of paperwork and more than 25 trips to the Queens County courthouse. "This could have probably ended a long time ago."

Much of the wait during the three years came from postponed settlement conferences — New York State–mandated meetings at which homeowners and bank lawyers address the status of a modification or mortgage settlement with a court-appointed mediator. Those delays endure, she says, costing borrowers time and money they can't spare.

"The servicers are violating the national mortgage settlement left, right and sideways all the time," Lynch said. She said bank attorneys came to conferences unprepared and would ask for the same documentation repeatedly. "It shouldn't take six months to a year to verify income."

Charles Das, a housing counselor at Brooklyn Housing and Family Services, says he sees consistent violations of the servicing standards' strict deadlines for dealing with paperwork from borrowers seeking loan modification.

"I have not seen a lot of the servicers adhere to the guidelines set by the settlement," said Das, "in terms of notifying the homeowner that they have received the completed package and then making a decision on a completed package within 30 days."

Against those headwinds, the funding that Schneiderman secured has provided an important boost for homeowners, according to Kristen Keefe, a staff attorney at Empire Justice Center, which is coordinating the attorney general's homeowner outreach program upstate and on Long Island. In the city, the Center for New York City Neighborhoods plays the same role.

"I can't imagine where we would be without that money," she said.

Many clients come to groups she works with after trying unsuccessfully on their own, or, worse, after being bilked by loan modification scams. Help from lawyers and counselors, Keefe says, makes a difference. "They came to our offices and, with assistance, we were able to get them loan modifications."

Paradoxically, though, counselors report that the settlement may be slowing down the loan-modification process for some borrowers.

While newer requests for modifications may be processed more quickly than they used to be, homeowners whose reviews were already underway before the settlement have seen their cases take longer than before, says Noemi Aviles, a housing counselor at the Parodneck Foundation. See sees a resulting bottleneck holding back resolution of both new and old cases.

That's because New York's courthouse foreclosure conferences, which are designed to make sure lenders uphold borrowers' rights, now have to retroactively review compliance with the servicing standards. In a six-month period last year, the state courts **held conferences on more than 35,000 foreclosures**.

“The problem is that people who filed their cases before the settlement are now going through the steps outlined in the settlement,” said Aviles. “So they had to go back and see what things were done incorrectly and change it. What they are finding is that some of these cases were settled without a settlement hearing and there are no documents.”

In the courthouse, a lack of communication between the servicers and clients — and the typical absence of bank representatives with decision-making authority — continues to hold up the process, according to Das.

“It is a lot of back and forth,” Das said. “It is not working out the way that it should, because the banks should have someone there to make a decision at the conferences.”

Das says he has not seen progress so far where it counts: in getting results for borrowers. “It has not made it better yet. I have not seen any improved results from the settlement,” Das said.

“In order for the settlement to have a big effect, what needs to be added is more penalties on the servicers if they do not meet the standards. And I don’t see that happening right now.”

Legal analysis by Robert L. Werhman.

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