



AMERICAN  
BANKRUPTCY  
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**COMMITTEE SESSION**  
**Consumer Bankruptcy/  
Legislation/Real Estate**

**Politics Practicality and People: The Impact of the  
Mortgage Meltdown in Bankruptcy**

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**POLITICS, PRACTICALITY AND PEOPLE**

**THE IMPACT OF THE MORTGAGE MELTDOWN IN  
BANKRUPTCY**

**American Bankruptcy Institute's  
Winter Leadership Conference  
December 4-6, 2008  
Tucson, AZ**

**Presented by:**

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**Overview of the Residential  
Real Estate and Mortgage  
Markets:  
When will it be safe to go  
back into the water?**

**Ronald Greenspan**

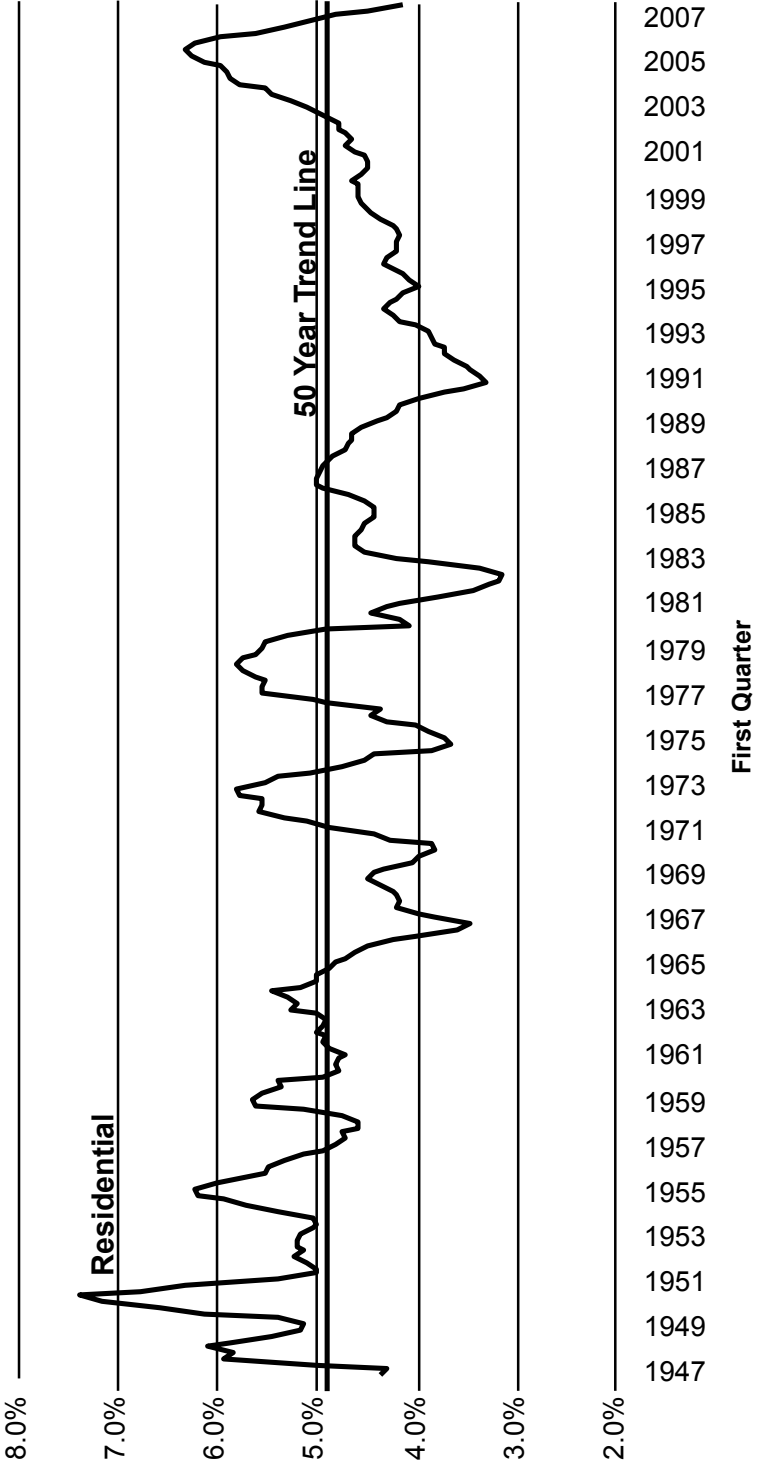
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# Residential and Non-Residential Structures as a % of GDP

Is there any doubt that aggregate homebuilding activity became excessive during the previous up cycle?

- Residential building as a proportion of GDP exceeded the post-WWII average every year since 2002 and was higher in 2005 and early-2006 than at any time since the rebuilding period immediately following WWII.

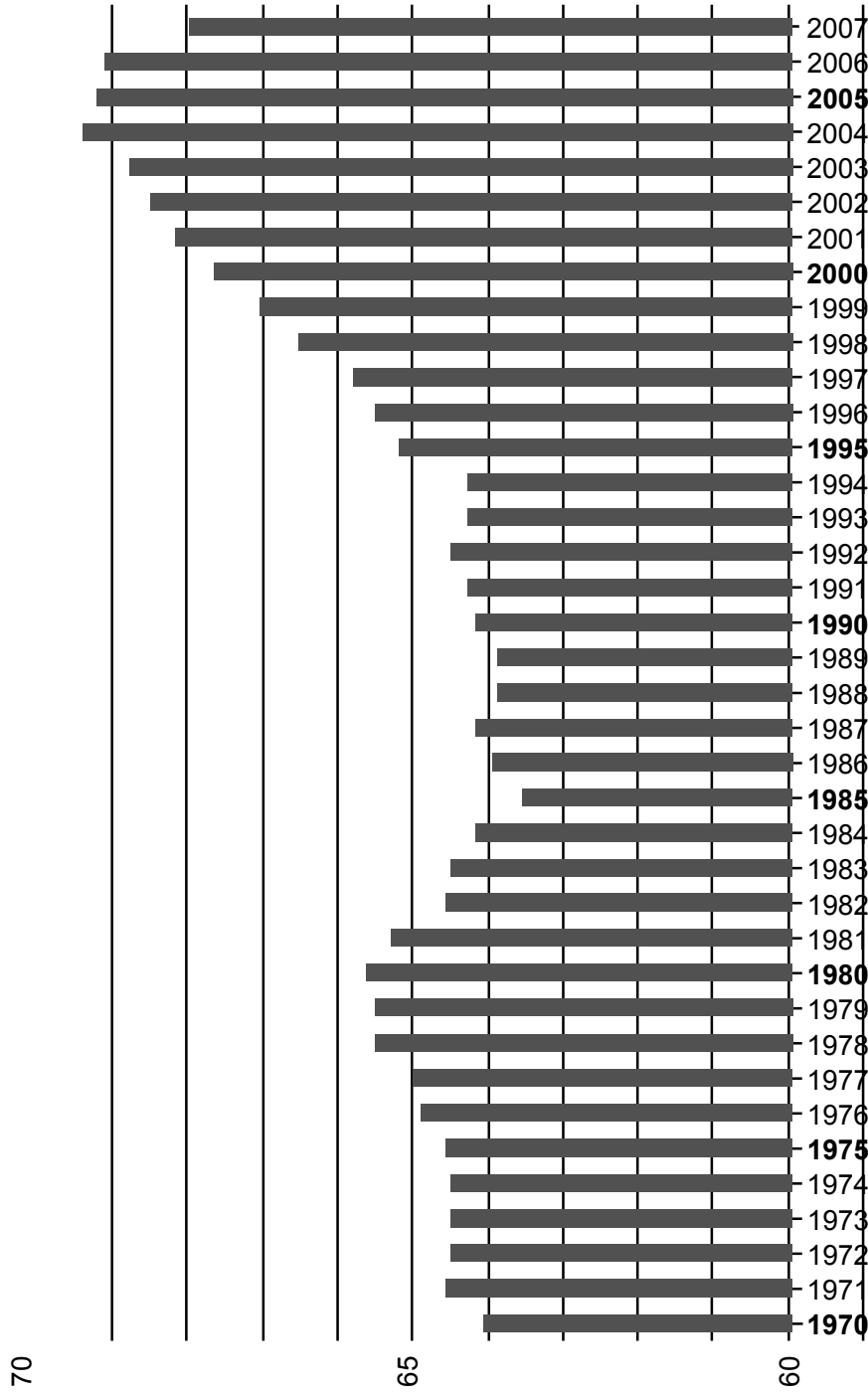


Source: Moody's Economy.com



# Homeownership Rates for the U.S.

Where did all these houses go? Beginning in the late 1990's the rate of homeownership in the U.S. soared to unsustainable levels

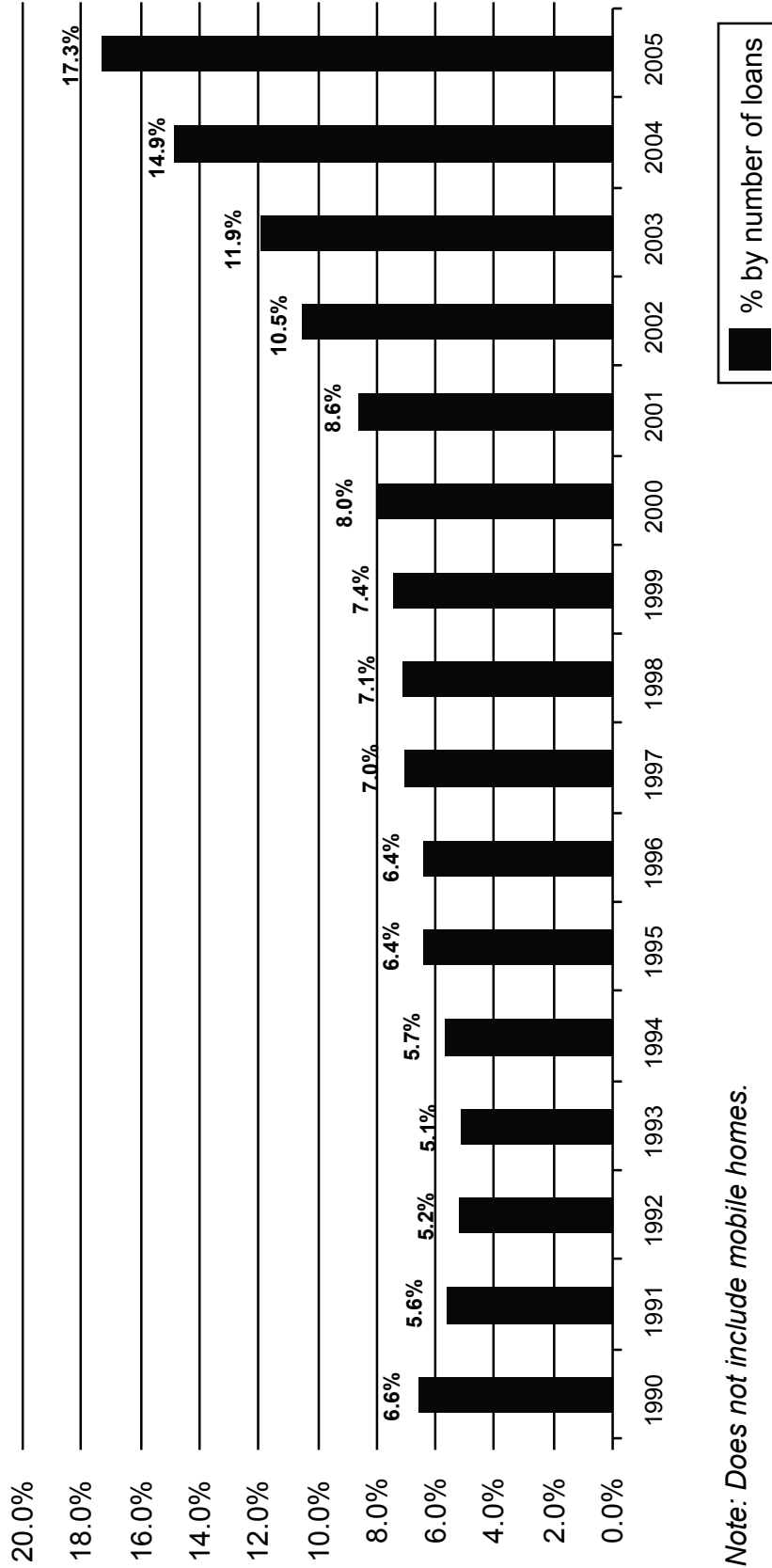


Source: <http://www.census.gov/hhes/www/housing/hvs/historic/index.html>



# Investor Share of Home Purchase Originations, 1990-2005

Where did all these houses go? Beginning in 2000, investors invaded the marketplace



Note: Does not include mobile homes.

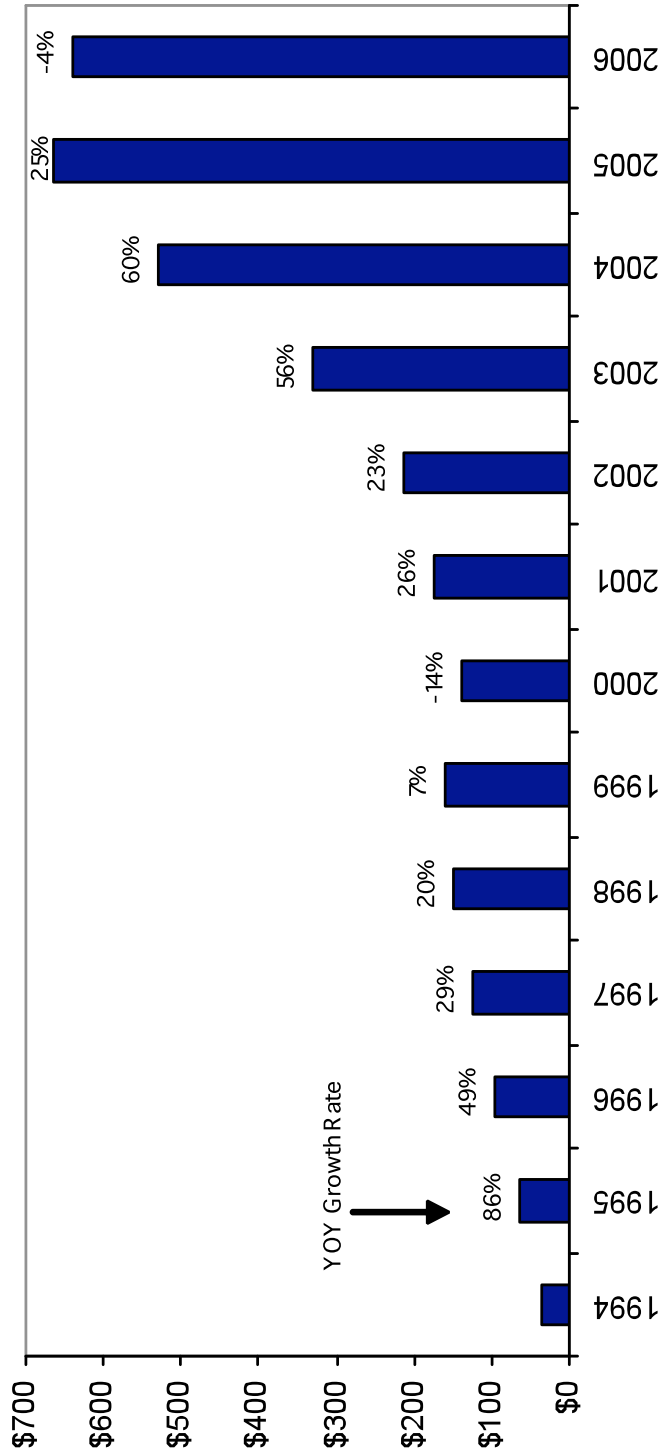
Source: HDMA



# Ownership Binge was Fueled by a Mortgage Binge

Residential Subprime Mortgage Industry – Almost Quintupled since 2000

Subprime Originations, 1994 - 2006



Note: Data include purchase and refinace originations. The number one subprime lender was Wells Fargo (13% market share), followed by HSBC (8%), New Century Financial (8%), Countrywide Financial (6%), CitiMortgage (6%), WMC Mortgage (5%), and Fremont (5%). Subprime lending represented 22% of total originations in 2006, roughly in-line with 2005.

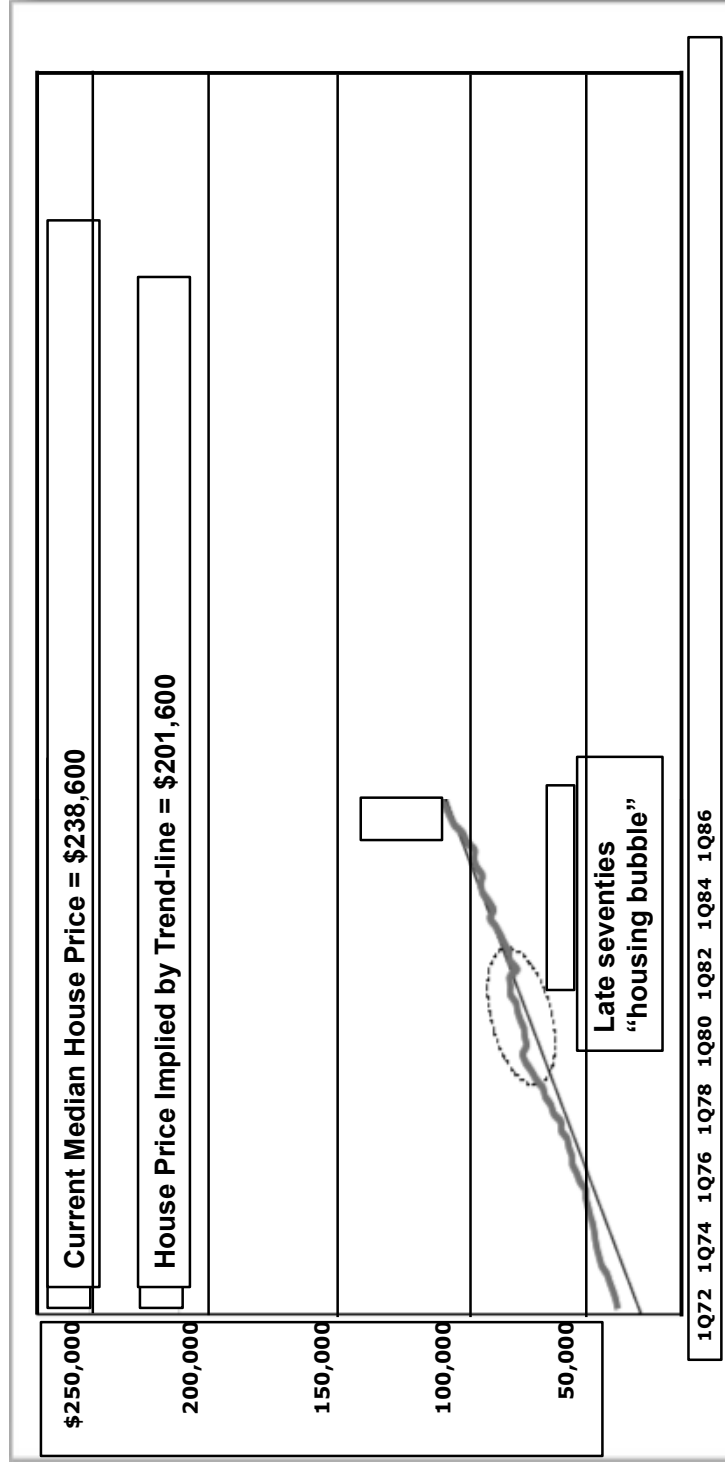
Source: Inside Mortgage Finance Statistic Annual, 2007 Edition; Credit Suisse estimates.



# The Mother of all Bubbles

The magnitude

## House Prices Compared to Long Term Trends, 1972 - Sep 2007



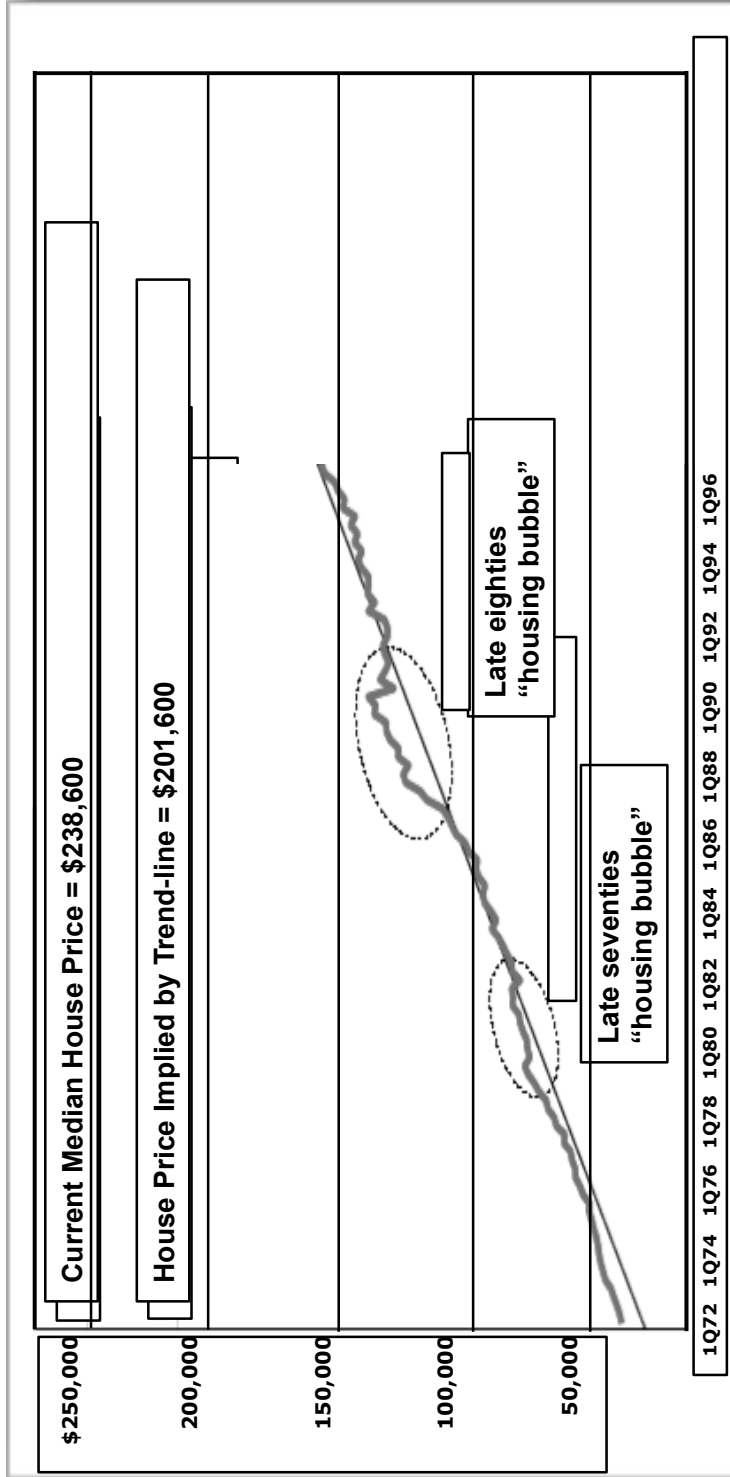
Source: Goldman Sachs, Nov 07



# The Mother of all Bubbles

The magnitude of the recent housing price bubble

### House Prices Compared to Long Term Trends, 1972 - Sep 2007



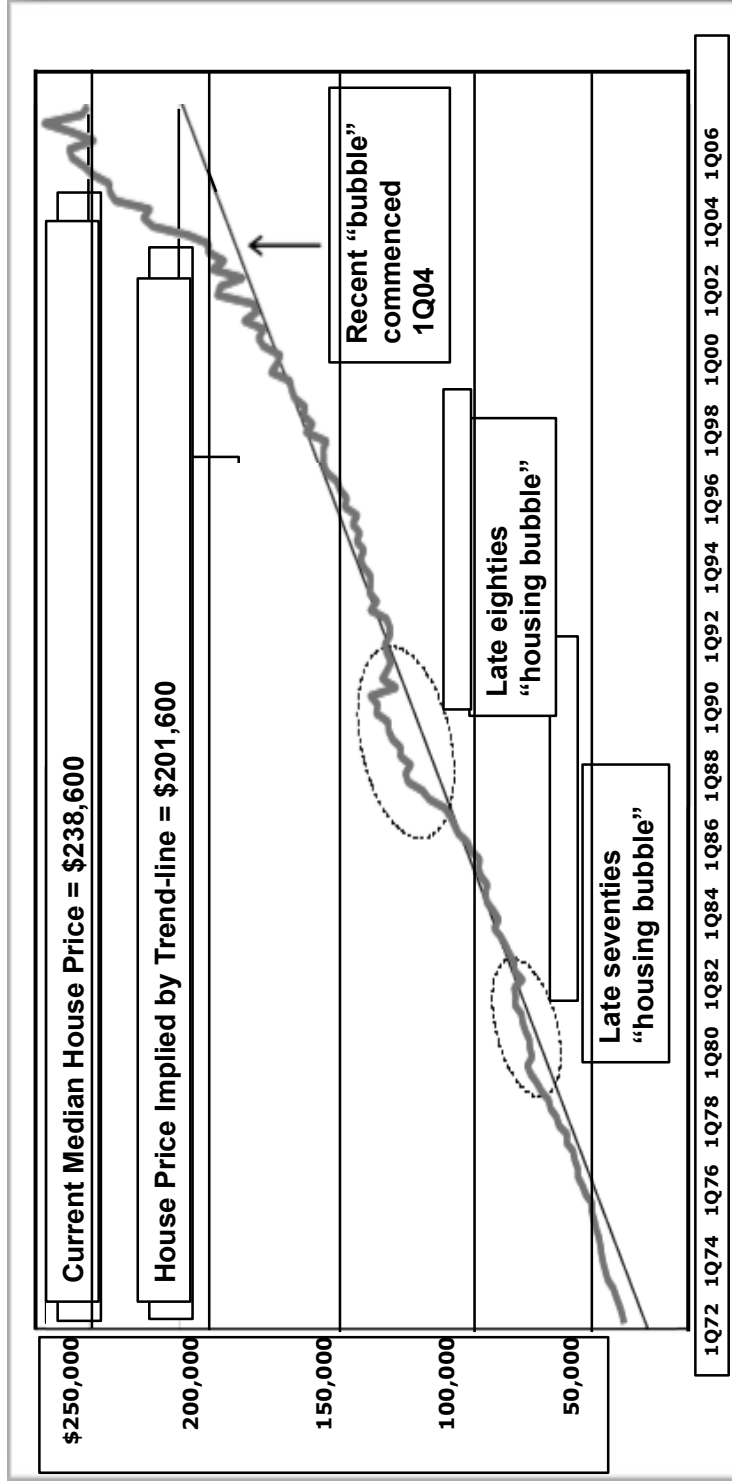
Source: Goldman Sachs, Nov 07



# The Mother of all Bubbles

The magnitude of the recent housing price bubble is unprecedented

### House Prices Compared to Long Term Trends, 1972 - Sep 2007

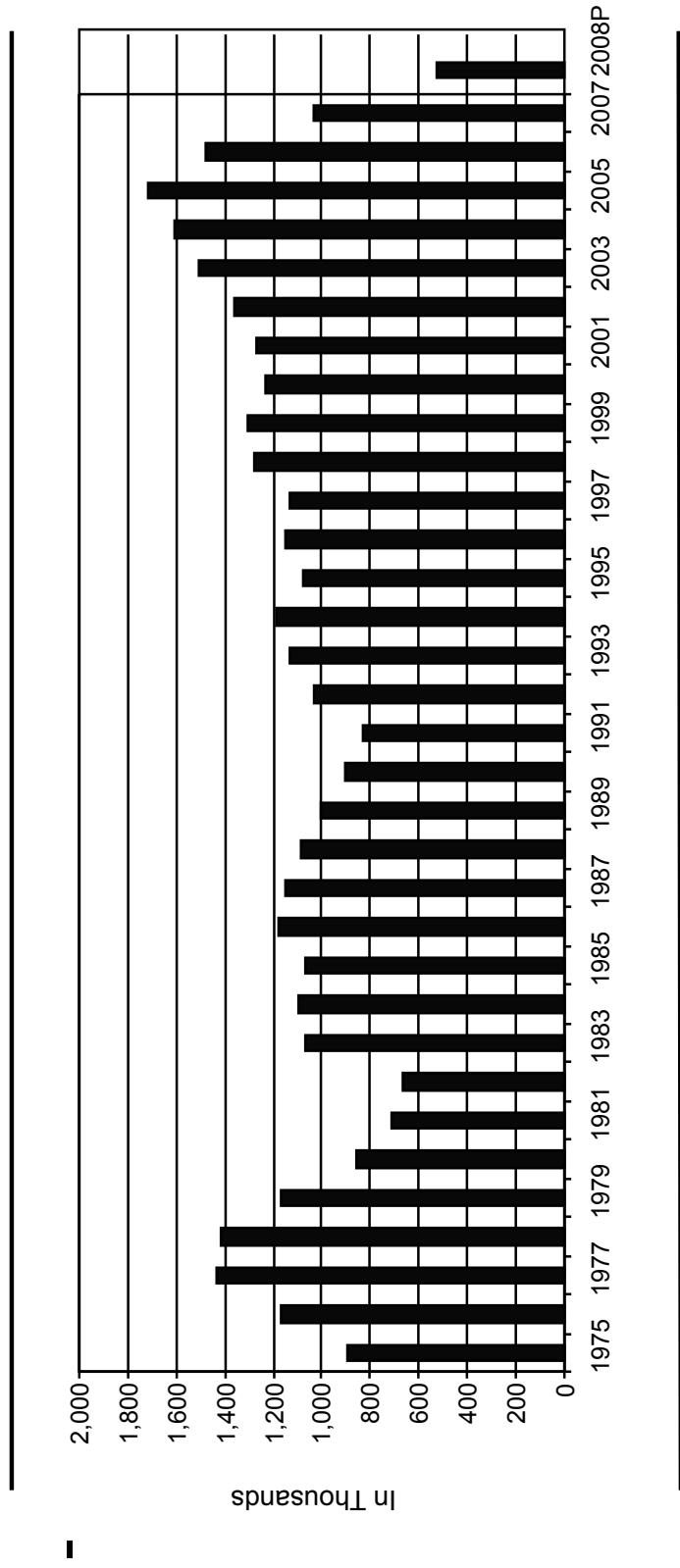


Source: Goldman Sachs, Nov 07

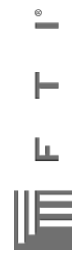


# Market Excesses Have a Tendency to Correct Themselves--Volume

Housing Starts: 2005 was the best year in history, 2007 was a 10-year low and 2008 will be the lowest in at least 25 years (remember prime at 18%?)



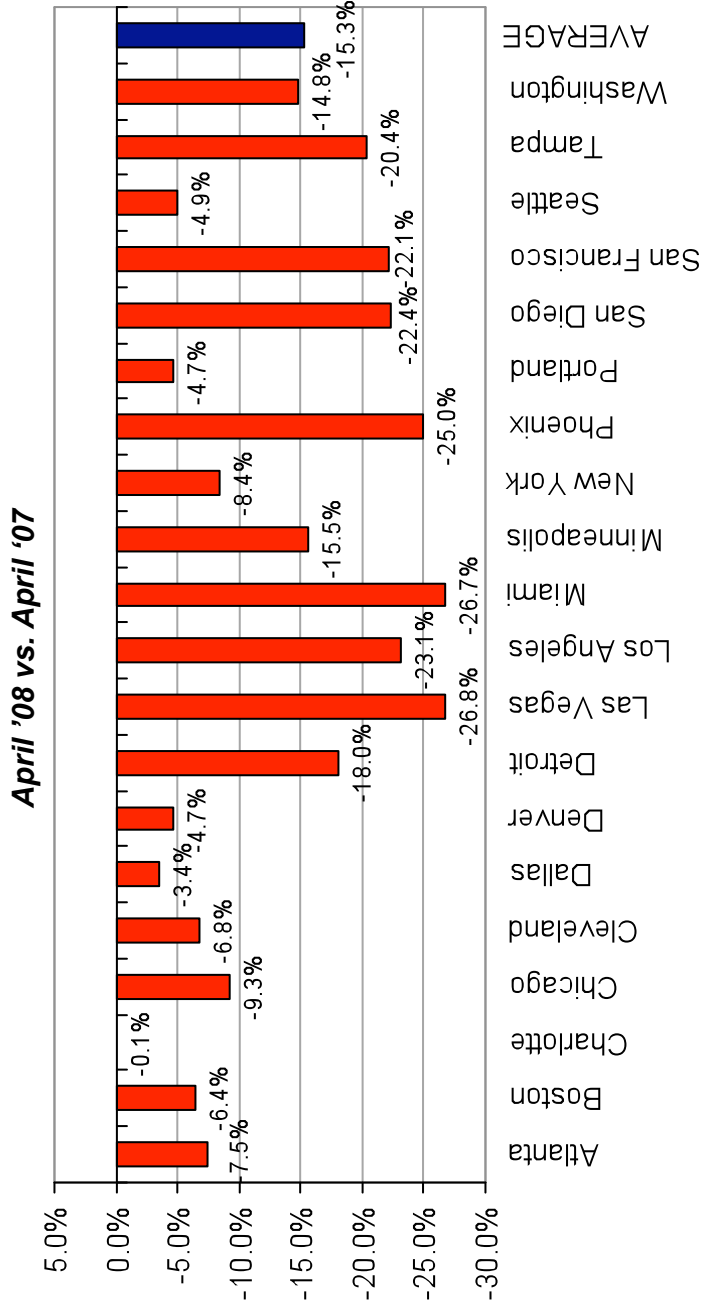
Sources: (1) U.S. Census Bureau, (2) Credit Suisse, Home Building Monthly Research Report.



# Market Excesses Have a Tendency to Correct Themselves--Prices

Prices are declining nationally, essentially for the first time in history

Case-Shiller Housing Price Index—Twenty Largest Metro Areas and U.S. Avg.



Source: [http://www2.standardandpoors.com/spf/pdf/index/CSHomePrice\\_History\\_062418.xls](http://www2.standardandpoors.com/spf/pdf/index/CSHomePrice_History_062418.xls)

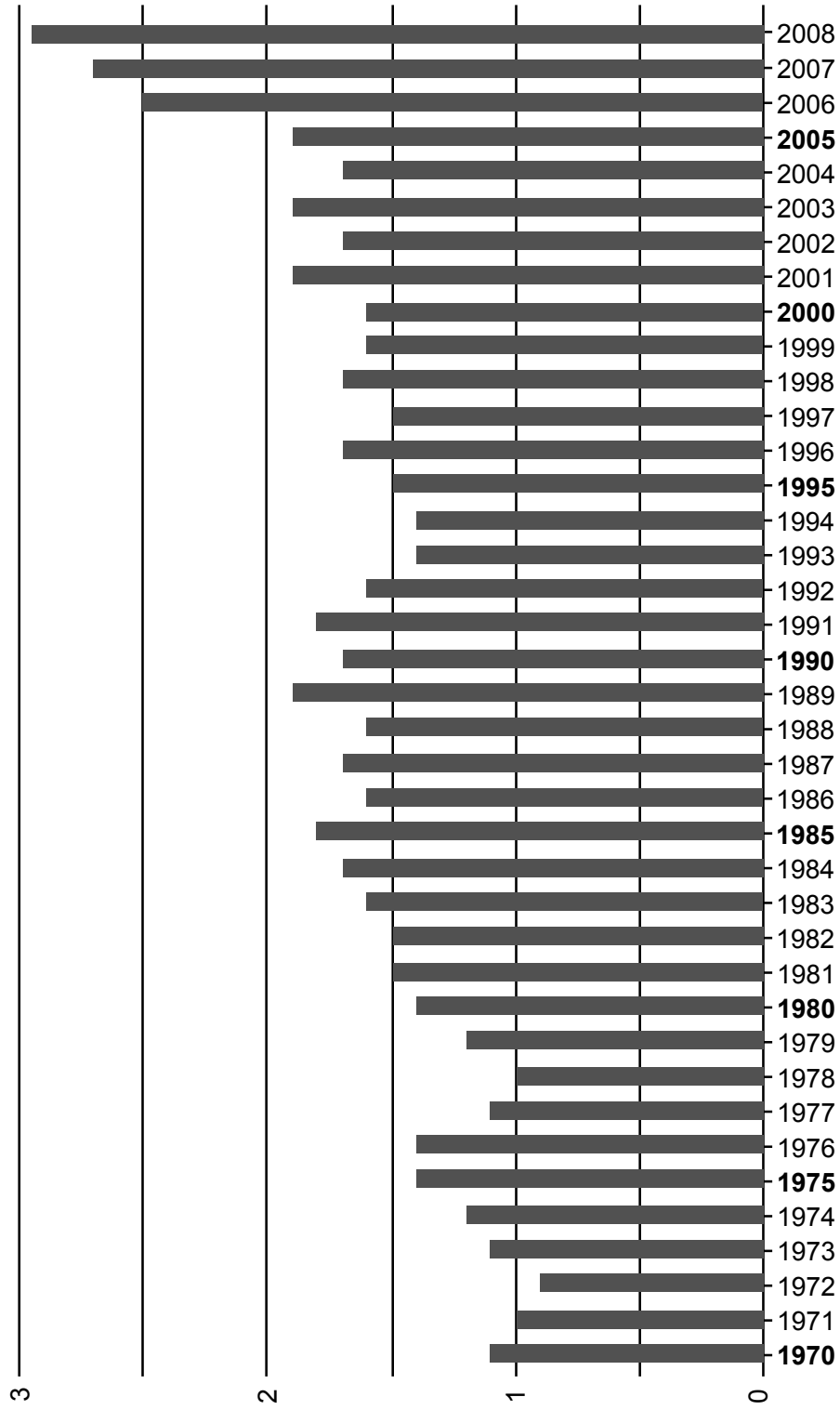
## How does this Slump Compare to Historical Corrections?

- The seven homebuilding slumps during the past 50 years have endured anywhere from 5-10 quarters, with homebuilding volumes declining within a range of roughly 30%-60% from the previous cyclical peak.
- It would be tempting to conclude that the current slump has run its course based on historical precedent (below), but the unprecedented length of the previous up cycle—13 years—and the heights to which the market rose invalidates that assumption.

Peak	Trough	# of Quarters	% Decline in Housing Starts: Peak to Trough
1Q59	4Q60	8	28%
4Q65	4Q66	5	39%
1Q69	1Q70	5	26%
4Q72	1Q75	10	60%
2Q78	2Q80	9	50%
4Q80	4Q81	5	42%
4Q88	1Q91	10	42%
1Q06	3Q08+	11	65%

# Homeowner Vacancy Rates

These factors are now being reflected in a tangible overhang of empty homes



Source: <http://www.census.gov/hhes/www/housing/hvs/historic/index.html>



## Existing Home Sales and Inventories

One month a trend does not make, but a hopeful sign.....

Year		Sales	Unsold Inventory	Months Supply
2005		7,076,000	2,846,000	4.5
2006		6,478,000	3,450,000	6.5
2006	Dec	6,270,000	3,450,000	
2007	Jan	6,440,000	3,539,000	
	Feb	6,680,000	3,805,000	
	Mar	6,150,000	3,806,000	
	Apr	6,010,000	4,220,000	
	May	5,980,000	4,378,000	
	Jun	5,760,000	4,368,000	
	Jul	5,750,000	4,561,000	9.6
	Aug	5,500,000	4,383,000	10.3
	Sept	5,110,000	4,370,000	10.5
	Oct	5,060,000	4,433,000	10.1
	Nov	5,020,000	4,217,000	9.7
	Dec	4,910,000	3,974,000	
2008	Jan	4,890,000	4,160,000	10.2
	Feb	5,030,000	4,018,000	9.6
	Mar	4,940,000	4,118,000	10.0
	Apr	4,890,000	4,549,000	11.2
	May	4,990,000	4,482,000	10.8
	Jun	4,850,000	4,495,000	11.1
	Jul	5,020,000	4,575,000	10.9
	Aug	4,910,000	4,255,000	10.4
<b>vs. last month:</b>		<b>-2.2%</b>	<b>-7.0%</b>	<b>-4.6%</b>
<b>vs. last year:</b>		<b>-10.7.0%</b>	<b>-2.9%</b>	<b>-8.3%</b>

Source: <http://www.realtor.org/Research.nsf/Pages/EHsdata>



## Surviving the Real Estate Correction & Capitalizing on Circumstances

Don't miss the recovery when it comes.

- Resales exceed new home sales by almost 5X—and inventory is almost 10X greater (over 4,000,000 units currently for sale): the resale market drives the housing market
- First sign of bottoming will be shrinking months' resale inventory on market. Currently about 11 months.
- Price recovery will lag sales recovery
- When the recovery comes, keys to success will be the traditional ones: high quality and value proposition; low cost producer; supply protected markets
- Consider differentiating new product from prior phases to lessen competition from resale inventory

## Surviving the Real Estate Correction & Capitalizing on Circumstances

If this is a recovery, why does it feel so bad?

- Beware of first false bottom: with almost six years of developable land inventory in the hands of builders and land banks and over two years of entitled lots, new construction volume might quickly swamp any tepid increase in demand
- Correctly calibrate to what is “normal” – the rates of construction in 2005 and 2006 were wholly unsustainable. Even the 2002-2004 rates probably exceeded “natural” demand. A sustainable “recovery” is only likely to match 2007 volumes.
- **WHEN WILL IT BE SAFE TO GO BACK INTO THE WATER?---VERY POSSIBLY FOLLOWING THE TERRIBLE SPRING '09 “SELLING SEASON”**

# The End

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**ABI LEGISLATIVE COMMITTEE PRESENTATION  
FOR THE JOINT COMMITTEE SESSION WITH THE ABI  
CONSUMER BANKRUPTCY AND REAL ESTATE COMMITTEES**

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**Public Law No.: 110-289—The Housing and Economic Recovery Act of 2008 (H.R. 3221)**

On July 30, 2008, President Bush signed H.R. 3221 into law. The legislation, called the Housing and Economic Recovery Act of 2008, will assist an estimated 400,000 homeowners facing foreclosure, by allowing them to refinance their current mortgages with a Federal Housing Administration (FHA)-backed loan. One part of the Act, authored by House Financial Services Chairman Barney Frank (D-Mass), provides for the refinancing of up to \$300 billion in troubled mortgages into 30-year loans backed by the government. This is the most significant aspect of the legislation in the short term, called the “Hope for Homeowners Program.” It enables the FHA to refinance the mortgages of at-risk borrowers living in their only home if: (i) mortgage holders write-down the principal of the mortgage; (ii) borrowers agree to share future equity with the federal government; and (iii) the borrower can afford to repay the new loan.

The bill also will permanently increase FHA, Fannie Mae, and Freddie Mac loan limits in high-cost areas. The bill permanently increases the conforming loan limit to \$625,000. In February, the Economic Stimulus Act of 2008 was signed, temporarily raising the conforming loan limit in high cost areas to \$729,750 from \$417,000 until December 31, 2008. The new loan limits for Fannie Mae and Freddie Mac are the greater of either \$417,000 or 115 percent of an area’s median home price, up to \$625,000. The new FHA loan limit will be the greater of \$271,050 or 115 percent of an area’s median home price, up to \$625,500. Both new loan limits

will be effective at the expiration of the economic stimulus limits on December 31, 2008.

Other notable provisions of the bill include:

- the creation of a National Affordable Housing Trust Fund to help cover the cost of the FHA rescue plan for the first five years and develop affordable housing in subsequent years
- a temporary increase in mortgage revenue bonds to refinance subprime mortgages
- the setting of minimum requirements for mortgage originators, which mandates fingerprinting of loan originators and establishes a nationwide loan originator licensing and registration system-the requirements do not apply to those only performing real estate brokerage activities unless they are compensated by a lender, mortgage broker, or other loan originator-states will have the ability to implement more stringent laws
- new regulator for government sponsored enterprises (GSE) to restore investor confidence in GSE loans and help the market and economy stabilize
- temporary raise in the loan limit for the Veteran Affairs home loan guarantee program to the same level as the economic stimulus limits until the end of 2008
- first-time home buyer tax credit, which allows first-time home buyers to receive a tax refund worth up to 10 percent of a home's purchase price, up to a maximum of \$7,500—the refund serves as an interest-free loan and the homeowner is required to repay it in equal installments over 15 years
- adjustment to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA), allowing sellers to provide the non-foreign affidavit to a qualified

- closing entity and not just the buyer
- the Community Development Block Grant Program's \$4 billion allotment for communities to purchase and refurbish foreclosed homes
- the Treasury Department's proposal to create a federal backstop program to ensure the financial well being of Fannie Mae and Freddie Mac
- the FHA's inability to insure loans that utilize a seller-funded down-payment assistance program—down-payment assistance from family, employers and other nonprofits is still allowed

**Highlights of the Conyers-Chabot Compromise - The Emergency Home Ownership and Mortgage Equity Protection Act of 2007 (H.R. 3609)**

This legislation allows qualifying homeowners, who are unable to make their current mortgage payments and cure their arrearages under the protection of Chapter 13 of the United States Bankruptcy Code, to modify certain mortgages qualifying as “nontraditional” and “subprime” mortgages. These mortgages must have originated after January 1, 2000, but before the date of enactment of the legislation. The two types of mortgages that can be modified are defined as follows:

“Nontraditional mortgages” - Interest only and negatively amortized mortgages; the term excludes subordinate home equity line of credit loans and reverse mortgages; this definition is derived from the U.S. Treasury guidance issued in 2007.

“Subprime mortgages” - Mortgages with interest rates that exceed certain thresholds: in excess of 3% over U.S. Treasury securities for first mortgages; and in excess of 5% for subordinate mortgages; this definition is derived from H.R. 3915, the “Mortgage Reform and Anti-Predatory Lending Act of 2007.”

The Chapter 13 debtor will be able to modify the aforesaid mortgages in the following

ways:

- a. exorbitant interest rates can be reduced;
- b. onerous prepayment penalties do not have to be paid;
- c. the term of the mortgage can be extended up to 30 years;
- d. the principal amount of the mortgage can be reduced to the home's fair market value; and
- e. the debtor will be able to object to unlawful fees charged by unscrupulous mortgage lenders

The Center for Responsible Lending estimates that more than 600,000 families could save their homes from foreclosure in the coming years if the Conyers-Chabot Compromise were enacted. Chapter 13 is a form of bankruptcy relief whereby an individual must repay his or her debts out of earnings to the extent such funds are available. If a consumer wants to prevent losing his or her home through foreclosure, Chapter 13 only allows a debtor to cure the mortgage arrears through a repayment plan approved by the court. A consumer cannot use Chapter 13 to deal with the problems that most likely triggered the foreclosure, i.e., exploding Adjustable Rate Mortgages, prepayment penalties, and hidden fees. As a result, the current version of Chapter 13 does not enable a consumer to save his or her home from foreclosure through a mortgage “cram down,” even though most every other debt - secured and unsecured - can be restructured in Chapter 13, including mortgages secured by vacation homes and loans secured by automobiles. The Conyers-Chabot Compromise provisions in H.R. 3609 will provide a mechanism for Chapter 13 debtors who owe on “nontraditional mortgages” and “subprime mortgages” to cure their existing defaults by paying the value of the underlying residential property in the same manner as they could cure a default on debts secured by non-residential real property collateral.

Supporters of this legislation include the following: The Honorable Jack Kemp, former Secretary, U.S. Department of Housing and Urban Development, under President George H.W.

Bush; various state Governors; U.S. Conference of Mayors; Dr. Mark Zandi, Chief Economist at Moody's Economy.com; *New York Times* Editorial (Oct. 8, 2007); AARP; ACORN; AFL-CIO; Center for Responsible Lending; Central Illinois Organizing Project; Consumer Action; Consumer Federation of America; Consumers Union; DEMOS; Leadership Conference on Civil Rights; National Association for the Advancement of Colored People; National Association of Chapter 13 Trustees; National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys; National Bankruptcy Conference; National Community Reinvestment Coalition; National Consumer Law Center; National Council of La Raza; National Fair Housing Alliance; National Neighborworks; National Urban League; National Women's Law Center; Opportunity Finance Network; Service Employees International Union; United Auto Workers; U.S. PIRG.

BEST PRACTICES FOR TRUSTEES and MORTGAGE SERVICERS IN CHAPTER 13  
AS ENDORSED BY NACTT, NACBA, CMIS AND AFN

If servicers/mortgagees include a flat fee cost in the proof of claim for review of the Chapter 13 plan prior to confirmation and for the preparation of the proof of claim, it should be reasonable and fairly reflect the attorney's fee incurred.

If Servicers/mortgagees include attorney fees for pursuing relief from stay, such fees should be clearly identified as well as how such fees are to be paid in any agreed order resolving a Motion for Relief from Stay or any other matter before the court.

Servicers/mortgagees should analyze the loan for escrow changes upon the filing of a bankruptcy case and each year thereafter. A copy of the escrow analysis should be provided to the debtor and filed with the Bankruptcy Court by the servicers/mortgagee or their representative each year.

Servicers/mortgagees should not include any pre petition cost or fees or pre petition negative escrow in any post petition escrow analysis. These amounts should be included in the prepetition claim amount unless the payment of such fee or cost was actually made by the servicer.

Servicers/mortgagees should attach a statement to a formal notice of payment change outlining all post petition contractual costs and fees not previously approved by the court and due and owing since the prior escrow analysis or date of filing whichever is later. This statement need not contain fees, costs, charges and expenses that are awarded or approved by the Bankruptcy Court order. In absence of any objection or challenge to such fees, the trustee should take appropriate steps to cause such fees to be paid as part of Debtor's Chapter 13 plan.

Servicers/mortgagees should supply and maintain a contact for debtor's counsel and trustee's for the purpose of restructuring, modifying a mortgage, or other loss mitigation assistance including a short sale or deed in lieu of foreclosure. The contact should be an individual or group with the ability to implement or assess with objective criteria a loss mitigation modification after filing of a chapter 13 petition with the goal of keeping the Debtor in the house and the success of the bankruptcy.

Mortgage servicers should provide a dedicated phone line and contact for Chapter 13 Trustee inquiry use only.

Mortgage servicers should monitor post petition payments. If the mortgage is paid post petition current then the servicers/mortgagees should not seek to recover late fees. No late fees should be recovered or demanded for systemic delay but should be limited to actual debtor default.

Pre petition payments should be tracked as applied to pre petition arrears, post petition payments should be tracked as applied to post petition ongoing mortgage payments

Servicers/mortgagees should file a notice and reason of any payment change with the court and provide same to the Debtor.

Servicers are required to file a notice of any protective advances made in reference to a mortgage claim, such as non escrow insurance premiums or taxes. Such notice should be provided to the debtors and filed with the court.

Servicers/mortgagees should clearly identify if the loan is an escrowed or escrowed loan and break out the monthly payment consisting of Principal, Interest, Escrow and PMI components.

Servicers/mortgagees should identify nontraditional mortgage loans in their proof of claims. Loans with options should identify on the proof of claim the type of loan as well as the various contractual payment options available during the bankruptcy to the borrower/Debtor.

Trustees should initiate a communication with mortgage servicers when questions arise in a review of a post petition escrow analysis.

United States Trustees and Trustee Education Network should modify the requirements of the financial management class regarding adjustable rate mortgages, the calculation of mortgage escrows and, in particular, the potential of increased mortgage payments resulting from increased taxes, interest rate hikes and/or mortgage premiums.

**Trustee** voucher checks, check stubs or vouchers provided with any other form of payment contain the following information, except to the extent prevented from doing so by local rule:

1. The Name of the debtor and case number
2. The trustee's claim number
3. The mortgagee's account number (to the extent provided on the proof of claim)
4. If the mortgagee account number is not available, e.g. not contained on the proof of claim, at least one other piece of identifying information e.g., property address
5. The amount of the payment
6. Whether the payment is for the ongoing mortgage payment or the mortgage arrearage
7. If for the mortgage arrears, the balance owing on the arrears claim after application of the payment
8. If the trustee has set up a separate claim for post-petition charges of the mortgagee, that the voucher clearly identify that fact
9. If any portion of the payment on arrears is intended to pay interest on the mortgage arrears, the amount of that interest portion of the payment
10. if the mortgage is to be paid off during the bankruptcy under the confirmed plan through payments by the trustee, e.g., a total debt claim, the portions of each payment which represent principal and interest, and the balance owing on the claim after application of the payment

There is a movement among servicers to redact all but the last four numbers of the mortgagors' loan numbers on proofs of claim, because those claims are public records. While mortgage servicers in general want as much information as possible on the vouchers, the mortgage servicers on the Working Group felt that if the voucher had the bankruptcy case number, the name of the debtor and the redacted loan number from their filed claim, they would be able to post the payment. Using the account number to the extent provided in a filed proof of claim also insures that trustees are not disclosing information on their website that is not already disclosed in the public record.

**Voucher Narrative re Payments:** The Working Group places particular emphasis on No. 6 above. The voucher should identify if a payment is for the regular mortgage payment or for the mortgage arrearage in consistent language. While Chapter 13 trustee disbursement applications focus on the claims to be paid, mortgage servicer computer systems focus on their mortgagor account number. Posting of receipts, whether or not the account is in bankruptcy, is typically handled by a Cash Processing group or department of the mortgage servicer. Those departments focus on the account number on the voucher and the narrative on the voucher for that account number to determine if the payment is for the regular mortgage payment or the mortgage arrearage.

**Mortgage Arrearage Claims:** When filing their initial proofs of claim, mortgage servicers should state their mortgage arrearage up to the date of the filing date of the bankruptcy petition, unless the plan or trustee indicates otherwise, or local rule provides otherwise. The Chapter 13 Trustee will use the mortgage arrearage claim to set up the arrearage balance on the claim, which in turn will show up as the "balance" on the voucher check, absent objection to the claim.

# Resources on Mortgage Servicing

Prof. Katherine Porter, Iowa College of Law  
Tara Twomey, Esq.

- I. Relevant Causes of Action, Laws, or Rules (other than Bankruptcy Code)
  - a. Federal Rules of Bankruptcy Procedures 2016, 3001, and 9011
  - b. Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(b)-(e); 2609
  - c. Unfair or Deceptive Practices Act
  - d. State Debt Collection statute (maybe Federal Debt Collection Practices Act)
  - e. Breach of Contract
  - f. Duty/Covenant of Good Faith or Fair Dealing
  - g. Fraud or Misrepresentation
  - h. Negligent or Intentional Infliction of Emotional Distress
  
- II. Bankruptcy Court Cases
  - a. *Campbell v. Countrywide Home Loans, Inc.*, 2008 WL 3906382 (5th Cir. Aug. 26, 2008) (holding that unpaid monthly escrow payments must be included in proof of claim; missed escrow payments may not be recouped by performing a new post-petition escrow analysis).
  - b. *In re Hight*, 2008 WL 3539802 (Bankr. S.D. Tex. Aug. 13, 2008) (disallowing creditor's pre-petition attorney's fees for preparation of foreclosure sale when creditor failed to provide evidence pertaining to what work was done, who did the work, hourly rate and time spent).
  - c. *In re Prevo*, No. 08-30815, Memorandum Opinion Sustaining in Part Debtor's Objection to Proof of Claim of Citi Residential Lending (Bankr. S.D. Tex. Aug. 7, 2008) (filing claim without supporting documents required by Rule 3001 and Form 10 result in loss of prima facie validity; disallowing all fees and costs and issuing show cause order to determine whether creditor must pay debtor's attorney's fee for objecting to claim).
  - d. *Nosek v. Ameriquest Mortgage Company, et al.*, (*In re Nosek*), 386 B.R. 374 (Bankr. D. Mass. 2008) (imposing monetary sanctions on Ameriquest, Wells Fargo, and several attorneys for misrepresenting the holder of the note).
  - e. *In re Stewart*, 391 B.R. 327 (Bankr. E.D. La. 2008) (awarding damages and legal fees and sanctioning Wells Fargo for the abusive and negligent imposition of fees, and moreover, ordering Wells Fargo to conduct an audit of every proof of claim filed on its behalf in cases pending on or after April 13, 2007).
  - f. *In re Schuessler*, 386 B.R. 458 (Bankr. S.D.N.Y. 2008) (ordering Chase Home Finance to pay attorneys fees and debtors' costs and barring recoupment of any costs to Chase of filing of unwarranted motion for relief from stay).
  - g. *In re Parsley*, 384 B.R. 138 (Bankr. S.D. Tex. 2008) (ruling on order to show cause why sanctions were not warranted for motion for relief from stay allegedly filed without grounds that while Countrywide and its counsel engaged in poor practices that conduct did not rise to level of clear and convincing bad faith action).
  - h. *In re Ezzell*, 07-34780 (Bankr. S.D. Tx. Jan. 14, 2008) (disallowing creditor's attorney's fees for failure to comply with Rule 2016)

- i. *In re Maisel*, 378 B.R. 19 (Bankr. D. Mass. 2007) (standing/ownership of creditor)
- j. *In re Waring*, No. 06-40614, Transcript of Hearing (Bankr. D. Mass. July 27, 2007) (requiring servicer to produce evidence that property inspections were conducted)
- k. *In re Dominique*, 368 B.R. 913 (Bankr. S.D. Fla. 2007) (holding that lender that failed to give debtor annual escrow analysis required under RESPA waived its right to collect such amounts).
- l. *In re Schwartz*, 366 B.R. 265 (Bankr. D. Mass. 2007) (creditor could not show it had right to undertake prepetition foreclosure)
- m. *Jones v. Wells Fargo*, 366 B.R. 584 (Bankr. E.D. La. 2007) (challenge to creditor's accounting and application of plan payments)
- n. *In re Allen*, 2007 WL 115182, No. 06-60121, Mem. Op. re Sanction of Creditor's Attorneys (Jan. 9, 2007) (sanctions for erroneous objection to plan confirmation)
- o. *In re Berghoff*, 2006 WL 1716299 (Bankr. N.D. Ohio 2006) (violation of Rule 9011 to include impermissible fees in claim)
- p. *Litton Loan Servicing v. Garvida*, 347 B.R. 697 (9<sup>th</sup> Cir. BAP 2006) (servicer failed to comply with court order to provide accounting of loan balance)
- q. *In re Nosek*, 363 B.R. 643 (Bankr. D. Mass. 2006) (misapplication of plan payments)
- r. *In re Rivera*, 342 B.R. 435 (Bankr. D.N.J. 2006) (pre-signature of pleadings by servicer without review)
- s. *In re Thompson*, 350 B.R. 842 (Bankr. E.D. Wisc. 2006) (RESPA action for failure to respond to debtor's request for clarification of account balance)
- t. *In re Gorshtein*, 285 B.R. 118 (Bankr. S.D.N.Y. 2002) (motions for relief from stay without adequate factual investigation or legal basis)
- u. *Maxwell v. Fairbanks Capital Corp.*, 281 B.R. 101 (Bankr. D. Mass. 2002) (miscalculation of amount owing)
- v. *In re Slick*, No. 98-14378, Adv. No. 99-1135 (Bankr. S.D. Ala. Nov. 22, 2002) (class action for failure to file applications with court for attorneys fees)
- w. *Tate v. NationsBanc Mortgage Corp.*, 253 B.R. 653 (Bankr. W.D.N.C. 2000) (Rule 2016 applies to attorneys fees of mortgage creditor)
- x. *In re Wines*, 239 B.R. 703 (Bankr. D.N.J. 1999) (inability to explain calculation of amount allegedly due)

### III. Other Relevant Cases

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- b. *In re Foreclosure Cases*, 07CV2282, 2007 WL 3232430 (N.D. Ohio. Oct. 31, 2007) (J. Boyko) (lack of standing/proof of ownership of mortgage)
- c. *Islam v. Option One Mortgage Corp.*, 432 F.Supp.2d 181 (D. Mass. 2006) (action against former servicer when acts to collect continued after refinancing)
- d. *Rawlings v. Dovenmuehle Mortgage, Inc.*, 64 F. Supp. 2d 1156 (M.D. Ala. 1999) (action against servicer for applying borrower's payments to wrong account)

#### IV. Pending Litigation to Watch

- a. *Hill v. Countrywide (In re Hill)*, No. 01-22574, Show Cause Order (Bankr. W.D. Pa. Dec. 21, 2007) (“recreated” escrow letters produced in post-discharge dispute; settlement requires Countrywide to pay \$100,000 to debtor as damages)
- b. *Trevino v. MERS, et al.*, 07-568, Complaint (D. Del. Nov. 6, 2007) (class action alleging MERS and lenders overcharge borrowers above actual costs)
- c. Selected Cases in which the Chapter 13 Trustee, Ronda Winnecour, seeks relief against Countrywide Home Loans, Inc., No. 07-00203 (Bankr. W.D. Pa.) (allegations by Chapter 13 trustee that servicer failed to credit debtors’ accounts with trustee payments)
- d. *Harris v. Fidelity Nat’l Information Serv.*, No. 03-44826, Adv. No. 08-03014, Complaint (Bankr. S.D. Tx. Jan. 16, 2008) (class action suit alleging that default servicers has impermissible and undisclosed arrangements with attorneys to retain portion of fees). Reference withdrawn, now case no. 4:08cv1243 in U.S. District Court in S.D. of Tex.
- e. *In re Ocwen Federal Bank FSB Mortgage Servicing Litigation*, 04-CV-2714, MDL-1604 (N.D. Ill.) (class action challenging “proof of claim” fee in mortgage claims)

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