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National Mortgage Settlement: One Year Later

When the national foreclosure settlement was signed in Feb. 2012, it was heralded as a great victory for consumers. Like many Maryland leaders, MCRC and other housing advocates believed at the time that the settlement between 49 state attorneys generals and five mortgage servicers (Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo) represented the best chance many struggling Maryland homeowners had to retain their homes.

Now, more than 13 months later, not a single bank involved in the settlement has offered more principal reductions (which most housing and consumer advocates believe is the most effective way to help families retain their homes) than other types of relief.

The mortgage settlement was reached in exchange for waivers of liability on substantial legal claims including robo-signing and dual-tracking. In return for those liability waivers, the banks pledged to invest billions of dollars to alleviate the nation's foreclosure crisis through consumer relief and improved service.

The settlement was structured so that banks received incentives to secure principal reduction mortgage modifications for homeowners and to act quickly within the first year to provide sustainable solutions to help families stay in their homes.

The settlement was designed to encourage principal reductions because reducing mortgages -- particularly in cases in which homeowners are underwater on their loans -- to the fair-market value of the home is often the best way to allow families to retain their homes and help stabilize communities, and can even cost banks less than the cost of foreclosing on a home.

Maryland Results to Date

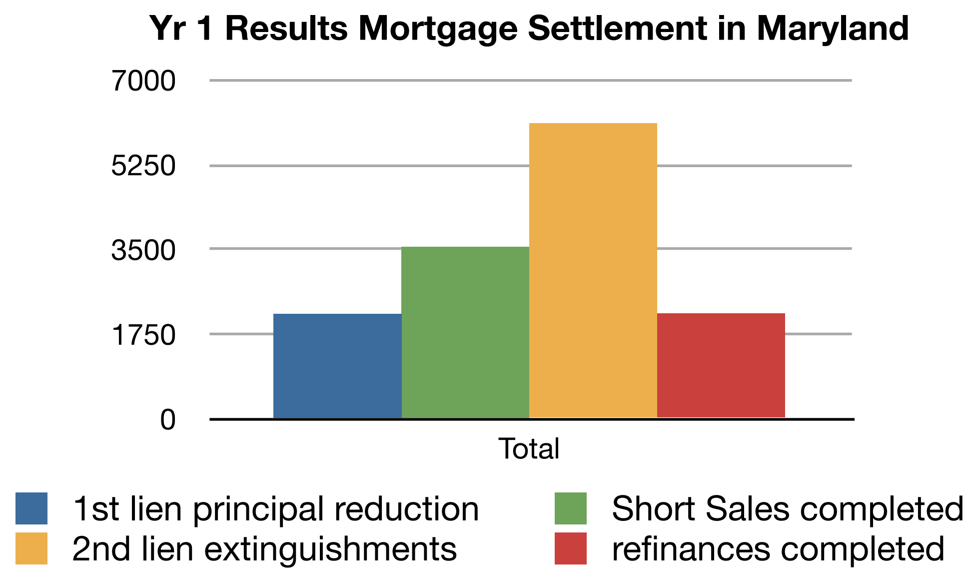
One year later, the results are extremely disappointing (see Table 1). Although the settlement mandates that 60% of the relief to consumers must come in the form of principal reductions, this has not happened.

Table 1. National Foreclosure Settlement Results for Maryland, March 1, 2012-March 31, 2013

	Ally/GMAC	BoA	Citi	Chase	Wells	**Total**
1st lien principal reduction	71	1017	121	702	259	**2170**
forgiveness of pre 3/12/12 Forbearance	6	264	190	114	135	**709**
2nd lien forgiveness	3	72	152	33	46	**306**
2nd lien extinguishments	46	4616	749	543	149	**6103**
Short Sales completed	79	2173	139	810	354	**3555**
Deed in lieu, deficiency forgiven			4		9	**13**
borrower transitional funds		576	1	198	72	**847**
servicer payment for release of second lien			6	38	11	**55**
deficiency waivers		599			73	**672**
forgiveness of principal associated with property with no foreclosure			21			**21**
REO properties donated				3	1	**4**
refinances completed	42	1176	230	170	554	**2172**
Total	**247**	**10,493**	**1613**	**2611**	**1663**	**16.627**

Results to Date

- 16,627 Maryland consumers have gotten some type of relief from the mortgage settlement.
- The average amount of relief per consumer has been $78,687.
- **Not a single bank involved in the settlement has provided more principal reductions than short sales or other relief** (see Table 1 & Chart 1).
- In the first 13 months of the settlement, **banks have forgiven second-lien loans nearly three times as often as they have offered principal reductions** or refinancing agreements.
- **Banks have completed almost twice as many short sales as principal reductions**.



Why the Type of Relief Matters

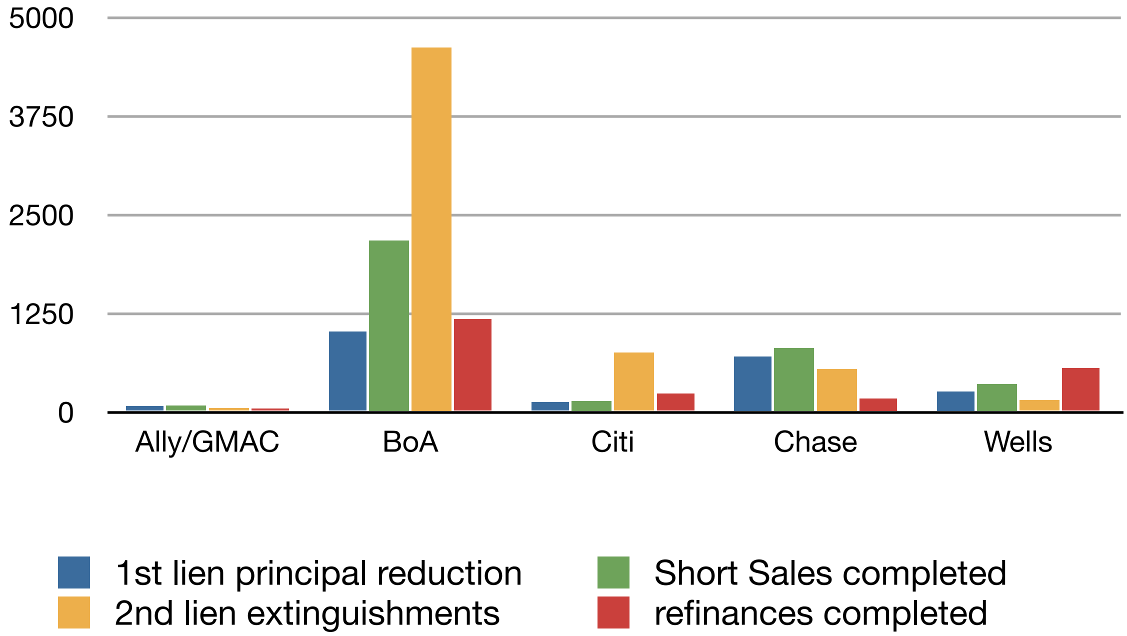
The spirit and intent of the settlement was to help families retain their homes. But in trying to achieve that goal, all consumer relief is not equal – and, as we have noted, forgiving a portion of the mortgage principal to reduce the loan to an affordable level (**principal reduction**) is very often the best way to prevent foreclosures and enable families to save their homes.

Yet only about one in eight Marylanders who have gotten help under the mortgage settlement has won a principal reduction. One reason for this is that Federal Housing Finance Agency Acting Director Edward DeMarco prohibits Fannie Mae and Freddie Mac from considering principal reduction agreements on the loans it owns, and many of the loans serviced by banks in Maryland are owned by Fannie Mae and Freddie Mac. With Fannie Mae owning the largest number of loans in the state (45% of total loans) and Freddie Mac owning 14.2%, a policy change by the FHFA that would allow principal reductions on its loans could help many more Maryland families get the kind of relief they need to save their homes.

Unfortunately, the types of relief the big banks have offered most frequently under the settlement are among those that do the least to help homeowners save their properties.

Second-lien extinguishments were the most common and least useful type of relief offered by banks to Maryland consumers. Second-lien loans, also called home equity loans, borrow from the equity in a home to provide funds for other needs. However, forgiving second-lien mortgages doesn't help the vast majority of Maryland families struggling to save their homes.

Chart 2. Consumer Relief Outcomes by Bank for Marylanders



Short sales, the second-most common type of relief banks have given Maryland homeowners under the settlement, are also a very weak form of relief because they leave a family without a home. In a short sale, the bank sells a home for less than the value of the mortgage. Short sales deprive a family of a home while providing investors with the opportunity to purchase homes at rock-bottom prices.

One form of relief allowed under the settlement is for a bank to complete a short sale and then decide not to try to collect the difference (also called a deficiency) between the price the house sold for and the mortgage on the house. But the banks MCRC has talked to have been unwilling to promise they won't try to collect those deficiencies in the future.

Relief Vs. Need

Although more than 16,000 Maryland consumers have been helped by the settlement, the need far outweighs the results to date. In March of this year alone, 10,422 Maryland families received notices that they may lose their home in foreclosure.[1] The sheer number of families facing foreclosure demonstrates that the need for meaningful loan modifications far exceeds the amount of relief banks have provided over the past 13 months.

Variations Between Banks

While no bank prioritized principal-reduction loan modifications over other relief, banks diverged on what type of relief they were most likely to offer. Bank of America offered more than four times as many second-lien cancellations as principal reductions or refinancing agreements (see Chart 2). Compared to the other four banks in the settlement, JPMorgan Chase

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[1] Notice of Intent to Foreclose in Maryland March 2013 Report, http: www.dllr.md.state.gov.us,

offered a higher proportion of principal reductions to other relief. Yet JPMorgan still offered more short sales (810) than principal reductions (752). Wells Fargo has provided principal reductions for 259 Maryland families and refinanced loans for 554 more. Although principal reductions are the best option for struggling homeowners, refinancing mortgages to make them more affordable is often the next best choice.

Wells Fargo owns the largest percentage of loans in Maryland (20.1%) among the banks in the settlement and owns the highest percentage of the loans it services in this state (22%), which gives it more flexibility to implement principal reductions, refinancing, and other more meaningful relief than some other banks have.

Hardest Hit Communities

Advocates remain concerned about the distribution of relief. Research in Prince George's County has shown that high-income borrowers in African-American neighborhoods were 42 percent more likely to go into foreclosure than typical borrowers in white neighborhoods. High-income borrowers in Latino communities fared worse: They were about 160 percent more likely to experience a foreclosure.[2]

Other research has shown that, nationally, African-Americans and Latinos were 30% more likely to receive a high-cost subprime loan than white borrowers.[3] These high-cost loans -- which were much more likely to go into foreclosure than other loans -- have caused devastating losses of wealth for African-American and Latino borrowers. Recent research from Brandeis University calculates that half the collective wealth of African-American households was lost during the recession because of home equity losses. Latino households lost 67% of their collective wealth because of home equity losses.[4]

For these reasons, fair housing advocates want to ensure that communities of color and the hardest-hit communities receive consumer relief commensurate to the distress these communities have suffered. However, advocates are concerned that banks may be targeting the most valuable loans for principal reduction while ignoring lower-value loans in low-income communities. In Maryland, the average principal reduction under the settlement has been worth $129,611, a figure that exceeds the average mortgage in some parts of the state, including Baltimore City.

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[2] Carr, James A., "Wealth Stripping: Why It Costs So Much to Be Poor" in *Democracy: A Journal of Ideas*, Issue 26, Fall 2012 http://www.democracyjournal.org/26/wealth-stripping-why-it-costs-so-much-to-be-poor.php

[3] Gandy, Imani, "The National Mortgage Settlement: Failing Women and Communities of Color?" *RH Reality Check*, March 18, 2013.

[4] Shapiro, Thomas, Tatjana Meschede, & Sam Osoro "The Roots of the Widening Racial Wealth Gap: Explaining the White-Black Divide" Institute of Asset and Social Policy, February 2013 http://iasp.brandeis.edu/pdfs/Author/shapiro-thomas-m/racialwealthgapbrief.pdf

Prince George's County leads the state in notices of intent to foreclose -- with 24.4% of all notices in the state over the last five years going to homeowners in that county -- while homeowners in Baltimore City received the second-greatest number of foreclosure notices (13.4%) in the state between April 2008-March 2013. While high-dollar principal reductions may provide relief in high-income African American communities in Prince George's County, that relief may be coming at the expense of low- and moderate-income communities of color in Baltimore City.

Wells Fargo's recent $42 million settlement of a lawsuit charging it failed to properly maintain foreclosed homes in black and Latino neighborhoods across the country adds to our concern that that poorer minorities may not be getting the help they need. The investigation found that foreclosed homes serviced by Wells Fargo in minority communities were more likely to be left damaged or left with unkempt yards or broken windows than those in mostly white neighborhoods.

Unfortunately, the mortgage settlement does not provide demographic or census-tract level data on where the relief is going, so there is no way for advocates to really know which communities are benefiting from the relief. In the national mortgage settlement, banks agreed that they would not provide consumer relief in discriminatory ways.

More detailed data on where the relief is going is needed not just to establish that the banks are fulfilling that promise, but to make sure they are complying with their fair lending obligations under the Fair Housing Act and the Equal Credit Opportunity Act (ECOA).

Policy Recommendations:

- **The Office of the National Settlement Monitor Should Require Banks to Provide Demographic and Census Tract Data for Consumer Relief Under the Settlement.**
- **Banks Should Increase Principal Reductions - Principal Reductions Should Exceed Short-Sales and Deficiency Waivers**
- **The Monitor Should Use His Authority to Confer Penalties on Banks that Do Not Comply with the Settlement Terms.**
- **President Obama should replace FHFA Acting Director Ed DeMarco with an appointee who supports principal reductions.**