



Attorney General Raoul Fights To Protect Homeowners From Unlawful Fees

January 29 2021 2:47 PM

CHICAGO– Attorney General Kwame Raoul today joined a bipartisan coalition of 33 attorneys general in opposing a proposed class action settlement that would permit a mortgage servicer to profit from illegal payment processing fees charged to homeowners making normal mortgage payments online or by phone.

Raoul and the coalition filed [a motion for leave to file an amicus brief](#), opposing the proposed settlement in Morris, et al. v. PHH Mortgage Corporation, et al. Raoul and the coalition argue the settlement would allow mortgage servicer PHH Mortgage Corporation and its predecessor corporation, Ocwen Loan Servicing, LLC (collectively PHH), to be able to continue to profit from illegal processing fees the company has been charging to nearly 1 million homeowners nationwide.

“This settlement will prolong the unnecessary harm that homeowners have experienced by allowing PHH to continue charging homeowners illegal processing fees,” Raoul said. “Any settlement should hold PHH accountable for its conduct, instead of allowing it to continue to profit from unethical and illegal conduct.”

For years, PHH charged nearly 1 million homeowners an illegal fee – ranging from \$7.50 to \$17.50 – each time a homeowner made a monthly mortgage payment online or by phone, despite most Americans paying their mortgages one of these two ways. Nowhere in these homeowners’ mortgage contracts is there authorization for such fees, and PHH does not charge “processing” fees to any other customers, including those who pay by check or those who set up automatic debit payments.

Under the terms of the proposed settlement – which was hastily entered into only five months after the complaint was filed – PHH not only will be permitted to continue to charge these illegal fees but will be able to actually increase fees – up to \$19.50 per

month – for the remaining life of the loan, which, for many homeowners, could be another 20 to 30 years. In exchange, homeowners will receive a paltry, and for some, illusory, one-time monetary payment. Further, the proposed settlement seeks to authorize these unlawful fees through an unwritten, mass amendment of the mortgages – a violation of most states’ statutes of frauds, a centuries old legal doctrine that requires contracts related to property to be put in writing and signed by the parties. This unwritten, mass amendment also means PHH will evade many states’ recording requirements for modified mortgages, resulting in confusion and enabling PHH to avoid state and local recording fees.

Additionally, Raoul and the coalition object to the inadequacy of the monetary relief, as the proposed settlement is designed to ensure that a portion of the monetary relief intended for homeowners will actually end up in PHH’s hands. Homeowners whose loans are still serviced by PHH will not receive any direct monetary payments for prior unlawful payments received by PHH. Instead, these homeowners will receive a credit to their accounts that will be applied to only the unpaid principal balance of the mortgage after any late fees are first paid – costing homeowners more in the end. Moreover, any settlement funds not distributed to the class member homeowners will be returned to PHH, ensuring the settlement further benefits PHH and not impacted class members.

Joining Raoul in filing today’s amicus request are the attorneys general of Alaska, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington and West Virginia.