



**For Immediate Release
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**MADIGAN ANNOUNCES COMPREHENSIVE STRATEGY TO
ADDRESS LOOMING HOME FORECLOSURE CRISIS IN ILLINOIS**

***Plan Includes Two Statewide Summits, Legislation to Enhance
Homeowners' Foreclosure Rights and Tighten Controls on Brokers and
Lenders***

Chicago—With tens of thousands of Illinoisans poised to lose their homes in the collapse of the subprime mortgage industry, Attorney General Lisa Madigan today called for a coordinated statewide effort to assist homeowners facing foreclosure and curb abuses in the mortgage lending industry.

“We are in a crisis of potentially large proportions,” said Madigan, noting that foreclosure filings statewide jumped 55 percent in 2006, totaling 72,455, and are projected to spike even higher in 2007. “As the outlook for many Illinois homeowners turns grim, it is critical that everyone with a stake in the problem—state and local government, lenders, regulators, and housing advocates—come together *now* to implement solutions. We cannot allow the gains in homeownership over the past 15 years in low and moderate income communities to be lost.”

Madigan will spearhead a statewide strategy that includes working with State Representative Dan Burke to pass legislation to enhance protections for already and soon-to-be homeowners in foreclosure and to impose duties on mortgage lenders and brokers to ensure future borrowers have the ability to repay their loans and keep their homes. Additionally, Madigan will convene two statewide summits, one to develop a blue print for expanding financial assistance for homeowners trapped in bad loans, the other to coordinate legal assistance resources for homeowners in distress.

Madigan is working with Rep. Burke to introduce the legislation during the current session and plans to convene the two summits this spring and summer. “It is critical that we take action now to enact comprehensive legislation to protect Illinois families from foreclosures,” said Rep. Dan Burke. “I am looking forward to working to pass meaningful reforms that will prevent families from losing their homes.”

“In putting together this statewide summits, we want people at the table who will roll up their sleeves and get to work immediately,” Madigan said. As an indicator of the urgency of the foreclosure problem, Madigan noted that the Cook County Circuit Court has reported a more than 50 percent increase in foreclosure filings in the first two months of 2007. If the current rate of filings

continues, the court is on track to handle a record 33,000 foreclosure cases this year, far outpacing the 22,000 foreclosures filed last year.

GROWTH IN SUBPRIME LENDING AND THE COLLAPSE OF THIS MARKET

The looming tidal wave of foreclosures is directly linked to the rapid rise in subprime mortgage lending in the last several years. Subprime mortgage lending is intended to serve the important goal of meeting the credit needs of borrowers with weak credit histories. Because these borrowers pose a greater credit risk, they typically pay higher upfront costs and higher interest rates. Unfortunately, as the subprime market grew dramatically, lenders began offering loans that borrowers could not afford.

Over approximately the past decade, fueled by an investment trend that allowed subprime loans to be securitized in large bundles and sold on Wall Street, loans that were once a small segment of the mortgage market exploded into a major source of home financing. Nationwide, the subprime home loan market grew from \$35 billion to \$665 billion from 1994 to 2005. In that same period, the subprime share of total mortgage originations climbed from 10 percent to 23 percent. The majority of these loans have been refinancings, as increasingly cash-strapped consumers have been compelled to tap into the equity in their homes to pay off other debts, or, worse yet, homeowners have been persuaded by unscrupulous lenders and mortgage brokers to refinance their mortgages with the promise of benefits that turn out to be illusory.

The incidence of subprime refinance lending in Illinois and the surrounding region is higher than the national average. Nationwide, one in four refinance loans made in 2005 were subprime, according to the Consumer Federation of America (CFA), a watchdog and policy group that tracks mortgage lending trends. By comparison, in the Midwest, subprime loans accounted for nearly one third (32.1 percent) of refinances originated that year. The numbers in some Illinois communities are even more unsettling. In Peoria, for example, subprime loans made up 45.4 percent of the refinancings done in 2005.

Although subprime loans are intended to make possible the dream of homeownership for consumers with less than perfect credit, Madigan said the unfortunate reality is that a volume-driven subprime industry has gradually relaxed its lending standards and pushed millions of homeowners into high-cost loans they cannot afford. Consequently, subprime mortgages have begun to fail in record numbers—as underscored by the recent collapse of more than 30 subprime lenders—while millions of homeowners are seeing their dreams vanish.

The Center for Responsible Lending, a national consumer advocacy group, estimates that nationwide, 2.2 million homeowners with subprime loans are at risk of losing their homes. In Illinois, the Center estimates nearly one in five subprime loans originated in 2006 will end in foreclosure. According to another study, one in five of Kankakee's subprime borrowers is 60 days or more late in making his or her mortgage payments, placing that city in the top 10 subprime delinquency markets nationwide. ^[1]

Especially disturbing are reports from the Center for Responsible Lending and other industry analysts indicating that an increasingly high number of subprime

mortgages are failing within just a few months after origination. “When borrowers are forced into default in the first three or four months after obtaining the loan, it is clear that they never should have entered into that loan in the first place,” said Madigan.

Subprime foreclosures will hit minority communities especially hard. The Center for Responsible Lending notes that a disproportionately high number of subprime mortgages are made to African Americans and Latinos.

Madigan noted that as the volume of subprime loans has increased, the features of the loans have changed in ways that produce higher profits for brokers and lenders, greater costs for borrowers, and increased chances of failure. In recent years Madigan’s office has handled a growing number of complaints concerning subprime mortgages that contain such features as:

- Low introductory or “teaser” interest rates that lure homeowners into high-cost loans but adjust upward after the two- or three-year introductory fixed-rate period ends, causing the homeowners’ mortgage payments to skyrocket;
- An introductory period in which the homeowners pay only the interest, or even less than the full interest, on the loan, creating the illusion of affordability until the introductory period ends and the homeowners find themselves unable to pay both the interest and the principal;
- Stiff prepayment penalties that make refinancing cost-prohibitive, effectively trapping homeowners in adjustable rate and interest-only mortgages after the loans have become unaffordable;
- Gross overstatements and under-documentation of homeowners’ income, often at the insistence of the mortgage broker and without the knowledge of the borrower, so that the homeowners appear to be able to afford a loan that they clearly cannot afford; and
- High upfront costs and fees paid to mortgage brokers, including fees known as Yield Spread Premiums, which brokers often receive from lenders for steering borrowers into costlier loans.

Madigan’s office has taken an aggressive approach to predatory lending and other forms of mortgage fraud, obtaining more than \$600 million in enforcement actions against subprime lenders, playing a principal role in passing the High Risk Home Loan Act of 2003, and drafting the Mortgage Rescue Fraud Act of 2006. Still, Madigan cautions that the thousands of Illinois homeowners in danger of foreclosure require immediate, one-on-one assistance.

Unfortunately, scared or embarrassed homeowners too often postpone seeking help until it’s too late to save their home, Madigan noted. “As frightening as it might be to confront the impending loss of your home,” said Madigan, “it is crucial that homeowners in financial distress learn about all of the options available to them—and the sooner the better.” Madigan urged homeowners in trouble to seek counseling from one of the dozens of HUD-approved housing counseling agencies located throughout the state. These agencies can help homeowners identify whether their loans contain predatory characteristics,

obtain refinancing in some instances, negotiate with their lenders, or find appropriate legal assistance.

To help homeowners identify HUD-approved counseling agencies in their area, as well as to find other sources of legal and financial assistance, Madigan's office has created **A Guide to Prevention and Recovery Resources** (with one version tailored to consumers in the Chicago area and another version focused on downstate). The **Guide** and other educational materials on predatory lending are available on Madigan's Website (www.IllinoisAttorneyGeneral.gov) or by calling her office's **Consumer Fraud Hotline** at: **1-800-386-5438**. Madigan also advised homeowners who believe they are victims of predatory lending to call the hotline and file a complaint with her office.

Madigan's office fears that the worst is yet to come in the nationwide collapse of the subprime mortgage market. In the next year, Madigan noted, more than a trillion dollars' worth of mortgages with adjustable interest rates are projected to recast, meaning that hundreds of thousands of families will experience the shock of higher monthly payments when their introductory teaser period ends. Madigan is concerned that the burgeoning need for legal, financial, and counseling assistance will far exceed the capacity of existing resources. "We need leadership on both the state and federal levels to look for innovative ways to help families and individuals preserve the dream of homeownership," said Madigan. "And when we can't find an innovative solution, we'll have to create one."

STATEWIDE MORTGAGE FORECLOSURE PREVENTION STRATEGY

The details of Madigan's statewide strategy are as follows:

Predatory Lending Legislation

Madigan will work with members of the General Assembly, led by State Representative Dan Burke, to move forward on legislation this session. This legislation will have two key components. The first will provide tighter regulation of lenders and mortgage brokers, and enhance protections for subprime borrowers. This legislation will:

- Require that lenders and brokers verify a borrower's ability to repay the loan, including creating a duty to look at documents confirming the borrower's income;
- Create a duty for mortgage brokers to obtain for borrowers the best deal that the broker can get for them;
- Prohibit prepayment penalties on all home loans, so that it is easier for borrowers to get out of bad loans;
- Require lenders and brokers to give borrowers notice of any material change in the loan terms or fees at least 24 hours before closing, effectively prohibiting the practice of "bait and switch";
- Require lenders and brokers to inform the borrower that an additional amount will be due for taxes and insurance, and, if known, disclose the

amount of these anticipated payments when quoting the borrower monthly payments on a proposed loan;

- Require lenders to give the borrower a copy of any appraisal necessary in underwriting the loan prior to closing, so the borrower can see whether the home has been over-appraised;
- Prohibit lenders and brokers from promising to refinance the borrower's loan at a later date, unless the promise is in writing; and
- Prohibit loan servicers from compounding late fees, i.e., charging borrowers a new round of late fees for the failure to pay an existing late fee.

The second component of this legislation will seek to amend the state's Foreclosure Act to provide greater protections to homeowners who are facing or already in the foreclosure process. This legislation will:

- Prohibit lenders from initiating legal proceedings until the lenders provide notice to the borrowers telling them, among other things, how much they owe, who to contact to make the loan current, and that they have a minimum of 30 days in which to bring their loan current;
- Require lenders to include, upon service of a foreclosure complaint, information detailing for borrowers their legal rights;
- Require lenders to attach to the foreclosure complaint the HUD 1 Settlement Statement and a complete payment history of the mortgage loan, to include in the complaint a history of the mortgage holders, including listing all prior holders and servicers of the note, and heighten the requirements for using a "missing note affidavit" in lieu of attaching the original loan document to the foreclosure complaint; and
- Require lenders to provide payoff statements to borrowers within a reasonable time period and create penalties for failing to do so.

Statewide Foreclosure Prevention Summits

Madigan will hold two summits with invitees from government, industry, legal, and non-profit organizations to craft a coordinated statewide foreclosure prevention strategy.

The **first foreclosure prevention summit** will focus on identifying financial counseling for borrowers in trouble and compiling a centralized source of information about home preservation programs, including programs to help borrowers refinance mortgages with high interest rates and unmanageable terms. Participants will include housing counseling agencies, state and federal regulators, community housing advocates, and lenders with a demonstrated commitment to supporting solutions to the foreclosure crisis.

In addition to identifying existing home preservation programs, the summit will explore increasing funding for such programs statewide and expanding outreach to delinquent homeowners. The summit also will look at ways to exert pressure on lenders to make existing high-cost loans less expensive for

delinquent homeowners, both by eliminating accumulated late fees and restructuring the loans.

The **second foreclosure prevention summit** will bring together representatives of organizations that provide legal assistance to borrowers in trouble, including legal assistance organizations, pro-bono organizations, and private bar associations. The summit's three-fold purpose will be to facilitate the coordination of efforts among the state's legal assistance providers, raise public awareness of available legal resources, and explore ways of increasing legal assistance providers' capacity to meet the growing demand for their services.

Consumer Protection Division Chief Deborah Hagan, Consumer Counsel Tom James, Assistant Bureau Chief Susan Ellis and Consumer Policy Advisor Steve Wrone are leading the implementation of this statewide strategy for Madigan's office.

[1]See *Subprime Risk: Most Vulnerable Markets*, CNNmoney.com, March 22, 2007, citing report by First American LoanPerformance.

- 30 -

[Return to March 2007 Press Releases](#)