

Section Three

Washington Task Force For Homeowner Security: Additional comments from Task Force members on how best to address Washington State's mortgage crisis.



Member Comments

The following comments reflect the views of individual members of the Task Force.

The following text is added to the report by the Task Force members who support additional reforms, including the strengthening of the accountability of lenders and mortgage brokers to their customers:

The Task Force has taken significant steps to recognize important ways that lenders and mortgage brokers can provide responsible and fair mortgages. Many of these are listed in the Best Practices sections (III and IV) of the report, as well as in the adoption of guidance on nontraditional and sub-prime mortgages section (VII). Many of our colleagues on the Task Force and throughout the industry voluntarily exercise good lending practices, yet we believe all loan originators should adhere to the same basic standards.

Therefore, we recommend state policymakers should, within the limits of Constitutional law, promulgate regulatory reforms that require sound underwriting practices and full disclosure, eliminate harmful loan products, and enable borrowers to defend against their homes being taken by illegal and unethical practices.

A fundamental component of reform is to require that lenders and mortgage brokers have fiduciary responsibility to their customers. Homeowners have suffered from misplacing their trust in the hands of the minority of mortgage brokers and lenders whose interest is maximizing their profits without regard to the consequences to their customers. As a result, some homeowners who qualified for traditional low cost mortgages have been sold expensive sub prime loan products because of the much larger fees they generated for the brokers. Other homeowners have actually lost their homes through various financing schemes perpetuated by disreputable brokers willing to profit from the homeowner's loss.

While most brokers and lenders watch out for the interests of their customers, unfortunately those that do not may attempt to shield themselves from customer complaints because their duty to customers is limited under Washington law. (See, *Mortgage Brokers in Washington and the Limits of Imposing Fiduciary Duty*, prepared by the Department of Financial Institutions and dated November 15, 2007. See *Addendum* Pages 86-88.) Accordingly, because brokers market their services with the claim that they have products that are in the best interest of homeowners and home buyers, all independent mortgage brokers should have a duty to their customers. More specifically, this duty to Washington homeowners and home buyers should be a fiduciary duty as is the case in California, or the duty should be clearly specified by statutes as it is in Minnesota.

Finally, it is important to note that making it clear that mortgage brokers have a duty to their customers, as is already the case for real estate agents and lawyers, is a tool that can provide increased homeowner security without increased taxes.

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Member Comments continued

The following draft legislation is being submitted by the Washington State Housing Finance Commission. This bill is an example of legislation relevant to Task Force recommendation 4 of subsection 2 (see pages 8 and 13).

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3961.1/08

ATTY/TYPIST: BP:cro

BRIEF DESCRIPTION: Creating a smart homeownership choices program.

AN ACT Relating to a smart homeownership choices program; adding new sections to chapter 43.320 RCW; and making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1)** A new section is added to chapter 43.320 RCW to read as follows:

(1) The smart homeownership choices program is created in the department to prevent predatory lending, prevent foreclosures, and provide prepurchase and postpurchase homeownership education and counseling to low and moderate-income households as defined in RCW 84.14.010.

(2) The Washington state housing finance commission shall administer the program with moneys from the account created in section 2 of this act pursuant to an interagency agreement with the department. The commission may request funds from the department as needed to implement and operate the program.

(3)(a) The Washington state housing finance commission shall provide grants to nonprofit organizations and governmental entities that have experience providing prehomeownership and posthomeownership education and counseling to low and moderate-income persons for the

purpose of preventing predatory lending, preventing foreclosures, and promoting responsible and successful homeownership activities in their local communities. A priority for grants must be given to organizations and governmental entities serving minority and multilingual communities. Moneys may also be used by the commission, under terms and conditions to be determined by the commission, to assist homeowners who are delinquent on their mortgage payments to bring their mortgage payments current in order to become eligible to refinance into a different loan product. Moneys may also be used for outreach activities to raise awareness of this program. Not more than four percent of the total appropriation for this program may be used for administrative expenses of the department and the commission.

(b) Amounts appropriated from the state general fund for deposit into the account created in section 2 of this act may only be used to serve low-income households as defined in RCW 84.14.010. Contributions for the program from private and other nonstate sources may be used to serve both low and moderate-income households as defined in RCW 84.14.010.

(4) The Washington state housing finance commission must provide an annual report to the legislature at the end of each fiscal year of program operation. The report must include performance measures, including measures to gauge program efficiency and effectiveness and customer satisfaction. The report must also include information including: The total number of households served; the percentage of program participants who successfully purchased homes; information on the terms of financing obtained by program participant homebuyers; information about participant homebuyers who receive housing finance assistance from the federal or state government or the commission; the number of program participants that elected not to purchase homes; the number of program participants seeking help to resolve mortgage delinquency; the number of program participants that successfully avoided foreclosure; and the number of program participants who refinanced a home, including information on the terms of both the new loan product and the product out of which the homeowner refinanced.

NEW SECTION. **Sec. 2)** A new section is added to chapter 43.320 RCW to read as follows:

The smart homeownership choices program account is created in the custody of the state treasurer. All receipts from the amounts appropriated for the smart homeownership choices program created in section 1 of this act and all receipts from private contributions and other sources that are specifically designated for the program must be deposited into the account. Expenditures from the account may be used solely for the purpose of preventing predatory lending, preventing foreclosures, and providing homeownership education and counseling through the smart homeownership choices program as described in section 1 of this act. Only the director of the department of financial institutions or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 3)** The sum of one million six hundred thousand dollars is appropriated for the fiscal year ending June 30, 2008, from the general fund solely for deposit in the smart homeownership choices program account created in section 2 of this act for the purposes of this act.