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FINAL REPORT
PREDATORY LENDING STUDY GROUP
FOR ATTORNEY GENERAL LORI SWANSON

January 2007

Introduction

In December 2006, Attorney General Lori Swanson appointed a Study Group to propose legislation to help address the problem of abusive and unfair mortgage lending in Minnesota. The Study Group consisted of state legislators, businesses (including community bankers involved in mortgage lending) and representatives of non-profit organizations with experience assisting Minnesota homeowners victimized by predatory lending. The first half of this report describes the extraordinary increase in home foreclosures in Minnesota, the lending practices examined by the Study Group that are substantially responsible for this increase, and current Minnesota law regulating home mortgage lending. The second part of this report details the legislation proposed by the Study Group to address these problems.

Part I: Imprudent and Unfair Home Lending Practices in Minnesota

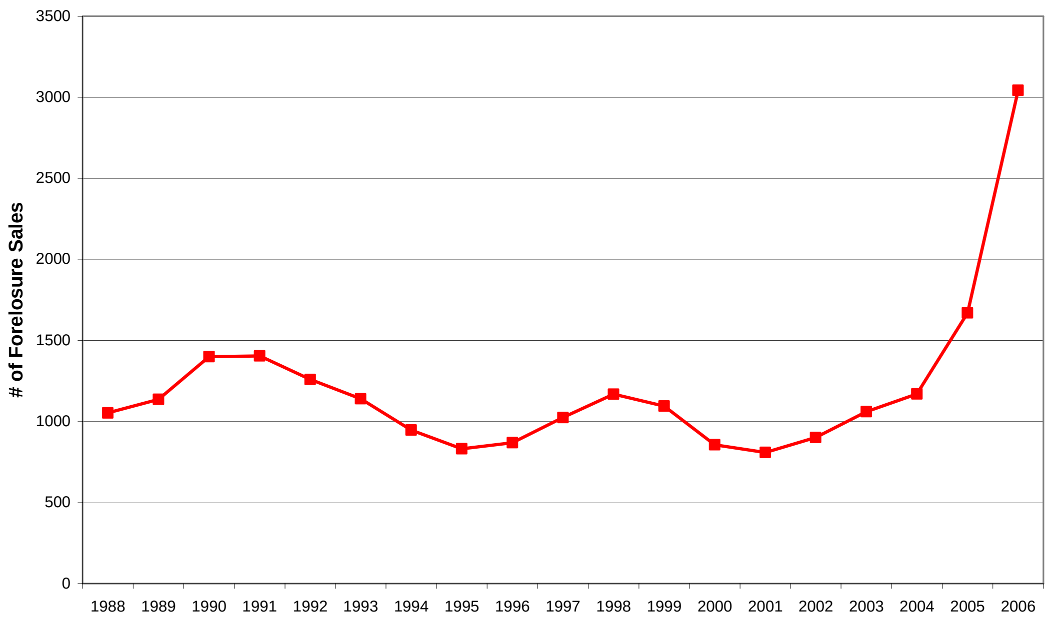
Steep Rise in Foreclosures

A rapid rise in home foreclosures, and a fear that foreclosure rates will accelerate even further, has been national news. *See, e.g.,* Kristin Downey, *A Dim Forecast for Risky Mortgages: Study Predicts Rising Foreclosure Rates on High-Interest Loans*, Washington Post (December 20, 2006); Ruth Simon and James Haggerty, *More Borrowers With Risky Loans Are Falling Behind: Subprime Mortgages Surged As Housing Market Soared; Now, Delinquencies Mount*, Wall Street Journal (December 5, 2006). Minnesota, which often closely tracks national housing trends, is experiencing this sharp rise in home foreclosures.

There is no reliable statewide data on the exact number of foreclosures, but county level data in the Twin Cities area confirm that the foreclosure problem is better described as an explosion than an increase. In Hennepin County, the number of sheriff foreclosure sales[1] over the last 20 years has been within about 30% of 1,100 foreclosure sales per year until 2005. As the following three graphs indicate, the number of home foreclosures soared in 2005 and 2006 at a rate without precedent in the modern era. More troubling, this rise occurred at a time when underlying economic data, such as interest rates and unemployment, suggest no market explanation for such an explosion. Some of the explanation lies in mortgage lending practices, as described below.

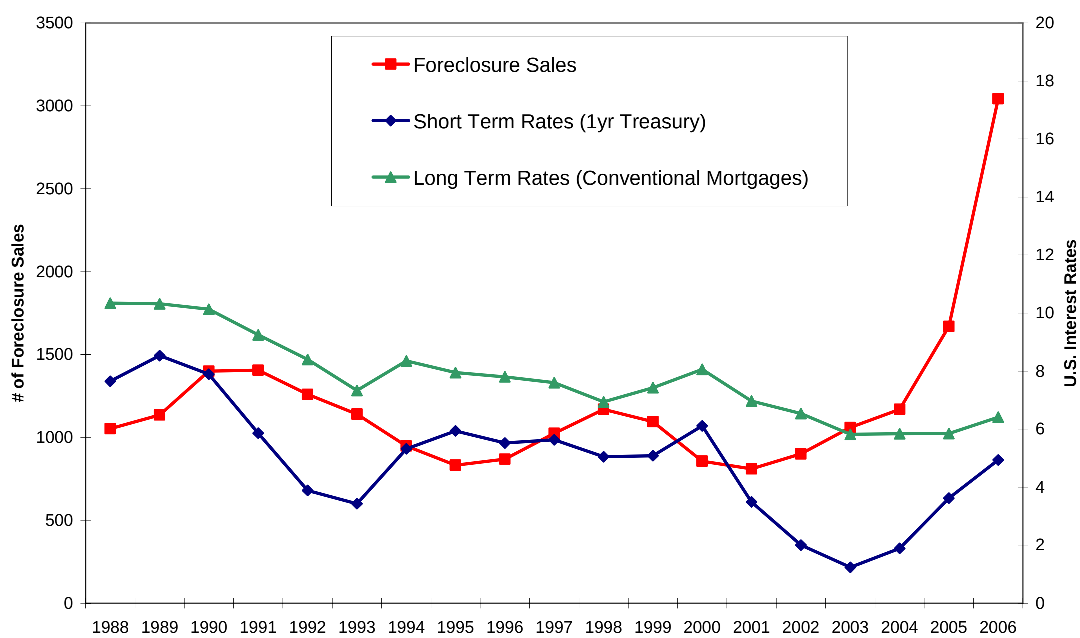
[1] Foreclosure in Minnesota occurs in two stages. In the first stage, the homeowner can "reinstate" the loan by making the overdue payments along with paying some additional costs. If the homeowner does not successfully reinstate the loan, this stage ends in the sheriff foreclosure sale, after which the homeowner generally has six months to "redeem" the home by paying the full amount of the mortgage.

Hennepin County Foreclosures, 1988-2006

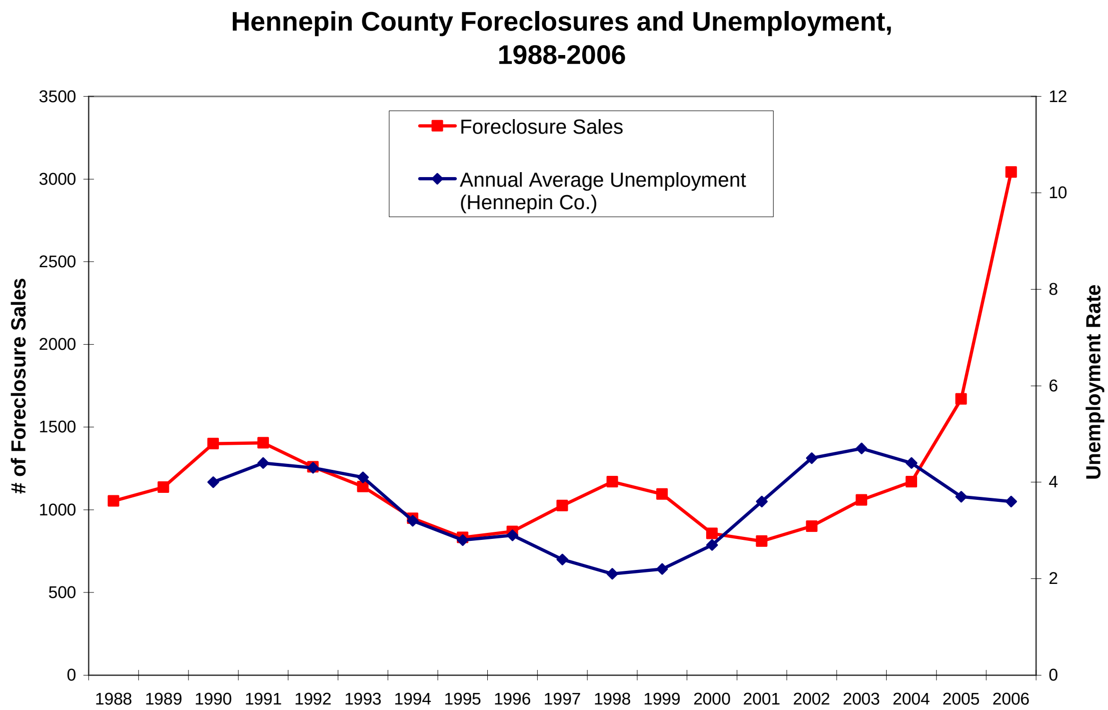


Source: Data from Hennepin County Sheriff's Office

Hennepin County Foreclosures and U.S. Interest Rates, 1988-2006

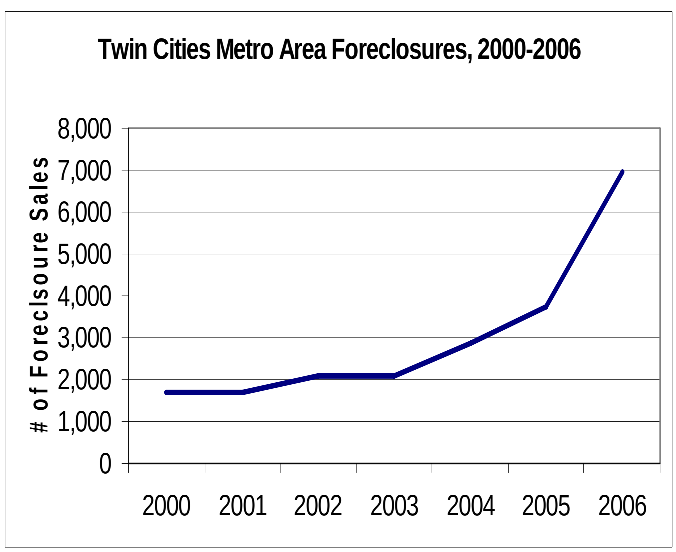


Source: Data from Hennepin County Sheriff's Office and Federal Reserve Board.



Source: Data from Hennepin County Sheriff's Office, US Bureau of Labor Statistics and Minnesota Department of Employment and Economic Development.

Other Twin Cities area counties have experienced a foreclosure explosion almost identical to that in Hennepin County, as the following graph shows:



Source: Data from Saint Paul Pioneer Press.[2]

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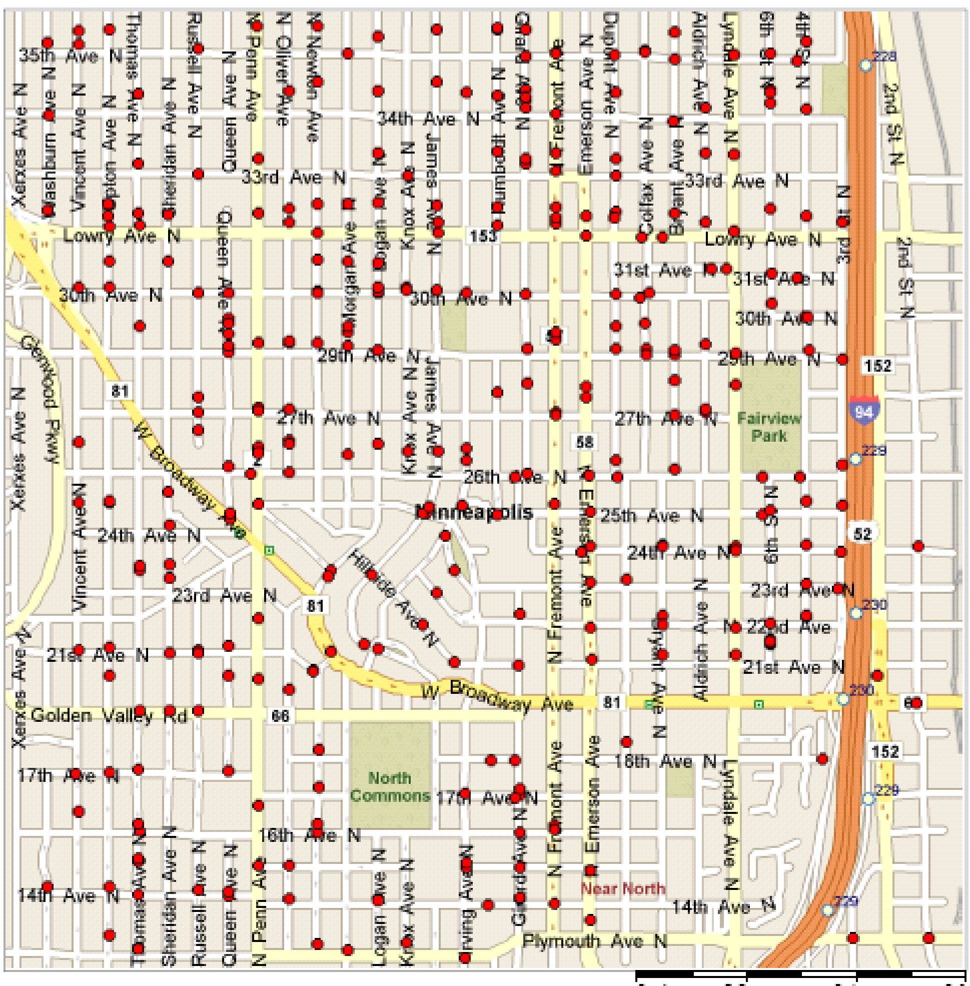
[2] Ramsey County numbers for 2000 are estimated based on metro area change from 2000 to 2001. Anoka County and Carver County numbers for all of 2006 are estimated based on data through October 2006.

Attached as an Exhibit to this report are graphs showing the rise in sheriff foreclosure sales from 2000 to 2006 for each of the metropolitan area counties other than Hennepin County.

In parts of Minneapolis and Saint Paul, the foreclosure problem is already inflicting community damage. Some core city neighborhoods have experienced visible blight related to high foreclosure levels. Jackie Crosby, et. al., *Twin Cities Troubled by Multiplying Foreclosures*, StarTribune (November 25, 2006) ("Home foreclosures in Minneapolis and St. Paul are rising at a rate that is beginning to alarm officials in both cities and threatening to destabilize some neighborhoods."). The following map of the near north side of Minneapolis shows the density of homes in foreclosure as of December 8, 2006:



Source: Community Planning and Economic Development, City of Minneapolis

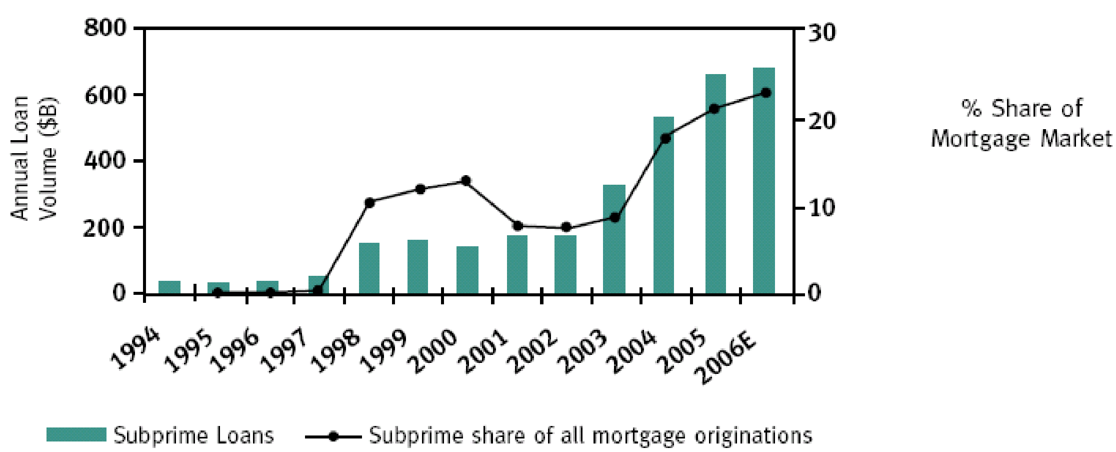
When foreclosures rise to the extent and concentration seen in these neighborhoods, the problem can move from individual tragedy to self-reinforcing blight in the community.

Jennifer Bjorhus, a Pioneer Press reporter, has written a series of articles in the last year examining the increase in foreclosures in Minnesota and the consequences for families and communities. *See, e.g.,*Jennifer Bjorhus, *Foreclosure Threat Reaches the Burbs*, St. Paul Pioneer Press (December 3, 2006). Several studies have described the characteristics of Minnesota home loans that enter foreclosure.[3]

Unfortunately, the problem may become worse in the near future. A large number of adjustable rate mortgages are on schedule to reset to higher monthly payment amounts in 2007, thus putting pressure on a substantially higher number of homeowners.

<u>Problems Associated with Subprime Lending</u>

The most important fact driving the problem of predatory lending is the extraordinary growth of subprime lending over the last decade. Subprime loans are made to borrowers with impaired credit. Ten years ago subprime mortgage lending constituted a negligible share of the mortgage lending market. By 2006, subprime loans had exploded almost twenty times in absolute dollar volume and now account for more than 20% of all new mortgage loans nationwide.



Source: Center for Responsible Lending

While subprime lending serves the important function of providing access to capital for those with impaired credit, it has been linked to unfair, deceptive and lax lending practices that result in extremely high rates of foreclosure. A recent report by the Center for Responsible Lending (CRL) describes in detail the rise of subprime lending and the clear link between subprime lending and foreclosures. *Losing Ground: Foreclosures in the Subprime Market and Their Cost to*

[3] Additional data on metro area or state level foreclosures can be in the following studies:
Jeff Crump, Center for Urban and Regional Affairs, http://www.cura.umn.edu/reporter/05-Spr/Crump.pdf
Center for Responsible Lending, *infra* p.5 (Appendix 5)
Ninth Federal Reserve Bank District, http://www.minneapolisfed.org/pubs/cd/06-4/foreclosure.cfm
Macalester Geography Dept., http://www.macalester.edu/geography/projects/courses/geog365/index.htm.

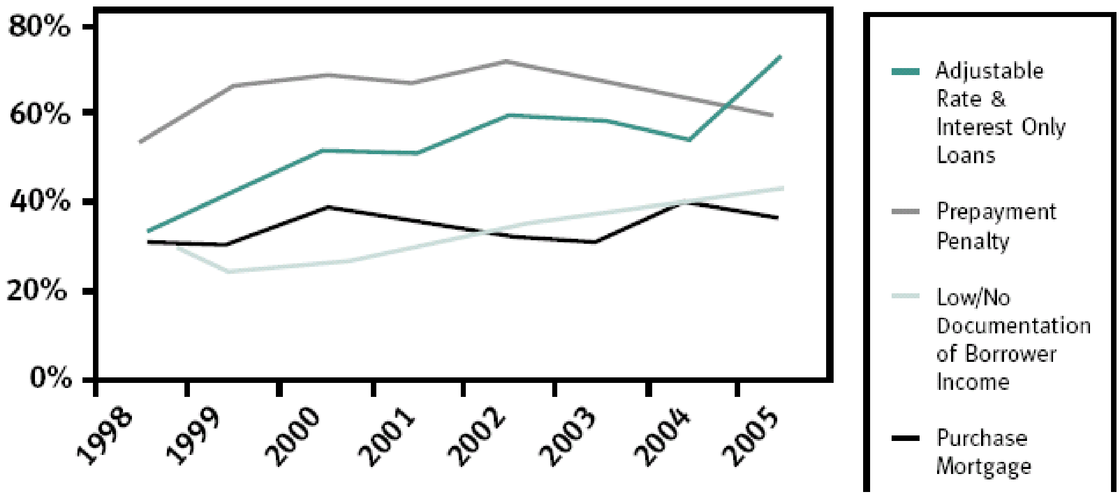
Homeowners (December 2006) (available at: http://www.responsiblelending.org/pdfs/FC-paper-12-19-new-cover-1.pdf).

The CRL study also raises the serious concern that recent subprime loans are far riskier than subprime loans of just a few years ago. The study concludes that: "Subprime loans originated in 2002 have a one in ten chance of foreclosing. For loans originated in 2005 and 2006, the probability shoots up to one in five." The study also describes the widely-held concern that the foreclosure problem will worsen if housing prices stagnate or decline.

The identification by many reputable Minnesota lenders and mortgage counselors of predatory lending problems in the home lending market, and the subprime market in particular, is consistent with the CRL Report and with the conduct uncovered in actions filed by the Minnesota Attorney General's Office.

First, there are problems associated with equity-based lending—lending based on the equity in the home rather than the borrower's repayment ability. Subprime lenders have too often made loans without verifying the ability of the borrower to pay for the loans. Many of these subprime loans are "no doc" loans, a mortgage product once confined to a very limited number of self-employed borrowers and that allows borrowers to obtain loans without any documentation of ability to make the payments. Subprime lending also has been associated with falsely inflated appraisals that increase the principal amount of the loan and leave the borrower owing more than the market value of the home.

Second, recent mortgage lending practices have resulted in many unsuitable or inappropriately risky loans. Heavy reliance on adjustable rate and interest-only loans, loans with negative amortization and other non-traditional mortgage products are a matter of concern throughout the mortgage lending industry. An interagency report of federal banking regulators recently issued a report and "guidance" to banks regarding problems in use of these loans. Interagency Guidance on Nontraditional Mortgage Product Risks (2006) (available at: http://www.federalreserve.gov/BoardDocs/Press/bcreg/2006/20060929/attachment1.pdf). In the subprime market, adjustable rate and interest-only loans have more than doubled as a percentage of loans, and now are more likely than not features of the borrower's loan, as indicated in the following graph based on nationwide data collected by the Center for Responsible Lending:



Source: Center for Responsible Lending

Finally, subprime mortgage loans have often been characterized by excessive fees and costs, even when adjusting for credit quality. These high costs have been hidden from borrowers by the complexity of the mortgage process and by deceptive practices. A long-standing deceptive sales practice noted by some Study Group members was the quoting of a monthly payment amount to the borrower that excludes escrow payments for taxes and insurance, but which the borrower believes is the same as his or her monthly payment on the existing loan that includes these charges.

Mortgage Lending Regulation in Minnesota

Residential mortgage lenders are known as “mortgage originators” in Minnesota law and are regulated under the Minnesota Residential Mortgage Originators and Servicer Licensing Act, chapter 58 of the Minnesota Statutes. Chapter 58 imposes conduct requirements on mortgage originators, such as mandating the use of trust accounts for client funds and prohibiting false and misleading advertising. Chapter 58 also regulates some mortgage loan terms; for example, section 58.137 places a 5% cap on fees and charges financed as part of the loan amount. Chapter 47 of the Minnesota Statutes contains some other state law regulation of residential mortgages, such as the law governing rate-lock agreements, suspending usury limits on certain mortgages, and cancellation of private mortgage insurance.

There are two types of mortgage originators under chapter 58: *lenders*, companies that provide the money for the loan at closing, and *brokers*, who assist the borrower in obtaining a loan. Nationwide, brokers account for about two-thirds of all mortgage originations. Some lenders also are regulated as banks, savings banks or credit unions under federal or state banking regulations. Mortgage originators who lend under federal financial institution charters currently are exempt from many state law requirements, including some of the rules and limits in chapter 58. Study Group members agreed that closely supervised banks have not been a substantial source of predatory lending problems in Minnesota. Non-bank mortgage brokers and lenders are licensed and regulated under chapter 58 by the Minnesota Department of Commerce.

There was a consensus among Study Group members that chapter 58 was not being effectively enforced by the Commerce Department. Mortgage originators, who engage in fraud and deceptive practices, or who promote imprudent or unsuitable loans for borrowers, have not been deterred by the current pattern of enforcement through the Commerce Department. *See* Bjorhus, Jennifer, *State Can't Keep Up With Mortgage Fraud*: *Homebuyers' Complaints Often Languish With Commerce Department*, St. Paul Pioneer Press (December 24, 2006). The Commerce Department, for example, has been cited by federal authorities for lax regulation of appraisers, including failure to investigate and resolve consumer complaints, such as alleged inflated appraisals. Enhanced Commerce Department enforcement would be very helpful in addressing the predatory lending problem.

Part II: Proposed Legislation

The Study Group suggests changes in Minnesota law to address the identified problems of predatory lending. These changes are not a substitute for strong disciplinary action by the Commerce Department for violations of existing state law. Instead, we offer these proposed changes to level the regulatory burdens between chartered banks and mortgage lenders not subject to periodic examination and strong regulatory supervision, and to implement new homeowner protections in light of the predatory lending problems of recent years.[4]

1. Prudent and Appropriate Lending.

The Study Group was in strong agreement that some lenders have been making loans that are clearly not appropriate for the circumstances of the borrowers, including loans not based on documented income, that contain negative amortization provisions, are part of repeated refinancings without benefit to the borrower, or that have an adjustable rate that the borrower may not be able to afford. The proposed requirement that a borrower's ability to pay be based on the fully indexed rate for adjustable rate loans is consistent with the Interagency Guidance for federally chartered financial institutions. *See* Interagency Guidance on Nontraditional Mortgage Product Risks (2006) at p.20.

Another highly destructive predatory lending tactic is to convince homeowners to refinance loans that contain subsidized and highly favorable terms. For example, many homeowners had no or low-interest rate Habitat for Humanity loans that mortgage originators have convinced homeowners to refinance for terms that are highly disadvantageous.

[4] Proposed new statutory language is underlined. Proposed *deletions* are in italics.

The following proposed language adds new standards of conduct to chapter 58 to address these issues, as well as a general duty of care.

Amend section 58.13 as follows:

Subd. 1. **Generally**. No person acting as a residential mortgage originator or servicer, including a person required to be licensed under this chapter, and no person exempt from the licensing requirements of this chapter under section 58.04, shall: …

<u>(23) make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the principal and interest on the loan, and pay real estate taxes and home insurance. For loans in which the interest rate may vary, the reasonable ability to pay shall be determined based on the maximum monthly payment that could be due during the first seven years of the loan term, which amount shall be calculated with reference to the maximum interest rate allowable under the loan assuming no default by the borrower and assuming a fully indexed rate and a repayment schedule which achieves full amortization over the life of the loan. For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents. A statement by the borrower to the residential mortgage originator or exempt person of the borrower's income and resources is not sufficient to establish the existence of the income or resources when verifying the reasonable ability to pay.</u>

<u>(24) engage in "churning." As used in this section, "churning" means to make, provide, or arrange for a residential mortgage loan to a borrower that refinances an existing residential mortgage loan when the new loan does not benefit the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, the effect of the loan on current and future equity in the home, and the borrower's other financial and life circumstances.</u>

<u>A court must presume that churning has occurred if: (1) the refinanced loan was originated within 24 months preceding the date the new loan was originated; (2) the interest rate on the new loan exceeds the interest rate of the refinanced loan; and (3) the refinanced loan is not in foreclosure or in imminent risk of being in foreclosure. For purposes of determining whether the interest rate of the new loan exceeds the interest rate of the refinanced loan under this provision: (i) in the case of a new loan or a refinanced loan in which the interest rate may vary, the interest rate is determined based on the maximum interest rate allowable under the loan that could be charged during the next five years from the date of origination of the new loan and assuming no default or further default by the borrower; and (ii) in the case of multiple new loans or multiple refinanced loans,</u>

the interest rate is determined by combining the loan balances and required payments. In order to rebut this presumption of churning, the residential mortgage originator or exempt person making the loan must demonstrate by clear and convincing evidence that the borrower received a substantial and definite benefit from the new loan;

(25) make, provide, or arrange for a residential mortgage loan, other than a reverse mortgage pursuant to 15 U.S.C. Chapter 41, if the borrower's compliance with any repayment option offered pursuant to the terms of the loan will result in negative amortization during any six-month period; or

(26) make, provide, or arrange for a residential mortgage loan all or a portion of the proceeds of which are used to fully or partially pay off a "special mortgage" unless the borrower has obtained a written certification from a counselor with a third-party nonprofit or governmental organization approved by the United States Department of Housing and Urban Development or the commissioner that the borrower has received counseling on the advisability of the loan transaction. The commissioner shall maintain a list of approved counseling programs. For purposes of this section "special mortgage" means a residential mortgage loan originated, subsidized, or guaranteed by or through a state, tribal, or local government, or nonprofit organization, that bears one or more of the following nonstandard payment terms which substantially benefit the borrower: (1) payments vary with income; (2) payments of principal or interest are not required or can be deferred under specified conditions; (3) principal or interest is forgivable under specified conditions; or (4) where no interest or an annual interest rate of 2% or less is charged in connection with the loan.

Subd. 1a. **Standard of care.** A residential mortgage originator, in addition to the duties imposed by other statutes or common law, shall: (1) act with reasonable skill, care, and diligence; and (2) act in good faith and with fair dealing in any transaction, practice, or course of business in connection with any residential mortgage loan.

2. Eliminate Waiver of Fiduciary Duty For Brokers.

Mortgage brokers offer the borrower the advantage of shopping with different lenders for the best terms. Mortgage brokers currently can issue a boilerplate waiver that allows them to avoid having a legal obligation to act in the best interest of the borrower when conducting this comparative shopping. The following proposed language prevents brokers from using a disclosure to avoid the fiduciary duty that would otherwise attach to their conduct under chapter 58.

Amend sections 58.15 and 58.16 as follows:

58.15 Disclosure Requirements For Certain Residential Mortgage Originators.

Subd. 1. **Nonagency disclosure.** If a residential mortgage originator or exempt person other than a mortgage broker does not contract or offer to contract to act as an agent of a borrower, or accept an advance fee, it must, within three business days of accepting an application for a residential mortgage loan, provide the borrower with a written disclosure as provided in subdivision 2….

Subd. 4. **Exemption from disclosure requirement.** If the Department of Housing and Urban Development adopts and implements a disclosure requirement *for persons offering mortgage origination services* that the commissioner determines to be substantially similar to the disclosure required in subdivision 2, compliance with the *licensees and exempt persons complying with the* HUD disclosure shall be considered sufficient to satisfy *have complied with* the requirements of subdivision*s 1 and* 2.

58.16 *Residential Mortgage Originators* Mortgage Brokers; Standards Of Conduct For Agency Or Advance Fee Transactions.

Subd. 1. **Compliance.** Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in this state in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower located in this state in obtaining a loan secured by a lien on residential real estate, shall be considered to have created a fiduciary relationship with the borrower and shall comply with the requirements of subdivisions 2 to 7 in addition to any duties imposed upon fiduciaries by statute or common law.

Subd. 1a. **Mortgage Broker Fiduciary Duties.** A mortgage broker shall be considered to have created a fiduciary relationship with the borrower in all cases and shall comply with the duties imposed upon fiduciaries by statute or common law.

3. Criminal Penalty For Knowingly Providing Grossly Unsuitable Loan.

Companies or individuals providing loans that are patently and grossly unsuitable would be liable for criminal penalties under the following new section.

58.19 Criminal Penalties For Grossly Unsuitable Loans

Subd. 1. Definition. For the purpose of this section, "grossly unsuitable" means:

(a) a residential mortgage loan for which the borrower lacked the capacity to repay the interest and principal of the loan, and the real estate taxes and home insurance on the property, at the time the loan was originated; or

(b) a residential mortgage loan made as a result of a loan application that contains materially false or fraudulent information as to the borrower's income, expenses, debts or assets.

Subd. 2. Acts constituting; penalties. Any person who makes a residential mortgage loan, or obtains or assists in obtaining from another person for a borrower a residential mortgage loan, that the person knows is grossly unsuitable for the borrower may be fined not more than $75,000 or imprisoned for up to two years or both. Prosecution or conviction for securing grossly unsuitable loans on behalf of borrowers will not bar prosecution or conviction for any other offenses. These penalties are cumulative to any other remedies or penalties provided by law.
Subd. 3. Additional penalty for crime against a disabled or elderly person. Any person who commits against a senior citizen or disabled person the criminal offense specified in this section may be fined an additional $50,000 or imprisoned for up to two additional years or both. For purposes of this subdivision, "senior citizen" and "disabled person" have the meanings given those terms in section 325F.71, subdivision 1.

4. Prepayment Penalty Prohibition

Prepayment penalties, which are charges to a borrower for refinancing or otherwise paying off the loan prior to maturity, are imposed in a substantial percentage of subprime loans. Prior to 1996, Minnesota banned prepayment penalties on conventional loans. In 1996, Minnesota permitted prepayment penalties within certain limits. In 2002, the provision allowing but limiting prepayment penalties was moved to section 58.137, and the law was amended to allow prepayment penalties for more than the limits if certain disclosures were made to the homeowner. The proposed language below would return Minnesota law to the pre-1996 position of banning prepayment penalties.

Amend section 58.137 as follows:

Subd. 2. **Prepayment penalties.** A residential mortgage originator shall not enter into a residential mortgage loan that contains a provision requiring or permitting the imposition of a penalty, fee, premium or other charge in the event the residential mortgage loan is prepaid in whole or in part. *Delete remainder of section.*

5. 5% Cost Limit: Add Yield Spread Premium And Third Party, Non-Governmental Costs (other than the owner's title insurance cost)

Current law places a 5% cap on fees paid by the borrower to the originator and financed as part of the loan. The fee cap, however, is not applicable to charges paid by the lender to the mortgage broker for providing the borrower a higher interest rate loan based on his or her qualifications under the lender's underwriting criteria. Nor does the fee cap include closing service costs. The following amendment to section 58.137 includes both of these types of charges in the 5% limit.

Amend section 58.137 as follows:

Subd. 1. **Financed interest, points, finance charges, fees, and other charges.** A residential mortgage originator making or modifying a residential mortgage loan to a borrower located in this state must not include in the principal amount of any residential mortgage loan all or any portion of any lender fee in an aggregate amount exceeding five percent of the loan amount. This subdivision shall not apply to residential mortgage loans which are insured or guaranteed by the secretary of housing and urban development or the administrator of veterans affairs or the administrator of the Farmers Home Administration or any successor.

"Lender fee" means interest, points, finance charges, fees, and other charges payable in connection with the residential mortgage loan: (1) by the borrower to any residential mortgage originator or to any assignee of any residential mortgage originator; (2) by the borrower to any third party that is not a residential mortgage originator or an assignee of a residential mortgage originator for appraisal, title insurance or closing services, except for the cost of title insurance for which the borrower is the insured; or (3) by the lender to a mortgage broker. Lender fee does not include: (1) recording fees, mortgage registration taxes, passthroughs, or other amounts that are paid by any person to any government entity or filing office; or *(language deleted)* (2) any amount that is set aside to pay taxes or insurance on any property securing the residential mortgage loan.

"Loan amount" means: (1) for a line of credit, the maximum principal amount of the line of credit; and (2) for any other residential mortgage loan, the principal amount of the residential mortgage loan excluding all interest, points, finance charges, fees, and other charges. A residential mortgage originator shall not charge, receive, or collect any excess financed interest, points, finance charges, fees, or other charges described in this subdivision, or any interest, points, finance charges, fees, or other charges with respect to this excess.

6. Comparable Monthly Payment Quotes

A persistent deceptive practice in the sale of mortgage refinancing loans has been the use of asymmetric monthly payment quotes. Mortgage originators will compare the principal and interest monthly payment on a proposed new loan with the monthly payment on the homeowner's existing mortgage—a payment that includes not only the principal and interest, but also the estimated tax and insurance payments to an escrow account. This practice is especially prevalent in the subprime industry where many lenders do not accept loans with escrow accounts.

Amend section 58.13 as follows:

(27) Whenever the residential mortgage originator informs a borrower, orally or in writing, of the anticipated or actual periodic payment amount for a first-lien residential mortgage loan, the residential mortgage originator must inform the borrower that an additional amount will be due for taxes and insurance and, if known, disclose to the borrower the amount of the anticipated or actual periodic escrow payments. A residential mortgage originator need not make this disclosure concerning a refinancing loan if the residential mortgage originator knows that the borrower's existing loan that is anticipated to be refinanced does not have an escrow account. Compliance with federal laws requiring disclosure of a periodic payment amount constitutes compliance with this paragraph but only for purposes of the particular disclosure required under federal law.

7. Express Private Right Of Action In Chapter 58 And Exemption From Private Enforcement For Chartered Bank Or Credit Union

No legal protection imaginable is of value to consumers unless the law is aggressively enforced. The following section provides an express private right of action for borrowers who have suffered from violations of the central duties in chapter 58.

Add a new section 58.18:

58.18. Private Right of Action.

Subd. 1. **Remedies.** A borrower injured by a violation of the standards, duties, prohibitions or requirements of sections 58.13, 58.136, 58.137 and 58.16 shall have a private right of action and the court shall award:

(1) actual, incidental, and consequential damages;

(2) statutory damages equal to the amount of all lender fees included in the amount of the principal of the residential mortgage loan as defined in section 58.137; and

(3) punitive damages as the court may allow. In determining punitive damages, the court should consider the severity and intentionality of the violation, the number of violations, and whether the violation was part of a pattern and practice of violations; and

(4) court costs and reasonable attorneys' fees.

Subd. 2. **Private Attorney General Statute**. A borrower injured by a violation of the standards, duties, prohibitions or requirements of sections 58.13, 58.136, 58.137 and 58.16 also may bring an action under section 8.31. A private right of action by a borrower under this chapter is in the public interest.

Subd. 3. **Remedies Cumulative**. The remedies provided in this section are cumulative and do not restrict any other right or remedy otherwise available to the borrower.

Subd. 3. **Exemption.** This section does not apply to a residential mortgage loan originated by a federal or state chartered bank, savings bank or credit union.

8. Express Private Right Of Action In Chapter 82B For Fraudulent Appraisals

The problem of appraisers over-valuing property to facilitate imprudently high loans is actionable under existing state law regulating appraisers, chapter 82B. The only express right of action under this law is enforcement by the Department of Commerce. The Department has been under federal scrutiny for its failure to respond to homeowner complaints about inflated appraisals and other matters. *See* Bjorhus, Jennifer, *State Can't Keep Up With Mortgage Fraud*: *Homebuyer's Complaints Often Languish With Commerce Department*, St Paul Pioneer Press (December 24, 2006). The following section provides an express private right of action for homeowners, lenders or others who have suffered from violations of chapter 82B.

Add a new section 82B.24:

58.18. Private Right of Action.

Subd. 1. **Remedies.** Any person injured by a violation of the standards, duties, prohibitions or requirements of sections 82B.20 or 82B.22 shall have a private right of action and the court shall award:

(1) actual, incidental, and consequential damages;

(2) statutory damages of no less than $1,000 nor more than $2,000; and

(3) punitive damages as the court may allow. In determining punitive damages, the court should consider the severity and intentionality of the violation, the number of violations, and whether the violation was part of a pattern and practice of violations; and

(4) court costs and reasonable attorneys' fees.

Subd. 2. **Private Attorney General Statute**. A person injured by a violation of the standards, duties, prohibitions or requirements of sections 58.13, 58.136, 58.137 and 58.16 also may bring an action under section 8.31. A private right of action by a borrower under this chapter is in the public interest.

Subd. 3. **Remedies Cumulative**. The remedies provided in this section are cumulative and do not restrict any other right or remedy otherwise available to the borrower.

Predatory Lending Study Group

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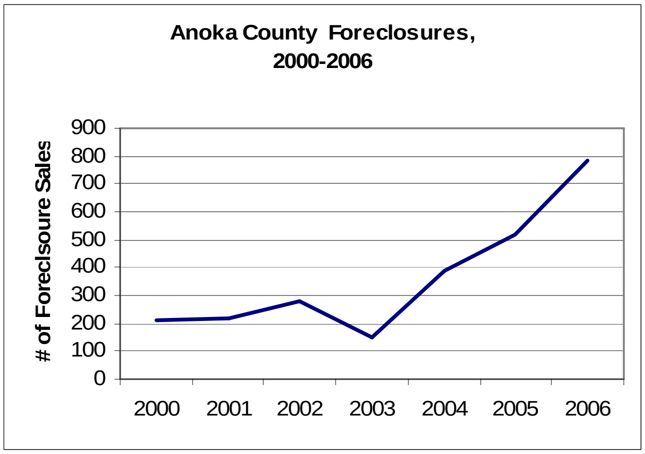
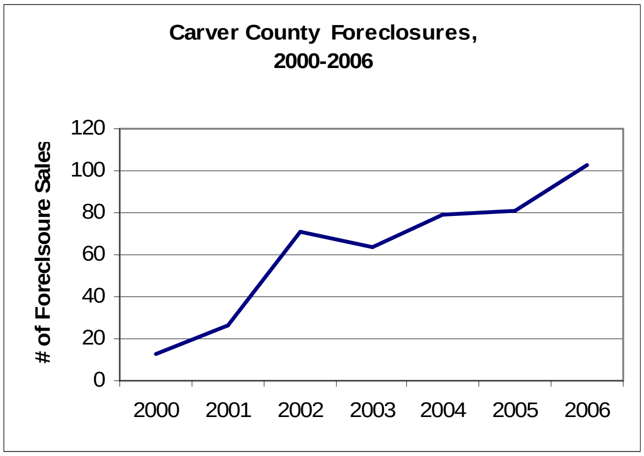
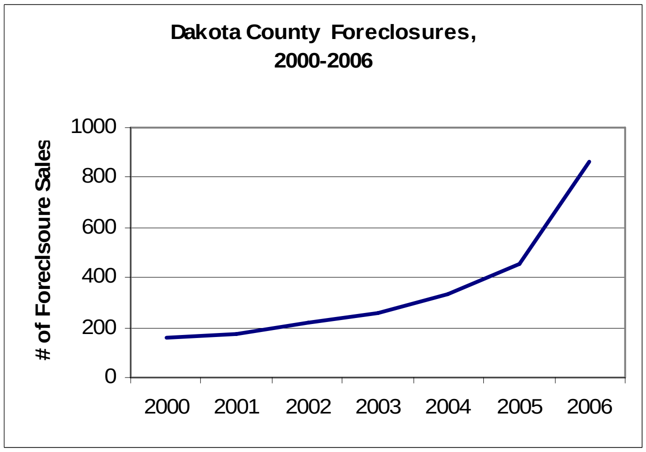
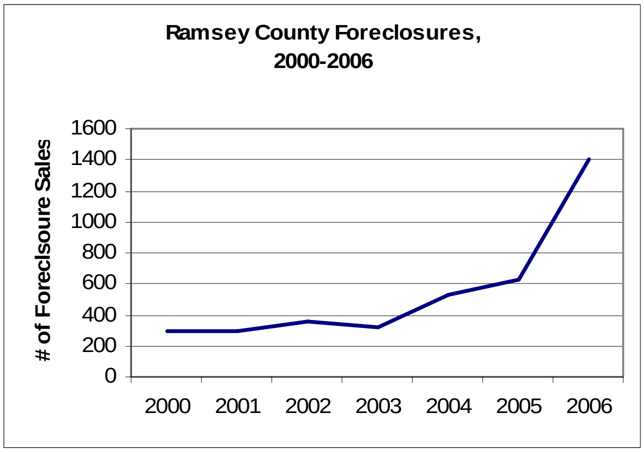
Assistance with graphs depicting Minnesota foreclosure rates provided by Eric Myott, Institute of Race and Poverty, University of Minnesota Law School. Additional staff assistance was provided by Alice Seuffert, Assistant to Senator Linda Higgins and Chris Gorman, Research Assistant, University of Minnesota Law School.

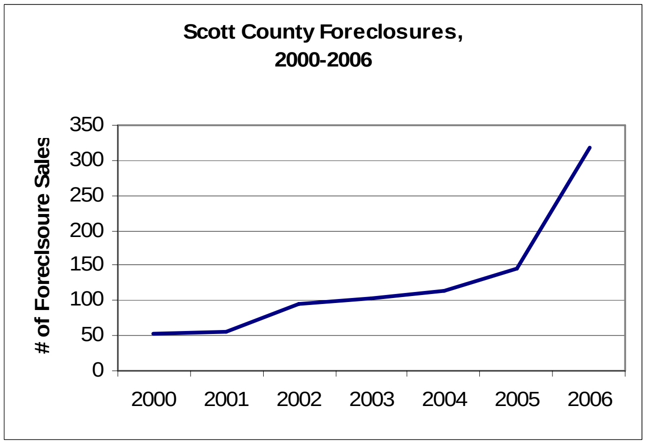
EXHIBIT
Metropolitan Area Foreclosure Rates, 2000-2006[5]

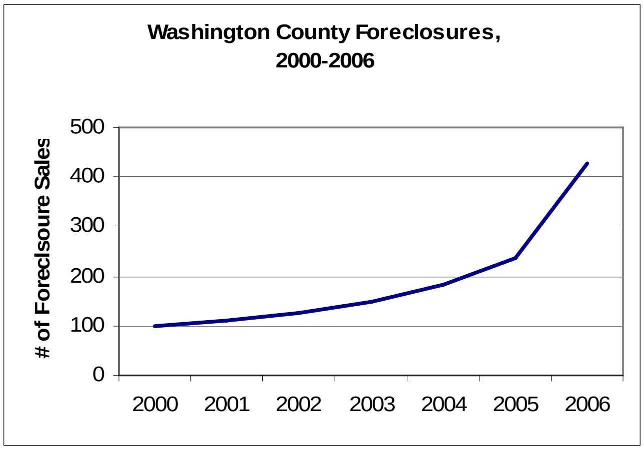












[5] Ramsey County numbers for 2000 are estimated based on metro area change from 2000 to 2001. Anoka County and Carver County numbers for all of 2006 are estimated based on data through October 2006.

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