REPORT OF THE MORTGAGE SUMMIT WORKING GROUPS

Recommended Solutions to Prevent Foreclosures and to Ensure Massachusetts Consumers Maintain the Dream of Homeownership

April 11, 2007

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Executive Summary

In response to rising foreclosures both locally and nationally, increasing evidence of mortgage fraud, and other developments in the mortgage market, the Commissioner of Banks convened a Mortgage Summit in November 2006 with participants from government, non-profit, and the mortgage lending industries to develop a foreclosure prevention strategy. From this Summit, two Working Groups were formed in December 2006 and began meeting in January 2007: one looking at rules and enforcement and the second focusing on consumer education and foreclosure assistance. The purpose of the Working Groups was to take the ideas of the Summit and develop concrete recommendations to both help consumers confronted with the loss of their homes as well as to address longer-term issues affecting communities across the Commonwealth of Massachusetts.

This report summarizes the recommendations of the Working Groups and is intended to be used by all stakeholders, including legislators, regulators, law enforcement, the mortgage lending industry, community and non-profit groups, and others to help address the rising number of subprime and nontraditional mortgage loans, growing evidence of mortgage fraud, and the subsequent rise in foreclosures in Massachusetts.

Below is a summary of some of the recommendations in this report:

- Criminalize the act of mortgage fraud.
- Support the multi-state licensing system for mortgage lenders and brokers being developed by the Conference of State Bank Supervisors.
- Raise the standards for applicants to become licensed as a mortgage lender or mortgage broker.
- Prohibit abusive foreclosure rescue schemes
- Increase enforcement resources at the Division of Banks to supervise existing mortgage lenders and brokers and, if applicable, mortgage loan originators.
- Implement changes to the foreclosure process to better protect consumers, including a required Notice of Intention to Foreclose, during which no additional fees could accrue, and a right to cure provision to provide a consumer the opportunity to pay all payments in default.
- Stop unfair and deceptive marketing and advertising practices.
- Recommend guidance to clarify that borrowers should be qualified based on their ability to repay a loan at a fully-indexed rate, particularly non-fully amortizing mortgages or so-called Hybrid adjustable rate mortgages.
- Increase funding for pre- and post-purchase homebuyer counseling.
- Create a dedicated website devoted to financial education resources in Massachusetts.
- Increase support and resources for foreclosure prevention counseling and intervention to help consumers facing the loss of their homes.
- Encourage lender forbearance as an alternative to foreclosure.

- Develop a foreclosure intervention mortgage program for those persons at risk of foreclosure who could still qualify for financing with flexible terms and credit enhancements.

Implementing the recommendations in this report may involve State or federal legislation or regulation. In addition, regulators, law enforcement officials, financial institutions, regulated entities, community and non-profit groups, as well as consumers themselves all have a role in preventing mortgage abuses. Some recommendations identify funding needs while others identify education programs.

Despite differences of opinion on some of the recommendations or the means to implement them, the participants of the Working Groups are all committed to do what they can to address the growing problems facing consumers and communities across Massachusetts.

I. Background and Format of Report

During 2006, the Commonwealth's real estate market started to cool and interest rates began to rise. These factors contributed significantly to the first substantial rise in foreclosure filings in many years in both Massachusetts and nationally. Factors such as slowing home sales, the upward re-pricing of adjustable rate mortgages, declining equity positions, and reduced opportunities to consolidate existing home mortgage and consumer credit debt into lower monthly payments have significantly challenged many homeowners. In addition, the seasoning of a growing number of subprime loans, nontraditional mortgage loans, and instances of mortgage fraud have also contributed to the increase in foreclosures.

In an effort to address the increasing number of mortgage foreclosures across Massachusetts, Commissioner of Banks Steven L. Antonakes called a Mortgage Summit in November 2006 with the stated purpose of bringing together a cross-section of stakeholders to develop a statewide foreclosure prevention strategy that would put into place lasting measures to help consumers confronted with the loss of their homes.

The full day long Mortgage Summit was attended by 49 individuals representing 29 divergent organizations and included representatives of the banking, credit union, mortgage lender, and mortgage broker industries; representatives from varied non-profit organizations, including numerous groups that focus primarily on matters related to housing, fair lending, and foreclosure prevention; and representatives of city, state, and federal governments.

Following the Mortgage Summit, the Division of Banks established two Working Groups and solicited the voluntary participation of summit participants and other interested parties. The first Working Group was charged with focusing on "Rules and Enforcement". The second Working Group was tasked with concentrating on "Consumer Education and Foreclosure Assistance".

Staffed with 25 to 30 participants each, the Working Groups began meeting in January 2007. Since that time, each Working Group met nearly every two weeks at the Division of Banks for generally two to three hours at a time. In addition, subcommittees were formed that met on their own to develop ideas and recommendations.

The pages that follow lay out specific recommendations for consideration by policy makers, regulators, legislators, industry, non-profit organizations, and other interested parties.

While the meetings of the Working Groups were facilitated by and this report was produced by personnel of the Division of Banks, the recommendations that follow represent those of the individuals assigned to the Working Groups. It should also be noted that not all of the participants agreed with each of the recommendations included here. The recommendations in this report, however, were either agreed to unanimously or by a significant majority of Working Group members.

The Division of Banks would like to express its appreciation to all of the individuals that gave substantially of their time. Their hard work and dedication is evidenced in the pages that follow.

II. Mortgage Summit Agenda

Mortgage Summit

November 14, 2006

Agenda

8:30 a.m.	Coffee and Registration
9:00 a.m.	Welcome and Introductions
9:15 a.m.	Division of Banks and Office of the Attorney General: *Update and Overview of Recent Actions*
9:45 a.m.	Roundtable Discussion: Rules and Enforcement *Potential Discussion Topics*: Regulatory Oversight & Legislation Guidelines / Best Practices Suitability / Ability to Repay
11:00 a.m.	Break
11:15 a.m.	Review of Foreclosure Trends *Julia Reade, Senior Research Associate, Federal Reserve Bank of Boston*
11:45 a.m.	Foreclosure Prevention & Intervention Strategies *LaRayne Hebert, District Director, NeighborWorks America*
12:15 p.m.	Lunch
1:00 p.m.	Roundtable Discussion: Education and Outreach *Potential Discussion Topics*: Pre-Closing Education Post-Closing Education Outreach Initiatives
2:00 p.m.	Roundtable Discussion: Foreclosure Assistance *Potential Discussion Topics*: Foreclosure Counseling Funding Post Foreclosure / Reestablishing Credit
3:00 p.m.	Wrap Up and Next Steps
3:30 p.m.	Adjourn

III. Mortgage Summit Attendees

Steven	Antonakes	Massachusetts Division of Banks
Cassie	Bardard	Freddie Mac
Steve	Bennett	Ecumenical Social Action Committee
James W.	Blake	HarborOne Credit Union
Helen	Blatz	Consumer Credit Counseling Services/MMI
Juan	Bonilla	Lawrence Community Works, Inc.
Tom	Callahan	Massachusetts Affordable Housing Alliance
Jim	Campen	The Fair Housing Center of Greater Boston
Jesse	Caplan	Office of the Attorney General
Helena	Chaikin	Homeowners Options for Massachusetts Elders
Prabal	Chakrabati	Federal Reserve Bank of Boston
Mary Ann	Clancy	Massachusetts Credit Union League
David	Cotney	Massachusetts Division of Banks
William F.	Cotter	Boston Department of Neighborhood Development
Kevin	Cuff	Massachusetts Mortgage Bankers Association
Tim	DeLessio	Federal Deposit Insurance Corporation
Carol	DeLorey	Brockton Interfaith Community/Nehemiah
James M.	Demers	New England Financial Services Association
Brenda	Doyle	Office of Consumer Affairs & Business Regulation
Rita	Farrell	Massachusetts Housing Partnership Fund
Lisa	Fiandaca	Massachusetts Housing Finance Agency
Alicia	Flanagan	Massachusetts Division of Banks
Gina	Govoni	Massachusetts Housing Partnership Fund
Marty	Gruer	NeighborWorks America
Ginny	Hamilton	The Fair Housing Center of Greater Boston
Kristen	Harol	Lawrence Community Works, Inc.
LaRayne	Hebert	NeighborWorks America
Bonita	Irving	Massachusetts Division of Banks
Kevin F.	Kiley	Massachusetts Bankers Association
Pamela	Kogut	Office of the Attorney General
Denise	Leonard	Massachusetts Mortgage Association
Joseph A.	Leonard, Jr.	Massachusetts Division of Banks
Richard	Olson	Boston Community Capital
Robert	Padgett	Freddie Mac
John	Prendergast	Massachusetts Division of Banks
Robert	Pulster	Ecumenical Social Action Committee
Len	Raymond	Homeowners Options for Massachusetts Elders
Julia	Reade	Federal Reserve Bank of Boston
Kathleen	Schreck	Massachusetts Mortgage Bankers Association
Jon	Skarin	Massachusetts Bankers Association
Nicole	St. Peter	Office of Consumer Affairs & Business Regulation
Nancy	Sullivan	Homeowners Options for Massachusetts Elders
Janice S.	Tatarka	Office of Consumer Affairs & Business Regulation
Janna	Tetreault	Citizens' Housing and Planning Association
Kathleen	Tullberg	Massachusetts Community & Banking Council
Cortina	Vann	Massachusetts Affordable Housing Alliance
Richard	Walker	Federal Reserve Bank of Boston
Odette	Williamson	National Consumer Law Center
Kenneth A.	Willis	Federal Home Loan Bank of Boston

IV. Members of the Working Group on Rules and Enforcement

Rafael	Abislaiman	International Institute of Greater Lawrence
Jon	Auger	Middlesex Savings Bank
W. David	Brennan	Cape Cod Five Cents Savings Bank
Thomas	Callahan	Massachusetts Affordable Housing Alliance
Jim	Campen	Fair Housing Center of Greater Boston
Mary Ann	Clancy	Massachusetts Credit Union League
Bill	Cotter	Boston Department of Neighborhood Development
Kevin M.	Cuff	Massachusetts Mortgage Bankers Association
James M.	Demers	New England Financial Services Association
Chris	Dunn	South Shore Savings Bank
Mark L.	Fisher	Winchester Co-operative Bank
Ginny	Hamilton	Fair Housing Center of Greater Boston
Jack	Hamilton	Medway Co-operative Bank
Kevin F.	Kiley	Massachusetts Bankers Association
Denise M.	Leonard	Massachusetts Mortgage Association
Barry J.	McCarter	Hyde Park Savings Bank
James	McGaugh	Citigroup Inc.
Peter	Milewski	Massachusetts Housing Finance Agency
Richard	Olson	Boston Community Capital
Andrew	Olszowy	Federal Reserve Bank of Boston
Judith P.	Pfeffer	Westborough Bank
Robert	Pulster	Ecumenical Social Action Committee
Leonard F.	Raymond	Homeowner Options for Massachusetts Elders
Julia	Reade	Federal Reserve Bank of Boston
Kathleen C.	Schreck	Mortgage Network, Inc.
Odette	Williamson	National Consumer Law Center

Facilitated by: David J. Cotney, Division of Banks

Staff Assistance: Alicia Flanagan, Division of Banks

V. Members of the Working Group on Consumer Education and Foreclosure Assistance

LaTanya M.	Arnold	Massachusetts Affordable Housing Alliance
James W.	Blake	HarborOne Credit Union
Prabal	Chakrabarti	Federal Reserve Bank of Boston
Jacqueline	Cooper	Financial Education Associates, Inc.
Tim	Delessio	Federal Deposit Insurance Corporation
Lisa	Fiandaca	Massachusetts Housing Finance Agency
Aida	Franquiz	Boston Private Bank & Trust Company
Gina	Govoni	Massachusetts Housing Partnership
Marty	Gruer	NeighborWorks America
Donna	Haynes	Central Bank
LaRayne	Hebert	NeighborWorks America
Catherine	Jones	Spillane Consulting Associates
Ana	Luna	Arlington Community Trabajando
Mary Lees	Miller	Cape Cod Cooperative Bank
Mary	Moura	Wainwright Bank
Ronald	Pugliese	HSBC
Robert	Pulster	Ecumenical Social Action Committee
Steven	Quigley	Braintree Cooperative Bank
Leonard F.	Raymond	Homeowner Options for Massachusetts Elders
Julia	Reade	Federal Reserve Bank of Boston
Mayte	Rivera	Community & Enterprise Development Center, Northern. Essex Community College
Jon	Skarin	Massachusetts Bankers Association
Nancy D.	Sullivan	Homeowner Options for Massachusetts Elders
Janna	Tetreault	Citizens' Housing and Planning Association
Kathleen	Tullberg	Massachusetts Community & Banking Council
Cortina	Vann	Massachusetts Affordable Housing Alliance
Kenneth A.	Willis	Federal Home Loan Bank of Boston
Juan P.	Bonilla	Lawrence CommunityWorks

Facilitated by: John M. Prendergast, Division of Banks

Staff Assistance: Alicia Flanagan, Division of Banks

VI. Recommendations of the Rules & Enforcement Working Group

The Rules & Enforcement Working Group was formed to examine more deeply structural issues concerning the regulation and supervision of the mortgage industry and the rules applicable to mortgage transactions, the foreclosure process in Massachusetts, as well as the enforcement tools available to regulatory and law enforcement agencies.

The Working Group met first in early January and reviewed the issues that arose during the Mortgage Summit. These included: regulatory oversight and licensing requirements, existing statutes and regulations and additional recommended requirements, industry guidelines and best practices, suitability and ability to repay standards, and the foreclosure process in Massachusetts.

Based on the issues before it, the Working Group divided itself into the following five committees:

- Barriers to Entry
- Data & Research
- Foreclosure Process
- Legislative Issues
- Products and Practices

Barriers to Entry

There was a strong consensus among both consumer and industry representatives that the barriers to entry for licensed mortgage lenders and mortgage brokers should be revisited. When the licensing of mortgage lenders and mortgage brokers was first implemented in 1992[1], the barriers to entry were set purposefully low to reflect existing businesses that had been in business years before licensing and to encourage competition and allow for the greatest consumer choice. However, recent enforcement actions by the Division of Banks and the Office of the Attorney General, an increase in foreclosure filings, and a dramatic increase in the number of licensees and a continued increase in applications to operate as a mortgage lender or a mortgage broker have raised the possibility that the barriers, which have changed little in the last 15 years, are now too low.

While there were only about 150 licensed mortgage lenders and mortgage brokers in 1992, today there are over 2,000. In addition, the Division of Banks receives 8 to 10 new applications each week, or nearly 500 per year. There has not been an accompanying increase in resources at the Division to supervise this growing trend. In addition, many of the new entrants over the last several years have minimal experience in the mortgage industry and, especially for mortgage brokers, very little net worth to absorb financial stress. This results in an increased risk for problems and violations after licensure.

To address these issues, the Working Group offers the following recommendations:

Increase the Net Worth/Bonding Requirements for Mortgage Lenders and Brokers

All applicants for a mortgage lender or mortgage broker license must demonstrate "financial responsibility". To ensure financial responsibility, the Division of Banks reviews personal and business financial statements, personal and corporate tax returns, as well as personal credit report information. In addition, for mortgage lenders, there is currently a $100,000 minimum adjusted net worth requirement after excluding certain disallowed assets. However, a mortgage lender may substitute a surety bond for no greater than $75,000 so long as the net worth and bond together are at least $100,000. Consequently, a mortgage lender can be licensed in Massachusetts with an adjusted net worth as little as $25,000. Similar to the fees for mortgage brokers and lenders, the net worth requirements have not changed since 1992.

For mortgage brokers, there is no minimum net worth requirement set in statute and an applicant for a license need only show that they have a minimum positive adjusted net worth.

The effect of these requirements is that a mortgage lender or broker can operate in Massachusetts on a thinly capitalized basis. In addition, with such little financial commitment required, an applicant has very little financial risk. While most companies operate with significantly more than the minimum required net worth, companies at the

[1] See G.L. c. 255E.

margin are unable to absorb losses or other market pressures. In addition, there could be very little capital or assets left for consumers who suffer harm.

The Working Group recommends setting net worth requirements for mortgage brokers and increasing net worth requirements for mortgage lenders. The Division should examine the requirements in other states to set a requirement at the upper end of the spectrum of what is currently required. In addition, the Division should establish a bonding or surety requirement so that there is some residual value for consumers that have been harmed to seek redress in the event that no other form of restitution exists.

Increase the License and Examination Fees for Mortgage Lenders and Brokers

Fees for mortgage lenders and brokers have not changed in the last 15 years. Currently, the annual license fee for mortgage brokers is $500 while a mortgage lender is $1,000 per year. A per branch fee of $50 per location is also assessed to all licensees. In addition, the Division of Banks charges a per diem examination fee of $220 per examiner for each examination. At the time these fees were first imposed, they were meant to pay for the costs of supervision for the Division. However, inflation has eroded the value of these fees.

At a minimum, these fees should be raised to account for the rise in inflation. Using the Consumer Price Index (CPI) the license fees set in 1992 in today's dollars would equal $750 per year for a mortgage broker, $1,500 per year for a mortgage lender, and $75 per branch location per year. Increases above the rate of inflation could also be considered. ***However, the Working Group's recommendation is contingent upon these increased fees being devoted to an increase in enforcement resources at the Division of Banks.*** As noted above, staffing at the Division has not kept pace with the rapid growth in the number of licensees. Without additional resources, the Division will be unable to appropriately supervise the mortgage industry for the increasing instances of mortgage fraud and unfair and deceptive practices. Any increase in fees should be used for investigative, enforcement, and supervisory staffing purposes and to fund foreclosure prevention efforts.

Long-term, a risk-based assessment system should be developed. Similar to the risk-based assessment system that was implemented for banks and credit unions in 1997, such an assessment would be imposed on an annual basis to replace existing license and examination fees and should reflect the full costs of supervision for the Division.

Increase the Experience and Education Requirements for Mortgage Lenders and Brokers

The Division's licensing regulations for mortgage brokers and lenders require that "An Applicant shall demonstrate to the Commissioner's satisfaction that the Applicant, and its applicable officers and employees, possess the necessary educational and business experience to engage in the business of a mortgage lender" or "mortgage broker"[2]. The Division's Regulatory Bulletin 5.1-102 requires that an applicant for a mortgage broker or lender license must possess a minimum of one year of experience working in the

[2] 209 CMR 42.03(2)(d) and 42.06(2)(d).

mortgage industry. However, applicants with less than one year may substitute up to six months experience with the completion of a formal course of training.

Given the highly complex nature of the mortgage industry in general, and Massachusetts laws and regulations in particular, it is unlikely that anyone can gain a sufficient understanding of all the requirements in one year. While most licensees have a clear understanding of the industry standards, many new entrants possess minimal experience and can obtain a license to work with consumers in what is likely the most significant financial transaction of their lives. A mortgage broker or lender should not be given a license to operate in Massachusetts until they have a demonstrated knowledge and understanding of all the complexities of mortgage lending.

The Working Group recommends that the experience requirements for mortgage lenders be raised to a minimum of five years and the requirements for mortgage brokers be raised to a minimum of three years.

Licensing of Mortgage Loan Originators

While a mortgage broker or mortgage lender must obtain a license at the company level, employees of the broker or lender are not required to be licensed in Massachusetts. Loan originator licensing is a growing phenomenon nationally, with over 20 states now requiring either the licensing or registration of mortgage originators in some form.

A major concern in the mortgage lending process is the relationship between the borrower and the mortgage originator. With growing instances of mortgage fraud, there is currently an inadequate mechanism to be able to track mortgage originators and to prevent rogue employees from moving from one company to another. In addition, there are no testing or education requirements for mortgage originators to work in Massachusetts. In states that require licensing of mortgage originators, there are usually some types of education and continuing education requirements to ensure that originators are fully informed on all of the obligations in Massachusetts.

Although not unanimous, and strongly opposed by the banking community, the majority of the Working Group supports the concept of licensing of mortgage loan originators. There are currently five bills pending that would require either licensing or registration of originators. The Working Group does not endorse any specific bill but does urge the Legislature to consider the following in its deliberations:

- The bill should ensure that the employing lender or broker remains fully accountable for the actions of its employees. A license given to a mortgage originator should not absolve the company from performing due diligence on prospective employees or from ensuring that its originators adhere to all policies and requirements.
- The bill must address issues of “portability”, meaning that an originator should not have the ability to take their license with them wherever they work. Rather, the employer should be required to report the reasons for leaving to the Division and an originator should be required to apply for reinstatement at a new employer.

- The bill should grant the Division of Banks full enforcement authority over originators with the same ability to suspend or ban individuals as it has for mortgage brokers and lenders.
- The bill should ensure that the mandate is fully funded. There will be start-up costs associated with licensing an estimated 30,000 to 40,000 mortgage originators in Massachusetts. In addition, additional resources will be required at the Division to supervise these entities. Licensing fees for mortgage originators should cover the costs of supervision and be devoted to increasing the Division's resources.

As noted above, the recommendation to support the licensing of mortgage loan originators was not unanimous. Most of the banking members felt strongly that originator licensing did not directly target the issue of foreclosures in the short-term and could be used as a marketing tool against exempt institutions.

Remove the Non-Profit Exemption

Shortly after the passage of Chapter 255E and the licensing of mortgage lenders and brokers in 1992, an exemption was added for non-profit entities assisting low- and moderate-income borrowers to purchase or refinance a home. Working Group participants, particularly consumer group representatives, believed that although there was a burden associated with obtaining a license, non-profit organizations should be held to the same experience and education requirements as for-profit companies. In addition, it was feared that the designation as a non-profit under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code could also be used as a loophole by some entities.

Other Issues Considered

In addition to the above recommendations, the Working Group also considered a suggestion by the banking community to impose a 180 day moratorium on issuing mortgage broker and mortgage lender licenses. The proponents of the moratorium stated that the establishment of a moratorium would give the Division, the Legislature, and the Patrick Administration time to evaluate current market practices, and to identify instances of consumer fraud or unfair and deceptive practices. The majority of the Working Group did not support the moratorium believing that it would not have any short-term or long-term impact on foreclosures since, presumably, no one applying for a license would bear responsibility for the current increase in foreclosures.

Data & Research

One of the difficulties in measuring the foreclosure problem is the lack of reliable data. While there are studies published and headlines announcing increasing foreclosures, most statistics cite foreclosure filings, not actual foreclosures. Many homeowners that receive notice of a foreclosure are able to avoid foreclosure, either through paying off the amount in default, restructuring the existing loan, or by selling their house prior to foreclosure. However, once a foreclosure occurs, the transfer of title is recorded at the Registry of Deeds. Because most mortgages are sold in the secondary market, nearly all the loan servicers or note holders are not the lender of record. In addition, there is no record on either the original mortgage or other filing of who the broker was in the transaction. Consequently, it is very difficult to quantify and track which lenders or brokers originate mortgages that are most likely to end in foreclosure.

The Working Group recommends the following initiatives to aid in tracking foreclosure data, analyze trends, and take appropriate action when warranted:

Create mandatory pre-foreclosure and foreclosure filing notices, with a copy to the Division of Banks.

In order to accurately measure and analyze foreclosure trends, basic information needs to be collected. In order to accomplish this, the Working Group recommends the following:

- A copy of the notice filed at the commencement of a foreclosure proceeding (pre-foreclosure notice) should be filed with the Division of Banks which includes basic information, including the name of the borrower, the property address, the mortgage holder, the mortgage servicer, if applicable, the original lender, and, if applicable, the licensed originator (see also the recommendation below under *Foreclosure Process* which would create a separate Notice of Intention to Foreclose).
- A copy of the final recorded foreclosure should be filed with the Division of Banks. This notice should include, in addition to the basic information above, the following: the name of the broker or mortgage originator, if applicable; whether it is a residential, one-to-four family or multi-family property; and whether the property is owner-occupied. Other information may also be included, including the type of mortgage, interest rate, etc.

In developing the notices above, various sources should be reviewed to determine what information is currently collected and available that could be easily incorporated.

The establishment of a foreclosure database

Using the data from the pre-foreclosure and foreclosure filings, an accurate and timely database of foreclosure information should be created. The data would be utilized to "red flag" any peak foreclosure activity by a particular lender, broker, or servicer, at any given time. In addition, there would more reliable data from which to look at trends across industries.

A filing fee for each pre-foreclosure and foreclosure filing

The holder or servicer of a mortgage should be required to pay a filing fee to cover the costs of administration of the notices and for the establishment of the foreclosure database. The fee should be sufficient to cover all start-up and ongoing operational costs of monitoring these trends.

Foreclosure Process

Each foreclosure of a residential mortgage is a personal, social and financial tragedy for the household facing foreclosure. The loss of a home represents the loss of a family's shelter and its most precious financial resource. Foreclosures also have a destabilizing effect on the neighborhood in which the homes are located due to homeowner turnover and because absentee speculators may replace the families who were forced from the homes.

Some believe that Massachusetts laws lack basic protections for homeowners facing foreclosure. Most other states have incorporated some form of homeowner protection in their foreclosure laws. However, Massachusetts foreclosure laws have changed little since their enactment in 1857.[3]

Four problems with existing Massachusetts law stand out:

- Massachusetts homeowners get inadequate notice of a foreclosure sale before the sale occurs. The only pre-foreclosure notice required by Massachusetts law may be sent as few as 14 days before the sale.
- Massachusetts law does not include a right to cure a default to prevent foreclosure. Unlike many states, Massachusetts does not allow a homeowner to avoid foreclosure by paying missed payments and allowable costs. This means that some Massachusetts homeowners lose their homes even though they can pay their lenders the entire amount they are in default.
- Massachusetts law allows foreclosure sales without a prior court proceeding. Many homeowners may have defenses to foreclosure including that no default has occurred or that the mortgage was obtained by fraud, unfair lending practices, or other scam. Unlike tenants facing eviction, Massachusetts homeowners have no court hearing in which to raise these defenses. Once a foreclosure sale is completed, the defenses are cut off by law.
- Massachusetts homeowners get no notice of what happens at the foreclosure sale of their home. There is no requirement that a lender inform a homeowner of the results of a foreclosure sale, including who buys their property, the amount paid, or whether the homeowner is entitled to any of the proceeds of the sale. Unscrupulous lenders use this to retain excess sale proceeds unlawfully or to inflate sale fees and costs.

Given the current foreclosure situation, Massachusetts foreclosure laws and procedures need to be updated to incorporate more protections for struggling homeowners. However, any changes to current statutes should also recognize that, in some cases, foreclosure is necessary so that a lender can preserve the asset (the home) it has in its portfolio.

Based on the above issues, the Working Group offers the following recommendations to improve the foreclosure process by granting consumers additional rights:

[3] Stat. 1857 c. 33 § 1.

Notice of Intention to Foreclose

Many consumer advocates have noted that, along with the rise of foreclosure filings in Massachusetts, mortgage servicers and other mortgage holders have significantly decreased the time it takes to foreclose on a property. To address this issue, the Working Group recommends that a notice of intention to foreclose be given to a homeowner under the following terms:

- Notice must be provided 90 days before the residential mortgage is accelerated.
- The notice must contain information about the right to cure.
- No attorney fees or other costs may be charged during this period.

Ideally, such a notice would be accompanied by a listing of resources that consumers could contact for information on how to address their problems. A statewide network of certified or approved counselors could assist consumers facing foreclosure. In order to accomplish this, there would have to be some means of creating an approved list of counselors, either through the Department of Housing and Community Development or some other agency. In addition, there would have to be a funding mechanism to offset the costs of some of these services. There are bills that have been filed during the current legislative session that would create a fund to be administered by the Department of Housing and Community Development that would provide grants to non-profit agencies for the purposes of assisting consumers facing foreclosure. This could be a means to achieve this objective.

Right to Cure the Default

The Working Group felt that it was important to offer consumers facing foreclosure the right to cure the default. This is particularly true for consumers that first learn that they are in default and facing foreclosure who present a payment to the lender, only to learn that there are additional fees payable to bring the mortgage out of default. During the 90-day "notice of intention to foreclose" noted above, no additional fees could be charged. In addition, after the expiration of the 90-day period, only "reasonable" attorney fees should be imposed. Consumers should have the right to cure a default up to one hour prior to the scheduled beginning of a foreclosure sale.

Post Sale Procedure

As noted above, although a consumer may be entitled to any residual value from the sale of a property after foreclosure, there is no obligation to notify the consumer of their rights. Some servicers have sent notices of the disposition of the property to the consumer at their last known address, being the property which was foreclosed upon. The Working Group recommends that a lender should be required to give a consumer that has been foreclosed upon a notice of sale or disposition of the property. At a minimum, the notice should:

- Give the former homeowner notice of the foreclosure sale details.
- Notice of sale or disposition should list the amount of money received and how it was distributed, and if the former homeowner is entitled to any surplus.

- Give a full accounting of the costs and fees associated with the sale.

In addition, best efforts should be made to identify an accurate address to send the post-foreclosure notice.

Other Issues Considered

The Working Group was unable to come to a consensus around a suggestion that Massachusetts provide a judicial review of residential foreclosures. Mortgages or deeds of trust are foreclosed judicially by statute or custom in 23 states or territories.[4] Under a judicial review system, a homeowner of a residential property (owner-occupied, 1 to 4 family dwelling) can raise all available defenses to the contract or the foreclosure. In effect, the holder of the mortgage would have to file an action and obtain a judgment to foreclose.

Although some believe judicial review would give consumers added protections, other members of the Working Group worried that the added time and cost of pursuing a foreclosure through a judicial review process could increase the risks and therefore the costs of mortgage credit for all Massachusetts consumers. Others dispute whether a judicial process would, in fact, significantly increase the cost of foreclosing on a mortgage. The impact of a judicial review process is also unclear, including the length of delay and the additional cost or administrative burden on the court system.

[4] Delaware, Florida, Guam, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, South Dakota, and Wisconsin. In addition, in Maryland, the process is supervised by the court; North Carolina requires a hearing before a clerk.

Legislative Issues

In addition to legislative issues specific to other committees, the Legislative Committee looked at several other legislative options. The Working Group recommends that the following issues be pursued through legislative changes:

Multi-State Licensing System for Mortgage Brokers and Lenders

The Working Group strongly supports the efforts by the Division of Banks working with the Conference of State Bank Supervisors (CSBS) to develop a national mortgage licensing system that will provide uniform licensing applications for residential mortgage lenders and mortgage brokers, as well as a central repository of information about licensing and public enforcement actions.

With mortgage fraud on the rise both nationally and locally, unfortunately, companies and individuals can perpetrate fraud in one state and, even after being caught, set up in another state with little chance of detection. The national licensing system will assist regulators to prevent fraud and to prevent problem entities and individuals from obtaining a license.

Legislation has been introduced in Massachusetts (H1028) by the House Chairman of the Joint Committee on Financial Services, Ronald Mariano to authorize the Division to participate in the multi-state licensing system and to conduct national criminal background checks on all license applicants and current licensees using fingerprint data through the Federal Bureau of Investigation. ***The Working Group strongly supports this legislation and the multi-state licensing system.***

Although not opposed to the multi-state licensing system, one group stated that certain issues such as fees and privacy should be more thoroughly addressed prior to implementing the system. It should be noted that CSBS has announced the creation of an Industry Advisory Council to address industry concerns such as these.

Criminalization of Mortgage Fraud

Mortgage fraud is among the fastest growing white collar crimes of this decade. It is a trend quickly sweeping through the country that can impact the financial health of families, property values and industry reputations. Mortgage fraud reports nearly doubled between 2003 and 2004 according to a U.S. Treasury Department study last November of suspicious activity reports filed by financial institutions. More than $1 billion in suspected fraudulent mortgages were reported to the Federal Bureau of Investigation in 2005[5]. This amount represents a $429 million increase. A concern exists relative to fraud which has slipped through the real estate boom and that is surfacing now.

Mortgage fraud generally relates to a mortgage transaction involving a purposeful misrepresentation of various factors in the process for the benefit of one or more parties. Most often, such transactions involve the misrepresentation of property appraisals, home

[5] SAR Activity Review – By the Numbers (Issue 6, May 2006).

values and the credit worthiness of buyers. In essence, someone lies or misrepresents a fact on a statement that a lender uses to make a loan.

Mortgage fraud manifests itself primarily in two ways: fraud for housing and fraud for profit. Fraud for housing represents the bulk of the number of instances of fraud and is perpetrated by the borrower in order to obtain a mortgage. Because there is an intention to repay the loan, there are few losses associated with this type of mortgage fraud. On the other hand, fraud for profit is perpetrated by one or more individuals for the purpose of extracting some type of value out of the transaction. This could involve property flipping, money laundering, or other crimes. In addition, a faulty or fake appraisal is at the basis of many fraudulent transactions. Valuations may be subjective but fraud is not. Many appraisers feel pressured to overstate their valuations to continue to receive assignments by brokers, lenders and real estate agents. Finally, some mortgage lenders and brokers have purposely steered customers, often those with low-incomes or with limited English speaking abilities, into loans they cannot afford, by using misleading tactics.

Misrepresentations of any size not only hurt the borrowers, but also the industry, the economy, the real estate market and specific neighborhoods. Passing laws that punish the crime of mortgage fraud and aggressively prosecuting those individuals may help to slow or stop its growth.

Georgia was the first State in the nation to enact a law specifically criminalizing mortgage fraud and allowing scam artists to be charged with racketeering. Arizona, Colorado, Mississippi, New Jersey, Oklahoma, Texas and Utah are considering laws that would make mortgage fraud a specific crime. Only four states, Utah, Michigan, North Carolina and Arkansas, make it illegal to force appraisers into making false valuations.

Massachusetts currently does not have a mortgage fraud statute. In addition, current fraud statutes are inadequate to completely address the magnitude of this issue.

Summary of Recommendations

The thrust of this recommendation is to make it a crime to commit mortgage fraud. Those who commit fraud in the mortgage process need more than a slap on the wrist and should be vigorously prosecuted. The issue centers around accountability, deterrence and punishment. The proposed provisions seek to:

- Clarify what constitutes fraud in the mortgage industry, including patterns of such fraud, and the making of fraud a felony;
- Clarify specific actions that constitute fraud within the appraisal process and eliminate the manipulation of appraisals;
- Provide prosecutors with the flexibility necessary to try cases more efficiently because mortgage fraud can overlap many jurisdictions;
- Grant authority to the District Attorneys and to the Attorney General to conduct investigations and to prosecute mortgage fraud cases;
- Hold homebuyers at the same level of punishment and culpability as other players involved in fraudulent transactions;

- Permit forfeiture of all real and personal property involved in a fraudulent mortgage transaction;
- Result in a penalty of up to 10 years imprisonment and/or a $50,000.00 fine for violations; and
- Result in a penalty of up to 20 years imprisonment and/or a $500,000.00 fine for multiple cases of mortgage fraud.

Foreclosure Rescue Schemes

The dramatic rise in foreclosures in Massachusetts and across the nation has also resulted in the growth of so-called mortgage or foreclosure rescue schemes. Foreclosure rescue fraud is simply another type of real estate-related fraud. The Office of the Attorney General has taken a keen interest in protecting consumers from these schemes. The Attorney General filed two civil enforcement actions in the fall of 2006 to stop foreclosure rescue schemes, one against a Brockton attorney and another against a North Shore mortgage broker, and another civil action in the spring of 2007 against nineteen defendants, including mortgage brokers, a real estate company and closing attorneys.

There are two common types of foreclosure rescue schemes: distressed property consultants and distress property purchasers. Distressed property consultants offer phantom help to homeowners in distress, typically promising to "buy them time" or "save the home" by negotiating with the homeowners' creditors. In exchange for a fee that ranges from $1,000 to $2,500, the distressed property consultant does little or nothing and essentially abandons the homeowner to a fate that might have been prevented with professional intervention.

Distressed property purchasers lead homeowners to sign over the deed to their property by telling them they can stay in their home and pay rent until they get back on their feet financially, often promising that the home will be held in trust for their benefit. Many homeowners do not realize they are selling their home to the "rescuer," and most receive no financial benefit from the transaction, even when their equity in the property is greater than what they owe. Commonly, the homeowners' rental payments are much higher than their mortgage payments. Using a variety of devices, the "rescuer" ultimately strips the home of its equity, often by selling it to a third party and the homeowner ends up facing eviction.

Summary of Proposed Legislation

The Working Group recommends proposed legislation to protect homeowners when dealing with distressed property consultants and property purchasers. With corrective legislation, bail out consultants would be required to detail all of their services in a clearly written contract and permit homeowners to cancel anytime before all services have been performed. The provisions seek to:

- Require distressed property consultants to provide homeowners with a written contract listing all services;
- Require the consultant contract to contain a right to cancel at any time;

- Prohibit the consultant from receiving any compensation until all services have been performed;
- Require purchasers to provide homeowners with a written contract that lists the terms of the sale and makes it clear that the home is actually being sold;
- Permit the homeowner to cancel the sales contract for five business days after it is signed;
- Require the purchaser to make a determination that the homeowner has the ability to make rental payments and to buy the home back prior to the sale;
- Require the purchaser to pay the homeowner at least 82% of the fair market value of the home at the time title is transferred;
- Permit the homeowner who remains in the home under a rental agreement to cancel the rental agreement at any time;
- Require the purchaser to record the purchase contract with the county recorder of deeds so that any subsequent purchaser is put on notice; and
- Mandate that a violation of these provisions is a violation of the consumer protection laws.

Products & Practices

During the past several years the evolution of risk-based pricing and subprime lending has presented consumers with tremendous choices and opportunities. However, the improved access to credit that has resulted from innovative nontraditional and subprime mortgage products has not come without both cost and consequences.

Risk-based pricing provides an intended fair cost of borrowing to higher-risk consumers who would not otherwise qualify for conventional mortgage financing. The dramatic increase in delinquencies and foreclosures that has resulted from increased subprime lending activity demonstrates the severe consequences for many borrowers that have taken out these loans. There is also fear of the potential effects of high foreclosure rates on certain communities, especially low- and moderate-income neighborhoods with high concentrations of immigrant or minority borrowers, where foreclosure rates are the highest.

In reviewing existing product choices and industry practices, the variety of opinions emerged at both the committee and Working Group levels. Lenders feel that existing requirements are sufficient and that additional limitations could hurt borrowers by restricting or limiting product choices. Restrictive guidelines could result in the unintended consequences of needy and deserving borrowers being denied access to credit. There is also a belief that existing guidelines and requirements should be enforced by fully staffed and funded regulators and law enforcement before any new statutory or regulatory requirements are imposed.

Housing agencies, credit counseling organizations, and consumer advocacy organizations argue that uniform, standard loan underwriting criteria or "suitability" standards would result in equitable and fair access to credit, fair pricing and an appropriateness of product for all borrowers and support sustainable homeownership. There is also the belief that proper regulation of loan products and processes will level the playing field for quality lenders who already follow the rules and engage in ethical and fair lending practices.

As an overarching theme of the Working Group, it was agreed that ***it should be a fundamental goal of all parties in a mortgage transaction that borrowers only obtain loans they can reasonably be expected to repay based on all information available at the time the loan is made and that all borrowers understand the terms of the loan***.

The following are recommendations by the Working Group to guide industry practices and the development or adaptation of mortgage products:

Subprime, Nontraditional Mortgage, and Hybrid ARM Product Lending Guidance Should Be Applicable to All Types of Lenders

It was agreed that there is a specific subset of mortgage products that appear to be at the center of the mortgage lending and foreclosure crisis, including: subprime loans, nontraditional loans (including interest-only loans and payment option ARMs) and short-term teaser rate Hybrid ARMs (including 2/28 & 3/27).

On October 4, 2006, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies) issued an interagency guidance relative to nontraditional mortgage product risks. (Nontraditional mortgage products include interest-only mortgages and payment option ARMs, or other mortgage products that do not fully amortize.) This interagency guidance applies to all banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions. The guidance addresses many of the concerns noted above with regard to nontraditional mortgages, including documentation of income, ability to repay, and "payment shock".

Payments on nontraditional loans can increase significantly when the loans begin to amortize. Commonly referred to as "payment shock," this is of particular concern for payment option ARMs where the borrower makes minimum payments that may result in negative amortization. Under the guidance, lenders should analyze a borrower's ability to repay the debt by final maturity at the fully-indexed rate. This analysis should not be based on an over-reliance of credit scores as a substitute for income verification in the underwriting process.

The Guidance also states that lenders should clearly disclose the risks that borrowers may assume in a nontraditional mortgage product. In addition to apprising consumers of the benefits of nontraditional mortgage products, providers should take appropriate steps to alert consumers to the risks of these products, including the likelihood of increased future payment obligations.

Recognizing that the federal interagency guidance does not cover a majority of non-bank entities originating loans in the Commonwealth, the Division of Banks, in cooperation with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), developed parallel guidance for licensed mortgage brokers and mortgage lenders in Massachusetts. The Guidance was issued in proposed format for comments on November 14, 2006, and became final in the form of a Regulatory Bulletin on January 2, 2007[6]. The guidance adopted by the Agencies and the Division helps to promote the uniform application of consumer protections for all borrowers.

While the nontraditional mortgage guidance goes a long way in addressing abusive practices associated with these products, the guidance does not address so called Hybrid ARM products, including 2/28 and 2/27 loans. Under these fully-amortizing products, a very low initial fixed rate for 2 or 3 years is followed by an adjustable rate period of 27 or 28 years. Similar to nontraditional mortgage products, there is a significant payment shock associated with these products. In addition, a prepayment penalty that extends beyond the teaser rate fixed period prevents many consumers from refinancing into a more conventional fixed rate or adjustable rate product.

To address these concerns, the Agencies released a proposed Statement on Subprime Mortgage Lending (Statement) on March 2, 2007. Similar to the nontraditional

[6] See Regulatory Bulletin 5.1-103, "Guidance on Nontraditional Mortgage Product Risks".

mortgage guidance, the Statement would apply to all state and federally chartered banks and credit unions and their nonbank subsidiaries. The proposed Statement addresses the issues raised above relative to the risks of these Hybrid ARM products. ***Once finalized, the Working Group strongly encourages the Division to issue a parallel Statement or guidance to licensed mortgage brokers and lenders to ensure a level playing field and that consumers receive the full protections of the Statement.***

Steering borrowers to higher cost loans when they may qualify for lower costs loans is inappropriate.

One potential way to address this would be for all loan applications originated with the intent to be sold in the secondary market be first submitted to automated underwriting systems, (for example, Freddie Mac or Fannie Mae) prior to recommending a nontraditional or subprime mortgage product. If a borrower is eligible for traditional conventional financing using automated underwriting, such a product with applicable terms and conditions should be presented along with other financing options. This would allow the borrower to make an informed choice between various mortgage financing options.

Stop Unfair and Deceptive Marketing Practices

The Division of Banks, the Office of Consumer Affairs, and the Office of the Attorney General should increase their current efforts to collaborate and identify false, deceptive, or misleading advertising practices, including offers for "easy credit" or "low-cost credit". These agencies should work with lending groups, trade associations, and consumer groups to develop a code of conduct for advertising. In addition, these agencies should consider convening a meeting of the editorial boards of the major media outlets, including print, broadcast, and electronic, to draw attention to the advertisements placed with their organizations and to remind them of their obligation to police the content of advertisements. Finally, the agencies should use their enforcement authority to go after anyone using unfair or deceptive marketing practices.

It should be noted that Representative Kevin G. Honan has filed a bill (H1237) on behalf of Boston Mayor Thomas Menino that would define certain unfair and deceptive advertising practices.

Require Anti-tying Disclosure by Real Estate Brokers

The Division of Banks, the Office of Consumer Affairs, and the Board of Registration of Real Estate Brokers & Salespersons should work together to review the practices of real estate brokers and salespersons that refer clients to mortgage lenders and brokers. Some of those real estate brokers are part of a "captive" organization, meaning an affiliated mortgage company or mortgage brokerage firm offers mortgage financing to clients of real estate brokers. Even with independent real estate brokers, there may be incentives to refer clients to a particular lender or broker. Notice or disclosure should be given to home buying consumers that the purchase of a home is not contingent on arranging financing through any specific lender or broker referred by the Realtor.

Additional Recommendations

In addition to the above recommendations, the Working Group also offers the following suggestions:

- Pre-payment penalties should not be charged after the initial reset period of an ARM product.
- Full, simple, and clear disclosure of all the features of the loan that might affect the monthly payment and borrower equity, should be provided.
- Full, simple, and clear disclosure of the incremental cost of each of the risk layering features of the approved loan should be provided.
- Changes in loan terms at or just prior to closing that adversely affect the borrower by increasing costs, fees, or rates or changing other terms are inappropriate and should be considered predatory.
- Require that the name and license number of the mortgage broker be added to the mortgage so that it becomes a public record.
- Require all licensed mortgage lenders and mortgage brokers to report through the annual report to the Division of Banks the number of loans that they originated that went into foreclosure.
- Require all licensed mortgage lenders and mortgage brokers to report through the annual report to the Division of Banks the number of loans originated in Massachusetts that meet the definition of a high APR loan (HAL) under the Home Mortgage Disclosure Act (HMDA)[7] and the percentage of all loans originated in Massachusetts that are HALs.
    - Based on the HAL data reported by mortgage lenders and mortgage brokers, consideration should be given to the following:
        1. If the majority of a lender's or broker's business are HALs, the lender or broker must disclose this to the customer in writing, along with information that better pricing and terms may be available from another lender.
        2. If the majority of a mortgage lender's or broker' closed loan business is defined as HALs, a separate license designation could identify them as a High APR lender or broker. This High APR identification would also have to appear in all advertising.

Other Issues Considered

The Working Group discussed the concepts of "suitability" and "fiduciary duty". This standard is a familiar practice in the securities industry, where brokers have a fiduciary duty to their client. Basically, a suitability standard would require a lender to

[7] Under HMDA, lenders are required to report the spread between the APR on the loan and the comparable Treasury rate if the spread exceeds three percentage points on a first lien and five percentage points on a second lien mortgage. These loans are sometimes referred to as "High APR" loans or "Higher-Priced" loans. This is not to be confused with a "high cost home mortgage loan" as defined under G.L. c. 183C.

only make a loan to a borrower so long as the product was suitable based on an evaluation of the borrower's individual circumstances and needs. Consumer advocates argue that a suitability standard would not be overly burdensome and is appropriate to ensure that a consumer is not steered to a product that is clearly unsuitable for him or her. Many lenders contend that a suitability standard is far too subjective and could in fact restrict credit to many borrowers, particularly members of protected classes who are some of the very borrowers a suitability standard is meant to protect. There was a lack of consensus, therefore on what to recommend regarding the concept of suitability.

VII. Recommendations of the Consumer Education & Foreclosure Assistance Working Group

After the Mortgage Summit, the Consumer Education & Foreclosure Assistance Working Group was tasked with taking the comments from the Summit to draft more specific recommendations. Specifically, the Working Group was responsible for issues such as: homebuyer and homeowner education and counseling, effective means for outreach to communities most affected by increasing foreclosures, assistance and resources for consumers faced with foreclosure, foreclosure intervention and rescue programs, and ways to fund these programs.

The Working Group divided into two committees to develop more concrete recommendations concerning these issues:

- Education and Counseling
- Foreclosure Intervention Products and Services

Education & Counseling

Objective: To recommend ways to inform the general public about available resources for pre-purchase education, post-purchase support and financial education.

In achieving this objective, the Working Group stresses three points that should be emphasized to all consumers:

- Consumers need to get informed and educated early in the process, whether that is early in the homebuying process or early in the credit problem stage, before the foreclosure process begins.
- Prevention is key: A homebuyer that avoids the loan they can't afford or plans for unforeseen problems down the road is less likely to face foreclosure.
- Buyers have to take responsibility to educate themselves. Relying on others to act in your interest will only open yourself up to trouble.

The Working Group recommends distributing information by two main approaches:

Statewide Campaigns

The Working Group recommends developing several different statewide campaigns to provide broad education to a wide variety of Massachusetts residents.

Grassroots Approach

A grassroots approach is essential to reaching people across Massachusetts that may not be aware of the existing resources available to assist them in making important financial decisions because they are not tapped into homebuyer education groups, community development corporations, or other local entities.

As an example of a grassroots approach, the Working Group recommends that the Greater Boston Civic Engagement Initiative (CEI) be used as a model. CEI was established in 2002 as a three-year $1 million effort to increase nonpartisan voter registration and mobilization in low-income communities and communities of color with low rates of voter participation. CEI invests in community-based organizations, such as community development corporations, health centers, service providers and ethnic alliances that include voter registration activities as one component of their work. The theory is that since they are embedded in their communities, they are trusted and have credibility to encourage voter participation as part of engagement in the local community. In the first year, 19 organizations in Boston, Chelsea, Salem, and Lynn received one-year grants in the range of $15,000-$30,000 and registered nearly 7,000 new voters, among other accomplishments.

Both methods will include messages targeted to different groups:

- First-Time Homebuyers

- Current Homeowners Interested in Learning More Information
- Current Homeowners at Risk of Losing Their Homes

The messages should further be provided in multiple languages and to people of various ages (young families versus elders).

The Working Group recommends that a partnership of government, non-profit, and industry groups be formed to identify specific entities to carry out the following actions and to oversee the initiative as a whole.

Short-Term Actions:

1. Statewide Campaign: State Agencies Should Support Homebuyer Education

It should be Massachusetts public policy to support the importance of homebuyer education. State agencies and state legislators should be equipped with the tools to refer consumers to available resources. A directory of housing counseling and other resources should be developed by the Department of Housing and Community Development and distributed to all state agencies and all state legislators to better serve clients and constituents.

2. Grassroots Approach: Initiative to Inform Local Communities

A. Regional Meetings

Convene regional meetings or forums to bring together "change agents": local officials, chambers of commerce, local non-profit organizations, members of the Massachusetts Municipal Association, local real estate agents, community development corporations, housing partnerships, other community-based organizations and community leaders. The "change agents" will all use the same unified, simple message and have resources to back up the message. The method used to educate and encourage "change agents" could be modeled after traditional voter turnout techniques. The regional meetings would provide education on the issue of predatory lending and foreclosures.

Create a packet of information to distribute that will include:

- Data by community (collect data on which communities have high rates of subprime lending; which communities are experiencing high rates of foreclosure).
- What the issues are (how do foreclosures affect local communities and neighborhoods; what is the fiscal impact for a municipality?).
- What can communities do? (ask local lenders to convene financial education seminars; send "Don't Borrow Trouble" brochures to all town residents; start their own initiative to combat foreclosures).
- Copies of the "Don't Borrow Trouble" brochures which include the 1-800 number for the Division of Banks hotline should be given to homebuyer counseling agencies, other community-based organizations and municipalities to distribute.

- Standardized form for change agents to use when providing information to consumers. The form could capture financial information and could be used to refer the consumer on for additional support or to determine if the consumer is at risk for foreclosure.
- Local officials should also be provided with information on the steps taken by other communities, e.g. Boston, Brockton and Lawrence.

B. Utilize Local Media Outlets

- Contact local newspapers and encourage the editors to run stories about subprime and predatory lending; consider obtaining "guest" columns to distribute to various newspapers.
- Educate local media about subprime and predatory lending and the negative impact it has had on their community.
- Contact local radio stations.
- Utilize local cable television. Community members can ask their local cable stations to run previously taped segments, including one segment that could be run statewide in multiple languages.
- Contact television stations to determine if they could donate air time to run previously recorded videos.

3. Grassroots Approach: Workshops to Inform Consumers

Encourage community-based non-profit organizations to hold workshops on post-purchase issues. Some non-profit organizations offer post-purchase classes. The Working Group recommends that these organizations increase their focus on predatory lending, refinancing and financial planning for the future. This will provide information to both homeowners before they experience financial problems and may capture homeowners that are already at risk for losing their homes and get them connected with services faster.

Long-Term Actions

1. Statewide Campaign: New Marketing Strategy

Massachusetts needs to develop a new way to reach people with the resources and information already available. A new statewide marketing strategy should be developed and a public spokesperson(s) should be identified. The Working Group recommends developing a competition and pair college students with local advertising and marketing firms to develop new messages about the importance of financial education and understanding mortgage products.

This competition could be modeled after the CHAPA and Federal Home Loan Bank of Boston's successful Affordable Housing Development Competition. That competition matches graduate students with professionals in the development community and provides the opportunity to combine classroom experience with real-world practice in affordable-housing development.

A similar approach could be used for a marketing competition to match college students with marketing professionals to develop new ways to reach out to the broader community about the importance of financial education. This can also present an opportunity for partnerships with organizations such as the American Marketing Association (AMA) – Boston Chapter. Associations such as these can introduce this initiative to their collegiate members or affiliates, where they can apply their marketing skills in a real-world situation. This also provides an opportunity for awareness and visibility among college students themselves who may soon be entering the home buying market.

2. Statewide Campaign: Website on Financial Education

The State should develop a website dedicated to financial education and existing resources in Massachusetts. The website should be developed and maintained by the Office of Consumer Affairs and Business Regulation and should model other successful websites like the State of Pennsylvania's Office of Financial Education website (www.moneysbestfriend.com).

The Working Group also recommends tapping into existing websites that may offer some of this information such as The Beehive (www.beehive.org), the state's Virtual Gateway, and other state-initiative websites.

3. Statewide Campaign: Legislation Filed to Create a Home Preservation Fund

At least three legislative petitions were filed for the 2007-2008 session regarding foreclosure and include the creation of funds to be used to preserve homeownership. One of the bills filed (S747/H1290) calls for the creation of a $10 million fund to be used for grants and loans to homeowners who are victims of predatory lending and are facing foreclosure and for grants and loans to non-profits to conduct education campaigns, counseling, legal services, and refinance assistance. At a hearing on that bill, it was suggested that if law enforcement officials recover judgments in cases alleging unfair or deceptive conduct by predatory mortgage lenders or brokers, they be authorized to contribute some portion of those recoveries to the Fund.

Under the bill, the Department of Housing and Community Development would be tasked with determining eligibility criteria to gain access to the funds. The Working Group recommends that, if implemented, high priority should be given to expanding the capacity of community-based organizations to assist local residents on credit and foreclosure issues in areas of the state with the highest levels of high-cost loans and foreclosures.

In addition to a state funding mechanism, those who are responsible for causing the current foreclosure crisis should help to solve the problem. If a foreclosure fund is established to help consumers facing foreclosure, a significant portion of those funds should be devoted to helping consumers stay in their homes as well as to counseling consumers to help repair their credit and to avoid getting into trouble again (see recommendations below under *Foreclosure Intervention Products and Services*).

Foreclosure Intervention Products and Services

The purpose of the Foreclosure Intervention Products and Services Committee was to try to find ways to reduce the number of foreclosures in the future, while at the same time trying to help those individuals who are in the process of foreclosure through products or services.

Widely published statistics show a growing foreclosure problem in Massachusetts. The current housing market slowdown, the upward re-pricing of adjustable rate mortgages have made it difficult for many consumers facing foreclosure to refinance into a more affordable loan. In addition, The Working Group believes that the additional reasons for the increase in foreclosure include the following:

- Fraud
- Exotic mortgages to unsophisticated borrowers
- Speculators
- Stated-income loans
- Loans with low initial interest rates which qualify a borrower and then adjust to interest rates that exceed the borrower's capability to pay

As a result of these issues, the Working Group recommends a number of options to mitigate the ongoing problems occurring in the Massachusetts marketplace:

Enhance the Mortgage Hotline

The Division of Banks offers a "1-800" number or mortgage hotline for consumers to call seeking help. In the past, the Division of Banks has partnered with the National Consumer Law Center to create resources for Division staff to use when consumers call who have been victimized by predatory lending practices. The Division should establish a similar model for consumers facing foreclosure. Division staff should have lists of resources to refer consumers to that need counseling or help in refinancing to avoid foreclosure. In addition, trained bilingual staff should be available to assist consumers who do not speak English.

Also, NeighborWorks America currently operates a hotline: 888-995-HOPE (www.995hope.org). The Working Group recommends that the Division of Banks consider the NeighborWorks model as a best practice to learn more what their process has been like.

Develop a list of foreclosure counselors

A statewide directory of counselors should be developed and made available to staff at the Division for the Mortgage Hotline for consumers facing foreclosure. There are currently bills pending before the Legislature that would create a fund to be administered by the Department of Housing and Community Development that would provide grants to non-profit agencies for the purposes of assisting consumers facing foreclosure. Callers to the Mortgage Hotline could be referred to such organizations approved by the Department of Housing and Community Development.

Develop a listing of lenders willing to assist consumers out of foreclosure

The Division should seek financial institutions and lenders throughout the state to register as willing to help individual borrowers in local communities who are at risk of foreclosure. Individual financial institutions would sign up and when someone called the "800" number they would be referred to a financial institution for counseling and assistance based on the location of the property. Participating institutions would offer an "intervention" product similar to the recommendation below (see "Foreclosure Intervention Mortgage" below).

Establish a fund or grants for organizations providing counseling or legal services to consumers facing foreclosure

Throughout discussions with various counseling agencies on the Working Group, it is apparent that funding sources for their organizations has been dwindling and in this kind of environment it is deemed inadequate. As a result, the Working Group recommends that the Commonwealth increase the funding to the agencies involved in assisting homeowners who face foreclosure. In addition, a disproportionately large segment of the foreclosure market represent minorities and individuals where English is a second language. Because of language and cultural barriers, there is a tendency for assistance to occur at the last possible moment and therefore any hope of reducing the list of foreclosure becomes problematic. Through appropriate funding levels, early intervention through various outreach efforts will provide a more meaningful solution. Additionally with an appropriate level of funding, homeowner education can take place for first time homebuyers. It is highly recommended that all first time homebuyers receive pre-purchase and post-purchase counseling or education, although the Working Group does not recommend making this a requirement. This will necessitate financial support for many local grassroots organizations, serving immigrant and minority communities throughout the state. In addition, if the counseling agency is not an independent third-party provider, they should disclose to the consumer any financial interest that the counselor or agency may have in the loan.

As mentioned above, there are bills pending before the Legislature to create a funding mechanism for counseling and other organizations. This would be accomplished either through appropriation or through fees from foreclosure filings or licensing. ***The Working Group recommends that some funding mechanism be established to ensure adequate services for Massachusetts homeowners at risk of losing their homes.***

Lender Forbearance

The social and human costs of foreclosure are well known. However, foreclosure is costly for lenders or the servicers of mortgages as well, both in terms of the monetary costs as well as the reputational risks. As an alternative to foreclosure, lenders, servicers, and note holders should consider forbearance in the form of temporary rate reduction, waiver of pre-payment penalties, waiving or capitalizing late fees, or restructuring the terms of the note. Failure to exercise prudent forbearance could result in a spiral of increased foreclosures, causing depressed community housing values, causing even more foreclosures. On an individual basis, there are few economic incentives to offer reduced

rates or altered terms to a borrower in trouble. However, the industry as a whole benefits by bringing down foreclosure rates. ***The Working Group recommends that the Division of Banks, the Office of Consumer Affairs, other Administration officials, the Attorney General, and other officials convene a meeting of those lenders, servicers, and investment firms with the largest portfolios of at risk loans to urge them to exercise forbearance as a first alternative to foreclosure.***

Develop a foreclosure intervention mortgage program

The Working Group recommends the development of a new product be called, "The Community Relief Mortgage" (the Program). The Program would be designed to help those mortgage borrowers who are in the process of foreclosure or at risk for foreclosure but can still qualify for refinancing with flexible underwriting and credit enhancements.

The Working Group has created the framework for a creative but sound Product. In general, the Product would be a 10/30 mortgage or, in essence, a 40-year term. The initial rate on the mortgage would be discounted from current market to approximately 5% and fixed for a period of 10 years. At the time of re-pricing, the rate will not exceed the original 40-year market rate plus a cap of 1%. For example, if at the time of the initial application, the fixed-rate on a 40-year mortgage was 6%, then at the time of re-pricing after 10 years, the maximum the rate could advance would be 7%. The borrower would not be subject to PMI. On a $250,000 loan the "lost" interest will be recovered after re-pricing in year 26 of the 30-year portion of the loan.

Program Highlights

- Expanded qualifying ratios
- Closing costs included in the mortgage
- Maximum mortgage amounts would equal FannieMae/FreddieMac limits
- The homeowner must maintain occupancy for a minimum of five years or pay back the discounted rate out of any appreciation.
- Impaired credit caused by the high cost of an initial mortgage would not discount eligibility for the program

Eligibility Requirements

- Owner occupied, one-to-four family property and condominium and co-operative dwellings
- Principal Residence
- No income limitations
- Prior participation in a foreclosure counseling by a third party without a financial interest in the loan

Create a market for the Foreclosure Intervention Mortgage Program

Credit Enhancement

This mortgage Product is clearly not a conventional program. Some form of credit enhancement may be necessary. The Working Group discussed the role that the Government Sponsored Enterprises (GSEs), including FannieMae, FreddieMac, and the Federal Home Loan Banks, could play in assisting the credit enhancement of this Product. Helping to preserve affordable housing is at the core of the mission of the GSEs and each has developed affordable housing programs. ***The Working Group recommends that the GSEs should play a role in helping consumers repair their credit and remain in their homes.*** This can be a shared risk approach with lenders where the present value between the market rate and the discounted rate could be amortized over the life of the Product.

Incentives to offer or invest in the Intervention Program

It is also anticipated that a marketing effort on the part of the Administration would be necessary to encourage various lenders to support this product. In addition, a secondary market of investors would be necessary to ensure the sustainability of the Product. Given this set of circumstances, it may be necessary to convince various foundations, the State Retirement Board under the State Treasurer's Office, various pension funds and others to invest in this effort as an alternative to the detrimental impact that would otherwise occur.

Given the current housing slowdown and backlog of homes available in the market, there continues to be downward pressure on pricing. When you add to that pressure the volume of foreclosures that are expected, it can only be detrimental to the housing pricing environment. This in turn could cause values statewide to decline, thereby reducing the tax-base upon which cities and towns rely to pay for critical services. This potential tax shortfall could be substantial given the potential impact by having this many families being moved out of their homes through foreclosure. When you consider that the majority of the foreclosures are occurring in the older industrialized cities, the social pressures that will be experienced in those cities will be significant.

Those who have contributed to the crisis should help solve it

The Working Group strongly believes that lenders who have originated a substantial number of loans in foreclosure and the holders of a substantial number of loans in foreclosure should bear the primary responsibility to help alleviate the current foreclosure crisis by investing in such a Product. Foreclosing on a property, taking possession, and attempting to sell a property in a declining housing market is a very costly proposition. Investing in the Community Relief Mortgage program would be less costly than the costs of a spiraling foreclosure crisis or the reputational damage, including litigation risk, by large scale foreclosures.

In addition to the above recommendation to convene a meeting of industry and government officials to encourage lenders to exercise forbearance, ***the Working Group***

also recommends that these same lenders and investors be urged to invest in the Community Relief Program as another means to alleviate the foreclosure problem.

While there is no question that a product of this nature will require strong public support and potential use of public funds, the alternative spiral of foreclosures is potentially more disruptive, uncontrolled and debilitating to municipal and the state's economy and to the mortgage market itself.

For those with no alternatives to foreclosure, assistance will be required

Despite anyone's best efforts or intentions, many people will not qualify for any forbearance or discounted product. For those individuals who will have to suffer the loss of their homes, they will have many needs. First among these is the need for shelter. If any foreclosure assistance funding is available, one of the key resources that will be required is ensuring that families that have lost their home find safe housing, either with relatives or through rental housing. This may require emergency funds and help from groups such as the Housing Consumer Education Centers. An increase in foreclosures will also increase the numbers of families on waiting lists for rental subsidies and vouchers. Second, these families will need counseling services to be able to rebuild their credit and ensure that they do not fall into similar circumstances again.

Additional Recommendations

In addition to the above recommendations, the Working Group also offers the following suggestions:

- The Federal Reserve should consider amending Regulation C pursuant to the Home Mortgage Disclosure Act (HMDA) to require the lender that closed the loan to file under HMDA. Currently, only the institution that made the credit decision is required to report the transaction under HMDA. However, many lenders "table fund" a transaction by underwriting the loan using another lender's guidelines, closing the mortgage in their name, but then immediately sell the loan to the lender that approved the loan pursuant to contracted underwriting guidelines. Under these circumstances, the "originating" lender never reports the transaction under HMDA even though they are the only face that the consumer ever knew.
- Government at both the federal and State levels should be wary of banning products outright. Rather, regulators should target practices, including steering borrowers into products that are inappropriate. Although subprime loans are often blamed for being part of the foreclosure problem, when underwritten appropriately, subprime loans can be a bridge for consumers to improve their credit to qualify for a prime loan. In addition, for many homeowners facing foreclosure, refinancing into a subprime loan may be their only alternative. Restricting borrower access to these products may only compound the problem.

VIII. Conclusion

The attendees at the Mortgage Summit and participants in the Working Groups represent the broad spectrum of those involved in one way or another in the mortgage industry. Government agencies, regulated entities, trade groups, community organizations, as well as advocacy groups all had a seat at the table. Each in their own right are also consumers.

Since all involved have roles within the mortgage process, all acknowledge that foreclosures will occur. History reflects that fact. However, all agree that a confluence of recent and ongoing events have resulted in the flood of foreclosure activity today. The recommendations in this report do two things. They recognize that current events evidence various new reasons for foreclosures, and two, that there are new areas to consider for resolution of today's mortgage problems.

Those resolutions may lie in State or federal legislation or regulation as well as with regulators, law enforcement officials, financial institutions, regulated entities, community and non-profit groups, as well as consumers themselves. Some recommendations identify funding needs while others identify education programs.

Despite our differences, the participants of the Working Groups also agree that we are committed to do what we can to address this growing problem.