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Massive mortgage settlement has winners and losers

South Florida Business Journal by Brian Bandell, Senior Reporter

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The $25 billion federal/state settlement with the nation's largest mortgage servicers has created some winners and loser among borrowers, especially in South Florida.

The deal is supposed to allow for financial relief to homeowners who are underwater – owing more on their mortgages than the value of their homes. According to CoreLogic, about half of the mortgages in South Florida are underwater. However, it seems unlikely that everyone will qualify for relief, said Boca Raton attorney Marlyn Wiener, who represents borrowers in loan modifications and short sales.

First of all, the agreement applies only to borrowers with Bank of America (NYSE: BAC), Wells Fargo (NYSE: WFC), JPMorgan Chase (NYSE: JPM), Citigroup (NYSE: C) or Ally Financial (NYSE: ALLY) servicing a loan that is held in mortgage-backed securities (MBS).

It doesn't help people with Fannie Mae or Freddie Mac loans. Even within that group, Wiener expects banks will only offer principal reductions to borrowers who are struggling to pay their mortgages, as opposed to borrowers with plenty of income to make payments.

"It is a significant pot of money, but it's not an endless pot of money," Wiener said. "Choices will be made between borrowers. A borrower who is upside-down but can afford their mortgage isn't a likely candidate for principal relief .... You are probably a loser if you are an underwater borrower who can make payments because it will be hard to sell your house in the future."

Florida Attorney General Pam Bondi said a $309 million portion of the settlement in Florida is for underwater homeowners seeking loan refinancing – a lower interest rate, not a principal reduction. To qualify, the borrower must be current, have a loan-to-value rate of more than 100 percent and an interest rate higher than 5.25 percent. Banks will contact borrowers who are eligible, Bondi added.

The $7.6 billion part of the settlement is for borrowers who are delinquent or in "imminent threat" of delinquency as determined by the loan servicer. They could qualify for a principal reduction if the loan servicer finds they can afford to make reduced payments. If that doesn't work, the loan servicer must explore a short sale or deed in lieu of foreclosure, with one incentive being the release of any future claims against the borrower.

"We are very pleased with this settlement," Bondi said. "It provides relief to homeowners and provides stability to the housing market. We are trying to help people who want to stay in their homes."

Borrowers who can demonstrate that they suffered a decline in income or other economic hardship might qualify for help, Wiener said. But a borrower with a severe income hit who cannot afford to pay anything probably won't get much relief.

What isn't clear, Wiener added, is how this agreement will apply to borrowers who are also delinquent on second mortgages, association fees and property taxes. Someone has to take responsibility for bringing those current if the loan is to be modified. Holders of the second mortgage must also approve short sales.

The settlement could prove to be a quandary for borrowers who are already delinquent and facing foreclosure. Thousands of people in South Florida are staying in homes without making payments – sometimes for years. Weston attorney Roy Oppenheim, who specializes in foreclosure defense, said foreclosure defendants shouldn't rush to take the deal, particularly if the lender can't find their mortgage documentation.

"The only people who lose are the people who leave [their houses] and don't stand their ground," Oppenheim said. "In some cases, they could beat the banks because the banks don't have the right paper. That is why they would rather give you $35,000 to get you out and do a short sale than not be able to foreclose."

Both Oppenheim and Wiener said they have had clients get cash incentives from banks to agree to a short sale or deed in lieu of foreclosure. This happens because the loan servicers would rather lose $20 billion giving out incentives than take a total loss on $3 trillion in mortgages, he said.

Whether delinquent borrowers should ultimately take the deal or not depends on their circumstances, Oppenheim said. If the borrower doesn't like the house and doesn't want to stay there, it might make sense to take advantage of the deal, he said.

Louis Archambault, a partner with Miami law firm Pathman Lewis who often represents banks in foreclosures, said the deal doesn't prevent borrowers from countering foreclosure lawsuits with abuse-of-process claims. It doesn't appear to resolve lawsuits where banks can't produce loan documentation.

For people looking to short-sell their homes, Wiener said the deal should help, assuming that banks implement it as planned. She said most banks have been very slow to approve short sales, and it's hard to communicate with them. Some of her clients were told by Bank of America to wait for assistance because it didn't have the staffing levels to help them, she said.

The settlement says the loan servicers must improve their staffing levels and provide a single point of contact for borrowers. They also can't attempt to foreclose on a borrower while in the middle of short sale or modification discussions.

Bondi said her office will ensure that loan servicers have the appropriate staffing levels to assist borrowers.

Wiener hopes the settlement will streamline the short sale process so troubled properties can move.

"If we get the short sale spigot opened again, we will see more inventory on the market and we will see demand for it," Wiener said.

Another group that essentially loses are people who already lost their homes to foreclosure in robo-signing cases. Oppenheim said the estimated settlements of $1,500 to $2,000 are hardly enough to compensate them. The Florida Legislature is considering a law that would prevent people who lost homes to foreclosure in these questionable cases from taking them back. Oppenheim said this effort is aimed at preventing chaos in the real estate market and harming title companies.

"It gives them a get-out-of-jail-free card for bad paperwork they got in the system illegally," Oppenheim said.

For borrowers who aren't lucky enough to have this settlement applied to their loan servicer, there could be a silver lining, as well. Archambault said other loan servicers will see the actions the regulators took and probably adopt similar practices for how they handle relations with borrowers.

"It is just a good business practice to address the problem," he said.

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