Statement of William J. Brennan, Jr.,
Director, Home Defense Program of the
Atlanta Legal Aid Society, Inc.,
Before the United States Senate
Special Committee on Aging
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Thank you for this opportunity to address the United States Senate Special Committee on Aging on the subject of predatory mortgage lending practices directed against the elderly. My name is William J. Brennan, Jr. For the past 29 years, I have been a staff attorney at the Atlanta Legal Aid Society, Inc. specializing in housing and consumer issues.

I have been the director of the Home Defense Program of the Atlanta Legal Aid Society for the past ten years. The Home Defense Program provides referrals and legal representation to homeowners who have been victimized by title conversion, home equity and home purchase scams. The Program is funded by the Atlanta Legal Aid Society and the DeKalb County, Georgia Community Development Department with HUD community development block grant funds.

On a daily basis, we assist individual homeowners who have been targeted by local and national companies with abusive, predatory mortgage lending practices. We provide them with legal advice. We evaluate their cases to determine whether legal claims exist. We settle some cases without litigation and litigate others. Most often, because of our limited resources, we assist homeowners in obtaining private attorneys to represent them in cases where the homeowners may have legal claims. Where appropriate, we also refer homeowners to local nonprofit housing counseling and other agencies which assist them in obtaining refinancing of their high cost mortgage loans through low-cost, conventional mortgage lenders or other special programs. Many senior citizen homeowners are referred for reverse mortgages. We also participate on a regular basis in a range of community education efforts aimed at warning homeowners against home equity theft scams, including abusive mortgage lending practices.

Home equity theft is the theft of the equity in the home or of the actual title to the home. The theft is accomplished through illegal practices and scams and also through otherwise legitimate business practices which are employed abusively and also used for purposes other than those for which they were initially intended. There are two categories of home equity theft scams. The first are title conversion scams, which involve fraudulent representations made to homeowners resulting in the immediate loss of the title to the home. For example, foreclosure assistance fraud occurs when homeowners facing foreclosures are approached by "lenders" who offer to lend money to save the house from foreclosure but end up owning the home, evicting the homeowner, and accessing the equity in the homes with new mortgage loans for themselves. The second category is predatory mortgage lending.

Predatory mortgage lending consists of lenders who purposely target homeowners with substantial equity but less than perfect credit for high-cost, abusive mortgage loans. The lenders employ a bogus theory of high risk to legitimize lending money at unconscionably high interest rates and engaging in other abusive practices which increase the revenue on the loans. The abusive practices include loan flipping, balloon payments, and the sale and financing of overpriced credit life and disability insurance (insurance packing). See Exhibit A for a list of the abusive practices and a description of each.

Why does predatory mortgage lending occur?

First, high equity makes homes attractive for predatory lenders. High equity is generally the result of two factors: (1) the appreciation of property values; and (2) payment of mortgages, which over time results in the reduction of the principal balance on the mortgage loan.

Second, the absence of strong consumer protection laws and the lack of enforcement of existing laws permit these scams to flourish. For example, many states have no usury laws or have caps on interest rates which are set too high. The Georgia criminal usury statute allows mortgage interest rates of 60% per year. Many states, including Georgia, permit non-judicial foreclosure sales, which facilitate foreclosures and impede homeowners' efforts to raise defenses in court.

Third, redlining creates a credit-vacuum filled by predatory lenders. When some banks and other conventional lending institutions designate entire minority communities as bad financial risks and refuse to make them loans (redlining), high-cost finance companies target those same communities with overpriced loan products, knowing that the residents are a captive market with no access to reasonably-priced credit (reverse redlining). In this way, redlining produces reverse redlining as its logical complement. Therefore, it's not surprising to find that banks guilty of the former often profit from the latter, either by owning, lending money to or purchasing loans from finance companies which engage in predatory lending.

Fourth, greed is the primary driving force behind predatory mortgage lending. The yields and profits are incredibly high. The risk is minimal because the loans are secured by gilt-edged, gold standard collateral: homes and the equity in homes. The practice of bundling mortgages together to be sold to pension funds, mutual funds and other investors as asset-backed securities further increases the profitability of this business. A review of the profits of some of the predatory lenders will verify this.

Types of Victims

The communities that fall prey to predatory mortgage lending predominantly consist of elderly, low and moderate income, and/or minority homeowners. Elderly homeowners, who tend to have substantial equity but live on fixed incomes (social security and retirement benefits), are perhaps the principal targets. Their homes may be in need of expensive repairs (often roofing work) or they may have fallen behind on their property taxes, incurred substantial medial bills not covered by Medicare, Medicaid or health insurance, or suffered a loss of income after the death of a spouse. The common characteristics of these victims are a need for money (either real or suggested by the lender) combined with a lack of financial sophistication, often exacerbated by diminished mental capacity as a result of Alzheimer's and other dementia-related diseases.

Minority groups are disproportionately targeted by predatory lenders because their access to legitimate sources of loans and other financial services is disproportionately denied. As mentioned above, redlining produces credit-starved communities that will pay exorbitant prices for loans.

Low and moderate income homeowners are also targets when they have or appear to have less than perfect credit ratings. Conventional lenders tend to deny loans to these individuals and often steer them to predatory lenders.

Historical Perspective

The last 10-15 years have seen a tremendous increase in home equity lending in general. Initially, home equity lending targeted middle-class and wealthy homeowners with good credit ratings, substantial income, and significant home equity. Recently the industry has expanded to encompass lower income and other communities formerly on the margins of the mortgage loan market; as this segment of the industry has demonstrated explosive growth, so have the predatory lending abuses described in Exhibit A.

In my practice as a legal services attorney over the last 29 years specializing in consumer and housing issues, I am struck by the fact that 15 years ago our typical homeowner clients did not have equity mortgages. A few had second mortgages, but in Georgia the terms of those mortgage loans were strictly regulated. There was a cap on interest rates for second mortgage loans, and if the lender violated the law the penalty was forfeiture of the remaining balance due on the mortgage. That law has been repealed. Our homeowner clients' involvement with finance companies was limited to signature loans in small amounts, usually $3,000 or less. Finance companies were not mortgage lenders at that time.

In the mid to late 1980's, these finance companies began making mortgage loans. Unfortunately, their mortgage lending operations were not subject to the state regulatory agencies which monitored their small, unsecured loan business although later, many states which did not already have laws in place enacted licensing laws to regulate mortgage lenders and brokers. The growth of mortgage lending by finance companies and other subprime mortgage lenders over the last 10- 1 5 years has been phenomenal. Additionally, banks, insurance companies, car manufacturers, a giant agribusiness corporation, and a host of other large corporations have entered the field of subprime mortgage lending. Moreover, new companies have been formed to take advantage of the lucrative profits generated by this business.

The growth of the home equity lending industry and the reasons therefor have been chronicled by Julia Patterson Forrester in an excellent law review article entitled, "Mortgaging the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing," 69 Tulane L. Rev. 373 (1994). Among other points, Professor Forrester explains how predatory mortgage lending practices have flourished within the context of the massive increase of equity lending.

My impression is that today, in the low and moderate income neighborhoods where our clients live, the penetration by subprime predatory mortgage lenders has been enormous. It appears that virtually every other house in these neighborhoods is burdened by a predatory mortgage loan. Nonprofit housing counseling agencies in our area report increases in predatory mortgage lending cases, especially among elderly homeowners. They refer many of these cases to my program. Additionally, legal services programs around the country report dramatic increases in these types of cases. Dozens of programs now have attorneys specializing in these cases. They are filing lawsuits against these companies on behalf of homeowners under various federal statutes including the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), and the Home Ownership and Equity Protection Act of 1994 (HOEPA). They also pursue claims under state Uniform Deceptive Acts and Practices (UDAP) statutes, and assert claims based on fraud or seek recession in equity based on unconscionability. Private attorneys around the country have also seen an influx of these cases and are filing lawsuits bases on the same claims. The National Consumer Law Center, based in Boston, MA, now conducts foreclosure prevention workshops for legal services and private attorneys around the country. This excellent program teaches attorneys how to legally assist homeowners who have been victimized by predatory mortgage lenders (for information on this program, contact Elizabeth Renuart in the Washington, DC, NCLC office at 202-986-6060).

What we are all seeing is that the substantial equity in the homes in these neighborhoods which formerly constituted an element of wealth for these homeowners, albeit in small amounts, is now held hostage or owned outright by predatory lenders. Their abusive business practices have resulted in a substantial increase in foreclosures which divest homeowners of their property and make them homeless. The result is destabilization of what were formerly vibrant neighborhoods populated by owner-occupied homes and an increase in the need for government-funded social service agencies to address the social ills generated by this destabilization

To put these abuses in perspective, consider the terms of home equity lines of credit (HELOCS) which banks offer to middle and upper income homeowners. While we have serious concerns about certain features of HELOCS, it is interesting to note that: they have no closing costs and no points; the annual interest rate is either slightly above prime, at prime, or below prime; they do not promote the sale of credit life insurance; they do not have balloon payments; and because the borrower can access additional equity without a new loan, these loans are not flipped. The dichotomy here is that a customer with good credit, middle to high income, and $30,000 in equity will qualify for one of these loans. In contrast, a lower income person with less than perfect credit who may be elderly and/or a minority with the same $30,000 equity is funneled into a predatory mortgage loan which has high interest and points, expensive credit life insurance, a balloon payment, and other abusive features. This loan is then frequently flipped two or more times, resulting in additional, unnecessary costs to the homeowner. Since the collateral for both loans is 80% of the value of the home, the slightly higher risk in the second loan cannot justify its much higher cost.

The state of Texas will provide a fascinating microcosmic illustration of the evolution of the predatory mortgage lending industry. Until recently, because of a broad homestead exemption dating back to 1839, home equity lending was virtually nonexistent in Texas. However, an intensive 20-year campaign by the mortgage industry has culminated in a constitutional amendment which sets the stage for the proliferation of home equity lending. Substantive provisions protecting borrowers from many lending abuses were included in the constitutional change. Texas will now afford us a laboratory-like setting to observe whether these protections will effectively deter predatory mortgage lending abuses as equity lending rapidly expands throughout the state.

Preferable Alternatives for Elderly Homeowners

The best advice for elderly homeowners is not to get an equity loan at all. An equity loan can often trigger the slippery slide into foreclosure, particularly for elderly retired homeowners who are living on a reduced fixed income. Occasionally, there are good reasons for elderly homeowners to access the equity in their homes: a new roof, replacement of a furnace, or large medical bills. Under these circumstances, a predatory mortgage loan is the worst possible option, While a HELOC would be a better option, some homeowners may not qualify. The best option for senior homeowners is a reverse mortgage, sometimes called a home equity conversion mortgage (HECOM). Homeowners qualify for these loans based upon their age and equity. With a reverse mortgage, a homeowner can borrow a substantial part of the equity in his home and the loan does not have to be paid until he vacates his home or dies. Under this plan an elderly homeowner may choose to make payments to reduce the balance but is not under threat of foreclosure and eviction if he does not make these payments. However, recent news articles have reported that some mortgage brokers have gouged elderly homeowners by charging them thousands of dollars in brokers' fees simply for referring them to reverse mortgage lenders. To avoid this pitfall, seniors should contact their local housing counseling agencies for information about and referrals for reverse mortgages. These agencies are funded by HUD, the American Association of Retired Persons (AARP) and other entities to provide these types of services free of charge. Two relevant articles from the HM publication "Counselor's Connection" are attached hereto as Exhibit B. Elderly homeowners already victimized by predatory mortgage lenders should seek legal advice from private attorneys or legal aid attorneys in their area.

Illustrative Cases

At this point, I would like to provide the stories of four victims of predatory mortgage lending abuses. Genie McNab is a seventy year old African-American woman. She is retired and lives alone on Social

Security and retirement benefits. She has owned her home in Decatur, Georgia for twenty years. In November 1996, she obtained a 15-year mortgage loan from a large national finance company in the amount of $54,300. The annual percentage rate is 12.85%. Under the terms of this loan, Ms. McNab will pay $596.49 per month until the year 201 1 when she will be required to pay a final payment of $47,599.14. Thus, when she is 83 years old she will be saddled with a balloon payment that she will never be able to make. Moreover, although she paid a mortgage broker a $700 fee, supposedly to help her find this loan, the lender also paid the broker an $ 1, I 00 fee.

Beatrice Smith is a sixty-eight year old African-American woman. She is retired and lives alone on Social Security retirement benefits. She has owned her home in Atlanta, Georgia for 29 years. Over a period of six years, from 1987 to 1993, she was given six mortgage loans. The first loan was for $20,334.71. The last loan was for $34,790.50. The first four loans were made by a national finance company. The company was subsequently purchased by a major national bank. The bank's subsidiary made two additional loans to Ms. Smith. In all of the six loans, the lender sold Ms. Smith credit life insurance with premiums ranging from $2,339.43 in one transaction to $2,905.82 in another transaction. Ms. Smith was required to pay closing costs in each loan. For the six loans, the closing costs totaled $2,544.79. The interest charged on each loan ranged from 9.99 to 15.5004%. Instead of making one loan to Ms. Smith for the money she may have needed, these lenders made her an original loan and flipped her through five successive loans that were of decreasing benefit to her and of increasing benefit to them. They sold her expensive credit life insurance which was of no use to her but, once again, was of great financial benefit to the lenders, one of whom owned the insurance company while the other received large commissions for selling the policies. For the past one and a half years, Ms. Smith has been unable to afford the payments. For months, the lender subjected Mrs. Smith to a campaign of abusive debt collection tactics: minutes after the regional collection office would call her demanding payment and threatening foreclosure, the local branch office would repeat the process, upsetting her greatly. I called the company and insisted that they stop contacting her. The only reason she has not been foreclosed on and evicted from her home is because I wrote the lender and demanded the cancellation of her mortgage loan on grounds of unconscionability. Although the lender has not complied with my request, it has not pursued foreclosure. See Exhibit C (copy of a chart outlining Ms. Smith's loans).

Beatrice Yorke is an eighty-two year old African-American widow. She is retired and lives alone on Social Security retirement benefits. She has owned her home in Norcross, Georgia for thirty-six years. In the late 1980's and early 1990's, she obtained three loans from a subsidiary of a large northeastern bank. The first loan was a mortgage loan for $15,812.16 with an annual percentage rate of 16.86%. The second loan was a signature loan for $780 with an annual percentage rate of 42.64%. The third loan was a mortgage loan which refinanced the two existing loans. This loan was for $16,851.84 and carried an annual percentage rate of 15.54%. This lender was the subject of intense controversy in the early 1990's when allegations were made that it engaged in predatory mortgage lending practices in Georgia and dozens of other states. This company entered into settlements with the Georgia Attorney General and various plaintiffs in class action and individual lawsuits totaling over $100 million. This company eventually left the business of subprime mortgage lending. However, it sold most of its existing mortgage loan portfolio to another large national finance company. Ms. Yorke has struggled to make payments to this company, but has been unable to do so for the last few months and is now facing foreclosure and eviction. We are working to find a way to stop this 82-year old woman from losing her home and being evicted.

Sanders Faust is a seventy-two year old African-American man who can neither read nor write. He is retired and lives alone on Social Security retirement benefits. He has owned his home in Decatur, Georgia for thirty-one years. There have been four mortgage loans on Mr. Faust's house since 1991. On September 1, 1991, he borrowed $16,499.99 from a finance company that is a subsidiary of a large corporation. On April 2, 1992, this company refinanced his loan for $22,234.79. On December 21, 1992, this same company refinanced his loan again for $25,831.91. These loans included credit life insurance premiums for $2,943.41 and $2,533.52. Finally, on September 13, 1995, he refinanced with a different company for $33,000. However, this other company promptly sold his loan to another subsidiary of the same corporation. The last loan carries an annual percentage rate of 16.185%. He has been unable to make the payments and we referred him to a private attorney for a Chapter 13 bankruptcy for the purpose of saving his home from foreclosure and preventing subsequent eviction. In the midst of this effort, the attorney has learned that the loan has been sold to another company.

These cases typify what we have been seeing in the Home Defense Program for the last 10 years: unconscionably high interest and points, balloon payments, loan flipping, insurance packing, abusive collection tactics, and so forth. Why are we seeing these cases? Predatory lenders say that the high cost of these mortgage loans is justified and required due to the high level of risk associated with borrowers with less than perfect credit. This explanation is bogus. These are not uncollateralized, signature loans. If they were, the argument about risk might be justified. Most predatory lenders lend up to only 80% of the value of the home, leaving the other 20% as a cushion to protect the lender in case of foreclosure. If the homeowner is able to make the payments, the revenue stream created by these loans is very profitable because of the high interest, points and other revenue enhancers. If in fact a default occurs, the lender forecloses, always buys the home at the foreclosure sale, and resells it for a substantial profit. The lender ultimately profits in either scenario, rendering the risk justification illusory.

The test of whether my assertions are correct involves determining whether these lenders' profit margins are in line with those of conventional lenders. In fact, a cursory inspection of industry trends suggests that the subprime mortgage lending market is enjoying spectacular growth and profitability. Even as these hearings proceed, the subprime finance company subsidiary of a major corporation is being sold off to stockholders for $25.8 billion. Within the last few weeks, another company was purchased by a large national bank for $2.1 billion. The CEO of yet another company received $102 million in total compensation for 1996 and $65 million in the previous year. In an article entitled "Loan Sharks, Inc.," Thomas Goetz reports that:

(s)ubprime companies say their interest rates are so high to compensate for the greater risk these borrowers bring. But a welcome side effect of high rates is the Iprofits that traditional banks can't hope to match. According to *Forbes,* subprime consumer finance companies can enjoy returns up to six times greater than those of the best-run banks. Corporate America hasn't failed to notice. *Village Voice,* July 15, 1997 at 33.

What I know from first hand experience is that their success is very much founded upon business practices which makes the lives of my clients miserable. Subprime lenders assert that they provide a positive service to borrowers who could not obtain credit elsewhere, but my clients would emphatically disagree. They don't feel helped; they feel exploited. This is especially true for my elderly clients, like Ms. McNab, Ms. Smith, Ms. Yorke, and for Mr. Faust. At a time when they should be enjoying retirement after a life of hard work, they are at best struggling to make mortgage payments they cannot afford and at worst desperately trying to find ways to save their houses from foreclosure and themselves from being evicted - put out on the street.

Conclusion

Home ownership has always been an essential component of the American dream. To fulfill this dream, homeowners work hard to pay off their mortgages so that they may peacefully live out their retirement in a paid-for home. In countless cases this dream has been shattered by predatory mortgage lenders whose drive for exorbitant profits has undercut the well-earned security of elderly homeowners. This is a tragic story for many seniors. Some are saddled with loans they never needed and cannot afford, while others who legitimately needed money were sucked into the worst possible option - a predatory mortgage loan.

PREDATORY MORTGAGE LENDING ABUSES

The following is a catalogue of predatory mortgage lending abusive practices. We have divided the practices into abuses associated with the origination of the loan, servicing of the loan, and collection of the loan.

I. ORIGINATION OF LOAN

1. **Solicitations**. Predatory mortgage lenders engage in extensive marketing in targeted the neighborhoods. They advertise through television commercials, direct mail, signs in neighborhoods, telephone solicitations, door to door solicitations, and flyers stuffed in mailboxes. Many of these companies deceptively tailor their solicitations to resemble social security or other U.S. government checks to prompt homeowners to open the envelopes and otherwise deceive them regarding their predatory intentions

2. **Home Improvement Scams.** Predatory mortgage lenders use local home improvement companies essentially as mortgage brokers to solicit business. These companies solicit homeowners for home improvement work. The company may originate a mortgage loan to finance the home improvements and then sell the mortgage to a predatory mortgage lender, or steer the homeowner directly to the predatory lender for financing of the home improvements. The home improvements are often grossly overpriced, and the work is shoddy and incomplete. In some cases, the contractor begins the work before the three-day cooling off period has expired. In many cases, the contractor fails to obtain required pen-nit, thereby making sure the work is not inspected for compliance with local codes.

3. **Mortgage Brokers - Kickbacks**. Predatory mortgage lenders also originate loans through local mortgage brokers who act as bird dogs (finders) for the lenders. Many predatory mortgage lenders have downsized their operations by closing their retail outlets and shifting the origination of loans to these brokers. These brokers represent to the homeowners that they are working for the homeowners to help them obtain the best available mortgage loan. The homeowners usually pay a broker's fee. In fact, the brokers are working for predatory mortgage lenders and being paid kickbacks by lenders for referring the borrowers to the lenders. On loan closing documents, the industry employs euphemisms to describe these referral fees: yield spread premiums and service release fees. Also, unbeknownst to the borrower, his interest is raised to cover the fee. Within the industry, this is called bonus upselling or par-plus premium pricing.

4. Steering to High Rate Lenders. Some banks and mortgage companies steer customers to high rate lenders, including those customers who have good credit and would be eligible for a conventional loan from that bank or lender. In some cases, the customer is turned away before completing a loan application. In other cases, the loan application is wrongfully denied and the customer is referred to a high rate lender. The high rate lender is often an affiliate of the bank or mortgage company, and kickbacks or referral fees are paid as an incentive to steer the customer in this way.

5. **Lending to People Who Cannot Afford The Loans**. Some predatory mortgage lenders purposely structure the loans with monthly payments which they know the homeowner cannot afford with the idea that when the homeowner reaches the point of default, they will return to the lender to refinance which provides the lender additional points and fees. Other predatory mortgage lenders, whom we call hard lenders, purposely structure the loans with payments the homeowner cannot afford in order to trigger a foreclosure so that they may acquire the house and the valuable equity in the house at the foreclosure sale.

6. **Falsified Loan Applications, Unverified Income.** In some cases, lenders knowingly make loans to homeowners who do not have sufficient income to repay the loan. Often, such lenders wish to sell the loan to an investor. To sell the loan, the lender must make the loan package have the appearance to the investor that the borrower has sufficient income. The lender has the borrower sign a blank loan application form. The lender then inserts false information on the form (for example, a job the borrower does not have), making the borrower appear to have higher income than he or she actually has.

7. **Adding Co-signers.** This is done to create the false impression that the borrower is sufficiently credit worthy to be able to pay off the loan, even though the lender is well aware that the co-signer has no intention of contributing to the repayment of the mortgage. Often, the lender requires the homeowner to transfer half ownership of the house to the co-signer. The homeowner has lost half the ownership of the home and is saddled with a loan she cannot afford to pay.

8. **Incapacitated Homeowners**. Some predatory lenders make loans to homeowners who are clearly mentally incapacitated. They take advantage of the fact that the homeowner does not understand the nature of the transaction or the papers that she signs. Because of her incapacity, the homeowner does not understand she has a mortgage loan, does not make the payments, and is subject to foreclosure and subsequent eviction.

9. **Forgeries.** Some predatory lenders forge loan documents. In an ABC Prime Time Live news segment-that aired on April 23, 1997, a former employee of a high cost mortgage lender reported that each of the lender's branch offices had a "designated forger" whose job it was to forge documents. In such cases, the unwary homeowner is saddled with a loan they know nothing about.

10. **High Annual Interest Rates.** The very purpose of engaging in predatory mortgage lending is to reap the benefit of high profits. Accordingly, these lenders always charge unconscionably high interest rates, even though their risk in minimal or non-existent. Such rates drastically increase the cost of borrowing for -homeowners. Predatory mortgage lenders routinely charge Atlanta area borrowers rates ranging from 12% to 18%, while other lenders charge rates of 7.0% to 7.5%.

11. **High Points**. Legitimate lenders charge points to borrowers who wish to buy down the interest rate on the loan. Predatory lenders charge high points but there is no corresponding reduction in the interest rate. These points are imposed through prepaid finance charges (or points or origination fees), and they are usually 5 to 10% of the loan and may be as much as 20% of the loan. The borrower does not pay these points with cash at closing. Rather, the points are always financed as part of the loan. This increases the amount borrowed which produces more annual interest to the lender.

12. **Balloon Payments**. Predatory mortgage lenders frequently structure loans so that at the end of the loan period, the borrower still owes most of the principal amount borrowed. The last payment balloons to an amount often equal to 85% or so of the principal amount borrowed. Over the term of the loan, the

borrower's payments are applied primarily to interest. The homeowner cannot afford to pay the balloon payment at the end of the term, and either loses the home through foreclosure or is forced to refinance with the same or another lender for an additional term.

13. **Negative Amortization**. This involves a system of repayment of a loan in which the loan does not amortize over the term. Instead, the amount of the monthly payment is.insufficient to pay off accrued interest and the principal balance therefore increases each month. At the end of the loan term, the borrower owes more than the amount originally borrowed. A balloon payment at the end of the loan is often a feature of negative amortization.

14. **Padded Closing Costs**. In this scheme, certain costs are increased above their true market value as a method of charging higher interest rates. Examples include charging document preparation of $350 or credit report fees of $1 50, both of which are many times the actual cost,.

15. **Inflated Appraisal Costs**. This is another padding scheme. In most mortgage loan transactions, the lender requires that an appraisal be done. Most appraisals include a typical, detailed report of the condition of the house (interior and exterior) and prices of comparable in the area. Others are "drive-by" appraisals, done by someone driving by the house. The former-naturally cost more than the latter. In some cases, borrowers are charged a fee for an appraisal which should include the detailed report, when only a drive-by appraisal was done.

16. **Padded Recording Fees**. Mortgage transactions usually require that documents be recorded at the local courthouse. State or local laws establish the fees for recording the documents. Mortgage lenders typically pass these costs on to the borrower. Predatory mortgage lenders often charge the borrowers a fee in excess of the actual amount required by law to record the documents.

17. **Bogus Broker Fees**. In some cases, predatory lenders charge borrowers broker fees when the borrower never met or knew of the broker. This is another way such lenders increase the cost of the loan for the benefit of the lender.

18. **Unbundling**. This is another way of padding costs by breaking out and itemizing charges which are duplicative or should be included under other charges. An example is where a lender imposes a loan origination fee, which should cover all costs of initiating the loan, but then imposes separate, additional charges for underwriting and loan preparation.

19. **Credit insurance - Insurance Packing.** Predatory mortgage lenders market and sell credit insurance as part of their loans. This includes credit life insurance, credit disability insurance, and involuntary unemployment insurance. The premiums for this insurance are exorbitant. In some cases, lenders sell credit life insurance covering an amount which constitutes the total of payments over the life of the loan rather than the amount actually borrowed. The payout of claims is extremely low compared to the revenue from the premiums. The predatory mortgage lender often owns the insurance company, or receives a substantial commission for the sale of the insurance. In short, credit insurance becomes a profit center for the lender and provides little or no benefit to the borrower.

20. **Excessive Prepayment Penalties**. Predatory mortgage lenders often impose' exorbitant prepayment penalties. This is done in an effort to lock the borrower into the predatory loan for as long as possible by making it difficult for her to refinance the mortgage or sell the home. Another feature of this practice is that it provides back end interest for the lender if the borrower does prepay the loan.

21. **Mandatory, Arbitration Clauses.** By inserting pre-dispute, mandatory, binding arbitration clauses In contractual documents, some lenders attempt to obtain unfair advantage of their borrowers by relegating them to a forum perceived to be more favorable to the lender than the court system. This perception exists because discovery is not a matter of right but is within the discretion of the arbitrator; the proceedings are private; arbitrators need not give reasons for their decisions or follow the law; a decision in one case will have no precedential value; judicial review is extemely limited; a lender will be a frequent user while the consumer is a one time participant; and injunctive relief and punitive damages will not be available.

22. **Flipping.** Flipping involves successive, repeated refinancing of the loan by rolling the balance of the existing loan into a new loan instead of simply making a separate, new loan for the new amount and always results in higher costs to the borrower. Because the existing balance of one loan is rolled into a new loan, the term of repayment is repeatedly extended through each refinancing. This results in more interest being paid than if the borrower had been allowed to pay off each loan separately. A powerful example of the exorbitant costs of flipping is the case of Bennett Roberts, who had eleven loans from a high cost mortgage lender within a period of four years. See, Wall Street Journal, April 23, 1997, at 1. Mr. Roberts was charged in excess of $29,000 in fees and charges, including ten points on every financing, plus interest, to borrow less than $26,000.

23. **Spurious Open End Mortgages.** In order to avoid making required disclosures to borrowers under the Truth in Lending Act, many lenders are making "open-end", mortgage loans. Although the loans are called "open end" loans, in fact they are not. Instead of creating a line of credit from which the borrower may withdraw cash when needed, the lender advances the full amount of the loan to the borrower at the outset. The loans are non-amortizing, meaning that the payments are interest only so that no credit will be replenished. Because the payments are applied to interest, the balance is never reduced.

24. **Paying Off Low Interest Mortgages**. A predatory mortgage lender usually insists that its mortgage loan pay off the borrower's existing low cost, purchase money mortgage. The lender is able to increase the amount of the new mortgage loan by paying off the current mortgage and the homeowner is stuck with a high interest rate mortgage with a principle amount which is much higher than necessary.

25. **Shifting Unsecured Debt Into Mortgages**. Mortgage lenders badger homeowners with telephone and mail solicitations and other advertisements that tout the "benefits" of consolidating bills into a mortgage loan. The lender fails to inform the borrower that consolidating unsecured debt into a mortgage loan secured by the home is a bad idea. The loan balance is increased by paying off the unsecured debt, which necessarily increases closing costs (which are calculated on a percentage basis), increases the monthly payments, and increases the risk that the homeowner will lose the home.

26. **Making Loans in Excess of 100% Loan to Value (LTV).** Recently, some lenders have been making -loans to homeowners where the loan amount exceeds the fair market value of the home. This makes it very difficult for the homeowner to refinance the mortgage or to sell the house to pay off the loan, thereby locking the homeowner into a high cost loan. Additionally, if a homeowner goes into default and the lender forecloses on a loan, the foreclosure auction sale generates enough money to pay off the mortgage loan. Therefore, the borrower is not subject to a deficiency claim. However, where the loan is 125% LTV, a foreclosure sale may not generate enough to pay off the loan and the borrower would be subject to a deficiency claim.

II. SERVICING OF LOAN

1. **Forced Placed Insurance**. Lenders require homeowners to carry homeowner's insurance, with the lender named as a loss payee. Mortgage loan documents allow the lender to force place insurance when the homeowner fails to maintain the insurance, and to add the premium to the loan balance. Some predatory mortgage lenders force place insurance even when the homeowner has insurance and has provided proof of such insurance to the lender. Even when the homeowner has in fact failed to provide the insurance, the premiums for the force placed insurance are often exorbitant. Often the insurance carrier is a company affiliated with the lender. Furthermore, the forced placed insurance is frequently padded because it covers the lender for risks or losses in excess of what the lender may require under the temis of the mortgage loan.

2. **Daily, Interest When Payments Are Made After Due Date.** Most mortgage loans have grace periods, during which a borrower may make the monthly payment after the due date and before the end of the grace period without incurring a "late charge." The late charge is often assessed as a small percent of the late payment. However, many lenders also charge daily interest based on the outstanding principal balance. While it may be proper for a lender to charge daily interest when the loan so provides, it is deceptive for a lender to charge daily interest when a borrower pays after the due date and before the grace period expires when the loan terms provide for a late charge only after the end of the grace period. Predatory lenders take advantage of this deceptive practice.

III COLLECTION OF LOAN

1. **Abusive Collection Practices**. In order to maximize profits, predatory lenders either set the monthly payments at a level the borrower can barely sustain or structure the loan to trigger a default and a subsequent refinance. Having structured the loans in this way, the lenders consciously decide to use aggressive, abusive collection tactics to ensure that the stream of income flows uninterrupted. (Because conventional lenders do not structure their loans in this manner, they do not employ abusive collection practices.) The collection departments of predatory lenders call the homeowners at all hours of the day and night, send late payment notices (in some cases, even when the lender has received timely payment or even before the grace period expires), send telegrams, and even send agents to hound homeowners in person. Some predatory lenders bounce homeowners back and forth between regional collection offices and local branch offices. One homeowner received numerous calls every day for several months, even after she had worked out a payment plan. These abusive collection tactics often involve threats to evict the homeowners immediately, even though they know they must first foreclose and follow the eviction procedures. The resulting emotional impact on homeowners, especially elderly homeowners, can be devastating. Being ordered out of a home one has owned and lived in for decades is an extremely traumatic experience.

2. **High Prepayment Penalties**. See description above. When a borrower is in default and must pay the full balance due, predatory lenders will often include the prepayment penalty in the calculation of the balance due.

3. **Flipping (Successive, Repeated Refinancing of Loan)**. See description above. When a borrower is in default, predatory mortgage lenders often use this as an opportunity to flip the homeowner into a new loan, thereby incurring additional high costs and fees.

4. Foreclosure Abuses. These include persuading borrowers to sign deeds in lieu of foreclosure in which they give up all rights to protections afforded under the I foreclosure statute, sales of the home at below market value, sales without the homeowner/borrower being afforded an opportunity to cure the default,

and inadequate notice which is either not sent or backdated. There have even been cases of "whispered foreclosures", in which persons conducting foreclosure sales on courthouse steps have ducked around the comer to avoid bidders so that the lender was assured he would not be out-bid. Finally, foreclosure deeds have been filed in courthouse deed records without a public foreclosure sale.