

P U B L I C H E A R I N G

before

SENATE LABOR, INDUSTRY, AND PROFESSIONS COMMITTEE
and
ASSEMBLY BANKING AND INSURANCE COMMITTEE

on

Senate No. 975 and Assembly No. 755
[Regulation of Mortgage Banking by Commissioner of Banking]

Held:
April 3, 1980
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF ASSEMBLY COMMITTEE PRESENT:

Assemblyman James W. Bornheimer (Chairman)
Assemblyman Charles Mays
Assemblyman Michael F. Adubato
Assemblyman Louis F. Kosco
Assemblyman Frederic Remington

MEMBER OF SENATE COMMITTEE PRESENT:

Senator James H. Wallwork

ALSO:

Laurine Purola, Research Associate
Office of Legislative Services
Aide, Assembly Banking and Insurance Committee

Patricia Turner, Research Associate
Office of Legislative Services
Aide, Senate Labor, Industry and Professions Committee

10
9
8
7
6
5
4
3
2
1

I N D E X

	<u>Page</u>
Robert W. Larson Chairman Larson Mortgage Company	1
Judd Levy Vice President, Municipal Finance Department Merrill, Lynch, Fenner and Smith	3
Michael Young President Larson Mortgage Company	7
William Populus Real Estate Broker Plainfield, New Jersey	17
Edward Goldberg First Vice President Mortgage Bankers Association of New Jersey	22
Joseph Bernardo Senior Vice President Kennedy Mortgage Company	24
Thomas C. Martin President - Chairman of the Board - Founder Kennedy Mortgage Company	30
Edward Heil Senior Vice President in charge of Mortgages and Real Estate Lending First National State Bank of New Jersey Newark, New Jersey	53
Robert Levy Executive Director and Counsel Mortgage Bankers Association	58
Frank Smith U. S. Mortgage Company	68
Angelo R. Bianchi Commissioner Department of Banking	72 & 1X

- - - -

1-25 :I
26-71 :III
72-82 :I
83-92 :II

SENATE, No. 975

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 4, 1980

By Senator BEDELL

Referred to Committee on Labor, Industry and Professions

AN ACT providing for the regulation and licensing of mortgage bankers, mortgage brokers and mortgage solicitors by the Commissioner of Banking, defining the powers and duties of the commissioner in connection therewith, and prescribing penalties for violations thereof and making an appropriation therefor.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 a. "Mortgage loan" means any loan secured by a first mortgage
3 on real property on a one to six family dwelling, a portion of which
4 may be used for nonresidential purposes.

5 b. "Primary market" means the market wherein mortgage loans
6 are originated between a lender and a borrower, whether or not
7 through a mortgage broker or other conduit.

8 c. "Mortgage banker" means any person not exempt under sec-
9 tion 3 of this act, who for compensation or gain, or in the expecta-
10 tion of compensation or gain, either directly or indirectly originates,
11 acquires or negotiates mortgage loans in the primary market.

12 d. "Mortgage broker" means any person not exempt under sec-
13 tion 3 of this act, who for compensation or gain, or in the expecta-
14 tion of compensation or gain, either directly or indirectly negoti-
15 ates, places or sells for others, or offers to negotiate, place or sell
16 for others a mortgage loan in the primary market.

17 e. "Mortgage solicitor" means any person not licensed as a
18 mortgage banker or mortgage broker, who performs any of the
19 functions under subsections d. or e. of this section and who is
20 employed by a mortgage banker or mortgage broker.

21 f. "Department" means the Department of Banking.

22 g. "Commissioner" means the Commissioner of Banking.

23 h. "Licensee" means a mortgage banker, mortgage broker or
24 mortgage solicitor licensed under any of the provisions of this act.

25 i. "License" means a license issued under the provisions of this
26 act.

1 2. The licensing and examination requirements of this act shall
2 not apply to:

3 a. Savings and loan associations, commercial banks, savings
4 banks, insurance companies and credit unions; but subsidiaries and
5 service corporations of these institutions shall not be exempt and
6 shall be subject to the provisions of this act.

7 b. A person making, acquiring or selling mortgage loans for
8 private investment or gain and not in the regular course of busi-
9 ness.

10 c. An attorney at law of this State, not actively and principally
11 engaged in the business of a mortgage banker or broker, when the
12 attorney renders services in the course of his practice.

13 d. A person licensed as a real estate broker or salesman pursuant
14 to chapter 15 of Title 45 of the Revised Statutes, and not princi-
15 pally engaged in the business of a mortgage banker or broker.

16 e. Builders who secure mortgages for their own construction or
17 for sale of their own construction.

1 3. a. No person shall act as a mortgage banker, mortgage broker
2 or mortgage solicitor without a license therefor as provided in
3 this act, but a person licensed as a mortgage banker may act as a
4 mortgage broker or mortgage solicitor and a person licensed as
5 a mortgage broker may act as a mortgage solicitor.

6 b. No corporation, partnership, association or any other entity
7 shall be issued or hold a license unless one officer of the corporation,
8 or one principal of any other entity has a license of the same type
9 sought or held.

1 4. The commissioner may issue any license under this act if the
2 following conditions are met:

3 a. A written application shall be accompanied by the required
4 fees, for a new license or for a renewal thereof and shall be made
5 on the forms and in the manner and accompanied by such evidence
6 in support of the application as may be prescribed by the com-
7 missioner.

8 b. An applicant shall qualify by examination approved by the
9 commissioner, which examination may be written or oral or partly
10 written and partly oral, and shall include a general knowledge of
11 the statutes of this State concerning real property, conveyancing,
12 mortgages, and agreements of sale, and of the provisions thereof.
13 The commissioner may designate an independent testing service
14 to prepare and administer the examinations.

15 c. Every application for a mortgage solicitor's license shall be
16 accompanied by a statement of a mortgage banker or mortgage
17 broker, who shall certify that he is to be the applicant's employer
18 and will be responsible for the applicant's actions.

19 d. An application for a mortgage broker's or mortgage banker's
20 license shall include suitable evidence that the requirements of
21 section 8 of this act have been met.

22 e. The examination requirements of this section may be waived
23 by the commissioner for any person applying for a:

24 (1) Mortgage solicitor's license, who, prior to the effective date
25 of this act, has been employed by a mortgage banker or broker
26 and who has been and continues to be licensed as a real estate
27 broker or salesman under chapter 15 of Title 45 of the Revised
28 Statutes; or

29 (2) Mortgage banker's or mortgage broker's license who can
30 demonstrate to the satisfaction of the commissioner that he has
31 for a period of at least 10 years prior to the effective date of this
32 act, been principally engaged in the business of mortgage banker,
33 or mortgage broker in this State and who submits a written re-
34 quest to the commissioner for his approval.

1 5. The license fee for each license for a 2-year period or any
2 part thereof ending the second June 30 from date of issuance, shall
3 be \$500.00 for a mortgage banker, \$500.00 for a mortgage broker
4 and \$100.00 for a mortgage solicitor.

1 6. Each license issued pursuant to this act shall expire on the
2 second June 30 following the date on which it becomes effective.
3 Licenses shall not be transferable or assignable.

1 7. a. A licensed mortgage banker or mortgage broker shall have
2 and maintain a place of business in the State for the transaction
3 of business. A license shall specify the address of the place of
4 business of the mortgage banker or mortgage broker and shall be
5 conspicuously displayed therein, together with the licenses of all
6 mortgage solicitors employed at that place of business. If a mort-
7 gage banker or mortgage broker maintains a branch office or offices,
8 one of the offices will be designated as the principal office and the
9 department may, upon application and the payment of a fee of
10 \$250.00, issue a branch office license specifying thereon the address
11 of each branch office, which license shall be conspicuously displayed
12 therein. A mortgage banking and mortgage brokerage office or
13 branch thereof shall be operated under the full control and super-
14 vision of an individual licensed under this act and employed at
15 the office or branch on a regular and full-time basis to supervise
16 and perform mortgage banking and mortgage brokerage services.

17 No such individual may be in charge of more than one office. In
 18 case the address of the principal place of business or of any branch
 19 office is changed, the commissioner shall endorse the change of
 20 address on the license.

21 b. A mortgage solicitor's license issued pursuant to this act shall
 22 indicate thereon the licensed mortgage broker or mortgage banker
 23 who employs the mortgage solicitor. The mortgage solicitor's
 24 license shall be immediately returned to the commissioner for can-
 25 cellation if for any reason the mortgage solicitor ceases to be
 26 employed by that mortgage banker or mortgage broker.

1 8. A licensed mortgage banker and mortgage broker, prior to
 2 doing business, shall obtain a bond in an amount and form pre-
 3 scribed by regulations of the commissioner. The bond shall be
 4 obtained from a surety company authorized by law to do business
 5 in this State. In lieu of individual bonds, a mortgage banker or
 6 mortgage broker may procure a blanket bond to cover all em-
 7 ployees licensed under the provisions of this act in an amount as
 8 prescribed by regulation of the commissioner. The bond shall run
 9 to the State for the benefit of any person injured by the wrongful
 10 act, default, fraud or misrepresentation of the mortgage banker,
 11 broker or solicitors. No bond shall comply with the requirements
 12 of this section unless the bond contains a provision that it shall
 13 not be cancelled for any cause unless notice of intention to cancel
 14 is filed in the Department of Banking at least 30 days before the
 15 day upon which cancellation shall take effect.

1 9. a. The commissioner may refuse to issue and may revoke,
 2 suspend or refuse to renew a license or impose a penalty pursuant
 3 to this act if he finds, after notice and an opportunity for a hearing
 4 in accordance with the "Administrative Procedure Act," P. L.
 5 1968, c. 410 (C. 52:14B-1 et seq.) and any rules adopted there-
 6 under, that any person, applicant for or holder of the license has:

7 (1) Willfully violated any of the provisions of this act or any
 8 order, rule or regulation made or issued pursuant to this act;

9 (2) Withheld information or made a material misstatement in
 10 the application for the license;

11 (3) Been convicted of an offense involving breach of trust,
 12 moral turpitude or fraudulent or dishonest dealing, or had a final
 13 judgment entered against him in a civil action upon grounds of
 14 fraud, misrepresentation or deceit;

15 (4) Become insolvent or bankrupt, or had filed a petition in an
 16 insolvency or bankruptcy proceedings; or

17 (5) Demonstrated unworthiness, incompetence, bad faith or dis-
18 honesty in the transacting of business as a mortgage banker or
19 mortgage broker or mortgage solicitor.

20 b. A license of a corporation, partnership, association or other
21 entity may be suspended or revoked if any officer, director or mem-
22 ber of the licensee has committed any act which would be cause
23 for suspending or revoking a license to him as an individual.

24 If the license issued to any member of a partnership, or to any
25 officer of an association or corporation is revoked or suspended,
26 the license issued to the partnership, association or corporation
27 shall be revoked by the commissioner, unless within the time fixed
28 by the commissioner, in the case of a partnership, the connection
29 therewith of the member whose license has been revoked shall be
30 severed and his interest in the partnership and his share in its
31 activities brought to an end, or in the case of an association or
32 corporation, the offending officer or director shall be discharged
33 and shall have no further participation in its activity. Officers and
34 directors of the corporation shall be required to fully divest them-
35 selves of all stock, bonds or other corporate holdings.

1 10. a. Every licensed mortgage banker and mortgage broker
2 shall maintain, at the place of business designated in the license
3 certificate, such books, accounts, records and documents of the
4 business conducted under the license as may be prescribed by the
5 commissioner to enable him to determine whether the business
6 of the licensee is being conducted in accordance with the provisions
7 of this act and the orders, rules and regulations issued hereunder;

8 b. A licensee operating two or more licensed places of business
9 in this State may maintain the general control records of all li-
10 censed places at any one of the licensed places. Upon appropriate
11 notice to the commissioner and if a change in location of records
12 is made, the commissioner shall be notified in writing of the change
13 within 5 business days of the change.

14 c. Every licensee shall preserve all books, accounts, records and
15 documents pertaining to his business, and keep them available for
16 examination by the commissioner for at least 7 years from date
17 of original entry.

1 11. The commissioner may make such investigations and exami-
2 nations of any licensee or other person as he deems necessary to
3 determine compliance with this act and the orders, rules and regu-
4 lations issued hereunder. For such purposes, he may examine the
5 books, accounts, records and other documents or matters of any
6 licensee or other person. He shall have the power to compel by
7 subpoena the production of all relevant books, records and other

8 documents and materials relative to an examination or investiga-
9 tion. Examinations shall not be made more often than once during
10 a year unless the commissioner has reason to believe the licensee
11 is not complying with the provisions of this act or the orders, rules
12 and regulations issued hereunder. Examinations conducted under
13 the provisions of this act shall be confidential except as required
14 in the administration, enforcement and prosecution of violations
15 under this act or pursuant to a court order. The cost of the in-
16 vestigations and examinations shall be borne by the licensee.

1 12. a. The commissioner or any deputy commissioner shall have
2 power to issue subpoenas to compel the attendance of witnesses
3 and the production of documents, papers, books, records and other
4 evidence before him in any matter over which he has jurisdiction
5 under this act, and to administer oaths and affirmations to any
6 person.

7 b. If any person shall refuse to obey a subpoena, or to give testi-
8 mony or to produce evidence as required thereby, the commissioner
9 may apply ex parte to any court having jurisdiction over that
10 person for an order compelling the appearance of the witness
11 before the commissioner to give testimony or to produce evidence
12 as required thereby, or both.

1 13. a. The commissioner may issue and promulgate such rules
2 and regulations, in accordance with the "Administrative Procedure
3 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), as he may deem
4 necessary in the implementation and enforcement of this act, and
5 such rules and regulations shall have the effect of law.

6 b. Except as otherwise permitted by law, the commissioner may,
7 by rules and regulations, establish guidelines to determine the
8 reasonableness of fees and commissions, including but not limited
9 to direct or indirect costs or expenses incidental to the processing
10 and closing of a mortgage loan transaction.

11 c. The provisions of this section shall not apply to loans insured
12 or guaranteed by any agency of the Federal Government.

1 14. a. No person or licensee shall advertise, print, display, pub-
2 lish, distribute, telecast or broadcast, or cause or permit to be
3 advertised, printed, displayed, published, distributed, televised or
4 broadcast, in any manner, any statement or representation with
5 regard to the rates, terms or conditions pertaining to the making,
6 negotiating, or sale of loans, which is false, misleading or deceptive.
7 No person who is not licensed under this act or not exempt under
8 section 3 of this act shall use the word "mortgage" or similar
9 words in any advertising, signs, letterheads, cards, or like matter
10 which tend to represent that he arranges real estate mortgage loans.

11 No person licensed under this act shall be granted a license in a
12 name containing such words such as "insured," "bonded," "guar-
13 anteed," "secured" and the like.

14 b. No person or licensee shall, in connection with or incidental
15 to the making of a mortgage loan, require or permit the mortgage
16 instrument or bond or note to be signed by a party to the trans-
17 action if the instrument contains any blank spaces to be filled in
18 after it has been signed, except blank spaces relating to recording.

19 c. No person or licensee shall charge or exact directly or indi-
20 rectly from the mortgagor or any other person fees, commissions
21 or charges determined to be excessive in accordance with subsec-
22 tion b. of section 13 of this act.

23 d. No person not licensed or not exempt from licensure under
24 this act shall receive any commission, bonus or fee in connection
25 with arranging or originating a mortgage loan for a borrower.

26 e. No person or licensee shall pay any commission, bonus or fee
27 to any person not licensed or not exempt under the provisions of
28 this act in connection with arranging for or originating a mortgage
29 loan for a borrower.

30 f. No person shall obtain or attempt to obtain a license by fraud
31 or misrepresentation.

32 g. No person or licensee shall misrepresent, circumvent, or con-
33 ceal the nature of any material particular of any transaction to
34 which he is a party.

35 h. No person or licensee shall fail to disburse funds in accord-
36 ance with his agreements, unless otherwise ordered by the com-
37 missioner or a court of this State or of the United States.

38 i. No person or licensee shall fail without good cause to account
39 or deliver to any person any personal property, money, fund, de-
40 posit, check, draft, mortgage, document or thing of value, which
41 is not his property, or which he is not in law or equity entitled to
42 retain under the circumstances, at the time which has been agreed
43 upon, or is required by law or, in the absence of a fixed time, upon
44 demand of the person entitled to such accounting and delivery.

45 j. No person or licensee shall fail to place in escrow, immediately
46 upon receipt, any money, fund, deposit, check or draft entrusted
47 to him by any person dealing with him as a mortgage banker or
48 mortgage broker, in a manner approved by the commissioner, or
49 to deposit the funds in a trust or escrow account maintained by
50 him with a financial institution the deposits of which are insured
51 by the Federal Deposit Insurance Corporation or the Federal Sav-
52 ings and Loan Insurance Corporation, wherein the funds shall be
53 kept until the disbursement thereof is properly authorized.

54 k. No person licensed under this act shall change the address
55 of his place of business without notice to the commissioner.

1 15. If the commissioner has reason to believe that any person
2 or licensee has engaged, is engaged, or is about to engage in any
3 practice or transaction prohibited by this act, the commissioner
4 may, in addition to any other remedies he may have, bring a sum-
5 mary action in the name and on behalf of the State against the
6 person or licensee and any other person concerned or in any way
7 participating in or about to participate in such fraudulent prac-
8 tices or actions in violation of this act, to enjoin the person or
9 licensee from continuing the fraudulent practices or engaging
10 therein or doing any act in furtherance thereof or in violation of
11 this act.

1 16. Failure to comply with the provisions of this act shall not
2 affect the validity or enforceability of any mortgage loan, and no
3 person acquiring a mortgage loan, as mortgagee or assignee, shall
4 be required to ascertain whether or not the provisions of this act
5 have been complied with.

1 17. Any person or licensee who engages in any conduct or prac-
2 tice prohibited by this act may be liable to a penalty not exceeding
3 \$5,000.00, to be recovered in a summary proceeding under the
4 "penalty enforcement law" (N. J. S. 2A:58-1 et seq.). Each vio-
5 lation shall constitute a separate offense, and the penalty under
6 this section shall be in addition to any suspension or revocation
7 of license under section 9 of this act.

1 18. Any agreement to waive any provision of this act shall be
2 unenforceable and void.

1 19. A person presently engaged in the business of a mortgage
2 banker, mortgage broker or mortgage solicitor shall comply with
3 the provisions of this act within 1 year of the effective date of
4 this act.

1 20. There is appropriated to the Department of Banking, for
2 the purpose of administering this act, the sum of \$50,000.00. In
3 addition thereto, all fees and revenue received pursuant to this
4 act from the effective date of this act until June 30, 1982, shall be
5 appropriated thereto.

1 21. This act shall take effect July 1 following its enactment,
2 but section 20 of this act shall take effect immediately. The com-
3 missioner may by regulation postpone the operative date of sec-
4 tions 3 and 8 of this act for a period of not more than 1 year.

STATEMENT

This bill provides for the licensing and regulation of mortgage bankers, mortgage brokers and mortgage solicitors by the Commissioner of Banking. It defines "mortgage banker," "mortgage broker" and "mortgage solicitor," and prohibits anyone not specifically exempt from acting in one of these capacities without being licensed under this bill. Attorneys are exempt from licensing requirements when rendering services in the course of their legal practice, and anyone purchasing a mortgage for his own investment is also so exempt.

The bill establishes procedures and standards for the granting of licenses, and specifies the kinds of conduct which will justify the refusal to issue or renew a license or the suspension or revocation of a license. All mortgage bankers and mortgage brokers would be required to post at least a \$25,000.00 bond, to maintain a place of business in this State, and to keep available, for a period of 7 years, records of all transactions in the manner prescribed by the commissioner. The bill also prohibits several specific business practices which are deemed inconsistent with the public interest.

Any violation of the act subjects a person to a civil penalty of up to \$5,000.00 per violation. In addition, the commissioner may bring a summary action to enjoin any violation of this act or any fraudulent practice. These powers are in addition to the commissioner's power to revoke or suspend a license.

ASSEMBLYMAN JAMES W. BORNHEIMER (Chairman): We will get started now. The first person to testify will be Mr. Robert Larson.

ROBERT LARSON: Good morning, members of the Joint Committee.

As Mr. Bornheimer said, my name is Robert Larson. I am Chairman of the Larson Mortgage Company. I am Past President of the New Jersey Mortgage Bankers Association, a member of the Board of Governors of the National Mortgage Bankers Association and I serve on the Advisory Board of the Federal National Mortgage Association, and have been in the mortgage banking business for 34 years.

It is clear that there is a need for licensing and follow-up procedure with real teeth to protect the public from those people who call themselves mortgage consultants and from other fly-by-night operators who are currently not supervised by anyone.

It is also clear that the vast number of serious complaints lodged during this hearing are directed at this type of operation rather than at mortgage banking as a whole, although the headlines in the papers would have the public believe that bona fide professional mortgage bankers should be lumped in the same category. This is grossly unfair and may reflect on information given to the press without careful thought. Sensational headlines and careless statements will not result in constructive legislative planning that really protects the consumer.

In that connection, I believe the attorney for the Mortgage Bankers Association of New Jersey has lodged with the Monmouth County Prosecutor a letter indicating a position I support and I believe this letter is also available to you should you care to request it from the Prosecutor.

Members of your Committee indicated at the last hearing that mortgage bankers did nothing to clean up the problem in their industry. On the contrary, this is far from the truth and if Mr. William Lewis, the Deputy Commissioner, were here, I think he would indicate to you whenever one of us received a letter from him pinpointing a problem, we made a prompt and cooperative response.

From the best figures I have available, there are close to 400,000 mortgage loans in this State serviced by mortgage bankers; and there are thousands originated each year. As an aside, I believe that probably there are 1,500,000 total home mortgage loans in this State, something in that vicinity.

If there were 300 complaints during one year lodged against mortgage bankers, and supposing that they were all justified, which is not the case, these complaints would constitute approximately 8/100ths of 1 percent of the total business we do. Without being privy to the statistics, I believe that almost all businesses that deal with the public have a consumer dissatisfaction rate higher than this.

As both responsible professionals and interested citizens of New Jersey, the members of this Association are anxious to cooperate in every way with the Banking Department's efforts to develop the kind of legislation that will best serve the public's mortgage needs in our State. With this objective in mind, about a year ago we proposed immediate establishment of a Mortgage Review Committee to handle specific complaints lodged with the Banking Department. Our proposal was dismissed and we were advised instead to accept the licensing regulations which are included in the bill before you. Had the Mortgage Review Committee been put into effect and we had been privy to these complaints, many abuses could have long ago been resolved at far less cost to the State and all parties involved. In addition, they could have been classified as to areas of abuse and our industry would have

given the Banking Department full cooperation in preparing the correct licensing procedure.

Rather than proceed with this approach, the Department remains insistent in acquiring almost total regulatory power. This insistence is of grave concern to every mortgage banker and should be to the citizens of New Jersey. Moreover, the Banking Department has not separated the complaints by category with the intent of logically demonstrating areas that do or do not need licensing, monitoring or regulating. The damage of issuing regulations inconsistent with the realities of the mortgage market are incalculable.

It is evident from comments on the bill at the last hearing with respect to Federal National Mortgage Association regulations that there are some gross misunderstandings with regard to the nature and complexity of our business. In some cases, despite important difference, mortgage bankers have even been confused with insurance salesmen. On the other hand, many of you may be doubtlessly aware that mortgage bankers have been in the forefront of developing innovative programs for inner-city areas. We have in a sense put our money where our mouth is. And many of us, including my company, have encouraged minority hiring practices. An inspection of our Plainfield Office would reveal that approximately 25 percent of our employees and officers are minority, a record that may be unmatched in other types of business, especially banking businesses.

In addition, we mortgage bankers have been a conduit for subsidy funds, especially benefiting modest income purchasers. We have been invited on a local and national level to participate with savings banks, commercial banks and savings and loans in helping to deliver mortgage opportunities to disadvantaged and modest-income New Jersey citizens. Our performance in this respect is well documented. A former Commissioner inspected these projects and presented ideas for their improvement and he felt that there was a genuinely cooperative effort at the State level to advance the cause of New Jersey home financing.

It is evident, based on past discussions with mortgage bankers, that this climate does not now exist and that there is not the desire to take the time to understand the subtleties and intricacies of the mortgage banking business.

I hope this distinguished Committee in its wisdom will carefully investigate and sort out the complaints by category and allow us to participate in designing a remedy that will prevent abuses without hindering a desperately needed innovative flow of mortgage money to New Jersey.

In that connection, all of you are probably aware that the current mortgage rate in New Jersey is somewhere between 16 and 18 percent - that is the home mortgage rate - but that mortgage bankers are still originating FHA and VA loans without halt, at a total annual percentage rate of less than 15 percent. This percentage rate, as you know, is derived by a combination of discount and base interest rate. Frankly, as far as I know, this is the only major flow of home mortgage money into New Jersey at this time.

I believe that the members of your Committee should take the time to sift through mountains of regulations that already control us through HUD, the Federal National Mortgage Association, and the Federal Home Loan Bank and the many lenders with which we work. Unless extreme care is taken, you will tie our hands so that we will be unable to bring mortgage money into this State and to continue to advance funds for worthy projects. In that connection, some recreational projects - the Vernon Valley Ski Run, for example, major state hospitals, many nursing

homes, hundreds of shopping centers, and multi-family housing units, have been recently financed through imaginative mortgage banker programs. Breaking up this flow of funds would be a serious deterrent to the economic growth and prosperity of the State and a gross injustice to the people of New Jersey.

I ask that you make full use of your vision and your wisdom to sort out these problems, and that you look on us as willing and able team members, not as dishonest operators or fly-by-nights whose fraudulent pursuits and illegal setups are the province of the Attorney General of the Consumer Frauds Division. We want to work with you to benefit our State. Please give us the opportunity to do so. I thank you for inviting me to testify.

ASSEMBLYMAN BORNHEIMER: Thank you, Mr. Larson. Are there any questions?
Mr. Kosco.

ASSEMBLYMAN KOSCO: I ask the same question I asked last week: How would this particular piece of legislation hinder mortgage money coming into the State?

MR. LARSON: One way would be that if it sets our fess, everything we do then is at risk and we can't contract out of the state and depend on a fee structure that there would be a profit with. Also this legislation will provide for auditing and for the licensing fees for solicitors, brokers and officers. That in itself will make an addition to our cost of operation. Already we pay increased corporate taxes this year to the State and the amount of money that we would have to add and pass on to a potential mortgagor would make it more difficult for the mortgagor to get his loan and it would make it more difficult for us to negotiate for loans out of state. If the Commissioner is granted full right of regulation, we would never really feel secure that we had the opportunity to advise and to coordinate in those regulations so that they would be fair to us as well as to the public. It would again put us at risk. As a matter of fact, it would put an element of terror into the mortgage banking business as it has already.

ASSEMBLYMAN KOSCO: Are you then definitely opposed to licensing as this bill provides?

MR. LARSON: I am not opposed to licensing. I think licensing is important, especially to keep out the fly-by-nighters. I am opposed to the type of total regulation, total fee-setting, the right to audit at will, and all of the other elements that will compound our cost and make it difficult for us to do business.

I believe the Governor of the State has actually come out and said that any new regulations should be looked on very carefully to see if they really do benefit the consumer. I am opposed to the type of regulation and the type of fee-setting in this bill.

ASSEMBLYMAN BORNHEIMER: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Mr. Larson, do you have a prepared text you could share with us?

MR. LARSON: Yes, I have copies for everyone here.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN BORNHEIMER: Any further questions? (No questions.)
Thank you, Mr. Larson.

The next person to speak will be Judd Levy.

J U D D L E V Y: Good morning, Mr. Chairman.

My name is Judd Levy. I am a Vice-President of the Municipal Finance

Department of Merrill, Lynch, Pierce, Fenner and Smith, in New York. My responsibility in the Investment Banking Division there is in charge of all the tax-exempt housing financing that the firm does. I have had that position for the last 18 months. Prior to that period, I worked for the New Jersey Mortgage Finance Agency as Deputy Director from February of 1974 to September, 1978. I am here today speaking, based on my experience with the mortgage lending community in New Jersey during that period when I was with the Mortgage Finance Agency.

I am not speaking for or against the legislation that is before the Committee, but I just want to bring some experiences that I have had in the lending community during my period of employment in New Jersey to your attention.

As you know, Mr. Chairman, the Mortgage Finance Agency is responsible, as an independent State agency, for increasing the amount of mortgage money to residents of the State of New Jersey who might not otherwise be able to secure such financing. The Agency was created by this Legislature in 1970 and with several amendments to the legislation over the years has become one of the most progressive and, I think, well respected state housing agencies in the country.

In 1974, in October of that year, interest rates were at record levels in New Jersey and the Mortgage Finance Agency sold a \$163 million bond issue to provide funds to the residents of New Jersey, at a time when there was very little mortgage money available because of the existence of the usuary ceiling and high interest rates. It was this program - this was the seventh issue that the agency sold - that provided mortgage money that would not otherwise have been available.

In that issue, there was a special feature that provided an additional economic incentive for the mortgage originators to make mortgage loans in the 28 urban-aid cities of the State. Of the \$163 million, approximately \$35 million was made available solely to residents who wanted homes in Newark, Trenton, Camden and similar areas.

One of the problems that we had with that issue was that the bulk of the savings and loans and commercial banking institutions were not actively engaged in mortgage loans in those cities, they were not making mortgage loans under the FHA or VA programs, and we had great difficulty getting participation of our lending institutions in the urban program. This was solved in part by the active role that a particular mortgage banker played in getting I think ten or fifteen savings and loan associations to participate in the program as borrowers from the agency; and then the mortgage banker, on behalf of the ten or fifteen thrift institutions, created a mortgage pool and the mortgage banker originated the mortgage loans in the urban areas and serviced them for the savings and loan associations.

What this proved to us was that if we were going to make any major effort to provide mortgage money to the cities and the residents of the urban areas of New Jersey, the mortgage bankers, as the prime originators of FHA and VA loans were going to be a crucial part of agency operations.

In 1976, we came before this Committee. I believe the Chairman was Chairman at that time and Mr. Aduato was on the Committee. We secured legislative changes that allowed the agency to enter a mortgage purchase program. In March of 1977, we introduced what we called the Neighborhood Loan Program, which was a program that was restricted solely to the 28 urban-aid cities and where funds could only be made available to people who were buying homes in those cities. The loans were made through New Jersey's lending institutions. And, once again, in

this program, there were 33 lending institutions participating; 17 of them were mortgage bankers. In terms of the dollars that were made available, there were \$86 million available to these lending institutions; the mortgage bankers participated to the extent of \$65 million or 75 percent of the funds available for the urban loans.

I think these statistics make it quite clear that without the mortgage banking community, the Neighborhood Loan Program, which went on to substantial success and has been copied in several other states, never would have succeeded in the State of New Jersey. The Neighborhood Loan Program continued in July of 1978 with an additional \$75 million bond sale and, once again, the mortgage bankers participated to the extent of over 57 percent of the dollars that were available to that program.

A couple of specific instances of programs that were introduced in the Mortgage Finance Agency when I was there: In 1977, the State of New Jersey through the Department of Community Affairs and the Mortgage Finance Agency and the Housing Finance Agency sponsored an affordable housing competition where we provided prize money to architects and designers who could design a low-cost home. The Bergen County Housing Authority was the winning entry and we provided two units of financing for low-cost housing there. Once again, a mortgage banker was the main impetus in providing the financing for the units that were actually built. I believe since that time an additional four more units under that affordable housing competition program have gone forth in Bergen County.

In 1978, in Jersey City in the Arlington-Jackson area, we participated with the Jersey City Redevelopment Agency for a substantial amount of rehab and renewal work for vacant homes in the Arlington-Jackson area. Once again, a mortgage banker was the prime agent for stimulating the demand and marketing and providing the financing through the agency for that renewal effort.

New Jersey lending is characterized by the fact that the traditional lending institutions - commercial banks and savings and loans - have really abandoned the FHA-VA market. It is a very cumbersome market. It is a difficult market. The processing and the servicing requirements are much more difficult than the conventional market. Over the years, they have just --- I don't think you could find, at least when I was active in New Jersey, a dozen lending institutions that were active originators of FHA-VA loans. On the other hand, the mortgage bankers obviously have picked up this slack and provide this financing to people who need it. Because the FHA-VA market is aimed at lower-income people and people who have lower down payments, I would expect that the relationship to the customers might be more difficult.

I would caution the Committee against condemning the mortgage banking community for serving what is a more difficult and more expensive market because the other lending institutions have abandoned it.

In conclusion, gentlemen and ladies, during the time of my four and one-half years' experience with the Mortgage Finance Agency, I developed a great deal of respect for the mortgage banking community as a whole. I think that the success of the Mortgage Finance Agency program would not have occurred without their participation in the program and without their productive and creative contribution on individual projects that gave the Mortgage Finance Agency the reputation that it has today. Thank you.

ASSEMBLYMAN BORNHEIMER: Does anyone have any questions?

ASSEMBLYMAN KOSCO: I have no questions, but I would like to make just

one observation. So far today, the two witnesses that have spoken are speaking as though we are adversaries. We are really not adversaries. You mentioned that we are condemning mortgage bankers and the other gentleman mentioned that we were talking bad about them and treating them all like they were fly-by-night people. I don't think that is the purpose of this bill. I don't think that that is the intention of the bill. I think, if you read the bill, the bill doesn't do anything or say anything derogatory about mortgage bankers. In no way do I think we are condemning anybody. We are simply trying to put it in a proper perspective: take it from being a real estate responsibility and put it into the banking where it belongs. I just want to make that point.

ASSEMBLYMAN BORNHEIMER: Do you think there is excessive regulation of the mortgage bankers?

MR. LEVY: Well, the mortgage bankers today are subject to substantial regulation by the federal government. I think Mr. Larson testified to the FHA regulations, the regulations the Veterans Administration imposes. Participants in the Federal National Mortgage Association program have regulations. The Federal Home Loan Mortgage Corporation has regulations. That doesn't mean that some sort of licensing, restriction and regulation by the State is uncalled for. Frankly, when I was at the Mortgage Finance Agency I believed that such action would be responsible.

My concern is that I am a strong believer in the free market system and any regulation on the pricing of the product they sell, which is a mortgage, as opposed to a regulation on the expenses of originating that product - and they are two different things --- any restriction or regulation that interferes with the free market, in my opinion, would be disastrous to the State of New Jersey. I think we have learned this in the last twelve months with the effects of the usuary ceiling. Anything that is going to restrict FHA-VA mortgages and prevent them from being sold on the secondary market, on the national market, I think would be disastrous to the State, and particularly disastrous to the State's urban areas where the bulk of these loans are made.

ASSEMBLYMAN ADUBATO: I apologize for not being here when you were making your presentation, but I will listen to it when I get back to my office. Did I understand you to say in talking about VA and FHA mortgages that they are exempt in this legislation?

MR. LEVY: What I did say when I spoke originally, Mr. Audubato, is that I am not speaking on or against the bill and I am not that familiar with the bill to make that statement. I don't know.

ASSEMBLYMAN ADUBATO: I have notes here from our last meeting that I can read, but look like they are in Chinese. If I remember correctly - maybe the Commissioner can help us - VA and FHA ---

COMMISSIONER BIANCHI: I think I just showed Mr. Levy the section that provides with reference to that particular area, establishing guidelines, "Provisions of this section shall not apply to loans insured or guaranteed by any agency of the Federal Government."

ASSEMBLYMAN ADUBATO: So they are exempt?

COMMISSIONER BIANCHI: Yes.

MR. LEVY: From all sections of the bill?

COMMISSIONER BIANCHI: From fee setting.

ASSEMBLYMAN ADUBATO: The question is: Is VA and FHA exempt from the bill?

MR. LEVY: If they are, they are. I am not addressing this bill as it relates to the --- I am just saying - and I think this is the way I answered the question - if the bill in any way impeded the free flow of the free market for government mortgages, then I think it would be detrimental. The bill, according to the Commissioner does not do such - does not take such action; and, therefore, that wouldn't.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN BORNHEIMER: Thank you very much, sir.

The next gentleman to speak will be Frank Smith. If he is not here, I will go on to the next person and come back to his name.

Michael Young.

M I C H A E L Y O U N G: Good morning. I am Mike Young. I am the President of Larson Mortgage Company. Bob Larson has spoken to you earlier.

I share the view that you expressed, that we are not here in an adversarial role with this Committee. My comments are not directed along that line.

However, I do oppose the bill in the form that it is in right now. I have some very substantial problems in a couple of areas. One of the things that occurred to me on the way down here today was that yesterday the prime rate was 19, 19 1/4, 15 1/2, depending on which bank you deal with. And it is 20 today. Yesterday, the FHA rate was 13 percent and it is 14 percent today. I heard discussion in the hearing last week with respect to "when are we going to do something about stopping the cost of inflation - what can we do in housing and what can we do in lending." I think one of the issues that has not been addressed perhaps as it should to date is the public cost versus the public benefit of a bill like this.

With respect to the public cost, I think that even after this legislation would pass, there would be an assessment that would have to be made on a regular basis of whether or not the public cost continues to justify the public benefit. I would just cite three examples. Yesterday, I called three State-chartered thrift institutions. Each of them gave me their figures on examination expense. Each of them gave me their figures on loan production for the last two years. And, in all cases, loan production went down and examination expense went up. The direct cost - and this has nothing to do with the cost of compliance or the cost of disclosure, but just for examination - would be about \$40 per loan. I don't know what the actual cost is because that is not my business to monitor or examine. But I think that that test has to be made at some point.

With respect to this specific bill, I think that there are two costs that affect the public. The one cost is very easy to deal with; and that is the cost of licensing and it is the cost of examination, and it may be the cost of compliance. In my company, I have 25 licensed field originators at the moment. We have four offices. I can break these figures down, if you would like, later. Assuming an examination fee, based on our origination of perhaps \$10,000 a year, it is not difficult to quickly come to a \$15 thousand or \$30 thousand bill for my company to produce 1300 mortgages. The profit of our company last year was \$100 thousand. That \$15 to \$30 thousand must be passed on to the home buyers. If it is not, our warehouse banks won't lend us enough money to close mortgages, at the rate of \$52 million a year; and our capacity to operate will be severely affected. Those

are the facts of life. We must be profitable to induce our banks to lend to us so that we can close loans, warehouse and deliver. Those costs are easy costs to deal with and the public will pay for them.

A harder cost to deal with is the cost to the public in terms of loss of innovation. You have heard other speakers talk about pipelining money into New Jersey. I believe we do that and do it very well. But as important, if not more important, we pipeline ideas, innovation, and create mortgage delivery systems for special and unique needs - and we do this on a regular basis.

I would ask this Committee to bear with me for one minute and let me run through a list of some of the projects that my company has done in the last ten-year period. The purpose of this is that I want to demonstrate that it is not an isolated phenomenon, but that it is a regular, recurring part of our business. Then, after I do that, I would like to take one of those projects and apply it against the bill that is before you and ask you how this would impact on our ability to do this job.

In 1969, the principals of my company allocated \$100 thousand to set up a minority-managed and operated construction company. That company build 235 housing in an inner-city area. We provided 84 units. Today, those units are being resold by the owners at substantial profits. Most of them were first-time homeowners. Some of the sub-contractors for this work today have full-fledged business as a result of that.

Secondly, in 1970, I believe that we played a key role in the first MFA issue. We examined the legislation that was on the books, felt that it was desirable for New Jersey and went out on our own, explained the program, and developed \$11 million in subscriptions by institutions at that time and said, if this came about, we would take the program. We then spoke to Bob Watson who was the Director of the MFA at that time and said, "We have takers. If you go to market, there will be a bond issue." There was a bond issue. Following that, my firm did 40 percent of the first 3 MFA issues put together.

In 1972, the insurance industry had a billion-dollar program to channel funds into the urban areas. We sold the first Ginnie May security, secured totally by 235 mortgages, which are for low- and moderate-income people, and I have an interest subsidy in city mortgages. They were the only thing in that package. We sold that to a Washington based insurance company.

In 1973, we developed with the Town of Hoboken the Home Loan Program. We developed a package where the banks would participate. That program was presented to the Department of Community Affairs; an allocation was made; and, based on that, that program has been copied in a number of the areas.

Judd Levy referred to our risk-sharing pool. I won't go into that.

We participated in the first Neighborhood Housing Service in New Jersey in Plainfield and six institutions in 1973.

We participated in intensive discussions with the MFA to set up the current Neighborhood Loan Program.

In 1979, we arranged the first use of the Economic Development Authority financing in conjunction with an FHA nursing home. This produced significantly lower per room financing cost and cost savings were subsequently passed on to the patients.

In 1979, in response to a program sponsored by the Department of Community Affairs, my company developed and submitted a plan to finance 5- to 20-unit dwellings. DCA selected that program for an appropriation of \$100 thousand to study the feasibility of that proposal.

In 1979, we developed a program involving the City of Paterson, the Federal Home Loan Bank, HUD and ten Passaic County savings and loan associations. The program was designed to provide financing for foreclosed Paterson properties. For these properties, the City of Paterson could find buyers and rely on having funds available to purchase and rehabilitate those homes. That system that was set up by my company will produce an effective efficient way of delivering rehabilitation funds, much as it would if a tract builder would have it. We will act as custodian for the lenders. We will service the loans. We will close the loans.

What I have gone through is a partial list, I believe, of some of the things that my company has done. Again, I would very quickly add that other companies in this room today could just as quickly produce a list of areas in which they have made special innovative contributions.

Let's take for a moment the Paterson project and apply it to this bill. We could process up there roughly 100 homes through the allocation that we have. Because of this, I have contemplated opening a small office in Paterson to process these applications. Under this bill, we would be required to hire, school and then have tested a field representative prior to opening that office. Next, I would be required to see the Banking Commissioner to apply for branch office approval, which he may or may not issue. Following approval, I would pay a \$500 office license and \$100 for the mortgage solicitor. Under this bill, at the discretion of the Commissioner since these are conventional mortgages, we would be subject to guidelines or fee schedules. I would then find myself, probably, in time-consuming discussions with the Department of Banking as to the reasonableness of fees for, say, processing cosmetic rehab loans versus gut rehab loans. I probably would have a difficult time explaining to the Department of Banking that in development expense and in legal expense necessary to establish the rights and responsibilities of all the parties - the savings and loans, Paterson, HUD and Larson - that I had incurred an expense of \$3,000 that is going to be part of the application fee, ultimately to recapture.

Next, I think it would be difficult to outline that New Jersey statutes presently require that if the property is municipally owned, it must be subject to public bid. To determine whether or not those bidders are qualified, I may have to process five applications. That is a different fee structure than processing one in the suburbs.

I then might have to discuss what an acceptable inspection fee schedule is, whether it is fair that on a rehab job that will cost a thousand dollars, there should be a different fee schedule from one that will cost ten thousand dollars.

There are other elements that I could also outline to you in terms of problems that this bill would create for us. But consider for a moment the real attraction of that type of program to a mortgage banker. I am doing this and my company is doing this on the basis that we are trying to develop a prototype that we could perhaps roll out into ten or fifteen other cities - into Newark, Atlantic City, New Brunswick, and Jersey City - that would provide funds needed for our cities. This bill would require that I contact the Department of Banking maybe 15 times to set up branch offices and negotiate cost differentials on the fee schedules from one city to the next.

In general, this bill erects obstacles and creates barricades that discourage innovation. By setting fees and placing restraints on opportunities, our industry will become institutionalized and unresponsive.

All of the programs that I have mentioned have been conceived and delivered in the absence of punitive regulations or specific legislation requiring urban investment. The programs have been developed because our risk capital has perceived an opportunity not serviced by other mortgage institutions. In a period when we must borrow at 20 percent and lend at 14 percent for a short period, it is frightening to contemplate the cost to New Jersey of compliance with the proposed bill. Specifically, it could cost the State the loss of innovation because risk capital cannot be attracted to conceive, develop and implement new programs. A consequence of this loss will be a reliance on government, the Department of Banking, to innovate through regulation. I, personally, consider that consequence unacceptable, inefficient and a frightening step back for the citizens of New Jersey. Thank you.

ASSEMBLYMAN BORNHEIMER: Any questions?

ASSEMBLYMAN REMINGTON: Is your current rate 14 percent?

MR. YOUNG: The FHA rate is 14 percent.

ASSEMBLYMAN REMINGTON: What is your non-FHA rate at the moment?

MR. YOUNG: If we were to originate for delivery to Fannie May, it would be in the area of 16 1/2 to 17 percent.

ASSEMBLYMAN REMINGTON: Hasn't the demand for mortgages virtually dried up at that rate?

MR. YOUNG: There is always a category of people who must sell and must buy. There is a sharp reduction in demand. The answer is yes.

ASSEMBLYMAN REMINGTON: One other question: Have you calculated how much this law or regulation would increase your cost?

MR. YOUNG: I don't know what the Commissioner would have in mind in terms of examination costs. So I have to couch it on the basis that I am just estimating. I will say that I spent half of my working career in the savings and loan. So, I have some feeling for what that cost can be. I would believe that it will be in the area of \$15,000 to \$20,000, without considering any man-hour costs to comply or to respond to regulation. And I don't know what that man-hour cost would be.

ASSEMBLYMAN REMINGTON: Thank you.

ASSEMBLYMAN MAYS: I hear you talk about how this would affect you. What about the customers, those who get the loans?

MR. YOUNG: I think it would disastrously affect them. First off, I think it is necessary that we pass our cost along. Secondly, I believe that if the resource to innovate and deliver mortgages to the areas that need it most is discouraged, there may not be anywhere near the size of market that there should be in New Jersey and there may not be anywhere near the size of funds for the housing that is most needed.

ASSEMBLYMAN MAYS: A couple of weeks ago we heard about some customers coming in and being run over by some mortgage companies, fly-by-nights. What has your company or your organization done to look into this situation?

MR. YOUNG: First off, I would say that my company has its share of complaints. To do the volume we do, we are going to have them. I try to respond personally to everyone that comes in. Secondly, whenever I get an inquiry from the Department of Banking or any regulatory agency, there is an immediate absolute total response. The third thing - and I will cite an example right now of it: We have an incidence right now with a taxing municipality that didn't issue bills. Because of that, they are charging interest to the homeowners and to us for not

paying it on time. They would never provide the bills. On behalf of those homeowners, I'm going to proceed with the town to try to recapture that. That is an abuse. A mortgage banker does something about that.

The other areas you spoke about where there is a criminal abuse - for example, the insurance salesman - that should be addressed by the State and it should be prosecuted and we should do everything we can to separate ourselves from that type of operation.

ASSEMBLYMAN KOSCO: Going back to the point when you were discussing the possibility of opening up a branch office, what do you find wrong with opening up a branch office and having the proper people run the office rather than just having a "lip service" type of operation and saying "Well, here, I can show in my portfolio that I have an office here, an office here and an office here," but what you really have is a telephone? Under this bill, you wouldn't be able to give "lip service." You would have to give true service. Under this bill, the license would not cost you \$500, but \$250. There is a certain cost of doing any type of business, whether it be this type of business or any other type. I own a business. I can tell you there are certain costs that your business is going to have to absorb. You don't right away run out and say, "I have to make a windfall type of profit and I have to pass it on to my customers." I don't know if you have to do that. I don't know whether you have to pay for the license. If I want to go to work for you as a mortgage broker, why do you pay for my license? I pay for my own license. If you have 20 salesmen or 20 solicitors on the road, you don't pay for their licenses. They pay for their own. So why do you have to pass that on?

MR. YOUNG: I pay for their licenses.

ASSEMBLYMAN KOSCO: That is your choice.

MR. YOUNG: Even if they paid for it, I would pay for it.

ASSEMBLYMAN KOSCO: That is your choice. You want to pay for that and pass it on to your customers.

MR. YOUNG: First off, there is nothing wrong with applying for a license to open an office. I have no problem with that. But I do have a problem if I have to have extraordinary schooling requirements to train somebody to operate it. And I do have a problem to the extent that every additional cost that is added will make a program that may be marginal to begin with that much more marginal in terms of whether or not we want to proceed with it and make the effort or, indeed, to develop a new way to deliver mortgage moneys.

ASSEMBLYMAN KOSCO: Wouldn't this bill force you, if you want to use the word "force," to have qualified people rather than just have people that might create a problem?

MR. YOUNG: My bottom line forces me to have competent people. It is that simple.

ASSEMBLYMAN KOSCO: Your argument against this section of the bill doesn't make any sense because you are saying this bill says you have to do something and now you are telling me you automatically do it. So, the bill then would have no effect on you, except the \$250 fee.

MR. YOUNG: And also perhaps time delays in terms of getting people through and getting it approved, also perhaps in terms of time spent with the Department of Banking to explain what we are doing.

ASSEMBLYMAN ADUBATO: Mr. Young, I believe you said that you had

25 dealers in your shop.

MR. YOUNG: There are 25 licenses.

ASSEMBLYMAN ADUBATO: Possibly you could help the Committee since you brought out the fact that the Larson Mortgage Company has participated to some extent in helping to develop or revitalize certain areas. Do you have any information as to the amount of money that has gone into the urban areas in the State of New Jersey through mortgage bankers in development under Section 235 or any other, because I believe there are some private service organizations as well that you people belong to, like Central Corp and things like that? Are you part of Central Corp?

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: Do you have any idea of the amount of money in the last five years that mortgage bankers have pooled together for development in urban areas?

MR. YOUNG: I don't have a specific figure for it, but I believe we could get for you a pretty accurate figure. For example, just the Mortgage Finance Agency - I would say if they have \$475 million out right now - I would estimate that 60 to 65 percent of that has been originated by mortgage bankers.

ASSEMBLYMAN ADUBATO: That is through the Mortgage Finance Agency of the State. Is that what you mean?

MR. YOUNG: Yes, in New Jersey.

ASSEMBLYMAN ADUBATO: You spoke before, Mr. Young, about being innovative. Have the mortgage bankers done anything on their own, anything through any non-profit corporations or any municipalities directly, outside of the issues that came through the Mortgage Finance Agency?

MR. YOUNG: Yes.

ASSEMBLYMAN ADUBATO: Do you have a figure?

MR. YOUNG: No, but I would be glad to work on it for you.

ASSEMBLYMAN ADUBATO: Do you think that is considerable?

MR. YOUNG: I don't know. I do know, for example, I referred to the Hoboken Home Improvement Program ---

ASSEMBLYMAN ADUBATO: Yes, you did. That is why I brought it up.

MR. YOUNG: As I recollect - and it has been some time - there were about 400 units ultimately affected by the program.

ASSEMBLYMAN ADUBATO: It is probably not an unfair question. You used the word "considerable." I would appreciate it if you would get those figures for the Committee. I would like to see them.

You spoke about insurance - the problems that were brought up, for instance, at the last Committee meeting. What are your feelings as far as insurance being sold in an operation like your company to an individual who is either purchasing a home or getting a loan? How do you feel about that?

MR. YOUNG: I am not a specialist in insurance.

ASSEMBLYMAN ADUBATO: Do you sell insurance through your agency?

MR. YOUNG: We do - I think health and disability - as part of the mortgage when it is closed. Afterwards we solicit and ask if they would like to have it. I think we represent two or three companies.

ASSEMBLYMAN ADUBATO: Is that through an individual sale or a franchised package sale?

MR. YOUNG: Through an individual sale or a ---

ASSEMBLYMAN ADUBATO: Well, actually, you are selling an individual - but

are they covered under a blanket franchise contract?

MR. YOUNG: That's right.

ASSEMBLYMAN ADUBATO: They are?

MR. YOUNG: Yes, I believe they are.

ASSEMBLYMAN ADUBATO: I assume then that your people are licensed health agents.

MR. YOUNG: We have two licensed health agents in the company.

ASSEMBLYMAN ADUBATO: And they are the only two that solicit?

MR. YOUNG: Yes. One of them runs the department that does do it.

ASSEMBLYMAN ADUBATO: How about general insurance?

MR. YOUNG: We sell no general insurance.

ASSEMBLYMAN ADUBATO: How about life?

MR. YOUNG: It would be in the same area. It would be mortgage life, yes.

ASSEMBLYMAN ADUBATO: So you do sell life insurance in your agency?

MR. YOUNG: But I think it is credit life.

ASSEMBLYMAN ADUBATO: Credit life?

MR. YOUNG: I think.

ASSEMBLYMAN ADUBATO: It probably is. That is a pet of mine - credit life. It is a pet, not necessarily a positive pet.

Just from the standpoint of information, have you ever taken the time to check the rates that you are charging people for your health insurance and for your credit life insurance? I talked about competition before. You know, I am all for competition. I am just curious if in your agency you have ever taken the time to see whether people are paying more than they should for that product.

MR. YOUNG: I am going to respond by saying, first off, I think we offer three separate plans. There are three different companies involved in it.

ASSEMBLYMAN ADUBATO: We don't have to get in specifics. I am just asking you a question.

MR. YOUNG: I think the thrust of your question is: Is there a comparison type of shopping available? I would say yes.

ASSEMBLYMAN ADUBATO: There is.

MR. YOUNG: I would also say, if I could, that I would believe that the statistics would support a much lower delinquency ratio as a result of having disability insurance versus not having it. It appears that there is a market for it.

ASSEMBLYMAN ADUBATO: I am not against anyone protecting himself at all. I have been in the life insurance business for 20 years. That is how I feed my family, not by sitting here.

But I am asking you again, if you feel that you should - and I agree with you about private enterprise and that we should have competition, etc. --- You don't see there is a conflict, in that some people might accuse you of running a supermarket since you have some people sitting there selling insurance and people might get an idea that if they don't buy the insurance that maybe they can't get the loan. Is that possible?

MR. YOUNG: I don't believe so. We do not solicit until the loan is closed.

ASSEMBLYMAN ADUBATO: Is the insurance on the same application?

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: Isn't there a check-off box, "Do you want credit life, or not"?

MR. YOUNG: No, sir.

ASSEMBLYMAN ADUBATO: There isn't?

MR. YOUNG: No, sir.

ASSEMBLYMAN ADUBATO: Well, I have different applications from yours.

MR. YOUNG: It is not on our application.

ASSEMBLYMAN ADUBATO: Is this a standard application?

MR. YOUNG: It is for us.

ASSEMBLYMAN ADUBATO: Do all mortgage companies use the same application?

MR. YOUNG: The one that is ultimately submitted to the agencies, if you are talking about FHA or VA, is the same. The one that may be used to develop the information, to work it up, can differ from company to company.

ASSEMBLYMAN ADUBATO: So there is no standard, there is no norm, there is no universal one - isn't that true? And this bill would provide that. This bill would say you have to use the same forms; isn't that true?

MR. YOUNG: It could say that.

ASSEMBLYMAN ADUBATO: Well, I think it would. Quite frankly, I think that is part of the purpose of the legislation. It is a small part, but it is part of the abuses that we have been informed about and, unfortunately, some of you people out there were not aware of it. Some of your peers admitted at the last public hearing that they were not aware that these abuses were going on. I think one of the reasons why we are sitting here with this legislation before us, as distasteful as some of the things in this bill are to me, personally - and they are - is because of the industry's lack of policing what your peers are doing, because, quite frankly, there are some applications in your industry that do have check-off boxes for insurance.

MR. YOUNG: If I could respond to that, I would like to respond in two veins. First, as far as I know, the Insurance Commissioner has control over how that insurance is solicited. Secondly, that I have heard the discussions with respect to insurance and with respect to mortgage applications, but I have not heard yet whether a mortgage banker did that.

ASSEMBLYMAN ADUBATO: Well, is the person licensed in your agency a mortgage banker or isn't he?

MR. YOUNG: Yes.

ASSEMBLYMAN ADUBATO: He is also licensed to sell insurance, isn't he?

MR. YOUNG: Yes.

ASSEMBLYMAN ADUBATO: Now, he is covered and regulated supposedly today under the Real Estate Commission, which is a part-time, non-entity, if you will. Then he is regulated under the Insurance Department, which is a very capable agency, but overburdened, as we all know. And probably the least amount of time is spent in that agency in looking at the things that are happening in your agency or any other mortgage agency, because there are so many problems. Life insurance and health insurance, the sales that we are talking about there --- Are you aware that there is a bill in now to have life insurance sold by mortgage bankers?

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: You are not aware of it?

MR. YOUNG: I am not aware of it. My business is mortgage banking; it is not insurance.

ASSEMBLYMAN ADUBATO: Okay. I thank you very, very much for your time. But you have no problem with a person purchasing insurance through your agency and getting a loan in your agency?

MR. YOUNG: None that I am aware of. But, again, I am willing ---

ASSEMBLYMAN ADUBATO: But you don't feel the person is intimidated?

MR. YOUNG: No, not if he is solicited after the loan closes.

ASSEMBLYMAN ADUBATO: Thank you.

SENATOR WALLWORK: I have just a couple of questions. In your judgment, is this bill needed?

MR. YOUNG: In its present form, no.

SENATOR WALLWORK: Then, is a bill similar to this needed?

MR. YOUNG: I am in favor of licensing. I am in favor of licensing to the extent that the license will be issued and held, based on performance.

SENATOR WALLWORK: In other words, you can see merit in licensing and would be for an amended bill if you could, theoretically, amend this bill and make it suitable to what you feel would be in the best interest, presumably, of the consumers, the citizens and the mortgage bankers.

MR. YOUNG: Speaking personally, I believe I could, yes.

SENATOR WALLWORK: Has you or your Association met with the Commissioner of Banking to discuss this type of legislation, to see whether there is a common ground you can arrive at and a bill proposed that would be supported by the mortgage bankers and the Banking Department?

MR. YOUNG: I have not met with the Commissioner. I am not sure that that would have been possible.

SENATOR WALLWORK: Has the Association met with the Banking Commissioner or don't you know?

MR. YOUNG: I believe the representatives have met with him and have attempted to enter into a dialogue.

SENATOR WALLWORK: Just one other question: Your Association, in other words, doesn't have amendments available or prepared that you would recommend for this legislation?

MR. YOUNG: Not today, no.

SENATOR WALLWORK: Thank you.

ASSEMBLYMAN ADUBATO: Mr. Young, are you licensed to sell insurance?

MR. YOUNG: Am I, personally, licensed?

ASSEMBLYMAN ADUBATO: Personally.

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: Have you ever been?

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: Do you know what the PS-58 Table is?

MR. YOUNG: No.

ASSEMBLYMAN ADUBATO: I was going to ask you if you know whether or not the rates that you are charging in your agency are higher or lower than that PS-58 Table. You wouldn't know what I am talking about.

MR. YOUNG: No. But what I would say to you is that if there is any way that we could lower them, I would like to lower them because that impacts on my delinquency ratio and I don't get paid for servicing if the loans are delinquent.

ASSEMBLYMAN ADUBATO: But your agency gets a commission, I assume, on the sales that you make? Is there a commission paid or are you doing it for servicing a loan?

MR. YOUNG: No, they do remit to us.

ASSEMBLYMAN ADUBATO: There is a commission.

MR. YOUNG: I would be happy to give you the figures.

ASSEMBLYMAN ADUBATO: No, it is not necessary. I make a commission every time I sell to. You are entitled to it. What I am saying is that too often I have come across people who were told they had a group contract and their rates were 40 percent higher than they would have been if they bought it from some companies on an individual basis. And they were told specifically by people in your industry, that represent your industry, that work for your industry, that they were getting the lowest net cost life insurance available.

MR. YOUNG: That is wrong.

ASSEMBLYMAN ADUBATO: And it was a damn lie.

MR. YOUNG: That is wrong to do.

ASSEMBLYMAN ADUBATO: Not only was it a misstatement, but they weren't close.

Now, as you know, there are different commissions paid on different products. Sometimes if you get a smaller commission, you can deliver a better product. It may cost your agency some money because you won't make that higher commission, but you will deliver a much more competitive product.

Again, whether this bill is passed or not, one of the things that I have been researching for several years has been the cost of credit life in your kind of operation. I am very, very interested in it. That is why I jumped on this because I see this legislation as a vehicle for some kind of control over what is happening to the public out there since I have been told - and I say this respectfully - that people must purchase credit life in order to get their loan. We were told that at our last public hearing here in the Senate Chambers, that if they didn't purchase the credit life, they could not get the loan. Are you saying that is not true?

MR. YOUNG: To the best of my knowledge, as I sit here right now, a mortgage banker did not participate in that. To the best of my knowledge, I have not heard that a mortgage banker has done that.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN BORNHEIMER: Mr. Young, what fees do you pay for renewal to the federal government or the federal agencies that you are licensed by?

MR. YOUNG: I'm sorry.

ASSEMBLYMAN BORNHEIMER: What renewal fees do you pay to federal agencies, if any?

MR. YOUNG: I am trying to think exactly what they are. I don't think that we have a specific fee that we pay to a federal agency. I would ask my brethren if they can help me. I am not aware of that.

ASSEMBLYMAN BORNHEIMER: In other words, when you qualify for the original license and you obtain the license, you carry the license ad infinitum, correct?

MR. YOUNG: Yes.

ASSEMBLYMAN BORNHEIMER: There is no further cost to you to get a new license or anything else?

MR. YOUNG: There is a compliance cost.

ASSEMBLYMAN BORNHEIMER: The compliance cost, meaning that you are audited, etc.

MR. YOUNG: Yes, and that we submit reports ; also we are subject to whatever examination or inquiry that would be made by the agencies.

ASSEMBLYMAN BORNHEIMER: How often do those inquiries occur?

MR. YOUNG: HUD has been into our office, not because of problems, thank God, but they have been in to three of our branch offices within the last year and the main office.

ASSEMBLYMAN BORNHEIMER: Is it an annual affair or is it semi-annually?

MR. YOUNG: It has become annual.

ASSEMBLYMAN BORNHEIMER: But there are no fees that you pay in addition to the original fee you paid or whatever you paid to obtain the license to operate under all these agencies?

MR. YOUNG: No. There are requirements that cost money that we comply with.

ASSEMBLYMAN BORNHEIMER: Thank you very much.

Has Mr. Smith returned? Since he has not, we will go on to William Populus.

W I L L I A M P O P U L U S: Good morning. My name is Bill Populus. I would like to thank the Chairman for giving me the green light to come down today and testify.

Last night, I wrote up a lot of different things and today I see that they don't make too much sense.

I don't know whether you gentlemen have ever met a hard-core, inner-city, urban-area, real estate broker; but today you are seeing one. Before I talk about that, I would just like to clarify a point on the insurance aspect. I have been in the business almost 15 years and I have never related insurance to the customer via the mortgage company. And I have dealt with practically all of them. I have never seen the check mark that you are talking about on an application subject to approval by the mortgage banker.

I also am glad to find out some of you are in business. That is one of the reasons I am down here. I am not only here as a real estate broker, but I also represent a group of black real estate brokers in New Jersey. We all have a common denominator - survival. Our main concern with this bill is the cost that will be filtered down to our purchasers.

Now, the gentleman on the end said you don't have to pass the cost down. We know, over the years, any time a cost comes along, it goes down to the guy on the bottom floor. We are going to get it. If it is going to be \$400 or \$50 or \$100, or whatever, our consumer will pay it in terms of points and that knocks out more of the market for the lower-income and middle-class person. If the mortgage bankers need to be regulated to some degree, then regulate them. But for the urban areas, they are the only game in town. They are the guys who have helped us with 235 programs in new construction, substantial rehabilitation. They are the ones that we can turn to when the Mortgage Finance Agency comes out with its bonds. They are the ones that are there. The commercial banks, the savings and loan and the savings banks - we can't get mortgages for our customers. I am talking in terms of cities like Newark, Plainfield, Jersey City, and Elizabeth. It is just virtually impossible. It is my belief that red-lining is still there simply by the fact that we can't get the mortgages for our people.

My big concern this morning is simply: How do we control the cost that comes down to our people? They are caught in the inner-cities. The rents are going to go up. They can't secure houses. Where is that dream of home ownership? The elastic band has been stretched to its capacity. If it is another \$50 or \$100 or \$200, how can they afford it? How can they afford to sell the house if

there is another point involved on it? How do we control that cost?

I thank you again for giving me the opportunity to come down?

ASSEMBLYMAN BORNHEIMER: Does anybody have any questions?

ASSEMBLYMAN MAYS: What city are you from?

MR. POPULOUS: Plainfield.

ASSEMBLYMAN MAYS: What is your interest rate there for FHA?

MR. POPULUS: As of this morning, 14 plus a half.

ASSEMBLYMAN MAYS: How about Fannie May?

MR. POPULUS: Sixteen and a half, I believe.

ASSEMBLYMAN MAYS: How many mortgages have you given out in Plainfield, Jersey City and Newark in the last year?

MR. POPULUS: Personally?

ASSEMBLYMAN MAYS: Yes, to blacks or other minorities in those areas.

MR. POPULUS: In Plainfield, probably 30 or 40.

ASSEMBLYMAN MAYS: Are you a licensed agency?

MR. POPULUS: Yes.

ASSEMBLYMAN MAYS: By whom?

MR. POPULUS: The Real Estate Commission. I am a licensed real estate broker.

ASSEMBLYMAN MAYS: Under this bill, wouldn't a person have to have a real estate license to get into this business? Right now, the only way he can become a bank broker is for him to have a real estate license.

MR. POPULUS: Exactly.

ASSEMBLYMAN MAYS: Under this bill, he doesn't have to have a real estate license to get the other kind of license, right?

MR. POPULUS: Yes.

ASSEMBLYMAN MAYS: Then doesn't this bill have some merit for those people who might want to go into the banking field?

MR. POPULUS: I am not saying that. I am saying that I am not necessarily concerned about the license fees that these people would incur; I am concerned about the other costs that they would incur, which would filter down to us. I am not opposed to the licensing of anybody because I have been licensed for 15 years. I have no problems with that.

ASSEMBLYMAN MAYS: Coming from Plainfield, you know about the problems in Newark, Jersey City, and Plainfield, how the blacks got ripped off by a lot of mortgage companies, don't you?

MR. POPULUS: Well, in my Association, no one has ever discussed how the blacks have been ripped off by mortgage companies.

ASSEMBLYMAN MAYS: I will rephrase it - anyone getting ripped off by a mortgage company, blacks, whites, or anybody.

MR. POPULUS: To my knowledge, no.

ASSEMBLYMAN MAYS: You never heard of that.

MR. POPULUS: And I can truthfully say that.

ASSEMBLYMAN MAYS: You never heard that at meetings of your organization?

MR. POPULUS: And I deal with all hard-core, ghetto brokers and we have the same type of committees to discuss problems which are different from the realtors. And they have never come forth and said, "XYZ Mortgage Company did such and such to such and such." Of course, back in the '60's that was a total scandal with a lot of people involved. But in terms of mortgage companies doing it today, that has never been brought to my attention.

ASSEMBLYMAN MAYS: Do your mortgage companies red-line?

MR. POPULUS: The mortgage companies that I have dealt with - I have always been able to secure a mortgage in any area. If the house is rejected by FHA, that is something completely different. And that would be rejected not for red-lining, it would be rejected because the house is not suitable for living. It has nothing to do with the financing of it.

ASSEMBLYMAN MAYS: Thank you.

SENATOR WALLWORK: Of course, the FHA guarantees the mortgage, does it not?

MR. POPULUS: Yes, the FHA insures the loan.

SENATOR WALLWORK: If the FHA approves, there is no problem for the mortgage banker.

MR. POPULUS: No, he gets his money back.

SENATOR WALLWORK: I was going to ask a similar question to Assemblyman Mays' question. In your 15 years of experience, you have never heard of any shady dealings or misrepresentations or things, shall we say, that would reflect unkindly on the Mortgage Bankers Association?

MR. POPULUS: No. I can say that personally and I can say that for my association with practically every black real estate broker in the State. I know it might sound silly, but this is the way it is. I realize this may have happened because we all know people are dishonest someplace. But I am sure if they had a situation with a mortgage company where there were bad dealings, they would tell one another and we wouldn't deal with that particular mortgage company.

SENATOR WALLWORK: In other words, you have never filed a complaint to the Banking Department?

MR. POPULUS: No. As an organization or personally, we have never filed a complaint with the Banking Department.

SENATOR WALLWORK: Thank you.

ASSEMBLYMAN MAYS: I find it hard to believe that the first time anyone in your organization heard of the problem is today or two weeks ago.

MR. POPULUS: What problem are you talking about?

ASSEMBLYMAN MAYS: The problem of people getting ripped off by mortgage companies by putting their deposit down.

MR. POPULUS. Number one, the deposits don't go to the mortgage companies; they go to the broker and go into a trust account. So the mortgage company has no control over that at all. We get that money and we reimburse it.

ASSEMBLYMAN MAYS: Did I hear you say the mortgage company had no control over that?

MR. POPULUS: Not over the deposit monies.

ASSEMBLYMAN MAYS: I heard differently last week.

MR. POPULUS: When the contract is entered into and the deposit moneys come to the real estate broker after the contingencies are met, then it can be released to the seller. But the mortgage company never sees that money.

ASSEMBLYMAN MAYS: Suppose he doesn't get the mortgage. What happens to his money then?

MR. POPULUS: It goes back to him because I have his money - I have his money in my program.

ASSEMBLYMAN MAYS: That is what I asked you. Isn't that a deposit?

MR. POPULUS: Yes. I have his deposit, but not the mortgage company.

I have that.

ASSEMBLYMAN MAYS: That is the question I asked you.

MR. POPULUS: I misunderstood you.

ASSEMBLYMAN MAYS: How long does it take for him to get his money back after the mortgage is denied?

MR. POPULUS: The next day. Once we get a release from both parties, he gets his money back instantly. Once the release is signed, he gets his money back immediately.

ASSEMBLYMAN KOSCO: Getting back to the costs, whenever we talk about legislation, we always for some reason or other get to the emotional end of it. When you talk about cutting costs or cutting any budget, everyone goes to the thing that is going to hit home the most. If you talk about cutting a school budget, then they say, "We'll have to stop bussing the kids." The same thing is happening here. We are talking about a pretty comprehensive piece of legislation and we hear a lot about fees of a couple of dollars for a license. I want to know what other cost than the fee for a license there is that is going to be passed on to all these people that you give your mortgages to because every one has brought this point up, that they are going to have costs that they are going to have to pass on. It seems to me if you give out 30 or 50 or however many mortgages you give out a year and divide that into the cost of your license, that doesn't seem like a lot of money. I am asking you: What costs are you talking about?

MR. POPULUS: Based on what I heard from the previous speaker ---

ASSEMBLYMAN KOSCO: Base it on this piece of legislation we are having a hearing on, not on what anybody else said.

MR. POPULUS: In that legislation, they are talking about licensing fees, brokers' fees, office fees. I believe I saw audit fees in there too.

ASSEMBLYMAN KOSCO: If you open up another office, whether there is a license involved or not, you are going to have the same fee.

MR. POPULUS: Oh, absolutely.

ASSEMBLYMAN KOSCO: Of course, you could open up an office with or without a license, unless you are just going to put a telephone booth in someplace.

MR. POPULUS: I would agree with that. But my contention is that if the consumer in my area and the areas where my associates deal have to incur the cost of a nickel, it would be detrimental not only to us as businessmen, but it would be detrimental to the people who are trying to sell. I have to deal with reality. It is tough enough selling in the inner-cities and if it is a penny more or if these guys don't deal with us at all --- Suppose a mortgage broker says, "Hey, we are not going to go into that area where the mortality rate is high, regardless of the insurance and the service and that type of thing," and suppose he does what a lot of other bankers do, where are we - where are we, the consumers who live in the inner-cities? My whole point is that a penny more would stretch us to the hilt because there is nothing else that we can afford to pay.

ASSEMBLYMAN KOSCO: Don't you think by licensing the people and putting things in their proper perspective, that it might help a person like yourself who does a good business and eliminate somebody else who is, to use the term that has been used, ripping off somebody?

MR. POPULUS: Absolutely.

ASSEMBLYMAN KOSCO: If you can get rid of that guy, isn't that going to help you?

MR. POPULUS: I am all in favor of that because he is detrimental to all of us. It gives everyone a bad name.

ASSEMBLYMAN KOSCO: If you are going to increase your business, then you really don't have to add 50 cents to each mortgage fee to make up for a couple of dollars that you are going to pay to be licensed.

MR. POPULUS: I hear you and I understand you. But my whole point is that it is not going to increase my business because we are dealing with marginal people anyway in terms of income. We are dealing with high taxes and we are dealing with marginal people. We are dealing with programs that would become non-existent if these people don't participate with us.

ASSEMBLYMAN KOSCO: Say you have 30 people in your area right now that are handling mortgages. If this bill will make 5 of those people feel, "I can't comply with those regulations. I can't continue to operate the way I have been operating because they are going to catch me. I had better go someplace else where they don't have legislation that is going to make me do it right," then those people are going to have to go someplace.

MR. POPULUS: I am all in favor of getting rid of bad apples. I have no problems with that at all. I am just frightened to death of what is coming out at the end of the tunnel in terms of the consumer, the purchaser, and the real estate broker who deals in those areas. It is easy for us to sit here and apply the rule of conjecture: no, they are not going to go up on us; it is not going to happen. But we have no control over that, regardless of what bill you pass. They come out 1 point over the market today - it could be 8 or 9 - 10 points plus a 5 or 6 percent commission - and the deal is dead. The consumer doesn't get his house. The seller can't sell. He is locked into a high tax situation, probably on fixed income. He is going to lose the house. There is no incentive for anything to be done in the inner-cities. That is really our tremendous concern: without the help of the only people that are helping us, what do we do? As an example, we heard Mr. Young tell how his company related to a 235 program. These were mortgage bankers who put their money in there. It wasn't the commercial banks; it wasn't the savings and loan associations. They got involved later - not the commercial banks, but the savings and loan associations got involved later when they got a pool and started donating money. But they weren't the vanguard. These guys came in and said, "Hey, Plainfield, you need help. Let's do it."

Even today, I discussed it with various mortgage bankers in terms of why we couldn't get together and build 235 houses. Right now, it is not profitable because of the high interest rate. But they have indicated an interest in still helping the inner-cities and they need all the help they can get.

ASSEMBLYMAN KOSCO: Thank you.

ASSEMBLYMAN MAYES: I asked you a question before about deposits. What about the mortgage fees that go to the mortgage companies?

MR. POPULUS: The only mortgage fees that go to the mortgage company are for a credit application and an appraisal. The appraisal fee goes to FHA. The consumer pays \$50 for an appraisal which goes to FHA. I am an FHA appraiser. FHA pays me \$60. So the mortgage banker doesn't get any of that. Today, the credit application is \$25. I have seen the bills. They come back \$26, \$24. If they come back at \$24, at closing, on the rest of the statement, a dollar is returned to the purchaser. I have to be aware of every dollar because normally my purchasers don't have enough money to consummate the deal. So I am looking at everything that is there.

ASSEMBLYMAN MAYS: You don't get any money for mortgage fees; you just get the appraisal fee ---

MR. POPULUS: --- and the credit application. Exactly.

ASSEMBLYMAN MAYS: How do you make your money?

MR. POPULUS: How do I make my money?

ASSEMBLYMAN MAYS: Yes - off the mortgage.

MR. POPULUS: I don't make my money off the mortgage. I make my money on commission when I sell the house. The mortgage is part of the vehicle where I get my commission.

ASSEMBLYMAN BORNHEIMER: At the time of closing, what are some of the costs involved on your closing statement, besides the taxes?

MR. POPULUS: Taxes and insurance.

ASSEMBLYMAN BORNHEIMER: Are there any placement fees charged by the mortgage companies?

MR. POPULUS: Replacement fees?

ASSEMBLYMAN BORNHEIMER: Placement fees.

MR. POPULUS: Points?

ASSEMBLYMAN BORNHEIMER: No, I am not talking about points. That is another facet. I am talking about fees for their services rendered.

MR. POPULUS: Most mortgage companies nowadays charge a warehousing fee.

ASSEMBLYMAN BORNHEIMER: That must be what I am looking for. What is that?

MR. POPULUS: To my knowledge, it is \$125.

ASSEMBLYMAN BORNHEIMER: Average?

MR. POPULUS: Right.

ASSEMBLYMAN BORNHEIMER: On a bigger piece, it would be more; and on a smaller pices, it would be less?

MR. POPULUS: I couldn't really answer that because most of my sales are in the \$50 or \$60 thousand category.

ASSEMBLYMAN BORNHEIMER: So it is \$125. That is standard in the industry, no matter which one you deal with?

MR. POPULUS: It is the standard fee for the ones I deal with.

ASSEMBLYMAN BORNHEIMER: And that is just a warehouse fee?

MR. POPULUS: That is right.

ASSEMBLYMAN BORNHEIMER: Thank you very much. Does anybody else have any questions?

ASSEMBLYMAN ADUBATO: Mr. Populus, I don't want to carry this too far, but you said you have never seen - was that the word you used? - any form where credit life or mortgage insurance was part of the form or in a list of charges that were presented by mortgage bankers. Was that your statement?

MR. POPULUS: Let me just draw it out a little bit. We get what we call a kit from the mortgage company which includes a variety of different forms that are necessary in order to consummate a deal and send it to FHA. In this kit, there is nothing that I have seen that indicates anything about life insurance. At the closing when we go over the rest of the statement, the only insurance that comes up is the insurance policy that normally my customers get from any agent in the area. They will ask me, "Bill, where do I get my homeowner's policy?" I say, "Take your choice - Allstate or any other --- "

ASSEMBLYMAN ADUBATO: Excuse me for interrupting. Do you get involved at all in the annual percentage rate form?

MR. POPULUS: No.

ASSEMBLYMAN ADUBATO: Are you more of a solicitor than a mortgage banker?

MR. POPULUS: No, I am not a mortgage banker. I am a real estate salesperson.

ASSEMBLYMAN ADUBATO: Are you familiar with the annual percentage rate form?

MR. POPULUS: No, I am not.

ASSEMBLYMAN ADUBATO: Are you aware that on this form, there is a check-off box that in some cases is part of their actual payment that includes insurance?

MR. POPULUS: I am not aware of what you are saying. I am aware after the loan is closed that people have called me up and said they have gotten a letter from the mortgage company asking them if they would be interested in obtaining mortgage cancelation insurance. That I am aware of. They ask, what do I think about it. I say, well, that is your choice, not mine.

ASSEMBLYMAN ADUBATO: Then you are not aware of the fact that even before the deal is made, when there is a compiling of the list of charges that the person is going to have to pay in order for that deal to be consummated there is a check-off box in some forms that is entitled - if not "insurance" - "other"?

MR. POPULUS: No, I am not aware of that.

ASSEMBLYMAN ADUBATO: And that "other" includes insurance costs?

MR. POPULUS: No, I am not aware of that.

ASSEMBLYMAN ADUBATO: Okay. Thank you.

ASSEMBLYMAN BORNHEIMER: If there are no further questions, thank you, Mr. Populus.

MR. POPULUS: Thank you very much.

ASSEMBLYMAN BORNHEIMER: Has Mr. Smith returned? (No response.) I think we can count Mr. Smith out.

Edward Goldberg.

E D W A R D G O L D B E R G: Good morning.. My name is Edward Goldberg and I am First Vice President of the Mortgage Bankers Association of New Jersey and Senior Vice President of Jersey Mortgage Company. My statement will be pretty brief.

The bill that is being proposed seeks to regulate mortgage bankers and mortgage solicitors but does not seek to regulate financial institutions.

Under normal economic conditions, these financial institutions compete with mortgage bankers in the making of first mortgage loans. The Mortgage Bankers Association of New Jersey feels that by regulating our industry and not the financial institutions, these institutions would be given a virtually unbeatable competitive edge.

First mortgage originations are the product and life-blood of our industry and without being able to compete, the mortgage banker may ultimately cease to exist. Take, for example, the plight of a mortgage banker in the hiring of a potential mortgage solicitor. In competition with a financial institution, we could only promise employment if the solicitor passes the proposed licensing examination. On the other hand, the financial institution, under no such restrictions could offer immediate, non-contingent employment. It is quite obvious that the potential solicitor would opt to join the financial institution rather than take the chance on contingent employment with the mortgage banker.

In addition to the licensing requirements, the commissions we could pay may be regulated by the Commissioner but would not be regulated if the solicitor

went to work for the financial institution. Once again, our industry could not compete since the employee could conceivably make a better compensation arrangement with a non-regulated employer.

Under this bill, the Commissioner may set fees and charges on loans originated by a mortgage banker but not on loans made by a financial institution. I know of no other industry where one competitor's prices or fees are fixed and another competitor's are not. By limiting a mortgage banker's fees and charges and not the financial institution's, it is entirely possible that it may become unprofitable for us to originate mortgage loans and yet remain profitable for the non-regulated financial institution. This hardly seems to afford our industry equal protection under the law. And who suffers when competition is stifled? - the citizens of the State of New Jersey. Competition keeps prices and rates down. Eliminate competition by making it economically unfeasible for the mortgage banker to make mortgage loans and you will u l t i m a t e l y reduce the supply of mortgage funds to the people of the State of New Jersey. I am sure this is not the intention of this proposed legislation. Thank you.

ASSEMBLYMAN BORNHEIMER: Any questions?

SENATOR WALLWORK: Has you or your Association met with the Banking Commissioner to discuss this proposed legislation?

MR. GOLDBERG: I believe we have on occasion; yes, sir.

SENATOR WALLWORK: When?

MR. GOLDBERG: I think Mr. Levy could probably give the time sequence better because he held the meeting.

COMM'R BIANCHI: I have been available to discuss the whole situation if you want to hear about it.

SENATOR WALLWORK: The reason for my question is that I am just trying to get to the bottom of what in this bill might be palatable and what would be in the public interest that could be agreed upon by the Banking Commissioner and the Mortgage Bankers Association and its individual members, and what isn't agreed on, and then take it from there. In other words, in many instances, I have seen legislation proposed that has been supported by various groups. I am wondering whether we can get that type of legislation here or whether the attempt has already been made or hasn't been made.

MR. GOLDBERG: I am sure that is possible, Senator.

SENATOR WALLWORK: There are certain things in here that I would like to ask the Commissioner of Banking about. But I think there is general consensus that there should be a licensing bill; do you agree there should be a licensing bill?

MR. GOLDBERG: Yes, sir.

SENATOR WALLWORK: So, the only question that you have is the format and you are complaining about your fee schedule ---

MR. GOLDBERG: We are complaining about the powers granted the Commissioner under this bill.

ASSEMBLYMAN REMINGTON: Mr. Goldberg, could you tell me what your typical fees are as compared to commercial banks or savings and loans institutions?

MR. GOLDBERG: Our typical fees would vary with the FHA and VA market, sir; and our fees would vary by mortgage company.

ASSEMBLYMAN REMINGTON: That really doesn't answer my question.

ASSEMBLYMAN BORNHEIMER: Could you give us a number?

ASSEMBLYMAN REMINGTON: Are your fees higher?

MR. GOLDBERG: Not necessarily. Again, that would depend upon the mortgage banker as against the commercial banker. Our fees are relatively nominal on a conventional loan. The fees on a VA-FHA are fixed. You cannot charge more than 1 percent to the purchaser by law.

ASSEMBLYMAN REMINGTON: In your presentation, you suggested that --- I thought that commercial banks and all the other banks in the State already are regulated and under the Banking Commissioner.

MR. GOLDBERG: They are not regulated as to fees and charges in making loans.

ASSEMBLYMAN REMINGTON: So you are specifically talking about the fees?

MR. GOLDBERG: Yes.

ASSEMBLYMAN REMINGTON: Thank you.

ASSEMBLYMAN BORNHEIMER: Any further questions? (No questions.)

The next speaker will be Ken Baresh. (Not present.)

Paul Forman. (Not present.)

Joseph Bernardo.

J O S E P H B E R N A R D O: Good morning. My name, as previously announced, is Joseph Bernardo. I am Senior Vice President of Kennedy Mortgage Company. I have had approximately 20 years in the mortgage business. I am here on behalf of the mortgage banking industry to explain our position regarding the disclosure of fees to both buyer and seller in each transaction.

I would like to begin by saying that the primary function of the mortgage banker is to provide mortgage financing to qualified borrowers when it is not otherwise available from the local lenders. In order to provide this service, a mortgage company solicits from private and permanent lenders commitment to purchase these loans after the funds are lent by the mortgage banker.

Unlike FHA and VA loans, each lender has specific lending criteria that must be adhered to, including but not limited to, credit underwriting, property location, maximum and minimum mortgage amounts, terms of years, and also down payment requirements. Because of all of these variables, the interest rate charged will vary from lender to lender, as will the commitment fees charged vary from lender to lender.

At the time of application, the mortgage banker advises prospective borrowers of the interest rates available to them as well as the fees and charges involved. As required under the Real Estate Settlement Procedures Act of 1974, all fees incident to the requested financing are disclosed in writing to the applicant within 3 days of the application. The applicant is also given a settlement cost booklet, prepared by HUD, and included in this booklet is a notice required by the Equal Credit Opportunity Act, advising the applicant who they should contact in the event of discrimination.

After the mortgage banker receives a completed application, as determined by their individual lending policy, an underwriting decision is made. If the application submitted is found to be acceptable, a typed commitment letter and Regulation "Z" Truth in Lending Statement are sent to both the borrower and the seller for their review and acceptance. In addition to complying with federal regulations, the commitment and disclosure procedure provides for compliance with the New Jersey law requiring notice to buyer and seller of the lender's fees, at least 12 days prior to the mortgage settlement. If, on the other hand, an application

does not meet the lender's underwriting criteria, the loan is declined and, in accordance with the Equal Credit Opportunity Act, a written notice of the declination is forwarded to the applicant within 30 days of the decision. The notification must include the reason credit was denied, as well as the identity of person or office that the applicant may contact to secure added details regarding the decision.

In further compliance with the Real Estate Settlement Procedure Act, at the closing of each mortgage loan, a uniform settlement statement form, known as a HUD-1 form, is prepared, itemizing all fees and charges being collected or paid in advance of settlement. The name of the recipient and the purpose of each charge is also noted on the HUD-1. The borrower may request of the person conducting the settlement that they be permitted to inspect the HUD-1 statement during the business day immediately preceding the date of settlement.

In summary, mortgage bankers now have the following regulations and several agencies, both federal and state, reviewing their handling of mortgage loan applications submitted to them: We have already heard mentioned HUD. We are also regulated by VA, Fannie May, the Real Estate Commission, and the Federal Trade Commission. The regulations include, as previously mentioned in my statement, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and the New Jersey 12-Day Disclosure Law.

That concludes my statement.

ASSEMBLYMAN BORNHEIMER: Any questions. Mr. Kosco.

ASSEMBLYMAN KOSCO: If I came to you as a mortgage broker or mortgage banker or mortgage solicitor and I purchased a home for \$100 thousand, could you tell me, not the dollar value, but what would the fees be for? What would be put under fees?

MR. BERNARDO: I have with me samples of forms that we do use at the time of application and forms that are used throughout the life of the loan application, and the eventual commitment of the mortgage loan, including Regulation Z. We provide at the time of application a homebuyer's guide and settlement costs, which I have previously referred to and, in addition to that, as provided by RESPA regulations, an estimated settlement charge breakdown, itemizing these fees that would be charged at the time of closing.

ASSEMBLYMAN KOSCO: Can you tell me what the fees are for? I don't mean the dollar value. What do they comprise? What are they for?

MR. BERNARDO: You are going to have to give me a little more information. If I am going to be taking an application from you, I have to know a little more.

ASSEMBLYMAN KOSCO: I am buying a house and I am asking you what you would include under the fee structure. If you had to put up a board in your office that said, this is the fee schedule, what would you have on that board?

MR. BERNARDO: I assume you are referring to a conventional loan. It has been previously stated that our fees are regulated on FHA's and VA's.

ASSEMBLYMAN KOSCO: The fee for what?

MR. BERNARDO: The fee for processing and securing a mortgage loan.

ASSEMBLYMAN KOSCO: Do you have one dollar amount or do you break it down?

MR. BERNARDO: It will vary, as I stated in my presentation, depending upon who the permanent lender is and what ---

ASSEMBLYMAN KOSCO: Is a survey included as part of the fee?

MR. BERNARDO: Not our fee, no. There is a survey typically secured.

ASSEMBLYMAN KOSCO: What I am asking is: What are you charging a fee for? Give us a breakdown of the services.

MR. BERNARDO: A breakdown of what we do, okay ---

ASSEMBLYMAN KOSCO: No, of what the services are for.

MR. BERNARDO: What services a mortgage banker provides?

ASSEMBLYMAN KOSCO: What services does he provide that he charges an extra fee for?

MR. BERNARDO: He doesn't necessarily charge an extra fee; he charges a fee for the services he provides.

ASSEMBLYMAN KOSCO: Okay. For instance, I sell you this table - okay? And, other than the commission I make for selling you this table, I am going to charge you handling charges of \$27.50. What are the handling charges for? I am going to charge you a documentary fee for sending you a letter -- I am asking you what you get, other than the normal commission you get as a mortgage broker? Everyone is complaining about a fee structure, and what I am asking you is, what is the fee structure for? What fees are we talking about? Could you document for me exactly what you are charging extra for? What fees don't you want regulated? We are not telling you you can only make so much profit; we are telling you that we want to regulate fees. Now, what fees don't you want regulated?

MR. BERNARDO: The service charge.

ASSEMBLYMAN KOSCO: What service charge?

MR. BERNARDO: The processing fee provided by the lender. The loan origination fee is, I think, a more appropriate term. The loan origination fee includes our fee for processing a mortgage, for taking the initial mortgage application, and processing it. It also includes settling, which includes preparation.

ASSEMBLYMAN KOSCO: Is that one price?

MR. BERNARDO: Yes.

ASSEMBLYMAN KOSCO: The loan origination fee is one price?

MR. BERNARDO: Yes, which includes preparation of the mortgage instruments, as required by the lender, or as required by the federal agency, or whoever may be involved. But, there is one flat fee charged for that service.

ASSEMBLYMAN KOSCO: Okay. Are there any other fees?

MR. BERNARDO: Provided by the mortgage company?

ASSEMBLYMAN KOSCO: That I am going to pay if I buy a house.

MR. BERNARDO: Other than out-of-pocket expenses, no. And, when I refer to out-of-pocket expenses, I am talking about appraisal, credit report, etc.

ASSEMBLYMAN KOSCO: I don't know anything. I am asking the questions because I don't know the answers.

MR. BERNARDO: I just tried to answer you.

ASSEMBLYMAN KOSCO: I don't know what an out-of-pocket fee is.

MR. BERNARDO: I just itemized the three typical out-of-pocket fees; they would be the appraisal fee - and that is typically collected at the time of the application--

ASSEMBLYMAN KOSCO: What did you say it was, the appraisal fee and what?

MR. BERNARDO: The appraisal fee, the credit report, and photos of the property to be financed.

ASSEMBLYMAN BORNHEIMER: What is the normal charge for that? Is that set by FHA or HUD?

MR. BERNARDO: Well, the application fee is set by FHA -- excuse me, the appraisal fee is. The credit report will generally be in the \$25.00 area, depending upon the actual cost of the photos and the credit report.

ASSEMBLYMAN KOSCO: On the hypothetical house that I am buying from you for \$100,000, could you tell me approximately what these fees would be?

MR. BERNARDO: You are applying for a conventional mortgage on that?

ASSEMBLYMAN KOSCO: Yes, a conventional mortgage.

MR. BERNARDO: Our standard charge would be \$450.

ASSEMBLYMAN KOSCO: For what?

MR. BERNARDO: For our loan origination. That is our fee for services provided.

ASSEMBLYMAN KOSCO: Okay. Then, of course, there would be the appraisal fee.

MR. BERNARDO: Then, the appraisal, credit report, and photos would be in addition to that.

ASSEMBLYMAN KOSCO: That is an additional fee? What do you have to pay to get a credit report, other than to call in to TRW, or whatever you do?

MR. BERNARDO: That's it. Whatever the charge is, that is what is passed on to the buyer.

ASSEMBLYMAN KOSCO: What does that cost you to do that?

MR. BERNARDO: It will vary from credit agency to credit agency. It depends on the location of the applicant. But, typically, it is in the area of \$20 to \$25.

ASSEMBLYMAN KOSCO: And, they bill you for each application?

MR. BERNARDO: Yes. Correct.

ASSEMBLYMAN KOSCO: Whether it is approved or disapproved?

MR. BERNARDO: That's correct.

ASSEMBLYMAN KOSCO: They charge you \$25 for that?

MR. BERNARDO: That is what is referred to as out-of-pocket expenses.

ASSEMBLYMAN KOSCO: Do they send you back a written report?

MR. BERNARDO: Yes.

ASSEMBLYMAN KOSCO: So, basically what you are talking about is your loan origination fee. I am not clear as to what that is.

MR. BERNARDO: That is our fee for services provided, and I stated what the fee would be on a typical conventional loan.

ASSEMBLYMAN KOSCO: I am in the automobile business. I own an automobile dealership. If you are buying a car from me and the car is going to cost you \$7,800, and I am going to charge you \$195 for getting the car ready for you, and I am going to charge you \$25 to call in a credit application for you, then you have to assume I am selling you the car at cost in the first place, and I am making my profit.

MR. BERNARDO: I previously stated our fee for services provided on a conventional loan; it is \$450.

ASSEMBLYMAN KOSCO: Isn't that part of the cost of the loan for the mortgage? Aren't you charging an extra amount?

MR. BERNARDO: That is our fee for services provided, yes.

ASSEMBLYMAN MAYS: If a person comes in and agrees on a fixed rate, say 12%, and then at the time of closing the prime rate went up to 14% or 15%, do you charge him that 14% or do you say he can't get the mortgage? Have you ever heard of something like this happening?

MR. BERNARDO: I have heard of that happening, yes. A commitment is issued for a specific period of time, typically for 30 or 60 days, and the commitment is honored during that time frame.

ASSEMBLYMAN MAYS: So, it would be beneficial to put off the closing and say he couldn't get it, and maybe in another two or three months you might get a higher rate.

MR. BERNARDO: Not once he is issued a commitment.

ASSEMBLYMAN MAYS: Excuse me?

MR. BERNARDO: Not once he is issued a commitment.

ASSEMBLYMAN MAYS: How long is that commitment for?

MR. BERNARDO: Either 30 or 60 days, it depends on the lender.

ASSEMBLYMAN MAYS: Do you have a "stalling" for 61 days, and then have it come back to you for that other 3%?

MR. BERNARDO: I am sure there are abuses of that sort, yes.

ASSEMBLYMAN MAYS: Wouldn't you say this bill is needed for that, to curtail that kind of action?

MR. BERNARDO: I don't think that it would curtail that kind of action.

ASSEMBLYMAN MAYS: You don't think so?

MR. BERNARDO: No.

ASSEMBLYMAN MAYS: Okay, thank you.

MR. BERNARDO: If there are unscrupulous lenders, that will continue.

ASSEMBLYMAN MAYS: Oh, you have heard about these lenders?

MR. BERNARDO: I just said if there are unscrupulous lenders.

ASSEMBLYMAN MAYS: Have you ever heard about these lenders who do business like this in your profession?

MR. BERNARDO: I would be living a fairy tale life if I hadn't heard that type of lender exists, but I don't think that is the problem here in New Jersey.

ASSEMBLYMAN MAYS: Oh, it is not a problem in New Jersey?

MR. BERNARDO: No, sir.

ASSEMBLYMAN MAYS: So, maybe New Jersey is a fairy tale situation, is that what you are saying?

MR. BERNARDO: I recognize there are some abuses that exist.

ASSEMBLYMAN MAYS: How do we stop those abuses? The Commissioner can't control them.

MR. BERNARDO: I think we have a criminal court system that deals with those types of abuses.

ASSEMBLYMAN MAYS: We had a couple of prosecutors in here a couple of weeks ago and they didn't know how to deal with it. It took too long for them. They would go to the Commissioner. They would go to the prosecutor.

MR. BERNARDO: I would imagine it would depend on the abuse and, obviously, an attorney would be best suited to answer that question.

ASSEMBLYMAN BORNHEIMER: In your original presentation, you ran off a list of certain agencies and certain regulations that you had to comply

with.

MR. BERNARDO: Yes.

ASSEMBLYMAN BORNHEIMER: Do those same regulations have to be complied with by other institutions, other than mortgage bankers -- savings banks, commercial banks, and so forth?

MR. BERNARDO: Yes, that's correct.

ASSEMBLYMAN BORNHEIMER: So, those laws are in existence for everybody, not just mortgage bankers?

MR. BERNARDO: Right.

ASSEMBLYMAN BORNHEIMER: So, you are just complying with what everybody complies with?

MR. BERNARDO: We are complying with federal legislation for the most part. One reporting vehicle is the New Jersey Twelve Day Disclosure Act.

ASSEMBLYMAN BORNHEIMER: Does anyone else have any questions?

SENATOR WALLWORK: Yes, I have a quick question and a clarification. Are all of your fees regulated under FHA and VA loans?

MR. BERNARDO: Are all the fees regulated?

SENATOR WALLWORK: Yes.

MR. BERNARDO: No, sir.

SENATOR WALLWORK: What fees are not regulated under those?

MR. BERNARDO: The out-of-pocket expenses.

SENATOR WALLWORK: In other words, your \$450 charge?

MR. BERNARDO: On FHA and VA loans, the maximum fee that can be charged is one percent of the mortgage amount.

SENATOR WALLWORK: Right. Would that be a satisfactory stipulation in this bill, to say that the fees would be in conformity with the FHA and the VA loan structure?

MR. BERNARDO: I would have to answer no to that.

SENATOR WALLWORK: Pardon?

MR. BERNARDO: I would have to answer no.

SENATOR WALLWORK: Why?

MR. BERNARDO: The mortgage bankers of America are appealing that fee structure with FHA, and have been for quite some time. The likelihood is that it will be increased. It is insufficient to cover our cost of operation.

SENATOR WALLWORK: All right. Would your position then be that fees should not be regulated, period?

MR. BERNARDO: That's correct.

ASSEMBLYMAN BORNHEIMER: Michael.

ASSEMBLYMAN ADUBATO: Mr. Bernardo, at the last public hearing that we held, someone made the statement that there were 10 states, I believe, that now regulate mortgage bankers. Are you aware of any of those regulations in any of the states -- excuse me, in comparing this legislation and its impact and severity on the mortgage bankers, as opposed to other states, is this legislation more liberal, or a lot tighter than any of the other states, would you say?

MR. BERNARDO: I am aware that there is other legislation. Excuse me, I am aware that there is legislation in other states. I am not aware of the content of that legislation.

ASSEMBLYMAN ADUBATO: Neither am I, that is why I am asking you. Okay. Thank you.

ASSEMBLYMAN BORNHEIMER: Does anyone else have any further questions?
(no response) Thank you, sir.

We will continue with the hearing and go right on through the lunch hour. The next person we will hear from will be Thomas Martin.

T H O M A S C. M A R T I N: My name is Thomas Martin. I am past President of the MBA of New Jersey, President and Chairman of the Board and a founder of Kennedy Mortgage Company. Kennedy is five years old, employs 300 people, and operates out of a main office in Cherry Hill and three branch offices in New Jersey. We service approximately \$450 million in single family, first mortgage loans and originate between \$250 and \$300 million per year.

I have some remarks I want to go over, if I may. There are three specifics and one question of some general import. Before I do, I would like to respond to a couple of questions that I heard raised this morning. I want to say that my remarks are that of a mortgage banker. I have little knowledge, and I am certainly not here to represent a group of concerned consultants, or mortgage consultants, or mortgage brokers. My comments will be relative to mortgage bankers.

First, this is a response to a question as it relates to the solicitation of life insurance and the implication that it is held up as a prerequisite of securing a mortgage loan. Mortgage bankers, and that includes anybody who is working with FHA, VA, Fannie May, or Freddie Mack, may not include on their application any requirement for the purchase of life insurance. Secondly, there was a remark made today that this act carried with it the implication that the Commissioner would determine the nature of our application form. That doesn't appear in the body; however, I cannot challenge the intent. Any action by the Commissioner to determine the form of the application could easily limit or conform us all to one mold. This would definitely restrict our innovative capacity, and it would leave us all operating at the average.

At the present time, as a matter of fact, all the mortgage bankers use the application form which is generated by FHA, VA, and Fannie May.

The second thing, we have heard questions today as to the "ripping off" of the populace. These were comments that were raised at the last meeting. Although I am sure that they were comments, they were not enunciated too specifically. I am sure that there is a public record of complaints as to mortgage bankers having challenges, clerical challenges, on the handling of people's payments and escrows, and maybe on the application procedures. Last week we did not hear, to my memory, any comments as to the "ripping off" of the populace by mortgage bankers. My memory is that of some consultants and of some insurance agencies. I do not recall any witness saying that the mortgage bankers had ripped off the populace.

Now, let me get into my remarks. I will read them, if I can, to spare you, gentlemen, and not take too much of your time. I want to speak briefly about three specific elements of the proposed act, and one more general impact of it.

The specific provisions involve three things: bankruptcy, audit requirements, and records retention. The general challenge that I would like to go into involves the strong possibility that the power granted the Commissioner in this act, in the area of fee setting, could work to interrupt, or stop, the flow of mortgage funds to the populace of our state. I think this has been

discussed before, but listening to the questions from the floor, I perceive that there are still perhaps misconceptions.

First, as to bankruptcy: Section 9 (a), page 4 of the Assembly Bill, provides for license denial or revocation in the event licensee becomes insolvent or files for bankruptcy. This option certainly should be part of any licensing bill.

Section 9 (b), page 5, provides that a licensee corporation may be denied its license in the event any officer, director, or member - and I am not sure what a "member" is - of the licensee has committed an act that would be cause for suspension of the corporate license.

Under this specific prohibition, the license of a corporate lender could be jeopardized, or could be withheld, if they were to grant continued employment to someone who has experienced some personal financial reverses -- perhaps through problems with health, children, or marital. This provision could work to require a termination of employment relationship with an individual at a time when he needs his job the most. It could deprive the employing licensee of services of the employee for no really relevant reason. And, it could work to deny him the constitutional protection granted him by the bankruptcy laws.

Second, as to audit, Section 11, page 5 of the proposed act, permits the Commissioner to schedule an audit of the licensee's books once a year - and more if the Commissioner determines that an additional audit is required. The once-a-year audit, of course, is without regard to any specific need for it. It is of interest to us all that all mortgage bankers who operate with FHA and VA, and all of us do, have to submit at least once a year to a certified audit by an approved CPA. Most of us utilize the services of the big firms known as the "Big 8", the nationwide firms, because they provide the greatest amount of credibility to our reports. Their audits include specific audits of our application procedures, of our fee taking procedures, and of our servicing procedures, and our holding of escrows and handling of delinquent loans, in accordance with the HUD guidelines. They are very specific audits and have to be part of the printed report.

The cost of this audit to us is not insignificant. In our case, it ranges from \$25,000 to \$40,000 per year, and takes about two months to accomplish. Yet, there is no provision for use of these outside audits within this bill. I perceive that this gives the Commissioner somewhat of a blank check. He has the right, under the proposed act, to bill us for the cost of the audit, whatever it may be. I heard this morning that the average cost to a savings and loan would be \$40 a loan, and I would hate to consider paying \$240 thousand for such an audit, because we do about 5,000 or 6,000 loans a year.

There is no limitation expressed in here, and, of course, we are not granted the right to shop. We have to submit to whatever costs are presented to us. All this is in spite of the fact that we do not operate with public funds, as do the depository institutions regulated by the Commissioner.

Third, relating to records retention -- Section 10 (c), page 5, requires record retention for seven years. The federal retention laws, that is RESPA, which governs most lenders, requires two years retention. IRS requires three years; payroll records for four years; and HUD requires us to keep them for

two years. Federal regulations prescribe which pieces of paper must be retained. This Act does not. This will generate significant additional clerical handling and storage costs. That is what a file looks like, gentleman. Imagine keeping 6,000 of these a year, for seven years. There has to be, perhaps, some modification made to the record retention requirement.

Finally - again I do not speak for the consultants or the mortgage brokers - is the matter of the regulation of the fee and the possibility of an adverse effect on the homebuying public of New Jersey. On several occasions, during these hearings, I have heard both the members of this Committee and the public refer to the current market situation, references that kind of carried with them almost an unexpressed confidence that it will go away -- the badness is going to go and we are going to go back to the old days, when we can once again look forward to the neighborhood savings and loan, our traditional friend at the corner, taking deposits from the savings population of this country at five or six percent, and lending it out, once again, at eight percent. I do no more than to articulate the consensus view of senior thrift officials and regulators when I speak to dispell this economic daydream. We are in a new era, whether we like it or not. We, both this Assembly and our industry, are participants in a new era. Yesterday, which was the '70's, the '60's, and before, is history, and the past will no longer be prologue. We are in a new era. It probably began forty years ago -- fifty or sixty years ago -- when the government first started to become involved in controlling the supply and demand of money. The most tangible evidence of it began last year - about a year ago now - when the savings and loans and the savings banks slowly, but very thoroughly, initiated their withdrawal from their traditional role as the main mortgage lender. Never again will the homes in our state trade at the \$20,000, to \$35,000, to \$40,000 average that they once did. Never again will people be willing to deposit their money for a five percent return. And, therefore, never again will mortgages be available at six, seven, or eight percent interest. Houses are going to be bought more tomorrow than yesterday, by people straining to match two, not one, incomes to the increased cost of home ownership.

During the next five years, whether we like it or not, we are going to see a proliferation of new loan devices to bridge the gap between the rapidly increasing cost of home ownership we heard referred to this morning, and the slowly increasing levels of income. An innovation to bridge the gap between yesterday's lending traditions, which were the savings and loans, and savings banks, and today's money market reality, makes them increasingly, as it relates to mortgage origination, a footnote in history.

We will see, over the next five years, graduated payment mortgages. You have to be a student of alphabets too -- GPMS they call them. We will see FLIPS, which are currently not made in this state because of some anticipation of regulatory action. We are going to see variable rate mortgages. We are very surely going to see Canadian rollovers. That is a loan which is based on a 25 year or a 30 year payment schedule, which is reviewed every five years as to the interest rate. That will be a must. In order to tap the public supply of money, there will be rollover loans. There will be no 40 or 50 year mortgages. There will be no additional federal subsidies. Notwithstanding the hue and cry, there is little hope of getting further subsidy. We are going to

see changes in those institutions that do bring the money to this state. We will be granted the power by the folks like FHA, VA, Fannie May, and Freddie Mack to assume full responsibility to originate the loan. At the present time, the VA allows most mortgage bankers the right to originate and close without their approval. They merely service audit bodies. By 1985, there is a strong conviction that all the federal agencies will be purely audit bodies.

The loans that are needed are not going to be made by local lenders, our of their savings funds. They are going to be made by a new breed of lenders. And, you all are dealing with the new breed. The new breed is the conduit lender, those of us who have learned to tap the public market and bring a bottomless supply of money to this state. The money will be brought in, subject to national interest rates, and under new and much more relevant underwriting procedures than we had in the past. The savings and loans, who traditionally made 70% of all loans, are now down to 40%, and their own association presumes they are going down to a 25% share. That is only 25%. The conduit lenders, the mortgage bankers and the savings and loans who are adjusting their role, will take up the slack. I would estimate that today 80% to 90% of all mortgage applications being taken in this state are being taken by the conduit lenders. We have replaced the direct lender as the main source of funds.

The implications of this new era, and the role of the conduit lenders, intensifies the spotlight placed on the fee-setting power delegated to the Commissioner by this act for two specific reasons. There are two reasons why this act impacts negatively on the capacity to keep bringing money in. One, conduit lenders differ from direct lenders, the savings and loans. We do not enjoy income out of the interest rate. We create a loan and we resell it. We do not stay there for 20 years to enjoy whatever spread there is between the interest rate we receive and what we are paying somebody for the use of their money, as the direct lenders did. Historically, direct lenders, taking in money at 5% or 6% and lending it out at 8%, recovered sufficient money out of that 2% spread to cover their cost of origination of a loan. Conduit lenders do not have that luxury. They must recover the cost out of the origination itself. We cannot do it out of the interest rate. If you are interested in those costs, I will be happy to respond to your question, as to what the charges are and the reason for them. A fair approximation of the cost of another man's evaluation, six or eight years ago is, when the Mortgage Finance Agency determined, or mandated, how much we could charge when we created the loans in the inner city - the ones that the direct lenders did not want to do - they prescribed a cost of \$650, which we were able to recap -- \$650. If you were to take the cost of living eight years ago and up it by the inflation rate, I am sure you would see, at least in their estimation, our statement that the cost to originate a loan exceeds \$800 is not unrealistic. So, that is one reason that any unwarranted - or, not unwarranted but incorrect - limiting of fees would deny the conduit lender sufficient capacity to recover his cost. And, if he cannot recover his cost, he cannot operate. We are all privately held corporations, who cannot - like those subsidized by the government - afford to lose money. We must operate at a profit, or we cease to operate.

The second reason that this bill impacts negatively-- Or, rather, the fee setting authority could impact negatively on our capacity - and remember we are doing 80% of the business right now - to continue to bring in money because

when we go out to find the money with which we make all these loans, we go out to nationwide public money sources, and we secure the money, subject to a wide variety of rates, terms, conditions, and fees. We approach, or use, facilities that sound like alphabet soup -- Freddie Mack, Fannie May, Ginnie May, FHA, MBS. The fee requirements generated by these money sources have to be passed on to the buyer and to the seller of the loan, just as the mortgage funds are passed on. There is no other income for the conduit lender to recover them. These fees will involve a wide panarama of arrangements, ranging from discounts to enable the making of loans at interest rates below the money market, commitment fees for the reservation of funds, and administrative and legal fees imposed upon us when we are into conventional mortgage bank securities. Even those of us close to the market cannot foresee the extent of the fee that will have to be passed on in order to bring money into this state. It changes continually.

The Commissioner, under the proposed law, has the unconditional right to set fees. A decision on his part, well motivated though it could be, could easily ignore the current, or, much more important, the future realities of the cost of origination - and, remember, we have to recover that at the outset of the loan, because we don't enjoy the rate - and/or it could ignore the cost imposed upon the secondary market. Any decision on his part which did not take into account the fact of costs put on us by the outside market or the costs for origination, could immediately result in a cessation, or a limitation, of activity by the conduit lender. Witness, within this state, before the Fannie May conventional loans were exempted from the usury points, the amount of Fannie May originations were a very, very small figure, because Fannie May imposed upon anyone who was doing business with them a one-half of one percent commitment fee, in addition to special costs. By law, we couldn't recover these costs, so we didn't make the loans.

Were the regulations or the ceilings on costs to be less than required to enable us to recover origination costs and the costs of bringing the money in, it would be an action that would leave the majority of the home buying public, most specifically the broad segment in the low and middle income group, without any mortgage funds.

Although it is not exempted in the proposed act, the Commissioner, has made it a matter of record that he would plan to exempt Fannie May loans from the fee setting power. Well, how about loans destined to go to Freddie Mack; or, more importantly, how about those loans going to the conventional mortgage backed securities? That will be the main way that we are going to bring funds into this state in the next decade -- that is, through these conventional mortgage backed securities. These are not exempted under this act.

You will hear later - and this is a response to a question that has been raised several times - a detailed recap of the nine or ten state regulatory bills that are currently in effect. And, I would not pretend to take the Right Reverend Robert Levy's role on that. However, I would like to comment that there are only two - there are only two - of those bills that leave to the Commissioner, or whatever regulator is involved, the right to become at all involved in fees -- only two. One is in Florida, and in that it is not left up to the regulator; rather, it was set by the Legislature itself, and it said that the fees would not exceed 10% of the mortgage loan.

That is one. The other one is in Hawaii, where most of your real estate transactions involve land leases, and where the lending is more of the oriental tradition. I don't believe that Hawaii has any challenge bringing in money. Therefore, I don't think that we can draw a comparison between this bill and what it does, and what it implies as it relates to fee setting in any of the other states.

In conclusion - I am finally done - your oath, of course, mandates that you bend your efforts to serve and protect the rights of the public. If your view of the facts and that of the Assembly and Senate indicate that the licensing of mortgage bankers must be switched from the Real Estate Commission to the Banking Department, then you are obliged to pass appropriate legislation. I would implore you, under the same banner of responsibility to the public, not to allow legislation that will create the capacity within our state institution to deny mortgage funds to that public.

I have here copies of part of what I said and some Wall Street Journals and New York Times - I am afraid they are the jargon of my industry - which underscore the dilemma confronted by the direct lenders, and which perhaps explain what mortgage bankers do.

ASSEMBLYMAN BORNHEIMER: Mr. Kosco.

ASSEMBLYMAN KOSCO: First of all, let me compliment you on your presentation, because you brought light and answers to some of the questions that I have been asking, and you pointed out to me how the regulations of the fees could be detrimental to the industry and to the mortgage market. So, I gather from your comments that your main concern is not that you are opposed to licensing of the mortgage brokers, but more to the fee construction and the freedom that the Commissioner has, in that he is the sole person to determine them.

MR. MARTIN: The answer to that is a resounding yes.

ASSEMBLYMAN KOSCO: Thank you.

ASSEMBLYMAN BORNHEIMER: Assemblyman Mays.

ASSEMBLYMAN MAYS: Do the fees differ with every mortgage company?

MR. MARTIN: Do the fees vary from company to company?

ASSEMBLYMAN MAYS: For late charges?

MR. MARTIN: For late charges? I guess they do. Let me answer more specifically, within the realm of my understanding. FHA and VA have specific prohibitions on charging anything in excess of four percent, if my memory is correct, and I think four percent is the standard charge. With respect to conventional loans, I am embarrassed; there are folks here who have more expertise with that. There are limits there, set by Fannie May and Freddie May. I can't keep up with them all. I think you will find, for example, that the great majority of us charge the maximum fee allowed by the federal authorities. And, if I may, I would like to say that all of us, even if we are making a loan these days which is not going to Fannie May or Freddie Mack - which are quasi-government operations - create our loans - all mortgage bankers, all conduit lenders - under procedures and in a form so that that they could go to that market. Therefore, whenever we create a mortgage, it is absolutely a liquid investment. Anyone to whom we sell a mortgage loan knows that they can sell it into the national market, so the fees that you see in there are the fees that most of us have to charge.

ASSEMBLYMAN MAYS: Fine.

MR. MARTIN: We cannot exceed this.

ASSEMBLYMAN MAYS: Do you realize that this bill didn't just come out of the air? The Commissioner was bombarded with calls and complaints about the irregularity of mortgage companies and this is how this bill came about.

MR. MARTIN: It is my understanding that a lot of this bill results from the complaints -- a lot of the impact behind this bill. I hope that is the main reason that it is on the table today. I am aware, after listening to the session last week, that there are a number of complaints which do not relate to mortgage bankers -- nor am I trying to get off the hook on that score -- where there were abuses of folks. Mainly, I understand, these are in the arena of collecting fees up front. That was the consensus view I listened to last week.

I would also imagine -- We had an opportunity, because the Commissioner let us do so, to look at 300 complaints, written complaints, that they booked over a two year period, and most of them had to do with servicing companies. A mortgage banker, in addition to originating loans, generally services them for the investor. That is, he collects the taxes. He pays the taxes and insurance. And, he collects the monthly payments. I was told there were about 700 telephone complaints, but we don't know the substance of those.

I am aware that a company, like ours, originating and servicing the volume that we do, we are -- I don't like the word "barraged", but I know I receive at least one complaint a month, and if I get one complaint a month, then there must be 30 or 40 complaints by people every month, and their complaints run along this line: "Why did my mortgage payment go up"? The reason, of course, is that the cost of their taxes, or something else, went up, and we paid the bill, went into the hole, and came back to them with probably one of the most complicated IBM kind of statements there is, indicating to them why their payment had to go up and they didn't understand it.

ASSEMBLYMAN MAYS: Fine. Do they ask you why the taxes go down at the same time, if their taxes go down at some time?

MR. MARTIN: There are only a few townships in which we work where the taxes have gone down and it is funny, none of them ever called us to thank us when the payments went down. By the way, this is a shortcoming that we, the insurance industry, and, I am sure, the car industry have. We all have challenges with our clerical handling of complex, and not so complex things, and I am sure there are complaints as to the handling of payments: "Why did we not accept a payment? Why did we foul up and put a payment in the wrong account, and then tell the guy he was delinquent"? I am sure they exist in some multitude, and we are just as anxious as you are to see an end to them, because they cost us a fortune to correct.

ASSEMBLYMAN MAYS: Do you agree with anything in this bill at all?

MR. MARTIN: Behind that lies the question, do I believe in regulation? Of course, I believe in licensing. Obviously, the main challenge we have is --

ASSEMBLYMAN MAYS: All right. Do you believe in anything that is in the bill?

MR. MARTIN: I believe there should be licensing. I think the bill is full of -- for one, I obviously take exception to the fee setting power.

And, there are certain other provisions that I think should be changed. My memory is - and we will talk about it later, I believe - that we had, at one time, drafted a bill. I don't even know the extent to which it was presented. But, some of that bill we would be happy to work with.

ASSEMBLYMAN MAYS: You said a couple of weeks ago that there was a fellow who came down from Connecticut, he was moving his family down, and he had a truckload of furniture?

MR. MARTIN: Yes.

ASSEMBLYMAN MAYS: That was the insurance company who did that, or was that a mortgage company?

MR. MARTIN: Well, that was -- I think you know the mortgage company too.

ASSEMBLYMAN MAYS: All right. I just wanted to know if it was the mortgage company.

MR. MARTIN: My reference of two weeks ago had to do with people who were, under fraudulent circumstances, presenting money for which they received no value. Now, as I recall, the fellow in question had delays in the processing of his loan.

ASSEMBLYMAN MAYS: He had to pay out \$750 to stay some place because of a house that he was going to buy?

MR. MARTIN: I do not know, because there was, obviously, no opportunity for any response by the lender. I did know that that happened to be a VA case. As to whether or not there was a fraudulent activity by the mortgage banker, one; two, a clerical mixup; or, three, his attorney mishandled his closing, I don't know the facts. I can say this, Assemblyman, we are in a very competitive business. You see -- what do they call us? The "Big 26", whatever we are called? It is a very competitive business. Yesterday, if you want to measure the competition, the point level at which FHA and VA loans were being sold in the market on Wall Street - it is published every day and all of us sit around and view our little television sets - it was being sold at about 90, which is a ten point discount in order to sell the loan, and most of us were originating at about 8 points and that is because we were going to compete with each other and make it up in volume. There is a great deal of competition in our business, and were we to hold up people who want to buy homes, I can assure you that our main source of business would desert us, and our main source of business is not the populace, in a direct sense; we take mortgage applications from people referred to us by real estate brokers, as you heard this morning, and by builders, and by mortgage brokers. And, we cannot continue to earn the referral business they send to us, unless we deliver the closings.

ASSEMBLYMAN MAYS: I think the main purpose is not to put you out of business but to remove the problems. So, that is what we are here for today.

MR. MARTIN: And I welcome it.

ASSEMBLYMAN MAYS: I will get back to what I said two weeks ago, and say we would like to see more of the people who have been hurt by your company come down here and testify also.

MR. MARTIN: I would be happy if they would.

ASSEMBLYMAN MAYS: They can't get out of work, like we do, or like you do.

MR. MARTIN: This is work. I would be happy to share with this Assembly a lot of the letters we get. I would be embarrassed to do so, but I would not be ashamed. We are a company handling a tremendous volume of paper work and we make mistakes. I don't think you have to go to the Commissioner to see some real ones. We can give you some real ones.

ASSEMBLYMAN BORNHEIMER: I am looking at your Regulation Z, the proof of lending statement you furnished us.

MR. MARTIN: If you can understand that, you are a Ph.D.

ASSEMBLYMAN BORNHEIMER: On the left hand side of the page it says, "service charge origination fee, \$450."

MR. MARTIN: Yes.

ASSEMBLYMAN BORNHEIMER: And, I peruse down and I see, "placement fee, \$453."

MR. MARTIN: Yes, sir.

ASSEMBLYMAN BORNHEIMER: And I peruse down further and I read a little bit more and it says, "commitment fee, \$226.50."

MR. MARTIN: Yes.

ASSEMBLYMAN BORNHEIMER: I assume that the \$226.50 goes to the federal government?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN BORNHEIMER: The \$450 goes to you?

MR. MARTIN: That is correct.

ASSEMBLYMAN BORNHEIMER: And the \$453 goes to whom?

MR. MARTIN: The \$453 -- if you will take a look up at the top, to be very specific with you, the \$453 can go to either us, the lender, or to the fellow to whom we are selling the loan. Let me use an example. This date of closing is March 27th, is it not? It shows it at the top, right.

ASSEMBLYMAN BORNHEIMER: Yes.

MR. MARTIN: I stand corrected. That is the date we committed. The loan will probably close within 60 days of that, so we are talking about a transaction that will occur in June. In other words, the settlement will occur in June. The application has probably taken 30 to 45 days before this was issued. It takes us that long to get all of our paperwork done. The rate is 13½. You all heard today what the current rates are within this state. What were the numbers we heard? Sixteen percent. I can show you an article here where Howard Savings says it is 18. This loan is being made at 13½. The \$453 placement fee will be paid by us, and I am afraid, because I know what our current dilemma is. We will pay more than \$253 to Fanney May to deliver this loan and satisfy their yield requirements. We have a commitment from Fanney May to buy the loan. The commitment is at around 15%. In order to make a 13½% loan look to them like a 15% investment opportunity, we have to discount it. On this loan we are probably going to lose \$500, which is a reflection of poor management, and you are looking at that poor management.

ASSEMBLYMAN BORNHEIMER: So, what you are telling me is that the \$453 is an added cost to the buyer.

MR. MARTIN: To the seller, sir.

ASSEMBLYMAN BORNHEIMER: To the seller.

MR. MARTIN: I stand corrected. Joe, is it the buyer or the seller?

RESPONSE FROM AUDIENCE: The seller.

MR. MARTIN: It is to the seller.

ASSEMBLYMAN BORNHEIMER: To the seller?

MR. MARTIN: But, that is a matter of tradition within the state.

That is--

ASSEMBLYMAN BORNHEIMER: I assume that that reflects the points had been made by the seller?

MR. MARTIN: I'm sorry, sir--?

ASSEMBLYMAN BORNHEIMER: Would that reflect the points the man had to pay?

MR. MARTIN: Yes. That, in this case, would be the points being paid by the seller. The law to this point is, they specify which charges have to go on that block and on the next block, and it is irrespective of whether it is the buyer or the seller. The law says that any cost of financing is part of the API, regardless of who pays it. In other words, this is a notification form, not a billing form.

ASSEMBLYMAN BORNHEIMER: And, the \$226 is what?

MR. MARTIN: Commitment fees. Fannie May, currently, every time we secure a commitment from them, whether we deliver under it or not, assesses to us a charge of five-eighths of one percent of the amount committed. We go in every two weeks and secure about six million dollars from Fannie May, and we pay to them, roughly, thirty thousand dollars every two weeks for that privilege. This is our means of recovery. If we don't use the commitments, we don't recover the money.

ASSEMBLYMAN BORNHEIMER: Now, say for example that we go through all of that and we get to this point, and then we cannot close the loan--

MR. MARTIN: Yes, sir, that happens.

ASSEMBLYMAN BORNHEIMER: What happens to these fees?

MR. MARTIN: None of these fees have been collected, sir. These are merely a statement. New Jersey law requires that we notify the buyer and the seller -- correction, all parties to the agreement -- of all charges to be assessed to all parties as of the date of settlement. We must do this twelve days before the closing occurs. The federal law requires that we make notification to the buyer, and the mortgagor, and they don't state how long before the settlement. This is no more than a notification fee. The only fees on here which will have been paid prior to this could be the -- I don't know if the application fee is on here.

MEMBER OF AUDIENCE: It is on the right.

MR. MARTIN: On the right? Okay, it says here, "appraisal and credit report, \$125.00." That fee has been paid and with the issuance of this, it will not be refunded, even if the fellow says, "I have changed my mind; I don't want to close." If I may add something: The \$125, we spend at the current rate for conventional appraisers, is a much more sophisticated form than an FHA. We pay people approved by Fannie May to do those, and the average cost runs, I think, from \$90 to \$110. The balance is the cost of the credit report, which averages \$20 to \$25.

I think that is important because after hearing about people charging \$800 fees up front and never performing, mortgage bankers, because they must comply with federal legislation, charge only that application fee up front. The balance of the monies are collected after closing, if there is one.

ASSEMBLYMAN BORNHEIMER: There is another one on here, "review fees."

MR. MARTIN: Where is that, sir?

ASSEMBLYMAN BORNHEIMER: It is on the bottom, on the right hand side.

MR. MARTIN: Okay, that is a review fee, if my memory is correct. I can't keep up with all the changes. That has to do with a review of the title.

(correction of witness' statement made by member of audience)

I stand corrected. That is a fee assessed to us by Fanney May for reviewing the credit package.

ASSEMBLYMAN BORNHEIMER: Wasn't that paid for in the original \$125?

MR. MARTIN: No, that is an additional charge, and we do not recover it if the loan is not closed. They charge us, and we try to recover it when the loan closes. If it is not closed, we do not recover it.

ASSEMBLYMAN BORNHEIMER: Now, on the front sheet, the amendment to the application, Item No. 902--

MR. MARTIN: The mortgage insurance premium?

ASSEMBLYMAN BORNHEIMER: Right. What is that?

MR. MARTIN: Okay. If I may, let me explain, because I think this answers the question you asked before, sir: "What fees do you advise a person of?" This has to go to every home purchaser, mortgage applicant, within 72 hours. We give it to him at the time of application because I am afraid. Breaking the law carries a very heavy fine. The 902 fee has to do with private mortgage insurance. Within the lending industry throughout the country, all loans, conventional loans, made in excess of 80%, generally - it is at the discretion of the lender - require private mortgage insurance. That is insurance by a large, nationwide insurer - those that we hear the most about are MGIC, "magic" - and are on different scales, depending upon the type of loan and how much is paid up front. They are one-quarter to one-half point up front, and in addition to that, they are one-quarter to one-half percent, per year. And, they pay on it until the loan reduces down to about 80%.

ASSEMBLYMAN BORNHEIMER: This is mandatory by law?

MR. MARTIN: It is mandatory by our commitments, or expressed another way, we are, right now, using Fannie May for these commitments. Fanney May says if you deliver to us a loan in excess of 80% of value, under this commitment we require that you include in the package, paid for by the mortgagor, private mortgage insurance from one of the following twenty companies.

ASSEMBLYMAN BORNHEIMER: One of the following twenty companies-- Now, I will continue. Does your mortgage company employ the agent who sells this insurance?

MR. MARTIN: Oh, absolutely no. If I may, I don't want to mix this up with life insurance. This is insurance by a large, nationwide carrier, who is saying, in effect, if this loan goes delinquent and is foreclosed, we - the insurance carrier - will pay to the lender up to 20% of the loan. Those are generalizations, but that is basically what it is. It has nothing to do with the mortgagor. This is insurance on repayment of the loan; and, the beneficiary of the insurance is the lender, not the borrower. The borrower pays for this because without this insurance he cannot induce the lender to give the loan. I think you will find, if you verify this with even the direct lenders in our state, that all 90% or 95% loans require private mortgage insurance. The lenders always require private mortgage insurance; it is standard.

ASSEMBLYMAN BORNHEIMER: Thank you. Michael.

MR. MARTIN: I think you had a question on how you-- I'm sorry.
Can I leave now?

ASSEMBLYMAN ADUBATO: You are a hell of a speaker, but I didn't know you were the Chairman too.

MR. MARTIN: It is a habit you will help me get over. (laughter)

ASSEMBLYMAN ADUBATO: I am very impressed, Mr. Martin. I really mean that, by the way. I am not saying that facetiously. I am very impressed with the homework you have done and the time you have taken to not only analyze the bill, but to inform the committee by presenting an actual transaction. That is what this is, isn't it?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN ADUBATO: I want to thank you, as a member of the committee, for doing an outstanding job. I have some questions. First of all, this is not a question, but in your statement I think you said something to the effect that no more are we going to see the time or the days when we have 40 and 50 year mortgages. Now, I think you were probably--

MR. MARTIN: I was commenting that this would not be a solution in the next five years; it will not happen.

ASSEMBLYMAN ADUBATO: As opposed to the probable reality that we will be in a situation with the Canadian roll-over type accounts. They will be more conducive to the future of the business.

MR. MARTIN: It is inevitable.

ASSEMBLYMAN ADUBATO: It is inevitable?

MR. MARTIN: In my opinion.

ASSEMBLYMAN ADUBATO: Okay. That is your observation.

MR. MARTIN: And, the rationale behind that - it is not our choice; it is certainly not our choice - would be that we make money by making loans, remember, so the more loans we make, the more money we make. That is what we are in business to do. And, the 40 or 50 year loans would be easier. Unfortunately, those people who buy our loans have just been emasculated by the movements in the bond market. And, to make a 40 year decision today, when the rates might be 20% higher ten and twenty years from now, turns them in the direction of only wanting to make five year decisions.

ASSEMBLYMAN ADUBATO: Now, I know how people feel when they ask me a question. On the application, the insurance that was spoken about - the MGIC, for instance - for this transaction, where the individual put down a very minimal amount of money in order to acquire the loan-- The actual amount of purchase was \$45,300, less the prepaid finance charges of \$743, and so forth. The actual amount financed was \$43,556.85.

MR. MARTIN: Yes.

ASSEMBLYMAN ADUBATO: If I am reading this properly.

MR. MARTIN: That is after you deduct all of the costs that he puts up at the settlement, or that are put up. You see, the buyer doesn't put all of that up.

ASSEMBLYMAN ADUBATO: That's the next question. Points charged to the seller, are they included in these transactions? Does it show on this form?

MR. MARTIN: Yes, sir, if you look at the -- we call it the Z statement -- placement fee, it is \$453.

ASSEMBLYMAN ADUBATO: Four hundred and fifty three dollars is the placement fee?

MR. MARTIN: That is our nice word for the discount, or the points. That is a government word, placement fee.

ASSEMBLYMAN ADUBATO: Oh. And, that is the amount of money that the seller of the home is being charged?

MR. MARTIN: It has been the tradition that it is the seller.

ASSEMBLYMAN ADUBATO: He is being charged in order to sell his home?

MR. MARTIN: Yes, that is correct.

ASSEMBLYMAN ADUBATO: On the application, to get back to my initial point, MGIC for this loan, to insure - as you stated - for approximately 80%--

MR. MARTIN: What they do--

ASSEMBLYMAN ADUBATO: May I finish the question?

MR. MARTIN: I'm sorry.

ASSEMBLYMAN ADUBATO: This individual is being charged \$2,570.32 on this Regulation Z form I am reading from - the Truth in Lending Statement. That is to insure that if he defaults, the mortgage would be picked up? Is that the purpose of that insurance? Yes or no, please. If it is, fine.

MR. MARTIN: Yes, on most. That is basically the thrust.

ASSEMBLYMAN ADUBATO: Is that what it is? Thank you. All right, so this has, as you pointed out, actually nothing to do with the person dying or becoming incapacitated through health or through an accident. It is strictly an economic insurance factor.

MR. MARTIN: And, the benefactor is the lender.

ASSEMBLYMAN ADUBATO: Right, the benefactor is the lender. So, what you are actually insuring is, if an individual puts up less than 25%, or whatever, the figure you are insuring is the 80% you said. This is common, right? This is the common denominator, more or less?

MR. MARTIN: Yes.

ASSEMBLYMAN ADUBATO: And, this is not a law.

MR. MARTIN: It is a requirement by the marketplace.

ASSEMBLYMAN ADUBATO: Right.

MR. MARTIN: By savings and loans in this state and by Fannie May and by Freddie Mack.

ASSEMBLYMAN ADUBATO: So, this individual who is buying this home is going to be paying an addition to the charges, and so forth and so on. And, it is not your fault. It is not our fault. I am just making an observation. He is going to pay, according to this chart, a total payment, in this transaction, of \$189,363.52. That is over a 360 month payment, or 30 years?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN ADUBATO: Now, let me ask you this: If I multiply \$518.87, which is the monthly payment, by 360, should I get \$189,363.52?

MR. MARTIN: I would have to do my homework, but I believe if you multiply 360 times \$518, and then add to that sum the amount that was paid at the closing, it should come to that \$189. Let me turn to my expert. My expert says no.

ASSEMBLYMAN ADUBATO: In other words, that \$189 is the 360 times \$518, plus the money that was put up, up front?

MEMBER OF AUDIENCE: The premium for the 95% loan, that is the example I present, is eight-tenths of one percent for the first year premium on a

private mortgage insurance plan, and a quarter of one percent each year thereafter. A quarter of one percent is what is determined on the principal that year. So, the balance actually is reducing the life of the loan. The premium is based on the life of the loan.

MR. MARTIN: Excuse me. Let me answer it more directly. I think the computation there explains the total. Number one, simple interest at 13½%, if there are no advance payments, on the declining balance would total \$141,000. That is the first line. The next line shows that over the life of the loan he will pay \$2,500 for the private mortgage insurance, and then the front end charges that he paid were \$1,700. And, then you add to that total the amount of the loan he has to repay and you will get the \$189 and, yes, I think if you multiply the 360 times 453 and you add on the 1743, you would get the 189 figure. What did you get?

ASSEMBLYMAN ADUBATO: Well, maybe my calculator is wrong, but I get \$186,793.

MR. MARTIN: Okay, the difference is either the 2570 or the 1743. The difference then is one of these two figures, the 2570 or the 1743, which has to be part of what the man pays. So, I am higher than you are only because I include what was paid at the settlement date.

ASSEMBLYMAN ADUBATO: Yes, it's just--

MR. MARTIN: Your answer is yes, after all of that.

ASSEMBLYMAN ADUBATO: It is yes that the 360 times 518, plus the charges--?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN ADUBATO: So, the 518 times 360, which is a different figure than the 189-- The 189 includes something I can't find. I don't know, maybe I'm wrong.

MR. MARTIN: What is 360 times the 518?

ASSEMBLYMAN ADUBATO: It is turning out to 186,000, if my memory is correct.

MR. MARTIN: Okay, so we have a variance then of 3,000, and the 3,000--

ASSEMBLYMAN ADUBATO: I get \$186,793.20.

MR. MARTIN: So, we are \$1,500 apart. Or, rather, we are \$2,500 apart, and the \$2,500 is, in truth, the PMI cost, which is number three.

ASSEMBLYMAN ADUBATO: \$189,293.20

MR. MARTIN: Well, maybe I have a bad adder at my place. We use a chart rather than add them all up, Assemblyman.

ASSEMBLYMAN ADUBATO: No, that's okay. I was just curious. It is no big deal. You talked about insurance. On your form here it talks about insurance. Now, is this a standard form?

MR. MARTIN: Yes, sir. It is dictated by the federal government.

ASSEMBLYMAN ADUBATO: And, it says that insurance coverage may be purchased from any insurance company, subject to the lender's rejection for reasonable cause. Would you just tell me what a reasonable cause would be?

MR. MARTIN: First, let me classify that we are talking about what I call homeowner's insurance, or general insurance, not life insurance.

ASSEMBLYMAN ADUBATO: Yes. I know that.

MR. MARTIN: Secondly, in our commitments we specify - I think it

is in there - that the insurance company must be best guide, Double A, or something. In other words, we prescribe an industry classification. I will turn to my expert again and ask him. My expert tells me no, it is our company's policy.

ASSEMBLYMAN ADUBATO: In other words, it is totally -- you pointed out before that in this legislation the Commissioner would have the authority, based on his observations, that you have -- the same authority to say to a borrower that for what you consider to be a reasonable cost he should purchase that insurance from that company. Is that what you are saying?

MR. MARTIN: No, sir, I don't think it is. What we are saying is--

ASSEMBLYMAN ADUBATO: It is not clear, Mr. Martin. Is there anything in here that sets up a guideline that I can't see?

MR. MARTIN: No, this merely specifies - and it is a federal form - that they must obtain fire and extended coverage.

ASSEMBLYMAN ADUBATO: I realize that.

MR. MARTIN: Secondly, this specifies that this coverage must meet a certain qualification. It says nothing about the cost or who to go to. The form is just a government form, and different lenders have different -- what is the right word? -- determinatives, or prerogatives, or set different standards. That is not prescribed. It is our company policy to use the book as the best guide, and my memory is that we insist that it be Double A, or better. That is in reference to the financial strength of the insurance company.

ASSEMBLYMAN ADUBATO: Mr. Martin, I am really not attacking you; I am asking you.

MR. MARTIN: I am listening.

ASSEMBLYMAN ADUBATO: In your industry--

MR. MARTIN: Go ahead.

ASSEMBLYMAN ADUBATO: (continuing) --would you agree that the person who is lending the money would have the right to say to an individual, "no, this is not the requirement for our money?"

MR. MARTIN: Absolutely.

ASSEMBLYMAN ADUBATO: In order to get our money, this is the kind of insurance you have to get.

MR. MARTIN: Yes. I think he would have the right to state the type, not the name or cost.

ASSEMBLYMAN ADUBATO: Thank you. On the application form from your company, when you talk about details of the purchase and you give your breakdown there -- total closing cost estimate, \$1,200, and so forth and so on -- what is that \$1,200 made up of?

MR. MARTIN: Where are we? Okay, I've got you. These are estimated, and they are a reflection, pretty much, of what we have put on the good faith estimate of the following charges. Again, this is only to the borrower. I will then get to why we do this. They are a reflection of, one, our origination charge, two--

ASSEMBLYMAN ADUBATO: Excuse me. Your origination charge is -- how much?

MR. MARTIN: Four hundred and fifty dollars.

ASSEMBLYMAN ADUBATO: Four fifty? Okay.

MR. MARTIN: It is a reflection of that. It is a reflection of his cost of securing title insurance so that he has good title to the property.

That is basically it -- survey, title insurance payment, and our cost. That would basically be within that \$1,200. There may be a couple of other charges by third parties that I am not familiar with. And, the line under that has to do with pre-paid escrows. We further estimate that when he closes, we will require him to make a two-month deposit of taxes so that we can meet the first bill, and the same on insurance. And, the reason that we total these is, when you take the application, if the man is putting down \$20,000 and he needs another \$2,000 in order to close, we want to make sure that on the asset side he has it. Failing that, you don't have a good loan.

ASSEMBLYMAN ADUBATO: Thank you. What is other financing, under f in that same column you referred to?

MR. MARTIN: Secondary financing. We do a lot of loans where the man has arranged secondary financing.

ASSEMBLYMAN ADUBATO: Okay. That's all?

MR. MARTIN: Yes.

ASSEMBLYMAN ADUBATO: That's all that means?

MR. MARTIN: Yes, on this one.

ASSEMBLYMAN ADUBATO: Just for a point of information, on the back of the application I notice there is an optional information, governmental block there, that deals with a person's race, national origin, and sex. I was unaware that this appeared on an application.

MR. MARTIN: It has to, by law.

ASSEMBLYMAN ADUBATO: This is our law?

MR. MARTIN: This is the law, yes.

ASSEMBLYMAN ADUBATO: This has to appear?

MR. MARTIN: Yes. By the way, they can complete a form and deny themselves the obligation of saying that.

ASSEMBLYMAN ADUBATO: I see that. I see the check on it. The reason why I ask that is that I think the pendulum has gone full cycle, because I believe it was in 1965, where on your life insurance acts it showed a person's race, and the law said then that you can't show it. It had to be removed.

MR. MARTIN: This really started out as a HUD regulation, if my memory is good, and it now relates to all loans which are destined for, or are audited by federal authorities. I believe it also impacts on Freddie Mack - I am sure it does - as well as FHA and VA, and it is for statistical reasons. It has been challenged, and that is why they put--

ASSEMBLYMAN ADUBATO: Well, I have no problem with that, and I don't want to impose upon you or the committee any longer, except to say that I have no problem with this, except when we talk about the American Indian, the Alaskan native, the Pacific Islander, the Black, the Hispanic, and then there is a white. I don't consider myself white.

MR. MARTIN: Are you "other"?

ASSEMBLYMAN ADUBATO: Yes. I am one of the others. But, that is just a-- With my senses, I put down that I am from the Italian tribe, by the way. I do not check off white. That may interest you to know, Senator, I do not put down other as white; I put down Italian.

SENATOR WALLWORK: You are going to screw up the federal government.

ASSEMBLYMAN ADUBATO: I don't think I could do it any worse than they are doing it themselves.

May I ask you this, Mr. Martin? Do you think there is any need

for the industry to be changed? Should they be taken out of the Real Estate Commission and put into the Banking Department?

MR. MARTIN: You properly criticize me for not answering questions directly. I will answer that question directly when we are finished, but first let me express what is my view.

ASSEMBLYMAN ADUBATO: I am not necessarily asking you to endorse this legislation.

MR. MARTIN: Oh, thank you.

ASSEMBLYMAN ADUBATO: I am asking a very broad question.

MR. MARTIN: In a broad response, the industry of people who originate, or hold themselves out to originate, single family, residential mortgage loans should be regulated, and should be licensed. And, to the extent that the Real Estate Commission has neither the treasury nor the time to do so, then that should be transferred to someone who has a staff and, obviously, the professional capacity to do so.

ASSEMBLYMAN ADUBATO: So, I would assume that your real objections are not that the Banking Department would be the, more or less, overseer of some of the problems that have confronted us; but, primarily, your problem is with Section 13 (b) more than anything else, I would assume -- on page 6?

MR. MARTIN: There are nuances to bankruptcy.

ASSEMBLYMAN ADUBATO: Also, the fact that you have to retain the little things, and I thought that was very important. For instance, the fact that you had to retain records for seven years, I think is negotiable.

MR. MARTIN: The essence of our concern is the fee setting, and it not a reflection on any man's talent. I don't know what the heck the fee requirements are going to be two years from now. Two years ago none of us knew we would be in this current situation.

ASSEMBLYMAN ADUBATO: The heart, or the core, of this is, as you pointed out, you are against this because you are not dealing with people's money over a long period of time - with having it funneled in and you funnel it out, like a savings and loan. You are dealing with the marketplace as you find it.

MR. MARTIN: Every day.

ASSEMBLYMAN ADUBATO: And, you have to adjust according to the cost that you are dealing with at that time in order for you to insure a profit. So, you are in more of a change -- grabbing money, buying it, selling it, and turning it around, day to day, if you will, as opposed to a more stable kind of an institution, like the savings and loans, and so forth and so on. Am I making a fair statement?

MR. MARTIN: Yes. You see the distinction. They can bury their errors in rate; they can recover their cost over a period of time. We do not have that luxury.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN BORNHEIMER: One point of clarification: On the application we have before us, are we to understand there was a 1% point paid in this case, \$453?

MR. MARTIN: Yes, I think that is what it said on this.

ASSEMBLYMAN BORNHEIMER: On 13½% there was only 1 point paid?

MR. MARTIN: Yes.

ASSEMBLYMAN BORNHEIMER: And that was paid by the seller?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN BORNHEIMER: Okay. Thank you very much. I have another question also. Would the person who submitted this to us object to the press seeing it?

MR. MARTIN: I didn't hear the question, sir.

ASSEMBLYMAN BORNHEIMER: The documentation that was submitted--

MR. MARTIN: Yes, sir.

ASSEMBLYMAN BORNHEIMER: (continuing) --is a matter of public record at the moment. There has been a request by the press to get a copy of it. Is there any objection?

MR. MARTIN: No, not at all. What is it he wants?

SENATOR WALLWORK: He means is there an objection, insofar as the individual involved having an objection?

MR. MARTIN: Oh, I'm sorry. I didn't listen. I apologize. I don't believe we talked to the people about that.

ASSEMBLYMAN BORNHEIMER: So, we will not give it to the press?

MR. MARTIN: That is correct. I'm sorry.

(whereupon there is an objection made by member of the press who is in the audience)

ASSEMBLYMAN ADUBATO: Mr. Chairman, may I make a suggestion? Would there be a problem with us blocking out the individual's name and residence, and then handing it to the people of the press? Would that be all right?

ASSEMBLYMAN BORNHEIMER: I would have to ask for an opinion by the Attorney General's office, and then I will take it into consideration.

NEWSMAN: I, Vincent Zarate, object to a public record being examined by the Attorney General at a public hearing, and I would like that on the record.

MR. MARTIN: May I say something? If you will return them to me, I will resubmit them with the name and address blocked out, and then you are welcome to them.

ASSEMBLYMAN MAYS: May I ask a question?

MR. MARTIN: Yes.

ASSEMBLYMAN MAYS: On this application, how come there are two different figures?

MR. MARTIN: Good question. Why is there a hand written form, and why is there a typed one? The hand written form is the application taken by our full time employee, from the buyer, at the time of application. Does that have a date on it? Yes, February 7th. From February 7th until the date of this application here, which is not dated but very close to March 27th -- during that 40 days, we were gathering documentation: credit reports, verification of employment, and deposit. We had to confirm everything that we were told by the mortgage applicant, and sometimes this one differs because the facts, as revealed to us by the third-party source, are different. This is the form that we then resubmit to the applicant to sign, and then we use this as our application for Fannie May.

ASSEMBLYMAN MAYS: The reason I asked that question is because there are two different figures quoted here, one is \$3,300 and \$4,075. Why?

MR. MARTIN: Which item are you referring to?

ASSEMBLYMAN MAYS: On the back, where it says details of purchase. Look at the cash required for closing -- \$3,300.

MR. MARTIN: And the other one says \$4,000?

ASSEMBLYMAN MAYS: Yes. Why?

MR. MARTIN: Because the sum total of the expenses went up. Let's look at them, one by one. Details of purchase: the total closing cost dropped. In other words, the employee who took the application assumed that the total closing cost would be \$1,500, but we have books that say \$1,200. The pre-pays went from \$400 to \$475.

ASSEMBLYMAN MAYS: Right, \$75 more.

MR. MARTIN: The total amount of cash is \$1,000. Maybe there is a subtraction there.

ASSEMBLYMAN MAYS: Yes, there is something wrong.

MR. MARTIN: I think there is a subtraction error in the manually prepared one. In other words, when he completed that one, he came to the \$3,300.

ASSEMBLYMAN MAYS: But, this is really only an application.

MR. MARTIN: Bear with me just for a moment. The math is correct on the hand written one. The cash required for closing is wrong on the typerwritten one; it should be the \$3,375.

ASSEMBLYMAN MAYS: Which one did he go by? Which one did he pay?

MR. MARTIN: Oh, no. That has nothing to do with what he paid. Bear with me, if I may. We merely totaled that to make sure he has enough assets to meet that requirement. So, what we said is, you have to have \$4,000, when we should have said, you have to have \$3,500. It has nothing to do with what he paid.

ASSEMBLYMAN MAYS: All right.

MR. MARTIN: We want to make sure they don't borrow money.

ASSEMBLYMAN ADUBATO: Mr. Chairman, he has been so informative for me, if I can impose just thirty seconds more -- We talked about that placement fee being \$453, and I see an asterisk here. On the form it says: "paid by the seller, unless you are refinancing." Mr. Martin, how much, on the value of this mortgage, is one point in dollars?

MR. MARTIN: Can you ask me that another way, I got lost?

ASSEMBLYMAN ADUBATO: Well, let's put it this way: On this transaction, the amount of the loan says \$45,300. Total amount financed, 43, minus the 1743. On the \$43,556 loan, how much is one point?

MR. MARTIN: Oh, it is one percent.

ASSEMBLYMAN ADUBATO: It is one percent?

MR. MARTIN: Yes, sir. A point is one percent.

ASSEMBLYMAN ADUBATO: A point is one percent?

MR. MARTIN: Yes, sir.

ASSEMBLYMAN ADUBATO: All right. So, that one point would be \$453.

MR. MARTIN: Yes, sir.

ASSEMBLYMAN ADUBATO: Now, that is paid for by the seller?

MR. MARTIN: On FHA and VA transactions, all discounts must be paid by the seller. The buyer is not allowed to pay them. On conventional loans it may be--

ASSEMBLYMAN ADUBATO: What I am asking is, there is only one point charged, is that it?

MR. MARTIN: On this one.

ASSEMBLYMAN ADUBATO: Why?

MR. MARTIN: Well--

ASSEMBLYMAN ADUBATO: Why is there only one point charged? What is the "norm?"

MR. MARTIN: I wish I could respond to that. If you had asked me two years ago, I would have said that it is always the points paid on--

ASSEMBLYMAN ADUBATO: Isn't the norm four or five points, or am I wrong?

MR. MARTIN: No. That is what I would have said in yesteryear. Right now, the average points on FHA and FA loans are approximately eight. And, on conventional loans - and I will give you an article - I think the points being charged across the county are averaging two.

ASSEMBLYMAN ADUBATO: I am having a lot of difficulty, and I admit it.

MR. MARTIN: That is because the market varies.

ASSEMBLYMAN ADUBATO: I am having a lot of difficulty. This loan took place on March 27, 1980.

MR. MARTIN: It hasn't taken place.

ASSEMBLYMAN ADUBATO: I'm sorry.

MR. MARTIN: It is committed for closing.

ASSEMBLYMAN ADUBATO: It is committed? And, this person who is selling his home -- We don't have anything for the person who is selling it. They are selling to people that are buying.

MR. MARTIN: That's right.

ASSEMBLYMAN ADUBATO: Are there any forms that the seller fills out?

MR. MARTIN: No.

ASSEMBLYMAN ADUBATO: Are there none at all required by law?

MR. MARTIN: The only relationship that the lender has with the seller is imposed upon us by the 12 day statute of New Jersey, which requires that we inform him of all charges to the transaction -- his and the buyer's too.

ASSEMBLYMAN ADUBATO: Is it possible that the seller could pay more money than has been shown on this form?

MR. MARTIN: The law requires that all charges paid by both buyer and seller appear on the closing statement. You do not have a copy of that. On this loan it has not yet occurred. Federal law requires that all fees paid by buyer and seller show on the HUD form.

ASSEMBLYMAN ADUBATO: We don't have a copy of that. Is it possible then, Mr. Martin, that the seller is paying more than \$453?

MR. MARTIN: To whom?

ASSEMBLYMAN ADUBATO: I don't know to whom.

MR. MARTIN: Well, it is not possible that he is paying more to the lender.

ASSEMBLYMAN ADUBATO: I don't know.

MR. MARTIN: No. My answer is--

ASSEMBLYMAN ADUBATO: How about the solicitor?

MR. MARTIN: The mortgage solicitor?

ASSEMBLYMAN ADUBATO: Is there any way that he could be charging him, legitimately, a consultant fee?

MR. MARTIN: No.

ASSEMBLYMAN ADUBATO: Over and above commission?

MR. MARTIN: Not the employed mortgage solicitor. But, let me go beyond that and perhaps respond to the implication of your question, perhaps. Let us assume--

ASSEMBLYMAN ADUBATO: I have no implication. I am just asking a question.

MR. MARTIN: There are no additional charges paid to the lender, other than what is advertised here. If so, we would have committed a crime.

ASSEMBLYMAN ADUBATO: I am not accusing anyone of committing a crime.

MR. MARTIN: No.

ASSEMBLYMAN ADUBATO: I am having difficulty because it has been my very limited experience in this area - and I am the first one to admit that I am extremely limited-- But, the one thing I do know is, when my mother sold her house, not too long ago, and it was purchased this way, she paid considerably more to have the house sold.

MR. MARTIN: Who did she pay it to, do you remember?

ASSEMBLYMAN ADUBATO: Gee, I think it would probably go in that little box, where you have placement fee, and the points were not one point. It was not one point. Now, I am having difficulty locating that money or finding out what happened to it.

MR. MARTIN: Let's assume, for a moment -- My assumption is that if your mother paid five, six, or seven points, probably the home purchaser opted to go for FHA or VA mortgage.

ASSEMBLYMAN ADUBATO: Is this FHA or VA?

MR. MARTIN: No, this is a conventional.

ASSEMBLYMAN ADUBATO: This is strictly conventional?

MR. MARTIN: This one happens to be. They don't look that much different on FHA-VA, but this is a conventional loan. By law they are conventional because the main conversation we had today was about the law here exempting FHA/VA.

ASSEMBLYMAN ADUBATO: Oh, I misunderstood then because I thought this was a VA or an FHA loan.

MR. MARTIN: And, the only difference that you had experienced, were this a VA or an FHA, is two-fold. The FHA has a one-half of one percent private mortgage insurance, or MIP, and the VA does not. Second, you are absolutely correct, the discount range, the placement fees on FHA and VA during the last 12 months, has averaged between 6 and 9 points.

ASSEMBLYMAN ADUBATO: On all monies? For instance, to get back to our little chart in the back, does that appear on all transactions, or just on FV and FHA loans? Is that on any transaction?

MR. MARTIN: That is on any transaction, VA or FHA -- any transaction intended for sale of Freddie Mack or Fannie May.

ASSEMBLYMAN ADUBATO: And, this Regulation Z, that applies to all transactions?

MR. MARTIN: All first mortgage transactions.

ASSEMBLYMAN ADUBATO: Is there anything on this form, anywhere -- on the applications or on the forms, or on your applications -- that would be different if a person were looking for a VA, FHA, or a conventional mortgage? Is there any way anyone can tell, by looking at these forms, if this was VA, FHA or conventional?

MR. MARTIN: The top left indicates which type of financing they are going to get. We do it for our own needs.

ASSEMBLYMAN ADUBATO: Top left?

MR. MARTIN: Right up where it says residential.

ASSEMBLYMAN ADUBATO: That's it?

MR. MARTIN: Yes.

ASSEMBLYMAN ADUBATO: There is nothing else that would show it?

MR. MARTIN: That tells us how--

ASSEMBLYMAN ADUBATO: In other words, all the information would be the same?

MR. MARTIN: Oh, absolutely. It is still a loan.

ASSEMBLYMAN ADUBATO: Now, on a conventional mortgage, by federal law isn't it a fact that all the seller can pay is one point? Or, am I wrong when I say that?

MR. MARTIN: No, that is incorrect. On an FHA or a VA loan, the most the buyer can pay is the one percent origination fee.

ASSEMBLYMAN ADUBATO: I mean the other way around. The buyer, the most he can pay on the VA or FHA is one point.

MR. MARTIN: That's it, plus the out-of-pocket fees.

ASSEMBLYMAN ADUBATO: Now, bear with me. We are now talking about a conventional mortgage, and in a conventional mortgage we are talking about the seller, not the buyer. He is not restricted?

MR. MARTIN: Not at all.

ASSEMBLYMAN ADUBATO: He can pay any points he wants?

MR. MARTIN: Anything.

ASSEMBLYMAN ADUBATO: To help move his house.

MR. MARTIN: As can the buyer.

ASSEMBLYMAN ADUBATO: There is no restriction on points?

MR. MARTIN: No. Can I just broaden my answer to that question? May I impose on you just to broaden that for a moment?

ASSEMBLYMAN ADUBATO: A little knowledge is dangerous.

MR. MARTIN: That's true. Assume we have a purchaser who can qualify for a 13% loan, but whose monthly income is insufficient to qualify him for the current 17%, or 15% loan. Sometimes his interests are best served on the conventional loan to pay placement fees at the outset and thereby set for himself a 13% loan, which he can afford to handle over the next 30 years. Oftentimes paying those points enables him to get the loan, when otherwise he would not be able to do so.

ASSEMBLYMAN ADUBATO: Do you think that, based on your projections of what could happen to the money market - which is probably going to happen as far as people having the capability of fulfilling the American dream--

MR. MARTIN: I can't see any question about it.

ASSEMBLYMAN ADUBATO: (continuing) --that there will be a payout in four years, with a twenty year rollover, and that that might be a little better than a five year, Canadian type rollover situation? Do you think that the institutions could live with something like that?

MR. MARTIN: More importantly, could the public money market live with it, and the answer to that is yes. The only thing that you would have to make sure of is--

ASSEMBLYMAN ADUBATO: Wait a minute.

MR. MARTIN: The answer is yes.

ASSEMBLYMAN ADUBATO: I have waited for four years to hear someone in the industry say that. Wait a minute. Let me rephrase my question.

MR. MARTIN: You said 20, and I said 5.

ASSEMBLYMAN ADUBATO: No, no, no. The Canadian rollover was five years, right?

MR. MARTIN: Anything -- three, five.

ASSEMBLYMAN ADUBATO: Whatever. What I am asking you is, do you feel, as a person in your industry, that if there were a 40 year mortgage and the first 20 years is paid on that mortgage, and then it is rolled over, based on the marketplace, for the next 20 years, that the flow of money would be there?

MR. MARTIN: The flow of funds would be interrupted if you did it 20 on 40. In my view the flow of funds would not be interrupted in any significant sense if you did it five on forty -- now maybe we will negotiate the ten. And, the market with which we are negotiating is, let's say, a pension fund that does not want to set an interest rate return on their investment for more than five years. The only factor would be amortization, whether it be 30, 40, or 50; we must have sufficient amortization to give them some liquidity, some repayment so that they have new money to reinvest, and that is what you negotiate. The concern with term by the investment community is much more with them having the alternative of adjusting the rate than it is how long, or what kind of schedule is impacted on the home buyer.

ASSEMBLYMAN ADUBATO: Well, with the new regulations that we are dealing with now in New Jersey -there is the factor that even though there has been a federal moratorium that has gone back into place again -I believe--

MR. MARTIN: Yes.

ASSEMBLYMAN ADUBATO: (continuing) --that if we ever get back to any kind of normalcy--

MR. MARTIN: Whatever that is.

ASSEMBLYMAN ADUBATO: (continuing) --whatever that is, I think the industry has to bend too. If they feel that they really want to have new starts, if they really want to motivate things, they have to bend. That is all I am saying.

MR. MARTIN: In my view, the bending of the industry, and also the money market - because we are their victim and their partner - will occur in two ways: one, they will go on a rollover route, and maybe they will stretch out the provision, which means you lessen the payments by structuring them on a forty year basis.

ASSEMBLYMAN ADUBATO: That is a good point.

MR. MARTIN: (continuing) But, they will shorten up the term. That I think they will do. But, more important than that to the home-buying public is, they will be increasing bending on what we call the graduated payment mortgages. As an example, right now, on the graduated payment mortgages - which are now available only with FHA's - you can reduce the monthly payment on a \$30,000 home by \$60 and \$75 a month in the early years, but you have to pay it back in the later years. It appears that that is an underwriting challenge; that is int a challenge to the money markets, to a great extent.

It appears that that is the direction that current innovation should go in,

as opposed to stretching out the length of the repayment schedule.

ASSEMBLYMAN ADUBATO: I apologize to the members of the Committee for keeping you so long, but I have learned today. Thank you.

ASSEMBLYMAN BORNHEIMER: Mr. Ed Heil.

E D W A R D H E I L: Thank you. Chairman Bornheimer, and members of the Joint Legislative Committee, my name is Edward L. Heil. I am Senior Vice President in charge of mortgages and real estate lending for the First National State Bank of New Jersey, which is headquartered in Newark. First National State Bank is the lead bank among a statewide network of affiliates, of which First National State Bank Corporation is the parent organization.

I very much appreciate the opportunity to present my views today. In my capacity as a commercial banker, I have been personally and directly involved with the mortgage banking industry for more than 25 years. Moreover, I have had a chance to be actively involved with the Mortgage Bankers Association of New Jersey myself, having served that Association in the past as its Executive Secretary and, later, as past President.

Accordingly, I appear here today as a commercial banking industry representative who is thoroughly familiar with the mortgage banking industry and with the people who work in it. As such, I would urge this Committee to reject the proposal to provide the State Banking Commissioner with the licensing and regulatory authority over mortgage banks and mortgage bankers.

Mortgage bankers, as I am sure most of you recognize, provide an essential function in the process by which permanent mortgages are made available to people who are buying homes. Basically, the mortgage banking industry serves as an indispensable bridge between the builders and the sellers of residential real estate at one end of the financing process, and the permanent lending institutions, such as commercial banks or the thrift institutions, at the other end.

I believe that the proposal before the Committee, if enacted into law, would represent a new example of a growing problem which is burdening the economy of our state and of our nation: that is the problem of unnecessary regulation, and over-regulation by government of business activity in what is supposed to be a private enterprise economy. Increasingly, we see examples of unheeded regulation and regulatory agencies heaped upon business and industry, and particularly upon our financial institutions. As a result, this is an unnecessary increase in the cost of doing business, coupled with an unnecessary increase in the cost of government. All of that, of course, translates into increased cost to the consumer out of the private marketplace, and increased taxes to be borne by the ever-suffering taxpayer.

The mortgage banking industry is already a highly regulated one at the federal level, especially by the Department of Housing and Urban Development. HUD requires, and sets standards for, its own audit guidelines, and, within this certification, requires the independent accountant to complete tests for compliance with HUD regulations. HUD regulations govern such areas as servicing of loans, the origination of mortgages, and the handling of escrow accounts - and, even down to the extent of the per diem interest rate calculations.

Beyond that, other federal agencies, such as the FHA and the VA, have their own separate requirements covering mortgage bankers. They require strict accounting procedures and detailed financial information and conformity with FHA and VA guidelines. Those agencies also have strict regulations

covering the handling of delinquent loans and the granting of forbearance.

Mortgage bankers are also subject to federal regulation as investors, and they create the secondary market in real estate. Accordingly, the Federal National Mortgage Association, that you heard referred to here this morning as Fannie May, and the Government National Mortgage Association, that you heard referred to as Ginnie May, also conduct on-site inspections of the books and the records and set industrywide standards of performance. These two agencies also set financial recording requirements, which in some aspects are more stringent than the standards required by the FHA.

In addition, there are other regulations referred to in earlier testimony, which have been imposed by Congress on mortgage bankers for the protection of the consumer. Individual members of the Mortgage Bankers Association, such as the brokers and the salesmen, are also required to be licensed at the state level under the New Jersey Real Estate Commission.

The Federal Housing Administration imposes stringent rules and regulations on the mortgage banking firms. FHA requires that they have certified public accountants conduct audits to insure that the mortgage bankers adhere to the FHA structural guidelines. Firms that are found to be in violation of these guidelines are subject to loss of their FHA approved mortgagee status.

I do not think that the mortgage bankers of New Jersey need another layer of rules and regulations, particularly at a time when the government itself, and many of its agencies, are questioning the need for more regulation. Gentlemen, I think you will agree that there is a growing concern about the control of government and its agencies over private enterprise. What we hear today is a growing call for less regulation.

My reasons for believing that the mortgage banking industry of the state should not be subject to this imposed licensing and regulation by the State Banking Department goes beyond the problem of excessive government regulation. There is a broader issue, and that is the objective of allowing a respected industry to set and enforce its own professional standards, where a capacity to do so has been clearly demonstrated.

As a commercial banker who has spent more than a quarter of a century in close association with the mortgage banking industry, I know that mortgage bankers have an excellent track record. Most people, including homeowners who have dealt with mortgage bankers, would agree with that statement. Mortgage bankers have performed ethically and effectively for the people of New Jersey and its citizens.

In fact, the Mortgage Bankers Association of New Jersey maintains and enforces a strong Code of Ethics. This code contains a set of canons and standards of practice which must be adhered to by everyone in the industry.

In the few and isolated instances where there have been deviations from that standard, the industry itself, through the Ethics Committee of the Association, has demonstrated a willingness to take forceful action against those who were not willing to adhere to the standard. It has been an effective and self policing mechanism which has served the people of New Jersey well.

There is apparent confusion in the minds of some, arising from complaints of homeseekers who have encountered difficulties in their dealings with so-called financial consultants. This is a problem which is irrelevant to the question of regulation of mortgage bankers. The question of controlling the activities of financial consultants is another matter entirely, and should

not be utilized as a justification for imposing new and unnecessary regulation on mortgage bankers. I share the concerns which have been expressed over the improper practices associated with certain so-called financial consultants; I know that the mortgage bankers of the state also share those concerns. But, that is a separate problem, and should be dealt with as such.

I believe it would be well to recognize that few mortgages are being made in New Jersey these days, a fact attributable to the problems currently pressing on our nation's financial system and overall economy. However, in this climate the mortgage bankers of our state have remained a major source of mortgage money for New Jersey's homebuyers. To make their function more difficult by the imposition of unnecessary regulation can only threaten the viability of an industry which New Jersey very much needs to foster and protect in these difficult times. It is an over-reaction. I would suggest that you reject the legislative proposal.

That concludes my prepared text. I will now answer any questions you may have.

ASSEMBLYMAN BORNHEIMER: Mike.

ASSEMBLYMAN ADUBATO: Mr. Chairman, I would like to ask something about his closing remarks, about the fact that he said there is a need for some kind of oversight, if you will, into those financial consultants, as he calls them, who are ripping people off. If I understand some of the testimony that was presented here at the last public hearing, some of these people who are out soliciting applications and soliciting loans are also people that could be working with mortgage bankers. They themselves are not mortgage bankers.

MR. HEIL: Well, that is a rather wide open statement. You know you are using a wide brush here.

ASSEMBLYMAN ADUBATO: Well, I am trying to say that in order for a person to go out and solicit, he has to have some place where he can deposit his transaction. And, if he goes out and solicits an application, maybe he presents to a person - or an individual - that he is going to finance it through "this" organization. Some of the testimony that was given at the last hearing was that some people were given a name of a mortgage banking operation, and finally what happened was that the prosecutor spoke on the issue, someone else spoke, another attorney spoke on the issue, and when they contacted that institution they said: "No, we have never gotten an application from these people; it is not true. We are not closing the deal." The fact remains, however, that the individual who acquired the application used that entity's name in the transaction -- for credibility, I guess.

MR. HEIL: Probably.

ASSEMBLYMAN ADUBATO: You know, for credibility, and I am not making any accusations, let's make that clear, that the mortgage bankers are in cahoots, or whatever. What I am saying is how do you eliminate those fees and that processing, and also how do you govern the legitimate, if you will, solicitors? I guess there are some legitimate solicitors - I am sure of it - that deal with the mortgage bankers -- or brokers that deal with the mortgage bankers. How do you govern those people under the Real Estate Commission?

I don't understand. People have come before us -- what I am trying to say, I guess, is that people have come here and said, "Well, we don't need this because we have the Real Estate Commission watching over us. We have

HUD watching over us." While I am using a broad brush maybe, from some of the testimony that was given before about what HUD does and doesn't do, at best, it is questionable as to how they do and do not regulate.

The other side of that coin is that the Real Estate Commission and the kind of jurisdiction they have, and what they do, speaks for itself.

MR. HEIL: Well, again, as I said, you are taking many things together.

ASSEMBLYMAN ADUBATO: Yes, I am trying to synthesize it.

MR. HEIL: There are two ways of -- I am sitting here talking to you as a commercial banker involved in mortgage banking and I have also been involved in the operation of the Association, having served as President at one time. But, anybody - and I can't go down numerically and reply to each one of your comments - can go out and represent anything as long as he can present a good story. I mean, I can go out and tell somebody that I am a used car salesman, but I haven't the slightest idea of how to sell a used car. I many have a car that I am going to get rid of and I will say: "In my experience this has been a great car." Really, if the person believes the one who is doing the selling, then he has some credibility.

Now, if that was brought to an association that serviced that industry -- the automobile dealers, or the Mortgage Bankers Association -- it would seem to me that that association would want to deal with that individual as having misrepresented himself. We are saying here that the Mortgage Bankers Association, as it is presently constituted, has formalized itself, and has people who have actually pledged themselves to a constitution and by-laws, and included in there is a code of ethics and standards of practice. They have said that they pledge themselves to adhere to these canons of ethics, and if they don't, they are subject to investigation from their peers and penalty from their peers. If the questions are brought up - as they have been in the past - there have been some instances where the Association has questioned some activities by particular members, and the Association dealt with them. They dealt with some severely, and with some punatively. If the actions are unknown to us, then the Association has no authority to act.

ASSEMBLYMAN ADUBATO: I am not questioning the integrity of the majority of the people in the industry. What I am saying is that, number one, all the testimony I have heard - and this is the second public hearing so far - is, "We are surprised; we weren't aware of these transactions going on" -- I don't know where these people have been. I don't understand why it has taken this for people in the industry that is being "blackballed", if you will, or for people who are saying that they are working with people that are in mortgage banking, and so forth and so on-- I don't understand. I have never seen an advertisement, for instance, in any media that would educate the public, number one, about your industry, insofar as what is and what isn't. I have never seen any public service. You know, it is very flowery and it is poetic to hear people from the industry come here and say: "I am against this bill." You know, I might agree with you. I really might. I don't know yet. I haven't made up my mind whether I am for or against the bill. There are some things in the bill I like and there are some things in the bill that I don't like. But, the one thing I do know is that while all this concern is displayed, and while all this poetry is displayed here, I haven't seen any evidence of anybody in this industry doing a damn thing about it on their own. Because I believe in private enterprise, like you

do, and I believe that we should clean up our own house, like you do, and I believe that we should not have any more regulations. But, damn it, when will we stop just saying that we shouldn't have regulations and do something on our own to stop regulations from being put into place? That is the argument. That is my bitch.

MR. HEIL: Well, if you are now coming back and -- again, you are using poor terms, but if the matters are brought to us, we can deal with them. If the matters are not disclosed to us, we can do noting. Those items that we know about, and that we handle, come to our Ethics Committee, and we do handle them. If those matters are never told to the Association, they can never be dealt with.

ASSEMBLYMAN ADUBATO: Respectfully, again, you just happen to be sitting at that mike, and this is not meant for you, but the fact of the matter is, there is no room, in my opinion, for cop-outs that say "we didn't know," because I believe that the people who are in that industry must know what is going on, and if they don't, they are not doing their job and they are not meeting their responsibility. When we sit here on this side of the microphone -- when I get a call from one of my constituents, I don't say, "The Governor did this, or the Senate did that", they don't want to hear that; they want to know what the hell I did. You know, the buck stops over here where the microphone is. What I am saying to the people in this industry who happen to be here today -- and I apply this to all our industry -- is that I don't think we can piecemeal this and say it is just the mortgage bankers, or it is just the insurance companies, or any part of private enterprise. We are all in this together and the sermon that I am making today is an appeal. It is an appeal that says if you really believe in the poetry that people are talking about here, and have spoken about for two meetings, I would like to see some evidence of it, and then maybe this legislation wouldn't be considered. But, I don't see any evidence of that here. When we don't have any alternative, then we support things that we really don't believe in, because we have no choice, we have no option. Thank you for your patience.

MR. HEIL: For five years this bill regarding the licensing of mortgage banking has been considered in various forms through the Department of Banking and through the Legislature. The mortgage bankers, as far as I know, have never opposed the licensing of themselves. What they have protested against is the matter of overregulation. Now, if the vehicle is to make the mortgage banker legitimate by putting a piece of paper on the wall which says he has a license, then so be it. But, if it comes down to the point of then, through that license, regulating that entire industry, and overregulating the entire industry, then I think that is overbearing.

ASSEMBLYMAN ADUBATO: But, it gives the constituent the opportunity to call the Banking Department and say, "They are under your jurisdiction; I have a legitimate complaint, and I have someone to talk to." Today, they talk to the Real Estate Commission that is never there.

MR. HEIL: Well, I am not speaking for the Real Estate Commission. The Real Estate Commission does have its own licensing procedures. For the Association it is just a matter of the overregulation.

ASSEMBLYMAN BORNHEIMER: Thank you. Mr. Levy will be the next speaker.

ROBERT LEVY: I feel bad for Mr. Heil, who, number one, is a commercial banker; and, number two, was not here at the last session and didn't hear the testimony. That is unfortunate.

First, I would like to start by thanking you for this opportunity, which I intend to use for two purposes. Number one, I will use it to address an issue that hasn't been fully discussed at the present time. And, number two, I will make a few comments, as Executive Director and Counsel to the Mortgage Bankers Association of New Jersey.

I think that it is fairly apparent at this point as to why, when I made my opening statement, I specifically noted that I was not going to try to deal with most of the technical issues regarding the bill and its effect and impact upon the mortgage banking industry. I said at that time that we would have a series of witnesses who would be far more expert than I to discuss these issues with you and answer questions. I think that not only has that become clear, but I hope that what has also become clear is that this is a very, very rather unique and complex business.

I wrote down a quote by a gentleman who came here not at the request of the Mortgage Bankers Association, interestingly enough, but I think he was contacted through an individual mortgage banker. I wasn't aware that he was going to appear until this morning. He was Mr. Populus, and I don't even know if I am pronouncing his name correctly. I couldn't help but write down what he said. The one quote that impressed me the most was, he said, "Without the help of the only people who are helping us, what are we to do"? I think that is the story of the mortgage bankers in the State of New Jersey, who may be much misunderstood, but who I hope have at least clarified, to some extent, their position here today and at the last hearing.

I was asked whether we had met with Commissioner Bianchi with regard to the bill. I believe Senator Wallwork has asked that question several times. I would like to address that briefly. The answer is, yes; we did. We met with Commissioner Bianchi on a number of occasions. We discussed the legislation and, as with, I suppose, any kind of negotiating situations, you can run into difficulty in terms of obtaining your goals for a number of reasons, not the least of which is, again, the complexity of the business, and perhaps the difficulty, from your own sense, of being able to clearly explain the business. We also had some very specific problems with sections of the bill, and we simply couldn't iron them out. I think the Commissioner was fair in discussing the matter with us at some length, and we just simply could not work the problems out.

Therefore, we are here today, and we were here previously, because we are hoping that through the process of hearing us at length in a public hearing -- and we urged this vehicle, incidentally, fully aware of the potential of bad press coverage; we knew that good and bad testimony would be given at a hearing such as this -- the Legislature of the State of New Jersey will become completely informed about the impact of the bill in the context of the true significance of the mortgage banking business. We felt this was very, very important, and it was only through this vehicle that we could have done that.

Unfortunately, at the last hearing a witness came here who created some confusion, I believe, which led to some serious questions as to the ethical nature of the business, as to whether there were illegal operators functioning

in the business, and which has also led to Assemblyman Adubato to question why we haven't come forward to try to cope with these situations previously.

First of all, I would like you to know for your edification that I wrote a letter to Prosecutor Lehrer immediately following the newspaper article that was written in the Star Ledger the day after he gave his testimony, and which I felt was somewhat confusing to the public. I explained in the letter -- I am not going to take the time to read it now -- that we were very, very concerned because we were sure that he didn't intend it that way, but there was great confusion concerning the financial consultant out in the field and the mortgage banker. Mr. Lehrer called me after he received my letter and he told me, with absolute certainty, that he thought he had completely distinguished the mortgage banker from the financial consultant and he didn't want to leave any implication that the people he was referring to were mortgage bankers.

Now, the question comes up: why didn't we deal with such people? And, I can appreciate the disbelief to some extent - I can appreciate why there is some - that we didn't know of their existence. We didn't know of their existence in terms of the problems they are causing because they are so peripheral to this business. And, perhaps to make it clearer, I believe that the people Mr. Lehrer is talking about are not people who are closely associated with mortgage banking. What they do is, they are a breed of cat that does business with all kinds of lenders: banks; I suppose savings and loans; mortgage bankers, certainly; but also second mortgage companies. I believe the testimony was that they do seconds and thirds. I am sure they do unsecured, and I am sure they send people to all sorts of lenders, including private lenders. The people we are talking about are not utilizing the mortgage banker as the sole vehicle for whatever it is they are doing to the public. They are advertising themselves as people who are able to obtain funds, and that they can obtain funds from all sources. That is the point that is so critical here. We are talking about a bill that regulates first mortgage lending, and regulates the mortgage banker in that function. It does not, and will not in its present form, encompass the financial consultant. Yes, you may grab him insofar as he refers a loan to a first mortgage lender, but that is not what you want to do because he is still going to be out there ripping off the public, selling them seconds and thirds and unsecureds, and everything else. That is not going to do anything.

So, you have two separate issues here. One is, can we do anything about the financial consultant? I knew of the financial consultant years ago. I have heard of them. I had never anticipated they would be related to this business, and I think I told you there was a bill at one time that I saw that somebody drafted, and I don't remember where I saw it. So, we have given this a lot of consideration. We feel, certainly, that since it happened to come up in this atmosphere, we are ready to pledge to Assemblyman Adubato and to the rest of the Committees our support and our abilities, to whatever extent they exist, to regulate this individual. And, we think that along with other significant changes that are required in legislation dealing with our industry, and any lending industry of this complexity, that we ought to do something in the way of preparing an appropriate bill, and that bill ought to include, as a separate segment of the bill, a provision for the

licensing of the financial consultant. But, don't restrict the first mortgages, because you will never get them. You have to get him in all of his various lending capacities -- seconds, thirds, and everything.

You want to put him in a bill? Fine. But, let's put him in appropriately, and let's distinguish him, and let's have a definition for the financial consultant, and let's put in the kind of regulation that will get at the evil. Because this bill doesn't, it doesn't even come close when dealing with that kind of an individual.

The problem with this bill and the reason we are here is that it is extremely disruptive of an industry which is serving the public now, and the only one providing the mortgage money for the public. And, if you want to find a good way to injure the public, then pass a piece of legislation that has the potential to provide regulation of fees and charges which will cut off the mortgage market. I know that is not what you want to do. And, I know that is not what Commissioner Bianchi wants to do. We are probably here because of an inability to communicate down to a level where we can all agree that something has to be done, and agree on how to do it. I am hoping that maybe we have cleared up a lot of this.

It seems to me that one of the issues that we constantly heard-- And I understand the problem because I have a problem. I want to say that I can certainly sit here and say without any hesitancy that the business is complex and that probably none of us sitting here understand it in its fullest extent, and that includes myself -- and I have been involved with the mortgage bankers since 1972. I learn every day. And, every other day I am told I am wrong about an interpretation of something, and somebody else will say, "Gee, don't you understand that this is the impact of the secondary market"? And, suddenly, my eyes are open to another facet of this business. I went and took a course for a week, down in Maryland, and that didn't give it to me. So, I certainly feel very comfortable, without demeaning anyone's intelligence, or whatever - because it would demean my own - to say that this is a difficult business to understand.

If I can simplify the most critical factor here - one of them - I would say that we have talked over and over again about how this will impede the mortgage business and the fees and charges, and so forth. And, I think that Chairman Bornheimer pointed out something that may also have been my reaction also, if I were on the other side: "Mr. Levy, I don't understand how you can say that the Commissioner setting the fees and charges is going to inhibit the mortgage market, because he is going to be reasonable, and he is going to listen to you. He is going to ask for your advice when you come in, if he regulates you, and say, 'what do you mortgage bankers think about this particular regulation'?" And, I have every confidence that that is correct. The problem is this, there is no way to set a fee or a charge that won't inhibit the mortgage banker and the flow of mortgage funds, for one simple reason: If, as is very often the case, a mortgage banker has a commitment, a forward commitment that he pays for in advance, from an out-of-state lender in order to have that money available to close a loan six months hence - which is the way he operates; and I think you have gotten that before - then he has to know not what the fee regulation is today, but whether the fee regulation that may be altered several times will, six months from now, accommodate that loan. Because if he pays out "x" dollars, and he can't get "x" dollars back, in the way of fees from the borrower, six

months from then, he is stuck. He may lose money. Will he do it? The answer is, no. He can't afford it.

Mr. Martin told you that it has to be profitable to do business. He will not take that commitment because he can't be sure if, six months from now, the regulation will allow him to get the money back. So, he won't make it. What happens? The public doesn't have the funds.

You have the same problem with Fannie May. Now, Mr. Allen, I might say, came up here very candidly and told you this his company has some problems. We don't deny that there are problems. There are problems due to the uniqueness of the economy today. There are problems due to the fact that Mr. Allen's company, in particular, is producing tremendous volumes of low rate money through Fannie May and is having difficulty getting the money out in time. I think, by the way, one of the witnesses that you heard last week - who had severe problems, incidentally - was related to that company, and it was not due to a desire to hurt, or to unethical conduct, or to intentional behavior; it was a problem. It was a problem that you can't solve by regulation. He just didn't have the manpower. He didn't have the warehousing, and so forth. I don't want to get into all the details, but that was the sum and substance of it. He was trying to help the public, and in the meanwhile people got hurt, inadvertently, and that can't be solved. That will happen once in a while.

But, Fannie May money is very important because you heard testimony to the fact that five-eighths of one percent has to be paid as a commitment fee there. What if that commitment fee changes? The whole problem is that we cannot anticipate or envision the kind of flexibility that is necessary for the mortgage banker to operate, relative to fees and charges. And, if you start to regulate them, there is going to be a serious problem. That is one of our greatest fears. And, that is what we are asking this Committee to recognize, and to take out that unnecessary regulation. It really is not necessary. If what we are talking about, gentlemen, is trying to get -- and this, by the way, is essentially what I think we have heard -- at the kinds of complaints that have been presented to the Banking Department, along with, I might add, complaints about savings and loans, and commercial banks, that doesn't demean them because they are doing business, and if you are doing business, you are going to get complaints. But, if that is what we are addressing, then let's address it. There is regulation in other states that provides the Commissioner with the ability to go in and audit and examine when he has reasonable grounds to believe that there is a problem -- when he has to investigate a complaint, or he has to investigate a particular situation. There is no adversity to that kind of legislation. We don't object to that.

We object to a broad-based, unnecessary power to audit, on a regular basis, a private company that is not utilizing public monies, that is not a depositor -- that is what we object to. We object to a broad-based, regulatory power that doesn't even exclude Fannie May or Freddie Mack. That is incredible. To start getting involved in the very marketplace that we so dearly watch over in the usury rate-- We exempted RS3111. We were always careful to exempt with regard to points when we had prohibitions, which we don't agree with, as you know. And, here we are just forgetting about it. Where is that exemption? Instead, we have a blanket power.

Now, isn't it strange that out of the whole United States we have two states, I believe - maybe a third - one of which is Hawaii, out of 50 states, that even try to deal with the subject of regulating fees and charges. Forty eight states don't touch it. There has to be a reason. As I say, one is Hawaii, and I really can't tell you at this moment what is going on down there. I don't know what regulations have been promulgated. The other state is Florida, and if you look at Florida it is a ten point maximum, which obviously gives the broadest kind of latitude. And, that is set by the Legislature, not by the Commissioner of Banking or any other department. So, we have a completely distinguishable situation with respect to that.

I want to briefly touch on one or two other matters. I know it is getting late, and I don't want to take up too much of your time. One of those matters has to do with the testimony of Mr. Goldberg, who gave you the factual background with respect to why there would be a problem in terms of the equal protection of the law if this bill were passed as presently constituted. He explained that with respect to the hiring of solicitors, the savings and loan industry - or the savings banking industry - can hire solicitors without any kind of examination, or without getting a license; whereas, we could not. They are the same kind of solicitors. They are going out and soliciting the same people. The commissions we could pay to our solicitors could, theoretically, be regulated. But, that does not apply to the savings and loans -- and they are the same fees and charges on the loan, interestingly enough. So, a savings and loan could go to the same house, knock on the same door, make the same loan, in the same amount, with the same term, and everything else, and charge more than the mortgage banker could if he were regulated by way of fee and charge regulation.

Now, as far as we are concerned, we are dealing not with an industry in this case; we are dealing with a marketplace, and that marketplace is the first mortgage market. We say if you are going to deal with the first mortgage market, it has to be dealt with across the board by any lender who is making loans in that marketplace.

Without belaboring the issue, I am sure you are aware of the special law prohibition under the New Jersey Constitution in Article Four, Section Seven; and, of course, the Federal Constitution deals with denial of equal protection of the laws. And, we have cases - which I am happy to provide to you - which say, essentially, that people who are engaged in the same business - and here the same business is the first mortgage market - cannot be subject to different restrictions, or held to different standards. And, there have been some cases - one or two recently - which seem to indicate that you can't take one competitor in the marketplace and impose charges on him, and impose examination requirements on his solicitors, and not do it across the board; you are going to throw the market out of whack.

So, I think we are here at this point in time saying to you that we are pledging, and I am going to ask for your consideration and indulgence in allowing us to do this, to come back to you with a bill. We will do that. We will do that with one that will make sense, that will accomplish what you want to accomplish, and that will deal with the financial consultant. We think that maybe if we can sit down over that kind of legislation, we could resolve some of the problems which you, gentlemen, have agreed exist, to some extent. Then maybe we could have regulation that will make sense, that will not be

harmful to the mortgage market, that will, in fact, support the public interest, and, yet, take care of the legitimate problems that you want to take care of.

Now, I have no doubt in my mind, because we have looked at the complaints in the Department - I said that Commissioner Bianchi gave us the opportunity to do that, the written complaints; I don't know about the telephone calls-- We know what they are. We didn't really come here to sit down to address complaint, by complaint, by complaint, by complaint, because as far as we are concerned, when you get to the bottom line, the answer is not that there aren't any complaints, and not that these complaints shouldn't be corrected, but how to deal with them. We are not saying that they don't exist. We will accept the fact of their existence. They come from the business and the volume that we do in the State of New Jersey. They relate to problems once in a while. You have a problem with an escrow account. There may be a problem with an insurance premium that wasn't paid on time. There may be a problem with an origination fee that may be higher than it should have been. There are all kinds of problems related to the business. They all, incidentally - as far as our investigation reveals,-do not get into any unethical conduct, they do not get into any attempt to deceive or injure the public, nor do they make any attempt to rip off anyone. But, they do occur merely because of the fact that out of so much volume problems will develop. And, every complaint that this industry has ever had against it, or that was related to it, has been dealt with; and, anything that the Department has given us, we have dealt with.

I get calls, by the way, regularly - so that there is no misimpression about this - through the Banking Department. People call my office and say, "We called the Banking Department and they told us to call you," and we deal with the complaint. If a person has a problem, I try and help him. I call the mortgage banker. I say, "What is the problem? Can we help this individual? What seems to be the difficulty?" I have never encountered a problem of any more severity than something that happened due to the fact that there was an error or omission that was purely inadvertent, or maybe negligent. But, it was certainly not willful. I think that these kinds of complaints need a place where the public knows they can go to to address them. And, I agree with that. I think there should be a place where the public knows that if they call a certain number, or a certain department - the Banking Department, or whatever - the Commissioner has some jurisdiction to be able to deal with the complaint effectively, and to be able to go out to the company and be able to talk to the management, and have some teeth. I have no problem with that. The problem we have is with the unnecessary aspects of the regulation, and that is what we ask your indulgence with -- to sit with us and cooperate with us and let us present to you the kind of legislation that will work. Thank you.

ASSEMBLYMAN BORNHEIMER: Mr. Levy, are your fees regulated by the federal agencies?

MR. LEVY: Well, yes, to the extent you heard about, the FHA, and points -- one point to the purchaser.

ASSEMBLYMAN BORNHEIMER: It is a substantial part of your market in these agencies?

MR. LEVY: Yes, a very substantial part, except you have to understand,

Mr. Bornheimer, that if the law has now changed and New Jersey remains, your conventional market could be far more attractive and, therefore, could be a place where you will find even more activity by the mortgage banker, and that is one of the reasons why we certainly encourage leaving the market open, without any restriction on points, because what you do is, you encourage the conventional market rather than letting it remain dormant.

ASSEMBLYMAN BORNHEIMER: Just for your clarification, in Section 2 of this bill, Paragraph (a), it says: "Savings and loan associations, commercial banks, savings banks, insurance companies and credit unions; but subsidiaries and service corporations of these institutions shall not be exempt and shall be subject to the provisions of this act." Therefore, the statement you make, that we should control the whole industry -- we intend to do that with this piece of legislation, I believe.

MR. LEVY: I think, Mr. Bornheimer, if you are reading the same line as I think you are, the language says that the subsidiaries and service corporations are not exempt, but the savings and loans, the commercial banks, and savings banks are.

ASSEMBLYMAN BORNHEIMER: They are all in the same sentence.

MR. LEVY: Yes. I agree. I can understand how you are reading it.

ASSEMBLYMAN BORNHEIMER: The interpretation I have is that they are all covered.

MR. LEVY: Okay, if that were the case, you would resolve a major problem we have with the bill.

ASSEMBLYMAN BORNHEIMER: One other question. The last time we had a public hearing, I think we discussed that there were ten states that had this and we were wondering if we could get some information concerning them?

MR. LEVY: Yes, I have that here.

ASSEMBLYMAN BORNHEIMER: Fine. Would you give that to the secretary so we can make it part of the record?

MR. LEVY: I don't have a copy with me. As a matter of fact, I had a copy, which I gave to one of our members. I may have an extra copy for you, and if I do, I will give it to Laurine as soon as the hearing is over.

ASSEMBLYMAN BORNHEIMER: Mr. Kosco.

ASSEMBLYMAN KOSCO: Just one question. The last time we had a hearing, you listened to the problems that some of the people referred to us. Those are substantial problems.

MR. LEVY: Oh, yes.

ASSEMBLYMAN KOSCO: I would not consider that a minor problem; I would consider that a very substantial problem.

MR. LEVY: Oh, no question.

ASSEMBLYMAN KOSCO: The problem they had was that they had no one to go to to get their problem taken care of. This bill would solve that situation and give the people a vehicle to use in order to attack a problem, when and if one does arise.

MR. LEVY: Yes, you see, that is true. That is why we say we are not here to dispute the complaints. By the way, I am happy that one of the

problems - a very serious problem, and I sympathized with the individual - individual - occurred, from what I understand, as part of a problem with a company trying to market these Fannie May loans at these low rates. They just couldn't control the processing, and so forth. It got a little out of hand. And, while that individual suffered, he also benefited in a peculiar way, because he wound up with a much lower loan rate than he would have otherwise if he was shopping. He got his mortgage, and he might not have otherwise gotten it if that company didn't exist. But, I don't mean to say--

ASSEMBLYMAN KOSCO: Part of this bill would solve that problem, or don't you agree with me? The part of the bill that would solve that problem would be the part that would make sure that there were not subsidiary offices set up with unqualified people in them. This bill would not allow that to happen.

MR. LEVY: Well, they weren't unqualified people. It was due to the fact that -- you see, you are dealing with a very, very unique economic time. I think you know that. And, it is very unfair to try and judge what is going to be happening in the country and in the state, based upon the unique situation developing now. What happened here, as you know because we talked to you about it, was that the mortgage market is just drying up and the savings and loans don't have the money, and the savings banks don't have the money. The mortgage banker is really the only significant one in the marketplace, and here was a mortgage banker who happened to have commitments through Fannie May with low rates. And, suddenly, the market went crazy, and he was deluged with people who were trying to get these loans. In trying to get the loans to the people, he ran into a problem and couldn't do it. It had nothing to do with competency. It had to do with the unique problem that developed, and in that particular case regulation really wouldn't have helped.

But, I still don't want to get on the wrong foot here because I think that certainly if I have a complaint against the mortgage banker - say I am not sure of the way my escrow is computed - I should be able to call somebody. Right now, if I don't get any satisfaction from the banker, I don't have any place to go; I agree with you. All I am saying to you is, let's give the people someplace to go; let's do that. But, let's not, simply to solve that problem, create a regulatory scheme that not only solves that problem but also is so overwhelming, in terms of its regulatory capacity, that it kills the business. This business is delicate enough, as I think you heard in the testimony, to be killed. It really can be killed. You watch the marketplace as it changes, and you watch the flow of funds on a day-to-day basis, and, boy, it doesn't take an awful lot of change to determine cost and to determine the rates on the national markets, and it can really turn off the flow.

ASSEMBLYMAN KOSCO: So, we are really playing in the same ballpark when we talk about the possibility of taking this out of Real Estate and putting it into the Banking Commission.

MR. LEVY: Oh, absolutely. As a matter of fact, if we were to take the Real Estate regulatory power and just shift it over, we would be delighted. The problems were going far beyond that and they were not responding to the real problem, and that is why I say to you that I would be happy, and more than delighted, if these two committees that are sitting would be willing to work with us and, hopefully, with the cooperation of the commissioner

and everyone else involved, to try and put together language that accomplishes what you want and yet doesn't come down on our industry and hurt it as much as this would.

ASSEMBLYMAN BORNHEIMER: Mr. Mays.

ASSEMBLYMAN MAYS: No questions.

ASSEMBLYMAN BORNHEIMER: Mr. Adubato.

ASSEMBLYMAN ADUBATO: Mr. Levy, page 6, Section 13 seems to contain the famous paragraph of these past two meetings. It is a very short paragraph -- about 4 or 5 lines. But, the impact seems to really get to the heart of this legislation, more so than any other section. Do you agree?

MR. LEVY: Absolutely.

ASSEMBLYMAN ADUBATO: And, naturally, I am relating that section to other sections of the bill, where that section would be referred to, as on page 7, 19 (c), and so forth.

MR. LEVY: That's correct.

ASSEMBLYMAN ADUBATO: There may be other different areas also.

MR. LEVY: Yes. That is 14 (c), page 7.

ASSEMBLYMAN ADUBATO: I am trying to think about other entities doing business, like my own, the life insurance business, or any other business. I don't know of any regulation that says that I can't opt, for instance, to make a 20% commission; and, in fact, there are some companies, if you want to handle their product, where you can make a 120% commission. I am against that, but, still, that exists in our society. I guess that is part of private enterprise.

I don't like this section. You know, I hadn't said that until this moment. I have been looking at it. I have been questioning it myself for a while. I have been listening to testimony about it and learning from it. But, I really do not like this section.

Is there anywhere where the fees are totally shown, like on those forms that we were shown, so that a person knows how much he is paying?

MR. LEVY: Absolutely.

ASSEMBLYMAN ADUBATO: Before the deal is sealed?

MR. LEVY: Absolutely.

ASSEMBLYMAN ADUBATO: They know what they are being charged?

MR. LEVY: Absolutely, twelve days in advance, at least.

ASSEMBLYMAN ADUBATO: And, they have the option to try to get a better deal?

MR. LEVY: Absolutely, there is no question about that.

ASSEMBLYMAN ADUBATO: How do you feel, Mr. Levy, about page 7, line 23 (d), where it says: "No person not licensed or not exempt from licensure under this act shall receive any commission, bonus or fee in connection with arranging or originating a mortgage loan for a borrower"?

MR. LEVY: We don't have any problem with that.

ASSEMBLYMAN ADUBATO: You don't have any problem with that? Now, when they say "not licensed", are we talking about real estate licenses, in your opinion?

MR. LEVY: I am not sure the real estate broker is exempt, to be honest with you.

ASSEMBLYMAN ADUBATO: What kind of a license are we talking about, do you know?

MR. LEVY: What this section says, as I read it, is that in order to receive any commission, fees, or bonuses, in connection with arranging or originating a mortgage loan, you must either be licensed as a mortgage banker, broker, or solicitor.

ASSEMBLYMAN ADUBATO: Under this legislation?

MR. LEVY: Under this legislation.

ASSEMBLYMAN ADUBATO: My point is that we are not talking about any known, existing license?

MR. LEVY: That is correct.

ASSEMBLYMAN ADUBATO: We are talking about a new license?

MR. LEVY: Correct.

ASSEMBLYMAN ADUBATO: Where, if this act were to pass, with or without certain amendments, it would have, let's say, the provision--

MR. LEVY: Correct.

ASSEMBLYMAN ADUBATO: (continuing) --that no person could receive any remuneration unless he was licensed under this act?

MR. LEVY: That's right.

ASSEMBLYMAN ADUBATO: All right.

MR. LEVY: Or, he was specifically exempted.

ASSEMBLYMAN ADUBATO: Such as an attorney, or someone working for a savings and loan, or whatever; they would be exempt?

MR. LEVY: That's correct.

ASSEMBLYMAN ADUBATO: Today's law, as I understand it, in New Jersey is, if a person is a finder for a transaction, and he is not licensed, there can still be an arrangement - a contractual agreement - for that person to receive a fee -- a finder's fee. However, if they go to court they do not have to pay that fee because he doesn't have a real estate license?

MR. LEVY: That's right. The courts will not--

ASSEMBLYMAN ADUBATO: But, the law does not say that he cannot receive money for his work. It says they don't have to pay it -- or am I wrong?

MR. LEVY: You get to that interpretation after you go through all the ramifications. What we are saying is, as we read the Real Estate License Act, in order to have anything to do with the origination or negotiation on a mortgage loan, you have to be licensed as a broker. If that is true, then, in theory, you are not entitled to any compensation for that activity, because you are in violation of state law, and the law in New Jersey has always been that a contract which violates state public policy is not enforceable in the courts. So, the bottom line, if you take all of that together, is what you just said, except that it is not a direct interpretation of the law.

If a man takes a fee and isn't licensed -- if he is given a fee, I don't know of any particular penalty, except you would have to look to the person giving him the fee to see whether he is licensed and attack him.

ASSEMBLYMAN ADUBATO: What I am trying to get at in a round-about way is, what criteria do you find when you read this legislation that would qualify an individual from getting a license?

MR. LEVY: What would qualify him?

ASSEMBLYMAN ADUBATO: An individual from getting a license.

MR. LEVY: Disqualify him?

ASSEMBLYMAN ADUBATO: What would qualify him to receive a fee, or a bonus, or a commission? What would the requirements be?

MR. LEVY: Okay, that is a problem under the act because I don't think the requirements are very clear. That is why we had a great objection to having language in the act which says that even after whatever examination requirements the Commissioner finally comes up with, he "may" issue a license. We believe that once you meet whatever requirements are going to be enumerated, that you "shall" get a license; or you should automatically be entitled to a license, upon a finding that you have passed your examination, or done whatever was required.

ASSEMBLYMAN ADUBATO: But, you have no problem with the fact that people would be licensed under a separate license?

MR. LEVY: No, we don't have difficulty with licensing, per se.

ASSEMBLYMAN ADUBATO: Your main problem is with the word "may", as opposed to "shall", once you meet that requirement, or that standard. If you take an exam, or you do something that qualifies you, that should be enough for you to receive a license?

MR. LEVY: That's correct. And, I believe further that there could probably be some more detail as to what kind of examination, or what kind of requirements in terms of examination, should be included here.

We also have a problem, I should note -- Mr. Smith is going to address it -- with the "grandfather clause". He is a mortgage banker that would not meet the terms of the grandfather clause because he wasn't in the business. I think it is a 10 year requirement now. We believe that a change is necessary there.

ASSEMBLYMAN ADUBATO: Last question.

MR. LEVY: Yes, sir.

ASSEMBLYMAN ADUBATO: Did I understand you to say that you feel that, in your opinion, there should be a place for the public to call -- not to call you, who represent the mortgage bankers, when they have a problem -- although there is nothing wrong with that -- but that they should have another alternative?

MR. LEVY: Yes, I agree.

ASSEMBLYMAN ADUBATO: Or, a more independent source?

MR. LEVY: Yes.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN MAYS: Is Mr. Smith here?

F R A N K S M I T H: Yes, sir. I would like to perhaps speak for just one minute.

ASSEMBLYMAN MAYS: Sure.

MR. SMITH: Thank you very much.

ASSEMBLYMAN ADUBATO: Excuse me, Mr. Chairman, while Mr. Smith is walking up, is this "the" Mr. Smith.

ASSEMBLYMAN MAYS: Yes, Mr. Smith from Washington. (laughter)

MR. SMITH: Gentlemen, I apologize. Thank you very much for your indulgence. Specifically, I am a private entrepreneur. I started the company four years ago. Subsequent to that date, I started a second company in conjunction with my first company. We think we are a well-run company. We think we have the interest of the public at heart when we work. We certainly do work for the profit motive, which I think is the American way. On the

other hand, in all candor - I regret having missed some of the hearing this morning - I am not aware of any problem with our company.

Specifically, the statement that I left - which I hope will be entered into the record - basically says this: I feel that, and my attorneys advise me of this, that the legislation, as promulgated at this time, does create a privileged class, with whom I have to compete. Specifically, these are full-time employees of savings and loan associations, who are exempt under this law. Very candidly, relatively few of these people ever go to real estate school. Probably few, if any, have ever been licensed by the Real Estate Commission. Yet, my staff and I may have to go through rather extensive relicensing, when and if this thing does come about.

Second, I don't think there is any adequate grandfather protection under this regulation, as presently promulgated. For example, I think proper provision should be made to see to it that those who are in business now can remain in business. And, when I consider all of the things that can go wrong between the time a law is enacted and the time that new testing procedures are established, we could literally have a void there between the time my people have to stop working and wait until whatever determining factor allows them to begin working again.

So, I respectfully request that you gentlemen consider the various legal citations we have in here. We think that our counsel has been rather direct in citing the constitutional questions. The citations are here for your review. I respectfully request that you do give this another look. Thank you again, gentlemen.

ASSEMBLYMAN MAYS: Just one moment.

MR. SMITH: Yes, sir.

ASSEMBLYMAN MAYS: The people in real estate school -- they can sell real estate too? They make money on real estate?

MR. SMITH: Yes, sir.

ASSEMBLYMAN MAYS: Okay. I just want to make this clear.

MR. SMITH: The people we have working for us are mortgage bankers. I guess I don't follow what you are saying.

ASSEMBLYMAN MAYS: They are wearing two hats. They become a banker for mortgages, and they sell real estate.

MR. SMITH: I see.

ASSEMBLYMAN MAYS: They make money from both.

MR. SMITH: No, not really, sir. The people we have are full time employees of the mortgage company. We follow the rules that were in force when we started the business, and what I am saying is, if we are going to change the rules during the course of the ballgame, fine, but don't strike us out.

ASSEMBLYMAN ADUBATO: Are you saying that people in your company do not hold real estate licenses?

MR. SMITH: No, sir. They are all licensed.

ASSEMBLYMAN ADUBATO: They are all licensed?

MR. SMITH: They are all licensed. All of our solicitors and management are licensed as either real estate sales people, or real estate brokers. However, we have a relatively young management team. We don't have people -- the company hasn't been in business for more than 10 years, and you will

notice that there is a provision in this bill which is something akin to a grandfather clause, but it says that you have to be in business for 10 years. I am saying I don't think that is fair. If we are in business now, and we are licensed by the state, insofar as the regulations to date have made us be licensed, and we are recognized by HUD, by Fannie May, by Ginnie May, and others. I just don't think it is proper to pass a bill that may literally put us out of business until the new tests come about, or whatever. In other words, if you are going to say to people who are already in business, "you have been around for 10 years, or longer, fine, you can stay in business; but you newcomers, now you have to sit on the sidelines until we figure out what to do with you", I don't think that is proper. I really don't. Candidly, that is what this thing addresses itself to.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN KOSCO: I have just one question. There is a provision in this bill that says that this does not affect anyone who is presently employed. They have a year to comply, and this Act does not take effect until July, after the bill is passed. So, if this bill was passed right now, you would have a year from July to comply with the law. So, what you are saying really doesn't affect you.

MR. SMITH: Sir, as an example, a few years ago, when I applied for my real estate brokers license, I happened to be one of the fellows who was caught -- I don't know whether any of you gentlemen are real estate brokers or not - between the old broker's test and the new broker's test. And, the funny thing is, the state had assigned this over to a testing agency in Princeton, I believe, and until they got the kinks in that thing knocked out, believe it or not, because of computer errors and the fact that they really didn't know how to administer the test, a high number of people, who subsequently had established their qualifications, failed the test -- a high number of people. It took the state, in my opinion, perhaps two years to work that whole testing system out.

Now, the mortgage banking business, regardless of what we want to say, is a rather complex issue. For example, I don't know of any test - I have taken a lot of college courses, and whatever, in banking - that can teach somebody how to evaluate yield or how to evaluate the marketplace. It may take the state several years before they come up with an adequate test.

I am simply saying this: If we are in business now, and if we are legally qualified to be in business today, and the state recognizes that fact, that today we are legally in business, and if the federal government recognizes that, and if the Veterans Administration recognizes that, and if Fannie May and Ginnie May recognizes that, I just don't think it is proper for the Assembly to come along and pass a bill that even risks putting me out of business. If I am in business now and if you are going to pass a law, then, by God, pass a law, but say, "hey, if you are in business now, stay in business." That is all I am saying.

ASSEMBLYMAN KOSCO: Well, we certainly don't want to put anybody out of business.

MR. SMITH: Well, that is a possibility right now, with the way the bill is structured.

ASSEMBLYMAN KOSCO: Do you think it would be better, in this section,

to give it more time?

MR. SMITH: No, sir. Sir, my attorneys tell me that you can't take away from someone a right that he already has, and my employees and I have a right to be in business today, unless we have done something criminal, or something wrong. Now, basically, I think there should be a simple grandfather clause, one that I am sure your counsel can devise. It should establish that if you are in business today and this law is passed, fine, you can stay in business. That is all I am saying.

ASSEMBLYMAN MAYS: On that same point--

MR. SMITH: Yes, sir.

ASSEMBLYMAN MAYS: Now, since this will take effect a year from July--

MR. SMITH: That's right, sir.

ASSEMBLYMAN MAYS: (continuing) --what happens to a person who takes the real estate test before that time -- July of '81?

MR. SMITH: Sir, I think it is rather obvious. It would be relatively easy for a newcomer in the business to establish whether or not he is in the mortgage banking industry. The same thing applies to a company. If a company isn't in business-- For example, a HUD approved mortgage might be one of the easy ways to determine that.

ASSEMBLYMAN MAYS: A person who takes the test before July of 1981, and passes the test, you say he is under the grandfather clause and he should not take the test again?

MR. SMITH: Oh, I see what you are saying. You are saying anyone between now and then.

ASSEMBLYMAN MAYS: Right.

MR. SMITH: I think, basically, you are going to have to relate to the companies that are in business, because I think the person's license, to some degree, has to follow the company.

But, I am saying, if you look to the companies, for example, who can establish that they are HUD approved mortgagees and the Federal Government has recognized them, then I think they, their management, and their employees, have a right to stay in business.

ASSEMBLYMAN ADUBATO: Mr. Smith, do you feel indignant about that clause?

MR. SMITH: I am enraged about it.

ASSEMBLYMAN ADUBATO: I am glad to hear that. I would be too, if I were sitting in your seat.

MR. SMITH: No one is going to take my business, and my people, and my jobs away from me.

ASSEMBLYMAN ADUBATO: That's terrific. Thank you, Mr. Smith.

MR. SMITH: Thank you, sir.

ASSEMBLYMAN MAYS: Thank you, Mr. Smith.
Commissioner, we will now hear from you.

A N G E L O B I A N C H I: Just to briefly address Mr. Smith's comments, I would like to call to the Commission's attention that that particular provision that is set forth in the statute was a suggestion that was made to us by Mr. Levy, the Executive Director of the Mortgage Bankers. In his letter, he requested that we provide that solicitors who prior to the effective date of this Act have been employed by a mortgage broker or a mortgage banker --- I'm sorry --- who applied for a mortgage broker's license who prior to the effective date of this Act can demonstrate to the satisfaction of the Commission that he has for at least ten years been principally engaged in the business of mortgage banker or mortgage broker in the State of New Jersey and submits written request to the Commissioner for his approval, implying that should be those people with ten years experience who should be grandfathered.

ASSEMBLYMAN ADUBATO: Excuse me, Commissioner. Is that letter from Mr. Levy?

COMM'R BIANCHI: That is from Mr. Levy.

ASSEMBLYMAN ADUBATO: I think Mr. Levy made a mistake.

ASSEMBLYMAN ADUBATO: I will read it again. It says, "... mortgage banker or mortgage broker who applied ... prior to the effective date of this Act can demonstrate to the satisfaction of the Commissioner that he has for a period of at least ten years ...," and I read the rest of it. It doesn't say "mortgage solicitor"; it says "mortgage banker or mortgage broker."

MR. LEVY: That is probably my error.

COMM'R BIANCHI: The paragraph above that referred to solicitors.

You see here we have heard a lot of things. I am sorry that I didn't have the opportunity to cross examine some of the witnesses who were here. It is wonderful to have people get up here and talk about how great their organizations are and how they have never done anything wrong and nothing should be done because they are supervised completely by the federal regulatory agencies. I don't understand what happened when we had all these people calling us up and coming down here complaining. Then we had the red herring: it only deals with financial consultants. Yet only two of the people who testified against us on behalf of this bill spoke about financial consultants. If you recall the rest of them -- Mr. Levy alluded to the members as 25 or 26. When a witness testified, I looked to see if his name was on there --- yes, his name was on that list. That wasn't a solicitor. That was a mortgage banker who is a member of this organization.

Frankly, I will say that this bill is deficient in a few ways. I think "shall" should be put in, in reference to the licensing if the requirements are met.

SENATOR WALLWORK: What page is that on?

COMM'R BIANCHI: That is on page 2, line 4. I agree with that.

I further agree that the solicitors should not have to take an examination for savings and loans. However, the mortgage banker or the mortgage broker is responsible for the actions of those solicitors.

We did, however, leave out a few things which I want to call to the Committee's attention and ask the Committee to consider. I think at the end of paragraph 4, on page 3, where we have licensing requirements, we should also add language to the effect that one of the things we have to consider is the character and fitness of the individual making the application. I submit that that particular type of language is in most of the mortgage banker bills in the other states.

The other thing we neglected to call to your attention is at the beginning of Section 5, page 5, where it says, "Demonstrated unworthiness, incompetence,

bad faith or dishonesty in the transacting of business as a mortgage banker or mortgager broker or mortgage solicitor," I would also like to add as one of the bases for refusing to grant a license, that he has engaged in any conduct which would be cause for a denial of a license, as far as a renewal.

Going back to the section where we have the "may" instead of "shall," an issue was brought up here: "Well, if a fellow goes bankrupt, you know this is improper to have this bankruptcy provision here." That is exactly why we put in "may" because if the bankruptcy wasn't one which was a result of a fraudulent activity by the person, we wanted to then have the discretion to say, well, that person can have a license. I will call to the Committee's attention when I go through the other states' statutes that all of them have this "may" provision, discretionary with the Commissioner.

SENATOR WALLWORK: That is for the lifting of a license?

COMM'R BIANCHI: That is for the lifting of a license, yes.

SENATOR WALLWORK: But not the granting?

COMM'R BIANCHI: No.

There is one other thing we forgot to put in. I am referring to the fact that we don't have any teeth in this particular legislation - and I agree. Most of the states provide criminal sanctions for violations. That is not in this particular provision. I call your attention to one of the states, Nevada, which provides, as follows: "Anyone who violates the provisions of this section is guilty of a misdemeanor if the amount is less than \$100; he is guilty of a gross misdemeanor, which in our case would be a felony, if the amount is \$100 or more but less than \$1,000, and shall be punished by imprisonment in state prison for not less than one year or more than six years, or by a fine of not more than \$5,000, or by fine or imprisonment, or both, if the amount is \$1000 or more.

I don't say our penalties have to be that stringent. But I want you to know that Nevada considers the violations of their provisions to be so stringent that it automatically carries a minimum of one year in jail and a maximum of six years in jail. I think we do have to have some criminal provisions set forth as far as penalties are concerned.

I agree with the speaker who said we didn't have any teeth in the law.

Briefly - and I am going to be as brief as possible because, in essence, I am rebutting 25 people who came up here - certainly more articulate than I am in dealing with this particular area --- First of all, I want to call your attention to the fact that Mr. Levy was the first person to testify, I believe, on behalf of the mortgage bankers after I made my statement. There was a reference to short notice, complaining that he didn't have sufficient notice and this industry didn't have sufficient notice to come forth and argue about this particular bill. This industry was aware a long time ago that we were trying to push this bill. But I want to call your attention to the fact that nine days before you had your hearing, I informed Mr. Levy that this hearing was going on. I said, "I will see you at the hearing." He indicated nine days before was the first time he became aware of it. A number of people stated they were unaware of the problems that existed. Well, when I go through the changes that we have made in this legislation as a result of suggestions of the mortgage bankers' representatives and their counsel and their executive director, it is going to be quite clear that they were aware of problems that did exist, the same problems that were testified to here today,

and these discussions took place more than a year ago.

You have the usual argument: overregulation and overkill - that this bill really only deals with financial consultant. Those are just red herrings. Only two people out of the whole group dealt with financial consultants. I understand that there is opposition to overregulation. There is no doubt about that. But when regulations are necessary, we have to have them. To argue against them under the guise of "Well, we are having overregulation or it's overkill" is nothing but ridiculous.

Now, I didn't refer to any particular person or any corporation by name. We have had certain people testify here and I just want to call to your attention that of the complaints that we have received through 1980 - and I am not talking about specific types of individuals, but specific types of the industry - on mortgage bankers, of the 420 complaints - and I am not saying one mortgage banker had that many against him - we had 324 against mortgage member people and, of those who call themselves mortgage brokers or use the word "mortgage" in their names, 70; financial consultants or financial companies, 16, and unknown lenders, 10. So I think you can see that the complaints we received dealt not with financial consultants, but dealt with people whose names appeared on the list that was alluded to as the Mortgage Bankers Association membership.

The press in its comments only dealt with those people holding themselves out as people who could get a mortgage and they chose to call them financial consultants. Let's put them in that category of financial consultants.

The argument was made that mortgage bankers bring not all, but most of the money from out of state into New Jersey. I think we have some people from the thrift industry that would dispute that. But I don't think that that is an issue. I don't care if they bring all of the money into the State of New Jersey; if they are doing something wrong that has to be regulated, so be it. As a matter of fact, the more money they bring in, the more reason why they should be regulated because there is more of an opportunity for abuse.

Frankly, I haven't had and you haven't had the full definition of all of these fees that are charged; and I will get into that a little later. But I would call your attention to the gentleman who testified from Forman Mortgage and just, coincidentally, brought you in this application which dealt with a conventional mortgage. Much of the discussion before dealt with these federal mortgages and the problems about getting them. But, for a conventional mortgage, let me tell you this individual he mentioned is probably one of the luckiest characters in the State of New Jersey because on March 27th, he got a 13½ percent commitment - 13½ percent and one point. From the data that we have received on conventional mortgages, as of March 28th, a day later, the average in the industry - and when I talk about the industry, I am talking about the entire financial industry - was 17 plus three points. We didn't find out it was a conventional mortgage until we had some interrogation. It is amazing that we have this one coming in at 13½. He is the luckiest person in the State of New Jersey.

Let me go into the divergence of these particular fees. There may be a justifiable reason for the divergence of fees that hasn't been pointed out to us. This legislation doesn't have us set fees. That is another red herring, talking about where we are going to set their fees. Now, we are talking about guidelines for reasonable fees. I have to compliment Mr. Kennedy, not only do I compliment him on this

particular mortgage, but from the statistics that I have, on March 28th, for a loan, he was charging \$125 for application fee, according to the statistics I have received - and, if I am wrong, he can correct me - and \$150 for a warehousing fee. Yet, another giant in the industry - and I mean a giant in the industry - was charging \$400 for a warehousing fee and, if you wanted to find out what their application fee was, you had to call them. We couldn't get that information. You had to call them for their application.

I don't know - maybe Mr. Kennedy really operates a great business and he only has to charge \$150. Maybe this other fellow is really bad and has to charge \$400. Fine - let's find that out. But when you look at all of the factors that we had here - and we had references here to the fees - even in this fee, the Kennedy Mortgage Company fee, you had first an estimated statement of charges which doesn't conform with the final Section Z because there are a few more charges there, not many, but a few more. Then you have the clinker: it is provided here that you may be required to pay additional amounts at settlement. And we heard it stated, "Well, 12 days before, if they don't like it - if they don't like the figures - if the figures are changed - they can leave." You heard the testimony of people out there trying to get a mortgage. They said they weren't shopping for fees; they were shopping to get a mortgage. And you tell me if you think an individual who comes in and, for the sake of argument, let's say his fees total at the time that they are speaking to him initially \$700 and 12 days before the closing, when he is supposed to move in that house in 12 days, is told, "We need an extra \$500," is going to say, "Oh, no, I'm going to shop around"? I honestly think initially before we had the point limitation removed by the federal legislation that a number of these fees were points in disguise. This is my personal opinion.

We then had an argument about the escrow: we don't hold anybody's funds. Well, they hold escrow funds and escrow funds belong to the public. They hold them in trust for the public. I think you recall - and, Senator, you weren't here - when I alluded to a particular situation with a particular company, which is again one of the giants - as a matter of fact, nationwide - where an error or a mistake to the tune of \$2 million plus was made and that \$2 million plus mistake they had for three months. Do you want to know what happened? Of in excess of 15,000 people who were affected, we only had 35 complaints. If those 35 people out of 15,000 hadn't contacted our department, we would never have known about that. And those 35 people precipitated the return of all of this money to 15,000 people, who I think probably were surprised when they saw that they had that return. When Mr. Levy testified or spoke before you last week, he said it was a computer error. It wasn't a computer error. It was an error, but it wasn't a computer error. They claimed it was a mistake in the law. So be it; we will accept that.

However, there is another company which is not a member of this group, but which is a nationwide organization, which I think we should have under our control if they are going to do business in New Jersey. When we ask about their substantial escrow problem, they, in essence, tell us to go fly a kite. And there is nothing we can do with them.

This bill is here not to gain additional regulatory power for the Department of Banking. We don't need it. Every time we come before the Legislature or the Appropriations Committee, when we get more authority, we have to get more money and it becomes more and more difficult. We have enough problems. This bill was prepared mainly for the purpose of obviating the situations that were discussed and those situations become exacerbated when you have a tight money market. That is what we have today and

that is when the problem really becomes worse.

The other argument that is raised that amazes me is the continual allusion to these federal regulatory agencies. They say, "We have to comply with the FHA, with the VA, with Freddie Mack." All other institutions that are presently regulated by my department, if they want to do business through FHA and VA and these other programs, have the same regulations imposed upon them and the same obligations imposed upon them and the same paper work imposed upon them. So that is just another red herring.

Mr. Scott testified on behalf of the mortgage bankers and he said that auditing was terrible. Well, we audit banks. I submit that maybe if we had the right to go in and look at the books, which is one of the things they are complaining about --- They say they send HUD an accountant's audit. I don't know what is covered by that. I don't know that an accountant's audit would show whether or not there are some discrepancies, whether or not there are some irregularities. I doubt it. We audit banks. We audit them all to guarantee not only safety and soundness, but to guarantee that they are following the rules, regulations and laws of the State of New Jersey and the United States of America.

Fee-setting authority - it is not really fee-setting authority; it is setting reasonable guidelines. I think it has been conceded by members of this organization that we already have that authority under our general powers dealing with savings and loans, and banks. You see, we don't have serious problems because we do, I submit, have that authority. We haven't had to exercise it because when there is something wrong, because of our regulatory authority over them, it is brought to their attention to immediately clear it up. But I would submit that under our general powers, if we had to, we could.

The other argument was that the legislation will not help the home buyers. If we are not out here to help the home buyer, then this Committee is wasting a lot of time and whoever drafted this bill wasted a lot of time because that is the exact intent, to help the home buyer. The spectre, as I said, that is being raised is the greatest bit of overreacting I have ever heard. They say, if this bill goes through, this industry is going down the tubes. I just can't believe it. I can't believe that anyone would get up and say this to you, the members of this Committee. They might think I am a dope, but I hope they don't think that everybody around is a dope.

Then, we had another red herring - licensing by the Department of Insurance. I might say it was never the intention when that bill was passed that the licensing procedure dealt with mortgage bankers, per se.

Mr. Blau testified and, much to his credit, acknowledged that there are some unscrupulous people in the industry. But he said the bill is wrong because it deals with the entire industry. I don't know, but can we take the bill out and segregate it and say we are only going to deal with A, B, and C? Of course, we have to deal with the entire industry. But if you are not unscrupulous, you are not going to have any problems with regulation. We are only going to be dealing with those who are unscrupulous. He went into the flow of funds. Then he made reference to states that don't have these fund restrictions. He was talking about the usuary laws that we had which are no longer in effect. He talked about Arizona and how wonderful Arizona was. Let me call to this Committee's attention the fact that a new mortgage banker bill - and there is one already in existence in Arizona - has passed the Senate and probably passed the House yesterday. The Commissioner there said, as soon as it passes the House, it will be signed by the Governor. And, lo

and behold, Arizona, the haven for money where I think they indicate there are so many mortgage companies -- I think some companies have 10, 15 and 20 offices in one city. I think that was the reference. The new bill gives the Commissioner the authority to set maximum fees. So, we can now add to Hawaii and Florida, Arizona, which was brought up as the panacea for mortgage lending in this country two weeks ago. Ten other states have seen fit to have regulations; as I said, I will go into that later.

Now, Mr. Blau - I am sure he didn't intentionally do it - but he said that they didn't meet with me and they didn't get these complaints until 72 hours before, even though they had asked for them a long time ago. Mr. Levy then got to the microphone and correctly said, "No, we asked for them and the next day the Commissioner told us to come down and look at them all." So, the first time they had asked to look at them was 72 hours before the Committee meeting. But we had many meetings with them and they were culminated by our preparing some legislation and Mr. Levy then writing suggestions from the mortgage bankers whom he represents. He indicates in his letter he appreciated the opportunity to have some input with respect to the proposed bill. He refers to our meeting and then he makes some suggestions. May I just briefly call these to your attention.

In the letter of Mr. Levy, dated September 28, 1979, he referred to the fact that savings and loan associations, commercial banks, and credit unions are presently subject to licensing, examination, and supervision by the State. Therefore, they are exempt from the provisions of this bill. The Mortgage Bankers maintain that in order to preserve the competitive equality of all first mortgage lenders in the primary market, subsidiary and service corporations of such institutions should not be exempt. We then included that in the bill. The last gentleman who testified was from the First National State Bank. I may be wrong, but I think that they do have a subsidiary company, that he works for that subsidiary company, and they do the same thing. It was at their suggestion that we put them in this bill, and we accepted it.

Further, in the draft of the bill, it was required that moneys entrusted to mortgage bankers and brokers be placed in escrow in banks or in insured savings and loans authorized to do business in New Jersey. The suggestion of Mr. Levy and his Association was that this shouldn't be done because it would not enable mortgage bankers doing business in other states to maintain escrow accounts in out-of-state financial institutions. We went along with that and we accepted their amendment and put in, "provided it goes into a deposit which is insured by the FDIC or FSLIC." That was more input from them and more changes from the original bill at their behest.

The Association also proposed an amendment which would limit the authority of the Commissioner to promulgate rules and regulations with regard to licensing and examination aspects of the bill. Some things we accepted and some we didn't.

They also proposed that loans insured or guaranteed by federal agencies or loans governed by any statute authorizing interest charges in excess of those permitted by R.S. 31:1-4, our Usury Law, be exempt from the rules and regulations and guidelines which the Commissioner is authorized to issue with regard to reasonable fees and commissions. We put that in at their request.

They also sought to exempt FHA approved lenders from bonding requirements on the ground that said lenders are required to have capital funds of not less than \$100,000. The bonding requirements are intended to --- I'm sorry. Frankly, I don't

know whether we put that in.

It was also suggested that there should be a waiver of examination requirements for individuals who have been employed by mortgage brokers. And we put that in. I already mentioned that.

SENATOR WALLWORK: When did these meetings take place?

COMM'R BIANCHI: They occurred prior to September 28th of 1979 when I received Mr. Levy's letter. I think we had two or three meetings. But I think the one around the 28th dealt with the final proposed piece of legislation.

SENATOR WALLWORK: In September of '79?

COMM'R BIANCHI: In '79 - and there have been a number of meetings subsequent to that date. Frankly, their real bone of contention is with fees and with our being able to look at their books.

One other provision dealt with operation and supervision of offices and branches. They requested that the provision be deleted in its entirety on the ground that the branch office performs limited functions and would not justify the expense of employing a top management person. As a compromise, we suggested the bill provide - and it is in the bill - that an office or branch be under the supervision of a licensed individual, the definition of which would include a mortgage solicitor.

So, there was input. There were discussions. There were discussions over a year ago. There was this letter. And this legislation has been amended to a considerable degree by the suggestions of this industry. To come to you today and say, "Now, we know all of this and we are willing to regulate ourselves" - well, I don't know. I didn't see anything happen since September of '79 or before September of '79. Sure, they are going to tell you they are going to regulate themselves now because you have them under the axe. They are worried you are going to pass this legislation.

We had some testimony today which I would just like to go over briefly. Mr. Larson testified and said mortgage bankers are being confused by what is going on. I think we have covered that. We have covered the fact that the regulations that he referred to from HUD and the Federal Home Loan Bank also apply to other regulated industries. He said legislation would hinder out-of-state money from coming into the State. I say there are all these other states that have licensing fees, auditing fees, and three that have guidelines for fees to be charged to the consumer. And we have a number of laws that have limitations on fees that can be charged by regulated industries in the State.

We had the reference to the Mortgage Finance Agency. I think there was allusion to the fact that they might not get into this because if we have these fee-setting powers, they might lose money. I happen to be a member of the Mortgage Finance Agency. I am the co-chairman of that agency. There will be no loss. They can't sustain that there will be loss, except possibly for commitment fees which could be lost by the mortgage bankers if they do not fulfill their commitment to the Mortgage Finance Agency. They come in and they ask for a certain amount of money, which is money that they lend out at lower rates than other people do. They lend it out in areas that have, frankly, been green-lined. It is red-lining in reverse. But I also want to say the fees are usually returned if the commitment is not fulfilled by the mortgage banker or the bank or the savings and loan. The mortgage bankers aren't the only people who are involved in the Mortgage Finance Agency. We have a number of savings and loans involved and I think we have some other thrift institutions.

Then we had Mr. Young testify that the profits of Larson Company were \$100,000; and, if they had to pay \$13,000 in fees, they would really be in bad shape.

I can't comment on their financial condition, as to why they only have \$100,000 profit. But I don't think that is a justification for saying we shouldn't have an imposition of auditing fees and licensing fees because one institution might lose a little more than 10 percent of its profit.

Then we had an argument that there will be a lessening of innovation and the public will lose. These other states that have these laws haven't lost innovation and the public hasn't lost.

I think Mr. Populus is a nice fellow. He came up here as a real estate broker and all he talked about were FHA and VA type loans - and they are exempt from this bill. So, really, everything Mr. Populus was talking about, the problems he was concerned about, won't apply because they are exempt from this bill.

Our purpose in this bill and our purpose in setting reasonable guidelines is to lower unconscionable fees which the consumer in a tight market like this can be subjected to. It is going to help Mr. Populus, not hurt the people in Mr. Populus's district. Frankly, those are the people who initially suffer. Then the people in the suburbs suffer and you heard them testify that they are suffering.

Mr. Goldberg in his testimony said, "Financial institutions should be regulated - that's okay - but not us."

Then you went into typical fees - and I don't think you got an answer as to what constitutes typical fees. I really don't think you got an answer to that. I would like to see a lot of these other applications. Maybe they will submit them to you and maybe we will see them. But maybe you will still get a 13½ percent type of application submitted to you when the market is at 16 percent - I don't know.

Mr. Bernardo then testified. Quite candidly, Mr. Bernardo admitted that there were problems - and I think he would have to be living in a dream world if he said that there weren't problems - but they are not as bad in New Jersey. You will recall those other people who came here: the woman who was living in a garage and the fellow who came here and said his stuff was in storage.

I have to compliment the Kennedy Mortgage Company because when you look at the list I have, they probably charge the lowest fees. I wasn't really surprised when their fee schedule was brought up. I was a little shocked when I looked at the regular schedule and found out about that mortgage at 13½ percent on March 27th. That was a hell of a deal. But, of course, I am sure it wasn't brought in here to fool you. I am sure it was a good faith offer. I think most of the arguments that they made were good arguments in support of the need for this bill and good arguments in support of the need for examinations. Who knows what we will find with examination? Maybe nothing. I would hope we find nothing. But maybe we would find something.

You have the fee schedule. You are going to see on the original there are a couple of little changes. We talked about the conventional mortgage - only one point to the seller there. That is good.

I don't think the bill deals with unscrupulous activities. I believe that we have to have a criminal penalty, a jail penalty.

We had reference to the HUD audit and that is an independent audit by their own auditor. Let me say this: HUD was contacted by a number of people who came and testified before you; and HUD, in essence, told a couple of them, "There's nothing we can do about them. We can't do anymore than you." Let me call your attention to the fact that the primary thrust of the HUD regulatory scheme has to do with qualifying the mortgagees and the basic requirements are that the principal activities are mortgage lending or investing in real estate, that the mortgagee possesses sound capital funds of \$100,000 or more, and that an audit report from an

independent accountant be submitted; to retain approval, a similar report must be submitted 75 days at the close of the mortgagee's financial year. That, in essence, was the primary thrust of HUD's regulatory authority. We have been informed that HUD does not send personnel to examine books and records. Occasionally, regional office personnel will check the mortgagee to see how it is performing in servicing and handling its portfolio. There is a limit on the fees and charges to buyers. Essentially, the buyer could be charged no more than 1 percent on the principal amount of the mortgage and actual cost for the other necessary expenditures. There is no limit on what can be assessed against the seller. HUD understands a warehousing fee to be the cost to the mortgagee to hold a mortgage pending its sale on the secondary mortgage market. Remember all this talk we had about - "Oh, we don't know what is going to happen in six months." Well, that is what HUD indicates this warehousing fee is to cover. And this is a cost of doing business. It clearly is not to be charged to the buyer. So, it is charged to the seller. And what does the seller do? He increases the cost of the house. Let's be honest about it. They are going to have to charge the seller points. All the seller is going to do is jump the cost of the house to cover the cost of the points. I really don't think you have to be a mortgage banker to figure that one out.

Should a consumer have a complaint, they address the complaint to their General Counsel's Office. Then it is referred to the Inspector General who makes a determination on whether an investigation is warranted. It is unlikely that individual cases are investigated, but rather a pattern of practice would more likely prompt an investigation from HUD. This is from HUD. This is from Mr. Albright in the Washington Office of HUD. So much for HUD - and I don't know anybody else who comes in and looks at their books.

Now, we went through the escrow problem. There was a statement about the fees being charged. I think we had reference to increasing the cost of fees. I don't know where that one is. Just bear with me a moment, gentlemen. We had testimony that where there was an application fee or an origination fee, they were then charged an institutional fee. We had one where they were charged an engraving fee. I don't know anyone who knows what an engraving fee is.

There was allusion to other states and I just want to point out what other states have in areas that were objected to.

Licensing requirements: Arkansas is one of the states that has a licensing requirement. Arizona has a licensing requirement. Delaware, Florida, Hawaii, Illinois, Nevada and Puerto Rico all have licensing requirements.

Licensing fees: They all have licensing fees. They vary, but they all have them. Some require, as our bill does, that the mortgage broker and the solicitor have to be licensed individually.

Rules and regulations and the exercise of discretionary power: You have to have discretionary power if you are going to set rules and regulations. Arkansas has it; Arizona has it; Florida has it; Hawaii has it; Illinois has it; Maryland has it; and the word "may" is the word that is used - The Commissioner may adopt rules and regulations necessary - may adopt - may issue. Minnesota has it. Nevada has it and Puerto Rico has it.

Fees and commissions: They were right; there are only two states up until now that have this. I think Arizona is coming in with it. I think I indicated to you that Arizona's law will provide that the Commissioner can set reasonable fees. Again, as I said, we are talking about reasonable guidelines; we are not even talking

about reasonable fees. A number of states have some provision dealing with fees, not covering the entire gamut.

Examinations: That was another bugaboo. Arizona's Superintendent may investigate on his own motion or to verify a complaint. So he can on his own do it or on a verified complaint. Arkansas has it. Delaware has it. Florida has it. The department may at intermittent periods make such investigation and examination as it deems necessary. In our bill, it says we can examine, but not more than once a year. It doesn't say we are going to examine them once a year - no more than once a year - except if there is a real problem. Hawaii has examinations. Illinois has it. Maryland does not have any provision. Minnesota does not have the provision. Nevada has it and Puerto Rico has it

Records and accounts: We use 7 years. Maybe it should have been 5 years because 5 years is the statute of limitations on a criminal charge. Arkansas has 5 years. Florida has 5 years. Illinois has 2 years. Puerto Rico has 5 years. Those are the provisions in those states which provide a period of time in which the records have to be kept. I can see 7 years may be too much. But if we are going to have criminal penalties, it should be 5.

Bonding requirements are in most of the states: Arkansas, Florida, Hawaii, Nevada, Puerto Rico, and it will be in the Arizona bill.

Penalties: Other than Delaware, I think they all provide penalties and most of them provide criminal penalties. I say that that is one area in which we have to have it drawn.

These were the main bones of contention. Ten states have it. There has to be a reason for it. One state is changing it and making it more stringent, as a matter of fact, adding a few provisions or guidelines. And those states are still going along. Arkansas had a peculiar problem because, in accordance with their constitution, they have, I think, a 10 percent usuary limit. That was the problem with money going into that state. It really makes me laugh. They talk about Arizona - great - but they didn't know about Arizona having a fee schedule. Now, I guess they are going to find out. When they talk about Hawaii - that's oriental. Florida - I have to admit that the Florida fee schedule is a farce because 8 percent for a loan is ridiculous. I don't know who drew that bill.

I think I have about covered the areas that I was concerned with. I submit we do not want this regulation for the sake of regulation alone. We want this regulation because we feel it is necessary. And I submit this regulation is necessary; it is not overregulation; it is not overkill. With all the money that is supposed to come into this State through these people and with the serious problems we have, these situations are going to become more and more severe. For that reason, we need these regulations. We don't intend to be unreasonable and, certainly, we are not out to put anybody out of business as a result of setting reasonable guidelines. But, if we don't set reasonable guidelines, what have we got? We can go in and look at their books and we can see they charge 5 different kinds of fees for closing because the guy is hard up and he has to get that mortgage. What are we going to do? We are going to put a license on the wall saying you are licensed and we can come in and look at your books. But there is nothing else we can do. The main abuse we have now deals with the question of fees and it is for that reason I say, if that particular section is taken out, then we will have emasculated this bill and the purpose and the intent of this bill is gone.

Thank you very much.

ASSEMBLYMAN BORNHEIMER: Any questions? Mr. Adubato.

ASSEMBLYMAN ADUBATO: Commissioner Bianchi, on page 6, Section 13 b, we refer to the guidelines to determine the reasonableness of fees and commissions. I get more confused when I look at all these different fees for different things and try to label them to see who is paying what and where it is going. I admit I am very confused about the fees and who gets the fees. I understand that part of an application fee goes to HUD?

COMM'R BIANCHI: Part of it does.

ASSEMBLYMAN ADUBATO: The fees we are really talking about are the fees that are retained by the mortgage banker?

COMM'R BIANCHI: Yes.

ASSEMBLYMAN ADUBATO: Those are the fees we are really talking about.

COMM'R BIANCHI: Exactly. That is what they live on because, as they told you, they aren't depository institutions.

ASSEMBLYMAN ADUBATO: They are the only fees we are talking about. In that section, it also says "and commissions." It says fees and commissions. Is there a difference between a fee and a commission? Or are they one and the same?

COMM'R BIANCHI: It is just a question of nomenclature. You can call it a fee or you can call it a commission. That is what we want to cover.

ASSEMBLYMAN ADUBATO: In other words, it is not like a real estate broker selling a home. He gets a commission. He may get a 5 or 6 percent commission, or whatever. Can a real estate man charge anything he wants or is he regulated to a certain amount of commission that he can charge, a certain percentage? Or can he charge whatever the market will bear?

ASSEMBLYMAN BORNHEIMER: I think there is a maximum.

ASSEMBLYMAN ADUBATO: Is there a maximum? I am not aware of it, by the way.

COMM'R BIANCHI: They are all realtors here because they all have their licenses. They should tell you.

ASSEMBLYMAN ADUBATO: I am not a real estate man, but it is my understanding that there is no maximum. Now, if I am wrong, tell me.

ASSEMBLYMAN BORNHEIMER: That is correct. Mr. Larson said there is no max.

ASSEMBLYMAN ADUBATO: I didn't think there was a max on real estate closings. The public thinks there is. Some real estate brokers may charge 4 percent and some may charge 7, or whatever. But there is no minimum or maximum as far as I know. There it is clear because they are getting their money based on that commission for the sale. The issue here is not so clear. It is not black or white; it is very gray. That is part of my difficulty in dealing with this section. If it is true that they are buying money to give it out again, to make money, to produce mortgages, the cost of that money at the time that they buy, the testimony has been, fluctuates. Naturally, at the time we are living in, the money is high. They are turning that money over to make a profit and at a cost that they can make that profit. The problem that I have with this section, Commissioner, is not so much as to how much the fees are going to be because I don't think any of us can control that even if this bill passes and you establish guidelines since those guidelines would have to fluctuate, I would think, according to the market --- Part of the problem could be: What are those fees being charged by one institution as opposed to another institution providing the same service with the same entity? Now the cost of doing business in one entity and another varies. If a person is a good businessman maybe his cost isn't as high as another individual's cost. If he can charge you less fee and make the same amount of profit, I don't see

anything wrong with that.

COMM'R BIANCHI: I think it is good.

ASSEMBLYMAN ADUBATO: He is being rewarded for the cost of doing business. What I would like to see eliminated, if this section does that, is the intrusion, if you will, of the State. And I am not debating the fact now whether we need regulations or licensing or anything else. I am talking specifically about this section. This section establishes guidelines saying, Commissioner, that the charge can't be more than x amount of dollars. Is that what it is saying? If a person gets a \$45,000 loan, he can't be charged more than x amount of dollars for fees to process that loan?

COMM'R BIANCHI: The guidelines, for the sake of argument, would be that you can charge an origination fee. They have those guidelines; they are limited on those particular things by HUD what they can charge for the application fee.

ASSEMBLYMAN ADUBATO: Excuse me for interrupting. Are they also governed on the conventional mortgages for the application fees?

COMM'R BIANCHI: Not on conventional.

ASSEMBLYMAN ADUBATO: But they are under HUD?

COMM'R BIANCHI: Yes, that's right. I heard it in the testimony here about HUD. They are restricted as to what they can charge.

ASSEMBLYMAN ADUBATO: Mr. Levy, being that we are a little informal here, maybe you could help us. Are the fees under conventional mortgages regulated?

MR. LEVY: No.

ASSEMBLYMAN ADUBATO: They are regulated under the federal statutes.

MR. LEVY: There are point regulations by FHA-VA, on a VA loan. It is limited to one point. There is no limitation on the fees paid by the seller. There is an application fee that goes directly to HUD.

ASSEMBLYMAN ADUBATO: That has nothing to do with your cost of doing business, though. Your cost of doing business is not regulated even by HUD. That is the point. So, there is no regulation by HUD.

COMM'R BIANCHI: He said the application goes to HUD. In the conventional mortgage, I have to assume the application fee is going to them, or whoever they are going to move it with. I don't know. Because that is not going to HUD.

What I am saying is, I want to know what an application fee is, or an origination fee, a processing fee, a warehousing fee? What are they all? Don't we have duplication? That is all I am trying to say. We might have to say you can charge this, this and that, as fees, to be fair.

ASSEMBLYMAN ADUBATO: I think we won't be able to tell what is fair and what isn't fair until we have total knowledge of what we are talking about, quite frankly. And, I agree with you, Commissioner, that we need a heck of a lot more information to get rid of labels and get to finding out what is really there.

COMM'R BIANCHI: The only way you are going to do that is by looking at their books.

ASSEMBLYMAN ADUBATO: Well, I have no problem, Commissioner, with looking at anybody's books when they are dealing with public money.

Commissioner, when we talked about the bonding in the statement to the bill, it suggested \$25,000. I brought this out at the last meeting. And, in the body of the bill, there is no amount of money when you talk about bonding.

COMM'R BIANCHI: I believe we had discussed that. I don't know why it was not incorporated in the general part of the bill.

ASSEMBLYMAN ADUBATO: Okay, but, in other words, the thought would be that it would be a minimum of at least \$25,000 for any person that is licensed under this new licensing?

COMM'R BIANCHI: Again, when you look at the other states, they have a scale depending upon the size of the organization, the monies they are handling. I guess we are talking about a minimum of that.

ASSEMBLYMAN ADUBATO: Respectfully, Commissioner, I don't want to take your time up with that. We will discuss that later.

When we spoke about the record keeping processes, and as you pointed out, there is room there to negotiate the fact that seven years might be five or less. I have no magic figure; I have no magic wand, but I am glad to hear that you feel that can be knocked back.

COMM'R BIANCHI: As I said, if we provide criminal sanctions, then I think you would have to make it fraud.

ASSEMBLYMAN ADUBATO: Talking about criminal sanctions, as I read this bill now, there are no real criminal sanctions.

COMM'R BIANCHI: No.

ASSEMBLYMAN ADUBATO: I would not like to see any, by the way. That is my opinion.

COMM'R BIANCHI: They are in every state, and as this gentleman pointed out, there is no teeth. If a fellow rips off somebody for \$50,000 or a group of people, what do I have to do with them?

ASSEMBLYMAN ADUBATO: Commissioner, do you know what I would like to see? You see, I am not just being a critic. I have an alternative. Instead of criminal sanctions being imposed, I would like to see a guarantee fund set up by the industry and when someone in the industry has committed a criminal charge, I would like them to pay the penalty collectively for their peers, if someone in the public is abused. I think that makes a lot more sense than criminal charges, quite frankly, because with criminal charges, the person does not get their money back.

COMM'R BIANCHI: They are fined. You can take it out of the fine.

ASSEMBLYMAN ADUBATO: This is just a suggestion. I don't want to belabor the point. But, I would rather see that, because I think when you have something like that, if you are paying for it, maybe you will be a little more critical of some of those few people who are probably in the industry that are causing problems for the overall majority of the good people in the industry. It may not be a whitewash like in other industries. I am not saying it happens here; I don't know. But, if that is the problem, then you are protecting your own interests.

How did you feel about Mr. Smith's comments, by the way? I realize that you read that letter and so forth, but I would tend to agree with Mr. Smith, quite frankly, Mr. Commissioner.

COMM'R BIANCHI: If he is engaged---

ASSEMBLYMAN ADUBATO: Yes, he is a mortgage banker. The way I understand it, he has a mortgage company.

COMM'R BIANCHI: You have something he sent you. Do you have the name of the company?

ASSEMBLYMAN ADUBATO: Yes, I have it right here.

ASSEMBLYMAN BORNHEIMER: Yes, the U. S. Mortgage Corporation.

MEMBER OF AUDIENCE: Mr. Smith had pointed out our error on the ten-year provision. He was right, and that was the reason for the discrepancy. Mr. Smith pointed out a problem that we were not aware of when we mentioned that ten-year provision in the letter. That is why he is as indignant as he is.

COMM'R BIANCHI: As I said, today is the first day I heard it. I didn't get a supplemental letter since March. There could probably be another provision. I have to be honest with you. That is not written in stone. But where there is proof of qualifications---

ASSEMBLYMAN ADUBATO: Right, assuming that the person is doing business and is qualified to be doing business.

COMM'R BIANCHI: When Mr. Levy supplies us with all the statutes, if you still want them, I think some of the states do provide --- Let me see, it might be of interest to you, three years' experience as a mortgage broker or equivalent and then some have a written application. You have to look into that statute further, I would think.

ASSEMBLYMAN ADUBATO: Commissioner, how much money do you think the State would raise? Has anyone made any fiscal impact study on the amount of money that would be generated by these fees?

COMM'R BIANCHI: Well, I don't think we could, because frankly you probably could make it on--- Here you have the corporations. I don't know how many employees they have.

ASSEMBLYMAN ADUBATO: When we talk about licensing fees, we are talking about the different categories of fees. In other words, a banker, broker, solicitor, the whole bit.

COMM'R BIANCHI: This book doesn't tell me how many solicitors there are.

ASSEMBLYMAN ADUBATO: Is there anywhere it is recorded that we know numerically how many people are in this industry? Does the industry have any idea?

MEMBER OF AUDIENCE: The Real Estate Commission.

ASSEMBLYMAN ADUBATO: The Real Estate Commission?

COMM'R BIANCHI: Do they have them separated? I would assume they just have the names of all the realtors.

ASSEMBLYMAN ADUBATO: They would not know who was engaged in this, unless we want to charge another licensing fee for everyone who sells real estate. I don't know.

COMM'R BIANCHI: Well, frankly, that was another thing that was brought up, the dual licensing. If someone wants to be a mortgage banker, I would submit that they can be licensed under this. If they want to be a mortgage banker and also sell real estate, then they get two licenses. But, it should not be that you have to get two licenses to be a mortgage banker.

ASSEMBLYMAN BORNHEIMER: There may be a stipulation in HUD that you have to have a real estate license.

MR. LEVY: You still have to comply with the Real Estate Commission Act.

ASSEMBLYMAN ADUBATO: Commissioner, you made a statement in the beginning of your presentation that you had failed in getting information about the fee

that was being charged by an institution that is not mentioned in one of those 25 or 26; they said that they would not give you the information.

COMM'R BIANCHI: Oh, yes, not the fee. The question was dealing with escrow and whether they are taking escrow monies out.

ASSEMBLYMAN BORNHEIMER: And application fees, too.

ASSEMBLYMAN ADUBATO: And application fees?

COMM'R BIANCHI: No, monies that they had to pay insurance and taxes, and whether they had increased those when they didn't have the right to increase them, like the instances where an individual company increased them and they had this \$2 million plus. That is what I am talking about. That is that company.

ASSEMBLYMAN ADUBATO: Oh, in other words, they did tell you that their fee was \$450 as opposed to \$125, somewhere in there?

COMM'R BIANCHI: No, no, no. I know what you are talking about. I am sorry; I had that confused. This is a service that is provided. I have to assume that it is accurate, but it may not be, but it is a print-out that most people are getting now, and it is based upon - as I have been told - a call to the institution to find out what their weekly fees are. This was one where I said this individual was fortunate because conventional mortgages were going for 17% plus three points.

Also, I said that Kennedy Mortgage Corporation, according to this, was charging \$125 for an application fee and \$150 warehousing fee. This is according to the schedule. This other large institution, in order to find out what their application fee is, it says, you have to call them, but their warehousing fee was \$400 - \$250 in excess of that.

ASSEMBLYMAN ADUBATO: First of all, that other institution is out of state?

COMM'R BIANCHI: No; no.

ASSEMBLYMAN ADUBATO: It is not out of state.

COMM'R BIANCHI: No, it is one of the larger mortgage banking institutions.

ASSEMBLYMAN ADUBATO: Mr. Kennedy, do you want to say something? We are informal at this point, you may go ahead.

MR. KENNEDY: The warehousing fee could easily vary depending on the source of money. Those of us who bought the same day have the opportunity to deliver the loan and get paid for it within about 25 days. Therefore, we only had to experience the loss for those 25 days. Other lenders have gone out and sought commitments from New York banks or pension funds or the mortgage backed securities and they are denied having the loans paid for maybe up to three months; hence, their warehousing costs would be much greater.

COMM'R BIANCHI: Does the warehousing cost then cover this loss that they are concerned about?

MR. KENNEDY: Unfortunately, it is not an exact science, nor will all of the loans comply to the same model.

ASSEMBLYMAN ADUBATO: Are the warehousing costs regulated here in this bill?

COMM'R BIANCHI: If the bill passes, it will be one of the fees that we would be able to set reasonable guidelines for.

ASSEMBLYMAN ADUBATO: Commissioner, this may be a really awkward, round-about

way to get to what I would like to talk about now, and that is, the cost of money at a specific time. I agree with you, first of all, that there has to be more than just a piece of paper hanging on a wall. In fact, I resented that remark. I don't think it was said that way. But, I resented the remark, "Fine, give him a license and throw it on the wall."

I think too much of this Committee's time and my own time and your time and in fact I even think too much of the person's time who made the statement to make that kind of a statement, so I will forgive him. But, we are not here sitting today just to make you feel good, or to make us feel good by saying, okay, give him a license and throw it on the wall. We are also not here to be punitive or to penalize anyone.

I must learn and I must know more about the impact of that cost of money when you deal with that warehousing fee. If a warehousing fee is the cost of money at a specific time, I have not yet thought of a way we could ever regulate that, or how we could ever put guidelines in to regulate it, when none of us have any control over it. That is my problem more than anything else now.

COMM'R BIANCHI: Just for the sake of argument, the gentleman indicates he can do it at \$150 and this other fellow is having a problem and he claims it costs him \$400. Well, if that is a fact and it can be verified, then they can charge it. However, I am not concerned about the warehousing fee. I am concerned about all these other fees that they throw on. I don't know why there should be a processing fee, or origination fee, or an application fee. That is what I am concerned about. The cost of money can be very easily handled.

ASSEMBLYMAN ADUBATO: I am concerned about the same fees you are.

COMM'R BIANCHI: That is what I am concerned about.

ASSEMBLYMAN ADUBATO: Does anyone from the industry want to say anything about that, the warehousing fees, or any of that?

ASSEMBLYMAN BORNHEIMER: Mr. Larson.

ASSEMBLYMAN ADUBATO: Mr. Larson.

MR. LARSON: The warehousing fee, we don't charge for that at the moment, but that is not because we think it is the way to go. I think we should and save some money. The warehousing fee is developed normally between the cost of money which now to some people is 20% and the coupon rate of the mortgage, and for as long as you have to hold it.

For example, if the rate of that Kennedy mortgage was 13 1/2% and he has to hold it for three months, and he has to warehouse it at 20% of the prime rate, that is 7% or 6 1/2% per annum times the principal amount of the mortgage. That divided by three or four is probably the warehousing cost on that loan. That company is attempting to turn over that cost to the particular mortgagor, probably to keep themselves from going broke, frankly, in this kind of market. We have no control over the escalation of prime rate, and it is spread between the coupon rate and the prime rate. There is no control there. We would like to be able to get in there.

ASSEMBLYMAN ADUBATO: Mr. Larson, how does this address the other problem of the processing of an application and the in-house thing and the different costs that are in there? I am not talking about the cost of money, but the cost of doing business outside the cost of that money, the cost of producing that product.

MR. LARSON: Using your term, if you make this more informative, but developing a forum where we can frankly exchange candidly. Most of us are a little afraid of the Commissioner. I get the feeling that he is a prosecutor, you see.

ASSEMBLYMAN ADUBATO: Well, he was.

MR. LARSON: I think this fear sits on us and probably keeps us from being candid and probably keeps the climate from developing into one where we can have---

ASSEMBLYMAN ADUBATO: Mr. Larson, I appreciate your candidness very, very much. That is very human and very real. Let me assure you that the Commissioner is a very real human being and sometimes I am a little afraid of him, too, to tell you the truth.

But, that is just his way. That is just his style. He doesn't need me to defend him. Just let me say that I agree with you about communications; the most important thing that can come from today right now this minute is communications between your industry and the Commissioner, believe me. And, if that happens like it is supposed to happen, your problems may not be as big as you think, in my opinion. But, you have to communicate.

ASSEMBLYMAN MAYS: What is the longest anybody ever holds money?

MR. LARSON: A year, a year and a half.

ASSEMBLYMAN MAYS: Okay, the average probably would be three months or six months then, and the highest rate so far is 20%. What would the maximum be for holding money that long?

MR. LARSON: To my mind, the maximum warehousing fee would be \$400. I am just thinking quickly without formalizing. And \$150 would be below cost.

ASSEMBLYMAN MAYS: And that warehousing fee you were talking about before was \$400.

COMM'R BIANCHI: One was \$150, and the other was for \$400.

ASSEMBLYMAN ADUBATO: Are these for the same amount of money? Let me tell you part of the problem, gentlemen, and I will be just as candid as you have been. I know that somewhere without being ridiculous there are things here that are meritorious and things that I can support today in this legislation. There are other things here in good conscience there is no way I can even begin to more or less have a conviction - not even an amendment. Forget a conviction, there are some things here that I just can't get an opinion on.

I would like to, with the Chairman's permission, say that the Commissioner has been fighting a battle, not just since January 29th when this bill was introduced, but he has been fighting the battle by himself for a while, and no one listened in my opinion. In fact, some people were arrogant; some people were even abusive, in my opinion. And, I think that the Commissioner tried in his own way, prior to the introduction of actual legislation, to communicate. That is my opinion.

Some of you did communicate and some of you did not. The facts are that we have complaints with your industry. I don't want to overreact and penalize anyone. I know the Commissioner doesn't. You know, gentlemen, when I made the statement to the gentleman from Kennedy, Mr. Martin, that he ought to be in politics, I really meant that. I was not joshing; I was not kidding. More of you ought to be in politics. Commissioner Bianchi is not a banker, as you know, and neither

am I. He is a damn good attorney, and he is a good fighter for what he believes in and so am I. But, you are bankers. This is your business. There is nothing wrong with you being in politics - and forgive the sermon. Maybe if one of you were down here, we could talk informally to your colleagues and help us and guide us. I don't just mean mortgage banks, but any industry. We all want to make money. But, some of you in private enterprise have to make a sacrifice. You should run for elected office. I know some people are smirking out there, and that is tough, because I believe in what I am saying, and I mean it. That is more important than this bill, that kind of a communication. But, for people to come here and abuse a man with innuendo and with smugness, that is something I won't stand for, and in fact, being an emotional person, I might make a mistake and even support something that maybe I don't truly understand. But, out of emotion, I am just liable to take a stand on something without really having that conviction. I hope I never do that. In seven years, I don't think I have ever done it. But, this is one situation where I am coming close. I hope that doesn't happen. I don't think it will. But, that is the kind of a climate that you are in. It is nothing to be afraid of. We are afraid too. Any time you don't have knowledge, you are afraid.

Well, I don't have the knowledge, so I am afraid. You are afraid because you don't have the knowledge of what you are dealing with down here. And, that is because you never come down here. I apologize to everybody.

COMM'R BIANCHI: I would like to ask Mr. Martin a question through the Chairman, please.

On every loan, can you determine what your cost was to you for holding that loan?

MR. MARTIN: We could, however, that would be a historical estimate. Yes, we could.

COMM'R BIANCHI: So, in essence, for the sake of argument, if we had a regulation which provided that you could be charged a warehousing fee which was a true cost of money to you, which we could verify by looking at your books, that big problem you are concerned about holding monies would not exist then, would it?

MR. MARTIN: If you could do that, it would not.

COMM'R BIANCHI: Well, you said you could.

MR. MARTIN: Unfortunately, you are getting into two things, one, the warehousing fee is assessed at the time of closing before the expense has incurred, so you have to base the charge on the anticipation. So you can't wait until afterwards to charge it.

MR. LEVY: You can't have an accurate figure.

MR. MARTIN: And, secondly, we are talking about fear. We live in some concern - I like that better than fear - there is an inborn intolerance of charges that probably reflect active costs. Therefore, our apprehension about the fee setting is present. That is what is in us.

ASSEMBLYMAN BORNHEIMER: I would like to bring this to some conclusion right now. Does anyone have any further questions of the Commissioner?

MR. LEVY: I have a comment about the 13% mortgage. There was some question about Mr. Martin's company, whether he makes those mortgages regularly or whether this was just a peculiarity that he brought down with him. I think he wants to make a very brief comment on that.

ASSEMBLYMAN BORNHEIMER: Go ahead.

MR. MARTIN: I sensed what was being inferred about the case that I brought. I am confident if you were to refuse the conventional loan closings for this mortgage banker, as most in this room, they are probably all closing loans not at the quotes that are represented on that sheet. Rather, they are closing loans on the prices they quoted maybe two, two and a half months ago. The 13 1/2% loan would reflect backwards to the procedure two and a half months ago. I just want to clear that up.

ASSEMBLYMAN MAYS: I thought sixty days was the limit.

MR. MARTIN: Well, the sixty days is the term of our Commission. Generally speaking, you enter into an obligation with the applicant and it is thirty days before the commitment.

ASSEMBLYMAN BORNHEIMER: February 7th is the date on this application.

MR. MARTIN: Then you would look around early February or early March.

COMM'R BIANCHI: Mr. Chairman, can I ask a question? Can I assume, once somebody talks to them and the rate at that time is 13%, if they don't get a commitment for two months, they are still going to get a commitment for 13%, even if the rate is down to 6% then?

ASSEMBLYMAN BORNHEIMER: I don't believe that is what he--- Is that what you said?

COMM'R BIANCHI: I thought that was what he said.

MR. MARTIN: The way obligations are expressed vary throughout the industry. It is characteristic, when an application is taken to say in most periods we are currently going to process your application at 13%, per se, and to the extent it closes within a certain period of time, generally sixty days or ninety days, we will honor that obligation. There are other times when we have no coverage, which has happened, and we say that we can make no expression as to rate. We will take your application, and we will let you know as soon as we have commitments to cover it.

I would say probably 70% of all applications are taken at a rate and that rate is protected.

COMM'R BIANCHI: Is that by you or by the entire industry?

MR. MARTIN: That is the big 26. I don't know about the rest of the industry.

ASSEMBLYMAN MAYS: When does the commitment begin, when you get a letter or when you are talking to the people, or when?

MR. MARTIN: Every lender would have to speak for itself. Part of it is a legal requirement.

ASSEMBLYMAN MAYS: When did the sixty days come into play?

MR. MARTIN: When this company issues a commitment, we generally have a thirty-day commitment from the written letter. We have had the loan in process at least thirty days before that.

ASSEMBLYMAN MAYS: So each company has their own commitment and length of time?

MR. MARTIN: I think you will find that is an averaging term of obligation.

ASSEMBLYMAN MAYS: I was under the impression that for every company it was sixty days.

MR. MARTIN: We are closing loans at 13 1/2% because those loans were brought in in another mortgage market. If there are any dissenters on this, that this is an improper expression of what mortgage bankers are doing today, they should come forward.

ASSEMBLYMAN ADUBATO: Would you be opposed to a uniformity in that commitment?

MR. MARTIN: This is a personal feeling. I am very much opposed to uniformity. We feel that a lot of our success is because we are not uniform---

ASSEMBLYMAN ADUBATO: Forgive me, Mr. Martin, let me rephrase the question. Uniformity in the sense that--- I am not talking philosophically now; I am talking about where a person is given a figure, you said that in 70% of the transactions the individual is given a figure.

MR. MARTIN: An obligation is expressed.

ASSEMBLYMAN ADUBATO: Right. In those instances, that is what I am talking about, not where a person says, "I can't give you a figure;" If you can't give a figure, I mean, I would assume you would still be allowed to do that. But, where you do commit that that time frame should be uniform, is there any problem in that?

MR. MARTIN: I would not attempt to answer that for others. We have policies of forty-five days, fifty, sixty, ninety.

ASSEMBLYMAN ADUBATO: That's okay. I was just curious as to why that couldn't be done.

MR. MARTIN: The question keeps coming up as to the fees, and I can certainly understand it, because I can't understand a truth in lending statement. That is the biggest piece of Federal gibberish I have ever seen. If there were a uniform set of words or fees, in other words, if we had to fit income into six categories, and categories had to have a certain definition that would not impact a tremendous hardship. Some of us call points, points or discounts, placement fees and other words. There is no challenge to imposing uniformity.

ASSEMBLYMAN BORNHEIMER: Commissioner, I would like you to, if you would be so kind, give us a copy of that bill that you were talking about with regard to the other states, for the record.

COMM'R BIANCHI: You want a copy of our breakdown, or do you want a copy of each of the states?

ASSEMBLYMAN BORNHEIMER: A copy of what you were just quoting from.

COMM'R BIANCHI: I have a copy of that. That is my breakdown.

ASSEMBLYMAN BORNHEIMER: Also, give us that other sheets with the rates for the record.

COMM'R BIANCHI: Fine.

MR. LEVY: Mr. Chairman, we very much appreciate this Committee sitting until four o'clock without a luncheon break and showing what we all believe to be a sincere concern over the testimony and the legislation at hand, and we very much appreciate that.

ASSEMBLYMAN BORNHEIMER: I will go one step further and give everybody in the audience an opportunity to submit some written documentation to the Committee aides to become part of the record. That will have to be submitted by next Wednesday at the latest.

ASSEMBLYMAN ADUBATO: Mr. Chairman, before you close the meeting, I would like to publicly for the record state that if any person would like to mail me information, that is what we are here for. My office is at 845 Mount Prospect Avenue in Newark. If you have any documentation or information you would like to send me, please do. I would appreciate it.

ASSEMBLYMAN BORNHEIMER: Thank you. That concludes today's hearing.

(HEARING CONCLUDED)

LICENSING REQUIREMENTS

ARKANSAS

- written application containing general plan and character of business, length of time in business, certified financial statement and such other information as the Commissioner may by Rule or Order require.

ARIZONA

- applicant must have three years experience as a mortgage broker, or equivalent experience in a related business or have successfully completed a course of study approved by the superintendent within five years preceding the application.

written application accompanied by such evidence as prescribed by the superintendent. The superintendent may require additional information of the experience, honesty and competency of the applicant.

DELAWARE

- written application with information as may be required by the Commissioner. If Commissioner finds that financial responsibility, experience, character and general fitness of applicant is such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, license shall be issued.

FLORIDA

- written application accompanied by such evidence as prescribed by the Department.
(In addition, note Florida regulations provide for written examination.)

HAWAII

- written application accompanied by evidence as prescribed by the Commissioner.

LICENSING REQUIREMENTS

- ILLINOIS - application to include such information as the Commissioner of Savings and Loan deems desirable.
- MARYLAND - statute contains none
- MINNESOTA - statute contains none
- NEVADA - written application to include such information as the Commissioner determines necessary.
- PUERTO RICO - application shall contain such information as the Secretary of the Treasury may require.

-
- ARKANSAS - \$250. initial registration fee
 \$150. annual renewal fee
- ARIZONA - \$200. original license fee
 \$100. initial investigation fee.
 \$200. annual renewal fee
 \$ 25. branch office fee
- DELAWARE - \$500. initial investigation fee
 \$500. annual license fee
- FLORIDA - \$ 50. initial investigation fee
 \$ 75. annual license fee for mortgage broker
 \$ 40. annual license fee for mortgage solicitor
 \$ 75. branch offices
- HAWAII - \$100. mortgage broker
 \$ 25. mortgage solicitor
 \$ 2. branch office
- ILLINOIS - \$500. annual license fee
- MARYLAND - \$100. annual registration fee for each place of business
- MINNESOTA - \$ 25. for lenders who make more than 5 conventional loans
 per year
- NEVADA - \$100. original application fee
 \$ 35. original application fee for branches

LICENSING FEES

NEVADA
(cont.)

- Annual renewal fee depends on dollar volume of loans originated in the preceding year:

Under \$1 million	-	\$100.
\$1 to \$2 million	-	\$150.
\$2 to \$3 million	-	\$200.
\$3 to \$4 million	-	\$250.
\$4 to \$5 million	-	\$300.
\$5 to \$10 million	-	\$400.
Over \$10 million	-	\$500.

PUERTO RICO

- Brokers who do not grant loan from their own resources or through the direct or indirect use of credit but only engage in the processing:

\$200.	-	initial study charges
\$400.	-	initial license fee

Other brokers/institutions:

\$500.	-	initial study fee
\$1000.	-	initial license fee

Renewal fee depends upon volume of business. For a mortgage institution, renewal fee is \$1000. if volume less than \$10 million and \$1500. if more than \$10 million. For a mortgage broker, fee is \$400. if volume is less than \$5 million and \$750. if volume is more than \$5 million.

RULES AND REGULATIONS

ARKANSAS

- Commissioner exercise general supervision and control over mortgage companies and is authorized to make reasonable rules and regulations as may be necessary.

ARIZONA

- The Superintendent of Banks may issue and promulgate such rules and regulations as he deems necessary to and consistent with the administration of the Act.

DELAWARE

- No general rule making statute.

FLORIDA

- The Department (of Banking and Finance) may issue and promulgate such rules and regulations as it may deem necessary in the administration of the Act and not inconsistent therewith.

HAWAII

- The Mortgage Commissioner may promulgate such rules and regulations as he deems necessary, including but not limited to rules regarding advertising, solicitations and specifications as to forms and procedures to be used in making any mortgage loan. He may also promulgate rules concerning the full disclosure of fees, commissions and charges.

ILLINOIS

- The Commissioner of Savings and Loan may adopt rules and regulations necessary for the proper administration of the Act.

MARYLAND

- The State Bank Commissioner is authorized, after conducting public hearings, to establish a code of conduct and standard of ethics to govern mortgage brokers and mortgage bankers.

RULES AND REGULATIONS

MINNESOTA

- Minnesota law applies to all lenders with regards to government insured or guaranteed loans, VA and FHA approved lenders may make same pursuant to such rules as the Commissioner of Banks finds to be necessary, and proper.

With regard to conventional loans, lenders are authorized to make same pursuant to such rules as the Commissioner finds to be necessary and proper.

NEVADA

- The Commissioner of Savings Association is empowered to make reasonable rules and regulations as may be necessary to effectuate the Act except as to loan brokerage fees.

PUERTO RICO

- The Secretary of the Treasury shall make such regulations as he may deem necessary for the enforcement of the provisions of the Act.

FEES/COMMISSIONS

- ARKANSAS - No specific provision in statute.
- ARIZONA .- No specific provision, however, if a deposit is required in connection with the application, there must be a written agreement signed by the parties governing the disposition of the deposit, whether the loan is finally consummated or not.
- DELAWARE - none
- FLORIDA - Maximum fee is set by statute and based on net proceeds of the loan:
- a) \$1000. or less - \$250.
 - b) \$1001. to \$2000. - \$250. for first \$1000. plus \$10 for each additional \$100. of loan.
 - c) \$2001. to \$5000. - \$350. for first \$2000. plus \$10 for each additional \$100. of loan.
 - d) Over \$5000. - \$250. plus 10% of the loan.
- In addition to said fees, loan closing costs and expenses incidental to the processing and closing of the loan may also be charged provided they are itemized and supported by actual expenditure.
- Federally guaranteed or insured loans are exempt from the fee schedule.
- HAWAII - The Mortgage Commissioner may also promulgate rules and regulations concerning maximum fees, commissions, and charges on mortgage loans.
- ILLINOIS - No specific provision in statute itself.

FEES/COMMISSIONS

MARYLAND

- Mortgage broker may charge a finder's fee not in excess of 8% of the amount of the loan in addition to a loan application fee which includes the actual cost of any appraisal or credit report obtained by the broker.

The amount of the finder's fee must be set forth in a written agreement and disclosed to the borrower before the broker undertakes to assist the borrower in obtaining a loan.

If the loan transaction is not made to the borrower, he is entitled to a refund of the finder's fee.

Violation of the "finder's fees" provisions results in forfeiture to the borrower of the greater of 3 times the finder's fee or \$500.

MINNESOTA

- On conventional loans, a single service charge not to exceed 1% of the original bona fide principal amount of the loan except that on a construction loan, service charge shall not exceed 2% of the amount of the loan. The excess service charge on a construction loan can only be imposed for itemized, actually performed services.

The definition of service charge does not include costs of appraisal, title fees, recording fees, or fees paid to a third party other than the lender.

NEVADA

- The Commissioner is statutorily precluded from setting loan brokerage fees. However, the statute does provide that advance fees or deposits must be placed in escrow and if the loan or commitment fails, returned to the borrower.

FEES/COMMISSIONS

NEVADA
(cont.)

- Advance payments to cover reasonably estimated costs are excluded provided there is a signed written agreement itemizing the costs and stating that same are non-refundable. For loan applications of \$50,000. or less, advance payments may be retained only for costs paid to third parties.

Violation of the advance fee provision is a misdemeanor if less than \$100., gross misdemeanor if between \$100. and \$1000., and if over \$1000., punishable by imprisonment for not less than one year nor more than 6 years, or by a fine of not more than \$5000., or both.

PUERTO RICO

- No specific statute governing amount of fees. However, a concessionaire is prohibited from failing to refund any deposit after deducting a reasonable amount for expenses incurred when the contemplated transaction is not completed.

EXAMINATIONS

ARKANSAS

- records are subject at any time or from time to time to such periodic, special or other examinations as the Commissioner deems necessary or appropriate in the public interest. In addition, the Commissioner may conduct such examinations, investigations and hearings as may be necessary and proper for the efficient administration of the Act.

mortgage company must file annual financial reports as prescribed by rule of the Commissioner.

mortgage company must upon reasonable notice, account to the Commissioner for all funds in its escrow accounts.

ARIZONA

- superintendent may investigate on his own motion or upon receipt of verified complaint.
if he has reason to believe there has been a violation of statute or rules or regulations of the superintendent, he may conduct an investigation.
fee not to exceed \$100. per day plus travel, lodging and meal expenses of examiners.

DELAWARE

- for the purpose of discovering violations of the Act or securing information lawfully required by him, the Commissioner or his designee may investigate the business and examine the books, accounts, records and files at any time and as often as he may determine.
must file annual reports giving such information as the Commissioner may require.

EXAMINATIONS

FLORIDA

- the Department may, at intermittent periods, make such investigations and examinations as it deems necessary to determine compliance with the Act, but not more than once during a year unless the Department has reason to believe the licensee is not complying with the provisions of the Act.

HAWAII

- if mortgage commissioner has reason to believe a violation of the Act, rule or regulation has occurred, he may make such investigations as he deems necessary and examine the books, records, etc.
no specific provision for periodic examinations in the statute itself.

ILLINOIS

- no periodic examinations specifically provided for in the statute.
commissioner can investigate complaints.
Illinois law establishes a state maximum residential mortgage foreclosure rate on government insured mortgages. If a company exceeds the rate, it is subject to an audit during the course of which public hearings are held.
annual reports must be filed which include "antiredlining data" and additional data as may be required by rule of the Commissioner.

MARYLAND

- none provided for in the statute.

MINNESOTA

- none specifically provided for.
must file annual reports containing such information as the Commissioner may require.

EXAMINATIONS

NEVADA

- the Commissioner may conduct such investigations as may be necessary to determine whether any person has violated the Act and may conduct such investigations and hearings as may be necessary for the efficient administration of the laws.

the cost of any examination, investigation or hearing is assessed to the mortgage company.

when the Commissioner ascertains that the assets or capital of any mortgage company are impaired or that its affairs are in an unsafe condition, he may immediately take possession of all the property, business and assets of the company located in Nevada.

PUERTO RICO

- annual reports containing such information as Secretary may prescribe.

commissioner may carry out investigations necessary for the good administration of the Act. Concessionaire to pay \$40. daily fee for each inspection plus expenses.

RECORDS, ACCOUNTS, ETC.

- ARKANSAS - must preserve records for 5 years unless the Commissioner by rule prescribes otherwise for particular types of records.
- ARIZONA - must keep correct and complete books of accounts and observe generally accepted accounting principles and practices as are approved by the Superintendent.
- DELAWARE - must be preserved for such period as the Commissioner may require.
- FLORIDA - must be preserved for at least 5 years.
- HAWAII - no specific provision in the statute itself.
- ILLINOIS - must keep and maintain a written record with respect to each written inquiry or application made in person or by written communication regarding any home mortgage in the course of conduct of his real estate business for a period of 2 years.
- MARYLAND - none in the statute
- MINNESOTA - none in the statute
- NEVADA - must keep complete and suitable records
- PUERTO RICO - records may be destroyed after 5 years with the authorization and under the supervision of the Secretary.

BONDING REQUIREMENTS

- ARKANSAS - \$25,000. corporate surety bonds (or deposit of cash or government securities in lieu thereof.)
- ARIZONA - \$5,000. surety bond
- DELAWARE - none
- FLORIDA - \$5,000. surety bond
- HAWAII - \$15,000. surety bond
- ILLINOIS - none
- MARYLAND - none
- MINNESOTA - none
- NEVADA - surety bond in the amount to be determined by the Commissioner but no less than \$25,000. If the Commissioner determines that a bond on deposit is insufficient, he shall require an additional bond to be deposited.
- PUERTO RICO - none. However, the statute contains capital requirements:
- a) mortgage institution - \$100,000.
 - b) mortgage broker who does not grant loans from his own resources or through the direct or indirect use of credit but is only engaged in the processing - \$5,000.

PENALTIES

ARKANSAS

- Wilfull violation of statute - Class B felony.
Wilfull violation of rule or order of Commissioner -
Class B misdemeanor.

ARIZONA

- Engaging in mortgage banking activities (with regards to conventional mortgage loans only -)
Without a license - misdemeanor punishable by a fine of not more than \$500. or by imprisonment in county jail for not more than 6 months, or by both.

DELAWARE

- None

FLORIDA

- Engaging in enumerated prohibited acts or offering to negotiate a loan for compensation without a license - felony of the third degree.
Violation of all other provisions - misdemeanor of the second degree.

HAWAII

- Violation of act is punishable by a fine of not more than \$1000. or imprisonment of not more than one year, or both.

ILLINOIS

- If a licensee has engaged in one of the enumerated types of conduct which would warrant revocation or suspension of license, licensee may be fined up to \$10,000. by the Commissioner.

MARYLAND

- Wilfully trading or acting as a mortgage broker or banker without prior registration - guilty of misdemeanor and is subject to a fine of not more than \$1000. or imprisonment for not more than 6 months, or both.

PENALTIES

- MINNESOTA - Fine of not more than \$100. for each offense.
- NEVADA - Violation of provisions of the act is a misdemeanor.
- PUERTO RICO - Violation of provision or regulation - Secretary is authorized to impose a fine of not less than \$100. or more than \$1000.

In lieu thereof, Secretary can institute a criminal action wherein violation constitutes a misdemeanor punishable by a fine of not more than \$500. or imprisonment for a term not to exceed 6 months, or both.

BRODART, INC	Cat. No. 23-221

