



MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL  
ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

(617) 727-2200  
(617) 727-4765 TTY  
[www.mass.gov/ago](http://www.mass.gov/ago)

**Greater Boston Chamber of Commerce**

**January 27, 2009**

**Prepared Remarks of Massachusetts Attorney General Martha Coakley**

As we all know far too well, our nation—and our Commonwealth—face economic turmoil and downturn worse than we have experienced in decades.

Wall Street's roller coaster and the international credit crisis are having a devastating impact on individuals and businesses alike, complicating the identification of remedies, and insuring a longer climb back to a sound and growing economy.

The Obama Administration brings a renewed sense of hope that there will be a clear-headed and competent approach to addressing the many challenges, economic and otherwise, squarely on the President's plate.

As your Attorney General, I am committed to working with other public officials and private sector leaders to find innovative and cost-effective solutions for Massachusetts.

But as we seek to manage and stabilize our current situation, we cannot ignore how we got here; otherwise, we will neither fix the mess we are in, nor be able to insure that we will avoid a crisis of this magnitude in the future.

In his inaugural address last week, President Obama reminded us that the question is not "whether the market is a force for good or ill. Its power to generate wealth and expand freedom is unmatched, but this crisis has reminded us that without a watchful eye, the market can spin out of control."

We have once again learned the hard way that government must employ a "watchful eye" when it comes to regulation.

Let me suggest this morning that the business community, too, must not only institutionalize its own "watchful eye," but also actively participate with public sector regulators to help insure that the method and manner of regulation is finely tuned, and neither overzealous nor ineffective.

What I would ask you to think about this morning is: *How DO we strike the right balance when it comes to regulation?*

Neither government nor business played an appropriate or effective role in keeping a "watchful eye" in recent years.

As the New York Times editorialized earlier this month: “There is an important false assumption that must be laid to rest: that protecting consumers and individual investors unduly limits corporate profits and financial innovation. It could be that the people whose actions contributed to the mess are best equipped to clean it up.”

We know that regulators and the regulated cannot have too cozy a relationship, but the opposite is also true: regulation can be neither totally hands-off nor unsophisticated, “do-gooder” reform.

The regulator shares with the regulated the goal of a fair playing field, in order to foster true competition.

I have seen firsthand what happens when we do not have the right balance of regulation.

Exhibit A is the mortgage industry.

The new administration’s plans for how to spend the remainder of the \$700 billion bailout package and the promise of an \$875 billion stimulus package now dominate the front pages, but let us not forget that a primary, underlying cause of current crisis was widespread, unscrupulous practices in the banking and mortgage industry which led to record numbers of foreclosures in recent years.

The industry’s subprime lending meltdown and its ripple effect on Wall Street are a perfect example of a Federal government that was asleep at the switch—assuming they knew there was a switch, and where it was—while the industry failed to self-regulate in any meaningful way.

Harvard Law School professor Elizabeth Warren noted in an op-ed this fall, “the blame falls on subprime lending and the culture of deregulation that fostered it.”

This morning, as we examine this question of regulation, I would like to first tell you about our office’s response to this crisis thus far, including civil litigation, criminal prosecution, regulation, and advocacy for Federal action. I will then tell you about the work we have planned for the coming months, including two pieces of legislation that we have filed to address ongoing problems.

By reviewing some of the work we have undertaken thus far, and initiatives we have planned for the year ahead, I hope I can also give you an understanding of how our office approaches a problem: by examining it from every angle, by using all of the tools available to us, and by thinking creatively about new tools that can best provide solutions.

One of the first steps we took two years ago was to begin civil consumer protection investigations into the institutions that had engaged in subprime lending. We quickly discovered a startling lack of self-policing within these institutions.

As I describe the ills of subprime lending, I should note that the vast majority of the most unsound and unscrupulous lending was carried out by a select group of non-bank mortgage lenders—companies like Fremont, New Century, Option One, and Countrywide, most of which no longer exist.

It is inaccurate to lump together all mortgage lenders.

Community banks, by and large, did not offer overly risky loans or abandon meaningful underwriting.

They have also stepped up to the plate in offering modifications to distressed homeowners. And in some ways, they were disadvantaged by those whose predatory practices have helped bring the economy to the brink.

Our investigations resulted in suits against two of the nation's largest subprime lenders—Fremont Investment & Loan, and Option One, a subsidiary of H&R Block. In both suits, we alleged abject failure to reasonably assess borrowers' ability to repay mortgage loans, and the use of loan features that predictably led to thousands of foreclosures.

Our case against Fremont resulted in a first-in-the-nation court order, recently upheld by the SJC, restricting Fremont's ability to foreclose based on unfair or deceptive loan origination conduct. Just last week, a local bankruptcy lawyer told me that this injunction saved two of her clients from filing bankruptcy.

Our suit against Option One is also first-in-the-nation in alleging that the company discriminated against black and Latino borrowers by charging them higher points and fees than similarly-situated white borrowers, and by targeting them with marketing that promoted the sale of predatory products.

On a local level, we found that some brokers took advantage of lax underwriting at large subprime lenders to fraudulently procure mortgages.

At the same time, homeowners with subprime loans who were facing foreclosure fell victim to the scam known as a foreclosure rescue scheme.

For example, a pastor living in Roxbury with his wife and their two children trusted the claim of Leo Desire, a salesperson for a small mortgage company, when he and his associates tricked the family into transferring the deed to their property to a straw purchaser, with the promise that the family would later be able to reacquire their home.

We know how this story ends—the property is stripped of any equity, and the family is left without a roof over their heads.

These investigations of rescue schemes and sub-prime lending led us to realize that the practices had become so widespread that lawsuits alone were a finger in the dike.

These practices had gone unchecked by any regulators for far too long. Under the Massachusetts Consumer Protection Act, we implemented regulations that define specific conduct that violates the law and any sense of fairness and directly injured the consumers of financial products and services.

First, in response to the overwhelming number of foreclosure rescue schemes statewide, we issued an emergency regulation in June 2007 banning predatory, for-profit foreclosure rescue transactions.

Next, we looked at how we could better protect consumers from unfair mortgage broker and lender behavior.

After hearings and careful consideration of input from both advocates for homeowners and the mortgage industry, we issued a set of regulations one year ago this month that address several forms of mortgage fraud and unfair lending which we believe directly contributed to the meltdown in the subprime market.

We believe that these regulations are key to preventing brokers and lenders from selling loan products that are destined to fail, but at the same time constitute a balanced approach to regulation that does not inhibit upstanding lenders and brokers from conducting business in Massachusetts.

We have also found some instances of criminal activity.

Just two weeks ago, a mortgage broker from Dorchester pled guilty to forging documents and exaggerating facts to secure loans for unqualified buyers. A judge sentenced her to two years in jail, marking the first time an individual in Massachusetts has been incarcerated for involvement in mortgage fraud connected to the subprime crisis.

As a side note, Massachusetts does not have a separate “mortgage fraud” statute, which we believe is appropriate in light of the intentional behavior we have seen.

We also have criminal indictments pending against a group of individuals alleged to have engaged in an elaborate mortgage fraud scheme, creating false or misleading bank documents that were used to obtain millions of dollars in fraudulent loans.

Over the past two years we have worked closely with other states, forming the State Foreclosure Prevention Working Group. We have taken a leadership role in this group, which includes 36 other state AGs, and other state banking regulators.

Our main objective is to work with subprime mortgage servicers to reduce the number of foreclosures by encouraging loan modifications and other sustainable long term solutions.

To say this has been an uphill battle would be an understatement.

The Working Group’s most recent report found that lenders are favoring short sales over meaningful loan modifications, and the few modifications offered are not sustainable. The result is that one out of five modified loans has fallen into delinquency. This is simply unacceptable.

Loan modifications stabilize the marketplace, stop the escalation of foreclosures, and ensure cash flow so that mortgages and mortgage-backed investments can again be valued.

As an outgrowth of the working group, I had the opportunity to testify this fall before the House Financial Services Committee, chaired by our own Congressman Barney Frank, who has showed tremendous leadership on this issue.

I was disappointed to have to report to the committee that lenders, holders, and servicers have

not lived up to their very public promises of avoiding foreclosures through modifications.

In fact, I told Congressman Frank's committee that of the 144 Massachusetts loan modification documents that our office reviewed, not one reduced the principal mortgage balance of the loan, and in fact, virtually none of the modifications reduced the monthly payments for the homeowners in question.

Not long after that hearing, as Congress considered a \$700 billion Wall Street bailout, I and other Attorneys General called on our leaders in Washington to include a requirement that the holders of subprime mortgages offer meaningful modifications. Our call went unanswered.

In fact, just a few weeks ago, the oversight panel appointed by Congress to monitor how the bailout funds are used, led by Harvard's own Professor Elizabeth Warren, reported that there was no evidence that the Treasury has used the money to support the housing market by avoiding preventable foreclosures.

While we are hopeful that the new administration and Congress will step up to the plate and address the need for loan modifications, we are again taking matters into our own hands here at the state level.

I'm pleased to announce today that Senator Susan Tucker, Representative Steve Walsh, and I have filed legislation that would essentially mandate loan modifications in certain circumstances.

The bill requires that creditors take commercially reasonable efforts to avoid foreclosure upon mortgage loans securing homes that are owner-occupied.

This would apply only to loans on principal residences, and most importantly, to loans with certain risky features, such as interest-only loans, adjustable rate mortgages, and loans with short-term introductory interest rates.

The legislation also provides a safe harbor for creditors to comply with this requirement of commercial reasonableness.

We hope that this legislation can serve as a model for the federal and even for other states.

In the meantime, thousands of foreclosures have already occurred, leaving properties across the state vacant and abandoned.

These properties, which can remain empty for months or years at a time, are susceptible to building code violations, deterioration, and criminal activity such as copper stripping and theft, drug dealing, and even arson.

Such issues not only threaten public safety, but they hinder our efforts to revitalize neighborhoods ravaged by foreclosures and to help communities realize economic stability.

Addressing the problem of abandoned properties that result from foreclosures is equally as important as preventing more foreclosures in the first place.

That is why I, along with Senator Tucker, Senator James Timilty, and Representative Barry Finegold, have filed additional legislation that we believe, if passed, will be instrumental in addressing this problem and the negative impact it has on our neighborhoods and our economy.

This bill would do two things. First, it would create a statewide abandoned housing registry.

The abandoned housing problem is further compounded by the inability to identify the owner or person responsible for the condition of the property.

Our proposed Massachusetts Abandoned Property Registry, like the one in Lawrence and the one created in Boston under Mayor Tom Menino's leadership, will require all property owners, including lenders, trustees, and service companies, to register and properly maintain vacant and foreclosed properties.

The bill would also require that owners of vacant properties must designate and retain a local individual or property management company to be responsible for security and maintenance of the property. Failure to register, to properly identify the owner or property manager, or to maintain the property will result in fines

Law enforcement, fire services, district attorneys, and municipal officials will have access to the registry in order to facilitate the tracking of abandoned properties and to ensure that properties are in code compliance and not being used for criminal activity.

The second thing that this legislation proposes is the creation of a statewide Second-Hand Metal Registry.

One of the most concerning public safety side effects of the foreclosure crisis is the increase in copper and scrap metal being stolen from abandoned properties. Such thefts are roadblocks to fighting the foreclosure crisis because they prevent homes from selling and therefore have a detrimental effect on our neighborhoods.

Law enforcement statewide has struggled to investigate these thefts, largely because they cannot access regional junk dealers' records, if such records even exist. A statewide registry would capture and centralize this information.

This bill would require all junk dealers and pawn brokers to register and license their business with the state, and to submit a detailed transaction form for each purchase made.

This will prevent theft of scrap metal from abandoned properties to ensure that the properties will be sold and occupied, and provide law enforcement with the necessary tools to pursue the thefts.

Senate President Therese Murray has expressed her concern about this very issue, and we look forward to working with her on this bill.

In addition to filing this legislation, I'm pleased to announce that my office is also working toward expanding our own Abandoned Housing Initiative.

This initiative was developed in the mid-1990's in response to complaints about crime and safety

issues imposed by one or two abandoned homes in an otherwise viable neighborhood.

AG staff work with municipal inspectional services to identify properties that are abandoned and therefore a threat to the neighborhood.

Using the state sanitary code, our office steps in when a property is in violation of those codes offering the owner the chance to rehabilitate the property. If the owner cannot be located, the AG's office then works with the housing court to appoint a receiver who will rehabilitate the property.

The proposed abandoned property registry, if passed, would improve this process as municipalities would be able to identify who is responsible for a property and to enforce sanitary codes.

In order to expand this program, we are working with the Massachusetts Department of Housing and Community Development to explore possible federal Neighborhood Stabilization Program funding.

Should we succeed in securing additional funding through this program, our office could train and support more municipalities in undertaking the receivership process, and expand coordinated outreach and training with local officials and community groups.

In addition to these initiatives at the state level, our office continues to take a leadership role among the states in advocating for action at the federal level.

Last month, with my colleague Tom Miller in Iowa, I led a group of over 20 Attorneys General in urging Congress to amend the U.S. Bankruptcy Code to permit federal Bankruptcy Courts to protect families from foreclosure.

And last week, I submitted testimony to the U.S. House Judiciary Committee, which is considering legislation to amend the bankruptcy code.

Changing the law, we believe, will reduce home foreclosures, stabilize real estate values and restore confidence in the financial markets. The bankruptcy court is well positioned to address this problem, with judges who understand the issue and a clear system already in place.

This change will help fight the tide of foreclosures and their negative impacts on our communities. It give the Bankruptcy Court the power to modify residential mortgage loans without any cost to taxpayers, will save lenders from costly foreclosures, and will aid millions of homeowners unable to make their monthly payments.

In the coming months, we will also continue to pursue the cases we have already brought—including those against Fremont and Option One, as well as those brought against the individual brokers and other professionals who took advantage of people who were doing nothing more than trying to find their piece of the American dream by owning a home.

But as we have seen, this is a crisis that has spread beyond subprime lenders alone.

The lack of regulation and self-regulation clearly had extended far beyond just the mortgage industry.

In the months ahead, our office will continue to study the ripple effects on the economy and on Wall Street, and whether unfair, deceptive, or other illegal activity occurred at levels beyond the subprime lenders who perpetrated this crisis.

As we forge ahead with these initiatives this year, I hope that we can count on the support of the local business community.

But I also ask you to continue to think about how we in government can work collaboratively with you to strike an effective balance in regulation.

Our goal in the Attorney General's Office is regulation that protects the public and safeguards our economy, but at the same time does not inhibit businesses' ability to thrive in the Commonwealth.

As Nobel Laureate economist Paul Krugman reminded us, "A long term problem deserves long term solutions, and can only be achieved by the active participation of each segment of the economy—government and business must work together."

#####