

# MORTGAGE SETTLEMENT IN THE COURTROOM

## Consumer Protection Mortgage Fraud Cases

Since the mortgage settlements were announced last year, Attorney General Horne continued to aggressively prosecute foreclosure rescue companies and others involved in mortgage fraud. A few examples are provided below:

### *State of Arizona v. The Mortgage Law Group, LLP and Underwater Property Solutions, LLC.*

On February 10, 2012, the Attorney General filed a lawsuit alleging that the Defendants engaged in deceptive practices in the marketing and sale of mortgage loan modification services to consumers, including representing that the services would be performed by lawyers when, in fact, no actual substantive work was performed by lawyers and the services largely consisted simply of collecting information from consumers and forwarding it on to the consumers' lenders. One of the defendants was an Illinois law firm. **The cases were resolved by way of Consent Judgments later in 2012, and they prohibit defendants from engaging in any consumer debt or loan modification activities in Arizona.**

### *State of Arizona v. La Paz Source, LLC & La Placita Multi Services, LLC.*

In August, 2012, the Attorney General filed a consumer fraud lawsuit in Pima County against La Paz Source, LLC. The complaint alleged that La Paz Source, LLC promised consumers it would to stop the foreclosure process, obtain loan modifications for its customers and communicate with lenders/servicers on behalf of its clients, but failed to provide the foreclosure consultant services required to earn their large up-front fees. La Placita Multi Services, LLC, which claimed to be a retail outlet for a Do-It-Yourself loan modification application website called Making All Homes Affordable ("MAHA"), was later added as a defendant in the case. The Defendants failed to respond to the lawsuit and the Attorney General obtained a default judgment against all Defendants in April, 2013. **The Judgment orders Defendants to jointly and severally pay \$26,498.50 in the State's attorney's fees and costs, \$71,743.34 in consumer restitution, and a civil penalty of \$270,000. The Judgment further enjoins all Defendants from violating the Arizona Consumer Fraud Act, engaging in any business activity to, into, or from the State of Arizona that requires licensure under Title VI of the Arizona Revised Statutes, and from selling or transferring any interest in the business entities without prior approval of the Arizona Attorney General's Office.**

### *State of Arizona v. Mortgage Relief Group, dba Mortgage Assistance Group, Stan Ni-Addo Allotey, Jr., and Dennise Allotey*

This case began with an enforcement action against Mortgage Relief Group, D.B.A. Mortgage Assistance Group ("MAG"), a loan modification company, and its principal, Stan Allotey. The State's investigation confirmed consumer complaints that MAG charges upfront fees to consumers in foreclosure, in violation of A.R.S. § 44-1378 et seq. (effective July 29, 2010). Consumers also complained that MAG provided little or no loan modification services to customers (despite charging fees ranging from \$995-\$3,000), erroneously told consumers to stop paying their mortgages and communicating with their lenders, failed to return calls, provided illusory money back guarantees, and failed to provide promised refunds. Moreover, MAG conducted direct phone solicitations without registering with the Secretary of State, in violation of the Arizona Telephone Solicitations Act and Consumer Fraud Act. **The case is now in litigation.**

### *State of Arizona v. Rosa Galope*

The Attorney General's Office filed a lawsuit against the Defendant after having received several complaints from consumers who had paid her significant sums of money for assistance obtaining a mortgage modification and, in some cases, for assistance facilitating the re-purchase of their homes after a short sale transaction. In each case, Ms. Galope failed to provide the services she promised and failed to refund consumers' money. **A Consent Judgment was negotiated in October, 2012 that requires Ms. Galope to pay consumer restitution and the state's fees and costs. Additionally, Ms. Galope is prohibited from engaging in any type of mortgage or real estate activities in Arizona or on behalf of Arizona consumers.**

The Attorney General also filed suit against companies whose practices allegedly contributed to the mortgage and foreclosure crisis in Arizona and nationwide.

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## *State of Arizona v. Standard & Poor's Financial Services, LLC*

In February, 2013, Attorney General Horne filed a consumer fraud lawsuit against Standard & Poor's and its parent company, McGraw Hill ("S&P"). The complaint alleges misconduct involving structured finance securities backed by subprime mortgages that were at the heart of the nation's financial crisis. According to the complaint, S&P violated the Consumer Fraud Act by misrepresenting the independence and objectivity of its securities ratings. Despite its representations of neutrality, S&P allegedly allowed revenue considerations to influence the analytical models it used to ultimately assign high ratings to many securities that turned out to be virtually worthless. The U.S. Department of Justice and about 15 other states have also filed suit. **The case is now in litigation.**

## *State of Arizona v. Lender Processing Services, Inc.*

In February, 2013, Arizona joined a \$120 million multistate settlement resolving an investigation of the foreclosure practices of Lender Processing Services, Inc. ("LPS"). Arizona's share of the settlement was approximately \$3.7 million. According to court documents, LPS and/or its predecessor, Fidelity National Information Solutions, Inc., and its affiliates, LPS Default Solutions, Inc. and DOCX, LLC, allegedly fabricated mortgage assignments, engaged in a referral fee kickback scheme with foreclosure attorneys, applied consumers' mortgage payments and fees contrary to their mortgage agreements, signed mortgage related documents without checking the accuracy of the information contained in the documents and forged the signatures of bank officers on mortgage documents. **The Consent Judgment requires LPS to significantly reform its practices and to review and correct certain documentation errors.**

## **Criminal Prosecution of Mortgage Fraud Cases**

The Attorney General's office has continued to prosecute criminal mortgage fraud cases over the last year. Examples of successful prosecutions include:

### *State v. Kenneth J. Plein.*

In November 2012, Kenneth J. Plein was indicted on multiple felony counts including five counts of Fraudulent Schemes and Artifices, five counts of Theft, 13 counts of Sale of Unregistered Securities, and 13 counts of Transaction by Unregistered Dealer or Salesperson. The State alleged that Kenneth J. Plein defrauded elderly investors, most of whom were Sun City residents, of approximately \$1.1 million. Plein allegedly promised a set percentage return on investments and represented to individuals that their investments would be secured by a mortgage on purchased property. In August of 2010, without providing notice to his investors, Plein filed for bankruptcy according to the indictment. Around that time, individuals who had made real estate investments with Plein and his businesses discovered that their deeds of trusts were either never recorded in their favor or that their liens were recorded as lower priority liens on the investment property. Additionally, Plein allegedly sold investments involving the same property to multiple individuals. All of this rendered the investments unsecured or grossly inadequately secured. As a result, these individuals allegedly lost their investments. **The case is pending trial.**

### *State v. Peter J. Workum*

In November, 2012, Peter J. Workum was indicted on multiple felony counts including two counts of Theft; two counts of Money Laundering; one count of Fraudulent Schemes and Artifices, one count of Residential Mortgage Fraud; and four counts of Forgery. The State alleged that Peter J. Workum, without the knowledge or permission of Orlo and Devera Ison, filed Articles of Organization for the Isons' LLC, Deveras, LLC, with the Arizona Corporation Commission, listing Workum's business entities as the manager and member of the LLC, not the Isons. The Isons created Deveras, LLC, to protect their assets according to the indictment, but due to a mistake, the Isons never realized that their Articles of Organization were not filed with the Arizona Corporation Commission. Believing that Deveras, LLC, had been created, the Isons allegedly purchased a truck in the name of the LLC and transferred the house they live in, located in Gilbert, AZ, into the LLC. Somehow, Workum allegedly discovered that Deveras, LLC, had not been registered, and then he registered the Isons' LLC under his company's name. He allegedly transferred the Isons' house in Gilbert, AZ to another one of his businesses and obtained a \$220,000 loan using the Isons' house as security. After the loan proceeds were distributed, not a single payment was made toward the loan and the lender initiated foreclosure proceedings against the Isons' house, according to the indictment. **The case is pending trial.**

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### *State v. Gary Patrick Duffy*

In March, 2013, Gary Patrick Duffy was indicted on three counts of Fraudulent Schemes and Artifices, class two felonies; and one count of Forgery, a class four felony. The State alleged that in 2010, Gary Patrick Duffy approached his friend for whom he was a financial advisor regarding a joint investment, proposing that they purchase a house to renovate and sell. Duffy and his friend allegedly agreed that they would be 50/50 partners and that the house would be purchased with cash. Duffy allegedly told Borden that he would obtain his half of the cash from his IRA. They purchased a house at a foreclosure auction, but, unbeknownst to his friend, Duffy had obtained a hard money loan for his portion of the purchase price and had used the house as security to acquire the loan. Duffy's friend allegedly later became aware of Duffy's loan and found out that Duffy was delinquent on his loan payments. To prevent the house from being foreclosed, Duffy's friend allegedly ended up making the delinquent payments and assuming the loan. Duffy also allegedly entered into similar investment agreements with other individuals. **The case is pending trial.**

### *State v. Russell B. Temple*

In February 2013, pursuant to a plea agreement, 72-year-old Russell B. Temple was sentenced for Fraudulent Schemes and Artifices, a class two felony. He was placed on four years of supervised probation and a six-month initial term in jail. The plea agreement resolves an indictment brought in October 2012 arising out of Mr. Temple's role as treasurer for the Golden Hills Homeowners Association, Inc. (HOA) from July/August 2004 through October 2011. While he was the treasurer, Temple allegedly transferred money from the HOA's checking account directly into his personal checking and savings accounts. Additionally, he allegedly used the HOA's check/debit card to make personal purchases. Temple allegedly hid his transactions by submitting monthly financial statements to the HOA that falsely represented the HOA's monthly checking account balance, savings account balance, income and expenses. **In addition to the jail term, Mr. Temple was ordered to pay \$328,587.76 in restitution.**

The Attorney General's Office is investigating many other mortgage fraud cases which are expected to lead to civil or criminal prosecutions.