

## Resolution ELF-05-2008

### Inclusion of Consumer Protection and Remedies In Financial Bailout Legislation

#### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Association recommends that legislation be sponsored in the United States Congress to require full and open hearings into the causes of and need for any financial bailout program including the proposal currently before the U.S. Senate Banking Committee. Additionally, any such bailout should include consumer protections and remedies as follows:

A. Strict oversight by Congress, including the authority to appoint a Special Master with subpoena powers to act jointly with the Secretary of the Treasury and approve in advance any disbursement of federal funds.

B. Funds will be used exclusively for the repurchase of non-performing mortgage loans.

C. A requirement that firms receiving bailout funds demonstrate by clear and convincing evidence their inability to obtain funds privately

D. A requirement that firms receiving bailout funds show bona fide attempts to rehabilitate or remedy so called "junk loans" prior to receiving funds by taking steps such as the following:

1. Reduce rates on existing "junk loans" to no more than 8%;
2. Within 180 days sell their inventory of foreclosed residences;
3. Eliminate abusive lending practices such as excessive loan fees, loans with adjustable interest rates that are or become unaffordable for the borrower; loans with equity ratios which are abusive.

E. Private and public remedies against lenders and executives who have engaged in abusive practices.

F. Loans shall be purchased at market value.

PROPONENT: Beverly Hills Bar Association

#### STATEMENT OF REASONS:

Existing Law: Historically, Congress and the President are prohibited by the Constitution and the Bill of Rights from enacting legislation to benefit private companies or private individuals. They are also prohibited from enacting bills of attainder which would adversely impact citizens existing rights.

This Resolution: Recognizes that integrity is the foundation of our financial strength and that ignoring the abuses which created existing problems will lead to further instability. Would urge Congress and the President to carry out their duties to hold full and open hearings and to include proper protections for consumers and other victims of abusive lending practices and ensure that federal funds are not used to benefit private individuals and corporations.

The Problem: The Administration is currently proposing a \$700 billion dollar financial rescue for financial institutions. Treasury Secretary Henry A. Paulson, in particular, is pushing for a “clean” bill to be passed quickly without provisions that would “deter companies from participating.”

The companies that are participating should be held to certain standards as a requirement of receiving government aid. Those standards must include transparency by disclosing abusing practices, accountability by holding to task companies and individuals who promoted or covered up irresponsible practices, and reform by requiring new oversight and regulations both at the corporate level and at the federal level to regulate and monitor lenders and securitizers to ensure that the monies are used to reform abuses not cover them up.

This proposal promotes economic security through a “trickle up” process which ensures that at its base, the financial institutions of this country are sound and that the consumers of financial services are well served and protected. This resolution promotes integrity, which is the hallmark of financial security and a necessity under the rule of law.

The President of the United States, despite years of abusive lending practices in the origination of loans and the maintenance of loans on corporate books, coupled with a disinterest on the part of federal regulators in enforcing existing laws relating to so called junk loans has come to Congress just two weeks before the fall recess and in the midst of a presidential election campaign to demand the emergency passage of the largest spending bill in the history of the United States and perhaps the world. Congressional leaders have been called to the table at the last moment in late night sessions and been told horror stories about what will happen if they do not act.

Administration recommendations facilitate a cover up of the reasons for the crisis, while bailing out and giving money, power and authority to the very persons who caused the crisis, with nothing more than a wish that giving them money will solve the problem.

This resolution attempts to address the core issues of the financial crisis. These are issues for which we as attorneys have particular expertise. They involve fraud, abusive lending practices, bait and switch practices, the use of threats, and warnings of dire consequences. In short, these are tactics of fraud and undue influence which attorneys see daily in our practices. Congress is no less susceptible to these tactics than the average citizen.

Certain members of Congress are standing up and insisting on safeguards for the consumers and taxpayers who will bear the costs of the bailout. This resolution would provide support for those members of Congress who do want safeguards in the bill and who insist on reform as a necessary element of saving and restructuring our financial system.

Before regulations are changed, it should first be determined whether existing regulations or the failure to follow the existing regulations was the cause of our financial problems. If Congress needs more time to investigate, then let them continue working through the fall recess. Obviously, close to a trillion dollars is worth a little overtime.

**IMPACT STATEMENT:**

This resolution does not affect any other law, statute or rule.

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