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Subprime Solutions May 11, 2007



This is part four of a four-part series of blog articles about the subprime mortgage problems. In [part one](#) I sketched the rise and fall of subprime loan products and their relation to predatory lending practices within a capitalist system. In [part two](#), I examined the structural relationship between a professional and his or her client. In [part three](#), I offered a business ethics case study comparing the Space Shuttle Challenger disaster to the subprime mortgage market collapse. In today's part four, I assert three logical solutions to the current crisis in lending.



The subprime crisis is a gift. Mortgage lending can emerge from the subprime mess and transform itself. I have been co-writing about predatory lending and the ambiguous professional status of retail mortgage salespeople for over 5 years. The industry has traded consumer respect for massive profits. It does not matter where you work: banker, broker, credit union, consumer finance company. It does not matter what you call yourselves: Loan officer, loan originator, loan consultant, mortgage planner. Consumers do not understand the subtle and obvious differences. They DO know "lender" and "loan officer." An "officer" sounds important and powerful, like an officer of a bank or a police officer: sworn to keep the world safe. The words connote safety and assurance. Yet the best advice consumers can bet on today is to have a full understanding that any retail mortgage salesperson, no matter what they call themselves or where they work has absolutely no duty to put the consumer's interests ahead of his or her own interests. The relationship is a [retail](#) relationship, not a [fiduciary](#) relationship.

Solution number 1

All retail mortgage salespeople, no matter where they work: bank, broker, credit union, consumer finance company, should owe fiduciary duties to consumers, just like a doctor or a lawyer does. The process of purchasing or refinancing a home is no less important than a medical or legal procedure. Retail mortgage salespeople: Referring to yourselves as Mortgage Professionals does not make it so, nor does it help the entire industry move forward. Referring to yourself as a licensed loan originator, if that is what it says on your license, is accurate and honest. You have one-up on folks who are exempt from licensing; now's the time to play that card.

Solution number 2

Let's stop dancing around the ambiguous behavior we call "predatory lending" and define it. We use to call such actions "fraud." There are now 24 states that have passed anti-predatory lending legislation. Congressman Barney Frank is going to make this his election year legacy. Instead of restating his plans, click here to read [the brief overview](#) of forthcoming introductory legislation.

My only question to Congressman Frank is this: How does the federal government plan to regulate and enforce this proposed law? Congressman Frank, if you are asking me, a United States taxpayer, to use my tax dollars to regulate this new law, my answer is "no thank you." Please gather the money to regulate predatory lending from the industry that created the problem.

Solution number 3

If the industry does not like paying higher costs associated with more state and federal regulations, the industry has another choice: Self-regulation. Any industry is far better off self-regulating rather than letting the government regulate for you. The last time the mortgage industry had to swallow government forced regulation, we ended up with [RESPA](#) and the [Truth-in-Lending Act](#). Oh, yes, these are such fine pieces of federal legislation, so easy to understand that the industry joyfully and voluntarily steps up to the plate every day to willfully comply with these two gems.

Every time I ask mortgage brokers the following question, I get the same answer, 100% of the time: "If you accidentally messed up and violated a federal or state law, would you want one of the competitors in your marketplace to give you a call and say, for example, 'Hey there, I think you missed the APR on that piece of advertising' or would you rather have your competitor turn you in to your state's regulator?" Everyone would rather have their competitor place a direct, friendly call to them.

Self-regulation is a sign that an industry is moving forward and growing up. Yes, it will mean requiring more pre and post education, tougher exams, and higher duties owed to consumers, but moving into the realm of professional status also means more prestige, less government oversight, and the fees emerging mortgage professionals will charge for their services and knowledge will be higher because their knowledge and duties will be worth more. If you regularly argue for less government intrusion and you are pro-business, you understand the value in self-regulation.

There are now four national professional associations where retail mortgage salespeople can voluntarily choose to act with professional status, or at least pledge a higher level of honesty than the existing industry associations. Members of NAMB must simply [look like they're honest](#).

Retail mortgage salespeople who join the Mortgage Professor's [Upfront Mortgage Brokers Association](#) will guarantee, in writing, a fixed price for their services up front. Members also pledge to put their client's interests above their own.

The National Association of Mortgage Professionals has a [Code of Ethics](#) that is better than NAMB, MBAA or NAPMW.

The [Certified Mortgage Planners](#) have a more detailed [Code of Ethics](#). However, all a person has to do is attend a 3 day class and pass a test and I'm not sure I agree with their premise: To help consumers *plan* how to use their home equity. This organization has some work to do in its intentionality. Interestingly, a regular [raincityguide.com](#) reader sent me an entire slew of articles that catch lead Mortgage Planner instructor Barry Habib with his pants down recommending consumers choose subprime products, take their equity out of their home and invest it, and other ["advice"](#). Looks like CNBC hasn't asked him for advice for a couple of months.

[Ethical Lending Foundation](#)

After approaching the existing trade organizations asking if they would like us to re-write their Code of Ethics, and hearing "no" from both, I decided to co-author a new code. I am Co-Executive Director of this new professional association. Consumers can receive a referral to an ethical lender who has pledged to uphold the Ethical Lending [Code of Ethics](#) which mandates fiduciary duties owed to consumers.

Ameriquest and Household Finance, two consumer loan lenders were forced [by way of court settlement](#) to cease rewarding their retail mortgage salespeople for steering trusting consumers into high cost, high rate loans. In contrast, Mike Dodge recently penned an Inman Guest Perspective in which his company, Internet Brands, voluntarily adopted a twelve point, detailed, home borrower's [Bill of Rights](#).

Some view the subprime meltdown as a threat. I see it as an opportunity to put the industry back on track ethically, lead retail mortgage salespeople towards transforming into emerging professionals, rope predatory lending back into where it came from: the fraud corral, and

open a national dialogue on self-regulation.

I see a trend: It's cool to be an ethical lender and it is profitable to be an ethical lender.

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