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Mortgage deal could help many avoid court, but backlog remains

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NEW YORK, Feb 10 (Reuters) - The \$25 billion mortgage settlement [announced Thursday](#) may not offer much relief from the foreclosure caseload currently swamping New York courts, but the state's attorney general says it could still keep tens thousands of homeowners from becoming future litigants.

"Not everyone is going to be able to make a deal, but we're going to be working hard to make sure as many New Yorkers as possible get principal reductions ... and lower interest rates," New York State Attorney General [Eric Schneiderman](#) told reporters Thursday. "The goal is to keep people in their homes." Schneiderman is helping to lead a federal Department of Justice unit investigating abusive home-loan lending.

The settlement between 49 states, the federal government and five major U.S. banks -- Bank of America, Wells Fargo, JP Morgan Chase, Citigroup and Ally Financial -- [released the banks from government claims](#) over improper foreclosures and misconduct in servicing mortgages, including "robosigning," in which banks signed thousands of foreclosure documents without properly reviewing them.

The banks still face a host of other potential government actions over the mortgage crisis. And individual homeowners who benefit from the settlement are not stopped from filing lawsuits against lenders over abuses.

New York State will receive \$136 million from the settlement, but it remains to be seen how much that will impact ongoing foreclosure proceedings across the state, where more than 345,000 mortgages were delinquent or in default in 2011, according to a report released last month by the Neighborhood Economic Development Advocacy Project.

The Department of Housing and Urban Development estimates that more than 46,000 New York homeowners will benefit from the settlement through refinancing, loan modification and payments for wrongful foreclosure, according to the attorney general's office. A portion of the money will provide legal aid to at-risk homeowners, as well.

"Representation is one of the keys here," said Paul Lewis, an Office of Court Administration official who has helped coordinate the judiciary's handling of foreclosure cases. "It's much more difficult for the court system to handle these cases without legal representation."

75,000 PENDING CASES

The current foreclosure backlog in New York courts -- 75,000 pending cases -- is due in part to a 2008 law passed by the state legislature in response to the growing housing catastrophe, requiring settlement conferences for all foreclosures in an effort to provide relief for homeowners whose mortgages are unaffordable. Since the law's passage, the courts have held 250,000 settlement conferences, Lewis said.

Prior to the legislation, Lewis estimated, more than 90 percent of homeowners facing foreclosure never set foot in a courtroom. Now, he said, that number is reversed, with 90 percent of homeowners going through the hearing process. A recent study by New York University's Furman Center for Real Estate and Urban Policy found foreclosures cases routinely last for two years.

The flood of new cases receded sharply in 2011, after the state's chief judge instituted a new filing requirement designed to combat robosigning. The new rule called for attorneys to submit affirmations certifying they had confirmed with banks that the documents were not robosigned.

New foreclosure cases could drop further as the mortgage settlement allows more homeowners to receive loan modifications, Lewis said, although Thursday's settlement provides relief only to homeowners who are underwater, meaning they owe more than their home is worth.

"This will hopefully cut down on our caseload," Lewis said.

An existing federal program for refinancing, the Home Affordable Modification Program, has been criticized by some advocates for helping fewer than 1 million homeowners obtain mortgage payment reductions, far fewer than the original goal of 4 million.

PROVIDING LEGAL AID

For homeowners at risk of foreclosure, an increase of support for legal aid could help them navigate the complicated process, said Meghan Faux, who runs an assistance program for low-income South Brooklyn residents faced with

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losing their homes.

"It's certainly very hard for homeowners to secure a sustainable modification on their loan without legal representation," Faux said. "The vast majority of our clients are denied modifications before coming to us."

According to an OCA report released in November, 67 percent of homeowners between November 2010 and September 2011 attended settlement conferences without a lawyer. State budget cuts have further reduced the money available for legal-aid services, which say they have already prevented more than 14,000 foreclosures statewide.

The settlement funds will help legal service groups on the brink of running out of state funding to continue their work.

At the same time, more representation could also lead to additional lawsuits against lenders.

"In a lot of these cases, it's no secret there are legal issues," Lewis said. "When you have a lawyer, that can lead to more litigation."

Nevertheless, the amount of the settlement pales in comparison to the size of the housing crisis still gripping the state, said Sarah Ludwig, co-director of the Neighborhood Economic Development Advocacy Project.

"The amount that's been allocated to New York for principal reduction is going to help a relatively small percentage of people who are underwater," she said. "We view this as a first opening milestone in addressing the foreclosure crisis."

Schneiderman said he expects more banks to sign onto the settlement in the coming weeks, which would increase New York's share of the money. And he vowed to pursue additional remedies.

"This is a down payment on the broader relief we'll be seeking in the course of our joint investigation," he said.

(Reporting by Joseph Ax and Dan Wiessner)

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