

Statement of

The Honorable Chuck Grassley

United States Senator
Iowa
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STATEMENT OF SENATOR CHUCK
GRASSLEY FOR JUDICIARY
ADMINISTRATIVE OVERSIGHT AND THE
COURTS SUBCOMMITTEE HEARING ON
ABUSIVE MORTGAGE PRACTICES IN
BANKRUPTCY, MAY 6, 2008

Thank you, Chairman Schumer and Ranking Member Sessions, for holding this hearing today. We've seen quite a few news reports about abusive and questionable practices by mortgage servicers, lenders and their attorneys during bankruptcy proceedings. Furthermore, the U.S. Trustee program has filed allegations in bankruptcy court that certain mortgage servicing companies and their attorneys have submitted inaccurate court documents, and charged fees against debtors that were undisclosed and/or impermissible under the terms of the loan contract or other applicable law. I do think the legal processes need to work themselves through. Many of these charges are still being litigated in court, and the U.S.

Trustee is still investigating others. Certainly the home mortgage lending and servicing system is complex and we need to understand it better. But there are enough cases where bankruptcy judges have ruled against the mortgage servicers, mortgage lenders and their attorneys, to lead me to believe that Congress needs to be looking very closely at whether the bankruptcy laws provide adequate protection against these abuses and whether we should be beefing up our laws against these practices. Congress needs to determine whether there is a deliberate effort on the part of mortgage service companies, mortgage lenders and their lawyers to engage in wrongdoing, or whether there is a widespread pattern or practice of negligence and sloppiness. If the evidence establishes that the conduct of mortgage servicers, lenders and lawyers has been deliberate and intentional, then perhaps

Congress needs to further enhance penalties and tighten up creditor filing requirements. If the evidence shows that mortgage servicing companies, lenders and lawyers have been highly negligent and sloppy, Congress needs to figure out how to promote responsible behavior while recognizing that a negligent pattern of conduct can become intentional if the bad actors are given an opportunity to change their ways and they don't. I'm in favor of more disclosure when it makes sense and doesn't confuse the situation even more. Moreover, I'm in favor of more disclosure if innocent debtors are helped and wrongdoing by creditors is exposed. I'm also in favor of imposing additional penalties to deter abusive and predatory behavior, especially if there is widespread abuse of the system.

I'm pleased that the U.S. Trustee has been aggressive about investigating and pursuing allegations of abuse and wrongdoing, be it by creditors, debtors, or bankruptcy attorneys working for either side. I'm particularly pleased by the actions of the U.S. Trustee to protect debtors who are on the verge of losing their homes in bankruptcy because of sleazy tactics and opportunistic misconduct by creditors and their lawyers.

One of the main goals of the bankruptcy reform law we passed in 2005 was to shore up the integrity of the bankruptcy system. I think that the U. S. Trustee's efforts at conducting more oversight of the accuracy of bankruptcy filings is a good thing for the bankruptcy system, for the public, and for borrowers and lenders.

Another goal of the 2005 bankruptcy reform law was to make the bankruptcy system more fair - to require people who can repay their debts do just that, repay their debts, while maintaining a safety net for those debtors who don't have

an ability to repay their debts. However, if creditors are taking advantage of the system, and are fraudulently and intentionally ripping off innocent debtors who are trying to get a fresh start in bankruptcy and who are playing by the rules, well, that is unfair and we need to put a stop to it. If creditor lawyers file inaccurate papers and are sloppy, and debtors are trapped into a foreclosure on their homes, that's unacceptable. I believe that the bankruptcy law contains provisions that already prohibit and punish this kind of activity, but I'm certainly open to hearing whether we need to beef up our laws to protect debtors who are being preyed on as they try to find relief in bankruptcy.

So I look forward to hearing testimony from the witnesses here today. In particular, I'd like to welcome Associate Professor Katherine Porter from Iowa University Law School, who is here to discuss her recent research paper, Misbehavior and Mistake in Bankruptcy Mortgage Claims. I think this is a very valuable study about what is going on relative to mortgage claims in bankruptcy. As an aside, Ms. Porter was an intern in my office back in 1994 while she was in college, and staff who worked with her remember her fondly. Welcome back to Washington, DC, Katie.

Chairman Schumer, again thank you for holding this hearing. I have a number of conflicting appointments this afternoon, so I'll have to leave the hearing early. However, I intend to review the record carefully and may submit written questions to the witnesses.