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TESTIMONY OF MARTIN O'MALLEY

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On

THE FORECLOSURE CRISIS

MORTGAGE SERVICING ABUSE AND MARYLAND'S FORECLOSURE PREVENTION EFFORTS

Before the

House Committee on Oversight and Government Reform

United States Congress

March 8, 2011

Baltimore Field Hearing

Chairman Issa, Ranking Member Cummings, Members of the Committee:

Welcome to the Greatest City in America. We are honored to host you in Maryland for this field hearing, and grateful that you've chosen to address the critically important issue of protecting homeownership.

In order for our country to win the global competition for jobs and opportunity, we must curtail the national foreclosure crisis. It has been suggested that there is no more powerful place than a family's home. Homeownership is the bedrock of a strong, growing, upwardly mobile middle class – and it is more important now than ever before, as we make this turn into a changing new economy.

This is one of those challenges that we can only hope to tackle together. Private citizens, private companies, and governments at every level have a role to play.

And all of us share a stake in the outcome. The loss of even one home impacts not just an entire family, but entire neighborhoods, communities, cities, and even states. This is a lesson we learned all too well here in the City of Baltimore through decades of population loss, as vacant homes led to vacant neighborhoods – and with them vacant hearts. Reclaiming vacant properties became a critically important part of our strategy for turning around our City and continues to be under the leadership of Mayor Rawlings-Blake.

Today I wanted to share a few of the things we've been doing in the State of Maryland to prevent family homes from becoming vacant houses, and a few of the areas for which we hope to continue to have your help at the federal level.

COMBATING FORECLOSURE IN MARYLAND

While we are by no means out of this crisis in Maryland, our strategies have been delivering results.

According to information from the Maryland Judiciary, in the first half of 2010 there were more than 25,000 foreclosure filings in MD and just 4,000 in the second half of 2010. We attribute this dramatic drop to two issues: the July 1 enactment of Maryland's new Mediation law and subsequent robo-signing scandal that surfaced in the latter half of the year. While the slow down that is attributable to robo-signing is temporary, we are hopeful that the Mediation law is having the desired dampening effect on foreclosure filings. The law substantially increases requirements for lenders to communicate with borrowers prior to foreclosing and to exhaust loss mitigation remedies available before a sale can occur.

But, as you know, too many of our fellow citizens continue to lose their homes. As mortgage companies end their robo-signing moratoriums and give the green light to their attorneys to proceed to foreclosure, we will likely lose even more.

The current foreclosure crisis and nationwide spike in foreclosure activity across the nation saw its origin in a vast surge in subprime lending that proliferated during the housing boom. Between 2000 and 2007, the subprime market share in Maryland climbed from just over 1.5% to almost 12% of all mortgage loans.¹ Loans with higher interest rates and “exotic” options that were originated with little to no verification of a borrower’s ability to repay made up 60% of all foreclosures in Maryland during 2007.²

Today, the face of foreclosure has changed. Homeowners with basic fixed-income mortgages are losing their jobs in the overall economic downturn and, therefore, cannot sustain their mortgage payments. Housing values for all homeowners have tumbled, depleting the wealth that all middle class families need to finance educational choices and a dignified retirement.

As Mayor in Baltimore City, my Administration recognized the importance of sustaining homeownership, not just creating it. We developed one of the first citywide partnerships in the country that brought the City government together with private sector nonprofits and local lenders – the Baltimore Homeownership Preservation Coalition. In early 2006 we began to train and support a network of nonprofit foreclosure prevention counselors and starting in the Fall of 2006 we used the City’s “311” number to connect citizens to the national HOPE Hotline. We used what we learned in the City to expand to a statewide scale.

After becoming Governor in early 2007, my Administration moved quickly to convene the Homeownership Preservation Task Force to develop an action plan to address escalating foreclosure rates and identify legislative and education and outreach strategies to preserve homeownership for Maryland families. The Task Force represented a wide cross section of stakeholders and produced a report that garnered bipartisan support in passing what the *Washington Post* called some of the most “sweeping” legislation in America to combat foreclosure. Between 2008 and 2010, dramatic changes were made to the foreclosure and lending process in Maryland in an effort to bring increased accountability and stability to the market in Maryland, including:

- Credit and lending reform regulation tightened lending standards and strengthened licensing requirements in the mortgage industry that implemented:
 - Ability to repay standard for borrowers
 - Tangible net benefit standard
 - Duty of good faith and fair dealing by mortgage professionals
- The Mortgage Fraud Protection Act created Maryland’s first comprehensive mortgage fraud statute;

¹ Maryland Homeownership Preservation Task Force, November 29, 2007 *available at* <http://www.dhcd.state.md.us/Website/documents/TaskForceReportFinal.pdf>

² Id.

- The Protection of Homeowners in Foreclosure Act which bans foreclosure rescue scams and provides greater protections for distressed homeowners;
- The Foreclosure Law Process Reform Bill reformed the foreclosure process providing homeowners with more time and effective notice before their home is sold;
- The Foreclosure Mediation law introduced mediation in the foreclosure process so that homeowners facing foreclosure have the opportunity to sit, face to face, with the party bringing the foreclosure action and explore all foreclosure alternatives available; and
- The Tenants in Foreclosure law provides greater notice to renters of pending foreclosures against landlords.

Recognizing that improvements to the foreclosure process itself, are not enough to avoid costly losses and preventable foreclosures, my Administration further leveraged the assistance of more than 1,000 *pro bono* attorneys that have been recruited to assist hundreds of vulnerable families. Maryland's HOPE network of 40 non-profit counseling organizations – supported by state and important federal resources – have assisted more than 54,000 Marylanders since the summer of 2007.

This is significant. A December 2010 Urban Institute analysis of the federally funded National Foreclosure Mitigation Counseling (NFMC) Program found that counseled borrowers were:

- Almost twice as likely to cure their foreclosure than non-counseled borrowers
- Received larger payment reductions through loan modifications than non-counseled borrowers (\$267 more a month, totaling \$3,200 in a year)
- Were 45% more likely to remain current on modified loan payments than non-counseled borrowers
- Were 53% more likely to bring their loan current than non-counseled borrowers

In 2010, I signed a new foreclosure mediation law which requires lenders to verify through affidavits that they have made a full review of a household's loss mitigation options. The law also gives homeowners the new right to a face to face meeting with the foreclosing lender. This puts families on a more equal footing with the national mortgage giants by requiring them to come to the settlement table before they can throw another family out on the street.

SERVICER REFORM

As the foreclosure crisis spread, it became abundantly clear that the servicers that had previously acted as a mere pass through channeling payments to investors were ill-equipped and understaffed to respond to the growing ranks of households seeking loss mitigation assistance. Every day since I became Governor in 2007, my office has received phone calls and letters from desperate homeowners who are willing to make whatever sacrifices are necessary in order to keep the family home. Remarkably, years

later, servicer inefficiency and lack of accountability continues to be a major obstacle to achieving sustainable foreclosure alternatives.

I am realistic in recognizing that not every home can be saved and not every foreclosure can be avoided. However, I strongly believe, and my Administration has taken every step to ensure that every preventable foreclosure should be prevented and at the very least, the homeowner making calls to their mortgage servicer should have someone answer the phone and not lose their loss mitigation application. Those eligible for a loan modification should receive a timely loan modification.

The current system is broken. Within a single servicer, there are multiple data systems and procedures for processing requests. There is no consistent single point of entry for submission of loss mitigation request and yet, when following the protocol set-forth by a given servicer, files are still transferred from department to department, documents are misplaced and authorizations expire. While at the same time, late fees and penalties continue to accrue and the file continues on a dual track that leads to foreclosure. To this very day, Maryland consumers consistently report that servicers repeatedly lose paperwork and take extended amounts of time to answer even basic inquiries about their eligibility for a loan modification.

The recent “robo-signing” scandal is a symptom of an industry in crisis. Many in the industry quickly mischaracterized the use of faulty affidavits in the foreclosure process as a mere technicality. This is not the case. I caution that the defective affidavits relied upon by the courts in foreclosure proceedings, as uncovered through the “robo-signing” scandal, are just one more concrete example of the overall failings of the industry.

Simply put, the scandal illustrates another symptom of an industry that needs accountability and transparency in its operations. Mortgage loan servicing is a critical function – linking the homeowner, secured party, escrow agent and insurer and with broader reach imparting direct influence on overall market performance. It is, therefore, critical that the infrastructure at these institutions is strong, with strong incentives for increased efficiency, sufficient internal controls and accountability in operations. Timely customer service must be a goal that is tracked, not something that matters only when an elected official such as Congressman Cummings or me brings a case to a lender’s attention.

This is not to say that the issue of the faulty “robo-signing” affidavits used in the foreclosure process should not be addressed -- the underlying operations that resulted in this practice cannot be ignored. When news of the “robo-signing” scandal broke this past fall, my Administration took swift action:

- On October 4th, I jointly issued a letter to the major servicers covering the majority of the Maryland market with Congressman Cummings and Maryland Attorney General Gansler requesting a stay of foreclosure proceedings until each servicer could provide assurance of the validity of the process undergone;

- Commissioner of Financial Regulation Mark Kaufman sent letters to Maryland licensed servicers on October 5th requesting the same;
- On October 9th, with the support of the Maryland Congressional Delegation, I asked Chief Judge Bell, the chief judge of Maryland's highest court, for court intervention, to ensure fair practices in the foreclosure process. The Judiciary responded immediately and adopted emergency rules providing that if the court has reason to suspect that any affidavit filed in a foreclosure may be invalid because of affiant's lack of sufficient knowledge of the facts stated in the affidavit, the court may decline to accept or may strike the affidavit and may order the party to show cause why the action should not be dismissed or other relief granted;

On October 13th, the Administration took a leadership role in the national initiative for coordinated multi-state review of foreclosure procedures at major servicers nationwide that includes all 50 state attorneys general and 37 state banking commissions led by Iowa Attorney General Tom Miller. Commissioner Kaufman, as a member of the Executive Committee of the Multi-State Mortgage Committee, a group of regulators from 10 states that coordinates the efforts of all 50 states, has been an active participant in this initiative. You will hear additional details from Commissioner Kaufman on the status of the examinations currently under way.

My Administration, through the Office of the Commissioner of Financial Regulation in Maryland's Department of Labor, Licensing and Regulation, will continue to work on a coordinated multi-state solution of servicing abuses with the state attorneys general under Iowa Attorney General Tom Miller's leadership. We are aiming for specific reforms and standards to ensure a healthy and functioning housing market. It is important to note that because this investigation is currently underway, I am limited in commenting on the specific work of the multi-state group.

FEDERAL ACTION

We are several years into this crisis and servicers are still without the basic systems in place to keep track of paperwork and provide timely responses to the loan modification applications of consumers; it still takes months and months to process loan modifications. We are doing everything we can at the State level to protect homeowners and hold the national mortgage giants' feet to the fire. But we can't go it alone or fight this battle with a hand tied behind our back. The federal government, as you know, has jurisdiction over the largest national banks. We need your help in holding them accountable – and on other fronts in this battle:

1. We favor the creation of clear and specific national servicing standards which will hold the mortgage giants accountable that includes offering loss-mitigation workouts under certain circumstances, providing incentives for foreclosure avoidance, establishing adequate internal controls and appropriate monitoring;

2. With Americans continuing to lose their homes, now is not the time to slash the investments we make in Housing Counseling, which is the most cost effective way to empower our most vulnerable homeowners with the tools and know-how to save their homes;
3. Don't dismantle the imperfect, yet critically important, Home Affordable Modification Program. This would in effect dismantle the ability of homeowners in every part of our country to save their homes with affordable and sustainable loan modifications. According to the latest monthly HAMP report from the U.S. Treasury, Maryland, permanent HAMP modifications are steadily rising, from below 5,000 in January of 2010, to just over 22,000 at the end of January 2011. Just as the face of the current foreclosure crisis has evolved, the HAMP program should continue to be shaped and improved to include aggressive loss mitigation, including principal reduction for loans severely underwater;
4. HUD's Emergency Homeowner's Loan Program (EHLP) is threatened to be cut from the budget even before it gets off the ground. More foreclosures are now due to unemployment or underemployment and a program like EHLP is slated to help one thousand or more Marylanders stay in their homes while they seek employment in the recovering economy;
5. We are deeply concerned about proposed deep cuts to Community Development Block Grants and the elimination of the Neighborhood Stabilization Program, which allow us to stabilize neighborhoods we might otherwise lose when homes are lost to foreclosure.

It is critical that Members of Congress do not abandon these programs now, just as we are trying to turn the corner and emerge from the Great Recession.

CONCLUSION

Across our country there are too many families who have worked hard throughout their lives, balancing sometimes two or three jobs – if they are fortunate to be able to find work - only to have the rug pulled out from under them during this Great Recession. As a country, we must commit to strengthening and stabilizing our middle class to ensure an America that not only competes globally but is rooted locally, with a strong foundation from which our future generations can grow. Now is the time to make that commitment rather than walk away from the problem. In Maryland, we have made the commitment and will continue to do our part to require transparency in the foreclosure process. For the reasons stated above, families across the nation need the same commitment from their representatives in Congress.

Thank you again for tackling this most important issue, for traveling to Maryland, and for giving me the opportunity to speak to you today. I look forward to continuing to work with you towards a national solution to the current crisis.