

Statement of

The Honorable Charles E. Schumer

United States Senator
New York
May 6, 2008

Senator Charles E. Schumer
Senate Judiciary Subcommittee on Administrative Oversight and the Courts

Opening Statement

May 6, 2008

Over the past year, we have heard much about the questionable lending practices that have harmed homeowners, roiled Wall Street, and stalled the economy - especially the ways that greedy lenders preyed on borrowers with subprime loans that many did not understand and could not afford.

What is far less known is the way that unscrupulous mortgage lenders and servicers have mistreated some of those same borrowers a second time - when they're down and out and at their most vulnerable - in bankruptcy.

There is a disturbing pattern of piling on that we need to get to the bottom of.

So today, I want to pull the curtain back on a hidden corner of the mortgage crisis.

As bankruptcies swell and defaults rise and revenue streams dry up, I fear a vulture mentality is developing in some quarters.

And that vulture mentality threatens to turn the dream of home ownership into an even worse nightmare than it has been for many already.

A homeowner is down on her luck and is forced to file for bankruptcy. She successfully completes a repayment plan to keep her home through Chapter 13 protection. There has been no foreclosure because she has rationally tried to keep her home, through a Chapter 13 workout.

But she then receives word that she owes more money on her mortgage than on the day she filed for bankruptcy or has to fight off foreclosure even though she has been making payments like clockwork.

How does this happen? How are these companies able to prey on homeowners with such impunity?

As Professor Kate Porter - who is a witness here today - has meticulously documented, they do it through a maze of dubious and undocumented fees.

All too often these charges are inflated, duplicative, or made-up. Just as often, they are undocumented, undisclosed, and just plain unlawful. They include:

Late fees
Demand fees

Overnight delivery fees
Fax fees
Payoff statement fees
Property inspection fees; and
Legal service fees

This is death by a thousand fees.

And the companies know that the hapless homeowner is too poor, too unsophisticated or too overwhelmed to challenge often blatantly fraudulent demands for payment.

Lest anyone think I am exaggerating the problem, consider the record.

As Judge Joel B. Rosenthal has noted, an increasing number of lenders, "in their rush to foreclose, haphazardly fail to comply with even the most basic legal requirements of the bankruptcy system."

The catalogue of alleged misconduct is too long to list in full detail here, but companies have:

repeatedly sought to foreclose on homes where owners were current on payments;
sought attorneys fees in bankruptcy court for motions that they have lost; and
failed to keep even the most basic records to justify their claims in bankruptcy court.

Consider some of the stories that are unfortunately becoming routine in this lesser known corner of the subprime crisis:

In the case of Sharon Diane Hill in Pittsburgh, Countrywide has admitted fabricating documents to wring dubious payments from a homeowner in bankruptcy.

Judge Thomas P. Agresti, had this to say about Countrywide's alleged fabrication of letters: "These letters are a smoking gun that something is not right in the state of Denmark."

In the case of John and Robin Atchley, Countrywide twice wrongly tried to foreclose on their home when they were actually current on their payments.

In that case, the Regional Trustee for the Atlanta area wrote in a brief that "Countrywide's failure to ensure the accuracy of its pleadings and accounts in [the Atchley] case is not an isolated incident."

Indeed, Countrywide today says problems exist in only a small number - maybe 1% of their case (or about 650 of the 65,000 cases Countrywide has in bankruptcy). But court records seem to tell a dramatically different story.

In just one judicial district alone - the Western District of Pennsylvania alone - the Trustee is so concerned, he is looking at 300 cases involving trouble with Countrywide.

Given that fact alone, the 1 percent numbers seems dubious, to say the least.

But the questionable behavior is by no means limited to Countrywide. Unfortunately, it seems dubious practices may span the loan servicing industry:

Consider the case of Jacalyn Nosek in Massachusetts, who desperately tried to save her home by diligently paying off her debts over five years in Chapter 13.

But Ameriquest, the company servicing her loan botched receipt of her payments so badly, they practically ruined her credit and made it impossible for her to refinance.

Said Ms. Nosek of how she was treated: "I felt like somebody hit me in the stomach . . . and you know, sucker-punched me . . . I became tremendously depressed, and really since then I haven't been able to get my feet under me."

The Court agreed with that assessment and sanctioned Ameriquest to the tune of \$500,000 in punitive damages and \$250,000 for emotional distress.

In the case of Pearl Maxwell, an 83-year-old Massachusetts woman with limited education, Fairbanks Capital Corporation took advantage of her by repeatedly demanding payments from her that she didn't owe. The bankruptcy court lambasted the company's conduct, calling it "egregious and inexcusable."

In another case, in the Northern District of Texas, a company filed a proof of claim that it was owed more than \$1 million, when the principal balance on the note was only \$60,000.

The list goes on and on.

And the bad behavior is not even limited to mortgage companies. Law firms also have gotten into the act.

For instance, one federal bankruptcy judge has criticized what he called a "corrosive assembly line culture of practicing law."

Another bankruptcy judge had this to say: "Above all else, what kind of culture condones its lawyers lying to the court and then retreating to the office hoping that the Court will forget about the whole matter?"

We invited a law firm to testify about its practices, but it refused, claiming over-broadly that the attorney client privilege prevented its appearance.

I hope today we can begin to get to the bottom of this practice of piling on.

To be sure, there is some good news.

The United States Trustee program has launched a series of investigations into these practices, as we will hear about today.

Judges are finally starting to hold these firms accountable.

And now, Congress will play its part.

My message to unscrupulous lenders and servicers should be heard loud and clear: Congress will no longer countenance this vulture mentality.

We will not stand for the continued abuse of homeowners who have worked hard and played by the rules of bankruptcy - only to have their homes and credit ratings and livelihoods threatened by misconduct at the hands of greedy corporations who made poor bets in the first place.

Given the record, I think the burden has shifted to these mortgage companies to demonstrate that their bad practices do not form an intentional pattern or deliberate business strategy.

There are too many horror stories, too many investigations, too many sanctions imposed for us to simply take the word of a company spokesman that "mistakes were made" and that they were few in number. We need a thorough and public accounting of industry practices.

Let me make a point on Countrywide here. I've always wondered why Bank of America - a fine institution with a good reputation - was willing to purchase Countrywide, given its recent history, and I understand that there has been encouragement by the financial regulators to make this transaction happen.

These latest revelations should make Bank of America think even harder about how they want to proceed with the deal.

If it turns out that the purchase price for Countrywide was based in part on profits from these bad practices, Bank of America should demand a lower price, because these practices will not be allowed to continue.

As we go forward, we will look closely at any and all solutions to these problems.

Do we need better deterrence? Stiffer penalties? More robust disclosures?

We will consider any and all such options. I look forward to hearing from all of our witnesses.

I now recognize Senator Sessions for an opening statement.