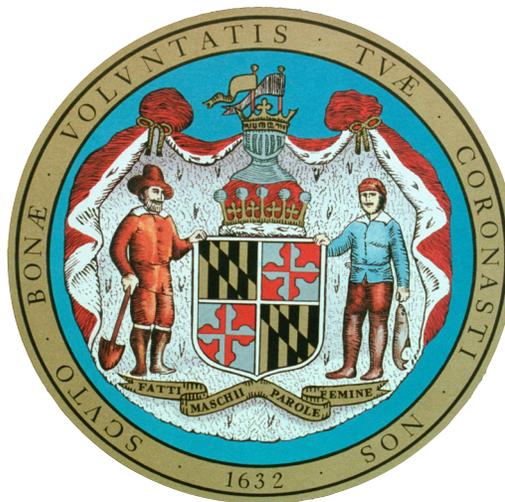


MARYLAND HOMEOWNERSHIP PRESERVATION TASK FORCE REPORT

OCTOBER 2007



RAYMOND A. SKINNER, *Secretary*
Department of Housing and Community Development
Co-Chair

THOMAS E. PEREZ, *Secretary*
Department of Labor, Licensing, and Regulation
Co-Chair

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor

Dear Governor O'Malley:

You established the Homeownership Preservation Task Force on June 13, 2007 in response to rising default and foreclosure rates throughout Maryland. You charged the Task Force with developing an action plan to address escalating foreclosure rates and identify effective ways to preserve homeownership for Marylanders. It is all too true that the American dream can become a nightmare unless we create a sound structure to ensure sustainable homeownership.

The specific objectives of the Task Force were to:

- Identify and assess available financial resources (public and private) to assist Maryland homeowners with inappropriate mortgages and recommend additional programs or financial products aimed at reducing the number of new foreclosures in Maryland;
- Review ongoing outreach, counseling, and educational programs and activities that focus on foreclosure prevention and recommend changes or enhancements as needed;
- Examine current laws and regulations in Maryland governing the mortgage industry and the foreclosure process and recommend changes, including legislative and regulatory actions where warranted; and
- Collect and analyze data to plan for current and future needs and monitor foreclosure activity.

The Task Force was convened to address the foreclosure spike, which has affected every jurisdiction in Maryland. *RealtyTrac* ranks Maryland 15th worst based on the number of total foreclosure filings per household for August 2007. Further, we know it is likely that the spike in foreclosures has not yet reached its peak, and the trend is troubling.

Maryland pays a substantial cost for rising foreclosure rates. Families lose their homes, are uprooted and their lives are disrupted. Their ability to obtain credit suffers and many families' chief asset, the equity in their homes, is lost. In addition, lenders lose money, and employees in the mortgage industry are in danger of losing jobs as lenders reel from the weight of defaulting loans.

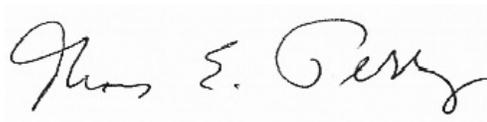
While people may certainly debate the root causes of the foreclosure crisis, its impact is indisputable, affecting homeowners, lenders, the real estate industry, families and communities all across Maryland.

We believe that the report contained herein reflects the best recommendations of the Task Force and the Work Groups. We hope that this Task Force Report will inform and guide your considerations as you prepare a package of reforms and programs that respond to the State's foreclosure problem and support sustainable homeownership in Maryland.

Sincerely,



Raymond A. Skinner
Secretary
Maryland Department of
Housing and Community Development



Thomas E. Perez
Secretary
Maryland Department of
Labor, Licensing and Regulation

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EXECUTIVE SUMMARY

The Charge: In response to rising default and foreclosure rates throughout Maryland, Governor Martin O'Malley established the Homeownership Preservation Task Force on June 13, 2007. The Task Force was charged with developing an action plan to address escalating foreclosure rates and identify effective ways to preserve homeownership for Marylanders. The American dream can become a nightmare unless we create a sound structure to ensure *sustainable homeownership*. The Governor designated Raymond A. Skinner, Secretary of Housing and Community Development (DHCD), and Thomas E. Perez, Secretary of Labor, Licensing, and Regulation (DLLR), as Co-Chairs of the Task Force. The specific objectives of the Task Force were to:

- Identify and assess available financial resources (public and private) to assist Maryland homeowners with inappropriate mortgages and recommend additional programs or financial products aimed at reducing the number of new foreclosures in Maryland;
- Review ongoing outreach, counseling, and educational programs and activities that focus on foreclosure prevention and recommend changes or enhancements as needed;
- Examine current laws and regulations in Maryland governing the mortgage industry and the foreclosure process and recommend necessary changes, including legislative and regulatory actions where warranted; and
- Collect and analyze data to plan for current and future needs and monitor foreclosure activity.

The Problem. The Task Force was convened to address the foreclosure spike, which has affected every jurisdiction in Maryland. *RealtyTrac* ranks Maryland 15th worst based on the number of total foreclosure filings per household for August 2007. The trend toward higher foreclosure rates has the State moving in the wrong direction. Further, it is likely that the increase in foreclosures has not yet reached its peak. Many adjustable rate mortgages (ARMs) taken out in 2004, 2005, and 2006, during the height of the housing and refinancing boom, are scheduled to reset to higher rates in the coming months. The higher interest rates will raise monthly mortgage payments and put many more homeowners at risk of losing their homes to foreclosure.

Maryland pays a substantial cost as foreclosure rates rise. Families lose their homes, are uprooted and their lives are disrupted. Their ability to obtain credit suffers and any equity in the home, quite often a family's chief asset and largest source of wealth, is lost. Lenders lose money, averaging about \$50,000-\$60,000 lost per home sold in foreclosure. Employees in the mortgage industry lose jobs as lenders reel from the weight of defaulting loans. Residents suffer from depressed home values and the blight of vacant housing, and communities with fewer involved residents become destabilized. Governments lose tax revenues and often must bear the cost of foreclosure sales.

Identifying Issues, Finding Solutions. There are front-end measures that can avert future crises and support sustainable homeownership to minimize the effect of default and foreclosure. A number of the Task Force recommendations address prevention:

- Stronger underwriting and lending standards and stricter regulatory oversight over the mortgage lending industry;
- Better homeowner education and understanding of the mortgage transaction so homeowners can avoid predatory players and inappropriate mortgage products and loan terms; and
- Greater access to sound, affordable financial products for home purchases and refinancings.

Marylanders currently in unsustainable loans or in fraudulent transactions, who are now facing default or foreclosure, need interventions. Task Force recommendations that address the critical needs of homeowners in distress include:

- Innovative financial products that provide critical gap funding for homeowners who, with some access to financial resources and assistance, can preserve their homes;
- Stronger laws and enforcement, both regulatory and criminal, to reign in bad players and practices;
- Foreclosure counseling for homeowners to make sound choices at a difficult time; and
- An improved foreclosure process that gives homeowners opportunities to avoid or minimize the effects of foreclosure.

The Task Force formed three Work Groups to address the problems and solutions.

The **Financial Resources (FR) Work Group** closely analyzed data about subprime markets and subprime borrowers, types of transactions, and credit scores on a local and national scale. The FR Work Group presented and explained existing DHCD homeownership programs including the Governor's Home Owners Preserving Equity (HOPE) Initiative. It looked to local programs, other states' initiatives, as well as trends and direction from government-sponsored entities including HUD, Fannie Mae and Freddie Mac for creative solutions appropriate for Maryland. The FR Work Group focused on expanding front-end financial resources to promote sustainable homeownership. These efforts include promoting housing counseling opportunities, financial literacy programs, and increasing the availability of sound financial loan products. The group also proposed solutions, including short-term funding for homeowners in crisis and funding for mortgage workouts to avoid foreclosure.

The **Education and Outreach (EO) Work Group** examined the capacity of existing housing counseling and financial counseling resources in the State and national resources addressing foreclosure prevention. The EO Work Group focused particularly on the work of two homeownership preservation coalitions in Baltimore City and Prince George's County, which are experiencing high foreclosure rates. It is essential that homeowners have sufficient information about the importance of credit and the terms of the loan transaction to make good choices. The EO Work Group supported education and counseling from qualified counselors at the front-end of the loan transaction. However, homeowners in default and facing foreclosure require not only

counseling, but also assistance with loss mitigation strategies and access to legal resources. While the HOPE initiative has provided initial funding to support and train nonprofit counselors, the group identified this as a critical ongoing need. Also, the group recognized the need to assure quality and consistency throughout the network of counseling providers. Equally critical is a statewide coordinated marketing and outreach campaign that links people to accurate information and quality assistance.

The **Legal and Regulatory Reform (LRR) Work Group** reviewed existing Maryland laws, regulations and practices related to the spectrum of mortgage loan transactions. The LRR Work Group derived good ideas from legislation and efforts of other states and national models. The members of this group examined front-end issues such as mortgage lending and licensing; addressed the harm that fraud and foreclosure scams create; and looked closely at the foreclosure process from the time of default to ratification of the sale. The LRR Work Group reviewed best practices in the industry, and looked closely at codifying those practices that serve to prevent abuses by some in the industry and level the playing field for all, whether regulated at the state or federal level. While all support rooting out fraudulent players, the consensus was that ultimately it must be the strength of our laws and the homeowner's ability to access those laws in a timely, meaningful way that is critical. These recommendations provide a basis for the reforms necessary to assure sound practices within the industry, to restore investor confidence and, most importantly, to support and preserve homeownership for all Marylanders.

Recommendations. The recommendations of the Task Force demonstrate the substantial consensus that emerged in all of the areas despite or, arguably, because of the range of perspectives and interests of the participants. The discussions and debates in this process were robust and extensive. Ultimately, the participants did not reach consensus on all matters raised. The Work Group reports note important arguments for which there was no consensus.

The Task Force is presenting this report and these recommendations to the Governor. The Governor has given high priority to finding solutions to the foreclosure problem because of its devastating impact on Maryland families. The Co-Chairs of the Task Force have emphasized throughout the process that the Governor would carefully review the Task Force report and recommendations. The recommendations are meant to provide the Governor with a framework for reform that reflects the consensus of the Task Force. The Governor may adopt a package that gives serious consideration to the work of the Task Force, but ultimately he will determine which components to support.

The members of the Task Force recommend the following major actions (a detailed summary of the recommendations is set forth in Chapter 5):

1. Create a "Homeownership Crisis Intervention Fund" to provide case-by-case interventions to prevent foreclosures and potential homelessness by: i) assisting households to move to an affordable, stable monthly housing payment; or ii) allowing time for the sale of property.
2. Expand options for homeowners to refinance or restructure mortgages to prevent foreclosure and address affordability.

3. Help communities that are in distress or are at-risk due to concentrations of foreclosure activity in certain neighborhoods or jurisdictions.
4. Promote sustainable homeownership resources through statewide outreach and marketing campaigns that will reach homeowners throughout Maryland.
5. Strengthen and expand nonprofit financial and housing counseling statewide.
6. Coordinate all public and private resources available in Maryland to sustain homeownership.
7. Increase the Commissioner of Financial Regulation's legal and regulatory oversight and enforcement of the mortgage lending industry to strengthen protections for homeowners and ensure the integrity of the industry.
8. Strengthen the laws and enforcement against fraud in mortgage transactions.
9. Improve Maryland's foreclosure process.

CHAPTER 1: INTRODUCTION

Defining the Problem: Home Foreclosures in Maryland

Rising foreclosure rates have swept the country over the last year and Maryland has not been immune to the trend. The problem has touched every corner of the State, with certain jurisdictions posting particularly high numbers.

Statewide, property based foreclosure events¹ reported in the second quarter of 2007 grew by 344 percent over the same period in 2006. Total foreclosure events in the second quarter of 2007 numbered 4,092, a growth of 3,171 events over the second quarter of 2006, according to numbers obtained from *RealtyTrac* and analyzed by DHCD. Figure 1 shows property foreclosure events by county for the second quarter of 2007 as compared to the same period for 2006.

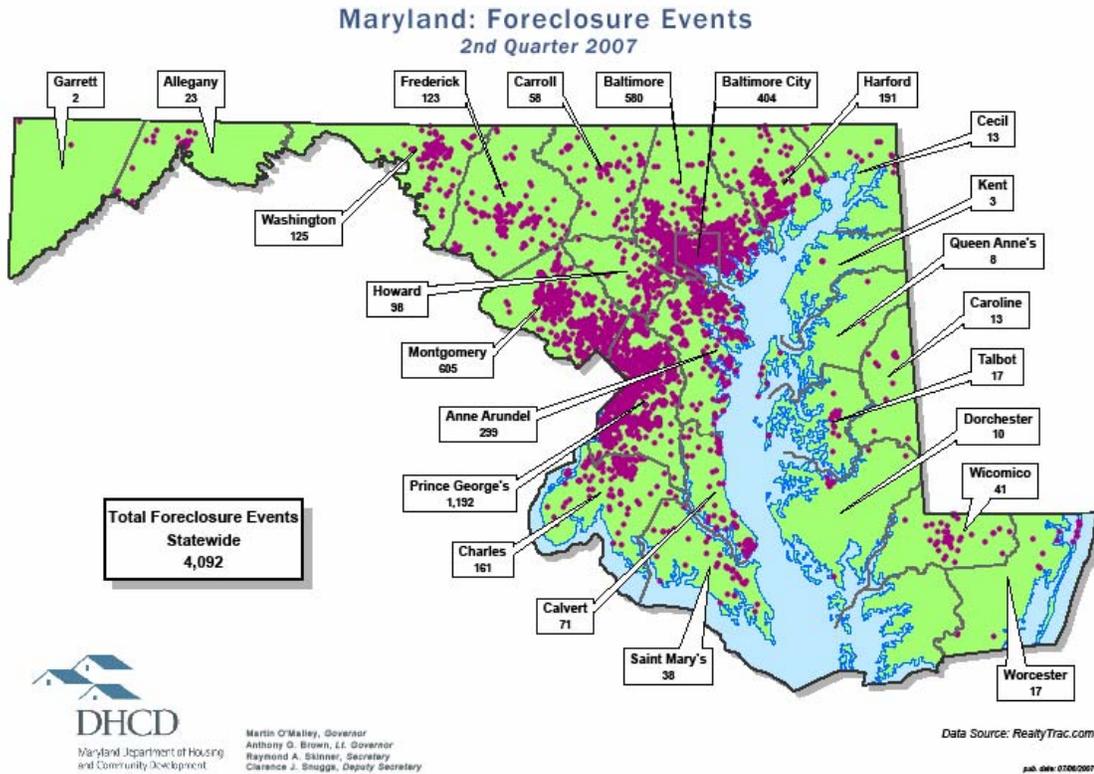
Figure 1. Total Property Foreclosure Events in Maryland – Second Quarter of 2007

Jurisdiction	Q2-2006 Number of Events	Q2-2007 Number of Events	%age of 2007 Events by Jurisdiction	% Change Q2-2006 to Q2-2007
Allegany	8	23	0.60 %	188%
Anne Arundel	69	298	7.30 %	332%
Baltimore	211	580	14.20 %	175%
Baltimore City	67	404	9.90%	503%
Calvert	34	71	1.70%	109%
Caroline	3	13	0.30%	333%
Carroll	16	58	1.40%	263%
Cecil	0	13	0.30%	n/a
Charles	87	161	3.90%	85%
Dorchester	3	10	0.20%	233%
Frederick	16	123	3.00%	669%
Garrett	0	2	0.00%	n/a
Harford	7	191	4.70%	2629%
Howard	37	98	2.40%	165%
Kent	0	3	0.10%	n/a
Montgomery	34	605	14.80%	1679%
Prince George's	298	1,192	29.10%	300%
Queen Anne's	0	9	0.20%	n/a
St. Mary's	23	38	0.90%	58%
Somerset	1	0	0.00%	-100%
Talbot	0	17	0.40%	n/a
Washington	2	125	3.10%	6150%
Wicomico	3	41	1.00%	1267%
Worcester	1	17	0.40%	1600%
Maryland	920	4,092	100.00%	344%

Sources: *RealtyTrac* and DHCD, Office of Research

¹ A foreclosure event can be one of three activities: 1) a Notice of Default; 2) a Notice of Foreclosure Sale; or 3) a Foreclosure Sale. The *RealtyTrac* data has been reviewed to remove duplicate activities for the same property. For further information about the data source, see Property Foreclosures in Maryland Second Quarter 2007, Office of Research, DHCD, in the Appendix.

Figure 2. Concentration of Foreclosure Events in Maryland Communities, Second Quarter 2007



Prince George’s County had the State’s highest number of foreclosure events, with 1,192 reported in the second quarter of 2007, representing a 300 percent increase over the same period in 2006. Even jurisdictions that would seem relatively safe from this trend have experienced a spike. For example, Montgomery County saw a 1679 percent increase in the number of foreclosure events reported from the second quarter in 2006 to the corresponding quarter in 2007. Significant foreclosure activity also was reported in Baltimore and Anne Arundel counties as well as in Baltimore city.

As Figure 2 shows, communities throughout Maryland are experiencing troubling concentrations of foreclosures. No community is entirely immune. While the increase appears to be largely tied to subprime lending, in recent months a number of mortgage companies have warned that even prime loans are seeing higher default rates.

Causes of the Problem. The foreclosure problem disproportionately involves subprime loans and non-bank loan originators such as brokers. The nationwide spike in foreclosures is closely tied to the surge in subprime lending that proliferated during the housing boom of recent years. Because home values soared, many buyers refinanced into loans, often subprime loans, assured they would have no problem repaying as home values seemed guaranteed to continue to climb. Subprime loans are loans frequently offered to borrowers with less than optimal credit who otherwise might have difficulty qualifying for a loan. Subprime loans often have higher interest rates and “exotic” options, such as adjustable interest rates with “teaser rates” that reset after a set period, steep prepayment penalties or no requirement for proof of income.

Between 2000 and the beginning of 2007, the subprime market share in Maryland climbed from 1.6 percent of all mortgages to 11.7 percent, according to the MBA survey. That growth mirrored the rapid climb of housing values that occurred during the same period. Significantly, subprime loans accounted for nearly 60 percent of all foreclosures in Maryland as of the second quarter of 2007.

Non-bank mortgage originators, such as brokers, have played a pivotal role in the proliferation of subprime loans. While brokers can provide an important service to consumers by helping them shop around to find a loan that works for them, the desire to earn fees can lead to unscrupulous practices that ultimately harm the consumer.

A paradigm shift has taken place in the mortgage marketplace leaving many consumers in unfamiliar territory. Previously, a homebuyer or homeowner in need of a mortgage loan went to a bank or financial institution and met with a loan officer. The homeowner took out a long term loan, usually 30 years, with a fixed interest rate. The loan officer was charged with going over terms and conditions of the loan. Usually the financial institution making the loan also held the loan and serviced it. The lender had strong incentives to assure that the homeowners who received loans would be able to repay those loans so as to limit risk to the lender. When there was trouble with payments, the homeowner could call directly to resolve the situation.

Today’s mortgage marketplace is quite different. Nearly 70 percent of all homeowners obtain their residential mortgage loans through a broker. In mortgage transactions, non-bank originators, such as brokers, collect fees up front for their services. The broker originates the loan and a lender underwrites the loan. Often as soon as the loan settles, the loan is packaged with other loans into mortgage backed securities (MBS) to make them attractive to investors. The homeowner has no connection with the holder of the mortgage note and may not even know who the note holder is. The loan goes to a servicer who services the loan for the note holder and collects payments and fees from the homeowner.

While most brokers are reputable professionals, the mortgage transaction has significant potential for abuse. In many cases, there are financial incentives for brokers in the form of higher commissions and fees to steer consumers to higher cost or subprime loans. The fact that a loan ultimately goes into foreclosure rarely affects the broker’s fee or commission; they are paid at settlement regardless of later outcomes. In fact, most originators may not even know whether a loan they originated ultimately ends up in foreclosure.

This new paradigm is coupled with the increasing use of exotic or nontraditional mortgage products. Nearly three quarters of the subprime mortgages originated nationwide in 2004 or 2005 were a type of adjustable rate mortgage known as 2/28 or 3/27 loans.² These refer to 30-year loans that carry a low “teaser rate” for a set period at the start of the loan which later adjusts to a higher rate, some adjusting as often as every six months. Nationwide, interest rate resets on those loans are set to peak over the coming months, and a large number of subprime borrowers will be at risk of default on their loans.

Subprime mortgage loans can play a critical role in the market because they facilitate homeownership for those who, because of bad credit or another reason, would otherwise be unable to get a loan. Similarly, expanded access to loan products and financial institutions gives consumers choices when making a mortgage loan. Homeownership is a worthy goal to be encouraged – it stabilizes communities and supports families. However, it is critical that what is being created is *sustainable homeownership*. A subprime loan becomes dangerous when it is given to a borrower without consideration of the borrower’s ability to repay the loan as scheduled. An emphasis in the lending industry on volume to feed the market demand for mortgage backed securities, coupled with increasing home values and loosening standards for a borrower’s ability to repay the loan, has created a situation ripe for abusive and predatory practices.

While foreclosure touches virtually every corner of the State, the effects are disproportionately felt in minority and immigrant communities. Home Mortgage Disclosure Act (HMDA) data shows that African Americans are three times more likely than whites to receive a subprime loan, and four times more likely to refinance from a subprime lender. Latinos are two times more likely than whites to receive a subprime loan, and three times more likely to refinance from a subprime lender. Minorities represent 58.8 percent of the population in communities that reported property foreclosures, with the African American population accounting for 43 percent of the residents. It is no coincidence that the pattern of subprime mortgages correlates closely with areas of high minority population where foreclosure rates spiked.

Figure 3. Foreclosure Activity by Race in Maryland, Second Quarter 2007

Total Foreclosures	4,092
<i>Race of Population in Communities with Foreclosure Events</i>	
African American	43.0%
White	41.2%
Hispanic	5.7%
Asian	4.9%
Other	5.3%

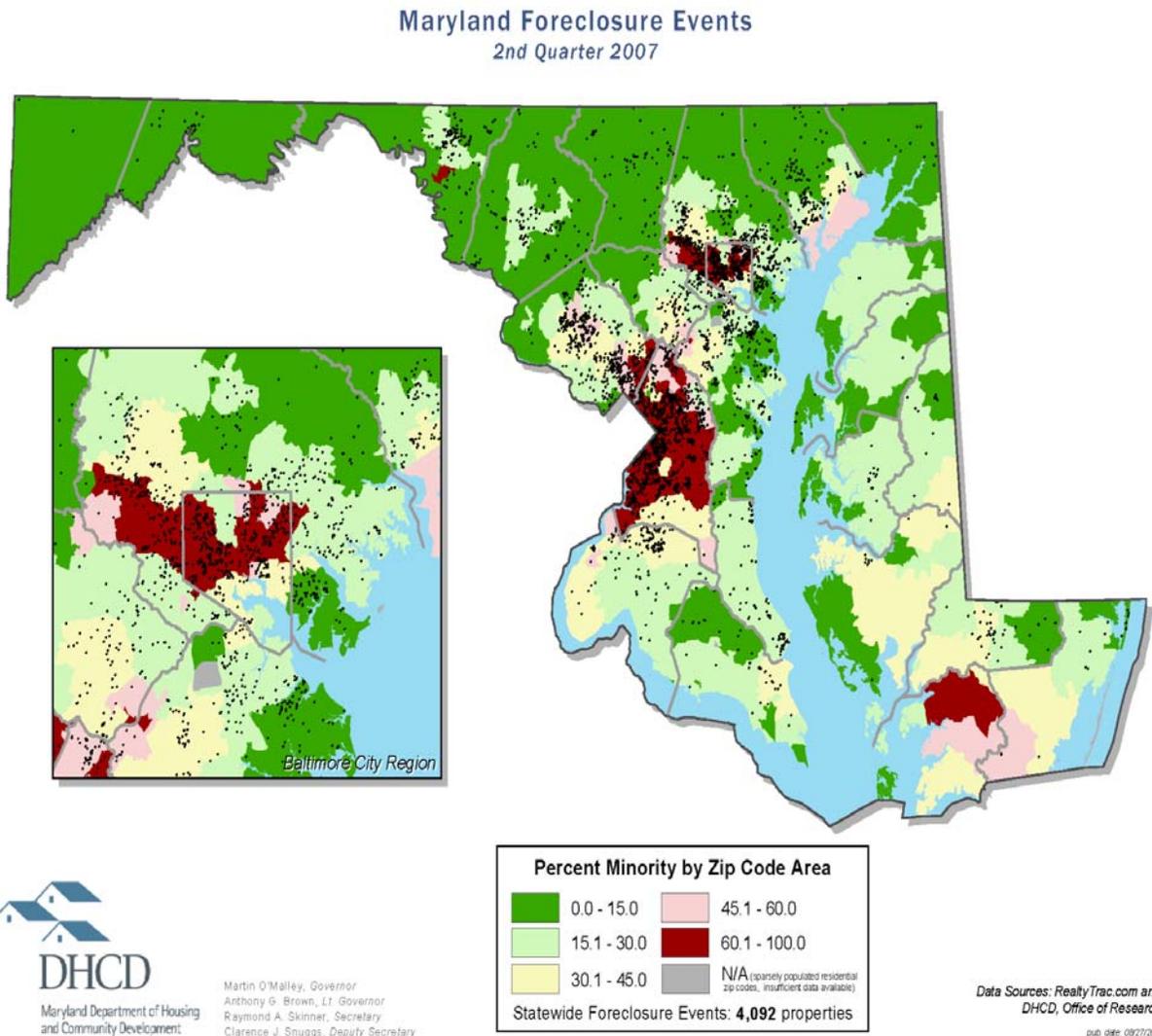
Sources: *RealtyTrac* and DHCD, Office of Research

² Testimony of FDIC Chairwoman Sheila C. Bair, to the U.S. House of Representatives Committee on Financial Services. <http://www.fdic.gov/news/news/speeches/chairman/spapr1707.html>

Figure 4 shows foreclosure events (represented by the dots) overlaid by the percent of minority population within zip code areas for the second quarter of 2007.

The map clearly shows that the pattern of foreclosure events correlates closely with high minority population areas.

Figure 4. Percent Minority Foreclosures by Zip Code Area, Second Quarter 2007



Rising foreclosures also have led to another type of predatory practice: foreclosure rescue scams. These are cases that involve an unscrupulous individual approaching a homeowner facing foreclosure, offering help, only to steal their equity by tricking the desperate homeowner into signing over the deed to the home. As foreclosure rates have spiked this year, so have the incidence of rescue scams.

Costs of the Problem. Foreclosures have a devastating effect on homeowners and the communities in which they live. Frequently, a homeowner who loses his or her home to foreclosure loses the accrued equity. A property sold in a foreclosure sale typically draws a lower price than it would in a regular market sale. In the first half of 2005, Maryland’s “foreclosure discount” was 18.8 percent, according to the St. Ambrose Housing Aid Center, Inc. This is a tragedy for a growing number of Maryland families.

Extensive damage is felt in neighborhoods and communities across Maryland. Research shows that with every foreclosure on a single family home, the value of homes within an eighth of a mile declines by about nine-tenths of a percent.³ Property tax revenues decline proportionally, causing a negative impact on state and local governments. A study of foreclosures in Chicago in 2005 estimated that a single foreclosure costs city government up to \$5,000 or more.⁴

Foreclosures also bring with them the potential for more violent crime. Research indicates that for every single percentage point increase in the foreclosure rate in a neighborhood, violent crime in that neighborhood increases by about two percent.⁵ Foreclosures can lead to vacant or neglected properties, which create an eyesore and become targets for vandalism. This can tip a community from one dominated by homeowners to one dominated by investors.

Of course, the lending industry and investors also take a hit from rising foreclosure rates. Some major lenders have closed their doors, declared bankruptcy or shuttered their subprime lending arms as a result of the waning demand for risky mortgage products in investor markets. Lenders typically lose \$50,000 or more on a single foreclosure, according to information from St. Ambrose Housing Aid Center, Inc. The banking industry cites a figure well over \$60,000.

The State Responds: Charge to the Task Force

Concerned about the impact of rising foreclosure rates on Marylanders, Governor Martin O’Malley took action to address the problem. On June 13, 2007, the Governor announced the Home Owners Preserving Equity (HOPE) Initiative, proposing \$100 million for DHCD’s Lifeline Refinance Program, \$10 million for a credit enhancement program and \$1 million in grants for housing counseling programs to provide foreclosure prevention counseling. The

³ “There Goes the Neighborhood: The Effect of Single Family Mortgage Foreclosures on Property Values,” Immergluck and Smith. The Woodstock Institute, 2005.

⁴ “Collateral Damage: The Municipal Impact of Today’s Mortgage Foreclosure Boom,” Apgar and Duda. Homeownership Preservation Foundation, 2005.

http://www.995hope.org/content/pdf/Apgar_Duda_Study_Short_Version.pdf

⁵ “The Impact of Single Family Mortgage Foreclosures on Neighborhood Crime,” Immergluck and Smith. Housing Studies, Volume 21, Number 6. 2006

Governor provided funding to hire four more investigators in DLLR's Division of Financial Regulation to increase its ability to investigate fraud and other abusive practices in the industry. Finally, the Governor announced the creation of this Homeownership Preservation Task Force to bring together a broad array of stakeholders to identify critical issues and make recommendations by October 2007. The Task Force was co-chaired by DHCD Secretary Raymond A. Skinner and DLLR Secretary Thomas E. Perez.

The Task Force convened for the first time on July 24, 2007 and divided into three Work Groups to accomplish its charge. They were: **Financial Resources (FR) Work Group**; **Education and Outreach (EO) Work Group**; and **Legal and Regulatory Reform (LRR) Work Group**. Reports and recommendations from each Work Group are presented in Chapters 2, 3 and 4, respectively.

Also included are three appendices. Appendix A is a list of Work Group participants. Appendix B is an "electronic appendix" in CD format that contains information cited in the report including other states' laws, models, and reports as well as a report prepared by DHCD's Office of Research entitled, "Property Foreclosures in Maryland Second Quarter 2007." Appendix C is a summation of comments from participants regarding the draft report.

Seeking Advice from Experts: Task Force Membership

Tracey M. Barbour, Program Officer
Abell Foundation

Rahn Barnes, Vice President/CRA Officer/Community Development Director
Provident Bank

R. Kevin Brooks, Executive Director
Maryland Rural Development Corporation

Lisa Evans, Deputy Director
Saint Ambrose Housing Aid Center, Inc.

Patrice Alexander Ficklin, Associate General Counsel
Fannie Mae

Eric Friedman, Director,
Montgomery County
Office of Consumer Protection

Salin Geevarghese, Senior Associate
The Annie E. Casey Foundation

Donna L. Greene, Regional Emerging Markets Manager
Wells Fargo Home

Swynice Hawkins, President
Southern Maryland Tri-County
Community Action Agency

Jan Hayden, Assistant Manager
Maryland Association of Realtors

James Kelly, Field Office Director
HUD Baltimore Office

Philisha Lane, Staff Assistant
Office of The Honorable Elijah E. Cummings, U.S. House of Representatives

Jon Laria, Esq.
Ballard Spahr Andrews & Ingersoll, LLP

Franklin N. McNeil, Jr.
Community Affairs Representative, Baltimore Branch, Federal Reserve Bank of Richmond
Board Chair, Community Law Center

Paul Michaud, Senior Vice President of Retail Lending
Bradford Bank

Robin Stout Migala, Senior Delinquency Resolution Manager
Freddie Mac Loss Mitigation

Kathleen Murphy, President and CEO
Maryland Bankers Association

The Honorable Doyle L. Niemann
House of Delegates, (D)
District 47, Prince Georges County

Denise Nooe, Annapolis Office Director
Office of The Honorable Barbara A. Mikulski
U.S. Senate

David Pulford, CMB, President
Maryland Mortgage Bankers Association

Kim Propeack, Esq., Director
Community Organizing & Political Action
CASA of Maryland, Inc.

The Honorable Catherine E. Pugh
Senate of Maryland, (D)
District 40, Baltimore City

Phillip R. Robinson, Executive Director
Civil Justice Network, Inc.

Thomas Shaner, Executive Director
Maryland Association of Mortgage Brokers

Steven Silverman, Chief of Consumer Protection Division
Office of the Attorney General

Joanna Smith-Ramani, Co-Chair and Director
Baltimore CASH Campaign/Baltimore Homeownership Preservation Coalition

Troy R. Swiger, Jr. Senior Relationship Manager
First Horizon Home Loans

Duane Yoder, President
Garrett County Community Action Committee, Inc.

Chapter 2: Financial Resources Work Group

The Financial Resources (FR) Work Group met on August 23, 2007 and again on August 30, 2007. Participants included representatives from banks, realtors, national and local nonprofit organizations, Fannie Mae, Freddie Mac, the U.S. Department of Housing and Urban Development (HUD) and local governments.

The purpose of the Work Group was to identify and assess all available financial resources (public and private); to work out distressed mortgages; and to recommend additional financial products and programs to homeowners to minimize the number of foreclosures.

The Work Group participants began by trying to get a “snapshot” of what actually was happening in Maryland. This included:

- A review of third party data on subprime markets, which included profiles of subprime lending in Maryland, use of funds (i.e., primary purchase or refinancings), original and current loan balances, credit scores, national comparisons, and county and other local concentrations of foreclosures.
- A presentation of homeownership programs available within DHCD. This included the relatively recent programs and activities of the Home Owners Preserving Equity (HOPE) initiative announced by the Governor on June 13, 2007 (which incorporated the existing Lifeline Refinance Program, a proposed credit-enhancement program under development in partnership with private lenders, and grants to housing counseling agencies) as well as an overview of other DHCD programs that have been supporting successful homeownership for many years.
- A presentation of call data from callers to the HOPE telephone hotline. Over a recent two-month period, many callers expressed concerns relating to unsuitable mortgages (73 percent) while other callers reported mortgage distress relating to loss of employment, medical or family crises, or other unforeseen circumstances (27 percent). While the call data reflects a very small sampling of cases, and the problems were self-reported, the information was informative in helping the Work Group understand the myriad underlying threats to homeownership in Maryland.
- A review of recent efforts by other states, including Pennsylvania, Ohio, Massachusetts, and North Carolina. Other states’ creative ideas were important in developing proposed recommendations and also in helping the group understand how Maryland was different in some regards (e.g. Ohio’s foreclosure problem is not only more severe, but is also complicated by underlying economic factors such as high unemployment).
- Presentations made by Neighborhood Housing Services (NHS) of Baltimore, Inc., Baltimore Community Lending (BCL), and NeighborWorks America. Federal agencies and government-sponsored entities (including HUD, Freddie Mac and Fannie Mae) also presented information on their programs and recent activities.

Freddie Mac provided survey information that confirmed the view of many that homeowners are fearful or embarrassed to call their lender for help, or simply do not know that they can or should call their lender first. Freddie Mac found that “over half of the borrowers in foreclosure proceedings have had no contact with their lender.”⁶

It quickly became apparent that additional financial resources are needed in Maryland. These needs fall into two general categories: i) funding for emergency or “rescue” intervention; and ii) funding for mortgage workouts, refinancings and loan modifications.

The need for emergency or “rescue” funding has been an ongoing concern for many years, but has sharply increased recently due in part to subprime lending problems. In other words, there has been and continues to be a demonstrated need to provide short-term assistance to homeowners who are facing foreclosure due to circumstances that may be outside of their control. These circumstances include unemployment, illness, or other family crises. The Work Group examined models developed by others who have addressed the need for rescue funds to preserve homeownership. These included reviewing models such as the Pennsylvania Homeowners Emergency Mortgage Assistance Program (HEMAP) and others. The following recommendation resulted from this review:

Recommendation 1: Create a “Homeownership Crisis Intervention Fund” to provide case-by-case interventions to prevent foreclosures and potential homelessness by: i) assisting households to move to an affordable, stable monthly housing payment; or ii) allowing time for the sale of property.

1.1: Establish an affordable housing trust fund or other dedicated source of funding to support homeownership preservation, specifically including emergency or “rescue” funding.

Other types of funding is needed for mortgage workouts, refinancings, or loan modifications to specifically address some of the negative experiences of some homeowners resulting from subprime lending practices and, in some cases, abuses. The following recommendation addresses these concerns by developing new programs or making improvements to existing programs and encouraging a collaborative approach among stakeholders:

Recommendation 2: Expand options for homeowners to refinance or restructure mortgages to prevent foreclosure and address affordability.

2.1: Continue to encourage lenders to follow Federal Reserve and SEC guidance on restructuring mortgages in default. Use existing DHCD lender networks and outreach activities to companies servicing loans in Maryland (to be identified by DLLR) to promote effective and fair loss mitigation strategies by the larger mortgage lending community.

⁶ “Foreclosure Avoidance Research,” published by Freddie Mac, 2005.

2.2: Create a refinance product available through private sector lenders using shared-risk credit enhancement available from the DHCD Maryland Housing Fund (MHF) mortgage insurance entity for those already in early stages of default.

2.3: Review and, if possible, enhance the existing DHCD “Lifeline” refinance product.

A topic that was much discussed involved funding for activities and programs to prevent future foreclosures or assist those already facing mortgage defaults by raising awareness and improving financial and homeownership education. A major concern, in addition to a lack of funding, was an insufficient effort to coordinate and organize available resources and activities that could help families avoid foreclosure and homeowner distress.

In addition, there was general agreement and recognition that nonprofit financial and housing counseling does provide a significant benefit to homeowners and is especially critical for first-time buyers. The Work Group noted, however, that most of the currently operating nonprofit housing counseling agencies have limited budgets and are funded almost on a crisis-to-crisis basis. If these counseling agencies are asked to increase their work load and also to assist “post default” or “pre-foreclosure” cases, when funding is not available from existing sources, they may not be able to handle the expanded caseload.

Since these concerns also were addressed by the Education and Outreach Work Group, proposed recommendations were incorporated into their report, which is presented in Chapter 3.

Finally, the negative impact of foreclosures on neighborhoods and communities was discussed by the Work Group participants. An important point raised during those discussions was that the present foreclosure situation does not appear to be limited to economically depressed areas and seems to be spreading through almost all income groups and to housing in all price ranges and neighborhoods. It is not clear how much assistance could or should be provided to those who bought properties substantially out of their price range by using subprime lending products. Regardless, a concentration of foreclosures in any particular neighborhood causes a negative economic impact in that community. Other homeowners can be affected by declining property values, which also has an impact on local jurisdictions that may receive decreased property taxes to provide services. There also was discussion that, in some Maryland jurisdictions, the lack of affordable housing is so severe that home buyers are relying on subprime loans to buy a house within a reasonable distance to employment. These concerns resulted in the following recommendation:

Recommendation 3: Help communities that are in distress or are at-risk due to concentrations of foreclosure activity in certain neighborhoods or jurisdictions.

3.1: Strategically focus homeownership counseling and financial resources in areas particularly affected by foreclosure.

Chapter 3: Education and Outreach Work Group

The Education and Outreach (EO) Work Group of the Maryland Homeownership Preservation Task Force convened five times in August and September. The Work Group discussed strategies for intervening with counseling in the case of imminent foreclosures, as well as long-term strategies for preventing the conditions that can lead to foreclosure. These strategies aim to help potential and current homeowners:

- become educated consumers who will shop around for the best loan product,
- understand their credit history and the disadvantage of poor credit,
- understand the equity stripping consequence of repeated refinancing of a mortgage loan,
- be connected to counseling and legal resources to identify and avoid risky and predatory lending transactions before entering into loan agreements, and
- have access to financial and homeownership counseling and foreclosure prevention resources.

The importance of including education and outreach in any plan adopted to address the current foreclosure crisis cannot be overstated. An educated consumer is the best consumer. The value of educating current and potential homeowners about the homebuying and foreclosure processes, the benefits of maintaining good credit, and about the options and resources available to homeowners in trouble was recognized not only by the EO Work Group, but by all of the Work Groups and the Task Force as a whole.

Financial literacy is paramount. Equally critical is reaching homeowners at risk of foreclosure and those obtaining loans to connect them with resources. The Work Group believes that nonprofit housing counselors are a vital resource and consumers should have statewide access to counseling with consistent, high standards. This is particularly critical for homeowners in the subprime market.

The Work Group recommendations address two broad goals:

- 1) Sustained support for a strong statewide network of nonprofit housing and financial counseling organizations, and
- 2) A unified statewide and localized marketing and outreach strategy that will reach homeowners throughout Maryland.

To help guide deliberations, the Work Group examined several varied foreclosure prevention models employed at the national, state and local levels. The first guide was *Massachusetts' April 2007 Report of the Mortgage Summit Working Groups*. The report illustrated how, through the Work Group deliberation process, a statewide task force can provide a comprehensive offering of recommendations that deal with an array of issues. Their Consumer Education and Foreclosure Assistance Working Group's suggestions were particularly instructive.

Next, the EO Work Group turned to a local model, examining the wide-ranging foreclosure prevention strategy undertaken by the Baltimore Homeownership Preservation Coalition (BHPC). Through a presentation and handout, BHPC discussed its mission, goals, membership and accomplishments, particularly in the area of outreach and education. The Work Group co-chairs also met with leaders of the Prince George's Homeownership Coalition to obtain their guidance on the draft recommendations.

In addition, BHPC (with funding from the Goldseker Foundation) commissioned a study by The Reinvestment Fund (TRF) to examine mortgage foreclosures in Baltimore. A second study commissioned by BHPC and local foundations is being completed by TRF and examines statewide mortgage foreclosure data. The data from these two studies will be critical to identifying the areas most in need of counseling and outreach.

BHPC also conducted an extensive local outreach campaign similar to the one we recommend in this report. Their campaign included, among other features, a website, forums for public and private sector leaders, town hall consumer education meetings, and providing training for the Maryland Housing Counselors Network on foreclosure prevention and predatory lending.

Finally, BHPC highlighted the need for the Work Group to consider using United Way's statewide "First Call for Help" hotline number, 211, as a vehicle for outreach to connect homeowners with resources. The 211 number is available in most, but not all, Maryland jurisdictions; and funding is needed to expand 211 statewide. However, a "1-800" version of "First Call for Help" is available statewide.

The third model examined was a national operation: NeighborWorks America's national public service advertising campaign and hotline. In collaboration with the Ad Council, NeighborWorks created a campaign that targets low- and moderate-income families who are having difficulty keeping up with mortgage payments and encourages them to call a national hotline for confidential financial counseling. The Work Group attended a special presentation at NeighborWorks' Mid Atlantic office that allowed participants to glean what essential components go into creating an efficient, effective homeownership counseling hotline. This national NeighborWorks model – along with the local United Way 211 number – will prove invaluable when determining how best to construct a statewide hotline in Maryland.

After learning what outside organizations have done to combat rising foreclosure rates, the Work Group had the models it needed to move forward with recommendations tailored to meet Maryland's needs.

Outreach Recommendations

The Work Group found that homeowners facing foreclosure often hesitate to contact lenders, and sometimes even fail to open mail from lenders. It is critical to convey to homeowners facing foreclosure the importance of contacting their lender to pursue any workout options that might be available. It is important that a homeowner understand that he or she is not the only one facing this situation.

A successful outreach campaign needs to be multifaceted. The campaign should include public service announcements on television or radio and in public areas such as on public transportation and must be part of a coordinated, comprehensive plan. A website that serves as a clearinghouse for information about resources also will play a critical role. Coordination with local governments, agencies and nonprofits is vital. Outreach to community and religious organizations, providing them with information and materials about foreclosure prevention resources, should be included.

Preventive education and outreach also is crucial for prospective homebuyers. Buyers need to understand the buying process and need help getting into an appropriate loan. As we address the current flood of foreclosures, it is important to adopt policies and programs that help prevent such a situation in the future. The possibility of enacting a financial literacy course requirement for high school graduation was discussed. Five jurisdictions in the state already have some sort of financial literacy requirement for graduates.

After meeting with NeighborWorks America, the Work Group believed a hotline staffed 24/7 with counselors trained to deal with callers facing foreclosure can provide a crucial service, particularly because homeowners in trouble often are more likely to contact this type of nonprofit service provider rather than their lending institution. However, the Work Group felt that there should be a referral back to local nonprofit counselors for in-person assistance and review. Further, it is essential to capture data about the homeowners assisted, the assistance provided and outcomes. The Work Group recognized the need to build capacity for the “211” number as the possible long-term goal, but recommended exploring the national resources in the short-term to provide immediate assistance.

Education Recommendations

The Work Group emphasized the importance of housing counselors as a critical resource both for existing homeowners who find themselves facing foreclosure, and for prospective homebuyers who often do not understand the buying and lending process. Most government-sponsored lending programs or buyer assistance programs, such as those operated by DHCD, require prospective borrowers to receive counseling before they can receive a loan. The challenge is to persuade other homeowners to seek counseling even where there is no requirement.

The Work Group examined the idea of mandatory housing counseling. Some jurisdictions mandate housing counseling for certain areas and for certain loans, such as reverse mortgages and high-cost loans. The Work Group did not go so far as to recommend mandatory counseling as there was concern about the capacity of the existing network of housing counseling groups to

provide the service. There is currently a lack of providers in certain parts of the State. Further, there was concern that mandatory counseling was not as meaningful for the consumer. The Work Group elected to strongly encourage housing counseling and to strategically expand the capacity of the network of counselors to meet the need for services. To make these organizations self-sustaining, the Work Group looked at fee-for-service models and lender contribution as ways to help fund and build these critical services.

Nonprofit housing counseling agencies are the primary resource to deliver consumer education to homebuyers and homeowners. The recommendations below address the need to ensure that the counseling services offered to Marylanders maintain a high quality standard. The Maryland Housing Counselors Network, representatives of which participated in the Work Group, is in the process of developing standards for counseling groups. Certification is important for all housing counselors. The challenge is to make such programs accessible and affordable for the nonprofit organizations. Working with state, local and private partners could meet that challenge.

Clearly, information is power. It is imperative that we reach Maryland homeowners early in the process so that they have information and knowledge to make good choices about buying and financing a home. For those in crisis now, we must offer assistance to find workable solutions that save homes where possible and minimize the devastating effects of foreclosure.

Recommendation 4: Promote sustainable homeownership through statewide outreach and marketing campaigns, pre- and post-purchase counseling and financial literacy programs.

4.1: Develop a statewide marketing campaign that alerts homeowners and connects them with resources and information. Target those at risk of foreclosure and those facing foreclosure and urge them to take action and seek help.

4.2: Endorse the program sponsored by Maryland Financial Literacy Coalition, which can be used in high schools to expand the financial knowledge of Maryland students.

4.3: Develop the capacity of The United Way’s existing “211” telephone number in Maryland to expand it to a statewide, fully-operational hotline with trained staff that could provide assistance to connect callers to existing local resources. Also, explore partnership with the national hotline for foreclosure prevention through NeighborWorks America.

4.4: Continue actively promoting DHCD’s Maryland Mortgage Program (MMP) and HUD’s FHASecure plan as safer alternatives to subprime or other “exotic” mortgage loans which have proved unsuitable for many homeowners.

Recommendation 5: Strengthen and expand nonprofit financial and housing counseling.

- 5.1: Establish statewide professional certification standards for housing counselors.**
- 5.2: Establish a uniform statewide curriculum for housing counselors to use in workshops with consumers, using national best practices such as those issued recently by NeighborWorks America.**
- 5.3: Expand funding for nonprofit financial and homeownership counseling and legal resources by establishing additional sources of funding such as the establishment of an affordable housing trust fund.**
- 5.4: Expand Maryland’s access to funding for housing counseling through the U.S. Department of Housing and Urban Development (HUD) by working with the Maryland congressional delegation.**
- 5.5: Focus outreach and education on particular populations – minority, immigrant and senior – that are particularly affected by predatory real estate practices.**
- 5.6: Develop a special campaign and educational resources to increase credit health awareness and strengthen consumer credit scores as a safeguard against high cost consumer and mortgage lending.**

Recommendation 6: Coordinate all public and private resources to sustain homeownership.

- 6.1: Establish a centralized website resource as a clearinghouse for consumer-oriented information about financial and homeownership education and financial assistance. The website should be available to homeowners, communities, resource providers and housing counselors.**
- 6.2: Work with the Baltimore Homeownership Preservation Coalition, the Prince George’s Homeownership Preservation Coalition, the Maryland Housing Counselors Network and others to develop and implement public-private partnerships that coordinate State and local resources.**
- 6.3: Provide statewide access to Baltimore’s new anti-predatory lending DVD, “Judge Smartt” and the new Prince George’s foreclosure prevention DVD, “Under a Shadow: Dealing with the Threat of Foreclosure,” produced by the Coalition for Homeownership Preservation of Prince George’s County.**

Chapter 4: Legal and Regulatory Reform Work Group

The Legal and Regulatory Reform (LRR) Work Group convened to review the existing laws and regulations that govern the mortgage industry.

The LRR Work Group was specifically tasked with:

- Identifying existing Maryland mortgage and foreclosure-related statutes, regulations and rules and determining their scope and application;
- Identifying material shortcomings and gaps in these existing laws;
- Examining best practices in the mortgage lending industry and among Maryland foreclosure attorneys; and
- Examining legislation (proposed and enacted) from other states aimed at strengthening the regulation of the mortgage industry and offering additional protections for homeowners.

The Work Group convened seven times in August and September: twice as a committee of the whole and five times in subgroups devoted to particular issues. At the final meeting, the Work Group considered the subgroups' findings and forwarded the recommendations to the larger Task Force for review.

The participants in the LRR Work Group represented a broad range of interests and perspectives including representatives from the mortgage industry, consumer groups and the Maryland foreclosure bar.

At the outset, there was fundamental agreement that foreclosure is and should be the action of last resort. Foreclosure does not serve the best interests of homeowners, communities, governments or lenders. However, when foreclosure occurs, it is the end result in a mortgage lending process that is complex and often confusing to consumers.

The LRR Work Group divided into subgroups to address each stage along the lending and foreclosure process continuum and recommend appropriate interventions. The subgroups looked at legislation and regulations from other jurisdictions, national models for examination and licensing and best practices in the mortgage lending industry.

The recommendations that follow represent the LRR Work Group's attempt to find workable solutions to the most pressing problems that arise for homeowners along the mortgage lending and foreclosure continuum. The recommendations of the Work Group are organized according to three distinct areas along that mortgage lending continuum.

- I. Front-End Issues**
 - A. Licensing**
 - B. Lending**

- II. Pitfalls: Fraud and Foreclosure Rescue Scams**
 - A. Fraud**
 - B. Foreclosure Rescue Scams**

- III. Facing Foreclosure: Maryland’s Foreclosure Process**

I. Front-End Issues: Licensing and Lending

Recommendation 7: The LRR Work Group recommends that Maryland increase the Commissioner of Financial Regulation’s legal and regulatory oversight and enforcement of the mortgage lending industry to strengthen protections for homeowners and ensure the integrity of the industry.

To enact the recommendations will require statutory and regulatory action. One of the major problems identified in the foreclosure process is the presence of unchecked bad players and some poor practices within the industry. The LLR Work Group worked to ensure that the highest standards are met and that consumers are protected. In order to meet those standards, more stringent requirements to enter the industry, better data and tracking of those licensed and greater regulatory oversight and examination of licensees are needed.

Increased oversight and enforcement will require additional resources for increased staffing, training and suitable technology to address data collection and integration within the Division of Financial Regulation.

A. Licensing Reform Recommendations

Mortgage brokers originate nearly 70 percent of the residential mortgage loans in Maryland. They hold a unique position in the mortgage lending process and influence the choices consumers make about what loan products to buy and the terms and conditions of those loans. Many states are enacting licensing requirements for brokers.

Maryland has been licensing brokers for over two decades. The number of licensed brokers has risen by 55 percent since 1999. As mentioned, brokers have the largest share of the residential mortgage market, and nearly 70 percent of all borrowers obtain their mortgage loans through a broker. While the broker does not represent the borrower, the broker guides and advises the borrower and charges a broker’s fee for those services. The Maryland Finder’s Fee Law⁷ governs these transactions and the obligations and fees of the broker.

⁷Md. Code Ann. Comm. Law § 12-801 et seq.

7.1: Track the transactions of licensed mortgage originators and lenders by requiring them to put their license number on any recorded security instrument they originate in order to capture a specific originator’s or lender’s foreclosure rates, defaults and instances of fraud.

Currently, Maryland lacks any system to track the involvement of mortgage originators and lenders in individual loan transactions. Since these loans often are sold or transferred, it is not possible to measure how often originators and lenders are associated with loans involving fraud or resulting in default or foreclosure.

This recommendation, for each security instrument recorded in connection with a mortgage loan to bear the license number of the mortgage originator(s) and/or lender(s), would have a threefold effect:

- It permits the clerks of the various circuit courts to collect data on the originators and lenders associated with any filed foreclosure actions;
- It creates a database of information that can be sent to the Commissioner of Financial Regulation for periodic review; and
- It requires that any “Notice of Intention to Foreclose” sent to a borrower by any lender or servicer must include the license numbers of the originator and lender.⁸

Creation of such a tracking and data reporting system would enable the Commissioner of Financial Regulation to initiate investigations where foreclosure or default rates for an originator or lender are unreasonably high. She may then consider whether to take additional enforcement action. The system also will allow employers to self-police, by identifying employees with high rates of foreclosed loans.

Similar systems have been adopted elsewhere. The Federal Home Administration (FHA) and the Veterans’ Administration (VA) track their loans and use corresponding identifiers. In the student loan context, the federal government tracks default rates and bars lenders from participation if they have 30 percent default rates or higher.

Consumer advocates urged the Commissioner of Financial Regulation to require disciplinary action and bar originators when they reach a foreclosure rate of a certain percentage. Lenders, however, urged against a fixed percentage triggering disciplinary action, as some lenders may have higher foreclosure rates because they loan to riskier borrowers. The LRR Work Group did not take a position on this issue.

⁸ See recommendation in the “Foreclosure Process” section which would require lenders to send out a Notice of Intention to Foreclose 45 days prior to commencing a foreclosure action and would be a pre-requisite to the filing of the action.

**7.2: Create two separate licenses for mortgage brokers and lenders.
Require that a copy of the license be kept in the loan file.**

Under Maryland's Mortgage Lender Law⁹, the definition of "mortgage lender" includes mortgage brokers, lenders and servicers. A licensee can engage in any and all of those activities with a single license. Given brokers' unique and distinctive role in the mortgage lending process, the LRR Work Group supported separating out brokers and lenders under the existing licensing scheme.

Initially, the Maryland Association of Mortgage Brokers argued for separate licenses for brokers because of their distinct position in the mortgage lending process. Consumer groups advocated for a different license for brokers and lenders so that consumers would know with whom they were dealing in the process and to regulate brokers more closely. Lenders argued that a separate license is not needed because consumers already are aware that they are dealing with a broker and not a lender when they sign the Broker's agreement required by the Maryland Finder's Fee Act.¹⁰ In comment, Mid-Atlantic Financial Services, Inc. (MFS), argued against separating licenses for brokers and lenders as costly and unnecessary to achieve the stated goals

The purpose of separating the licenses for brokers and lenders is three-fold:

- to track and collect data regarding brokers' and lenders' activities;
- to remind consumers that they are dealing with a broker; and
- to define for brokers their role in the transaction.

Currently, there are 6,154 mortgage lending licensees in Maryland and there are 10,493 mortgage originators. Because mortgage lending licensees currently can act as a broker, lender or servicer under the same license, we do not have a specific breakdown of the number of brokers operating in Maryland. However, it is estimated that approximately two-thirds of the mortgage lending licensees, or about 4,120, are brokers.

Recognizing that some "problem" brokers are located and licensed in other states, the Work Group reviewed information from the Conference of State Bank Supervisors (CSBS) which outlines a national mortgage licensing system. Entering into a national licensing system would provide uniform licensing applications for mortgage lenders and brokers and create a central repository of information about licensing and enforcement actions.

The Work Group did not make a recommendation on Maryland's entry into a national licensing system. However, the Work Group did reach consensus about strengthening the current licensing system and reviewing the uniform application as a model for improvements to Maryland's system. The Commissioner of Financial Regulation is investigating ways to achieve the goal of this recommendation by modifying the existing licensing system under the Mortgage Lender Law. Further, the Commissioner is examining licensing requirements and fees to increase the requirements for licensure and resources for enforcement.

⁹ Md. Code Ann Financial Institutions § 11-501 et seq.

¹⁰ Md. Code Ann. Comm. Law § 12-801 et seq.

7.3: Require that mortgage brokers adhere to a standard of good faith and fair dealing and demonstrate that their transactions show a reasonable, tangible net benefit for the borrower.

Brokers have played a large role in expanding opportunities for homeownership by helping potential borrowers access a variety of loan products. At the same time, however, unscrupulous brokers have been involved in some of the more egregious and fraudulent practices at the heart of the foreclosure crisis, including qualifying borrowers for loans without regard to their ability to pay, putting borrowers in subprime loans when they qualify for prime loans, and “churning” or “flipping” loans to generate more fees.

Several states recently have adopted a statutory duty of care for brokers. Minnesota imposed the most stringent duty of care standard for brokers, holding them out as fiduciaries in mortgage loan transactions.¹¹ North Carolina adopted a standard requiring a broker to make loans that are “reasonably advantageous” to the borrower considering all the circumstances.¹² Ohio, in 2006, required brokers and lenders to adhere to a duty of good faith and fair dealing.¹³ And, in each statute, brokers must show that when a borrower refinances, he or she will receive a tangible net benefit in the transaction. The LRR Work Group reviewed a Statement of Net Benefit used in North Carolina as an example of how to document this standard (See Appendix B.). A number of other states also have required brokers to demonstrate net benefit.¹⁴

The Work Group supported the adoption of a good faith and fair dealing duty of care for brokers licensed in Maryland. It further recommended that the Commissioner of Financial Regulation work with the brokers and others to define and adopt a requirement that brokers, when refinancing loans, be able to show a reasonable, tangible net benefit to the borrower in the transaction.

Establishing a duty of care gives the Commissioner of Financial Regulation, and borrowers themselves, the ability to ensure that licensed brokers meet these standards and to enforce borrowers’ rights and duties when they do not.

In response to abuses in an expanding profession, the Maryland Association of Mortgage Brokers has recently adopted a Code of Ethics in an effort to set standards and self-police its members. Recognizing the need to ensure adherence to these standards, the brokers supported the LRR Work Group’s recommendation.

¹¹ Mn. Chapter 18 – H. F. No. 1004, amending Minnesota Statutes chapter 58, effective date 8/1/07

¹² N.C. Session Law 2007 -352, HB 1817, amending G.S. § 53-243.10, effective date 1/1/08

¹³ Mortgage Broker Registration Act, Ohio Rev. Code § 1322.081, effective date 1/1/07

¹⁴ www.mortgagebankers.org/files/Conferences/2006/Quality_Assurance_Conference/TangibleNetBenefitbyState.pdf

B. Lending Reform Recommendations

The increase in subprime lending and the attendant bundling and securitization of loans in the current financial market have given borrowers unprecedented access to credit. At the same time, however, there has been a shift in the underwriting standards and terms governing those loans. No-documentation or low-documentation loans and the failure of originators and lenders to verify that a borrower has the ability to repay the loan not only puts homeowners at greater risk of default and foreclosure, but also puts financial institutions and their investors at risk. Increasingly, in the subprime markets, loans have been made based on the value of the home, not on the borrower's ability to repay the loan. As a result, homeowners have ended up in loans they cannot afford. Unfortunately, with growing numbers of homeowners facing foreclosure, the concurrent rise in homeownership may prove more illusory than real.

One of the main reasons for the current foreclosure crisis has been the risky and, at times, predatory and fraudulent application of the underwriting standards that lenders use to qualify borrowers in the subprime market when a loan is made. Without a credible and documented examination of the borrower's income and the household debt to income ratio, as well as a determination of their ability to pay once an adjustable rate mortgage resets beyond the introductory rate, borrowers are set up for failure.

Additionally, these subprime loans and nontraditional mortgage products, such as ARMs, interest-only and payment-option loans often include terms that catch homeowners by surprise. These include pre-payment penalties, balloon payments and binding mandatory arbitration clauses, which may create hardships for unsuspecting homeowners. Over the last year, several federal oversight agencies issued guidance addressing the risks posed by these products and terms in an effort to alert borrowers who may find themselves at greater risk of default and foreclosure. This also serves to educate lenders who may not have adequate controls in place to limit their risk and exposure when making these loans

Federal Action

On October 4, 2006 the Board of Governors of the Federal Reserve Board, 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 the Federal Interagency Guidance on Nontraditional Mortgage Product Risks. The first guidance addressed the rising number of "exotic" loans that defer repayment of principal or interest. These are loans such as interest-only loans and payment-option loans which may put borrowers at risk who do not fully understand the terms and repayment requirements of such products.¹⁵ On July 10, 2007, the Agencies issued the Interagency Statement on Subprime Mortgage Lending that covered similar concerns about risk to the borrower, but focused on borrowers in the subprime market rather than on specific products.¹⁶

¹⁵ 71 FR 58609 (October 4, 2006)

¹⁶ 72 FR 37569 (July 10, 2007)

In addition, CSBS with the American Association of Residential Mortgage Regulators (AARMR) issued its own guidance to states regarding how to implement the federal guidance and statement as state regulation, and they have developed model examinations as well. Thirty-eight (38) states have adopted the federal guidance in some manner.

7.4: Adopt the Federal Interagency Guidance on Nontraditional Mortgage Product Risks and the Interagency Statement on Subprime Mortgage Lending as Maryland regulations and give the Commissioner of Financial Regulation the ability to enforce adherence.

The federal guidance applies only to federally-regulated financial institutions including federal depository institutions such as banks and their subsidiaries and affiliates. As federal guidance, it does not apply to state-regulated non-bank, non-depository institutions. Enacting the guidance and statement as a Maryland regulation would level the playing field by ensuring that all State financial institutions adhere to similar standards and requirements.

The LRR Work Group reached consensus on how best to regulate some of the issues discussed in the guidance, but not all.

Specifically, the LRR Work Group reached consensus on the following:

- **Ability to Repay.** Require the lender to analyze the borrower's ability to repay using a debt to income ratio and include in the calculation other costs, such as taxes, insurance and utilities.
- **Verification of Income.** Require a lender to document and verify a borrower's ability to repay and, in certain cases where the borrower is self-employed or a business owner for example, show documentation such as previous years' tax returns upon which the income projection was based.
- **Calculating Ability to Repay.** Require the lender to calculate the borrower's ability to repay and, in the case of an ARM, calculate that ability using the fully indexed rate at the time of maturity, not merely the introductory or teaser rate, to avoid payment shock when the rate resets.
- **Pre-Payment Penalties.** Forbid pre-payment penalties beyond the reset period and require that they be disclosed prior to settlement at minimum.

Note: There was vigorous discussion regarding pre-payment penalties. Consumer advocates argued that these pre-payment penalties are onerous and can hasten foreclosure. Homeowners cannot afford to refinance out of costly ARMs or other loans where the loan contains a pre-payment penalty. Lenders disagreed and stated that their use is already limited by statute and that there are market-based reasons to allow them, such as offering lower interest rates with a pre-payment penalty. However, consumers argued that homeowners in the subprime market do not get the benefit of those interest rates in exchange for the pre-payment penalty. The penalty is a take-it-or-leave-it proposition that is often not even known until settlement.

- **Disclosures.** Disclosures about terms should be clear and concise and provided to borrowers before they agree to them. This is particularly true where taxes and insurance are not included in the monthly payments, where pre-payment penalties or balloon payments are included or where binding mandatory arbitration clauses are part of the terms of the loan.

Consumer advocates and others supported the recommendation that the disclosure of these items be required in the financing agreement—a document given to consumers prior to settlement by non-bank financial institutions. All too often, consumers find out about these terms at settlement. The change would alert consumers that these terms exist and give them an opportunity to reconsider the loan before reaching the settlement table. Those representing depository banks objected to this recommendation, expressing concern that the change would require them to do financing agreements that are currently not required. There was no agreement to require this of depository banks as a financing agreement if not required in those transactions.

There was general discussion about the need for a comprehensive review of the required disclosures to find ways to streamline the information and make it more accessible so that consumers are not so overwhelmed by the disclosures as to make them meaningless. The federal agencies' examples of disclosures and consumer information in the subprime lending and nontraditional mortgage products contexts were disseminated to the group.

- **Risk Management Systems.** Require the Commissioner to examine the lender's risk management systems to ensure that the institution is able to meet its obligations and can adequately protect consumers.

After much discussion, the LRR Work Group did not reach consensus on the following issues:

- **Balloon payments.** See above regarding disclosure prior to settlement.
- **Binding Mandatory Arbitration Clauses.** There was an argument advanced to ban these clauses in mortgage transactions. The clause is not a negotiated term and it can remove a consumer's ability to litigate a contested matter in court. Fannie Mae and Freddie Mac ban their use. While they are not found in all mortgage loans, their presence can limit a consumer's ability to "have his or her day in court" should a dispute arise. Consumer advocates also argued that arbitration itself creates additional hardships for the consumer: the terms can require that the arbitration occur in another jurisdiction and dictate the cost, which is often high. Moreover, the lender typically engages arbitrators, resulting in an overwhelming number of cases decided in the lender's favor. In response, lenders noted that such a ban might be pre-empted where arbitration is required. Further, they argued, arbitration has an important role to play in resolving disputes and is favored and, in some cases, mandated by the courts.

In considering Maryland's adoption of the federal guidance and statement, the LRR Work Group examined a Colorado statute,¹⁷ which requires the Colorado Banking Board to implement the nontraditional mortgage product guidance by regulation. The LRR Work Group did not discuss whether a similar approach should be adopted in Maryland, nor did they consider any particulars regarding implementation. Finally, please note that the group considered statutes from the following states: Ohio, North Carolina, Maine and Minnesota.

II. Pitfalls: Fraud and Foreclosure Rescue Scams

Recommendation 8: The LRR Work Group recommends that Maryland strengthen the laws and enforcement against fraud in mortgage transactions.

The recent foreclosure crisis has put fraud in the spotlight, specifically various types of fraudulent activity in the mortgage lending process as well as the rise of foreclosure rescue scams. In both instances, victimized homeowners can end up losing their homes, compromising their ability to obtain credit and struggling to regain their financial footing for years to come.

To determine whether existing State statutes are adequately protecting homeowners, the LRR Work Group reviewed the range of Maryland laws that encompass mortgage fraud and studied the Protection of Homeowners in Foreclosure Act (PHIFA)¹⁸ that the legislature enacted in 2005.

¹⁷ Co. Revised Statutes, 11-1020106

¹⁸ Md. Code Ann. Real Property Article § 7-301 et seq., (PHFA)

A. Mortgage Fraud

8.1: Enact a criminal mortgage fraud statute that would apply to all possible players involved in mortgage transactions and would incorporate a reporting requirement to the Commissioner of Financial Regulation or other licensing body. Include a private right of action for defrauded persons

Currently, there are provisions in the Financial Institutions Article contained in Financial Institutions Article § 11-517 and §11-523 that apply to mortgage lending licensees and provide for administrative sanctions and action and criminal penalties for fraud and other bad acts. Similarly, there are statutes regarding fraud and bad acts that apply to real estate agents and appraisers and title companies. However, with the exception of the criminal penalty provision for mortgage lending licensees, most remedies involve disciplinary actions against licensees or criminal prosecution for those who are unlicensed.

The LRR Work Group agreed that Maryland's current mortgage fraud scheme is woefully inadequate. Much of the fraud currently being perpetrated is complex and can involve multiple players. Prosecuting these cases as "Theft by Deception" is cumbersome and difficult to explain to the average jury.

The Work Group reviewed other states' mortgage fraud statutes, examining closely the Georgia statute that includes provisions for forfeiture¹⁹ as well as the Minnesota statute that includes a provision for restitution to make victims of fraud whole and enhanced penalties for fraud against "vulnerable persons" (e.g., elderly, disabled, etc.).²⁰

Several states have imposed a duty to report fraud. New York requires mortgage lenders and originators to report instances of mortgage fraud to the Banking Department.²¹ In Texas, a person who determines or reasonably suspects fraudulent activity in connection with mortgage fraud must report to an authorized governmental agency including the Attorney General and the Commissioner of Banking.²² In both New York and Texas, there are certain protections for persons making reports in good faith.

The LRR Work Group supported, at minimum, a requirement to report convictions or charges of mortgage fraud to the Commissioner of Financial Regulation or other licensing entity should the convicted or charged professional be licensed elsewhere.

Also, to extend the law's reach and enhance the remedies and redress available to defrauded persons, the LRR Work Group recommended that a private right of action be included in this fraud statute.

¹⁹ Ga. Code Ann. §16-8-100 et seq.

²⁰ Minnesota Statutes 2006, section 58.19

²¹ NY

²² TX H.B. 716, effective date 9/1/07

In sum, the LRR Work Group agreed on the need for a criminal mortgage fraud statute in Maryland and supported a law that will allow prosecutors to target the evolving fraudulent schemes in the mortgage lending industry. However, the critical need is for expanded resources for enforcement and prosecution of mortgage fraud schemes.

B. Foreclosure Rescue Scam

8.2: Amend the Protection of Homeowners in Foreclosure Act (PHIFA) to give concurrent jurisdiction to the Commissioner of Financial Regulation identical to the investigatory and injunctive powers of the Office of the Attorney General. Require notice be sent to the licensing body when a licensee is found in violation of PHIFA.

8.2.1: Encourage and ensure prosecutions under PHIFA by providing funds that allow the State's Attorneys to train and dedicate staff and resources to the prosecution of these crimes.

Foreclosure rescue scams prey upon those in financial distress whose properties are at risk of foreclosure. DLLR's Financial Regulation Enforcement Unit has been in the forefront of investigating and unearthing these scams and characterized the general schemes as follows:

1. The Phantom Helper—This scam involves a person who agrees to “negotiate” on behalf of the homeowner for an up-front fee. The fee is paid, the homeowner is told not to contact the lender, and the scammer does nothing and absconds with the fee. The homeowner is then in foreclosure or has lost the home to foreclosure sale.
2. The Bait and Switch—The scammer induces the homeowner to sign over title so that the scammer can save the home and promises to return title at a date certain. The former homeowner, now a tenant, is evicted in rent court.
3. Lease Buy-Back—The scammer induces the homeowner to transfer title to a straw-investor with the promise that they will be able to take back the home after some period. The scammer refinances the mortgage and pulls out 100percent of the equity. The homeowner can no longer afford the mortgage. The straw-investor also may be unaware of the refinance and fails to make payment or cannot afford payment, and the home goes to foreclosure on subsequent full mortgage. The initial homeowner loses the home and all equity while the straw-investor ends up with a foreclosure on their credit record.

To stop these schemes and contain the effects of these transfers, the legislature passed PHIFA in 2005. PHIFA requires that “foreclosure consultants” enter into consulting contracts with homeowners that lay out the terms of their agreements, give disclosures²³ and afford basic consumer protections such as a three-day rescission period.²⁴ Failure to provide these can result in prosecution and/or a lawsuit.

²³ Md. Code Ann. Real Property Article § 7-306 et seq.

²⁴ Md. Code Ann. Real Property Article § 7-305

The LRR Work Group recommended remedying two flaws in the existing statute by adopting the following changes:

- 1) Grant the Commissioner of Financial Regulation the power to investigate and enforce these cases when they come to the attention of DLLR's Division of Financial Regulation through the complaint and/or enforcement processes; and
- 2) Require that the Commissioner receive notice about licensees who are convicted under this statute so that she can take appropriate disciplinary action, including revoking the license of any licensees implicated.

One state, Massachusetts, has banned for-profit foreclosure consultants from transferring or assisting in the transfer of property for homeowners in anticipation of foreclosure. DLLR has examined this model to consider whether Maryland should similarly limit such transfers due to the widespread potential and actual fraud which can and has occurred. DLLR is examining the possibility of licensing "foreclosure consultants" to be able to monitor and regulate closely these consultants to protect consumers. The Massachusetts' regulations are new and therefore these measures did not have the benefit of stakeholder input.

Finally, there was concern about the lack of prosecutions under PHIFA. Reasons for the lack of prosecutions include its recent enactment, the complexity of the subject matter and competition for attention and resources of State's Attorneys prosecuting these cases.

The Work Group recommended that each State's Attorney's Office designate a point person to receive training and support to prosecute these complex cases. Although PHIFA gives consumer homeowners a critical private right of enforcement, that provision does not replace the need for criminal prosecution in certain cases.

III. Facing Foreclosure: Maryland's Foreclosure Process

Recommendation 9: The LRR Work Group recommends that Maryland improve the foreclosure process.

In Maryland a foreclosure action is commenced by filing an Order to Docket in the applicable Circuit Court along with the instrument that gives the authority to foreclose and a statement of what is owed.²⁵ The Court oversees and approves or ratifies the foreclosure sale;²⁶ neither personal service nor a hearing is required to conduct a foreclosure sale. Maryland is a quasi-judicial foreclosure state. Foreclosure in Maryland is an *in rem* action. The authority to foreclose is derived from a power-of-sale provision in the security instrument securing the home.²⁷

The process for foreclosure is set forth by statute and appears in the Maryland rules. The process is relatively condensed and can conceivably result in a sale as soon as 15 days after filing an

²⁵ Md. Rule 14-204

²⁶ Md. Rules 14-207, 14-305

²⁷ Md. Code Ann. Real Property Article § 7-105 et seq.

Order to Docket.²⁸ Further, neither the statute nor the rules governing foreclosure actions require much by way of notice to borrowers.

Consumer advocates and housing counselors noted that the minimal notice requirements are inadequate as to time and type. They generally fail to capture the attention of the homeowner in crisis to alert them to a pending foreclosure action, and the process does not afford homeowners adequate time to mitigate their loss or present defenses to the foreclosure action.

The LRR Work Group examined Maryland's foreclosure process through multiple lenses, studying the statutory requirement, the Maryland rules and practitioners' experiences. Looking at the foreclosure process as one that begins when the borrower is in default, the group focused on the need to get the homeowner's attention and response as soon as possible upon default and again on the eve of foreclosure. The LRR Work Group compared the statutory process with the actual practice of foreclosure in Maryland.

The following recommendations reflect the LRR Work Group's goal of codifying better foreclosure practices.

9.1: Adopt a statute requiring that a lender or mortgage holder may not file an Order to Docket commencing a foreclosure action until 90 days from the borrower's default.

By practice, but not required by Maryland statute or rule, it is often 90 days before a lender initiates a foreclosure action. Lenders send notices of default as soon as the homeowner misses his or her first monthly payment. Default, however, is defined by the terms of the mortgage note and typically occurs when the payment is not received by the due date. While it is generally the case that lenders do not move to initiate a foreclosure action until the loan has been in default for 90 days, this recommendation will require a 90-day period from default before the lender can begin a foreclosure action.

Lenders' attorneys were concerned that they would be unable to send the Fair Debt Collection Practices Act (FDCPA) notice during the 90-day period. The FDCPA notice informs the homeowner that a third party (the foreclosure attorney) is attempting to collect a debt and states the amount of the debt. A consumer/homeowner has 30 days to dispute the debt. The debt collector—the attorney—does not file an action until the 30-day period to dispute the debt passes. Foreclosure attorneys expressed concern that sending the FDCPA notice might violate the recommended statute.

9.2: Adopt a statute requiring that Notice of Intent to Foreclose be sent to the borrower by certified and first class mail 45 days prior to the filing of an Order to Docket in a foreclosure action and that the sending of the Notice be a prerequisite to filing any foreclosure action in Maryland.

²⁸ Md. Rule 14-206(b)

This recommendation was based on proposed legislation in Massachusetts that requires as a pre-requisite to filing foreclosure the sending of a Notice of Intent to Foreclose 90 days prior to foreclosure.²⁹ The statute requires that the Notice be uniform and include fact of default and that foreclosure can be filed after the period, the contact information of all involved (servicer, assignee, mortgage company, etc.) and resources for assistance. Also, during the 90-day period, no further fees or penalties accrue for purposes of reinstating the loan. The proposed Massachusetts legislation can be found in Appendix B.

The Work Group recommends that a lender or mortgage noteholder send a Notice of Intent to Foreclose 45 days before an Order to Docket may be filed. There was consensus that a copy of the notice be sent to the Commissioner of Financial Regulation and that it be standardized; however, the group did not agree on what it should look like. Consumer advocates and nonprofits were in favor of a form similar to the Massachusetts notice, but the lenders advocated using the standard Fannie and Freddie Mac Acceleration Notice to meet this requirement.

Through comment, the Mid-Atlantic Financial Services Association, Inc. stated they did not support the sending of this Notice as a pre-requisite to filing foreclosure. Whereas St. Ambrose Housing Aid Center, Inc., argued in comment to the report that there was not consensus on the timing, form or effect of the Notice, but merely the fact that a Notice be sent. St. Ambrose supports the Massachusetts model including a 90-day notice period, a uniform notice with information for the homeowner and no fees or penalties accruing during the reinstatement period.

Consumer groups and housing counselors strongly favored a provision to stay the accrual of further fees/penalties for reinstatement purposes during the notice period on the theory that it would make workouts easier and provide homeowners an incentive to come forward and try to resolve the problem. Lenders did not agree to that provision.

9.3: Require the Court to send a uniform Notice of Order to Docket to the borrower and to the address of the residential property in foreclosure and include in the notice the date certain after which the foreclosure sale may be held.

This recommendation would require that the Notice of Order to Docket be sent by the Court both to the borrower and to the property address. Since borrowers often ignore notices and letters sent by the lender or its representatives and get barraged by others offering assistance, the LRR Work Group agreed that homeowners might pay more attention to a Court issued notice.

Currently, there is no requirement that notice be sent to the homeowner at the time of filing an Order to Docket.³⁰ Under the Maryland rules, a lender must only send notice when the sale is imminent.³¹ In addition, there is a statutory requirement that the person authorized to conduct the sale, generally the foreclosure attorney, send a notice to the borrower two days after filing an

²⁹ Mass. H.B. 4085, June 2007

³⁰ Md. Rule 14-204

³¹ Md. Rules 14-204, 14-206(b)(2)

Order to Docket.³² This recommendation seeks to provide enhanced notice about the pending action by having a Court document arrive at a more timely point in the process.

Consumer groups argued that the foreclosure action should be an *in personam* action as opposed to an *in rem* action. An *in personam* action would require basic due process like any other civil action by requiring notice in the form of personal service and an opportunity to be heard. The loss of one's home, they argued, is a very serious matter and homeowners should have notice and an opportunity to present any defenses, such as fraud, prior to the sale of their home at the foreclosure auction.

Lenders countered that the nature of the action is based on their security instrument and that a homeowner in default knows they are in default well before the foreclosure action is commenced. They argued that through the instrument a homeowner agrees to pay the note and suffer the consequences should they fail to make payments. Moreover, the lenders noted, it would be difficult and costly to serve process on the borrower.

The changes contemplated in this recommendation will require creating a uniform enhanced notice and will require involvement from the Court to mail the notices. The idea that notice also might be posted on the property was advanced as well. The LRR Work Group did not discuss at length nor was there consensus about hearing rights for the homeowner in a foreclosure action.

Through comment, Civil Justice, Inc. contends that a recent Supreme Court case³³ in the context of a tax sale suggests that due process is not met where a homeowner receives notice of the sale of their home by first class mail alone. Further, Civil Justice, Inc. has raised the issue of hearing rights for homeowners with good faith defenses. The LRR Work Group did not discuss at any length nor was there any consensus about hearing rights for homeowners in foreclosure actions.

9.4: Extend and codify the time before which a foreclosure sale may occur to require that a foreclosure sale may not occur until 45 days after the Order to Docket is filed.

Currently, the foreclosure sale is tied to the requirement that a Notice of Sale be published three times before the sale can be held.³⁴ As mentioned above, under the current rules, a foreclosure sale can occur as soon as fifteen days from the filing of the Order to Docket (e.g. Wednesday, Wednesday, Wednesday, sale on Thursday).

This recommended change would start the clock from the time that the foreclosure action is docketed instead of when the notice of sale is published. This would put the borrower on notice that a foreclosure sale could occur after a date certain. The 45 days was based on the actual practice of foreclosure attorneys that typically conduct the sale in that timeframe.

³² Md. Code Ann. Real Property Article § 7-105 (a-1)

³³ *Jones v. Flowers*, 547 U.S. 200 (2006), a case holding that notice of an impending tax sale sent via 1st class mail and certified mail to the homeowner which was returned "unclaimed" to the sender was unconstitutional under the 14th Amendment for failing to satisfy basic due process

³⁴ Md. Rule 14-206(b)

9.5: Reduce the number of times notice of the foreclosure sale must be published in a newspaper from three to one time.

The current requirement that notice of sale be published three times in a newspaper of record is often a costly requirement for the lender and ultimately for the homeowner trying to reinstate the loan and avoid foreclosure.³⁵

The LRR Work Group recommended reducing the requirement to publish from three times to one. It also was believed that newspaper publication benefits potential purchasers and does little to alert homeowners. As outlined in the recommendations above, homeowners should receive notice more directly.

Note: There may be a need to consult with the Office of the Attorney General to determine whether reducing the publication days will satisfy due process requirements and pass constitutional muster.

9.6: 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.

It is the practice of most lenders to accept payments to cure the default up until the foreclosure sale, but they are not required to do so and may demand the full accelerated amount of the loan to stop sale.

The Work Group recommends codifying that right to cure and entitling homeowners to pay the reinstatement amount to cure the default, and halt the sale of the home up until one business day prior to the sale.

³⁵ Id.

Chapter 5: Summary of the Task Force Recommendations

- 1. Create a “Homeownership Crisis Intervention Fund” to provide case-by-case interventions to prevent foreclosures and potential homelessness by: i) assisting households to move to an affordable, stable monthly housing payment; or ii) allowing time for the sale of property.**
 - 1.1. Establish an affordable housing trust fund or other dedicated source of funding to support homeownership preservation, specifically including emergency or “rescue” funding.**
- 2. Expand options for homeowners to refinance or restructure mortgages to prevent foreclosure and address affordability.**
 - 2.1. Continue to encourage lenders to follow Federal Reserve and SEC guidance on restructuring mortgages in default. Use existing DHCD lender networks and outreach activities to companies servicing loans in Maryland (to be identified by DLLR) to promote effective and fair loss mitigation strategies by the larger mortgage lending community.**
 - 2.2. Create a refinance product available through private sector lenders utilizing shared-risk credit enhancement available from the DHCD Maryland Housing Fund (MHF) mortgage insurance entity for those already in early stages of default.**
 - 2.3. Review and, if possible, enhance the existing DHCD “Lifeline” refinance product.**
- 3. Help communities that are in distress or at-risk due to concentrations of foreclosure activity in certain neighborhoods or jurisdictions.**
 - 3.1. Strategically focus homeownership counseling and financial resources in areas particularly affected by foreclosure.**
- 4. Promote sustainable homeownership through statewide outreach and marketing campaigns, pre- and post-purchase counseling and financial literacy programs.**
 - 4.1. Develop a statewide marketing campaign that alerts homeowners and connects them with resources and information. Target those at risk of foreclosure and those facing foreclosure and urge them to take action and seek help.**
 - 4.2. Endorse the program sponsored by Maryland Financial Literacy Coalition, which can be used in high schools to expand the financial knowledge of Maryland students.**

- 4.3. Develop the capacity of The United Way’s existing “211” telephone number in Maryland to expand it to a statewide, fully-operational hotline with trained staff that could provide assistance to connect callers to existing local resources. Also, explore partnership with the national hotline for foreclosure prevention through NeighborWorks America.**
- 4.4. Continue actively promoting DHCD’s Maryland Mortgage Program (MMP) and HUD’s FHASecure plan as safer alternatives to subprime or other “exotic” mortgage loans, which have proved unsuitable for many homeowners.**
- 5. Strengthen and expand nonprofit financial and housing counseling statewide.**
 - 5.1. Establish professional certification standards for housing counselors.**
 - 5.2. Establish a uniform statewide curriculum for housing counselors to use in workshops with consumers, utilizing national best practices such as those issued recently by NeighborWorks America.**
 - 5.3. Expand funding for nonprofit financial and homeownership counseling and legal resources by establishing additional sources of funding, such as the establishment of an affordable housing trust fund.**
 - 5.4. Expand funding for housing counseling through the U.S. Department of Housing and Urban Development (HUD) by working with the Maryland congressional delegation.**
 - 5.5. Focus outreach and education on particular populations – minority, immigrant, and senior – that are particularly affected by predatory real estate practices.**
 - 5.6. Develop a special campaign and educational resources to increase Credit Health awareness and strengthen consumer credit scores as a safeguard against high cost consumer and mortgage lending.**
- 6. Coordinate all public and private resources available in Maryland to sustain homeownership.**
 - 6.1 Establish a centralized website resource as a clearinghouse for consumer-oriented information about financial and homeownership education and financial assistance. The website should be available to homeowners, communities, resource providers and housing counselors.**
 - 6.2: Work with the Baltimore Homeownership preservation Coalition, Prince George’s Homeownership Preservation Coalition, and the Maryland Housing Counselors Network and others to develop and implement public-private partnerships that coordinate State and local resources.**

- 6.3: Provide Statewide access to Baltimore’s new anti-predatory lending DVD, “Judge Smartt” and Prince George’s new foreclosure prevention DVD, “Under a Shadow: Dealing with the Threat of Foreclosure,” by the Coalition for Homeownership Preservation of Prince George’s County.**
- 7. Increase the Commissioner of Financial Regulation’s legal and regulatory oversight and enforcement of the mortgage lending industry to strengthen protections for homeowners and ensure the integrity of the industry.**
- 7.1. Track the transactions of mortgage originators, brokers and lenders by requiring them to put their license numbers on any recorded security instrument they originate in order to capture a specific originator’s and lender’s foreclosure rates, defaults and instances of fraud.**
- 7.2. Create two separate licenses for mortgage brokers and lenders. Require that a copy of the license be kept in the loan file.**
- 7.3. Require that mortgage brokers adhere to a standard of good faith and fair dealing and demonstrate that their transactions show a reasonable tangible net benefit for the borrower.**
- 7.4. Adopt the Federal Interagency Guidance on Nontraditional Mortgage Product Risks and the Interagency Guidance on Subprime Mortgage Lending as State regulations and give the Commissioner of Financial Regulation the ability to enforce their adherence.**
- 8. Strengthen the laws and enforcement against fraud in mortgage transactions.**
- 8.1. Enact a criminal mortgage fraud statute that would apply to all possible players involved in mortgage transactions and would incorporate a reporting requirement to the Commissioner of Financial Regulation or other licensing body. Include a private right of action for defrauded persons.**
- 8.2. Amend the Protection of Homeowners in Foreclosure Act (PHIFA) to give concurrent jurisdiction to the Commissioner of Financial Regulation identical to the investigatory and injunctive powers of the Office of the Attorney General. Require that notice be sent to the licensing body when a licensee is found in violation of PHIFA.**
- 8.2.1 Corollary Recommendation: Encourage and ensure prosecutions under PHIFA by providing funds that allow the offices of the State’s Attorneys to train and dedicate staff and resources to the prosecution of these crimes.**

9. Improve Maryland's Foreclosure Process.

- 9.1. Adopt a statute requiring that a lender or mortgage holder may not file an Order to Docket commencing a foreclosure action until 90 days from the borrower's default.**
- 9.2. Adopt a statute requiring that a Notice of Intent to Foreclose be sent to the borrower by certified and first class mail 45 days prior to the filing of an Order to Docket in a foreclosure action and that the sending of the Notice be a prerequisite to filing any foreclosure action in Maryland.**
- 9.3. Require the Court to send a uniform Notice of Order to Docket to the borrower and to the address of the residential property in foreclosure and include in the notice the date certain after which the foreclosure sale may be held.**
- 9.4. Extend and codify the time before which a foreclosure sale may occur to require that a foreclosure sale may not occur until 45 days after the Order to Docket is filed.**
- 9.5. Reduce the number of times notice of the foreclosure sale must be published in a newspaper from three to one time.**
- 9.6. 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.**

Appendix A: Work Group Participants

FINANCIAL RESOURCES

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The Honorable Doyle Niemann, House of Delegates
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Adam Ortiz, Special Assistant to the Secretary, DLLR
Dave Pulford, President, Maryland Mortgage Bankers Association
Joanna Smith-Ramani, Director, Maryland CASH Campaign & Chair, Baltimore Homeownership Preservation Coalition
Sally Scott, Ph.D., Program Manager, Baltimore Neighborhood Collaborative
Robert J. Strupp, Director of Research and Policy, Community Law Center
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Delegate Catherine Pugh, House of Delegates
David Pulford, President, Maryland Mortgage Bankers Association (MMBA)
Lisa R. Ransom, Vice President, Federal Affairs, Senior Legislative Associate, State Affairs
April Richardson, Esq., Bernstein & Feldman, P.A.
Phillip Robinson, Executive Director and Attorney, Civil Justice, Inc.
Joseph Rooney, Deputy Commissioner, Division of Financial Regulation, DLLR
Susan Russell, Office of Policy Analysis, Senate Judicial Proceedings Committee
Tony Salazar, Provident Bank
Vicki Schultz, Office of the Secretary, DLLR
Thomas Shaner, Executive Director, Maryland Association of Mortgage Brokers
Robert J. Strupp, Director of Research and Policy, Community Law Center
The Honorable Michael L. Vaughn, House of Delegates, District 24

Appendix B: List of Resources

(CD format)

Defining the Problem Resources

1. *Total Property Foreclosure Events in Maryland – Second Quarter 2007*
Maryland Department of Housing and Community Development (DHCD) Office of Research (2007)
2. *There Goes the Neighborhood: The Effect of Single Family Mortgage Foreclosures on Property Values*
Immergluck and Smith – The Woodstock Institute (2005)
3. *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom*
Apgar and Duda – Homeownership Preservation Foundation (2005)
http://www.995hope.org/content/pdf/Apgar_Duda_Study_Short_Version.pdf
4. *The Impact of Single Family Mortgage Foreclosures on Neighborhood Crime*
Immergluck and Smith – Housing Studies, Volume 21, Number 6 (2006)

Financial Resources Work Group Resources

5. *Baltimore Emergency Loan Program Fact Sheet*
Baltimore Community Lending
6. *Ohio Foreclosure Prevention Task Force – Final Report*
Ohio Foreclosure Prevention Task Force (September 10, 2007)
7. *Ohio Foreclosure Prevention Initiative*
NeighborWorks
8. *Homeowner's Emergency Mortgage Assistance Program (HEMAP) Overview*
Pennsylvania Housing Finance Agency
9. *Baltimore Homeownership Preservation Coalition (BHPC) Overview*
Baltimore Homeownership Preservation Coalition
10. *Foreclosure Prevention Loan Products*
Neighborhood Housing Services of Baltimore, Inc. (May 11, 2007)
11. *Subprime Market Update, Maryland Subprime Statistics*
UBS Investment Bank
12. *Foreclosure Avoidance Research*
Freddie Mac (2005)

Education and Outreach Work Group Resources

13. *Massachusetts' Report of the Mortgage Summit Working Groups – Recommended Solutions to Prevent Foreclosures and to Ensure Massachusetts Consumers Maintain the Dream of Homeownership*
State of Massachusetts (April 11, 2007)
14. *Baltimore Homeownership Preservation Coalition (BHPC) Overview*
Baltimore Homeownership Preservation Coalition [Refer to item no. 9 listed above]
15. *HOPE Housing Counselor Map*
Maryland Department of Housing and Community Development (DHCD) Division of Neighborhood Revitalization

Legal and Regulatory Reform Work Group Resources

Licensing

16. *Maryland Finder's Fee Act*
Md. Code Ann. Comm. Law §12-801 et seq.
Applies to brokers brokering loans in Maryland and requires Brokers to execute a Broker's Agreement.
17. *Maryland Mortgage Lenders Law*
Md. Code Ann Financial Institutions § 11-501 et seq.
18. *Minnesota House File No. 1004, amending Minnesota Statutes chapter 58, effective date 8/1/07*
State of Minnesota House of Representatives
Fiduciary Duty Standard imposed on brokers.
19. *North Carolina Session Law 2007 – 352, Senate Bill 185/House Bill 1817, effective date 1/1/08*
General Assembly of North Carolina
Broker's Duty to show transaction is "Reasonably Advantageous" to the borrower considering all the circumstances.
20. *Ohio Senate Bill 185 – Mortgage Broker Registration Act, effective date 1/1/07*
General Assembly of the State of Ohio
Broker/Lender's Duty of Good Faith and Fair Dealing.
21. *Tangible Net Benefit Standard Table Imposed on Brokers by State Mortgage Broker Registration Act (2006)*
22. *Statement of Net Benefit*
State of North Carolina
Brokers are required to complete statement in each loan transaction.
23. *Code of Ethics*
The Maryland Association of Mortgage Brokers (2007)

Lending

24. *Federal Interagency Guidance on Nontraditional Mortgage Product Risks*
Federal Register Vol. 71, No. 192 (October 4, 2006)
25. *Federal Interagency Guidance on Subprime Mortgage Lending*
Federal Register Vol. 72, No. 131 (July 10, 2007)
26. *Guidance on Nontraditional Mortgage Products*
Conference of State Bank Supervisors (CSBS) and American Association of Residential Mortgage Regulators (AARMR)
27. *Statement on Subprime Lending*
CSBS, AARMR, and National Association of Consumer Credit Administrators (NACCA)
28. *Colorado Senate Bill 07-216 – CONCERNING ADDITIONAL CONSUMER PROTECTIONS IN RESIDENTIAL MORTGAGE LOAN TRANSACTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH (Revised Statutes, 12-61-910.4)*
General Assembly of the State of Colorado
Statute giving authority to the Banking Board to promulgate regulations implementing federal guidance
29. *Ohio Senate Bill 185 – Mortgage Broker Registration Act, effective date 1/1/07*
General Assembly of the State of Ohio [**Refer to item no. 20 listed above**]
30. *North Carolina Session Law 2007 – 352, Senate Bill 185/House Bill 1817, effective date 1/1/08*
General Assembly of North Carolina [**Refer to item no. 19 listed above**]
Law applies to subprime loans and includes provisions that require examination of ability to repay, verification of income, disclosure of lowest priced fix rate loan where an ARM is offered, and bans pre-payment penalties.

31. *Maine State Legislature L.D. 1869 – An Act to Protect Maine Homeowners from Predatory Lending, effective date 1/1/08*
Maine State Legislature
Law requires lenders to consider ability to repay and, in the case of ARMs, at the fully indexed rate, verify income and, for high-cost loans, bans pre-payment penalties.
32. *Minnesota House File No. 1004, amending Minnesota Statutes chapter 58, effective date 8/1/07*
State of Minnesota House of Representatives
For all home loans; lenders must consider ability to repay at the fully indexed rate for ARMs, obtain verification of income, disclose taxes and insurance if not escrowed and, for subprime loans, the law bans prepayment penalties. [Refer to item no. 18 listed above]
33. *Grid on Guidance – Lending Issues*
Maryland Bankers Association (September 19, 2007)
34. *Illustrations of Consumer Information for Nontraditional Mortgage Products*
Federal Register Vol. 72, No. 110 (June 8, 2007)
35. *Proposed Illustrations of Consumer Information for Subprime Mortgage Lending*
Federal Register Vol. 72, No. 156 (August 14, 2007)

Fraud and Foreclosure Rescue Scams

36. *Maryland Protection of Homeowners in Foreclosure Act (PHIFA)*
Md. Code Ann. Real Property Article § 7-301 et seq.
37. *Maryland Mortgage Lenders Law*
Md. Code Ann Financial Institutions § 11-517 and § 11-523
38. *Georgia Fraud Statute*
Ga. Code Ann. §16-8-100 et seq.
Includes provisions for forfeiture and restitution.
39. *Minnesota Fraud Statute, Minnesota Statutes 2006, H.F. No. 931, adding section 58.19*
Fraud Statute that includes enhanced penalties for “vulnerable persons.”
40. *State of New York Comp. Codes R & Regs., Title 3, proposed part 414, Mortgage Fraud Reporting*
New York State Banking Department
Requires mortgage lenders and originators to report instances of mortgage fraud to the Banking Department.
41. *State of Texas Legislature 2007 House Bill 716 – AN ACT relating to mortgage fraud; providing criminal penalties, effective date 9/1/07*
State of Texas Legislature
Requires a person who determines or reasonably suspects fraudulent activity in connection with mortgage fraud to report it to an authorized governmental agency including the Attorney General and the Commissioner of Banking.

Foreclosure Process

42. Md. Code Ann. Real Property Article § 7-105 et seq.
43. *Massachusetts House Bill 4085 – An Act Implementing the Division of Banks Mortgage Summit Recommendations, June 2007 proposed*
General Court of the Commonwealth of Massachusetts
Requires that a uniform Notice of Intent to Foreclose be sent 90 days before filing for foreclosure. The Notice must include fact of default, that foreclosure can be filed after the period, the contact information of all involved (servicer, assignee, mortgage company, etc.) and resources for assistance. During the 90-day period, no further fees or penalties accrue for purposes of reinstating the loan.
44. *Protecting Homeownership: The Challenge of Preventing Abusive Lending and Foreclosure Practices – A Study of Maryland Predatory Lending & Foreclosure Laws*
Maryland Consumer Rights Coalition (October 2006)

Appendix C: Comments from Participants

The draft task force report was sent to Task Force members and Work Group participants for review and comment prior to finalizing the report for submission to the Governor. Six organizations submitted comments regarding the substance of the report while other groups and individuals submitted edits of the text. A summation of the comments appears below. To see the submitted comments in their entirety, please visit www.dllr.state.md.us or www.mdhousing.org and click on the link to the Governor’s Task Force on Homeownership Preservation Report. The Secretaries thank those who took the time to read, consider and comment on the draft report.

Civil Justice, Inc.

Civil Justice, Inc. submitted a memo regarding changes to the foreclosure process to be considered by the task force. The memo addresses the rights of the homeowner in a foreclosure proceeding. Civil Justice argues: 1) that the homeowner should have a right to appeal and not be barred *per se* for mootness after ratification of sale; 2) that there be a formula established for the calculation of the appeal bond; 3) that there be established certain bright line “good faith defenses” that will entitle the homeowner to a hearing and a discussion of those affirmative defenses; and 4) for the creation of a presumption shifting the burden of proof when homeowners raise good faith defenses in a foreclosure proceeding. Civil Justice diverges from the enhanced notice recommended by the task force and argues that notice must be reasonably calculated to inform the homeowner of a pending foreclosure sale. Notice, it is argued, should begin with several attempts at personal service followed by posting or other means of notification.

Community Law Center (CLC)

The Community Law Center (CLC) argues that the need for immediate funding sources to assist homeowners in distress is a crucial component of foreclosure prevention as is the expansion of education and counseling resources. CLC argues that more funding and staffing is necessary to investigate and prosecute fraud and abusive practices, particularly among foreclosure “consultants” involved in foreclosure rescue scams, and ensure enforcement of the laws. CLC detailed the costs associated with foreclosure that justify the allocation of greater resources for assistance and enforcement that will avoid those long-term actual and societal costs.

Maryland Association of Mortgage Brokers (MAMB)

MAMB fully agrees with the net tangible benefit analysis but notes that it pertains to refinances and not initial purchases. MAMB also believes that the new standards of care proposed for brokers by the task force should apply not just to brokers, but to all those financial institutions that can be regulated by the state, such as state-chartered banks and non-bank lending entities.

Maryland Bankers Association (MBA)

The Maryland Bankers Association appreciated the process and the framework going forward which the recommendations establish. However, on the matter of data, they asked for clarification and definition of the term “foreclosure event”. Further, they cited MBA data which differed from *RealtyTrac* data for the same periods being measured. While both sources show increases, the MBA data shows an annual increase in the foreclosure rate of 64percent from

Second Quarter 2006 to Second Quarter 2007, compared with *RealtyTrac* data which shows a 344percent increase in foreclosure events for the same period.

Additionally, the MBA believes the report should be clear that the recommended changes pertain to residential foreclosures, a term which will require definition. While they support the consensus recommendation to adopt the federal Guidance and Statement, they believe the report should note that the list of issues articulated below should be taken together and not as stand-alone provisions. They also believe the private right of action under the criminal mortgage fraud statute needs clarification.

Mid-Atlantic Financial Services Association, Inc. (MFSA)

The MFSA generally supports the recommendations of the task force and believes they reflect a meaningful effort to address problems, but MFSA reserves comment and judgment on the specific legislation and/or regulation that will follow. On the narrative section, MFSA believed the analysis of the causes of the problem were oversimplified and argued for changes regarding the causal link between foreclosure and crime and the role of race and ethnicity to the problem. Further, MFSA took issue with the paradigm shift as a cause of the problem and argued, conversely, that the development of the secondary market enhanced the option of accessing products at one's local financial institution and vastly expanded homeownership; the negatives of that paradigm shift, they argue, were "more in the nature of side-effects."

As to the recommendations, MFSA argues that the existing Mortgage Lending Law provides the Commissioner with broad investigatory, examination and enforcement authority; the real need is to increase the resources available and particularly the funding for the Office of the Commissioner of Financial Regulation to enhance enforcement. Further, MFSA believes there is adequate ability to track originating brokers and/or lenders and argues against separating licenses for brokers and lenders as costly and unnecessary to achieve the stated goals. MFSA supports the "good faith and fair dealing" standard recommended, but believes more clear guidance is needed to determine how to document the "benefit" of the reasonable net tangible benefit standard. MFSA argues for adoption of the guidelines, but against the characterization of binding arbitration as a hardship; calculating utilities as part of ability to pay; and further restriction on pre-payment penalties. MFSA supports early disclosure, but is uncertain if the financing agreement is the appropriate vehicle. While MFSA does not oppose the mortgage fraud statute, they strongly support greater enforcement. They do oppose, however, a Notice of Intent to Foreclose as a pre-requisite to filing foreclosure. Finally, MFSA wants any foreclosure reform to be applicable to owner-occupied and not investor properties.

St. Ambrose Housing Aid Center, Inc. (St. Ambrose)

St. Ambrose contends that the report as it pertains to Recommendation 9.2 does not accurately reflect the discussion on the Notice of Intent to Foreclose. St. Ambrose does not believe there was consensus on the length of time for providing this specific notice. St. Ambrose argued that the Notice of Intent to Foreclose be sent 90-days prior to filing a foreclosure action. Further, St. Ambrose, in addition to a 90-day period, favors a statute modeled after the Massachusetts law, which provides for no accrual of fees and penalties for purposes of reinstatement during the notice period; that the notice be uniform with specific information; and that it be sent via certified and first class mail.