



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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# HEARING BEFORE THE SENATE SPECIAL COMMITTEE ON AGING

## ENTITLED

## FORECLOSURE AFTERMATH: PREYING ON SENIOR HOMEOWNERS

### WRITTEN TESTIMONY OF JOHN W. ANDERSON, ABR, CRB, CRS, GRI

ON BEHALF OF THE

**NATIONAL ASSOCIATION OF REALTORS®**  
**FEBRUARY 13, 2008**

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REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.



Chairman Kohl, Senator Smith and Members of the Committee, thank you for inviting me to testify today on the issue foreclosure rescue scams and their impact on older Americans. My name is John Anderson, and I am a licensed real estate broker and owner of Twin Oaks Realty in Minneapolis, Minnesota, a family business my father started in 1961. I have been a REALTOR® for almost 30 years and have assisted and counseled thousands of buyers and sellers over the years as primarily a residential broker and salesperson.

I am here to testify on behalf of more than 1.3 million REALTOR® members of the National Association of REALTORS® (NAR) who are involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors and others engaged in all aspects of the real estate industry. Members belong to one or more of some 1,400 local associations/boards and 54 state and territory associations of REALTORS®. We commend the committee for holding today's hearing on the very serious issue of foreclosure scams and recommendations to protect our nation's senior homeowners from harm's way.

### **REALTORS® Want to Protect our Nation's Homeowners**

Irresponsible and abusive lending practices are a major problem for our nation's communities. While responsible subprime lenders have played an important role in helping millions of consumers achieve homeownership, abusive lending occurs much too often in subprime markets. Unfortunately, some lenders have abused their role and taken advantage of vulnerable borrowers, including older Americans, by charging extremely high interest rates and loan fees unrelated to risk, using aggressive sales tactics to steer consumers into unnecessarily expensive or inappropriate loan products, advertising "teaser" interest rates (like the 2/28 or 3/27 adjustable rate mortgage) that steeply increase after the first few years of the loan and basing their lending on artificially high appraisals. Real estate professionals have a strong stake in preventing abusive lending because:

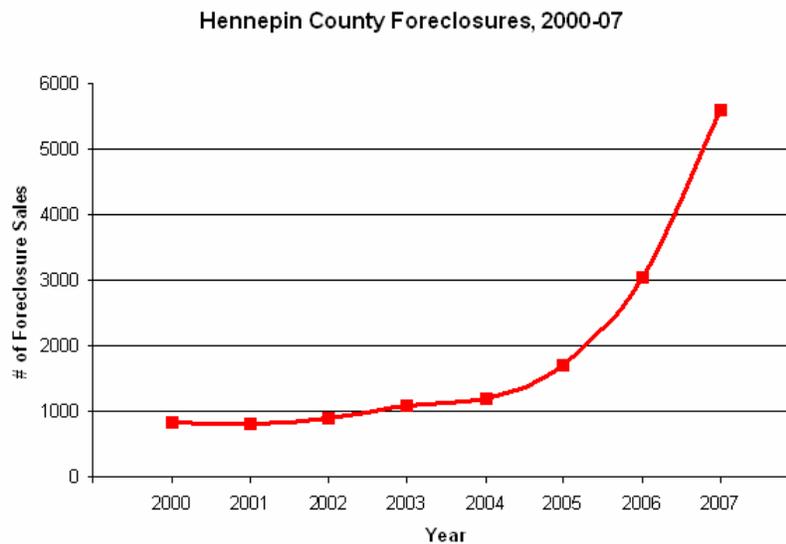
- Abusive lending erodes confidence in the Nation's housing system.
- Legislative and regulatory responses to lending abuses that go too far can inadvertently limit the availability of reasonable credit for prime as well as subprime borrowers in a credit-driven economy. When responses to abusive lending constrain

the ability of the secondary mortgage market to provide liquidity for home finance, consumers will find it more difficult and expensive to buy a home.

- Citizens of communities, including real estate professionals, are harmed whenever abusive lending strips equity from homeowners. This is especially the case when irresponsible lenders concentrate their activities in certain neighborhoods and create a downward cycle of economic deterioration.

### **Foreclosures Devastate the Strength and Stability of Communities**

The consequence of lending abuses is higher rates of foreclosures leading to the loss of families' homes and savings and increased vacancy rates which, in turn, can cause all homes in a neighborhood to lose value. In my own state of Minnesota, 2007 foreclosure filings almost doubled from 2006. Minneapolis-St. Paul (Hennepin County), where I live and work, has the highest rate of foreclosures in the entire state.<sup>1</sup> In January 2008, there were 711 foreclosures in Hennepin County, the highest since October 2007 when there were 560 foreclosures.<sup>2</sup>



*Source: Federal Reserve Bank of Minneapolis and Hennepin County Sheriff's Office*

I can tell you first hand that the impact of foreclosures on Hennepin County is unmistakable. According to research conducted by the Woodstock Institute, a foreclosed home lowers the price

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<sup>1</sup> <http://www.housinglink.org/Foreclosure.htm>. HousingLink is an independent, nonpartisan, Twin Cities-based organization that specializes in the collection and distribution of affordable housing information.

<sup>2</sup> Hennepin County Sheriff's Office.

of surrounding homes by about 1 percent.<sup>3</sup> The same research also found that each additional foreclosed home within an eighth of a mile lowered the values by an additional percent. Just last month, the Center for Responsible Lending (CRL), who more than a year ago warned Congress about their projection of more than 2 million American families losing their home to foreclosure, released startling research on the spillover effect on our nation's communities and neighborhoods. Specifically, CRL estimates:

- More than 40 million neighboring homes will suffer a decline in property values because of foreclosures in their neighborhood;
- The total decline in property values and reduced tax base because of nearby foreclosures will be \$202 billion;
- Homeowners living near a foreclosed home will see their property value reduced by about \$5,000.<sup>4</sup>

Recently, the U.S. Conference of Mayors commissioned a report looking at the economic and fiscal impact of foreclosures.<sup>5</sup> The findings were largely consistent with the CRL and concluded that 2008 will bring more foreclosures, curtailed consumer spending and significant financial stresses for state and local government budgets. In Minnesota, for example, the Mayor's report indicates that due to depreciating property values, property taxes in the state could ultimately decline by as much as \$20 million.<sup>6</sup> In addition, Minnesota is expected to lose \$3 million in sales tax revenues due to weakening consumer spending in 2008, and \$13 million in transfer tax revenues because of declining home sales and prices.<sup>7</sup>

State and local governments will immediately feel the impact of the reduced property tax revenue, which goes to fund important county/city services we depend on every day (police protection and fire rescue services, schools, social services, public transportation etc.). Furthermore, what many people do not realize is that foreclosures actually require local

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<sup>3</sup> *There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values*, Woodstock Institute (June 2005).

<sup>4</sup> *Subprime Spillover: Foreclosures Cost Neighbors \$404 Billion; 40.6 Million Homes Lose \$5,000 on Average*, Center for Responsible Lending (January 2008).

<sup>5</sup> *The Mortgage Crisis: Economic and Fiscal Implications for Metro Areas*, Global Insight for the United States Conference of Mayors and the Council for the New American City (November 2007).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

governments to *spend* money “for inspections, court actions, extra law enforcement, visits from city utilities and sometimes demolition.”<sup>8</sup>

Someone once said that foreclosures are like mold — once it starts, it’s difficult to rid a community of it. Families struggling to make mortgage payments and who live in a neighborhood where homes have already been lost to foreclosure will find it difficult to refinance or sell due to declines in area home values. Far too often the financially stressed family will end up losing their home and feeding the vicious proliferation of foreclosures.

### **Older Americans are Targets for Abuse and Have a Lot to Lose**

Today, there are more than 87 million Americans over the age of 50.<sup>9</sup> According to NAR research, 43 million American’s aged 50 and over own their home with a typical market value of \$186,200.<sup>10</sup> More than half of older baby boomers (50-60) have been a homeowner for more than 20 years and last purchased a home 15 years ago.<sup>11</sup>

The foundation of many older Americans’ net worth is the equity in their home.<sup>12</sup> NAR research indicates that among older boomers, the typical household reports home equity of \$100,000, with nearly one-quarter having at least \$250,000 in equity. Yet, when describing their financial situation, 35 percent of older homeowners consider themselves as having just enough to make ends meet and 14 percent report having financial difficulties.<sup>13</sup>

It is not surprising that half of older boomers are concerned about their financial security given rising medical costs, increasing monthly household bills (utilities) and other age-related expenses. A spike in just one monthly expense or an unexpected significant cost transforms older boomers into the most vulnerable population in the eyes of abusive lenders and foreclosure scammers.

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<sup>8</sup> T.W. Farnam, *As Foreclosures Rise, Mayors Brace for Fallout*, Wall Street Journal (January 28, 2008).

<sup>9</sup> U.S. Census Bureau.

<sup>10</sup> National Association of REALTORS®, *Baby Boomers and Real Estate: Today and Tomorrow* (2006).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* NAR research shows that older homeowners report that their home accounts for more than 45 percent of their net worth.

<sup>13</sup> *Id.*

## **Foreclosure “Rescue” Scams**

The most pervasive foreclosure “rescue” scam is the “reconveyance” which may or may not involve equity stripping. Generally, the scam goes like this:

- A homeowner falls a few months behind on their mortgage payment and has just received a notice of pending foreclosure from the lender.
- The homeowner responds to an advertisement or a letter that typically says, “Want to avoid foreclosure and stay in your home? Call now. Time is of the essence. The foreclosure timeline has already started.”
- The foreclosure “rescuer” or “counselor” makes promises of a fresh start and rebuilding credit by bringing the mortgage current. In exchange for paying the mortgage arrears, the homeowner is asked to sign a quitclaim deed and told they can remain in the house as a renter.<sup>14</sup>
- The “rescuer” or “counselor” explains that every month, the homeowner makes a payment (i.e. rent) to his company, which will be lower than their current mortgage payment. The homeowner is also told that every payment will be credited to the principle of the original mortgage and will help them to repurchase the home in a few years.
- While the homeowner is making monthly payments to the “rescuer” or “counselor,” the scammer is not making payments on the original mortgage; rather the “rescuer” is using their presumed ownership of the property to borrow against the equity built up in the home.
- Soon, the homeowner learns they are further in arrears with the original lender and have the added financial burden of new liens for the scammer’s new home equity loans. In almost every case where there is no legal intervention, the homeowner loses the home to foreclosure, loses all the money paid to the scammer as rent, and loses all the home equity than has built up over the years.

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<sup>14</sup> Transfer of ownership generally does not relieve the homeowner of their mortgage debt obligation. Most conventional mortgages have a “due on sale” clause that prevents a transferee (in foreclosure “rescuer” scams, the transferee is the scammer) from assuming the mortgage obligation. Typically, the only way to be released from liability of mortgage debt is paying off the property’s mortgage, either from proceeds of a sale or at the end of the term of the mortgage.

### **Minnesota’s “Foreclosure Reconveyance” Statute**

In 2004, the Minnesota took a significant step to protect its citizens from becoming victims of foreclosure “rescue” scams by enacting a law that sets forth a series of complex requirements applicable to persons who offer to help stop or postpone a foreclosure (“foreclosure consultant”).<sup>15</sup> The mortgage foreclosure law requires that if a transaction falls within the statutory definition of “foreclosure reconveyance,”<sup>16</sup> all details of the transaction must be in a written contract, including the exact nature of the foreclosure consultant’s services and the total amount and terms of compensation. The Minnesota statute requires that the following notice be included in the contract and be printed in at least 14-point boldface type:<sup>17</sup>

**“NOTICE REQUIRED BY MINNESOTA LAW**

**..... (Name) or anyone working for him or her CANNOT:**

**(1) Take any money from you or ask you for money until ..... (Name) has completely finished doing everything he or she said he or she would do; and**

**(2) Ask you to sign or have you sign any lien, mortgage, or deed.”**

Probably the most important provision of the state mortgage foreclosure law is the additional right of the homeowner who engages the services of a “foreclosure consultant” to cancel the contract for services within three business days. The statute requires that a separate “Notice of Cancellation” be attached to each contract and include the following statement:<sup>18</sup>

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<sup>15</sup> Minn. Stat. §325N (2004). See Minn. Stat. §325N.01(a) and (b) for complete definition of “foreclosure consultant.” Generally, NAR does not take positions on state statutes and does not have a position on Minn. Statute 325N. The Minnesota Association of REALTORS® supported the final version of MN Statute 325N when it was enacted in 2004.

<sup>16</sup> Minn. Stat. §325N.01(c) (2004).

<sup>17</sup> Minn. Stat. §325N.03(b) (2004).

<sup>18</sup> Minn. Stat. §325N.03(e) (2004).

**“NOTICE OF CANCELLATION  
..... (Enter date of transaction) (Date)**

**You may cancel this transaction, without any penalty or obligation, within three business days from the above date.**

**To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation**

**to ..... (Name of foreclosure consultant)  
at ..... (Physical  
address of foreclosure consultant's place of business)  
..... (E-mail  
address of foreclosure consultant's place of business)  
NOT LATER THAN MIDNIGHT OF ..... (Date)  
I hereby cancel this transaction ..... (Date)  
..... (Owner's signature)”**

The Minnesota statute also includes strong remedies for violations by foreclosure consultants including a private right of action and criminal penalties (imprisonment).

### **Homeowners Have Legitimate Options to Prevent Foreclosures**

In order for a foreclosure “rescue” scam to be successful, the “counselor” must cut off the homeowner’s access to all legitimate foreclosure prevention options. They do this by preying on the vulnerability of homeowner, often instructing them to not contact the lender or an attorney because it will preempt the “rescuers” negotiations to stay the foreclosure. For older Americans who have been in their home for more than 20 years and who do not want to seem like a burden on family members, the foreclosure “rescue” seems like a great option and the “counselor” seems like they really want to help. But as detailed above, it is the worst option and, by some measures, even more terrible than a foreclosure where equity in the home is returned to the borrower when the mortgage debt is paid.

It is critical that foreclosure prevention options be widely advertised, especially in areas where we know rescue scammers like to operate. The general nature of a homeowner who is behind on their mortgage payment is to avoid contact with the lender. We are hopeful that these attitudes and behaviors will change now that there is widespread messaging from the President of the United States that help is just a call away: 1-888-995-HOPE.

NAR supports the efforts of the HOPE NOW Alliance, which is a broad-based collaboration between credit and homeownership counselors, lenders, investors, mortgage market participants, and trade associations and endorsed by the Department of the Treasury and the Department of Housing and Urban Development (HUD). HOPE NOW members, who represent the majority of prime and subprime lenders, have engaged in repeated direct mail campaigns that promote and urge borrowers to call the 888-995-HOPE hotline. The hotline directly connects the homeowners with a trained counselor at a HUD-certified, non-profit counseling agency. This counseling service is free and is offered in English and Spanish. The trained counselors have a direct channel to lenders and help identify and present options to the homeowner from a trusted third party perspective. Since May 2007, NAR has actively promoted the 1-888-995-HOPE in numerous publications and on the highly visited REALTOR.org website.

Another foreclosure mitigation option that has also been actively promoted by the Administration and NAR is FHASecure. This program expands the Federal Housing Administration's (FHA) ability to offer refinancing by giving FHA the flexibility to work with homeowners who have good credit histories but cannot afford their current payments. In just three months, FHA has received over 120,000 refinancing applications and has already helped more than 35,000 people refinance. By the end of 2008, the FHA expects this program to help more than 300,000 families.

NAR strongly believes the private sector has an obligation to help educate homebuyers about today's mortgage products. Starting in 2005, NAR worked with the Center for Responsible Lending (CRL) to produce a series of brochures that describe the pros and cons of conventional loans and nontraditional mortgages, give consumers tips on how to avoid predatory loans. In May of 2007, NAR partnered with CRL and NeighborWorks, on a brochure that focuses on

helping financially stressed homeowners understand their options and offers tips on how to avoid foreclosure. Shortly after the brochure was released, NAR's President sent an e-mail to over 1.3 million REALTORS<sup>®</sup> informing them of the foreclosure prevention brochure and encouraging REALTORS<sup>®</sup> to put the brochure into the hands of every consumer they help to become a homeowner.

NAR also supports increased funding for programs that provide financial assistance, counseling, and consumer education to borrowers to help them avoid foreclosure or minimize its impact.

### **Conclusion**

Rarely do foreclosure "rescue" scams turn out with a happy ending. Rather, the "rescue" scenario that is played out over and over in communities across this country is in reality the theft of a family's wealth, the taking of a homeowner's dignity and stolen homeownership. For older Americans who rely on their home as the foundation of their net worth, a foreclosure is emotionally and financially crippling.

REALTORS<sup>®</sup> help families achieve the dream of homeownership. The National Association of REALTORS<sup>®</sup> supports increased consumer protections to ensure that the "dream" our members help fulfill does not turn into a family's worst nightmare. NAR stands ready to work with Congress on the important issue of foreclosure "rescue" scams and we are happy to make available to your constituents our "Learn How to Avoid Foreclosure and Keep Your Home" brochure, which is attached to the testimony. Thank you.