

**TESTIMONY OF MASSACHUSETTS ATTORNEY GENERAL MARTHA COAKLEY**  
**COMMITTEE ON FINANCIAL SERVICES SUBCOMMITTEE ON HOUSING AND**  
**COMMUNITY OPPORTUNITY**

**Wednesday, May 6, 2009**

**Foreclosure Rescue Fraud Legislation is Vital to the Protection of Vulnerable Homeowners**

Good morning Chairwoman Waters and members of the Subcommittee. My name is Martha Coakley and I serve as Attorney General of the Commonwealth of Massachusetts. Thank you for giving me the opportunity to testify on H.R. 1231 and the important issue of protecting homeowners from loan modification and foreclosure rescue fraud. While I have some concerns about H.R. 1231 as originally filed, I support the amendment offered by Congresswoman Gwen Moore, and urge you to adopt it so that consumers will be further protected from foreclosure rescue fraud.

**Our office is working diligently to combat predatory lending practices.**

The Massachusetts Attorney General's Office is committed to combating predatory lending practices that have become prevalent during the mortgage foreclosure crisis that has gripped our nation. In Massachusetts, as in many parts of the country, we have experienced a dramatic surge in home mortgage foreclosures, due in large measure to unsound and predatory lending practices. Many foreclosures and delinquencies have resulted from loan practices and products that were destined to fail because lenders departed from the bedrock lending principle that one should reasonably assess the borrower's ability to repay before lending money.

In response, our office has sought accountability through regulation, litigation and other advocacy. In June 2007, our office enacted emergency regulations which govern mortgage lenders and mortgage brokers in Massachusetts in order to prevent predatory lending. These regulations

significantly extended the applicability of the regulations to purchase-money and refinance mortgage loans, and have been effective in protecting consumers in this area.

We have also brought enforcement actions against subprime lenders who promoted and originated risky loans, mortgage professionals who engaged in loan application fraud, and attorneys, brokers, and loan modification assistance companies who have preyed upon homeowners facing foreclosure. For example, our office filed suit against two major subprime lenders—Fremont Investment & Loan/Fremont General, and H&R Block/Option One Mortgage Corporation for predatory lending practices. In both actions, we obtained injunctions that restricted foreclosures on certain loans that were considered doomed to foreclosure because of the specific combination of ultra risky loan features that the lenders used in marketing these loans to consumers. In the Fremont case, the Massachusetts Supreme Judicial Court upheld the trial court’s injunctive order, and the concept that it is an unfair trade practice to sell mortgage loans that require borrowers to refinance when the terms and conditions of the loan make refinancing virtually impossible to obtain, absent a perpetual increase in home values. In addition, we brought enforcement actions against mortgage professionals who engaged in loan application fraud, and other loan origination misconduct.

**Our office is also working to protect consumers from foreclosure rescue schemes that have resulted from predatory lending practices.**

Congresswoman Moore’s amendment to H.R. 1231 will be a vital tool for law enforcement in combating foreclosure rescue schemes. As the proliferation of risky loan practices led to skyrocketing foreclosure rates, Massachusetts saw increasing numbers of homeowners targeted by unscrupulous parties trying to capitalize upon the foreclosure crisis. This fraudulent activity includes: 1) those attempting to convince desperate homeowners to transfer ownership of their homes, and 2) those charging upfront fees with a faulty promise to help homeowners obtain loan modifications.

These foreclosure relief fraud schemes can result in a homeowner losing money and in some instances, even their home. The first scheme involves a person or business that claims to be able to assist consumers facing foreclosure by promising replacement mortgage financing. When the foreclosure is imminent, however, the rescue schemer convinces the homeowner that they must convey their property to another purchaser in order to “save” their homes. As part of the scheme, the scam artist then arranges a mortgage loan in the name of a “straw” buyer. The real homeowner remains in the home for a period of time and pays rent, with a promise that they can re-acquire the home at a certain date in the future. Inevitably, the promise of maintaining home ownership is illusory and homeowners eventually lose their home to the so-called “rescuer.” Even more tragic, however, is that whatever equity the homeowner once had in the property is often stripped away in the process and paid to the rescuer or some other third party. Our office has brought several enforcement actions to stop this type of foreclosure relief scheme.

The second most common type of scheme involves companies seeking to make a quick profit by claiming to help consumers obtain loan modifications. These companies reach out to desperate homeowners with promises to save their homes, and dramatically lower their interest rates. In Massachusetts, we have seen these entities advertising through mail, email, unsolicited telephone calls to homeowners, as well as through the newspaper, television, and radio. The advertisements often overstate guarantees, promising to save the home with a near 100% rate of success, or to achieve a loan modification with a new, eye-catching low rate. They often make false claims of affiliation with a government program, or claim to have lawyers on staff to aid the homeowner. Most alarming, these entities often solicit an upfront fee—ranging anywhere from one to several thousands of dollars.

**The amendment to H.R. 1231 protects consumers against foreclosure rescue fraud.**

In order to guard against those foreclosure consultants who are not reputable, our office enacted regulations to protect consumers against foreclosure rescue fraud. In June, 2007, we issued emergency regulations, which became final in August 2007. The regulations prohibit various unfair and deceptive acts, including: offering or carrying out predatory, for-profit foreclosure rescue transactions that result in the transfer of interest in the property; the solicitation or acceptance of an advance fee in connection with offering or providing services to help a homeowner avoid foreclosure; and the advertisement of foreclosure rescue services without clearly and conspicuously disclosing the precise services offered by the promoter and how the promoter will assist persons to avoid foreclosure.

Upon enactment of these regulations, our office brought several enforcement actions against companies and individuals who were preying upon homeowners facing foreclosure by engaging in conduct prohibited by the Massachusetts regulations. In December 2008, my office brought an enforcement action against an individual who was offering to help homeowners save their homes from foreclosure by assisting them in filing for bankruptcy in exchange for a \$1,000 cash upfront fee. In many instances, the bankruptcy petitions were deficient and dismissed because they were incomplete or lacked the proper information. Our office obtained a preliminary injunction prohibiting the individual from contacting individuals to offer foreclosure related services or assisting individuals with filing for bankruptcy.

Our office also recently filed two cases against companies that were soliciting Massachusetts homeowners with misleading promises to save homes from foreclosure, and were soliciting and accepting illegal advance fees, in violation of our regulations. One such case against Express Modifications, Inc., involved a company running full-page advertisements, in Boston and New York newspapers, offering the services of a company they called “Loan Mods By Lawyers” to

save homes from foreclosure. The company demanded up front fees of \$1,500 to assist homeowners in obtaining loan modifications and had no attorneys on staff. Upon filing our action against Express Modifications, we obtained a Temporary Restraining Order against the company enjoining its fraudulent foreclosure rescue activities. Shortly thereafter, we filed a Consent Judgment, which permanently enjoined the company from future operations in Massachusetts, and required the company to pay \$7,300 in restitution to Massachusetts homeowners and \$25,000 in civil penalties.

In combating these abuses, the Massachusetts regulations have been a vital enforcement tool. However, each week our office learns of new abuses stemming from the foreclosure crisis, many of them coming from outside of the state. As a result, H.R. 1231, as amended, is necessary to stop those who seek to benefit from the misfortune of others during this crisis.

As originally filed, H.R. 1231 raises several concerns. For example, it exempts both attorneys and real estate brokers from the definition of foreclosure consultant, thereby exempting them from the limitations designed to protect the property and security of homeowners. This is problematic because our enforcement actions have demonstrated that some attorneys and real estate brokers are participating in the type of unscrupulous conduct that this legislation is designed to prevent. While a competent and ethical attorney can be a valuable asset to a homeowner trying to avoid foreclosure, attorneys should be held to the same standards as any other parties in being proscribed from transferring property to themselves, or charging upfront or excessive fees for foreclosure rescue services.

We support the amendment to H.R. 1231 because it eliminates these exemptions, and still allows attorneys to collect an advance fee or retainer for legal fees in connection with the preparation and filing of a bankruptcy petition or court proceedings to avoid a foreclosure. This

language is similar to our state regulations which we have seen to be quite successful in curtailing this fraudulent activity. In addition, unlike the original bill, the amendment includes language addressing loan modifications, short refinancing and repayment plans in the scope of services performed by a “foreclosure consultant.” Making this type of activity subject to the legislation is critical because our office has seen a noticeable increase in the amount of fraudulent activity involving these forms of mortgage rescue activities.

If enacted, the amendment to H.R. 1231 will serve an important role in combating the types of fraud I have outlined in my testimony. First, the amendment prohibits foreclosure consultants from acquiring any interest, directly or indirectly, in the residence of a homeowner with whom the foreclosure consultant has contracted. With appropriate enforcement, this provision should protect homeowners from the scams I addressed previously, that are aimed at transferring the home into the hands of the fraudsters.

Second, the amendment outlaws the collection of advance fees that have become so prevalent, by requiring, in Section 703(a)(1) that foreclosure consultants fully perform their services before they may demand or collect a fee. That section provides further, important protection, by stating that a fee cannot be collected at all if the end result of the service is that the homeowner’s monthly mortgage payment has *increased*.

In addition, I respectfully recommend the amendment be further revised to reduce the allowable fees foreclosure consultants may charge. As drafted, section 703(a)(2) of the amendment, permits a fee equal to the greater of 1 percent of the principal outstanding balance on the property, or the sum of two monthly mortgage payments. Our experience has shown us that the second prong will often be the greater of the two. As such, if a homeowner facing foreclosure is unable to make their monthly mortgage payments, or is in imminent danger of falling behind on their mortgage

payments, we are concerned they will be likewise unable to afford to pay a fee equal to two months' payment, which in some instances, may be as much as six thousand dollars. This places the homeowner even further in financial straits, when it is intended to aid them in obtaining a sustainable loan modification. Given these concerns, we respectfully ask the Subcommittee to consider a more reasonable cap on fees.

Lastly, the amendment gives states the authority to bring an action under the federal law, or to enforce state laws which provide equal or greater protection, without preemption. This is critical, and we look forward to working with the federal government to utilize all the tools at our disposal, to protect homeowners from these disturbing trends.

**Meaningful loan modifications continue to be the cornerstone in addressing the mortgage foreclosure crisis.**

I continue to assert, and have done so in front of Congress on several occasions, that a significant portion of foreclosures should be avoided through loan modifications. However, most homeowners should be able to obtain a loan modification without having to hire someone to assist them or paying an upfront fee. Based on evidence our office has seen over the past several months, not all lenders and servicers are engaging in meaningful loan modifications, using a net present value analysis, in order to arrive at an affordable monthly payment for the homeowner. Additionally, we are hearing from distressed homeowners that inadequate staffing by the loan servicers has led to ineffective management of call volumes, poor customer service and ultimately in many instances, deficient loan modifications or none at all. This is significant because if servicers improved their customer service, fewer homeowners would feel the need to reach out to some of these third party entities for assistance in saving their homes from foreclosure.

Homeowners are facing mounting challenges as the foreclosure crisis continues and increased fraudulent rescue schemes emerge. This proposed legislation is an important step towards

providing solutions to these challenges and ending this fraudulent conduct. If H.R. 1231, as amended, is enacted, those who seek to prey upon vulnerable homeowners with unscrupulous conduct will be held accountable for their fraudulent behavior. Thank you for the opportunity to be heard on this critical matter, and we look forward to continuing to work with the Subcommittee on this important issue.