Real estate law the American dream transfigured into the American mortgage crisis

2012

Maricruz Aguiar
University of Central Florida

REAL ESTATE LAW:
THE AMERICAN DREAM TRANSFIGURED INTO THE AMERICAN MORTGAGE CRISIS

by

MARYCRUZ AGUIAR

A thesis submitted in partial fulfillment of the requirements
for the Honors in the Major Program in Legal Studies
in the College of Health and Public Affairs
and in The Burnett Honors College
at the University of Central Florida
Orlando, Florida

Spring Term 2012

Thesis Chair: Dr. Gina Naccarato-Fromang

ABSTRACT

Real Estate law is the body of rules and regulations with legal codes that concern ownership, development and transactions. Real Estate has grown to be one of the main contributors to the nation’s financial system. For decades, the housing market has been such an integral part of the economy. Unfortunately, in the beginning of the twenty-first century lax regulatory oversight led the nation to an economic collapse. Indeed, federal, state and local governments have become heavily involved in solving the downward spiral in the economy. This research focuses on the mortgage crisis in order to show how Real Estate law can in fact, restore the economy when the government has a balance between regulations and market discipline.

The intent of this thesis was to study the occurrence of the mortgage crisis, the regulatory authorities and the legal effects of the housing market. Through the analysis of case law and statutes, data, previous recessions, and economic indicators, this thesis examines the key factors in our legal system that should drive reform in our economy. Results suggested that greater efforts to a regulatory structure generate a secure financial system. Thus, the purpose of this thesis is not only to solve our current mortgage crisis but also to mitigate or prevent future crises.

DEDICATION

For all those victims who have lost their homes.

For my loving parents and family, thank you for being such an inspiration and for always believing in me.

For Cesar, thank you for being my strongest supporter, my soul mate and best friend.

ACKNOWLEDGEMENTS

I would like to express my deepest gratitude to all those who made my thesis possible. To my committee members, who have been gracious enough to enable this project with their guidance, wisdom, and experience. I am especially grateful to my thesis chair, Dr. Gina Naccarato-Fromang, for her kind attention, patience, and devotion throughout this entire process. Thank you to the Law Offices of Keating & Schlitt, P.A. for allowing me to use their library. I would also like to thank Denise Crisafi and Kelly Astro for their encouragement and assistance. I wish to thank my family, friends, and professors for making everything possible these past four years at the University of Central Florida.

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CHAPTER ONE: INTRODUCTION

The American Dream for the majority is fulfilled with the ownership of a home. Acquiring rights to a home brings an emotional experience, especially to first time buyers who desire that social status of homeownership. Indeed, being a homeowner results in asset building, as well as, financial and social benefits. Nonetheless, it is essential to recognize the risks that convey the transaction.

But what happens when the dream drastically transfigures into a helplessness reality? In 2007, a mortgage crisis severely unfolded in the United States causing anxiety and chaos globally. Many Americans have faced circumstances where their homes are worth less than their mortgages triggering many homeowners to default on their loans and sadly walk away from their homes. Prior to 2007, a large majority of borrowing took place; financial modeling was inconsistent and many individuals lived with the assumption that home prices would only continue to increase. When a home decreases in value and when it cannot be sold, homeowners are left with limited options; individuals can renegotiate their loans, go into foreclosure, or walk away from their homes.

As the Housing Market crashed, homeowners have encountered increases in their mortgages and have not qualified for refinancing. They have also suffered decreases in home value and loss of income due to the real estate collapse. The economic effects of this crisis have exposed individuals to face loss of employment, work cutbacks, layoffs, and pay reductions. Such effects have developed significant depression in the business industry, Real Estate community, and the mortgage businesses; causing severe effects on liquidity, loans, purchasing and selling.

Further, there has been a decline in business and sales revenues causing many businesses to come to an end. Individuals who were self-employed, owned a small business, earned bonuses, commission, or tips, have now experienced losses as sales have declined. People have now turned to underemployment such as: working part-time at a local store earning minimum wage making less than their previous job. The list is endless, as to what has been affected by the Real Estate industry.

The Real Estate industry has impacted a variety of people, not only bringing upon a burden to our own nation, but altering the economic balance worldwide. Understanding the importance of Real Estate is vital for the restoration of this country. The following pages will discuss various issues that caused what we know today as the 'Mortgage Meltdown.' Several factors serve as an influence in this particular industry. Therefore, it is crucial to raise attention to the contributions of the mortgage crisis for suitable legal deliberations. The identification of each factor is not meant to provoke controversies nor undervalue the various departments within the Real Estate business, but rather to help restore this economic downturn.

Throughout this thesis, a variety of programs will be examined for the purpose of discussing the financial assistance offered by the Federal Government. Because of the high impact Real Estate brings upon the nation, the manner in which legislators undertake this responsibility is crucial to the global markets. The Federal Government has responded in many ways to the rising foreclosure rates by establishing various programs to safeguard individuals from foreclosure. Thus, everyday homeowners are being threatened by the mortgage crisis.

In addition, this thesis will evaluate the economic history of the United States to illustrate the effects and solutions set forth for restoration. The research conducted herein is important as it serves as assistance to those who have been impacted by the Real Estate collapse. Moreover, recognizing the importance of law, this thesis will focus on relevant federal statutes in relation to the Real Estate market. While precedence of law establishes authority throughout our nation, several cases will be presented to examine the judgments rendered by the federal and Florida courts.

Finally, statistical research regarding the mortgage crisis was conducted for purposes of illustrating the changes throughout the past few years, primarily focusing on foreclosure rates. This thesis will examine the importance of foreclosure rates while they serve as a barometer to the nation because it reflects the health of the country. In completion of the research, findings of the mortgage crisis will demonstrate the importance of Real Estate law within our society, and how it affects our everyday lives. Thus, as a highlight topic by many and appearing on the cover of many newspapers, Real Estate law can make a difference in this economy.

This thesis was not conducted for the purpose of creating debates between homeowners and lenders, or to demonstrate who is at fault. In lieu, the only intent of this thesis is to assist many of those who are being impacted by the mortgage crisis. In order for the mortgage crisis to be resolved, these issues must be examined. By virtue of law, the reduction in legal barriers involved in the mortgage crisis is imperative and the renovation of trust in the housing market is an urgent matter of improvement. This change can be implemented by improving lending performances and establishing new laws for the protection of homeowners from predatory lending and to protect lenders from homeowners defaulting. The mortgage crisis has imposed health issues and distress across the nation and globally. To that end, this thesis sets forward new changes to answer the questions of many and for the health of this nation.

CHAPTER TWO: BACKGROUND

This particular section will provide background information on the various programs the Federal Government has established to help reduce the foreclosure rates and to recover the Real Estate market. Even though the standards may vary within the states, this section will briefly define each program and explain how the Federal Government has responded to the mortgage crisis. Although many establishments have been made, this section will examine the effects of each particular program and how they have contributed to the Housing Market. In addition, this section will cover the requirements a homeowner must meet in order to be eligible for the program and receive financial assistance from the Government. The majority of the terminology consisted herein will be used throughout this research. Therefore, this section provides clarification and abbreviations on the terms to simplify the comprehension throughout the thesis.

Mortgage Modification

Mortgage Modification is a process where adjustments can be made to the original contract between the lender (mortgagee) and the borrower (mortgagor) by reinstating the loan. The terms of the contract may be modified by eliminating the fees and penalties, decreasing the interest rate, reducing the principal, decreasing the monthly payment, or by reducing the loan term. However, in order for the mortgage modification to be granted, homeowners must qualify for these programs.

The following pages will examine various programs established by Making Home Affordable program, also known as MHA. Initiated by Obama's Administration, MHA was formed to safeguard homeowners from foreclosure and to protect the nation from the mortgage crisis. MHA is a free program designed by the Federal Government to assist homeowners with more affordable loans.

Home Affordable Modification Program

Home Affordable Modification Program, also known as HAMP, is aimed to help individuals who are struggling with their payments. According to the Federal program, “HAMP can lower your monthly mortgage payment to 31 percent of your verified monthly gross (pre-tax) income” (Making Home Affordable). The first step to this process is for homeowners to contact their mortgage servicer to verify if this program is offered by their lender. Point in fact, not all lenders offer HAMP. Once this step has been completed, the homeowners must meet certain criteria to be eligible. The requirements may vary between lenders; the requisites provided herein are simply to serve as guidelines.

The homeowner must occupy the house as their primary residence and the mortgage of the home must have been acquired on or before January 1, 2009. Homeowners must provide information which reflects their monthly mortgage payment exceeds 31 percent of their monthly gross earnings. The principal balance owed on the home cannot surpass $729,750. Additionally, homeowners must prove their financial hardship through delinquent payments on their mortgage. Homeowners must also provide sufficient income documentation to confirm their ability to pay their modified payment. Within the last 10 years, if a homeowner was convicted with a felony, forgery, theft, larceny, tax evasion, fraud, forgery, or money laundering, in relation with a real estate matter, the homeowner will not be eligible for the HAMP.

HAMP is a lengthy program and many individuals may not meet the necessary criteria to qualify for this program. As a result, when homeowners are denied from government financial assistance, there is high probability of vulnerability to foreclosure. As Mike Shedlock points out, “Moreover, 4 million delinquent borrowers are not even eligible for the program” (par 1). Shockingly, the illustration found in Figure 1, demonstrates the increasing rate of trials in 2010 of ineligible homeowners within the HAMP program attempting to receive a permanent modification. “More than a third of the 1.24 million borrowers who have enrolled in the $75 billion mortgage modification program have dropped out” (Shedlock par 2).

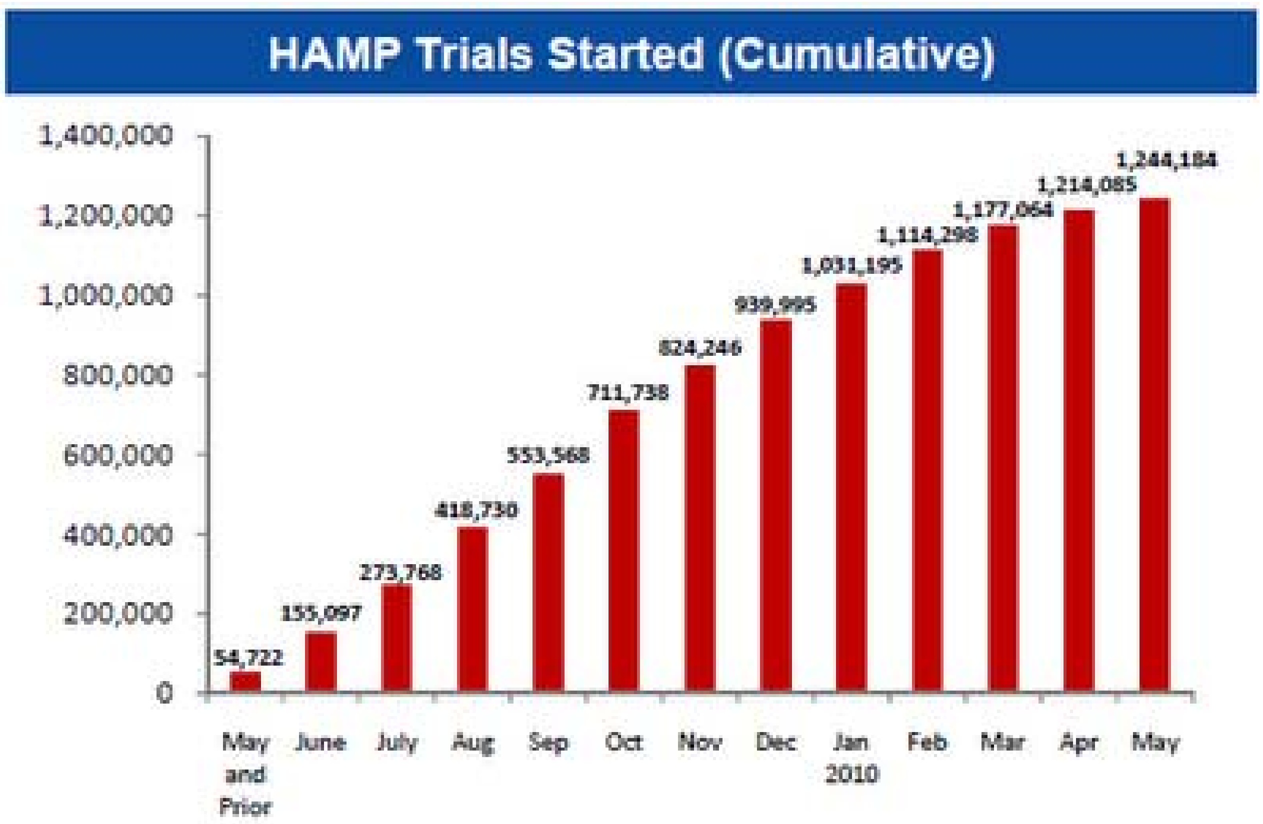

Figure 1: Chart illustrating the increase rate of trials within the HAMP program (Making Home Affordable)

Principal Reduction Program

Principal Reduction Program, also known as PRA, is specifically designed to reduce a homeowner's balance on the loan. This program is ideal for a homeowner who owes more than the value of their home. Lenders who offer this program are willing to decrease the amount owed by the homeowners once they meet the requirements for this transaction.

Homeowners will be eligible for the PRA if Fannie Mae or Freddie Mac do not own or hold guarantee on their mortgage. The homeowners must occupy the house as their primary residence and the mortgage of the home must have been acquired on or before January 1, 2009. Homeowners must provide information to reflect their monthly mortgage payment exceeds 31 percent of their monthly gross earnings. The principal balance owed on the first mortgage cannot exceed $729,750 and the homeowners must attest that the value of the home is less than what they owe on their mortgage. Furthermore, homeowners must prove their financial hardship through delinquent payments on their mortgage. Homeowners must also provide sufficient income documentation to confirm their ability to pay their modified payment. Within the last 10 years, if a homeowner was convicted with a felony, forgery, theft, larceny, tax evasion, fraud, forgery, or money laundering, in relation with a real estate matter, the homeowner will not be eligible for the PRA.

However, it is the investor who holds the security on a mortgage. Therefore, the bank must receive approval from the investor in order to reduce the principal amount. Although the program was aimed to protect at least 4 million homeowners from foreclosure, "even with the changes, the effort will likely prevent no more than 1.5 million foreclosures (qt. in Zibel and

Jacobs par 10). Such programs may generate a backlog in the situation instead of improving. “Disputes among banks and investors, who would have to approve any cuts in loan principal, could prevent the effort from stopping more foreclosures, as could another drop in home prices” (Zibel and Jacobs par 12). Sadly, the cooperation of banks and investors is highly necessary as the upturn of the housing market depends greatly on them within the PRA.

Second Lien Modification Program

Second Lien Modification Program, also known as 2MP, is presented by the US Treasury Department and is designed differently from other Mortgage Modification programs. 2MP is aimed at homeowners who hold a second mortgage on the same property in which the first mortgage was officially modified by the HAMP. Through 2MP, homeowners have the opportunity to receive a modification or principal reduction on their second mortgage as well. HAMP and 2MP work together to assist homeowners with more affordable loans once they meet the requirements stipulated.

In order for homeowners to be eligible for 2MP, as referenced above, the owners’ first mortgage must have been modified through HAMP. Within the last 10 years, if a homeowner was convicted with a felony, forgery, theft, larceny, tax evasion, fraud, forgery, or money laundering, in relation with a real estate matter, the homeowner will not be eligible for the 2MP. Finally, homeowners who have missed a HAMP modification payment within three consecutive months will not be eligible for 2MP.

2MP is a voluntary program and not many banks are willingly to contribute to the people. More than 100 mortgage servicers participate within the MHA program; however, only 17 mortgage servicers are part of the 2MP (Making Home Affordable). As of today, six of those servicers who are currently participating are: Ally Financial, Bank of America, Wells Fargo, JP Morgan Chase and Citigroup. “To date, over 115,000 second liens have been identified as eligible. Yet, less than half had begun the modification process” (Cuevas par 4).

Home Affordable Unemployment Program

Home Affordable Unemployment Program, also known as UP, is designed for homeowners who are unemployed and can no longer afford to comply with their monthly mortgage payments. UP offers a more affordable loan by reducing the mortgage payment to 31 percent of the homeowners’ income or defer the payments for 12 months or more. For qualification of UP, homeowners must meet certain criteria.

The homeowner must be unemployed and hold unemployment benefits. The homeowner must occupy the house as the primary residence and the mortgage of the home must have been acquired on or before January 1, 2009. However, if a homeowner has received a HAMP modification in the past, the individual will not qualify for the program. Lastly, the balance owed on the mortgage cannot exceed the amount of $729,750. Once the homeowners meet the requirements referenced above, they may be eligible for the UP.

As shown in Figure 2, a correlation exists between the housing and labor markets (Dunn and Fee). The illustration presents the increasing rate of foreclosures in 2007 followed by the unemployment rate. This cycle produces a strong relationship between both markets, which is most likely to generate a higher percentage of foreclosures in those states that experience a higher unemployment rate.

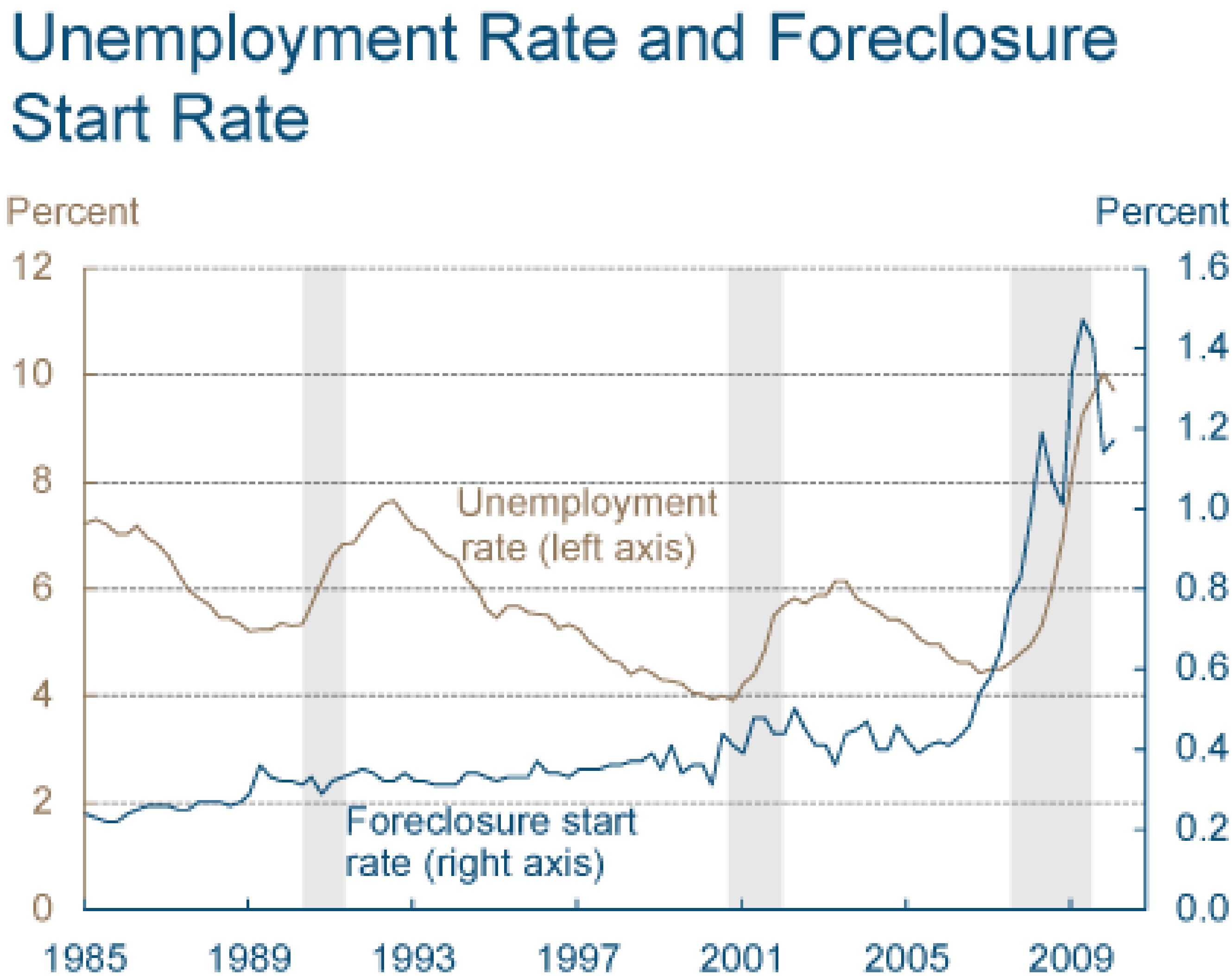

Figure 2: Unemployment in the Great Depression (Dr. Housing Bubble)

Short Sale

A Short Sale is the process of selling the property for less than what is owed, whereby the lender agrees to the transaction and accepts less than the balance owed on the mortgage loan. Thus, it allows the homeowners to sell the property at a significantly lower price, once the lender has accepted a Short Sale on the property. A Short Sale transaction often serves as an alternative to foreclosure, because it saves the lenders and borrowers the high fees of foreclosure. Although the additional costs of a foreclosure are mitigated with a Short Sale, this will not preclude homeowners from negative credit report after the transaction.

Homeowners must understand the process of a Short Sale given that two options may exist within the transaction. Often the unpaid balance on the debt must eventually be paid to the lender. This is known as a *Deficiency Judgment*. The difference from the Short Sale price and the amount owed on the mortgage loan will create a deficiency, which may result in excess amount. In a Short Sale, lenders will not necessarily liberate the borrowers from the repayment of deficiencies, unless it has been specified in the transaction. The homeowner will be held liable of the monies owed and this will exist throughout their credit report until the debt has been fully paid. “Short sales of this nature frequently take numerous years to pay off, as the balance generally equals thousands of dollars” (Short Sales Help).

The second option that may be available to homeowners who are looking into a Short Sale is known as a *Payment in Full without Pursuit of Deficiency Judgment.* Homeowners who opt for this type of Short Sale will not be obligated to pay the difference between the Short Sale amount and the balance owed on the mortgage loan. The amount reduced from the Short Sale can be claimed as income by the lender using a 1099 on their income tax return (Bent-Twyford par 3). Once the Short Sale transaction has occurred, homeowners will be freed of the debt.

Hence, homeowners must meet certain criteria to qualify for a Short Sale and the stipulations may vary from lender to lender. The following requisites will serve as guidelines for homeowners interested in short selling their property. First and foremost, sufficient evidence must be presented before the lender to demonstrate that the expected mortgage payments in the future cannot be made due to the financial hardship. There must be a decrease in the property owners' income from the time the mortgage loan was initiated, proof of unavailable funds in a savings account and the mortgage payment must be at least one month delinquent.

The process of a Short Sale may vary from lender to lender. However, the following description is the basic process for a traditional Short Sale. Once homeowners decide to sell their Real Estate through a Short Sale transaction, the first step is to always contact the lender for consultation of the various options and benefits, if any. Subsequently, homeowners will send a letter granting authorization to the escrow agency and property buyer to release information regarding the Short Sale. Along with the letter, homeowners will provide specific description of the sale for purposes of the property listing. A settlement statement that includes valuable information concerning the short sale must be completed and scrutinized by the lender. Enclosed in this statement is the selling price of the property, a listing of all expenses, fees that are applied at the closing of the transaction, and any loans that remain unpaid.

Furthermore, homeowners will be required to submit a 'letter of hardship' to the lender indicating the financial adversities. Lenders may require additional documents from bank accounts and employers for confirmation of the economic hardship in order to validate the Short Sale. The sale price of the property will be determined using the market value of similar homes and the current condition of the property. Finally, the agreement will be analyzed by the lender to assure the conditions are reasonable and all aspects of the Short Sale have been met.

Although the Short Sale process has protected many homeowners from pursuing a foreclosure action, Short Sales have caused a negative contribution to the Housing Market. As the distress of the mortgage crisis commenced, Short Sale fraud became a concern as well (Christie 2). Many banks innocently released the mortgage on homes through a Short Sale transaction, not knowing that the investors and real estate agents were making a profit by selling the property at a higher price utilizing the same transaction (Weintraub). Such effects have narrowed the possibilities for legitimate Short Sale transactions to be validated.

Refinancing

Refinancing is the revision of a loan with better terms by replacing the previous loan with a new loan to benefit the borrower with a more favorable mortgage. The same property will be used as collateral and the previous loan will be paid off using the proceeds of the new loan. Homeowners may refinance their homes for purposes of obtaining a better interest rate, to alternate the risk with the mortgage rate, to merge other debts into a single loan, or to reduce the monthly mortgage payment by extending the term of the loan. Various reasons exist as to why homeowners choose to refinance their homes.

The Federal Government has established the Home Affordable Refinance Program (HARP) to assist homeowners who are beleaguered with their mortgage payments. Using the appraised value of the property, HARP allows homeowners to refinance up to 105 percent of the property's value (Government Refinance Assistance). The Federal Government designed this program to provide financial assistance to homeowners by offering affordable mortgage payments. The following pages will explain the various selections that exist when refinancing a home.

Adjustable Rate Mortgage

Adjustable Rate Mortgage, also known as ARM, is a loan with an interest rate that is subject to change during the life of the loan. The interest rate remains unchangeable for the first couple of years, which is known as fixed rate. However, once the initial fix rate ends the interest rate may decrease or increase depending on the economic index it is associated with (Refinancing Right). The fluctuation of the interest rate also depends on the terms of the loan and on the lender.

The benefit of an ARM is the low interest rate it offers within the initial fix rate period of the loan (Refinancing Right). When compared to the average interest rate of a Fixed Rate Mortgage, ARM saves homeowners thousands of dollars due to the interest rate offered throughout the life of the loan. Additionally, homeowners have the opportunity of refinancing to a lower ARM if their current interest rate has increased in great deal. Homeowners may also encounter risks when obtaining an ARM. Given that the interest is not locked, the interest rate has the possibility of increasing monthly or yearly as it depends on the market. Individuals must take into consideration how soon the mortgage will be paid off and what is in the best interest of their financial circumstances.

Fixed Rate Mortgage

Fixed Rate Mortgage in its explicit sense is a locked rate through the life of a loan. The interest rate of the loan is fixed for a certain term. With a Fixed Rate Mortgage loan homeowners have the ability to budget their expenses and avoid the stress of dealing with unstable monthly mortgage payments. Although this loan is not as flexible as an ARM, it offers homeowners stability and ease of budgeting in the course of a long term. Fixed Rate Mortgage may be the ideal loan for individuals who intend to own their homes for several years and who desire consistency in their mortgage payments.

Fixed Rate Mortgage is one of the safest loans due to its stability and reasonable interest rate (Refinancing Right). Homeowners will be given steadiness during their refinancing needs and continue paying the same figure throughout the term of the loan. Nonetheless, the interest rate from Fixed Rate Mortgage will always be higher than an ARM and the loan will contain less features. Individuals with a negative credit report essentially will be given a higher interest rate than individuals with a good credit. For this reason being, many homeowners opt for an ARM.

Cash-Out

Cash-Out refinance use the equity of the home to obtain a loan greater than the balance owed on the mortgage. Equity is the value of the property minus the balance on the mortgage loan. For example, if the home is worth $300,000 and the homeowner owes $120,000, the equity is $180,000. The loan obtained is then used to pay off the mortgage balance and the homeowner can utilize the extra cash for home improvements, pay off school loans, or other debts. Cash-Out refinance is not intended to reduce the monthly mortgage payment or decrease the loan term. Rather, they are often used for extra cash and to pay off other debts.

Generally, the maximum refinance amount within a Cash-Out is 90% of the property's value (Government Refinance Assistance). However, homeowners must be cautious of the potential risks involved with Cash-Out refinancing, because there may be lenders who offer greater loans with higher risks and additional costs. When obtaining a larger mortgage loan, homeowners are exposing themselves to losing their homes by paying higher monthly mortgage payments. Finally, when individuals borrow from their property, tax consequences may be incurred.

CHAPTER THREE: HISTORY

Before looking at the current outline and applications of Real Estate laws today, it is important to exam the history of the Real Estate industry during previous recessions in our country. This section will provide information regarding the business cycle contraction during the decline of economic activity by examining certain factors such as employment, investment spending, inflation, bankruptcies and household income. In addition, the results and solutions of each recession will be studied thoroughly throughout this section. The examination of previous recessions as a whole can bring answers to our current economic crisis.

Recession in 1933

The Recession in 1933, also known as the "Great Depression", was a massive heartbreak for millions of Americans who were left unemployed and forced to file for bankruptcy. This recession was known to be the longest recession in the 20^{th} century and it's used frequently when comparing today's economic downturn in the 21^{st} century. The Great Depression was a worldwide economic downturn, which started in the United States on October 29, 1929 when the Stock Market crashed, known as "Black Tuesday" (Goldston 29). Many Americans lived with the impression of becoming rich by investing in the stock market. However, the panic and despair unfolded in the United States when no one wanted to purchase stocks as the prices plunged to the floor, leading to an increase in bankruptcy.

The Great Depression, which lasted for approximately a decade, exhibited many of the similarities the United States is encountering today. This was a globally catastrophic economic collapse impacting income, industrialization, construction, tax revenue, a decrease in prices and proceeds, international trade, and an increase in unemployment (Goldston 56). Moreover, various banks began to shut down as they were also severely affected by the stock market crash. The solution for many Americans was to immediately withdraw their funds. With a massive cash withdrawal, this led to additional bank closures throughout the nation and more bankruptcies.

The decline in the economy scattered quickly throughout many industrialized regions, affecting primarily North America and Europe. Individuals who depended profoundly on industry felt beleaguered as crops prices plummeted. Unemployment severely struck the United States as many lost their homes and starved in the streets. At the height of the Depression in 1933, “25 percent of all workers and 37 percent of all non-farm workers were completely out of work” (Smiley). Figure 3 provides an illustration of the unemployment rates throughout the Great Depression, a comparison which serves as an assessment to what the United States is currently facing.

Figure 3: Unemployment in the Great Depression (Dr. Housing Bubble)

Figure 4 demonstrates the consecutive national unemployment rate for the 21st century during the mortgage crisis. According to the Bureau of Labor Statistics, this has been the longest uninterrupted series in the record for unemployment rate since 1948 (qt. in Manuel par 12). Although the rate is not identical to the percentages found in Figure 3, the statistics included in Figure 4 illustrate how the rate continues to increase climbing through the current years. The unemployment rate is a fundamental indicator for the growth of the economy, because the rate confirms the effect of economic junctures (BLS). The Federal Reserve, businesses, investors and additional entities use the unemployment rate to substantiate the health of the economy (Amadeo par 8).

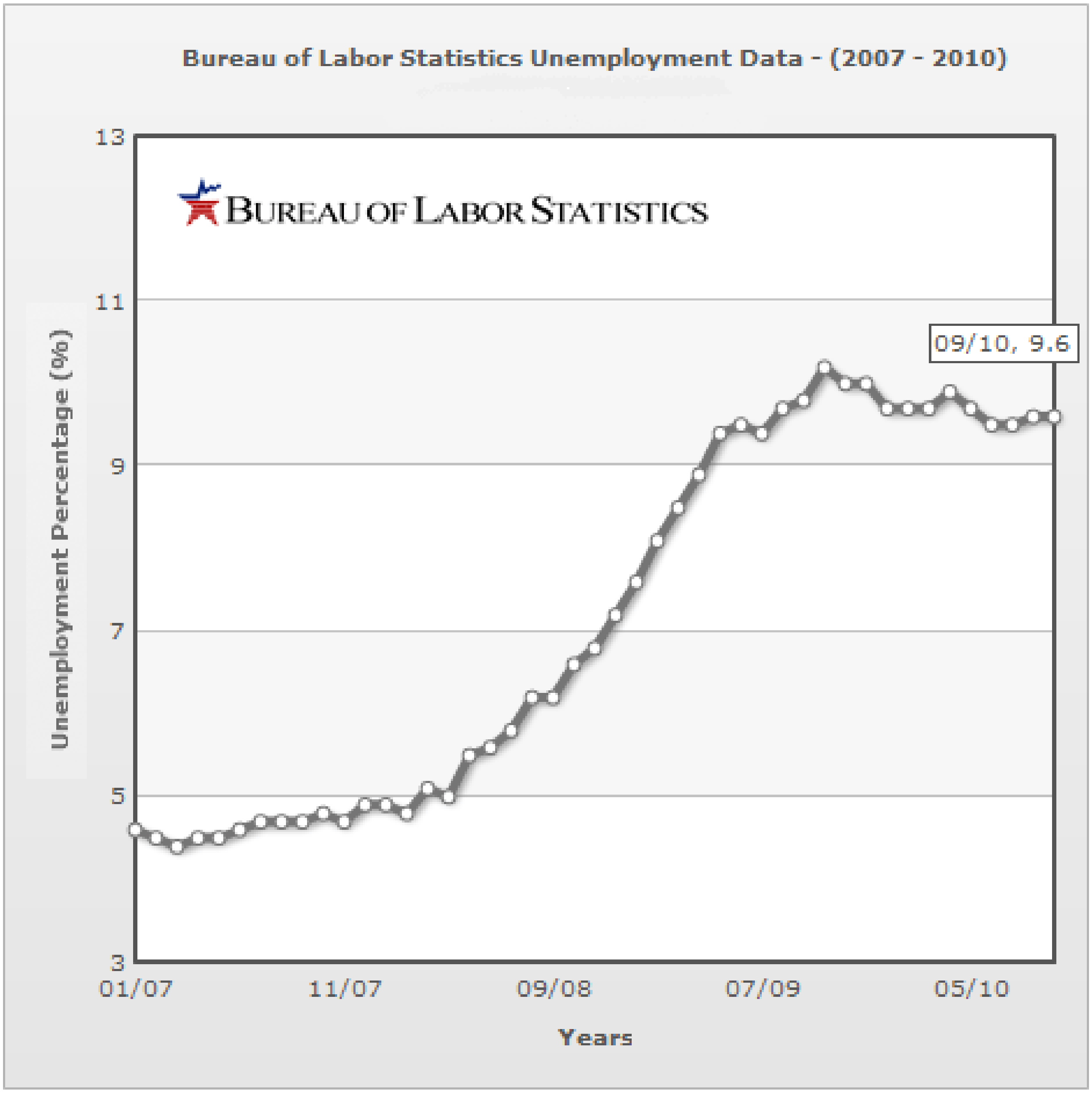

Figure 4: Bureau Labor Statistics Data – (2007 – 2010) (BLS)

Many theories were established as to what were the predominant aspects of the Great Depression. Economist Irving Fisher introduced the “Debt Deflation Theory of Great Depressions”, as he argued the causes of over-indebtedness and deflation (Fisher 338). Within this theory, nine factors are introduced as the mechanics of the boom and bust leading to a chain of events when the two economic maladies, over-indebtedness and deflation exist within the economy.

The boom and bust was caused by nine factors that are linked together and are outlined in the following order: (1) debt liquidation and distress selling, (2) contraction of the money supply as bank loans are paid off, (3) a fall in the level of asset prices, (4) a still greater fall in the net worth of businesses, precipitating bankruptcies, (5) a fall in profits, (6) a reduction in output, in trade and in employment, (7) pessimism and loss of confidence, (8) hoarding of money, add (9) a fall in nominal interest rates and a rise in deflation adjusted interest rates (Fisher 341-342).

Brokerage firms were flexible with margin requirements and signed off loans to many individuals who did not meet the necessary credentials. Therefore, there was an increase in foreclosures when the market crash occurred, because the debt could not be paid back and many individuals began to default on their loans. Billions of dollars were lost as many banks began to fall apart triggering additional bank closures throughout the entire nation. Regulations established by the Federal Reserve for the purposes of panic circumstances were unsuccessful and were not even in use during the devastating period. Banks failed dramatically and Americans felt hysterical in this crisis.

Debt liquidation caused a decrease in prices, capital investment and construction. Yet, it could not keep up with the loss. A total of 744 banks failed after the market crashed and depositors witnessed a loss of $140 billion from bank failures (Living History farm). Additionally, due to the effect in liquidity, this caused a value increase in each dollar owed and the burden of debt did not diminish for borrowers. Paradoxically, as borrowers made more payments to their loan, the debt increased; the horrific period in 1933 known today as the Great Depression.

When Franklin Delano Roosevelt became President in 1932, the banking crisis and the unemployment rate were at its highest percentage. President Roosevelt was committed to establish new programs and associations for purposes of the reformation of the nation (Taylor par 7). Although many of his proposals were rejected by Congress, President Roosevelt asserted to resolve the woes of the country. Immediately after taking office, he initiated by shutting down banks and not allowing them to reopen until they showed stability (Rosenburg par 12). Additionally, President Roosevelt introduced a new program known as the “New Deal”, designed to ease the crisis of unemployment rates.

The New Deal consisted of various programs with fundamentals to restore America. The Agricultural Adjustment Administration, also known as the AAA, was aimed to assist farmers. As it was approved in 1933, the program “accepted the long-held premise that low farm prices resulted from overproduction” (The Great Depression and New Deal). AAA was designed for adjustments to farming prices and in the end it served as a favorable program for large operators. The Tennessee Valley Authority, also known as the TVA, “provided millions of dollars to transform the economies of seven depressed, rural Southern states along the Tennessee River" (The Great Depression and New Deal).The program introduced high-wage jobs in construction and electricity to help strengthen many families financially.

Lastly, another noteworthy component of the New Deal was the Works Progress Administration, also known as the WPA. The programs offered assistance to unemployed breadwinners by providing numerous jobs in construction, building, roads and parks. The intent of the program was to curtail unemployment and help this group of individuals financially. President Roosevelt made changes within the banks and labor market. Indeed, the projects and programs implemented were features that made a positive contribution to the economy and President Roosevelt was seen as a hero by many (Rosenburg par 15).

Recession in 1973

The 1973 Recession in the United States was known as a period of stagnation, due to the immobility of the economy. The nation experienced a failure in economic growth for a prolonged period and many compared it to the depression of the 1930s. Although Americans did not face the similarities of the Great Depression, this crisis was known to be the worst, thus far. The economy came to a standstill state as it ceased to grow and caused an augment to unemployment along with inflation. The impact amongst unemployment and inflation led a recession of stagflation causing an economic burden to the Western World.

The nation was hit with an energy and steel crisis. Given that many countries began to expand in the steel industry, competition was created with the United States and many suffered loss of employment. The recession became apparent when the stock market crashed in 1974.

Subsequently, the ominous economic cycle commenced and many Americans feared as this recession could possibly turn into a depression.

Gross Domestic Product plummeted and unemployment peaked at 9 percent, reaching its highest ever since the Great Depression (Watkins par 11). Inflation was the foremost factor of the recession as it triggered interest rates to increase and a loss in investment purchases. Due to the correlation that exists within interest rates and investing, the increase of interest rates caused a decline in investment purchases (Watkins par 7). The reduction in investments led to a decrease in production and this led an increase in the unemployment rate.

The period of stagflation, is known to be caused by inflation and stagnant industries. Individuals began to purchase more goods, since they lived with the impression that the price of goods would only increase. With the increase in purchasing, this stimulated an increase in demand and demand raised the costs of goods. This led to a higher pay, which in turn caused the prices of goods to increase even more. Cost of living clauses were introduced and the budget deficits enlarged due to government borrowing. Interest rates rose dramatically causing many businesses to languish due to the increase in costs. Many businesses shut down and the unemployment rate rose to uncomfortable levels.

After 17 months of suffering a drastic downturn, the economy slowly began to convalesce from the recession (Giving USA Foundation). In 1975, President Gerald Ford introduced the Tax Reduction Act for purposes of increasing consumption (Meeropo par 7). Ford’s intent was to reduce taxes by $16 billion for one year to stimulate economic growth and to avoid inflation.

A tax cut is created to reduce taxes and to stimulate economic activity. Once a tax cut has been created this will causes a decrease in the government's income while it increases the income of those individuals whose tax rate has been lowered. A tax cut provides incentive investments to individuals and corporations as it serves as a positive influence to the spending plans of individuals. Theoretically, this can engender additional taxable income which will produce more revenue.

In spring 1975, the economy began to recover its strength almost exclusively from consumer spending, which helped restore business investments and federal purchases (recession and recovery 497). "Marginal rates were not cut, and instead all taxpayers and their dependents received a credit of $30 (almost $100 in current dollars)" (Meeropo par 5).

Additionally, there was an extension to unemployment benefits allowing individuals to search for a better employment position for a longer period of time. As a result, individuals who were unemployed were able to survive the recession due to the low living costs and the increase in employment compensation (Recession and Recovery 499-500). According to Meeropo, 81 percent of all unemployed individuals received compensation, therefore, "It is clear that the 1975 tax cut, plus some increased spending in the form of extended unemployment compensation benefits, helped raise the federal deficit and increase aggregate demand" (par 7).

Recession in 1980

The Recession in 1980 is generally described as two recessions: the first six months of 1980 and a period of 16 months from July 1981 to November 1982. This recession became a severe global economic catastrophe as it affected much of the developed world in the early 1980s. The primary cause of the recession was a monetary policy introduced by President Jimmy Carter; The Depository Institution Deregulation and Monetary Control Act (DIDMCA). A law passed by the Federal Reserve System in 1980 where many regulations were altered and banks were forced to comply with the Federal Reserve's rules.

DIDMCA allowed the Federal Reserve to have control over non-member banks and suddenly banks were permitted to amalgamate. Credit unions and Savings and Loan were allowed to issue checkable deposits and the deposit insurance of U.S. banks and credit unions increased to $100,000. DIDMCA abolished the usury caps on interest rates and allowed financial institutes to set their own interest rates, thus removing this power from the Federal Reserve Board of Governors (Birgir par 9).

The wave of deregulation caused damaged to the bank industry and many were forced to shut down. As banks were given an increase in power, this served as an incentive in lending to low-income communities, not knowing this would only damage the bank and mortgage markets. Bank failures increased rapidly by mid 1982 causing 42 banks to shut down. The Federal Deposit Insurance Corporation (FDIC) spent $870 million in purchasing bad loans as an attempt to restore the bank industry.

Additionally, the recession caused a Savings and Loan (S&L) crisis. In 1979, S&L had $616 billion in total assets and by 1980 the net S&L income decreased to $781 million. According to Ely, the S&L industry did not recover until 1989 after experiencing a recovery cost of $160 billion (121). Inflation soared quickly and it began to affect the housing, steel manufacturing and automobile industries, America's key industries. By 1980, inflation reached its highest peak of

13.5 percent. Many businesses were severely affected from the economic downturn and by the end of 1982, the unemployment rate raised to 10.8 percent nationwide (Spencer par 8). Since the Great Depression, America was facing the highest unemployment rate in any recession as it maintained above 10 percent for ten months (Amadeo par 4).

The abolishment of the hostage crisis began with the Presidency of Ronald Reagan. President Reagan established the Economic Tax Recovery Act, which consisted of a reduction in government expenditure, personal and corporate tax cuts and a balanced financial plan. To achieve a balance budget many cuts had to be made to social programs such as: school lunch and disability programs. Theoretically, by introducing the tax cuts individuals are willing to spend more money on goods and services, thus stimulate the economy (American Experience). Generally, if individuals won't spend the money in goods or services the money will be used to invest in businesses, thus producing economy growth.

As a result, the tax cuts had a significant impact on the economy as it initiated the recovery from the recession. The unemployment rate dropped to 7.2 percent where virtually two million left the unemployment rolls. Inflation dropped to 3.2 percent and corporate earnings increased to 29 percent in 1983. Although Reagan's tax cuts affected the poor while it privileged the rich, the economy was set back on course and America experienced the longest prosperity in history (American Experience).

CHAPTER FOUR: FACTORS OF THE MORTGAGE CRISIS

Examining the current dilemma is significantly important for purposes of preventing similar disruption in the future. Indeed, there have been many crises previously in our nation and around the world. However it is helpful to conduct such an assessment to fully grasp the contributing factors behind a mortgage meltdown. Although no particular industry should be blamed for this collapse, such problems should be understood in context. By gathering statistics regarding the Real Estate market, one can get a more accurate picture of how Real Estate law affects society.

Subprime Lending

Subprime Lending are loans offered to individuals who may be inconsistent with a repayment schedule and who have unfavorable credit history. These loans are composed of higher interest rates with inauspicious terms for purposes of compensation to creditors for the high risk. Subprime lending is also described as non-prime, near prime, second-chance lending, because it is aimed at borrowers who are more likely to default on their loan mortgages than prime borrowers. "The term *subprime* generally refers to borrowers who do not qualify for prime interest rates because they exhibit one or more of the following characteristics: weakened credit histories typically characterized by payments delinquencies, previous charge-offs, judgments, or bankruptcies; low credit scores, high debt-burden ratios; or high loan-to-value ratios" (Barth et. al 42).

Even though subprime lending provides loans to individuals who do not meet the credit standards, it is critical to understand that this type of lending plays a vital role in our economy. Subprime interest rates are also referred to as *hybrids*, because the initial interest rate remains fixed for a certain period and resets to a higher variable rate for the remainder of the loan term (Barth et. al 60). Lenders used many financial tools to offer loans to subprime borrowers without taking responsibility of their actions.

Subprime lending offers interest-only loans, which are characterized as low monthly payments so borrowers can afford their mortgage payments. However, after three or five years, the initial interest rate resets. Despite the fact that this increased the creditors' risk, lenders only lived with the impression that borrowers would resell their homes after the change in interest rates rather than defaulting.

Borrowers opted for an adjustable-rate mortgage (ARM), which allows them to have a low initial interest rate along with low monthly payments. However, as the adjustments are made to the interest rates it is likely for the interest rate to increase by two percent or more per year creating a greater loan. For example, a $500,000 loan with a four percent interest rate for a term of 30 years equates to a monthly payment of about $2,400. However, after three years with an ARM, this same loan can create an interest rate of ten percent after the adjustable period ends, resulting in a monthly payment of $4,220 creating almost a six percentage point increase. The total cost of the loan with four percent interest rate is $864,000 while the total cost of the loan with ten percent interest rate is $1,367,280.

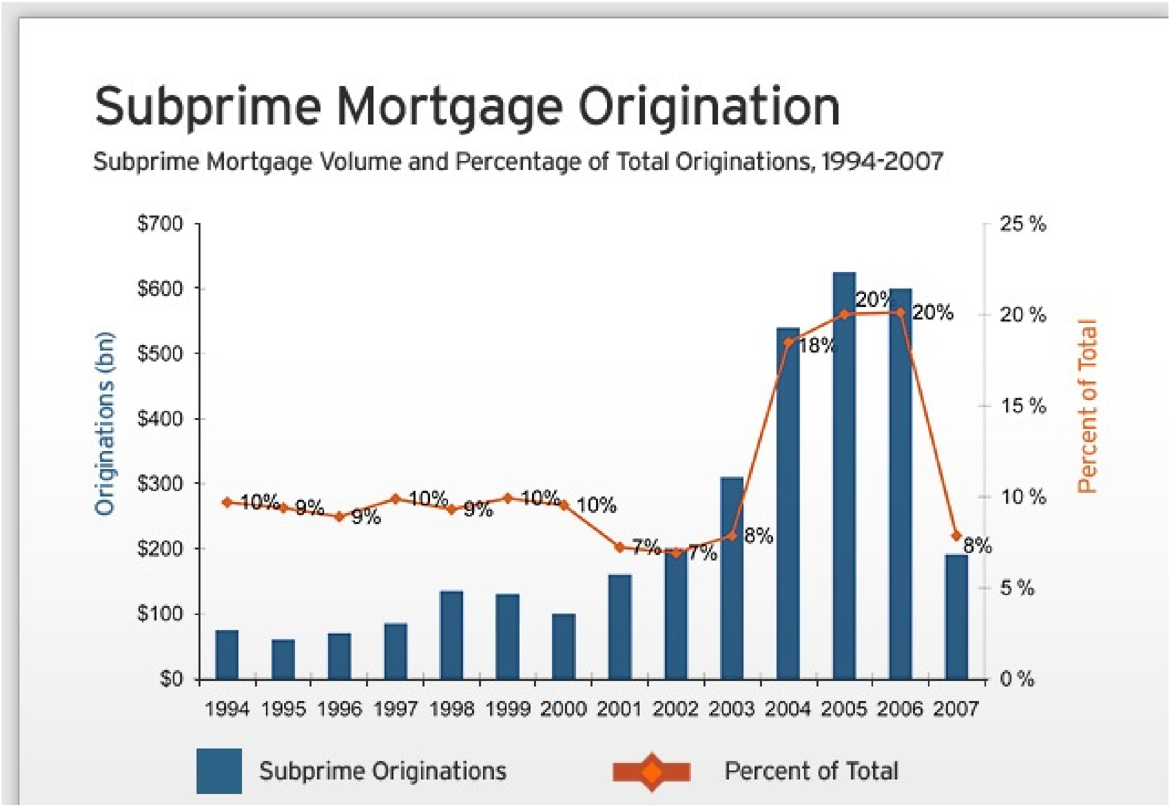

Figure 5: Subprime Mortgage Origination (CNBC)

As Figure 5 shows, Subprime lending increased rapidly in the beginning of the twenty-first century. The subprime mortgage industry is composed mainly of ARM. According to Barth, Li, Lu, Phumiwasana and Yago, the ARM share of all outstanding home mortgages increased from ten percent in 2001 to 21 percent in 2006 (53). ARMs accounted for 40 to 50 percent of all subprime mortgages. Nonetheless, when compared to prime loans, ARMs accounted for less than 20 percent and in FHA loans less than ten percent (54). Thus, subprime borrowers are exposed to higher risk interest rates.

Lenders also offered Mortgage-Backed Securities (MBS), described as loans bundled together that are resold by lenders to create an increase in their funds. Even though the risk was apparent, the risk seemed slight at the time due to the increase in the housing market. As a result when combining the advent of interest-only loans with MBS, this amalgamation led to a housing boom in the market due to all the liquidity that was created. “In 1994, an average of 31.6 percent of subprime mortgage were securitized, but by 2006, that share had more than doubled to 80.5 percent of all subprime loans” (Barth et. al 49). MBS offered big returns to investors as the process of securitizing and selling the loans provided lenders with additional funds and liquidity to offer additional loans.

Not surprisingly, every boom has its bust and the nation began to experience a downturn in the economy in 2006 as the housing market initiated its decline. Subprime borrowers began to stress over mortgage payments and the attempt to sell their homes was unsuccessful. Therefore, homeowners started to default on their loans resulting in a subprime mortgage crisis. According to Amadeo, since the loans were repackaged and sold, borrowers were unable to negotiate a settlement with their lenders (par 10). Even though subprime lending has existed for a long period of time, its drastic increase in the early years of the twenty-first century came to severely affect the economy bringing a threat to the entire nation.

When the interest rates started to reset borrowers began to default on their loans and this led to a widespread collapse globally. Excessive subprime lending was the primary cause for the 2008 financial crisis, which then led to the deepest recession since the Great Depression (Amadeo par 1). In 2007, the nation experienced a banking crisis where many banks filed for bankruptcy and individuals were forced to default. Therefore, it is fundamental for individuals to understand the importance of real estate and interest rates since they serve as a critical role in the nation's economy. As Figure 6 shows, individuals with a lower credit score had a higher default rate than individuals with a higher credit score.

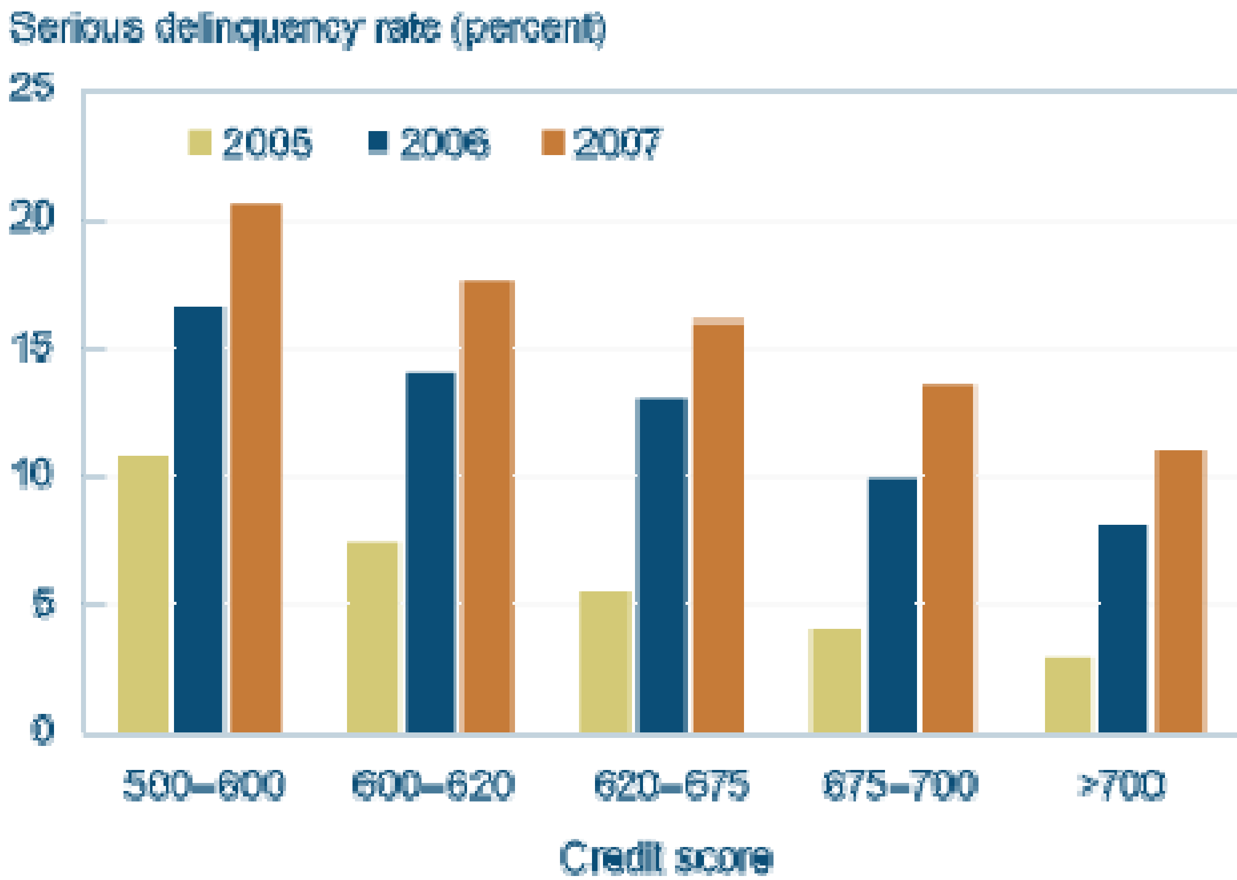

Figure 6: Delinquency rates based on Credit Score (Federal Reserve Bank of Cleveland)

As for the subprime borrowers, once the interest rate increased many intended to refinance their homes. The strategy was possible so long as the housing prices continued to increase. Yet, when the housing market began to decline, homeowners were left with mortgages higher than the current market value of their home. As for the lenders, many anticipated to sell the homes of owners who would default believing the prices would only increase or that the loan could be securitized and pass the risk to a different party. Nevertheless, with the decline in the housing market lenders weren't left with many choices either.

In 2001, the subprime home mortgage originations were at $160 billion and by 2005 it increased to $625 billion (Barth et. al 46). Around the same period of time, the subprime home mortgages outstanding increased from $479 billion to $1.2 trillion once the housing bubble occurred (47). Subprime home mortgage originations and subprime home mortgages outstanding declined drastically after the housing bubble burst.

The subprime mortgage industry developed a number of tactics for buyers, investor and lenders. Individuals were not taking full responsibility of their actions and many participated unethically. It was an era of easy lending that didn't require borrowers to meet the necessary standards. Many borrowers gave a small down payment and others no down payment at all. Americans lived with the impression that housing prices would only increase, therefore, many invested in properties to flip for a profit. Furthermore, individuals were underestimating the risks that accompanied subprime lending. Americans chose to exploit the situation as many participants believe that real estate investment could not be missed, and many ignored the actual risk associated with subprime mortgages.

The Housing Boom and Bust

The housing boom and bust is known to begin with skyrocketing house values (boom) followed immediately by a steep decline (bust). During the boom individuals made their financial move in buying homes and investing in real estate as many depended on their general belief that home values would only continue to increase. This served as an incentive for lenders as many loans were approved without taking into account full responsibility and regulation. Borrowers became vulnerable to substantially high risk loans and with the occurrence of the bust homeowners started to default on their loans. In the period of the bust, homeowners are unable to take out further loans because their home loses value and most likely the mortgage loan is higher than the value of their home. American single family homes increased by almost one third from 2001 to 2005 equating from $143,600 to $219,000 (Sowell 1).

In the housing market during the period of the boom, "creative" financial arrangement is highly used between borrowers, investors and lenders. Low interest rates are offered with low standards to low income individuals with less education or knowledgeable experience. These individuals, who previously were unable to qualify for a loan, were buying homes from the newest and more complicated mortgages. It has been indicated that perhaps individuals with less experience might have not fully comprehended the terms of the ARMs and the ominous terms associated with the commitment (Sowell 26).

Generally, during the boom period a so called "teaser" rate exists to attract individuals in buying homes. The teaser interest rate falls below the market interest and will be charged for the first few months of the mortgage. Subsequently, the interest rate will reset to a much higher interest rate causing an increase on the monthly payment.

In 2005 and 2006, during the height of the housing market, it has been established that 15 percent of all ARM had an initial interest rate below two percent (Sowell 27). The “teaser” rate serves as a trap for those individuals who were purchasing homes in the early years of the twenty first century. However, many purchased homes with a teaser rate as an investment and flipped the transaction for a profit before the bust. “Nationwide, a survey by the Nation Association of Realtors found that, during the housing boom, homes were bought as investments, rather than to live in, by 28 percent of homes in 2005 and by 22 percent of homes in 2006” (28).

Additionally, an important element that affects the housing market is defined as “predatory lending.” This type of lending involves lenders who participate unethically to take advantage of those individuals with less experience or those who are first time buyers. Many lenders signed loans to low income individuals knowing they would end up defaulting on their mortgage. Nonetheless, the predatory lenders created such a mortgage loan to later foreclose on the property and recover the home. Many homeowners were signing agreements without fully understanding the terms and the risks involved in these shady operations.

The housing bust occurred in 2006, as the housing prices started to decline. The “blame game” initiated as to who was responsible for such a collapse. According to Sowell, housing prices were declining by great amounts for the first time in more than a decade (58). Foreclosure rates began to increase in California and then rapidly expanded throughout the nation by September 2006. By June 2007, the foreclosure rate had increase to 87 percent nationwide

(Sowell 59). Banks started to panic because the cost of each foreclosure home was approximately $40,000. Suddenly financial disaster began to spread from local housing markets to nation and international financial markets. A flooded downturn occurred worldwide with the mortgage delinquency rates along with the skyrocketing defaults.

The collapse initiated in 2007 when the housing prices began to plunge and homeowners and financial institutions fell into distress. In the first half of 2007, there was an average of 573,000 properties in foreclosure nationwide (Barth et. al 74). A cascade of consequences occurred and individuals who purchased their homes at the end of the boom period were now underwater (owing more than the current market value of their home).

Housing prices started to plunge sharply spreading throughout the nation. In Miami home prices fell by 29 percent, in Las Vegas by 32 percent, in Phoenix by 33 percent and in California homes dropped by an average of $100,000 in 2007 and 2008 (Sowell 61). According to Sowell, one fourth of all ARM loans, interest-only loans and MBS were late on their mortgage payment by 60 days (63). When comparing ARM loans with 30 year fixed interest mortgages, the results of their actions reflected on the default and foreclosure rates during the economy downturn. With the decline in housing prices, many homeowners were force to default while other chose to default as many stopped making payments on a $500,000 mortgage when the home is only worth $350,000.

In 2008 during the last few months of Bush's presidency, Congress accepted a proposal from the Bush administration that $700 billion were to be spent under the Troubled Asset Relief Program (TARP). However, during the Obama administration, Congress voted for another $800 billion referred to “stimulus” or “bailout” as an attempt to recover from the economy downturn. A “stimulus” is used as an effort to motivate somebody or something. In the end, “stimulus spending event on the unprecedented scale in the stimulus package is not by itself supposed to restore the economy prosperity and rising employment” (Sowell 84). The proposal might have seemed fine at the time, yet, no one ever knows what will actually happen.

The purpose of TARP was to protect financial institutions from collapsing. Therefore, many banks were provided with billions of dollars all across the nation. “As of February 2009, the largest recipients of TARP money included J.P. Morgan Chase ($25 billion), Wells Fargo ($25 billion), AGI ($40 billion), Bank of America ($45 billion) and Citigroup ($50 billion). Unfortunately, the bailout money was misused by these financial institutions and Congress was shocked by the results. The money was used for things different from what the Congress had planned.

The bailout and stimulus program led to a danger of inflation where history was repeating itself from the “stagflation” that occurred in the 1970s. The consequences of unprecedented deficit spending increased the inflation rate for the first time in twenty years. Americans continued to face foreclosure and unemployment increased drastically.

Irresponsible Regulations

As the government approved more lax standards for low-income individuals, this increased the risk in the mortgage industry and homeowners became vulnerable to default. According to Sowell, government officials adjusted lending regulations allowing banks to offer loans to people whom they would not lend before (36). Borrowers entered unsafe loans offered by unscrupulous lenders. As a result, the government did not adjust the regulatory practices to the financial markets of the twenty-first century and exposed creditors and borrowers to a risk that led to a shortage in liquidity and a mortgage meltdown.

Additionally, there were many fraudulent underwriting practices due to the negligent financial modeling. As borrowers applied for a loan, applications were not being checked for accuracy and little or no documentation was required at times. The role of fraud can be a chain of events where each participant should comply with their responsibilities. However, many ignored the ethical practices and focused more on the profits.

Borrowers provided false information on their application, brokers encouraged such actions and lenders misled borrowers. Such practices of course led to an endemic crisis. According to Kane, a study conducted by Mortgage Asset Research Institute stated that on average 60 percent of the stated incomes on the loan applications were exaggerated by at least 50 percent (par 7). Subprime mortgages, whose rate was still at the initial interest rate, were found to be at 28.5 percent delinquent. In 2006, Citibank had an average of 60 percent defective mortgages due to missing policy documents and negligent underwriting procedures (qt. in Bowen par 15).

It is important to understand the integral role of the Federal Reserve System in the Real Estate market. The Federal Reserve System has the authority to regulate banks, make adjustments, change interest rates and regulate money supply. “Members of congress from both political parties have urged federal regulatory agencies to pressure banks and other lenders to lower mortgage loan requirements, and have passed legislation to that and to subsidize or guarantee loans made under lowered standards” (Sowell 30).

The U.S. Securities and Exchange Commission changed the net capital rule with lax standards and allowed banks to increase their level of debt, encouraging the growth of MBS in 2004. The top U.S. banks were permitted to exclude significant amounts of liabilities and assets from their balance sheets. As a result, in 2009 many of those banks were obligated to return large amounts of money to their balance sheet, figures such as $500 billion to one trillion.

Furthermore, President George W. Bush introduced the American Dream Down Payment Act to congress in 2002. This act subsidized the down payments from prospective home buyers whose incomes fell below average. Subsequently, Bush advised Congress to permit the Federal Housing Administration to offer zero down payment loans with a low interest rate to low income Americans. “Traditional 30 year mortgages with a fixed interest rate, which were still 57 percent of all mortgages in 2001, fell to 33 percent of all mortgages by the end of 2006” (Sowell 42). As a result, subprime lending became the ultimate finacing model increasing to 19 percent of such loans and other non-traditional loans increased to 14 percent (43).

The relaxed regulations and standards entailed a rising riskiness for borrowers and creditors. As the changes were implemented, the traditional safeguards in mortgage lending began to be eliminated and the “modern” and “flexible” standards introduced by the government increased. Not knowing this would only lead to “creative” financing, Americans started to lose confidence in banks, the government and the nation.

CHAPTER FIVE: FEDERAL STATUTE ANALYSIS

This section will provide several Federal Statutes in relation to banking laws that have been established throughout U.S. history. These laws were established in response to several crises rather than drafting the laws with the intent of preventing or being prepared for future economy downturns. Even though the laws contained herein are not specifically for the state of Florida, they still have an important role because these laws may influence financial regulations. Thus, it is critical to understand that the government should not wait until a crisis has occurred to increase regulation within financial institutions.

12 U.S.C. § 93 (1933) known as the Banking Act of 1933 (Glass-Steagall Act), was enacted during the years of the Great Depression. This law established the Federal Deposit Insurance Corporation (FDIC) for the intent to reform banks and control speculation. The payment of interest-on-demand deposits is prohibited under this law and a limit was set on the interest rates for banks and savings and loans deposits. Once the law was enacted, a separation was created between banking and the securities business.

12 U.S.C. § 1828 (1980) known as the Depository Institutions Deregulation and Monetary Control Act (DIDMCA), was enacted during the Savings and Loans crisis. A law passed by the Federal Reserve System in 1980 where many regulations were altered and banks were forced to comply with the Federal Reserve's rules. DIDMCA allowed the Federal Reserve to have control over non-member banks and suddenly banks were permitted to amalgamate. Credit unions and Savings and Loan were allowed to issue checkable deposits and the deposit insurance of U.S. banks and credit unions increased to $100,000.

12 U.S.C. § 1464 (1982) known as the Garn-St Germain Depository Institutions Act, was enacted during the years of the Savings and Loan crisis as well. In 1982, this act deregulated savings and loans associations as it permitted banks to offer adjustable rate mortgage loans. Many believed this law to be a contributing factor to the Savings and Loan crisis. The Garn-St Germain Depository Institutions Act also allowed federal associations to offer loans for commercial, agriculture and corporate businesses.

44 U.S.C. § 3501 (1989) is known as the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The purpose of this law is to restore the confidence in financial institutions after the Savings and Loan crisis. Many boards were created to oversight the work of financial participants, such as the Resolutions Trust Corporation (RTC). The RTC was a temporary agency established by the government given the authority to manage and dispose all assets of failed institutions. Additionally, another oversight board was created to supervise the authorities of the RTC policies. After the Savings and Loan crisis, many regulations were enacted by the government for purposes of economy restorations.

15 U.S.C. § 7201 (2002) known as the Sarbanes-Oxley Act. The purpose of this law was to enhance new standards for all U.S. public company boards, accounting and financial firms. The requirements for audits, annual and quarterly reports were enforced along with this law. The Sarbanes-Oxley Act established the Company Oversight Board to supervise the work of accounting firms and financial institutions. CEOs and CFOs must meet certain standards with the Securities and Exchange Commission.

12 U.S.C. § 4516 (2008) known as the Federal Housing Finance Regulatory Reform Act. The establishment of this act was to enhance availability in mortgage credit and to help homeowners save their homes during our current mortgage crisis. As discussed previously in chapter two, the government has extended financial assistance to homeowners as an attempt to limit the increase in foreclosures. As the mortgage meltdown occurred, many regulations have been established to offer new affordable housing goals.

CHAPTER SIX: CASE LAW AND COURT DECISIONS

When analyzing the decisions of state courts, one can understand why many individuals face foreclosure without having the opportunity of making arrangements with their lenders if the modification process fails. This section will provide court opinions of Florida that directly relate to summary final judgment of foreclosure on the basis that there is no genuine issue of material fact. Specifically, the grounds on which the lenders are entitled to summary judgment as a matter of law will be discussed below to fully comprehend why so many homeowners lose their homes when confronted with a foreclosure lawsuit.

Under Florida law, when a mortgage contains an acceleration clause, upon breach of a mortgagor's covenant to make the required payments, a mortgagee may sue to foreclose the mortgage before the due date. *Treb Trading Company v. Green*, 102 Fla. 238, 135 So. 510 (1931). Indeed, a principal purpose of a foreclosure action is to subject the security to the payment of the obligation involved. *Bobby Jones Garden Apartments v. Connecticut Mutual Life Insurance*, 202 So.2d 226 (Fla. 2d DCA 1967).

The institution of a foreclosure suit evidences the exercise of a mortgagee's option to declare the remaining principal sum and interest due thereon. *Kreiss Potassium Co. v. Night*, 98 Fla. 1004, 124 So. 1751 (1929).

A mortgagee has a right to accelerate upon default in conditions of the security agreement, such as payment of interest, installments of principal, taxes and insurance. *Clark v. Lachenmeier*, 237 So. 2d 583 (Fla. 2d DCA 1970). The mortgagee has exercised its rights under the Note and Mortgage to accelerate all payments due thereunder.

Under Florida law, the basic rights of a mortgagee are well established. As a matter of law, mortgagee is entitled to a foreclosure upon the secured property in the event of a default under the mortgage. *See*, *e.g.*, *Homeowners Loan Corp. v. Wilkes*, 178 So. 161, 163 (Fla. 1938); Fla. Stat. 673.413(1). As was stressed by the Florida Supreme Court in *David v. Sun Federal Savings and Loan Association*, 461 So.2d 93, 96 (Fla. 1984):

> Failure to make timely payment is not a mere technical breach of covenant intended to preserve the security; it goes to the heart of the agreement between a mortgagor and mortgagee.

Accord Community Federal Savings and Loan Association v. Orman, 446 So.2d 1129, 1131 (Fla. 4th DCA 1984) ("The obligation of a mortgagor to pay and the right of a mortgagee to foreclose in accordance with the terms of the note and mortgage are absolute.")

CHAPTER SEVEN: CONCLUSION AND RECOMMENDATIONS

While the mortgage crisis continued to evolve, the government's response to such occurrence was the usage of bailout and stimulation programs, as discussed in chapter four. However, such response was only a temporary fix followed by an increase of damage in our nation and in many other countries. Therefore, after analyzing how the initial problems of the mortgage crisis developed, new regulations should be established for the purpose of creating a healthier Real Estate market.

As a start, market discipline will help restore the confidence lost in lenders, borrowers and the government. Many actions can be implemented to monitor and safeguard all participants in the financial industry that will help prevent further crises. Individuals may live with impression that the government will always solve all financial problems. Such belief only worsens the situation because this promotes risk-takings. Nonetheless, when regulators encourage market discipline this will enhance their authority over financial market participants.

One important aspect of the restoration process should be adequate disclosure. As discussed previously, many lenders and borrowers were not being honest with mortgage transactions. By providing adequate disclosure a transparency will exist when discussing risks, services, ratings and mortgage documentation. When regulators request better comprehensive information to be used in the Real Estate market, this will create a performance of due diligence between all financial market participants.

Additionally, the regulatory challenge continues since adjustments are not only needed in homeownership, but also in limiting foreclosures as it is important to keep families in their homes. Many strategies can be implemented to avoid foreclosure on a home. Some flexibility should be allowed when individuals file for bankruptcy, such as modifying the terms of all debts. Special attention should also be drawn to modification fraud. Homeowners who provided necessary information for a home modification ended up losing their home due to the negligence of financial institutions. However, when there is a vacant, abandoned or tax-foreclosed property banks should be given the opportunity to manage or develop the location. Such strategies can be created to prevent an increase on foreclosures in the event of another home price bubble.

One must keep in mind of all the factors that created the housing bubble and find a way to limit such situation or at least be prepared before it expands into a global disaster. As discussed previously, credit was not used wisely as it was allowed to increase dramatically leading to excessive leverage. Our economy depends on credit for growth and development; therefore, regulators should know how to control it. The government itself should focus on how to identify when such problems are emerging, rather than allowing it to grow out of proportion. Learning how to identify an emerging crisis is fundamental and being prepared is crucial for the health of the nation.

Whether we look at the Real Estate market in general or the housing market in detailed, before moving forward it is critical to understand the factors that led this nation to a collapse. Confidence needs to be restored in our economy and fundamental restructuring can be useful to reshape financial institutions. By raising awareness of the structure of our economic system, our society will understand the importance of market discipline. Everything in our American economy is connected and if the performance of financial participants is done with due diligence, the smallest improvement in one element will continue through the chain to other financial participants.

Will the Great Depression repeat itself in the twenty-first century? The question of many still stands and there is no definite answer. However, as examined previously history can repeat itself and most of the time the same mistakes are ignored "The world was going through the most dangerous financial crisis since the Great Depression of the 1930s and it is the result of three failures: a regulatory and supervisory failure in advanced economies, a failure in risk management in private financial institutions, and a failure in market discipline mechanisms" (qtd. in Barth et. al 293). Thus, it is important to take the good with the bad from our past crises to find the answers needed for the restoration of our American economy as a whole.

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