

## Recent Developments in Attorney General Investigations

A state Attorney General is charged with representing the legal interests of his state by serving as the “people’s lawyer” for his constituents.<sup>1</sup> An Attorney General enjoys a considerable amount of autonomy in this role, and is generally the sole representative of executive-branch interests in the courtroom.<sup>2</sup>

Some of the most visible successes of various state Attorneys General in prosecuting financial issues have resulted from multi-state investigations.<sup>3</sup> For example, in 2002, various Attorneys General settled charges that mortgage lender Household Finance violated state consumer finance and protection laws by misrepresenting or failing to disclose the terms of mortgage loans. Under the settlement, Household Finance agreed to pay up to \$484 million to consumers nationwide.<sup>4</sup> In 2006, Ameriquest Mortgage Co. settled predatory lending charges with 49 states and the District of Columbia. The company agreed to pay consumers and states a total of \$325 million and to implement reforms.<sup>5</sup>

Several current investigations involve either a single state or a consortium of only a few states. Recent investigations and lawsuits by state Attorneys General include:

### Ohio:

Attorney General Marc Dann, who had sued more than a dozen lenders and brokers by October of last year, recently brought suit on behalf of the Ohio Public Employees Retirement System against the Federal Home Loan Mortgage Corporation, or Freddie Mac.<sup>6</sup> The securities fraud class action, which was filed in an Ohio federal court in January, alleges that Freddie Mac, its top executives and some directors made misleading statements about the extent of Freddie Mac’s subprime exposure to artificially inflate the company’s stock price.<sup>7</sup>

In addition, Dann has alleged that 10 mortgage lenders and appraisal companies used pressure tactics to persuade appraisers to raise the appraised values of homes. He has also announced that he may bring a “broader case against Wall Street banks, lawyers and bond-rating agencies.”<sup>8</sup>

### Illinois:

<sup>1</sup> National Association of Attorneys General, *Frequently Asked Questions: What does an attorney general do?*, available at [http://www.naag.org/what\\_does\\_an\\_attorney\\_general\\_do.php](http://www.naag.org/what_does_an_attorney_general_do.php).

<sup>2</sup> Timothy Meyer, *Federalism and Accountability; State Attorneys General, Regulatory Litigation, and the New Federalism*, 95 CAL. L. REV. 885, 890-91 (2007).

<sup>3</sup> Meyer, *supra* note 2 at 906-7.

<sup>4</sup> Press Release, State of Idaho Dept. of Finance, States Settle with Household Finance (Oct. 11, 2002) available at <http://finance.idaho.gov/PR/Archives/2002/SettleHousehold10-11-02.pdf>.

<sup>5</sup> Press Release, Iowa Attorney General, Miller: Ameriquest Will Pay \$325 Million and Reform Its Lending Practices (Jan. 23, 2006) available at [http://www.iowa.gov/government/ag/latest\\_news/releases/jan\\_2006/Ameriquest\\_iowa.html](http://www.iowa.gov/government/ag/latest_news/releases/jan_2006/Ameriquest_iowa.html).

<sup>6</sup> Paul Menchaca, *States Weigh Legal Action against Lenders: Ohio, Massachusetts among states accusing lenders of deception*, ASSET SECURITIZATION REPORT, Oct. 22, 2007.

<sup>7</sup> Press Release, Marc Dann Ohio Attorney General, Attorney General Marc Dann Sues Freddie Mac on Behalf of Ohio Public Employees Retirement Fund (Jan. 22, 2008) available at <http://www.ag.state.oh.us/press/08/01/pr080122.pdf>.

<sup>8</sup> Associated Press, *Regulators’ Subprime Mortgage Cases*, Feb. 18, 2008.

Attorney General Lisa Madigan subpoenaed Countrywide Home Loans, Inc. and Wells Fargo Financial Illinois, Inc. in March to investigate whether the companies used discriminatory lending practices in violation of fair lending and civil rights laws. Madigan's investigation was triggered by a study from the *Chicago Reporter* that found that African-American and Latino borrowers were more likely than non-minorities to be steered to subprime loans, and that Countrywide and Wells Fargo sold the highest percentage of subprime loans to minority borrowers. Madigan was already investigating whether Countrywide sold unaffordable loans to Illinois borrowers when she issued the subpoenas.<sup>9</sup>

Madigan has aggressively pursued allegations of mortgage fraud. She has recently taken action against mortgage rescue companies for violation of the state's Mortgage Rescue Fraud Act, which took effect in January 2007.<sup>10</sup>

#### **Texas:**

Texas Attorney General Greg Abbott has taken a leading role in pursuing allegedly fraudulent foreclosure rescue schemes. His office has filed enforcement actions against several rescue operations, and has obtained temporary restraining orders in at least two cases.<sup>11</sup> Abbott has also joined with Attorneys General from 10 other states and several state bank regulators in a foreclosure prevention working group.<sup>12</sup>

Abbott's office and other Texas regulatory agencies have formed the Texas Residential Mortgage Fraud Task Force, "a partnership that involves key state regulatory agencies to take a proactive stance towards tracking and prosecuting mortgage fraud."<sup>13</sup> In February, Abbott's office led the prosecution of a mortgage fraud scheme that allegedly defrauded the United States Department of Housing and Urban Development of more than \$3 million.<sup>14</sup>

#### **New York:**

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<sup>9</sup> Press Release, Illinois Attorney General Lisa Madigan, Illinois Attorney General Madigan Issues New Subpoenas to Countrywide and Wells Fargo (March 6, 2008) available at [http://www.illinoisattorneygeneral.gov/photos/2008\\_03/index.html](http://www.illinoisattorneygeneral.gov/photos/2008_03/index.html).

<sup>10</sup> Press Release, Illinois Attorney General Lisa Madigan, Madigan Reaches Settlement with Mortgage Rescue Firm (Feb. 27, 2008) available at [http://www.illinoisattorneygeneral.gov/pressroom/2008\\_02/index.html](http://www.illinoisattorneygeneral.gov/pressroom/2008_02/index.html); Press Release, Illinois Attorney General Lisa Madigan, Madigan Utilizes New Law to Sue Mortgage Rescue Company (Sept. 14, 2007) available at [http://www.illinoisattorneygeneral.gov/pressroom/2007\\_09/index.html](http://www.illinoisattorneygeneral.gov/pressroom/2007_09/index.html).

<sup>11</sup> Press Release, Attorney General of Texas Greg Abbott, Attorney General Abbott Takes Legal Action Against Foreclosure Rescue Firm's Unlawful Texas Operations (Oct. 24, 2007) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2233>; Press Release, Attorney General of Texas Greg Abbott, Attorney General Abbott Takes Legal Action Against Foreclosure Rescue Firm's Unlawful Texas Operations (Dec. 14, 2007) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2304>.

<sup>12</sup> Press Release, Illinois Attorney General Lisa Madigan, Madigan and State Foreclosure Prevention Working Group Release Report on Mortgage Activities (Feb. 8, 2008) available at [http://www.illinoisattorneygeneral.gov/pressroom/2008\\_02/20080208.html](http://www.illinoisattorneygeneral.gov/pressroom/2008_02/20080208.html).

<sup>13</sup> Press Release, Attorney General of Texas Greg Abbott, Attorney General Abbott Takes Legal Action Against Foreclosure Rescue Firm's Unlawful Texas Operations (Dec. 14, 2007) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2304>.

<sup>14</sup> Press Release, Attorney General of Texas Greg Abbott, Darrell and Kandace Marriott, Karen Hayes charged with first-degree felonies (Feb. 7, 2008) available at <http://www.oag.state.tx.us/oagNews/release.php?id=2364>.

In March, Attorney General Andrew Cuomo entered into cooperation agreements with Freddie Mac and Fannie Mae that require them to purchase loans only from banks that adhere to new standards designed to prevent fraudulent property appraisals. Specifically, brokers must not select appraisers themselves, and lenders cannot use staff appraisers or appraisers from companies that they control. Fannie Mae and Freddie Mac agreed to give \$24 million to implement the standards.<sup>15</sup>

The New York Attorney General's Office has also spent more than a year investigating mortgage fraud, with a focus on appraisals and securitization. In November, Cuomo subpoenaed Freddie Mac and Fannie Mae for information on the loans they purchased, including their due diligence practices and property valuations.<sup>16</sup> Shortly before issuing the subpoenas, Cuomo filed suit against eAppraiseIT and First American Corporation, alleging that they violated appraiser independence laws by inflating property values in order to obtain continued business from Washington Mutual.<sup>17</sup>

Recently, a panel of the Second Circuit held that Cuomo could not investigate national banks for potential violations of state or federal law.<sup>18</sup> The New York Attorney General became interested in bank activities after discovering that several banks, including Wells Fargo, J.P. Morgan Chase, Citigroup, and HSBC, appeared to lend money to minority borrowers at higher interest rates than non-minorities.<sup>19</sup> When he demanded that the banks produce information about their mortgage policies, the Office of the Comptroller of the Currency (OCC) and a consortium of national banks sued to enjoin the investigation.<sup>20</sup> The Second Circuit upheld the OCC's interpretation of the National Bank Act as precluding the Attorney General's investigation of the banks.<sup>21</sup> However, the court held that the question whether the Attorney General could bring suit for violations of the Fair Housing Act, which might create an exception, was not ripe for adjudication.<sup>22</sup>

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<sup>15</sup> Press Release, Office of the New York State Attorney General Andrew M. Cuomo, New York Attorney General Cuomo Announces Agreement with Fannie Mae, Freddie Mac, and OFHEO (March 3, 2008) available at [http://www.oag.state.ny.us/press/2008/mar/mar3a\\_08.html](http://www.oag.state.ny.us/press/2008/mar/mar3a_08.html).

<sup>16</sup> Press Release, Office of the New York State Attorney General Andrew M. Cuomo, New York Attorney General Cuomo Sends Letters of Notice and Demand to Freddie Mac and Fannie Mae (Nov. 7, 2007) available at [http://www.oag.state.ny.us/press/2007/nov/nov7a\\_07.html](http://www.oag.state.ny.us/press/2007/nov/nov7a_07.html).

<sup>17</sup> Press Release, Office of the New York State Attorney General Andrew M. Cuomo, NY Attorney General Sues First American and Its Subsidiary for Conspiring with Washington Mutual to Inflate Real Estate Appraisals (Nov. 1, 2007) available at [http://www.oag.state.ny.us/press/2007/nov/nov1a\\_07.html](http://www.oag.state.ny.us/press/2007/nov/nov1a_07.html).

<sup>18</sup> *The Clearing House Association, L.L.C. v Cuomo*, 510 F.3d 105, 121 (2d Cir. 2007).

<sup>19</sup> *Id.* at 126 (Cardamone, J., dissenting).

<sup>20</sup> *Id.* at 109-110.

<sup>21</sup> *Id.* at 121.

<sup>22</sup> *Id.* at 124-25.