

Ally Financial Ready to Fight AGs? Is the Announced Foreclosure Settlement Done or Not?

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In today's *Housing Wire*, there's news that a deal has been reached in the Big Bank - AG Settlement of ForeclosureGate issues and the numbers seem to jive with the earlier reporting in the *New York Times* by Gretchen Morgenson (see our earlier post for details).

Sounds like the tracks are being repaired and the financing industry train is about to get back on the tracks, right? Maybe not.

Today, just as Ally Financial announced its \$210 Million loss in the third quarter of 2011, its Chief Executive Officer, Michael Carpenter, stated publicly that Ally Financial is not happy with the proposed settlement and Ally Financial is NOT going to make that deal with the AGs because it's not good business for Ally.

*That's right: Ally Financial appears to have thrown down the gauntlet and announced Ally is ready for a courtroom battle rather than take the deal that is being described in the *New York Times* and *Housing Wire*.*

Why? Ally Financial doesn't like the numbers. Ally's CEO is telling Ally investors that it's Ally's position that the settlement, as it stands right now, is not in the best interests of its shareholders and while this decision may mean incurring legal fees, Ally sees the "aggravation" of a legal fight as a better alternative that signing off on the AG proposal.

Ally Points Out the Duty to Foreclose Placed Upon Banks

And, here's the key. As CEO Carpenter points out in his statements to the press, financial institutions that are in the mortgage business have a duty to foreclose when mortgages are delinquent for a set period of time.

The banks have a legal duty to do so; they answer to their shareholders. Where would we be right now if these mortgage servicers had just sat back and refused to foreclose on the defaulting loans?

ForeclosureGate was not the result of evil-doing greed: it was the result of banks (and their lawyers and servicing companies) being blindsided by the HUGE, unprecedented number of loans that went belly up. For whatever reason, people stopped making their home loan payments and the banks were left between a rock and a hard place: they are fiduciaries to their shareholders, after all.

Ally Financial Ready for the Courtroom?

Ally Financial seems to have done its homework here, purporting to have reviewed its foreclosure cases for exposure in the ForeclosureGate mess. Out of 25,000 foreclosure cases Ally reviewed, it found that each case had a mortgage that had been delinquent for at least one year.

Therefore, after a year with no payments on the loan, Ally is revealing its defense to any lawsuits that might be filed against it: it was fulfilling a legal duty to foreclose because the home owners had stopped paying on their loan contract. Period.

Will the other Big Banks follow Ally's lead? Will the state AGs just start suing? Will everyone calm down and get back to the table and iron out a deal?

It's too soon to tell. However, one thing's for sure: one of the reasons cited by Ally Financial for its \$210,000,000 loss this quarter is a decline in its mortgage servicing rights valuation. It's a leaky boat right now.