

GUEST OPINION: BARRY KIRSCHNER

Cleaning up subprime lending mess

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BARRY KIRSCHNER

I cut my teeth as a lawyer battling subprime mortgage lenders in 1980. Union Home Loans, California's largest mortgage broker, was victimizing Arizonans in financially stressed neighborhoods with interest-only, balloon-payment loans, many with annual percentage rates exceeding 30 percent.

In our class-action lawsuit, we described the process as putting the borrower on a treadmill. We saw borrowers who refinanced as many as eight times - usually with UHL - when their balloon payments came due.

And beyond the balloon payments the brokers knew the borrowers could not meet, there were late fees and documents fees adding to the homeowners' financial burdens.

Our star witness was someone who had worked for UHL, studied the process and actually wrote a book, "God Bless Our Second Mortgage."

He said UHL knew that a borrower desperate for money, or who thought he was, listened mostly for two things: How much could he get, and how big were the monthly payments.

Even paperwork clearly stating the existence of a balloon note payable in full within 12 or 24 months would slip by unsophisticated consumers who had put their home in jeopardy to raise some cash.

By the time our suit was settled, UHL had already played the bankruptcy card. But of the 6,000-plus loans within the scope of our action, we saved at least dozens of homes, maybe hundreds.

Shining light on the abusive practices and having laws with some teeth saved hundreds, maybe thousands of others from losing their homes.

The subprime lending problems now in the news have the same essential element as what we saw in the 1980s.

Sophisticated marketing plans made money for lenders in the short term while bringing great pain, financial and otherwise, to unschooled or undisciplined borrowers who couldn't resist offers that were too good to be true.

With all the current talk about bailouts for our banking system, the most equitable and efficient way to deal with the backlog of underwater mortgages has taken a back seat in the debate.

We need to give bankruptcy judges the power to reduce the principal and interest on loans if they determine that lenders knowingly enticed borrowers into loans they had no way to pay back.

Bankruptcy judges already have the power to reduce the principle owed on second or third homes -even yachts - of the wealthy. That power should be extended to first homes as well.

The cost of allowing judges to renegotiate bad loans would be peanuts compared with the government's plans to bail out the financial industry and take care of the toxic assets.

This would require a few hundred judges or magistrates and the space to hold hearings. After the first few cases were decided in each jurisdiction, the patterns would be established so later cases could settle out of court.

Unfortunately, the financial industry that brought the world into these disastrous circumstances is working hard to keep bankruptcy judges from gaining the power to adjust mortgages on the homes people live in.

The CEOs still have great power and influence over members of Congress, including some Democrats and virtually every Republican in the House and Senate.

Some politicians campaign as if they want the Ten Commandments to replace the Constitution, but instead of helping those most in need, they live by a different kind of golden rule: He who has the gold, makes the rule.

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