Testimony of

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Hearing

On

Foreclosure Aftermath: Preying on Senior Homeowners

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Foreclosure Aftermath: Preying on Senior Homeowners

Good morning Chairman Kohl, Ranking Member Smith and distinguished members of the Committee. Thank you for inviting me to testify on Maryland's efforts to combat mortgage fraud and provide relief to the foreclosure crisis facing Marylanders.

Effective oversight of the mortgage industry must be a joint venture between state and federal regulators. In Maryland, an estimated 70 percent of residential mortgages are originated by brokers, which means they are regulated by the state.

With the fluidity in the modern mortgage market, mortgage loans flow from state to federally-regulated financial institutions. There is a clear role for federal regulation of the secondary markets, particularly with respect to the issue of assignee liability. Federal and state regulators play distinct roles and it is important that we work in partnership and avoid actions that would preempt state oversight. Political will shifts and it is critical to create redundancies in enforcement as we never know where political will may lie at any given time.

At the state level, we are concerned currently about the Bank of America's acquisition of Countrywide. We encourage federal regulators, as they consider the acquisition agreement, to ensure a continued role for state regulation of Countrywide as a condition of their approval.

We would also encourage this committee to support a requirement for credit counseling for fixed income seniors who are considering an adjustable rate mortgage, similar to what Congress did for reverse mortgages. Such a requirement would serve as in important tool to fight fraud, though there would need to be additional resources to increase the capacity for counseling services. We believe such resources would be worthwhile, as older Americans are disproportionately vulnerable to the potentially ill effects of ARMs, as the vast majority of them have fixed incomes.

Federal regulators have traditionally been the protectors of safety and soundness in the banking industry. We believe that consumer protection is at the heart of sound banking policy.

Foreclosures in Maryland

Despite Maryland's relative wealth and economic stability, we have not escaped the foreclosure crisis that has swept the nation. In Maryland, foreclosure events – or foreclosure related court filings – reported in the third quarter of 2007 grew by 639 percent over the corresponding period in 2006. In the third quarter of 2007, Maryland saw 7,001 foreclosure events, an increase of 6,053 events, according to numbers obtained from RealtyTrac and analyzed by the Department of Housing and Community Development. This dramatic increase is the continuation of a trend seen throughout the year.

Regrettably, Maryland, like many other states, has not seen the worst of this crisis. In 2008, 30,000 ARM loans will reset in the states. Estimates from a 2007 U.S. Joint Economic Committee Report indicate that between the 1st quarter of 2007 and the 4th quarter of 2009, 25,057 subprime mortgages in Maryland will go into foreclosure.

While we do not track foreclosure data by a borrower's age, it is reasonable to assume older Americans have been and will continue to be significantly impacted by this troubling trend. In 2004 this committee heard from the Federal Trade Commission that more than a quarter of subprime borrowers were 55 or older, compared to only 14 percent of prime borrowers.

The Homeownership Preservation Task Force

As foreclosure rates swelled across the nation last year, Governor Martin O'Malley recognized the need to provide protections for Maryland homeowners. Owning a home is the cornerstone of the American dream, and the rising tide of foreclosures not only threatens the stability of individual families, but also of communities. The increase in foreclosures also leaves more homeowners vulnerable to foreclosure rescue scams.

Governor O'Malley formed the Homeownership Preservation Task Force, which brought together representatives from the banking and lending industries, federal, state and local government entities and consumer advocates to study the issue and make recommendations.

The Task Force and its work groups studied the issue, looked at best practices in the industry and examined laws enacted in other states. The report and recommendations of the Task Force, submitted to Governor O'Malley in October, represented broad consensus – all stakeholders at the table were interested in proposals that would reform lending and provide greater protections for consumers while increasing the resources available to deal with foreclosures and prevent future scenarios like the one we face today.

The Governor's Homeownership Preservation Package

Based largely on the work of the Task Force, the O'Malley-Brown Administration has proposed a package of reforms designed to help those families at risk of foreclosure, and create greater protections for future homeowners. The reform package represents a comprehensive approach to dealing with all facets of the current foreclosure crisis. The Administration's suite of four bills and four regulations, focus on ensuring appropriate and effective regulation of mortgage professionals, providing an adequate amount of time for foreclosure proceedings, minimizing opportunities for foreclosure rescue scams, and creating criminal and civil fraud provisions to cover all potential actors engaged in the mortgage fraud process.

Maryland is committed to making licensing requirements more meaningful. In Maryland, it is far more difficult to become a barber than a broker. Homeowners deserve to know that when they are completing the most important financial transaction of their lives, the purchase of their home, they are working with a competent and qualified professional. The Department of Labor, Licensing and Regulation licenses more than 10,000 mortgage brokers and originators, but the licensing system until now was an assembly line process with little quality control and no meaningful protections for consumers.

The Governor has proposed sweeping reforms to raise the bar for licensing, as well as measures to tighten lending standards and eliminate defective products from the market in Maryland.

Meanwhile, an emergency regulation to require loan servicers to report monthly to DLLR all loss mitigation and loan modification efforts is under review. All players in the industry claim they want to avoid foreclosures, but there is a wide gap between their words and their efforts to actually help homeowners. We want to shine a bright light on those individuals to determine whether their actions are in line with their words. Servicers will also be required to report information about all ARMs that will reset in 2008. This will serve as an early warning system for homeowners in danger of foreclosure and will give us a chance to provide those homeowners with information and assistance.

The Administration has also introduced a bill intended to improve the regulation of mortgage industry professionals and reform lending practices by:

o Banning prepayment penalties for sub prime loans;
o Assuring a borrowers ability to repay a mortgage loan and verify sources of income; and
o Increasing mortgage licensing requirements, including increasing the amount of the surety bond requirement for mortgage lender licenses and instituting a minimum net work requirement.

Maryland's foreclosure process is among the fastest in the nation – from the time of the first foreclosure filing, a foreclosure sale could conceivably occur within 15 days. The proposed reforms would codify the industry's best practices and lengthen the process while providing personal service to Maryland homeowners facing foreclosure where no notice was required before.

Meanwhile, Maryland currently lacks the tools needed to combat mortgage fraud. The Governor's plan will create a criminal mortgage fraud statute that would include restitution, forfeiture, enhanced penalties for violations involving vulnerable adults, a private right of action and a duty for companies to report convictions to any licensing body.

Addressing Foreclosure Rescue Scams

Investigators in the Division of Financial Regulation have seen an increase in the incidence of fraud both at the front end of the lending process, as well as when borrowers face foreclosure. The enforcement arm of the Division investigates cases that range from charging illegal fees to scamming homeowners out of hundreds of thousands of dollars worth of equity. Older Americans are particularly vulnerable to the latter type of fraud, known as foreclosure rescue scams, as they frequently have more equity to be stripped.

The reconveyance, the most common type of rescue scam, involves a foreclosure consultant arranging the conveyance of a property that is at risk of foreclosure to a third party, often via quit claim deed, with the expectation that at a certain point in the future, often 12 months, the property will be reconveyed to the homeowner. The homeowner often believes that they are refinancing, or that they will be able to repair their credit, get on firm footing and "buy back" the property as part of a "program" arranged by the foreclosure consultant. The reality is that the homeowner relinquishes title, the property is refinanced to strip out substantial equity and often the third party purchaser, either knowingly or unknowingly, defaults on the refinanced note and the original homeowner is evicted as a tenant. The homeowners are left, when they can access representation, to assert their legal rights through a theory of equitable mortgage. Reconveyance clouds title, has shown to serve no legitimate purpose and has resulted in substantial losses of equity for homeowners in Maryland.

It is very easy for a homeowner to fall victim to one of these schemes when the homeowner's only goal is to keep their home. It is not uncommon for even a sophisticated person to lack understanding of what is really happening in one of these transactions. Our victims have been white collar office workers, blue collar laborers, government employees, homeowners with advanced degrees and senior citizens.

Protection of Homeowners in Foreclosure Act

The Protection of Homeowners in Foreclosure Act (PHIFA) was passed by the Maryland General Assembly in 2005. It provides consumer protections and disclosure requirements for the activities of foreclosure consultants. There are three types of activities that foreclosure consultants engage in and which are covered by the Act: foreclosure consulting services, reconveyances and foreclosure surplus acquisition.

Since its enactment, there has been substantial fraud and harm inflicted on homeowners through the reconveyance of property in the foreclosure rescue context. Governor O'Malley has proposed a bill to amend the existing statute to ban foreclosure rescue transactions reconveyances in the foreclosure consultant context.

The proposed bill will extend additional consumer protections to homeowners whose residences are in default and are either being sold as part of a foreclosure consultant contract or by a foreclosure consultant. The administration is seeking to assure through this provision that those who have a stake and profit motive in the unregulated context of foreclosure consulting give homeowners in distress additional time and opportunities to consider and rescind transactions that may not be in the homeowners' best interest. It is not our intention to interfere with all sales in the ordinary course of business, but to limit these additional protections to the foreclosure consultant context.

When enacted, PHIFA exempted certain categories of licensed professionals from the Act. This amendment will remove certain exemptions for real estate agents, brokers and lenders and title companies and agents. Again, experience has shown that some in these professions who have crossed the line to act as foreclosure consultants have been at the heart of the problem of widespread fraud. Their professional license has exempted them from any of the PHIFA requirements, though they are engaging in foreclosure consulting. Where such professionals are engaging in foreclosure consulting services, they should be covered by the Act.

Further, the amendments to PHIFA include granting the Commissioner of Financial Regulation the power to investigate and enforce these cases when they come to the division's attention through the complaint or enforcement process. There is also a provision that will require the Commissioner or other licensing body receive notice about licensees who are convicted under the Act.

SECRETARY PEREZ TESTIMONY
ATTACHMENT A

Total Foreclosure Events in Maryland

Jurisdiction	1Q06	2Q06	3Q06	4Q06	1Q07	2Q07	3Q07	4Q07
Prince George's	330	298	372	234	449	1,192	1,669	2,732
Montgomery	74	34	25	13	183	605	855	1,310
Baltimore City	147	67	13	34	67	404	1,155	1,268
Baltimore	45	211	210	150	247	580	711	1,028
Anne Arundel	78	69	85	55	247	298	577	683
Charles	54	87	78	69	111	161	307	411
Frederick	29	16	19	10	66	123	281	372
Harford	9	7	1	0	0	191	265	284
Washington	9	2	0	4	1	125	177	270
Howard	29	37	55	60	96	98	168	238
Calvert	29	34	43	32	51	71	117	183
Carroll	8	16	9	24	22	58	136	132
Wicomico	11	3	0	1	0	41	79	131
Cecil	1	0	0	0	2	13	129	123
St. Mary's	20	23	31	23	34	38	93	109
Worcester	2	1	1	0	2	17	44	77
Allegany	5	8	3	4	0	23	62	73
Queen Anne's	0	0	0	0	0	9	35	60
Caroline	1	3	0	1	0	13	44	58
Somerset	3	1	0	0	0	0	20	54
Dorchester	3	3	0	0	0	10	35	49
Garrett	5	0	0	0	3	2	9	28
Talbot	1	0	0	1	6	17	24	27
Kent	0	0	2	0	0	3	9	23
Maryland	**893**	**920**	**947**	**715**	**1,587**	**4,092**	**7,001**	**9,722**

Note: Total foreclosure events include all notices of default, foreclosure sales as well as lender purchases of foreclosed properties Source: RealtyTrac

SECRETARY PEREZ TESTIMONY
ATTACHMENT B

The Homeownership Preservation Plan for Maryland
Proposed Legislative and Regulatory Reforms

SB 270/HB 363 – Credit Regulation – Mortgage Lending

- Ban pre-payment penalties for all subprime loans
- Assure a borrower's ability to repay residential, owner-occupied mortgage loans and verify source(s) of income
- For ARMs, qualify borrower at the "fully indexed rate", not just the "teaser" rate
- Increase surety bond requirement and add a minimum net worth requirement for mortgage lender licensees
- Prohibit the granting of a license to mortgage originators and lender applicants and allow for revocation where the applicant or principal has a felony criminal conviction within ten years for fraud, theft, forgery or financial crime of any type
- Authorize the Commissioner or her designee to develop and administer the license test and to increase license fees by regulation
- Require that mortgage originators live/operate within 100 miles of employer's office
- Require brokers to specifically disclose in the Finder's Fee Agreement that the individual is a broker and not a lender in the transaction
- Authorize Maryland's entry into the National Licensing System effecting Mortgage Lender Licensees (Mortgage Brokers, Lenders, Servicers) and Mortgage Originators which will give Maryland regulators access to a central repository of information about licensing and enforcement actions
- Recordation - Require that any security instrument when recorded have the license number of originator/lender on it or an affidavit line if the document was not originated by a Md. Licensee

SB 217/HB 360 - Mortgage Fraud Protection Act

- Creates a criminal mortgage fraud statute that covers all potential actors engaged in mortgage fraud and includes:
    - restitution
    - forfeiture
    - enhanced penalties for vulnerable adults
    - a private right of action
    - duty to report convictions to any licensing body

SB 218/HB 361 - Protection for Homeowners in Foreclosure Act (PHIFA)

- Ban the conveyance of real property in the foreclosure rescue context

- Grant the Commissioner of Financial Regulation concurrent jurisdiction with the Attorney General to investigate, enforce and enjoin action in these cases
- Require that the Commissioner receive notice about licensees who are convicted under the statute

SB 216/HB 365 - Sale of Property – Foreclosure Process
- Require lender to wait 90 days from borrower's default to the filing of the foreclosure action
- Send a uniform Notice of Intent to Foreclose to the homeowner by certified and first class mail 45 days prior to the filing of foreclosure action
- Require lender to produce proof of ownership when filing a foreclosure action
- Personal Service: Require two good faith attempts at personal service on separate days and, after, allow service by posting with the filing of an affidavit documenting attempts
- Require 45 days from service of Order to Docket to foreclosure sale
- Reduce the number of times notice of the foreclosure sale must be published in a newspaper from three times to one
- Codify the right to cure during the time between filing the Order to Docket and sale, and limit the exercise of the right to one business day prior to sale

Emergency Regulation – Loss Mitigation Reporting Requirement for Servicers
- Require servicers to report monthly loss mitigation and loan modification efforts and outcomes

Regulation 1 - Chapter 6 - Maryland Mortgage Lender Licensees
- Require servicers to report loss mitigation and loan modification efforts and outcomes
- Impose a duty of good faith and fair dealing on licensees—brokers, lenders and servicers
- Require brokers and lenders to show a reasonable net tangible benefit to the borrower when refinancing
- Track rates of default and foreclosure of licensees by requiring license numbers to be placed on security instruments they originate
- Regulate the fair marketing and advertising of mortgage products
- Require risk management policies and protocols to ensure soundness and stability
- Strengthen the experience requirement to obtain a license

Regulation 2 - Chapter 9 - Maryland Mortgage Originator Licensees
- Impose a duty of good faith and fair dealing on mortgage originators
- Require originators to show a reasonable net tangible benefit to the borrower when refinancing
- Track rates of default and foreclosure of licensees by requiring license numbers to be placed on security instruments they originate

Regulation 3 - Chapter 10 – Credit Regulation

- Establish a duty to report incidents of fraud, theft, forgery or other financial crimes within 5 days of discovery or conviction
- Require disclosure at least 72 hours prior to settlement of the presence of any of these 3 terms: 1) Balloon Payment; 2) the omission of an Escrow Account for taxes and insurance; 3) mandatory binding arbitration clause

SECRETARY PEREZ TESTIMONY
ATTACHMENT C

Trying to Hold Onto Home
Metropolitan Money Store Put Their House at Risk, Md. Couple Say

By Ovetta Wiggins
Washington Post Staff Writer
Wednesday, October 10, 2007; B01

The dining room table is draped with a blue plastic tablecloth, left over from an 11-year-old's birthday party a few days earlier.

George and Jacqueline Prunty's son wanted a sleepover, but his parents said no. Facing eviction because their house has gone through foreclosure and been sold at auction, they have banned all sleepovers.

"I'd hate to have all his friends over and there be a knock on the door with someone saying, 'You have to be out,' " George Prunty said.

The Pruntys, like millions of people nationwide, took advantage of a hot real estate market to borrow on the equity in their house. Now, entangled in what investigators call one of the largest mortgage scams in Maryland history, they risk losing the split-level brick home in Fort Washington they've owned for eight years.

All they had wanted to do was fix the roof, replace the front door and some windows, and pay off bills.

Instead, family time is stretched thin: Only one parent goes to their sons' baseball and football games in case the eviction notice comes while they're gone. And finances are tight: The family no longer eats out and saves money for an uncertain future. "We're under a lot of stress in the household that was never there," George Prunty said.

The spike in foreclosures across the Washington region and the nation has done more than disrupt corporate lending and damage financial institutions. It has left thousands of people hopeless, questioning day to day whether they will have a roof over their heads.

Maryland's foreclosure ranking jumped from 40th in the nation last year to 18th in June, state officials said. Prince George's County has the highest percentage of homes in foreclosure in the state, and Fort Washington is one of the hardest-hit communities in the Washington region.

With a booming real-estate market doubling the value of his house, Prunty decided last year to do what many homeowners did: refinance.

While he was getting money for the repairs, Prunty decided last October that he would pull out additional cash to pay off bills, including credit cards and back payments to the Internal Revenue Service that were dragging his wife's credit score down.

The Pruntys purchased the three-bedroom house in February 1999 for $146,000. It was their first home. With their combined $60,000 salary at the time, they got a 30-year fixed rate loan with a 7 percent interest rate.

George Prunty, a boiler operator, and his wife, Jacqueline, a clerk for a federal agency, were glad to get out of an apartment. They saw it as no place to raise their family. Wanting to escape Mississippi Avenue in the District, he headed to where many African Americans have moved in search of a better life: Prince George's.

In Fort Washington, his two boys could throw a football in the yard without his worrying about their safety. They could run around and bounce on the trampoline he placed beside the house.

Yes, life in the suburbs would be better, he thought. But, even before the move to Fort Washington, there were signs of financial troubles. The couple had a new baby, and Jacqueline Prunty suffers from a chronic illness, leaving hospital and doctors' bills. "When you're trying to pay a hospital bill, it makes you late on another bill," George Prunty said.

Within a year of buying the new home, the couple filed for bankruptcy. Under Chapter 13 bankruptcy, individuals are allowed to pay their debt over time. By filing, homeowners can stop foreclosure proceedings but must make subsequent mortgage payments on time. The repayment schedule for other bills can last up to five years.

By last year, the Pruntys had completed the repayment schedule and wanted to pay off some remaining debt, as well as make home repairs. With an appraisal showing the value of their house had more than doubled to $340,000, they decided to pull out some equity.

They ended up on the doorstep of Lanham-based Metropolitan Money Store Corp., a foreclosure rescue company that offered financing help to homeowners with credit problems.

Jacqueline Prunty, 51, said she heard about Metropolitan on nearly every radio station she listened to. The company advertised on gospel and R&B stations, promising to help homeowners like her with cash flow and credit problems. She was sold when she saw a spot on the Black Entertainment cable television station.

"Now I want to go down to BET and say, 'Do you know what you're putting out to our people?' " George Prunty said in a recent interview.

"What really hurts me more than anything else is that it's black-owned," Jacqueline Prunty said of Metropolitan as she sat at a dining room filled with knickknacks and family photos. "Why would they want to do this to their own people like this? It really hurts."

George Prunty said Metropolitan's owner, Joy Jackson, added "insult to injury" by spending nearly $800,000 on her elaborate June 2006 wedding at the Mayflower Hotel, which lawyers say was probably paid for, in part, with money from her business.

"It's a messed-up situation. . . . I want my two boys to have a stable home," he said.

Jackson and Metropolitan are the subject of a class-action lawsuit filed on behalf of homeowners, including the Pruntys, who have collectively lost as much as $60 million in home equity. The company is also being investigated by the several federal agencies for possible fraud.

The lawsuit alleges that instead of helping homeowners, Metropolitan enlisted investors or straw buyers with good credit to buy the houses and borrow as much as possible against the home value, siphoning the equity.

Jackson, whose business has since closed, did not respond to requests for comment. Efforts to locate her have been unsuccessful.

Jacqueline Prunty said her intuition should have told her something wasn't right when she saw the flashy cars outside the company's office. The couple met with Jackson, whom they described as a smooth fast-talker.

A month behind on their $1,100 mortgage payment, they were told to skip the next couple to get into a credit repair program. "That was their catch, telling us, 'We have this covered,' " George recalled.

The Pruntys said they took Metropolitan's advice and stopped paying the mortgage. Within a couple of months, a letter arrived in the mail from their lender that said the house was in foreclosure.

"We weren't even in a foreclosure when we went" to Metropolitan, George said. "We were coming in for a refinance."

Metropolitan then told the Pruntys that they could get into a program that would help them keep their home and add at least 100 points to their credit scores, which were in the low 600s -- low enough to make it difficult to obtain loans at good interest rates or rent an apartment.

While they were in the credit-repair program, Metropolitan said it would work on the foreclosure by getting someone to invest in their property, George recalled.

He said he felt like he didn't have anywhere else to turn, so he agreed to Metropolitan's proposal. When it came to signing the deal, Jacqueline said there were so many papers on the table she didn't know what she was signing.

The couple said they didn't realize that they were signing over the deed of their home to the investor. Nor did they know they were signing away more than $100,000 in equity.

The straw buyer hasn't made any mortgage payments on the Pruntys' house, they said. And now, said the Pruntys' attorney, Phillip Robinson, the house has been foreclosed on and was recently sold to a bank at auction.

"They could be kicked out any day," Robinson said. "We've asked the judge to hold off until this other case [the class-action suit] is handled."

Robinson said he has been working on a case-by-case basis to keep his clients from being evicted. He has asked Maryland's attorney general to order that no one involved in the lawsuit be evicted while the case is pending.

Meanwhile, the Pruntys are setting aside money and looking for places to store furniture and belongings. George Prunty said he sometimes peers out his window and finds cars driving slowly by his house. Some take pictures.

"We're in a holding pattern," he said. "We were told to start saving money because we don't know what tomorrow is going to bring."

They've also been told, he said, that someone should always be at the house; otherwise it could be seen as "voluntary abandonment."

"We used to go out to my son's baseball and football games. Now one of us is always here," he said. "It used to be a family thing."

"You can't get mad," Jacqueline said. "It's a lot of people going through it. If we were the only ones, then we would be mad."

But anger is a waste of her energy, she said. And at this point, she doesn't even have the energy to take the birthday tablecloth off her table. She said she'll get to it.

Right now, she's more worried about coming home and finding a "pink slip" on her front door.

SECRETARY PEREZ TESTIMONY
ATTACHMENT D

Attachment D (Maryland Homeownership Preservation Task Force Report) is available online at:
http://www.dllr.state.md.us/whatsnews/taskforcereport.pdf