

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
S-975 and A-755

(A bill to provide for the licensing and regulation of mortgage bankers, mortgage brokers and mortgage solicitors by the Commissioner of Banking.)

Held:
March 19, 1980
Senate Chamber
State House
Trenton, New Jersey

MEMBERS OF SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE PRESENT:

Senator Eugene J. Bedell, Chairman

MEMBERS OF ASSEMBLY BANKING AND INSURANCE COMMITTEE PRESENT:

Assemblyman James W. Bornheimer, Chairman
Assemblyman Charles Mays
Assemblyman Michael F. Adubato
Assemblyman Louis F. Kosco

ALSO:

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

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ASSEMBLY, No. 755

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1980

By Assemblymen BORNHEIMER, T. GALLO, KOSCO, MAYS
and ADUBATO

Referred to Committee on Banking and Insurance

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 EUGENE J. BEDELL (Chairman): There are four members of the Assembly Banking and Insurance Committee present. Immediately below me, from the left, are Assemblyman Adubato, Assemblyman Mays, and Assemblyman Kosco. I am joined at this time by the Chairman of the Assembly Committee, Assemblyman Bornheimer. So, I think we will get underway right away. We are talking, specifically, about Senate Bill #975, and Assembly Bill #755, which are identical. We would like to call, as the first witness, Angelo Bianchi, Commissioner of Banking for the State of New Jersey.

COMMISSIONER ANGELO BIANCHI: Thank you, Senator. The Department of Banking is supportive of this particular legislation. We feel that this legislation is imperative for the well-being of the citizens of the State of New Jersey.

Just for a moment, I would like to address one section of the legislation, Paragraph 2, Section D. This exempts from the legislation persons licensed as real estate brokers or salesmen, pursuant to -- and there is a chapter set forth -- and not principally engaged in the business of mortgage bank or broker. We feel that we do have some problem with this particular section, and we may be proposing amendments to either remove realtors from the exemption, or to make it more specific. More particularly, I am concerned with the term, "not principally engaged in the business of mortgage bank or broker." If someone does forty nine percent as a mortgage banker or broker and fifty one percent as a realtor, do we say, therefore, that there is an exemption? I frankly don't even see the need for the exemption, but I just want to call that to the attention of the Committee.

I am sure the Committee is aware of the functions of a mortgage banker, or a mortgage broker, but, briefly, a mortgage broker is one who, for a fee, brings mortgage lenders and borrowers together. A mortgage banker is one who, for a fee, both arranges bringing the two parties together and servicing the loan. Loan servicing means collecting payments, seeing that taxes and insurance are paid, and maintaining the property. Mortgage bankers usually act independently, serving several lenders and many borrowers. There are no regulations, specifically, in the State of New Jersey regulating the activities of mortgage bankers, brokers, or solicitors. Solicitors are people who work for them, and who go out to solicit loans.

When a mortgage banker operates under a federal program dealing with a federally-related mortgage loan, they do fall within the regulations of certain federal regulatory bodies. I am sure that we will hear sometime today that they are adequately governed and watched over by these particular authorities. I also think that we will have citizens here who will indicate that that is not absolutely correct. As a matter of fact, on many occasions, after we receive complaints, we advise the complainant to see HUD. They then return to us and advise us that HUD told them there was nothing they could do. I just use that as an aside.

I would like, further, to call to the attention of the Committee that ten states presently have laws which regulate mortgage bankers and brokers.

This particular problem, dealing with mortgage bankers and brokers, became exacerbated during the recent mortgage crunch that we have been experiencing for the last year, or year and one-half. As a result of my being informed that we were receiving numerous complaints, in July of 1979, I requested that my department keep a record of complaints that we received, both via telephone and in the form of written complaints. I call to your attention the fact that in reference to complaints dealing with the same type of activities of a mortgage banker, we received a total of two hundred and forty three complaints against commercial banks, sixty three of them against

national banks, over whom we have no jurisdiction. We received a total of eighty-two complaints against savings and loans, both national and state, and forty-five complaints against savings banks. We received one hundred and forty-two written complaints against mortgage banks or brokers, which is more than the combined complaints we received against the savings banks, and the savings and loans - both of which are regulated in this state - and less than the complaints we received against the banks that are regulated by the state.

In September, I also requested that we keep a log of telephone complaints that we received. I would like to call to your attention the fact that as far as banks are concerned, we received one hundred and seventy-six complaints, fifty-one of them dealing with national banks. Savings and loans received two hundred and sixty-two complaints, twenty-one dealing with savings and loans. And, mortgage companies received seven hundred and fifty-one complaints. The reason why I asked that these complaints be documented and docketed was to call to the attention of the Legislature the number of complaints that we do receive, and, more specifically, the disproportionate amount of complaints dealing with mortgage bankers, as distinguished from the other financial institutions that have always been regulated by the State of New Jersey and the Department of Banking.

I would, just briefly, like to give you some idea of what area we receive the most complaints about. We receive complaints dealing with escrow accounts. I will, more specifically, go into escrow accounts in a moment. We receive complaints concerning application problems. Just to give you an example, we received a complaint where the complainant negotiated a mortgage with a mortgage company and the original estimated closing cost did not include a warehousing fee of forty-two dollars and fifty cents, which they had to pay at the closing, or there wasn't going to be a closing. They were not made aware of that.

Another example, dealing with fees: An individual contractor, dealing with a mortgage company - and I am not mentioning the name of the company - was informed that his fee would total no more than eight hundred dollars. They broke down the fee into a two hundred and seventy five dollar application appraisal fee, a twenty-five dollar credit check, and a five hundred and fifty dollar fee for origination. The mortgage company required three hundred dollars in advance and the balance upon receipt of commitment. At the time the commitment was received, he was advised that the fees had been increased and he would have to pay one \$1,050, which he paid in order to get the mortgage. Eventually, the builder reneged on the contract, so there was never a closing, and the individual paid the mortgage company \$1,050 and did not receive one penny in refund, despite the fact that there was no closing. Of course, I know the argument will be: "Well, we did our work because we got a commitment," but that was the situation in that particular instance.

Another situation also deals with someone obtaining a commitment. He was charged a \$325 processing fee in order to get the commitment, and he was never supplied with a mortgage commitment. The attorney then attempted to get the money back and, as a result of deleterious action, this individual was forced to incur a \$2,878.50 additional expense, caused by his reliance upon the promise that the mortgage commitment would be obtained. We have some people here who will also testify to particular instances of similar nature.

Another glaring incident is when someone poses as a mortgage banker, or broker, and gets the commitment fee from a person, never gets a commitment, and then folds up his tent and disappears in the night. Of course, with no licensing

requirement, it is very easy to do that.

I have a number of other incidents, but I won't burden you with them. We have some people who have complaints. I would just like to call your attention to one specific incident, dealing with escrow. While I am sure - although I am not positive - that this is not the "norm", this did occur. A mortgage company had fifteen thousand, plus, borrowers for whom they were handling the escrows. We received 35 complaints from 15,000 people about this. So, you can see how many people either weren't aware of their rights, or weren't aware that they could come to our department with their complaints. They did take tax escrows, despite the fact that there were no new tax bills, despite the fact that some of the taxes were reduced rather than increased. They had a total of -- I think it is one million, eight hundred thousand dollars that they weren't really entitled to at that particular time. They had it for three months. Now, I don't know what you can do with one million, eight hundred thousand dollars, but I would like to have it for three months; I could certainly make a few dollars with it. However, they did - as a result of our receiving complaints and our pressing them - refund to these mortgage borrowers, one million, one hundred and eighty thousand, five hundred and seventy-five dollars, initially, and they were also going to refund an additional one million, two hundred thousand dollars during the six months preceeding the initial reimbursement. Therefore, this averaged out - and it is not the same in all cases - to \$150 to each individual, and other than the 35 who complained, the fifteen thousand, four hundred and some odd people were, I assumed, surprised that they got back the \$150, which was taken when there was no entitlement to it.

So, these are some of the problems that do exist, especially - and I call your attention to this - in these times. Probably the most active people in obtaining mortgages in the State of New Jersey are mortgage bankers and mortgage brokers. You can certainly realize that being unregulated creates a serious problem for the individuals who are at the mercy, today, of people in the financial industry. So, it is for these reasons, and for reasons that you will hear from other individuals who are here, that we respectfully support the bill, in total, except for possibly requesting an amendment, insofar as exempting realtors is concerned. Thank you very much.

SENATOR BEDELL: Thank you, Commissioner. Are there any questions?

COMMISSIONER BIANCHI: Oh, one other thing.

SENATOR BEDELL: Certainly.

COMMISSIONER BIANCHI: In reference to fees, I know that that will be a bone of contention as far as this particular bill is concerned. I would like to call your attention to the fact that we have received a print-out, which I am sure will be rebutted as not being accurate. However, it amazes me that some institutions will ask for a \$150 application fee; another one will ask for a \$500 application fee; another will ask for a \$375 application fee; another will ask for a \$550 process fee. They are all doing, as far as I am concerned, the same type of work, and if there is something extraordinary they are doing, we don't know about it because we don't see anything from it. Now, I would be glad to answer any questions.

SENATOR BEDELL: Are there questions?

ASSEMBLYMAN ADUBATO: Commissioner, I am not familiar at all with this process, so bear with me. These fees, are these all paid up front?

COMMISSIONER BIANCHI: Yes, in most instances.

ASSEMBLYMAN ADUBATO: You specifically spoke about an incident where an individual was told that this fee was going to be approximately \$800, or something like that.

COMMISSIONER BIANCHI: Yes.

ASSEMBLYMAN ADUBATO: And, it ended up being considerably more than that, and the transaction never was completed. However, the individual was still obligated to pay that process fee.

COMMISSIONER BIANCHI: Right. We contacted that company and despite our efforts, we were unable to obtain any reimbursement.

ASSEMBLYMAN ADUBATO: Do you think there should be some consideration given? I don't see where that is addressed in this bill, by the way, where a person would not have to pay that fee - all of it - unless the transaction is completed.

COMMISSIONER BIANCHI: Well, that may be, Assemblyman Adubato. I think we do have provisions in here, and I am sure you are going to hear from people who are representative of and from mortgage bankers. One of their main bones of contention with this bill was the provision of Section H, paragraph (14) -- No, I'm sorry, (b)--

ASSEMBLYMAN ADUBATO: Excuse me, Commissioner, what page are you on?

COMMISSIONER BIANCHI: Page 6, number 13, which indicates that we will have the right to set rules and regulations, to establish guidelines to determine the reasonableness of fees and commissions, including but not limited to direct or indirect cost or expense incidental to processing and the closing of a mortgage loan transaction.

ASSEMBLYMAN ADUBATO: So, in your opinion, that would cover the problem?

COMMISSIONER BIANCHI: Yes, exactly.

ASSEMBLYMAN ADUBATO: Thank you, Commissioner.

SENATOR BEDELL: Assemblyman Kosco.

ASSEMBLYMAN KOSCO: I have just one question. Is your department prepared to police this and follow through on this?

COMMISSIONER BIANCHI: Oh, absolutely. There is also a provision in the bill which sets up certain funding initially and there were also fees--

ASSEMBLYMAN KOSCO: Was that amount of money established by the department, assuming that it could be handled?

COMMISSIONER BIANCHI: Yes, and I have been told that it may not even be enough, but I don't want to argue appropriations. Yes, we are.

ASSEMBLYMAN KOSCO: Okay.

SENATOR BEDELL: While you are on that, Commissioner, is it anticipated that this is operational, assuming that it is; that the fee schedule will be able to maintain the increased costs of administration?

COMMISSIONER BIANCHI: I'm sorry, I didn't understand that.

SENATOR BEDELL: The fee schedule itself?

COMMISSIONER BIANCHI: Oh, yes.

SENATOR BEDELL: Will it be self-perpetuating?

COMMISSIONER BIANCHI: The fee schedule, we believe, will be sufficient -- the fee in the examination schedule.

SENATOR BEDELL: Right.

COMMISSIONER BIANCHI: Yes, as it is with our other institutions, we charge an examination fee.

SENATOR BEDELL: All right. Chairman Bornheimer, do you have any questions?

ASSEMBLYMAN BORNHEIMER: No, no questions.

SENATOR BEDELL: Thank you, Commissioner.

COMMISSIONER BIANCHI: Thank you.

SENATOR BEDELL: The Joint Committee would like to call upon Mr. Alexander Lehrer, County Prosecutor, County of Monmouth, New Jersey.

I might add - I should have said this at the outset - that if anyone has a position paper and has copies available, we would like to take them in advance. If not, if you have one copy, please leave it with us before you depart so we can reproduce it for the record.

ALEXANDER LEHRER: Senator, I am here to testify on behalf of the concept of this bill. We find, in the County of Monmouth, and in law enforcement in general in Monmouth, that with the economy, people are seeking other than traditional ways of selecting mortgages. There has been advertising in local newspapers, indicating that mortgages are available for first, second, and third mortgages. We are currently doing a number of investigations, and I brought with me Investigator Feabizio, from my office, to answer specific questions on these investigations.

Basically, we have seen situations where application fees are charged and they are also tied in, on a number of occasions, to insurance policies - life insurance policies - where these people who are allegedly brokering mortgages indicate to the people who are seeking mortgages that they must buy life insurance policies in order to secure them. The application fees are paid. The insurance policy premiums are, in fact, paid, and there is no action ever taken on the mortgages. Some of these organizations just fold up and leave. We believe they are opening under different names in different places. And, the ones that do not fold up and leave just indicate to the people that there are no mortgages available.

We find that in this kind of economy, and with this kind of situation, the resources of the Monmouth County Prosecutor's office and law enforcement in the county of Monmouth are being devoted to investigating a number of complaints, which, if there was some regulation, we could coordinate with the Commissioner, and, certainly, assure to the public a better system.

This is not to say that the great majority of mortgage brokers who we feel are legitimate would in any not benefit by this piece of legislation. In my opinion, it would restore the faith of the community in the legitimate mortgage brokers, and it would serve as a benefit to them. What I am basically testifying to are the kinds of schemes which I have outlined to you. I feel that the policy of this bill is essential to law enforcement, particularly in Monmouth County.

SENATOR BEDELL: Thank you. I would suspect that your investigator should join you at this time in the event the Committee would like to direct some specific questions to the area you have alluded to.

MR. LEHRER: May I introduce to you Investigator Robert Feabizio.

SENATOR BEDELL: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Mr. Prosecutor, I think I have seen you on television once or twice. I am interested in -- I assume you are talking about credit life insurance on these policies?

MR. LEHRER: It is sold as mortgage insurance.

SENATOR BEDELL: Individual sales?

MR. LEHRER: Yes, sir.

ASSEMBLYMAN ADUBATO: Because there is a maximum, I understand, on credit life that an individual can buy. So, you are really talking about individual life insurance sales?

MR. LEHRER: That's correct.

ASSEMBLYMAN ADUBATO: To cover the term of the mortgage and the amount of money?

MR. LEHRER: That's correct, sir.

ASSEMBLYMAN ADUBATO: Is this actually part and parcel of the agreement, or are they given an opportunity to buy it? I mean, is the individual more or less intimidated to buy the insurance?

MR. FEABIZIO: He is led to believe that if he does buy the insurance policy this will be an act of good faith to the mortgage company, showing that he is willing to maintain mortgage payments. That is what it is set up to be to the prospective borrower, an act of good faith.

ASSEMBLYMAN ADUBATO: What I am trying to get at is, I would have no problem, being in the life insurance business for 20 years, if they legitimately say to the man, "Hey, you are going to have a burden and we suggest that you go out and talk to your broker, or life insurance man if you have one, to cover this need, because if something happens to you, it is going to be a burden on your family." I have no problem with that. I do have a problem if you are saying that the person who is supplying the money is selling the insurance; then I do have a problem.

MR. LEHRER: That is the case we are speaking of. It is not the case where someone is advising - and I agree with you - that in many cases it is a good policy to get credit life insurance to cover a mortgage. That is not the case we are talking about. When the applicant comes in, pursuant to this newspaper article, and he pays his fee, as investigator Feabizio indicated, it was suggested to him that he purchase that policy through the person who is the mortgage broker.

ASSEMBLYMAN ADUBATO: In other words, Bob, they have the applications right there, the life applications, and the process takes place, physically, right there?

MR. FEABIZIO: They represent an insurance company.

ASSEMBLYMAN BORNHEIMER: Would you speak into the microphone, please?

MR. FEABIZIO: They represent an insurance company, in this particular instance. They normally write business for that company.

ASSEMBLYMAN ADUBATO: So, really, it could be interpreted that their concern isn't really the fact that the person needs insurance, but the fact that they buy it from them, regardless of cost or competitiveness? There is no competition, in other words -- this is it, and this is the contract?

MR. REABIZIO: The contract is that they buy the insurance from them, and they also act on their behalf to secure a mortgage, but they put it to the prospective borrower that one follows the other -- the mortgage application follows the insurance and it is presented as a package.

ASSEMBLYMAN ADUBATO: Is there anything on the actual mortgage transaction where it would indicate the fact that the individual bought life insurance?

MR. LEHRER: No, the application for the mortgage itself is vague, at best. It doesn't specify the type of mortgage that these people are contracting for, nor terms -- nothing to indicate what it is. It is an application to the broker to act on behalf of the borrower to secure a mortgage. That is, in essence, what the application is. Most often, they don't see another application. My experience is they are rejected. I have had conversations with the broker and his response to me was that these arrangements were made over the telephone. These people were rejected over the telephone. Sometimes they are sent a letter saying that they are rejected. Sometimes they are just not told anything. Any response to telephone calls, telephone inquiries, or letters are met with a put-off: "call me later," or "see me next week," or, "it hasn't gone through yet; we are anticipating a response within a certain period of time." And, eventually they give up.

ASSEMBLYMAN ADUBATO: Excuse me, I don't want to be redundant, but are we saying that these people who don't buy the insurance are given this treatment?

MR. LEHRER: They buy the insurance and they are given this treatment.

ASSEMBLYMAN ADUBATO: In other words, after they pay?

MR. FEABIZIO: It is after they pay. Also, after they pay the fee to process their application--

ASSEMBLYMAN ADUBATO: Is there any pattern to a specific company that is handling most of this life insurance? Could you tell us what companies are handling most of these transactions?

MR. LEHRER: These matters are still under investigation by our office, so I have asked not to go into specifics. We can only give you generalities.

ASSEMBLYMAN ADUBATO: The reason why I bring that up, Mr. Prosecutor, is because in my experience in the life insurance business, I have seen something similar that I won't get into right now, where the companies that were making the transaction were paying a commission of 120% a year. The first year commission was 120%, which means that if the individual paid \$100 for the first year premium, the agent actually got \$120. I have seen this.

I am just curious to find out if this same company is still doing business in New Jersey. By the way, I experienced this long before I was in the Legislature. I would just like to know just how bad these people are being treated. I am not against commission; that is how I eat. But, I am against this kind of transaction, where a person is intimidated. There should be some kind of control, to give the individual the opportunity to go out-- Again, I am not against a person covering their need, but I think it is totally unethical to put a person in that position, when it speaks for itself why he is there. He is looking for a second mortgage, and then you throw an application in front of him; this guy is going to sign just about anything that is in front of him.

MR. LEHRER: Sir, we have received letters from applicants who have indicated to us that they were just not aware of the fact that they didn't have to pay an application fee in order to secure a loan. These people come in. They see an ad in the newspaper. They know they have a need for a mortgage, and they probably don't know about traditional lending institutions, or approved mortgage companies.

ASSEMBLYMAN ADUBATO: And, everything they are doing is totally legal today, isn't that right?

MR. LEHRER: Absolutely.

ASSEMBLYMAN ADUBATO: They collect their fee - the whole bit - and they don't have to process. They don't have to go beyond that. They have their money and they can run.

MR. LEHRER: Also, you are seeing a combination of a lot of services, where a person who may be an insurance broker is now combining his services to be a financial consultant, a mortgage broker, an insurance consultant, and he sells it as a whole package, when, in fact, he may just be a licensed real estate broker, or a licensed insurance broker. The problem is, as the Commissioner so well put it, we need licensing of those kinds of mortgage brokers, so that we can, in law enforcement at least, cooperate with the Commissioner's office, to find out exactly what is happening and to have some regulation. There are a lot of people who don't understand the financial market, and they think that they have to pay these fees in order to-- I guess I don't either.

ASSEMBLYMAN ADUBATO: With all due respects to you, I don't think we do either.

MR. LEHRER: But, it is a basic fact that you don't have to pay these kinds of fees in order to secure a loan. Some of them are exorbitant.

ASSEMBLYMAN ADUBATO: Thank you. Thank you, Mr. Chairman.

SENATOR BEDELL: Assemblyman Mays.

ASSEMBLYMAN MAYS: Yes. You heard the Commissioner say he has received complaints, since July 1979. He has been recording that. In 1979, in Monmouth County, how many complaints did you receive? What was the procedure? Did you prosecute them, or did you try to prosecute them? What was your follow up?

MR. FEABIZIO: There were six complaints involving two companies.

ASSEMBLYMAN MAYS: Could you tell me what these complaints were?

MR. FEABIZIO: Basically, people responded to an ad in the newspaper, advertising for second and third mortgages. They called the number indicated in the ad. They were contacted, or were required to go down to the office, or the Financial Planning Service. They filled out an application. At this time, they also filled out an application for insurance. They were required to put up anywhere between \$175 and \$200 as an application fee. In addition, they would be required to pay a year's premium on the policy. At that point, if they didn't get the mortgage, which is the case with the complaints. They called and got no response. They were promised action within a certain period of time - a week or two weeks. When they didn't get any response within that period of time, they either called or wrote, and they got to the point where they never got any satisfaction. When they never got any satisfaction, that is when they contacted our office. But, I should add in all fairness to the insurance companies, some insurance premium fees were returned to the customers by the company. But, the application fees were not.

MR. LEHRER: May I add one thing, sir? What we are talking about is just the tip of the iceberg because when an investigation, such as this, is complete and made public and an indictment results, or some criminal action results, there are a myriad of people who then contact the office, who now realize what they were involved in was illegal. So, this is a very deceptive figure.

ASSEMBLYMAN MAYS: Have you had any indictments?

MR. LEHRER: The matters are both still under investigation.

SENATOR BEDELL: Assemblyman Kosco.

ASSEMBLYMAN KOSCO: You are telling us, Mr. Prosecutor, that your problem is that you don't have a law to hang your hat on and that this would give you a tool to use to prosecute.

MR. LEHRER: Not only would it give us a tool to use to prosecute - I don't think there are any criminal penalties in this existing law - but it would give us an agency that is competent and that knows the area to refer these matter to, and to hold hearings under.

ASSEMBLYMAN MAYS: This law does provide penalties.

MR. LEHRER: Yes, but the Commissioner of Banking would administer those penalties. It would give us an agency that is competent, that are professionals in the areas of banking, mortgage banking, and things like that, with the powers of audit and subpoena, as I understand the bill. We would be able to coordinate with them and communicate with them, and refer things to them.

ASSEMBLYMAN MAYS: At the present time, if you do find something that your office feels is wrong, you are prosecuting on the basis of fraud, or--

MR. LEHRER: Fraud, or obtaining money under false pretenses -- those kinds of things.

ASSEMBLYMAN KOSCO: With this bill you would be able to relate to a specific?

MR. LEHRER: Well, this bill, from a law enforcement point of view, would allow us to coordinate with the Commissioner of Banking and advise him as to possible violations. As I understand the bill, he would act basically not as a police agency but as a hearing agency who controls that group. I presume that if he found something so outrageous in the County of Monmouth, he would refer it to us and we would investigate it and present it to a grand jury. But, under current law, there is no requirement for any kind of accounting, any kind of audit, any kind of licenses, any kind of training. If we want to look at these cases individually - a \$200, or a \$500, or a \$1,000, or a \$1,500 obtaining-money-under-false-pretenses case - that is really not the problem we are addressing. We can do it on a piecemeal basis, but the problem that we are really trying to address is the one concerning people who are not mortgage brokers, who are not qualified to be mortgage brokers, who hold themselves out to the public to be mortgage brokers and who are really duping the public for basically what amounts to registration fees, or fees of from \$300 to \$500. Now, these people aren't dumb either. They know the limited resources of law enforcement and they know that if within certain priorities, you have six, seven, or eight, \$500 to \$750 obtaining-money-under-false-pretenses cases, they may be treated in a different fashion than if you could put it all together under one giant plan and say, "you violated the Commissioner of Banking's regulations", or whatever -- I don't know if I am making myself clear.

ASSEMBLYMAN KOSCO: Yes.

MR. LEHRER: Okay. Rather than a piecemeal approach, this legislation, through coordination with the Commissioner's office, would enable law enforcement to really deal with the problem, and that problem is the kind of people that prey on the unfortunate who come to them for mortgage money.

ASSEMBLYMAN KOSCO: Thank you.

SENATOR BEDELL: I would like to follow the line of questioning that Assemblyman Kosco has established. I might be rephrasing some of those questions for my own edification.

MR. LEHRER: It is always a pleasure to answer your questions, Senator.

SENATOR BEDELL: Okay. Mr. Prosecutor, you would, naturally, be in contact with prosecutors from other counties in New Jersey. Is this a practice, from your knowledge, that has been reported to be widespread in New Jersey?

MR. LEHRER: Well, Senator, I really did not talk to them about this matter. Had I known you were going to ask that question, I could have polled them. But, I can't really speak for any other county prosecutor at this point. I am sorry.

SENATOR BEDELL: Predicated on what you have said, I am assuming at this point that these practices are not illegal at the present time, under current statutes, except, of course, if the advertising is fraudulent or something like that. But, the practice itself is not illegal.

MR. LEHRER: That is correct, Senator. The problem is, basically, in order to prove obtaining money under false pretenses, you have to prove that these people, at the beginning, were not going to do anything for the application fee. In this kind of mortgage market, it is very easy to take an applicant's fee and say - especially to the kind of people who are applying; the ones we are talking about - that there is no money available. In the contract it is very clear that the application fee is not refundable.

SENATOR BEDELL: Then in your experience and from your investigations, would

you say that with the money market as tight as it is today the incidence of these things is increasing?

MR. LEHRER: There is no question about it, sir.

SENATOR BEDELL: Bob, would you agree with that?

MR. FEABIZIO: Yes.

SENATOR BEDELL: Based on what you said, I would draw the conclusion that the consumer is almost at the complete mercy of these individuals, is that correct?

MR. LEHRER: That is our opinion, sir.

SENATOR BEDELL: And is it your opinion that this bill would act as an effective tool to prevent those kinds of practices?

MR. LEHRER: In my opinion it would, sir.

SENATOR BEDELL: Thank you, gentlemen.

MR. LEHRER: Thank you very much, Senator.

MR. FEABIZIO: Thank you.

SENATOR BEDELL: I would like to call upon Mr. Robert Levy, Counsel, Mortgage Bankers Association.

R O B E R T L E V Y: Thank you, Mr. Chairman. We appreciate the opportunity to appear before the joint committees.

SENATOR BEDELL: On such short notice, Bob?

MR. LEVY: Well, it was short notice. As you know, we made every effort to try and have the hearing adjourned.

ASSEMBLYMAN BORNHEIMER: Did you request public hearings at some point in time?

MR. LEVY: Yes, as a matter of fact in 1979 - at the end of 1979 - we requested public hearings because we felt that this bill had overriding significance to not only the mortgage banking industry but to the public in the State of New Jersey - particularly in this dire economy, since at this time there is an unfulfilled need for mortgage money, If there was any chance at all of establishing clarity through witnesses and through responding to your questions - and I know you will have many for our experts who are here today; they are in the business and that is why they are expert - we felt we ought to have a public hearing and air this matter, once and for all. We feel, and you will learn today, I hope, that the bill in question is not responsive to the problems you have heard about, for the reasons I will mention. In fact, it is a bill which would, with all good intentions, misdirect an awful lot of armament and ammunition of the State of New Jersey, and, in fact, inhibit the flow of the very mortgage money our public so urgently needs. It was for this reason we requested the hearing. We know that the joint committees have responded to that request. We appreciate that. The only difficulty we did have, as I indicated, was the timing of it. We did our best, as you know, to try and obtain more time, but we are going to do the best we can today.

SENATOR BEDELL: Mr. Levy, just for the record I would like to state that any fear that your organization might have that this bill is going to be rushed to judgment will not be realized. We think the question we are attempting to address is rather important and there will be subsequent hearings on this bill and complete deliberation on the part of the two committees before any action is taken on the final version of the bill, or before it is released for legislative action. I just want to assure you of that, before the public, at this time. We will not be rushing this bill out with any great dispatch.

MR. LEVY: Thank you, Senator, that is a very comforting thought. We certainly appreciate the fact that you have the interest to do that.

MR. LEVY: I want to say, to be very, very frank, that I sat here this morning, as Executive Director and Counsel for the Mortgage Bankers Association, and almost felt that I was in the wrong room. There is no question, from what I heard - and I have to take what I heard as fact-- By the way, I want to thank Commissioner Bianchi for what I thought was a very candid presentation, in terms of listing the complaints, which also included complaints against other institutions. I did have the opportunity - and I would like this on the record - afforded to me by Commissioner Bianchi, to allow members, or representatives, of our Association to look at the complaints that might be relevant to this bill, and we appreciate that. I want to state that as a matter of public record.

The complaints you heard about this morning, from the Department of Banking and from the Prosecutor, are, without question, the kinds of complaints that concern us as members of the public of the State of New Jersey, as much as they concern anyone. Certainly, to the extent that there are brokers or financial consultants - which I think is a more appropriate term - in the state who lack the capability or the intent of performing as promised, and who are representing, or misrepresenting, themselves to the public, this ought to be stopped and stopped immediately.

I am aware of such circumstances. I was aware of them when I prosecuted on behalf of the Attorney General's office, back in the late '60's. I was aware of second mortgage violators and companies who were less than candid with potential borrowers; companies who, while they were licensed as second mortgage lenders, were going far beyond that licensure. They were selling people television sets and doing all sorts of horrible things during a bad economy, when people were in dire need of mortgage money. We prosecuted them, and we prosecuted them hard. The kinds of abuses we are talking about now are criminal type offenses. They have nothing to do with the mortgage banking industry in the State of New Jersey -- absolutely nothing.

The mortgage banking industry in the State of New Jersey is represented by approximately twenty five major companies, all of whom are reputable, all of whom you can find listed in our Mortgage Bankers Association Directory. They are not involved in the practices you just heard about at all. Their involvement in the State of New Jersey is to primarily see to it that our citizens have out-of-state mortgage money flowing in, because they function in a national mortgage market, utilizing their own funds to lend here in the State and then reselling loans all over the United States through these national markets. These are the people that this bill addresses, when, in fact, what you gentlemen are looking for, I believe, is a bill addressed to financial consultants. And, by the way, I personally am aware that there has been a bill drafted, and I don't know where it is - I saw a copy of it some time ago - that is addressed to the financial consultant. You can draw a bill addressed to the financial consultant, and I would be more than happy to sit down and do the best I can to help to draft such a bill and eliminate the kinds of practices that the prosecutor referred to. But, the problem is that while the bill we have before us - the two bills - incorporate, because they are so broad, the broker, perhaps to some extent they go beyond that. It is like covering a pea on a bed with a huge blanket: You are also covering the rest of the bed. You cannot, in our opinion - respectfully - over-kill and bring in, under this blanket, an industry which is not the industry you are aiming at and which is not causing the problems and concerns that you have heard about, and, at the same time, not damage that industry severely so that it cannot supply the mortgage money for the State of New Jersey and the public here.

I view what is happening here today, based upon the -- They are legitimate, incidentally; don't think for a minute we challenge them -- complaints, as being a situation whereby the wrong party is on trial, if you will. What is really on trial here today, with all due respect, is the right of the public of the State of New Jersey to have a free mortgage market. They need assurance that in these troubled economic times, when we so desperately need out-of-state money, it will flow in because we do not inhibit the mortgage banker who is reputable, who is licensed through HUD, and who has tremendous regulatory problems to deal with. We should not incorporate and encompass him within a bill that is directed at some other bad guy who is operating in the State, and who we can reach through other legislation.

I am not, at this point, going to go into the details of the mortgage banking business, or to go any further in expressing to you my great concern for what appears to be a situation where we are misdirecting legislation, because I have with me today two experts in the business, the names of whom you already have. They will be far better able than I am to answer your questions. I merely want to introduce what we believe to be the real issue here today -- not complaints against financial consultants, not criminal problems with people misrepresenting themselves and trying to sell insurance, the real problem today, gentlemen, is, does S-975 and A-755 over-kill, over-reach, and reach a point where we are going to severely injure the public? We say it will. I have the witnesses to prove it. We respectfully request the opportunity to present those witnesses. Thank you.

SENATOR BEDELL: Thank you, Mr. Levy. Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Mr. Levy, this bill was introduced on January 29th of this year. Has your organization, from that date to this, put into writing any recommendations that would solve some of the problems that you say should be solved but really are not solved in this legislation? Have you submitted that to staff or to anyone else?

MR. LEVY: The answer is that we have presented-- The bill is similar to, or substantially identical to, a bill that was introduced in 1979. We had submitted a critique in writing, and at one point, I believe, we submitted a potential draft of legislation. However, we really didn't, until today - and I say this honestly - comprehend the kind of problem that we were really talking about, namely the financial consultant, not the mortgage banker. Having now recognized what the real problem is, I have no doubt in my mind - at least based upon my experience with the State - that I could present to you a bill which would very, very clearly direct itself at the problem that the prosecutor mentioned, and clear up that problem -- at least to the extent it could be enforced. There is no doubt in my mind whatsoever about that.

ASSEMBLYMAN ADUBATO: In Section 1, on the front page of the bill, it reads, under (a), " 'Mortgage loan' means any loan secured by a first mortgage on real property on a one to six family dwelling, a portion of which may be used for non-residential purposes." Is there any other place in this bill where that would extend beyond that situation?

MR. LEVY: Not that I know of.

ASSEMBLYMAN ADUBATO: So, we are really talking about a person who is buying either a one family home or a home up to six families, is that a fair statement? We are not talking about apartment houses; we are talking specifically in this area?

MR. LEVY: Yes. In fact, if you recall the testimony of the prosecutor, you can see how easily we get confused in terms of -- not that he was confused; he had specifics, but we here can get confused - what we are trying to deal with, for

the very reason that you just mentioned: we are talking about first mortgages alone. The prosecutor mentioned, a couple of times, second, third, and so forth; this has nothing to do with this bill. The problem he is talking about is one that deals with guys who are going around the state who are never going to be licensed, incidentally, because they are the kind of people who won't get licenses and who aren't interested in licenses because then they can't prey upon the public the way they do.

They are misrepresenting themselves and telling people that they can get seconds and thirds, and that if they sign applications for insurance this shows good faith, and if they pay them up front this shows good faith, and then they don't get the loan and they keep the money. I know what the practice is. It has nothing to do with our business. It has absolutely nothing to do with it.

ASSEMBLYMAN ADUBATO: What would be the difference - and I realize that today is a different world, so let's go back a couple of years maybe - in rates if an individual went through a mortgage banker, as opposed to going through a savings and loan?

MR. LEVY: Well, there is no real difference in rate so much. I can't tell you that unless I were to know -- you know, I would give you examples of actual dollar figures. For example, the mortgage banker presents to this state an alternative. He is not the only lender in the state; he is an alternative. He can bring money in from out of state when you can't get money in the state. Now, in order to do that, he operates through what they call a discount function. What he does is, he takes a loan which is originated here in New Jersey and he sells it to a buyer who is out of state. That buyer will not purchase that loan unless it meets national yield requirements, because that buyer has to obtain a certain yield in order to have a profit. And, in order to obtain that yield, the only way to sell the loan over to the buyer is to be able to discount it. For example, if the loan is only paying 12% in a 14% market, or whatever, in order to increase the yield to that purchaser you have to say, "All right, we are not going to charge you the full amount of the principal of the loan; we will discount it. We will only charge you \$38,000 for a \$40,000 loan. Now, in order to do that, the mortgage banker operates through the use of the discount system here in the state. When he originates the loan, he has to obtain points or discounts - if you want to call them that - from the borrower - some money in advance - because, in effect, he passes it on into the secondary market when he makes the discount. He actually, in effect, hands that man the money. He doesn't keep the money. So, in order to maintain that viable system - and the Commissioner himself said that the mortgage banker today is the guy in the business - when you have a capital-short problem in the state, you want to encourage that; you don't want to discourage it. Because if you discourage it, you are not going to have mortgage money available. That is what we are trying to emphasize.

ASSEMBLYMAN ADUBATO: In effect, are these people charging points on conventional mortgages?

MR. LEVY: So long as they are allowed to, they would do so, because that is the way that they can bring the out-of-state money in. If you stop the points and you stop the out-of-state money, that's fine. All you have left then is what you have in-state. As you know, today thrift institutions are having a very difficult time obtaining the kinds of funds they need to make loans in New Jersey. So, what we do by saying we don't want to allow the charging of points, or whatever, is to thereby stop the very inflow of funds which we so desperately need.

ASSEMBLYMAN ADUBATO: Let me ask you this: How long have mortgage bankers

been charging points on conventional loans?

MR. LEVY: Well, they have been charging around the country, I suppose, since time immemorial. They have been charging it in New Jersey only since they have been allowed to by law. As you know, the law prohibited that. What it did, incidentally, is to thereby effectively preclude the mortgage banker from operating in the conventional market; therefore he has not. Therefore, this state has been deprived of the kinds of funds that otherwise it would have been entitled to. So, we have been fighting constantly to get mortgages for our people. Other states don't have that problem. What we have to recognize is that in New Jersey today - and I don't want to take away from Mr. Blau's presentation - we are shifting from a capital-rich state to a capital-poor state. All our laws that inhibit the flow of funds, such as the point prohibition and things like that, were promulgated at a time when we were rich in capital, and we were exporting capital. Today, we are not; we need to bring it in. The only way you bring it in is through allowing the flexibility of the point, or discount, system.

ASSEMBLYMAN ADUBATO: Mr. Levy, just one more statement and question. I fail to see - and maybe I will be enlightened as we get along in this - where this legislation would be a detriment to those 25 major companies who are really the legitimate people you are talking about. Maybe as time goes on I will get a better grasp, but at this point in time I don't see anything in this legislation that would hinder these 25 companies from doing business, quite frankly. All I do see it doing is to make people a little more accountable.

So, at this point in time, I have to respectfully say to you that I think the bill, with maybe one or two minor changes, is a good bill and would protect the people of New Jersey, without doing any damage to the reputable companies.

If we are saying that the 25 major companies have no objection to having someone look at their records, to having to maintain records, to have to keep these records available, as the legislation says, for a period of seven years -- if people have nothing to hide, I don't see why they would oppose doing something like this.

MR. LEVY: Well, let me say this: Obviously, we do have nothing to hide. In fact, as Commissioner Bianchi pointed out very thoroughly, we have been responsive. If there are complaints, we answer them. Our Association discusses the matter with the Department. In one instance that he referred to, there was a terrible computer problem. It happened to be with a company that is now out of state, which isn't regulated under the bill, and that did respond. In fact, they called me and I tried to help them get in touch with the appropriate people in the Department - at that time I believe it was Deputy Commissioner Blaize - and they worked out the problem. It was a very serious, unintentional, situation, whereby, as I said, the computer had-- They had an escrow problem and they didn't realize, as I understand it, that the statute had changed in New Jersey and that they couldn't increase escrows until the tax bills came out, and because of the computer situation, they weren't able to make the changes immediately, but they worked with counsel and with the Department and they finally worked it out.

ASSEMBLYMAN ADUBATO: Would this problem have been avoided in any way if this bill were implemented?

MR. LEVY: No, because of the very reason that you heard the Department of Banking state - and it is obvious; you didn't have to hear it from anybody. Complaints are going to be incident to any business operation that exists. I am sure that complaints are incident to the operation of the Legislature. I am sure complaints are incident

to the operation and function of the Governor's office. Everybody will have complaints because you are doing business. If you are an active businessman, you will be complained about because people misunderstand what you are doing, people misunderstand your motives. But, if you are an honest man, the truth will come out, and there is no problem with that. The existence of a complaint, or the existence of a problem, does not, in our opinion, indicate a need for immediate legislation. It may indicate, as we think it does here, that we have a very active industry. The mortgage bankers are active; they are serving the public. And, if they are serving the public, they will generate complaints from the public. But, when you take into consideration that perhaps we are originating one billion dollars a year in this state, and perhaps twenty five thousand loans a year in this state - and these are numbers which I cannot verify, but I am approximating - then you realize that the extent of the complaints is miniscule, at least those that address the mortgage banking industry, and are merely reflective of a great volume of business; not that there is a need for regulation. Additionally, we have been responsive to those complaints and we certainly appreciate the effort of the Banking Department. They are going to probably be a department that seems to be relevant to people. Some people will refer complaints to them and we are more than happy to have someone like Commissioner Bianchi, who is willing to take his time and the time of his personnel to refer those to us so that they can be solved. But, we don't need this kind of legislation.

To answer your other question, I could sit here for another hour and explain the problems of the bill that are serious, very, very serious, to our industry, but I have a number of people here already to do that, and I really don't want to impinge upon what they are prepared to do.

ASSEMBLYMAN MAYS: Mr. Levy, you stated that this bill would do damage to the people of the State of New Jersey.

MR. LEVY: Yes.

ASSEMBLYMAN MAYS: How will it do damage to the State of New Jersey?

MR. LEVY: I think, again, Assemblyman, that will be brought out. I don't want to-- We have a number of people prepared to address those issues, and rather than listen to me for another hour, I would prefer to hear it from them. I will then be available for a summation, if you will, and I can then answer any additional questions you may have.

ASSEMBLYMAN MAYS: You do agree that some people in the State of New Jersey have been burned by some mortgage bankers?

MR. LEVY: No, not mortgage bankers. What I am saying is that the mortgage banking industry is a clean, viable, healthy industry, that helps the State. It doesn't hurt the State. You will hear, for example, from Mike Young, about how the mortgage bankers have been the people involved in the urban problems of this State, more so than anyone else.

ASSEMBLYMAN MAYS: Do you see what you just said? You said not mortgage bankers.

MR. LEVY: That's correct.

ASSEMBLYMAN MAYS: Now, if a lay person is looking for a mortgage out in the field, what this bill will do is to require the lender to have a license, and to display it in his office, so the borrower will be protected. They don't have to do that now.

MR. LEVY: Well, you see, there is a misconception there too. They are presently. They must be licensed by the Real Estate Commission because they negotiate

and originate mortgage loans; so they are all real estate brokers, that is number one.

Number two, the majority of the mortgage bankers in this State - I guess probably all of them - are now licensed through HUD because they make FHA and FA loans.

ASSEMBLYMAN MAYS: All are licensed real estate brokers?

MR. LEVY: Yes, that is correct.

ASSEMBLYMAN MAYS: Then they are not fly-by-night, they just can't--?

MR. LEVY: They don't. They absolutely don't, sir.

ASSEMBLYMAN MAYS: This is why the bill is needed then, I would say, because the lay person going in there don't know you, or don't know anyone; they want to get a mortgage.

MR. LEVY: Right.

ASSEMBLYMAN MAYS: What this bill will do is to protect the general public from getting ripped off, don't you think?

MR. LEVY: Well, I think that what has happened, if I can explain it again, is that the bill started, apparently, to address a problem with what we call the financial consultant - okay? - the guy who has no license; he is running around the state and making representations that he can get seconds, and he can get thirds, and "sign this credit application", and all this stuff - and he is a bad guy. Now, you can direct your effort at that and start with a bill and then slowly expand it. Before you know it, you have incorporated within that bill an industry which is not causing a problem. By bringing them in and subjecting them to regulation, on top of all the regulation they have now from the federal government, and elsewhere-- They are a very specialized and complex industry. When I say complex, I mean when you get involved in the national mortgage market and "Ginnie May" futures and dealings with "Fannie May" and "Freddie Mack", and all these other programs, it is very difficult to then inject, on top of that, additional regulation, where fees and charges, and whatever, are fluctuating on an almost hourly basis, and suddenly subject them to the kind of regulation, where they now have to be concerned about whether they are going to be able to function effectively on a national level.

Bear in mind, and I think the Commissioner mentioned this, that there are only ten states that even bother regulating them at all, and they regulate them in all different ways. So, you have forty states out there that don't regulate this industry, and the industry works very effectively.

ASSEMBLYMAN MAYS: So, your main objection to this bill is that you don't want to be regulated by the State of New Jersey or the Commissioner's office?

MR. LEVY: Well, I can say this to you: We don't believe there is any need for it, and we don't think that the state ought to be spending its time, effort, and money regulating an industry if there is no need for it. We really don't. If there were need, we wouldn't say there wasn't. If, in fact, there is some desirability for providing the Commissioner with some jurisdiction regarding complaints, or things of that nature, so that he would feel more comfortable in at least having some ability, legislatively, to handle complaints about us, then perhaps there is some legislation that could be drafted that would address that problem.

What we are saying is, we don't want to see an economic situation develop, where we address this problem and we create this very expansive regulatory atmosphere which will then hurt the public. Again, I don't want to go through the details of it, but we really believe that what you are going to do is, you are going to interfere with a system that is very delicate, and thereby cut off the supply

of out-of-state mortgage funds to the people of this state. I know that is not your objective. The difficulty we always have, Assemblyman, is that it is such a complex business that a lot of the times we have a hard time explaining the business sufficiently, so that we can make it clear as to the difference between the broker- or financial consultant - on the one hand, and the mortgage banker. They are two businesses that are so different that it is like a restaurant business and a car wash; they just don't relate.

ASSEMBLYMAN MAYS: Thank you.

SENATOR BEDELL: Assemblyman Kosco.

ASSEMBLYMAN KOSCO: Usually when we are involved in passing any type of legislation that creates a reaction, it is usually because it is a very, very good bill, or it is a very, very bad bill. Obviously, those of us who have our names on the top of that bill feel it is a very, very good bill.

MR. LEVY: I'm sure.

ASSEMBLYMAN KOSCO: That is why we are here, and that is why the bill is there -- that is why it has been put in. You pointed out yourself that there has been evidence of problems, but that it is not your people who create the problem,

MR. LEVY: That's correct, sir.

ASSEMBLYMAN KOSCO: (continuing) So, I am led to believe then that this is a necessary bill, because, obviously, your industry isn't controlling it; it is allowing other people to come in. For example, you pointed out something to the effect that people come in and sell television sets, and whatever.

MR. LEVY: That is an experience I had years ago.

ASSEMBLYMAN KOSCO: Now, they have to get that customer's name from someone, so obviously there is some kind of a contact that is being made from someone. I am only drawing this conclusion from what you said. I would have to also repeat what was said before, and I am going to repeat it because I feel it deserves repeating. You said that it is a bill that would damage the industry and it would stop out-of-state mortgage money from coming into the state, and I fail to see that. You also said it would be detrimental to the public, and those are the same people that we are trying to help. So, obviously, we are on opposite sides of the spectrum.

I think what you are going to have to do before we leave here, or before we change our minds - or I change my mind - is to convince us that the statement you made - a very broad statement - is really a true statement. You have to convince me as to how this is going to damage the people and how it is going to stop money from coming into the state. If, by putting things into perspective and having the people who should be involved in handling this type of business involved in handling it it will be detrimental to the people of this state, then you are going to have to show me how.

MR. LEVY: Okay. And, I appreciate exactly what you are saying. Let me say that I have absolutely no question that the names of the individuals on both the Assembly and Senate bills are there because they truly believe that the bill they have drafted and have put in - and I am sure Commissioner Bianchi believes this too - is a good bill. I have no doubt about that.

As with much legislation, there are times when, in drafting the legislation, you are, in effect, drafting a document which will later attract to you, as the drafter, the people that are involved in the industry so that you can get input, and that is why you are here, obviously. I know that in good conscience if you hear from us today, as we are prepared to do, that the seriousness of the problems that

will be created will be very real, you will all, in good conscience and for the very reason that you want good legislation, alter that legislation, and alter your course. I am prepared to say to you now that at the end of this session, I am confident that you will be thinking a lot differently about this legislation than you are now. I am confident that we are going to deal directly with the legislation, with the specific provisions. Again, at the termination of that, I would be happy to answer any further questions you have.

ASSEMBLYMAN KOSCO: Thank you.

SENATOR BEDELL: Mr. Levy, I have a few questions. I am concerned about the line of questioning my colleagues have directed themselves to. You have heard the Commissioner say that there are ten other states which have legislation somewhat similar to this. Are you familiar with any or all of those?

MR. LEVY: Yes. Of course, I have reviewed the other legislation. I don't think the Commissioner said - correct me if I am wrong - that they were all the same, or similar. I think he said there were ten other states who had legislation. The legislation varies, Senator Bedell, from state to state. There is a whole gamut of types of legislation. Some have a greater number of provisions, and different types of provisions. I have that material available and could probably provide the committees with a synopsis of that. But, I think the greater point to be made is that forty states don't have it, and that many of these states who do not have it are states that have a tremendous inflow from other states of out-of-state money.

I would say to you what may very well happen is that you may find that a lot of New Jersey money may begin to run off into these other states because there the lenders have the flexibility to be able to obtain attractive yields and sell these mortgages, perhaps, to investors in New Jersey.

SENATOR BEDELL: Bob, do you have actual copies of the legislation?

MR. LEVY: I have. I am not sure that I have them with me, but I do have in my possession, in the office probably, copies of these.

SENATOR BEDELL: The committees would appreciate having that information.

MR. LEVY: Okay. I will be happy to supply that.

SENATOR BEDELL: Bob, is this legislation before us now more stringent, more wide of the mark, then the legislation that exists in the other states that do have some sort of governance?

MR. LEVY: By and large, yes. I can't say I have inspected every single piece of legislation, but I believe in general it would be more onerous. Also, the types of provisions -- there are provisions in this law that are non-existent in any other law. That creates severe problems.

SENATOR BEDELL: You talk about money flow, Bob. To your knowledge, has there been a curtailment of the inflow of money to states that do have bills of this nature, or laws of this nature?

MR. LEVY: I cannot make that representation. I haven't checked that. I can check it. I don't know.

SENATOR BEDELL: You mentioned at the outset of your testimony that there was some prior legislation - I guess concerning the regulation, or how we would handle the consultant aspect of it - that had been introduced. Do you know, off hand, Bob, what year that might have been, or what session that was, or what the bill number was?

MR. LEVY: I don't know that it was introduced. I saw a draft of a bill and I don't recall who had it, whether it was one of the state agencies or some of the Assemblyman or Senators. But, there was a bill that directed itself to the financial consultant, and that is the very thing that the prosecutor brought out.

It was designed to give power to -- I believe it was the Banking Department, in order to prevent that kind of abuse. And, as I said, I think it can be prevented, and I think the power can be given in an appropriate way, directed at the evil, rather than expanding it beyond the evil to include a business that really can't function under the burdens that we would otherwise put it under with this legislation.

SENATOR BEDELL: Again, Bob, just calling upon your own appraisal of the situation. And, I respect your opinion because you are really knowledgeable in your field.

MR. LEVY: Thank you.

SENATOR BEDELL: I would like to ascertain what your objections are. You do recognize the fact that there are fraudulent, or anti-consumer, practices going on. So, the intent of what we are trying to do -- you have no objection to that?

MR. LEVY: That's correct.

SENATOR BEDELL: But, do you feel that this bill is so wide of the mark that it is objectionable from your standpoint, in that it places prohibitions and monetary requirements and filing requirements on a vast amount of people who are above reproach, and who have been all along, in this industry?

MR. LEVY: That's correct.

SENATOR BEDELL: Is that essentially what your objection is?

MR. LEVY: That is essentially the objection. And, I will take it one step further and say to you that the kinds of restrictions and burdens that would be created would have a very detrimental impact on our business in the State of New Jersey and the ability of our members to import money for the public. I think that is exactly what we don't want to do in this state, especially in this difficult economic time.

SENATOR BEDELL: Bob, is it your opinion that this bill is so wide of the mark that it is patently defective and cannot be amended to perhaps satisfy some of the objections you have?

MR. LEVY: I would say that.

SENATOR BEDELL: Is it that wide of the mark?

MR. LEVY: I think it is so wide that the amendments would be very, very substantial so as to emasculate a large portion of the bill. If I were addressing the issue that Prosecutor Lehrer addressed, for example, I would draft a bill to address that issue. I think then, to the extent you want to incorporate a little bit more outside that, you could do it. But, this bill is really addressing the wrong problem. It starts off, as I pointed out, by talking about first mortgage loans and mortgage bankers, and the testimony we are talking about here refers to financial consultants, and seconds and thirds, and life insurance problems, and everything else.

SENATOR BEDELL: Thank you. Assemblyman Mays.

ASSEMBLYMAN MAYS: I have just one question. You said that if this is passed, the outside money coming into New Jersey will be halted or lessened.

MR. LEVY: Yes.

ASSEMBLYMAN MAYS: Have the other ten states lost outside money?

MR. LEVY: Senator Bedell asked that question. Maybe one of our other members can answer that. The problem is that we are dealing now - and this is the purpose for our being here - with the specific bills that we have facing us, without comparing to the other states. As I explained, there are some provisions here that are more onerous than anything I have ever seen. We know the impact of these bills, and we can explain why - what the potential problems are here. For example, there

are problems which I will address later that deal with just the unfairness of imposing certain fee restrictions on a mortgage banker and not upon other mortgage lenders in the same business. There are problems with licensing the solicitor - the man who goes out to obtain mortgage loans for the mortgage banker - and not the solicitor for the savings and loan or the savings bank. You are creating a very, very difficult equal protection problem. You are putting the mortgage banker at a tremendous disadvantage in terms of his ability to function in the marketplace, next to his brethren, if you will, who are in the savings and loan and savings banking business, and the commercial banking business, to the extent that they make mortgage loans. You have problems along those lines.

You have potential problems with the interference of the regulation of fees and charges, and so forth, where the mortgage banker must be flexible and free to adjust fees and charges on a day-to-day basis to be able to meet and accommodate the needs of the national market, and to meet and accommodate the bidding requirements of Fannie May. It is a very complex problem.

ASSEMBLYMAN MAYS: I still don't think you answered my question. Did the other states decrease in the amount of outside money coming into their states?

MR. LEVY: I would have to look into that.

ASSEMBLYMAN MAYS: Then you have no proof?

MR. LEVY: At this time I don't, but I will be happy to check with the Mortgage Bankers of America, with whom we have very good relationships and ties, and see whether they have such information. It may not even exist, but I will check it for you.

SENATOR BEDELL: Mr. Levy, you do have other people with you from your Association?

MR. LEVY: Yes.

SENATOR BEDELL: Are they here merely to respond to questions from the Committee, or do they want to make presentations also?

MR. LEVY: No, they have statements, and what we planned to do, Senator, just so you will understand, is not to take the time of the Committee with a great deal of redundancy. That is why I have been hesitant to get too deeply involved in specifics.

SENATOR BEDELL: We appreciate that.

MR. LEVY: I have a number of people here who are ready to address specific problems with the bill and explain to you how this bill would function in the mortgage market today, in light of the business of mortgage banking.

SENATOR BEDELL: Thank you, Mr. Levy.

MR. LEVY: Thank you.

SENATOR BEDELL: Mr. Edward F. Leston.

EDWARD F. LESTON: Thank you, Mr. Chairman.

SENATOR BEDELL: Mr. Leston, our sheets don't tell us who you represent. Would you just state that for the record, please?

MR. LESTON: Yes. My name is Edward F. Leston. I am an attorney in Toms River, New Jersey, and I am here to talk in support of Senate Bill 975.

I come here by virtue of the fact that I filed a complaint with Commissioner Bianchi concerning a mortgage company in New Jersey, in December of last year, and found, much to my surprise, that the Banking Commissioner did not regulate mortgage companies. I have spoken with the Banking Commissioner since then and he invited

me to come here and testify, and I am happy to do so.

What I would like to relate to the Committee is the specific problem which several of my clients had with one mortgage company. The mortgage company in question is a wholly owned subsidiary of a major single family residential housing developer, operating in New Jersey. My clients purchased homes from this developer and were provided mortgages by this mortgage company. The mortgages are what is known as flip mortgages, that is to say the monthly mortgage payments gradually escalate over the first ten years. The mortgagor is required to deposit, in a pledged savings account, a certain amount of money from which a portion of the mortgage payment is withdrawn every month, so that he is, in essence, paying a full mortgage payment every month, but only part of it is coming out of his pocket; the rest is coming out of his pledged savings account.

Now, the mortgage company in question apparently had a contract with another banking institution, to whom these mortgages were to be assigned. And, in the particular development in question many of them were. However, with regard to my clients, who became my clients after closing, a dispute developed between the developer, the homeowners, and the town in which the property is located, over a conservation and drainage easement which was to have been dedicated by the developer prior to closing, but was not. As a result of that, the town refused to issue permanent certificates of occupancy. Apparently, the lack of permanent certificates of occupancy for these homes, and there are some 12 of them, led the banking institution - to whom these mortgages, granted by the mortgage company, were to be immediately assigned - to refuse their assignment. As a result of that, the mortgage company in question, I feel, had an obligation to immediately begin servicing these mortgages; to begin collecting the tax escrows; to begin collecting interest and principal payments. Instead, they did nothing. They failed to collect interest and principal. They failed to collect tax escrows, and to pay real estate taxes. And, they failed to make any contact with the mortgagors as to what had happened to their pledged savings accounts, as to where they were, and as to what interest was being paid.

Apparently this was done in the hope that the problem with certificates of occupancy would be quickly cleared up, the mortgages could be assigned, and this mortgage company wouldn't have to be bothered with any of the servicing problems.

As a result of this, the homeowners in question were left in limbo, with no contact from their mortgagee for, in many cases, some six to eight months. What called their attention to the problem was the fact that they began to get delinquent tax notices from the township. The taxes hadn't been paid.

They also then realized that if they didn't bring their mortgage accounts current by the end of 1979, they would all lose substantial income tax deductions for real estate taxes and interest payments.

At this point, I became involved, and after much correspondence and many unreturned phone calls finally got the mortgage company in question to bill the homeowners in question for the monies that were due on account of interest, principal, and tax escrows, and to pay the taxes to the involved township and absorb the interest penalties on those taxes.

These homeowners, however, had still not been told where their pledged savings accounts were located, and that interest was being paid on them. I would note, parenthetically, that these pledged savings accounts, to these middle income homeowners, are no small amount; they are upwards of \$5,000 each. We still don't know where they are.

Now, in addition to that -- or, rather, in contrast to that, I would point out that in the same development, where this C. O. problem did not exist and the mortgages that were originally granted by the mortgage company were quickly assigned to the New Jersey Banking Institution, which is regulated by the Banking Commission, the homeowners have had no problems. Their questions have been answered. Their mortgages have been promptly serviced. They have been given statements. They have been told where their pledged savings accounts are, and that they are, in fact, gathering interest for them.

I think that contrast points up exactly what this bill is addressed to. I feel that this bill would, most certainly, have a deterrent effect on the type of conduct that my clients faced, and that I had to deal with in this case. I would urge the passage of this bill. Thank you.

ASSEMBLYMAN BORNHEIMER: Are there any questions? Mr. Kosco.

ASSEMBLYMAN KOSCO: Are you saying that the mortgages that were placed with New Jersey banks did not have a problem, and that the mortgages placed with out-of-state banks did have a problem?

MR. LESTON: No, what I was suggesting is that the problem is with this wholly-owned mortgage company. It is wholly owned by a mass builder, a real estate developer. As to the mortgages it had to hold onto, which it could not transfer, there were problems.

In the same development, with the same type of houses, with the same type of mortgages, based on the same type of commitments, where there was no certificate of occupancy problem and they were immediately transferred to a New Jersey banking institution, regulated by the Banking Commissioner, there were no problems at all.

ASSEMBLYMAN KOSCO: Okay. Thank you.

ASSEMBLYMAN BORNHEIMER: Did your clients endeavor to make payments to the mortgage institution?

MR. LESTON: Yes. There were many, many phone calls made by my clients, beginning approximately thirty to sixty days after each of them closed, and they were either not returned, or they were told, "Don't worry. You are going to get a coupon book. You will be hearing from someone. It may not be us; it may be a bank." And, they were put off for some six to eight months. Fortunately, these are people who were thrifty and who had the presence of mind to, on my advice, after I got involved, put the money away every month. They put more than they thought necessary away so that they wouldn't have a problem. Approximately three weeks before Christmas they finally got bills for the eight month's worth of unpaid mortgage payments and tax escrows. Fortunately, they were ready for it.

ASSEMBLYMAN BORNHEIMER: Thank you. Are there any other questions? (no questions) Thank you, Mr. Leston.

MR. LESTON: Thank you.

ASSEMBLYMAN BORNHEIMER: Mr. Robert Scott.

R O B E R T S C O T T: Good morning.

ASSEMBLYMAN BORNHEIMER: Good morning.

MR. SCOTT: My name is Robert E. Scott. I am a past President of the New Jersey Mortgage Bankers Association, and President of a small, independent, privately-capitalized mortgage banking company, employing approximately twenty five people.

I appear before you on a matter which may well determine whether that company will survive. The bill you have before you was inspired by the Department of Banking, and constitutes one of the most sweeping grants of power I have ever seen. It

bestows upon the Banking Commissioner life and death power over our industry, by vesting in one man the right to set fees and charges for a privately capitalized, entrepreneurial business, which operates without public funds. It directly raises our cost of operation, increases the burden of regulation without compensating public benefit, and provides an opportunity for regulatory harassment without any objective or statutory limits.

The most fatal flaw in the proposed legislation is that it allows the Commissioner to "determine the reasonableness of fees and commissions, including, but not limited to, direct or indirect costs or expenses incidental to the processing and closing of a mortgage loan transaction." That is in Section 13 (b).

As I read it, this gives the Commissioner the right, not only to establish or eliminate the profit I may earn on the origination of a given mortgage loan, but also to determine how much I may charge for a credit report fee, application, appraisal, legal review fees, etc. Since my costs of operation are determinative, in part, to the origination fee I charge, will the Commissioner have the right to influence how much I may pay a loan processor, loan underwriter, or sales originator? Suppose I elect to purchase a long term mortgage commitment from an out-of-state mortgage investor, and by virtue thereof am able to offer lower borrowing rates to individual home buyers in a period of rising interest rates? Will I be able to recapture my commitment fee if it exceeds the norms developed by the Commissioner? Will I be able to charge an origination profit for my prescience and willingness to gamble the commitment fee?

Let us not be misled by the seemingly innocuous phrase "establish guidelines to determine the reasonableness of fees and commissions." These are not voluntary restraints. In the very next section - 14 (c) - licensees are proscribed from charging or exacting directly or indirectly fees, commissions, or charges "determined to be excessive in accordance with subsection (b) of Section 13 of this act." Further, the Commissioner is empowered in Section 15 to bring summary action to enjoin any licensee from engaging in a practice prohibited by this act. In short, the Commissioner can shut down my company if he does not approve of what I am charging.

The argument has been made by others more eloquent than I that this kind of bureaucratic overprotection will redound to the ultimate disadvantage of the borrower by denying him access to the resources of the national secondary mortgage market. That is the truth, as has been adequately demonstrated by the long history of maladministration of usury ceilings in this state, but I want to underscore the injustice of it. What distinguishes our business from any other private business that warrants allowing one individual to so dominate it and to set prices for its product? What statutory authority permits the Commissioner to set fees and charges for the banks and savings and loan that he currently regulates?

We mortgage bankers are presently licensed by the New Jersey Real Estate Commission, under the Commissioner of Insurance, who has no more right to set our fees than he has the right to set the maximum commission that a real estate broker may charge. How is this any different than giving a cabinet officer the right to set the price for the sale of a new home, furniture, or automobile? If it is the Legislature's true intent to establish price controls on mortgage loans, then let someone draft legislation with clearly-stated purpose, and make it applicable to all mortgage lenders, not just a select segment of the market.

Government, in my opinion, should not have the right to establish what a privately-owned and capitalized business may charge for its product or services,

but it does have a right to insist that that price be fully and fairly disclosed to the consuming public.

In New Jersey we have a twelve day law which pre-dates federal consumer protection laws and requires at least twelve days' advance written disclosure of any fees for the making of that loan. In addition, we now have a whole host of federal laws and regulations, such as Regulation Z, the Real Estate Settlement Procedures Act - RESPA - and Equal Credit Opportunity Act - ECOA - which mandate detailed advance disclosure in a uniform fashion of charges incident to the transaction.

The proposed bills are defective because, in addition to the blanket grant to the Commissioner of the right to control our income, they are replete with opportunities for discretionary use of power. The Commissioner has the right to determine the frequency and extent of audits of our operations without the justification of any public deposits being at stake and without the discipline of having to fund the cost of the audit, which would be borne by the licensee. It is the Commissioner's discretion as to how much of a bond will be required of licensees, and what the conditions of that bond will be. The Commissioner is vested with broad rule-making power "as he may deem necessary in the implementation and enforcement of this Act." This is at a time when citizens throughout the country are clamoring for relief from the excesses of regulation by unelected administrators, and responsible legislators in many jurisdictions are working feverishly to retrieve some of the authority that they have mistakenly granted to regulators. The standards for licensure are not objectively stated, but are left to the Commissioner's discretion. Even if an applicant meets the licensing standards, the Commissioner is not obliged to issue a license. The overall effect of the bill, as drafted, is to confer upon an unelected regulator total power, restrained only by the conscience of the individual holding that post.

Section 11 says that "the Commissioner may make such investigations and examinations...as he deems necessary to determine compliance with this act and the orders, rules, and regulations issued hereunder." In a preceding section, 10, the Commissioner is empowered to prescribe what books, accounts, records, and other documents we must keep, and he has the unlimited right to examine these records. Section 11 does provide that examination shall not be made more often than once a year, unless the Commissioner has reason to believe we are not complying with his orders, rules, or regulations.

My company is an approved FHA mortgagee, and, as such, we are periodically audited by FHA and our major investors, such as FNMA and our correspondent banks which provide us lines of credit. In addition, as a real estate licensee, we submit to the right of the Real Estate Commission to investigate our activities and records in connection with a specific complaint. None of these entities charge us for the cost of the examination, as the Commissioner would be permitted to do under this bill. We do pay our independent auditors to test our compliance with HUD regulations and render an annual report in accordance with the audit guide for Audits of HUD Approved Mortgagees. This compliance testing procedure, however, is made in strict accordance with objective, written standards, and it not a fishing expedition for unspecified complaints.

Section 8 requires licensees to obtain a bond "in an amount and form prescribed by Regulations of the Commissioner." Contrary to the statement on the bill, no bond amount is specified and you, as Legislators, have no reason to know whether the bond which will be established will be adequate for the protection of the public. As I mentioned previously, my company is an FHA approved mortgagee and, as such, in

order to maintain that status, must continuously maintain a minimum net worth in assets acceptable to the Department of Housing and Urban Development of not less than \$100,000. In addition, we are an approved Fannie May seller/servicer, Ginnie May seller/servicer, and approved to issue mortgage-backed securities by the Government National Mortgage Association, all of which mandates more substantial net worth and other financial requirements. This bill would substitute the Commissioner's judgment of our capacity to do business for that of the carefully considered policy of these federal agencies. Will the Commissioner's bond be a uniform amount, applicable to the storefront operator and to us? Will the "here today, gone tomorrow" mortgage broker have less of a bond requirement than our company, with over 30 years standing, substantial net worth, and thorough internal controls?

We currently have contributed to the real estate recovery fund administered by the New Jersey Real Estate Commission. Is that fund inadequate for the protection of the public, and, if so, why shouldn't it be replenished?

Section 13 (a) invests the Commissioner with the right to promulgate rules and regulations with the effect of law "as he may deem necessary in the implementation and enforcement of this act." Since the act deals with the licensing of people originating first mortgage loans on one to six family residential homes in the primary market, it would appear by extension that the Commissioner has the right to promulgate regulations dealing with virtually any phase of the origination of those loans by licensees. What is there to prevent the Commissioner from requiring that mortgage bankers only make loans in a particular area, or on certain terms? In anti-redlining legislation, the argument is made that depository institutions should make loans in the neighborhood or city in which they are located because if they do not, they are taking deposits from residents of that neighborhood and exporting them to make loans in other areas, to the detriment of the local residents. Whatever the merits of that argument, it does not apply to mortgage bankers, who do not accept deposits from the public, but if an urban investment or anti-redlining program is deemed socially desirable, what would prevent the Banking Commissioner from dictating to the mortgage banker that he can only make loans in an urban area? The idea has been advanced that mortgage lenders should make 40 year loans. Why could not the Commissioner adopt a rule to that effect binding on mortgage bankers even if they could not sell such a loan in the secondary market?

I would submit that the rulemaking power granted the Commissioner under this bill, coupled with the broad definitions and extraordinary powers, is much too extensive. If certain objectives are deemed socially desirable, they should be decreed by the Legislature, not an administrator. The flavor of this blanket grant of power comes through in the licensing section, Section 4, where it says, "The Commissioner may issue any license...if the following conditions are met." The Commissioner has the right to prescribe the evidence to be submitted in support of an application and to approve the form of application. Mortgage bankers or brokers may be excused from the examination requirements at the discretion of the Commissioner if they can demonstrate certain circumstances to the satisfaction of the Commissioner. Contrast this vague, subjective type language with the specific statutory requirements that control us now under the Real Estate License Act. At 45:15-10.1, a real estate salesman must have 45 hours education at an approved school, and a real estate broker must have 90 hours at an approved school. This is in real estate. At 45:15-9 minimum age, public education, and other standards are stipulated. Without equivocation at 45:15-10, the law provides that "upon satisfactorily passing such examination and other qualifications, a license shall be granted." And, further, "...such license

shall be renewed...upon the payment of the fee...."

My purpose this morning has been to focus on the unrestrained grant of authority to the Banking Commissioner represented by these bills. I cannot pass the opportunity, however, to comment on the increased cost which would be imposed upon my company if either of these bills were enacted into law. The appropriate people in my company are licensed by the Real Estate Commission and we pay an annual fee of \$15 for salesmen and \$30 for broker's fees. These bills provide no relief from the requirement of being licensed by the Real Estate Commission; thereby, subjecting us to duplicate expense and the potential for duplicate or conflicting regulation by two state agencies, both of whom have jurisdiction, to say nothing of the potential for conflict with new or existing federal regulation. For example, the bill requires us to maintain records prescribed by the Commissioner for seven years; whereas, the Federal Real Estate Settlement Procedures Act and Equal Credit Opportunity Act require us to maintain records for only two years. License fees under the proposed legislation would be \$250 per year for a mortgage banker's license, and \$50 per year for mortgage solicitors. Enactment of this bill would result in a quadrupling of the license fees for my little company. This substantial direct cost will, however, be dwarfed by the much more substantial cost of annual - or more frequent - audit by the Banking Department, and the unmeasurable cost of regulatory compliance with rules yet to be announced by the Commissioner. To the extent we are permitted to do so by the constraints imposed by the Commissioner's fee setting powers, we will be compelled, as a matter of survival, to attempt to pass these costs on to the public.

I would submit that the proposed legislation, if enacted, will result in seriously diminished mortgage financing opportunities for the public. If, in the judgment of the Legislature, if in your judgment after these hearings, there are significant abuses rampant in our industry which cannot be adequately addressed through the New Jersey Real Estate Commission, or under the spate of state and federal law regulating mortgage lending practices, then I would volunteer to work willingly with the Legislature to draft legislation to prevent those abuses, without stifling, under the heavy hand of bureaucratic overkill, the one segment of the mortgage lending industry that has proven to be innovative and creative enough to provide the primary means of access to the resources of the national secondary mortgage market during periods of credit stringency. Thank you.

ASSEMBLYMAN BORNHEIMER: Does anyone have any questions? Mike.

ASSEMBLYMAN ADUBATO: First of all, let me compliment you on an excellent presentation, sir.

MR. SCOTT: Thank you, sir.

ASSEMBLYMAN ADUBATO: It may surprise you that some of the points you made, even though I am a co-sponsor of the bill, I would tend to agree with. However, you suggest that other institutions do not have, in this similar area - I am talking about residential homes-- I don't know if it is one to six, or one to four, to be totally honest about it. Mr. Chairman, through you, isn't it a fact that there is a maximum lawyer's fee, or a finder's fee, of \$100? Wasn't that passed last term?

ASSEMBLYMAN BORNHEIMER: Yes, it was, Mike.

ASSEMBLYMAN ADUBATO: One hundred dollars was the maximum they could charge? Is that a fair statement? So, your statement--

ASSEMBLYMAN BORNHEIMER: For a lender's attorney.

ASSEMBLYMAN ADUBATO: Right. There have been some restrictions placed on certain kinds of fees in other areas. It is not exactly the case you point out, probably, but we saw a need for that because you have some people paying \$50 and

some people paying \$300 for the same service.

MR. SCOTT: That was done by legislation though, was it not, Mr. Adubato?

ASSEMBLYMAN ADUBATO: Yes, sir. I would like to ask you about the real estate license fees. Maybe you can help us. How long have these fees been at that level - \$15 and \$30?

MR. SCOTT: I really can't answer you.

ASSEMBLYMAN ADUBATO: Does anyone on the Committee know, Mr. Chairman? Do they know when was the last time these license fees were changed?

ASSEMBLYMAN BORNHEIMER: About eight years ago.

ASSEMBLYMAN ADUBATO: About eight years ago? Well, I think you are due for an increase, to tell you the truth. Just recently we had a bill in our Committee, where I offered an amendment to increase the cost of certain licenses. In fact, staff has drafted another bill that would extend that to life insurance salesmen. What do they pay -- \$5 a year? That is crazy. It is horrendous, for the processing and work that has to be done. We have to pay for that. My bill multiplies that from \$5 a year to \$25 a year. So, that is a heck of an increase. I don't honestly know what you should be paying, but, certainly, I think you would agree - I hope you would agree - that the fees are extremely low for the times we are living in, and that just for the paperwork alone the monies are way under what they should be. I don't know if they should be \$200 a year, and \$50 a year -- I don't know. But, I have no problem with supporting an increase in fees.

You spoke about the open-endedness of the power of the Commissioner. I have every confidence in our present Commissioner; however, I am more or less have attacked legislation in the same way you have, in that if it is possible, I would like to see things thrown out into the marketplace, with true competition. However, as you and some other gentlemen have pointed out, you are not challenging some of the abuses that were mentioned here. You know, it is sad that you in the industry, who probably understand a lot more than we do who are sitting here about how your business works, and some of the people who you should be policing, have not policed your own industry. The reason why we are here, quite frankly, gentlemen, is because of these blatant inequities and injustices that have been perpetrated by people in your industry. It may not be you, sitting here at the microphone, that is responsible for these injustices - and I don't think it is. But, that is why we are here. I wish we didn't have to sit up here. I wish you gentlemen would come up with ideas and cooperate with the elected and non-elected officials to do things.

I can understand the frustration of a Commissioner, quite frankly - not only a Banking Commissioner, but an Insurance Commissioner who deals with an industry, and who recognizes inequities. They admit them, but they don't do anything about them because they say no one has ever asked them to, or forced them to. I think you have a responsibility, more than we do, to police your industry.

I don't mean to lecture you, even though I am, but you don't want to see some of the things in this bill, quite frankly. I hope that we can address some of these things and make them a little more specific, especially as far as the qualifications for licensing, and so forth, and so on, is concerned. I do agree there should be licensing. I do agree that there is a certain amount of credibility involved in that. And, I do agree that the fee should be more. Whether or not one individual should have that supreme power to say you may get a license, or you may not get a license -- I don't like it. I agree. But, that is what we are here for.

As the Chairman stated, this bill is not going to be released today. And,

I want to thank you for coming down. Again, I thought your testimony was excellent. I agree with some of the things you said. Most of them I don't agree with, but some of them I agree with.

MR. SCOTT: Thank you. May I respond to just one thing?

ASSEMBLYMAN ADUBATO: Sure.

MR. SCOTT: I think one of the points, of course, is that we don't think we are on the same ground on this point; we don't want to throw the baby out with the bath water. We feel that whatever the abuses are - and I don't know that they have been demonstrated to be abuses within our industry yet - this bill, or these bills, represent a form of overkill that does not properly address whatever the abuses are, or that have at least been raised before us so far.

The other point is on the issue of the fees. I hope that this will not be the inspiration for raising fees for real estate brokers since we are not terribly--

ASSEMBLYMAN ADUBATO: It definitely will be..

MR. SCOTT: (continuing) --we are not the most endeared to them at the moment. Of course, the numbers are a different situation there. As I understand it, the licensing fees the Real Estate Commission collects are something like a million and one-half dollars, and their operating budget is less than half of that, as I understand it. So, it is a revenue raising forum for the state right now.

I think we are in sympathy, Mr. Adubato, on the issue of stating these things up front. We can have an honest disagreement about whether or not a fee should be established by government or not, but I think that the proper place for constraints to be imposed, if there are going to be imposed, is here in the Legislature, not in an administrator's office. The licensing fee is just a very, very minute portion of the charges we will have to bear if this bill were to pass in its present form.

If it were the will of the Legislature to say, "yes, we want audits and we want all these other things," then let's spell out what it is going to charge. We have \$100 billion a year in regulatory compliance imposed upon the private sector by government, and that is not being spelled out up front in a lot of this legislation. I think that is where we can--

ASSEMBLYMAN ADUBATO: I think they are the kinds of things I really agree with you on. However, the Legislature doesn't have the responsibility to implement what it passes. That is up to that department. That is why we have to work as closely as possible, and the Legislature has failed, miserably and historically, to have oversight on departments. That is our failure. That is our shortcoming. I admit it to you. We have to improve on that. However, when a person, whether he is elected or appointed, is charged to implement whatever legislation we have passed, then I think we in the Legislature have a responsibility not only to pass the bill, but to give them the tools to see that it is implemented, hopefully, the way we want it to be implemented, without any undue burden, by the way.

I don't know the Catch 22, or how it works here, but we have to find ways whereby we can correct ills and do our best not to stop business, not to overregulate business. The question to me here is not one of over-regulation - forget the bills for a minute - as much as it is regulation. I think it starts at ground zero; that is what we are talking about. The fact is that you are already subject to audits by the feds. The fact is that you have other licenses. The fact is that no one has come up here and defended the solicitor, not that I have heard -- no one.

Let me ask you a direct question. Under the profile that is spelled out in this legislation, dealing with the one to six family homes, can you tell me what the variable is in processing fees, from one company to another, for the same job?

MR. SCOTT: The variable is a number of things. Obviously, part of it is the cost of operation of that particular company; and, secondly, how competitive their terms are relative to someone else's terms. The consumer has an opportunity, under the current matrix of consumer protection laws, to shop for financing.

ASSEMBLYMAN ADUBATO: Respectfully, sir, you are not answering the question. What I am getting at is that while it is true that government wastes a lot of money, do you think that because that is true the public should have to pay for people in business who don't know how to run a business, who aren't competent? Their costs of doing business may be a lot greater than that of someone down the street and maybe they can justify the fact that they can't make a profit unless they charge one thousand dollars on a fifty thousand dollar mortgage. I don't know. Any other person can charge maybe three hundred dollars, or four hundred, or whatever. Maybe they can justify that - maybe with their books - and say, "Hey, we can't make a profit unless we charge 'x' amount because we have 'this', 'this', and 'this' as waste. I think there has to be a meeting of the minds, especially with fees. While it is true there should be some leeway, when you are talking about processing a mortgage for 'x' amount of dollars, I think it is outrageous-- I have documented this. You know, sometimes I don't totally tell the truth. I am not as dumb about this as I have suggested. I am certainly not an expert, but I do have documentation that I would be happy to share with you of specific transactions that I have had for over four or five years, that has nothing to do with the prime being 19 today, even though we say there is a high cost of money. It has absolutely nothing to do with that. This was when the prime was seven and eight, and it was that not too long ago. Mortgage transactions, transactions with mortgage bankers, cost \$1,100 to process a \$60,000 mortgage.

MR. SCOTT: Is that a processing fee, or a discount, or--?

ASSEMBLYMAN ADUBATO: That was a processing fee, cumulative -- you know, with other "goodies" thrown in and not counting other little points. I would be happy to mail you a copy, and cancel the name out, of such a transaction. So, in a way I am delighted to see this. I just hope that the people out there, such as yourself, who are responsible and who I can agree with on what I think is a major issue, that of over-interference by government, if you will - and I agree - will cooperate and lend their expertise and their knowledge. Because whether they do or they don't, quite frankly, I think it is going to happen. But, it can happen a lot better for everybody, and a lot less painful if we recognize those things that are obvious to all are not fair. They aren't fair.

So, respectfully, sir, again I am not an expert, but I can add and I can read. I just don't think these things should be allowed to continue. I am proud to be a co-sponsor on an imperfect bill. That is why we are here. But, I am still proud to be a co-sponsor on that bill.

ASSEMBLYMAN BORNHEIMER: Mr. Mays.

ASSEMBLYMAN MAYS: Your main objection to this bill, as I understood your presentation, was that you resent the fact that the Commissioner has sole control over whether you get a license or not. Would it make you feel any better if, after he gives his decision, in writing, to you as to why he refused your license, that within 20 days you would have the right to answer, or appeal, his decision to a group or a committee? Would that help you out a little?

MR. SCOTT: No, that is just one facet to the problem, Assemblyman. The thrust of my criticism at this point - and it is certainly not directed at this particular Commissioner, I would oppose this bill, in principal, if I were not in the mortgage

banking field, because I think it is representative of a dangerous tendency - as Assemblyman Adubato has just identified - of over-regulation, or potentially stifling some form of business enterprise. The thrust of the specific comments I made here is that there is a lack of statutory discipline on whomever exercises the office of Commissioner of Banking. The issue of licensing is only a very small part of it. The major part of it, the most effective from the standpoint of the public interest-- Forget about whether or not the mortgage bankers, per se, survive; maybe the Legislature doesn't care and maybe the public doesn't care. That is an issue that has yet to be resolved in the broader context. But, the major disadvantage from the standpoint of the public benefit is that this kind of legislation tends to lead to well-meaning, well-intentioned, but heavy-handed intervention in the functioning of the marketplace, which will therefore deny the home buyer mortgage funds.

ASSEMBLYMAN MAYS: This bill has been out since January 29th, and ten other states have similar legislation, did you check on these other ten states to see whether what you just said applies to them?

MR. SCOTT: Assemblyman, I have been involved in this issue since 1972, when various Commissioners and various Legislatures have debated and reviewed various forms of this kind of bill. I have had an opportunity to review the evolution of the perspective regulation. I have not gone to specific states and said, "what happened the day after you enacted a law"?

ASSEMBLYMAN MAYS: But, you made the statement that it would do this.

MR. SCOTT: I believe that it will, and I believe that--

ASSEMBLYMAN MAYS: But, you don't know.

MR. SCOTT: Sir, I yield to no one in my concern for the home buying public in New Jersey. We started the mortgage banking business because we were first in the real estate business. My father opened a small real estate brokerage business in Union County, in 1946, and we ran into a tight money period in 1948 and '49, when there was not a lot of conventional mortgage money around. So, he formed a mortgage company so that he could get mortgage loans for the homebuyers that he was serving through his real estate company. I have perpetuated that same approach in the companies that survived. We have a real estate brokerage company and we have a mortgage banking company. The mortgage banking company is dedicated to serving the home buying needs. Today, more so than at any time in the past, you need the mortgage banking function to provide mortgage funds to home buyers. I would say that the vast majority of all the residential mortgage money that is being made available in the State of New Jersey today is through the mortgage banking function, whether it be a mortgage banking company, per se, or whether it be a savings and loan, or a savings bank, or commercial bank that is acting as a mortgage banker and selling the mortgage loan after they make the loan.

ASSEMBLYMAN MAYS: Okay. I would also like to ask you something else. Being the sponsor of the anti-redlining law, I think you have a moral obligation to the public and to the urban cities to help rebuild them, since you are making money in New Jersey. What you said is true. I like to see that involvement. I would like to see you do some business in what they call the ghetto area.

MR. SCOTT: Well, sir, we are very active lenders in the urban areas. We have beend, as an industry, extremely heavily involved in the Mortgage Finance Agency programs. I believe that better than two-thirds of all the loans made through the Mortgage Finance Agency programs have been originated through mortgage bankers. We believe very strongly in our social commitment. We also believe that it can be good business. I do, however, resist the notion that government should tell me that I

must make a loan there, particularly when I make my living on my ability to sell that loan somewhere else. And, if I can't find anyone to buy that loan, that government fiat is going to put me out of business.

ASSEMBLYMAN MAYS: I don't think the government should tell you, but I think you have a moral obligation to the public.

SENATOR BEDELL: Assemblyman Kosco, do you have any questions?

ASSEMBLYMAN KOSCO: Mr. Scott, you really don't have any objection then to the licenses, per se?

MR. SCOTT: We are licensed now, sir.

ASSEMBLYMAN KOSCO: I mean this particular type of license -- through the Banking Commissioner?

MR. SCOTT: I would have no personal objection to the Real Estate Commission relinquishing the authority that it has now to the Banking Department, if that is the question.

ASSEMBLYMAN KOSCO: That wasn't the question. You strongly object to the setting of fees by the Commissioner?

MR. SCOTT: Yes, sir, I do.

ASSEMBLYMAN KOSCO: But, isn't it true that when people go out to get a mortgage, or when they buy a house, whether it be in a development, or whatever, the mortgage company is usually recommended to them by the people they are buying the home from, and they usually get the mortgage for them? The people really don't pay attention to those things that we are talking about, insofar as fees are concerned; they are usually concerned about what it is going to cost them at the end of each month for their mortgage. Most people really feel that that is more or less controlled by state or federal standards, and they really don't pay attention to those fees. I think that is what we are dealing with in that section; we are trying to help to control the fees that certain people charge. Most people don't pay any attention to what the fee is, or don't even ask about what the fee is because they are not even aware of it.

MR. SCOTT: I would disagree with you, sir. Our market experience is that it is intensely competitive as to what the fees are.

ASSEMBLYMAN KOSCO: And, you actually have people shopping for fees, as opposed to shopping for mortgage money?

MR. SCOTT: Yes, sir. Absolutely.

ASSEMBLYMAN KOSCO: I wasn't aware of that. I felt that you more or less had a captive audience. When you are selling a mortgage, or getting a mortgage for a person, they have usually come to you to get a mortgage, or you have gone to them because of a particular dealing with selling a house - or in conjunction with selling a house. I really was not aware that people shop for fees, insofar as the amount of the fee is concerned. That was my question.

SENATOR BEDELL: I have one brief question. It has been mentioned before that people in this area who are doing business for the federal government - I guess under HUD - are licensed. Is there a fee involved in that?

MR. SCOTT: To be licensed by HUD?

SENATOR BEDELL: Yes.

MR. SCOTT: The licensing fee itself, if there is one - it has been so long since we went through that procedure - is very minimal; it would be in the form of application review, and so forth. I really don't know. There is no annual fee, per se.

SENATOR BEDELL: Right. How are the requirements for getting certified by HUD? Is it a lengthy process?

MR. SCOTT: Yes. There is a mandatory financial requirement. There is investigation as to the business capacity and so forth. That is only just the first plateau, in that any modern mortgage banking company today can't rely just on being an FHA approved mortgagee; they must get approved by the other hierarchy of federal, or quasi-federal agencies.

SENATOR BEDELL: Mike.

ASSEMBLYMAN ADUBATO: Mr. Scott, are you bonded today?

MR. SCOTT: No. Well, we do have a mortgage banker's blanket bond for the benefit of our investors. That is an insurance premium kind of thing. But, we do not have a bond that runs to the benefit of the state. We do contribute, however, to the New Jersey Real Estate Recovery Fund, as real estate licensees.

ASSEMBLYMAN ADUBATO: You know, I had trouble reading the bill and then reading the statement. You said it was open-ended. The statement reads that you would have at least a \$25,000 bond. Respectfully, Mr. Chairman, I admit that I can't find, in the bill, where it says \$25,000. Maybe it is there, but I don't see it. The statement says \$25,000, and it may be in the bill; I just haven't located it.

I have another question for you, Mr. Scott. You seem to have analyzed this bill extremely well. I was just curious. I didn't recall you voicing an objection to Section 12, on page 6 of the bill. I am just wondering how you feel about that section? You alluded to it.

MR. SCOTT: Yes. I don't have any problem with that, in the context of the other powers. If the judgment is that the Commissioner should be the agency of government that is going to do these things, consistent with what you said before, he is going to have certain powers. However, what I do resent, as I mentioned before, is just the blanket grant given to him -- going in and audit, for example, for no reason whatsoever, with no public funds involved. If it were the judgment of the Legislature that they were going to have a licensing bill, they would have to give the Commissioner investigatory powers. That certainly follows. But, it should be on the basis of some specific complaint, or on the basis of some specific reason to believe there was wrongdoing, rather than just adding another layer of seemingly perfunctory audit annually - or at least annually - at the cost of the licensee.

ASSEMBLYMAN ADUBATO: I know that in the Banking Department they have audits.

MR. SCOTT: They have public funds, sir.

ASSEMBLYMAN ADUBATO: Yes, I see the difference, really. But, I also see the fact that you are dealing with the public. I was just curious. I don't know - and maybe the Chairman can help me - if, assuming the bill were to pass in its present form, we would want - you know, it doesn't exist in New Jersey today - any Deputy Commissioner to have the same power as the Commissioner to institute this kind of thing. I also don't know about the requirement concerning administering oaths to investigators. For one thing, that sounds almost like a prosecutorial function, under oath. If we are going to do that, maybe we all ought to go under oath when we speak from the floor; I would like that. It would be very interesting.

Mr. Chairman, I was just wondering if there is any precedent in the statutes of New Jersey, where Commissioners have that power? Maybe they do.

SENATOR BEDELL: I think they do, Mike. I think it is almost an s.o.p.

ASSEMBLYMAN ADUBATO: Does that apply to Deputy Commissioners as well?

COMMISSIONER BIANCHI: That applies when the Commissioner is not available. The Deputy Commissioner takes his place.

ASSEMBLYMAN ADUBATO: Thank you. You see, it doesn't say that. What the bill says is that the Commissioner, or any Deputy Commissioner, shall have the power. It would be interesting to find a situation where one of the Deputy Commissioners may not get along with the Commissioner -- you know, it is farfetched, but it could happen. It has happened before in New Jersey where a Deputy Commissioner has gone bananas. I am just wondering about the intent, if it said "the Commissioner or his designee", as opposed to any other Commissioner, and so forth and so on.

SENATOR BEDELL: All right. Thank you very much, Mr. Scott. I would like to make a request. I do not want to have it appear as though I am attempting to limit anyone's right to speak. We certainly don't want to do that. The purpose of the hearing is to elicit as much information as we possibly can. But, it is now approaching one o'clock. We have heard from five witnesses and there are some fifteen witnesses yet to speak. So, I would ask all, if they are going to speak and they are going to reiterate points that have been made before, that you don't belabor them, or I am going to have to abort your presentation. We want increased information. If you have an opinion, make the statement and let it go at that.. Again, I merely say this not to offend, but the fellows at the bottom of this list have been sitting here as long as the others, so let's have consideration for each other.

We do have two gentlemen who have scheduled court appearances this afternoon, and who have been patiently waiting. So, I would like to get them on right now.

Mr. John McNiff will be the first of the two.

J O H N J. M c K N I F F: My name is John J. McNiff. I am with the firm of Tessler, McNiff. We are attorneys in Paterson, New Jersey. I have had a very unpleasant experience with a mortgage banker, a mortgage company, in regard to two residential mortgage closings that I have had. In one I represented the seller, and in the other I represented the purchaser. I am more informed to speak in regard to the purchase aspect of it since the only information I had when I was the seller's attorney was what the purchaser's attorney told me, and I thought at that time that he was high on something until I became a purchaser's attorney. I then realized that this man was sincere in what he was telling me were the reasons for the delay in the closing.

The transaction I am presently working on entered into contract on April 6, 1979, and we have not as yet closed that loan. The mortgage company involved issued a firm commitment to my client on July 9, 1979, and on that same day, as soon as the commitment came into the office, I had my client sign it. It was returned to the mortgage company within the time they required it. On the same day the commitment was received, I ordered the title work, so that there would be no delays on my part to close this deal. The commitment was for a mortgage in the amount of approximately \$31,000 for a 25 year term, at 10% interest. This was in July of 1979.

All of my search work and survey needed by the mortgage company was prepared and submitted to them in August of 1979. I was then told that we needed a flood certification letter, which was not told to me prior to this. I prepared a flood certification letter and submitted that. I was then told that the binder had to be amended because our name is not "Co.", it is "company" and the word "company" must be spelled out. Again, we amended the binder. Then there were other amendments to the binder that were required and we also complied with these. Then the mortgage company involved said: "Well, your title company says nothing about insuring us on the basis of a census tract." I said, "Well, what is a census tract"? They said, "Well, your title company will know." Well, the title company didn't know what a census tract was. Three

weeks of telephone calls, back and forth between my office, the title company, and the mortgage company, as to what a census tract was, were to no avail. So, finally, that was abandoned, and to this day I don't know what a census tract is; neither does the title company. I hope at the time of closing this won't be held over my head as an item I didn't comply with.

We were told that we could close this loan on October 30, 1979. I ordered a final run-down on title. All of these things were received. The closing never took place on October 30th because the mortgage company told us, "Well, you need a new mortgage now and new papers have to be drafted. There will be a new commitment coming out." The papers did come out and we don't know why we had to redo the papers. Two weeks later we found out that the mortgage company did not like courses and distances in their description, but they liked metes and bounds in their description. So, papers that have been hanging around with them since August 20, 1979 suddenly, on the day of the closing, had the wrong description of the mortgage. This is what we were told. We redid the papers again in October of 1979. Again, we had to amend letters to the binder, and each time this request was complied with. Finally, we were told, on November 15, 1979: "Good news for you, Mr. McKniff. You can close your loan tomorrow, November 16th. What time would you like to close?" We said, "One o'clock would be good." They said, "Good. Have someone down there in the morning. We don't have the money to give you, but we are getting the money from some outfit in Cherry Hill, New Jersey and we are going to send a guy down there to pick up the check. You be here tomorrow morning, about ten o'clock, or so, and we will give you your check." So, I sent my man - or a representative from my office - down there to pick up the check. Now, mind you, the Thursday before that I was given all the figures -- how much I was to collect; when the first payment would be due, etc. At twenty five minutes after twelve, on the morning of November 16th, I was told by my messenger, "You can't close; they don't have the check." Finally, when all the people came into the office, they looked at me; I was the bad guy: "Well, the attorney did something wrong and he is just putting it on the mortgage company so he can have an easy out." There was no way that I could convince my clients and the sellers and the sellers' attorney that it was through no fault of my own that the loan did not close.

We did not hear anything again from the mortgage company until mid December when they said, "Well, now the appraisal has run out. We are going to need another appraisal. There is going to be another reinspection fee and another inspection by HUD and the FHA." Wouldn't you know? The FHA found more repairs that had to be made, and we complied and made the repairs. On January 10, 1980, all new repairs were done. We thought we could close. We made repeated calls to the mortgage company and they went unanswered. Finally, we were told by the mortgage company, "Well, since the appraisal ran out, the commitment ran out. We are going to send you a new commitment; have your client sign it." Sure enough, in came the commitment, but it was not at 10%, it was at 12%. The sellers' attorney indicated that his clients had made money on repairs and the deal had to go through. Although it meant more points and it meant a higher interest rate, we signed the commitment at 12%. The loan still hasn't closed.

I was informed, yesterday afternoon, by a representative of this mortgage company: "If you want to close the loan, you can close it, but the interest rate is now 13%, and we will send you out a new commitment." I said, "Why can't I just white out on the original mortgage papers the 12% and change it to 13%?" They said, "No, you can't do that because we have to have them for twelve days before we can

even issue the check. I said, "My gosh, you have had these papers for almost a year and you still haven't issued the check." I was told, "Well, procedures are procedures and you will have to wait." My office is now, for the fourth time, changing mortgage papers to comply with these requests of the mortgage company and I still don't know when and if I can close this loan.

The gentleman who spoke earlier said, "Well, go to HUD. We are under HUD regulation." We did that. We went to the area manager's office in Newark and we complained to HUD. HUD said, "Well, what do you want us to do? We regulate the fees they can charge; the interest rates; that the seller can't pay for this and that the buyer can't pay for that; and the attorney's fees are limited." You know, I have just as much influence over them as you do, and I didn't believe them until, in the presence of one of my associates, he called this particular mortgage company and they said, "Well, we will have to get back to you." They got back to him three days later. Now, if there were such awesome controls and regulations by HUD over these mortgage companies, why didn't the mortgage company, in an instant, return the call, or give this individual from HUD some satisfaction. Three days later he was called, and he called me and said, "I'm sorry, but things don't seem to be in order and I don't know what I can do for you."

I called Commissioner Bianchi's office and I spoke to Deputy Commissioner Freeman. She said, "I sympathize with you, but that is all I can give you is sympathy, because this department does not regulate the mortgage companies." I know in my own conversation with members of the profession in Passaic County of two other attorneys who had to file orders to show cause in the Superior Court, to compel mortgage companies - not just one mortgage company, but two or three that I have had experiences with and they have had experiences with - to issue a check for closing -- an order to show cause, signed by a judge of the Superior Court. I have had that experience; I hope that I am not going to be forced to draft pleadings to get the check.

I would like to know when I am going to close, and if this bill, or any substitute for this bill, or any amendments made to the existing bill, will help to give some control and some regulation over these practices, I welcome that bill. Thank you.

SENATOR BEDELL: Thank you, Mr. McKniff. Are there any questions from the Committee? Mike

ASSEMBLYMAN ADUBATO: I am just sitting here wondering if your experiences are with one of those 25 companies.

MR. Mc KNIFF: Well--

COMMISSIONER BIANCHI: Can I show him the list for him to see whether it is one of the 25 companies?

ASSEMBLYMAN ADUBATO: Sure, I appreciate it.

MR. Mc KNIFF: Yes, it is one of those 25 companies.

ASSEMBLYMAN ADUBATO: I am disappointed. Thank you.

SENATOR BEDELL: Are there any further questions? (no questions) Thank you very much, Mr. McKniff.

Our next witness will be Mr. James Carey.

J A M E S C A R E Y: Senator Bedell, my name is James Carey. I am a single practitioner in the practice of law, with offices in Wall Township, New Jersey.

SENATOR BEDELL: And a former employee of the New Jersey State Senate.

MR. CAREY: Yes, former employees of the New Jersey State Senate. Thank you.

I am here today because of a complaint that I too signed against a real estate broker -- not a broker, a mortgage broker. I will try and be as brief as possible because I am one of the gentlemen who has to be in court today.

Touching on about two or three comments that some other people have made: First, I agree with Mr. Levy's comments, that the mortgage bankers are a healthy group that provide an adequate service today. I do not specialize in real estate closings, but fifty percent of my income is derived from real estate. Today, the only closings I am closing are those which involve a cash transaction, or those in which a mortgage bank is involved. There are no commercial mortgages available.

So you have some idea of what we are talking about, presently if you are going to buy a house for \$60,000, a bank would want \$25,000 down. But, even if you have the \$25,000, or the \$20,000, they are not going to give you a mortgage. Because of the Federal Reserve raising the interest rates, the banks are not lending money. So, your only alternative is a cash deal, and that leaves out most of us. The alternative is when the seller is willing to take back the mortgage. That is all right if it involves someone who is retired, or independently wealthy, or if it is an income property. Or, the third alternative is the mortgage banks, those dealing with VA, FHA, or Fannie Mae, which still have 10%. I do quite a bit of work with them and they are the loans that I am closing today.

I also agree with the comment made by Assemblyman Adubato. My problem has come about because there hasn't been a sufficient policing. There is an intermediate gap. There are too many people today who are holding themselves out to be mortgage brokers, or mortgage bankers. My problem specifically dealt with an institution that held itself out to be a National State Mortgage Corporation. It issued, on October 26, 1979, a commitment. Thereafter, I proceeded to process this, as you would in the course of representing a buyer on a house. In other words, we had a house. We had a buyer. It went to the National State Mortgage Corporation. They gave us a commitment letter. We then ordered our title insurance. We sent them a letter from Pioneer Title Insurance, saying that James Carey was an approved attorney. We ordered a title binder, listing the National State Mortgage Corporation in it. We had a survey done, and the survey listed my client's name and also certified to the National State Bank Mortgage Corporation. That is the National State Mortgage Corporation, not National State Bank. Those names do tend to cause problems.

So, I had the National State Mortgage Corporation commitment letter. The date for the closing came. I was there. The seller was there. The seller's attorney was there, and the buyer was there. We did not get a check. I called the people up. It was rescheduled for the 27th of December. At that point in time, I got on the phone and I spoke to an answering service - on several occasions - and I was specific when I said that if we did not have a closing, my client was in jeopardy of losing his deposit, which was \$4,500, with the other attorney making time of the essence. My client, as a layman, was concerned with his \$300 application fee, and I, as an attorney, was concerned with the time of the essence attitude of the other attorney.

On December 27th, the day the closing was to take place, I contacted these people at 10 o'clock in the morning. They told me they would have a check for me at 2 o'clock. I said, "Whose check is it going to be?" They said, "It is going to be our check, the National State Mortgage Corporation's." I thereupon hung up the phone and called one of my friends who is in the business and who is a mortgage banker. Again, I was dealing at this point, I believed, with a mortgage banker.

My friend advised me, "James, they are not mortgage bankers." I said, "What do you mean"? He said, "They are a mortgage broker. They place with us." He then named several other companies that they could place with. I called the young lady back and I said, "Who are you placing this loan with"? She said, "We are not. It is ours, the National State Mortgage Corporation." I said, "You are not a banker; you are a broker. You are not a mortgage banker, you are a mortgage broker. You have to place it." She said, "I placed it with" -- and she gave me the name of the mortgage company in Irvington. I contacted that mortgage company, and they had no knowledge of these people, nor any application. Needless to say, the closing did not take place on that day. Thereafter, my friend in this healthy business was able to help me process this loan at a later date, and also at a higher interest rate to my client because of the fluctuating market.

The problem was that they had no fear, whatsoever, of me saying I was going to turn them into the Banking Department. They had no real concern about any teeth that could bite them on this. And, what we were doing is, my client never got his three hundred dollars back and I, as an attorney, was less worried about that. I was concerned about the \$4,500. So, there was no stop-gap for protection. I believe that the companies, on a whole, offer a tremendous service today to the people who cannot afford conventional mortgages. But, I do believe there has to be something with people who hold themselves out, that lower echelon, that broker. There has to be someone to look it over.

I too, as was Mr. Ed Liston, was surprised when I, in fact, sent a letter to the Banking Commission, which I told this lady I would do. I said, "I am sending it to the Banking Commission." I carboned it to her, National State Mortgage Company, and the gentleman who held himself out to be it. I said I would do this. They could have cared less. I was surprised when I got back a letter from the Real Estate Commission. I called them and said, "Hey, why did you send me a letter back"? Although I do a lot of real estate, they said, "We regulate it. The Banking Commission does not regulate this."

So, I point out that you have a group of people who are not reputable and who need policing. That policing can be either through this piece of legislation, through the bankers themselves, or something. They have the ability to set up and issue what looks like a commitment letter and take the \$300. That may not sound like much, but to the individual it is -- and to 20 or 30, or 100, or 200 individuals it is. Let there be 10 or 15 of these situations develop into "time of the essence" closings, and we would have a problem.

So, what I am basically saying, in summation, would be that there is a tremendous need provided by the mortgage companies that I deal with on a regular basis. But, I still think there should be some policing of that lower echelon group called "mortgage brokers", who hold themselves out to be bankers, and that is why I came down here. Thank you.

SENATOR BEDELL: Thank you, Mr. Carey. Mike.

ASSEMBLYMAN ADUBATO: No questions.

SENATOR BEDELL: Assemblyman Kosco.

ASSEMBLYMAN KOSCO: I have just one question. How do you feel that if this bill was in effect it could have helped you in this particular instance?

MR. CAREY: Well, I think it would have offered teeth. The present Real Estate Commission, as you know, I believe is only a part time commission. I think it only has two or three commissioners. It doesn't have the staffing. What it offers, whether it be through the Real Estate Commission, or through the Banking Commission,

it will offer a little teeth. Presently, they are not afraid. They know there is nothing out there. So, if a person calls up, or an attorney calls up, and says: "listen, pal, I am going to call the Commission", or if he calls up a banker and says, "I am going to call the Banking Commissioner, or the Insurance Commissioner"-- Right now, they know there is no regulatory process that can bite them, and these people were arrogant and abusive. They knew that no matter what I said to them, it didn't matter. I sent them a couple of Mailgrams. Again, I carboned my first letter and sent it to the Banking Commissioner. On December 27th, I sent the letter to Mrs. Elenor Lizinski, who is the person I make the accusation against, and also Mr. Vincent Lumberto, who I also make the accusation against. Incidentally, after I sent this, they returned to my client \$300, in the form of their Trust Check, which bounced. So, they could care less.

To answer your question, it would get some teeth into that mortgage broker, not the banker, the broker who holds himself out to be a person who can supply money in a time when there is a such a need in the mortgage market.

ASSEMBLYMAN KOSCO: What you are essentially saying is that you feel the Banking Commission is better equipped to handle it than the Real Estate Commission?

MR. CAREY: It has a longer arm, and probably more forceful powers, yes.

ASSEMBLYMAN KOSCO: Thank you.

ASSEMBLYMAN ADUBATO: I would just like to say, Mr. Chairman, that we are fortunate that you were here and also that the other people who are here to testify have come today. I am curious to find out how many people aren't here today that may have had similar experiences. That would be an interesting percentage to quote.

To get back to over-regulation -- you know, you are out there in the market-place and you appreciate the need for mortgage bankers and the void they are filling, especially in today's times and the state of mortgage money. That is all the more reason why those responsible people in the industry have failed to protect their own reputation by allowing these things to take place. They are not seeking it out and bringing it out and stopping it. Again, I don't mean to lecture, but I am. Government must interfere when those people who are out there, and who understand their business better than government does, just turn the other way. Sometimes it is unfortunate, but the pendulum will swing more than is necessary to correct a situation, especially when it is as blatant, as was pointed out in this specific case.

MR. CAREY: Yes.

ASSEMBLYMAN ADUBATO: I want to thank you for coming down.

MR. CAREY: Thank you. The only other comment I would offer is, doing quite a lot of business with these people, I have discussed this with the people I do business with and they said, "We feel that you should, in fact, testify. We are concerned about these people too." And, my people - the ones who I am talking about - are in the mortgage business. Thank you.

ASSEMBLYMAN ADUBATO: I am sure they are concerned. My point is that I haven't heard about it before today -- the fact that they are concerned. But, I agree; they probably are concerned.

SENATOR BEDELL: Thank you, Mr. Carey. We will be calling a break in the proceedings at this point. We will reconvene at 2:00 sharp.

(Lunch Break)

ASSEMBLYMAN BORNHEIMER: We will now reconvene the hearing. Mr. Fred Allen will be the next witness.

F R E D A L L E N: I'm Fred Allen, President of the Essex and Union Mortgage Co., and I'm concerned with some of the complaints that I've been hearing here today and I feel that an explanation in connection with some of them is required.

Since March of 1979, Essex and Union Mortgage Company has been stockpiling commitments in anticipation of an interest rate shift in the mortgage market and our problem is a fairly simple one. We found ourselves in the position that we could supply the house-buying market interest rates far below the mortgage market. While the interest rates have been soaring to a high of 17%, we have been able to supply mortgages from interest rates as low as 11½% to a high of 13 3/4%. That's when we found ourselves in the position where hundreds of mortgagors are seeking lower interest rate mortgages from our company and therefore a tremendous growth situation resulted. We increased our staff from approximately 25 to approximately 70 people. We moved into a new office building to accomodate the new influx of business. We hired some of the top mortgage people in the State of New Jersey to man the growing enterprise. We spent thousands of dollars for new equipment, typewriters, adding machines, computers and the like. We have added many trunk lines to our switchboard, so they can handle the tremendous amount of calls that were coming in. Incidentally, our switch is one of the most sophisticated ones in the industry. We have set up monitoring teams to do nothing but try to smooth out the tremendous amount of telephone calls that were coming in to the Essex and Union Mortgage Company.

Mortgages draw lawyers. The real estate brokers and the like pressed us for fast closings because of their fear that the lower interest rates would not hold. All of this added to the pressures of our company facing this tremendous growth because of the lower interest rates being offered to the public. Part of our problem has been our inability to find an increase of interim financing, which in the mortgage banking field is called "warehousing". The problem is compounded by the fact that the commercial banks have found themselves short as far as capital is concerned and have not been able to give the lines that have been needed for tremendous growth. It is similar to a gas station who suddenly finds himself at 50¢ a gallon where the rest of the market is \$1.30. We found ourselves giving mortgages to the industry at interest rates far below anything that anybody could give in this State. Therefore, we had a tremendous growth situation.

Through this growth situation, we have not, at all times, been able to give the public the kind of service that we would have liked to give it and, therefore, there have been complaints that have come into this organization from our company. We want to make sure you understand that the complaints that have been coming into our company are not because of the fact that mortgage bankers are not doing their jobs right. It is because of a tremendous growth situation. As an example, 11½% interest rate mortgage on a \$50,000 mortgage for thirty years would have a payment, forgetting about taxes, of approximately \$485.00 per month, where a 17% interest rate would have an interest rate payment of \$712.00 per month, a \$227.00 differential. Naturally, when somebody can save this kind money on a mortgage payment, they're going to come to us.

In spite of the fact that we're a minority mortgage banking company, we found ourselves the fastest growing company in the State of New Jersey. I was concerned that some of these complaints that have come into our office would create a stigma

as far as the mortgage banking industry is concerned and as far as we were concerned. I can assure you that we intend to close as many of these mortgages as we can at the lowest possible interest rates that we can. It's a service. It's one of the areas that prove that mortgage bankers and their role in the money industry in the State of New Jersey are one of the reasons that the builders and the brokers and the home buyers can buy and sell homes.

ASSEMBLYMAN BORNHEIMER: Thank you very much, sir. Assemblyman Mays?

ASSEMBLYMAN MAYS: What is your main objection to this bill? I still don't understand that.

MR. ALLEN: One of the concerns that I have--and I talked to one of the fellows before and he said, "Don't bring up the minority situation." I'm concerned with it because if there is an organization or any single person or even a body of persons that can have the right to, maybe, give me a license, that frightens. The very fact that I fight against tremendous odds daily is one of the things. But, if I have to, suddenly, find out that in order to have a license in New Jersey--and I am one of the few minority mortgage bankers in this country--I would be frightened of this kind of a law.

Also, in many of the instances that Mr. Levy brought up, our counsel, in the mortgage banking business, it is a very complicated business, as far as playing with the money market is concerned, the "Ginnie May" markets, the "Fannie May" markets and we must have flexibility in order to work in this kind of a market, to bring the monies in. The market sometimes fluctuates by the day and if we have a governing body that tells us that you can't charge too much and two days later we find out that the market has changed totally, we can be wiped out. A one point fluctuation in the interest rates can cost us as much as six percent, eight percent, nine percent. It can wipe a mortgage banking company out because we deal in millions of dollars. Each time we close a loan, it's \$100,000; \$50,000; \$60,000. It's a very dangerous kind of situation if we can't control the situation as we're doing today.

ASSEMBLYMAN MAYS: Well, how do we deal with the problems that you heard this morning and get rid of the fly-by-night mortgage banker?

MR. ALLEN: Well, that's the problem and it is a problem that I think most of us were fairly aware of, but we did not realize that this was one of the reasons that your body was so concerned with the licensing situation. The mortgage banker would do everything he possibly could to help you write a bill that would control that kind of a situation, but not interfere with the flow of monies that fluctuates back and forth between the states.

ASSEMBLYMAN MAYS: Thank you.

ASSEMBLYMAN BORNHEIMER: Mr. Kosco?

ASSEMBLYMAN KOSCO: Why would this bill stop you from--to use your words--playing with the money market? How would this bill stop that from happening?

MR. ALLEN: Well, it can stop it if we have so many restraints on it--

ASSEMBLYMAN KOSCO: Can you give me one of the restraints that would stop you from doing business?

MR. ALLEN: Well, we were concerned with the fact that you would control--well, points is an example. Points are done by virtue of the cost of the monies.

ASSEMBLYMAN BORNHEIMER: Points are controlled by a different bill. This bill does not deal with points.

MR. ALLEN: Well, I think one of my concerns was that some of the wording gave me the impression that the charges and costs were tied into the points.

ASSEMBLYMAN BORNHEIMER: Not at all, sir. There is nothing in this bill that deals with points.

MR. LEVY: Mr. Chairman, if I can make a point, the language in Section 13, a and b, if you refer to it, particularly b, says, "Except as otherwise permitted by law, the Commissioner may, by rules and regulations, establish guidelines to determine the reasonableness of fees and commissions, including but not limited to direct or indirect costs or expenses incidental to the processing and closing of mortgage loan transactions." We've reviewed that language very closely and analyzed it. It was ambiguous, but it also concerned us because it seems, to a large extent, that points would necessarily be included in that language, and whether or not they would be regulated by another bill, the Commissioner would be given the authority--

ASSEMBLYMAN BORNHEIMER: Mr. Levy, you know for a fact that there's another bill pending.

MR. LEVY: I understand that.

ASSEMBLYMAN BORNHEIMER: And that bill would take precedence.

MR. LEVY: If that bill were enacted dealing with a conventional mortgage loan, it would take precedence, I agree, Mr. Bornheimer. The problem is that you've also got other types of lending, which are not subjected to the A-1052, such as the "Fannie May" market, which is why Mr. Allen is able to supply the public with loans as low as 11½%, which could be affected under Section 13b, which would still allow control over any kind of cost, whether they were related to points or otherwise.

ASSEMBLYMAN BORNHEIMER: Let me explain something to you. Normally, what happens, when a piece of legislation is passed, is that the industry and the Commissioner and the Legislature all get involved and see that it doesn't kill one or the other or give too much power to one person or take too much power away from one person. You raised the question of points and I don't think that's involved in this bill at all.

COMMISSIONER BIANCHI: Mr. Levy talks about federal programs. Let me remind you that he certainly knows that this bill provides as follows in relation to our setting of fees: "The provision shall not apply to loans insured or guaranteed by any agency of the federal government." He knows that that deals with "Ginnie May" and "Fannie May".

MR. LEVY: That's not so.

ASSEMBLYMAN BORNHEIMER: All right, we'll continue with the present witness. Mr. Kosco?

ASSEMBLYMAN KOSCO: If we clarified that particular section--

MR. ALLEN: I think if that section was clarified, many of the fears that I have would be subsided.

ASSEMBLYMAN KOSCO: Do you have any other objection to the licensing section of this bill?

MR. ALLEN: Well, I think the main objection is the wording, the fact that you may or may not give a license to a mortgage banker, rather than you shall, if he passes.

ASSEMBLYMAN KOSCO: You would rather see the word "shall" be substituted for the word "may" in many instances throughout this bill?

MR. ALLEN: Yes.

ASSEMBLYMAN KOSCO: Thank you.

COMMISSIONER BIANCHI: May I ask the witness a question?

ASSEMBLYMAN BORNHEIMER: Yes, you may, Commissioner.

COMMISSIONER BIANCHI: He felt that because of problems with his institution maybe we were pressing this particular bill. Mr. Allen, would you be surprised if I told you that in the figures that I gave regarding the complaints up to February of 1980, that in reference to your institution, there were only eight complaints up to February of 1980?

MR. ALLEN: I'm glad to hear that, sir.

COMMISSIONER BIANCHI: So, it is not because of your institution that this bill is being pressed.

ASSEMBLYMAN BORNHEIMER: I thank you for being here today. Do you have anything else you would like to say?

MR. ALLEN: No, that's all.

ASSEMBLYMAN BORNHEIMER: Thank you very much. We appreciate you being here. The next witness is Thomas Landa.

T H O M A S L A N D A: Good afternoon. I am not affiliated with any bank. I'm not an attorney. I'm a recent New Jersey home buyer and I experienced problems with obtaining a mortgage. I had my lawyer send a complaint to the Banking Commission on the corporation that I worked with originally to obtain a mortgage. I did, eventually, obtain another mortgage, a V.A. mortgage through another corporation, but I originally applied for a mortgage in September, at a 10½% rate. I had a choice of either going with a conventional mortgage at 10½% or a V.A. mortgage at 10%, but there were points additional on the V.A. mortgage, which would have meant upfront money. So, I decided to go with the conventional mortgage.

Now, this mortgage corporation was recommended by the realtor and since I was moving in from out of state, I trusted the realtor, since they have been in business for quite a while and they had a good reputation, that they would be able to provide me with a source of mortgage money.

So, I made my application on September 22 and the mortgage personnel that I talked to felt that there would be no problem at all in getting a 10½% mortgage. Every once in a while, I would call up this mortgage company, since I was the only one that could get in touch with them. The realtor would call and they would always get the answering service. My lawyer called and he frequently got the answering service. But, if I called them during a specific time during the day, I could get this mortgage company. They were very reassuring, telling me that there was no problem, everything was going fine. About the third week of October--I had a mortgage commitment date of the 22nd of October for the mortgage for the purchase of the house. About the third week of October, I called this mortgage company and they were reassuring me again. I decided to get in touch with a relocation, which I was using through the corporation that I worked for, and I asked them about the mortgage company that I was working with and they indicated that they didn't have any hard facts or any definite information, but people have been told to steer away from it. At that time, I started proceedings to get a V.A. mortgage. By the way, the origination fee or the application fee for the mortgage, the original mortgage, was \$325. The application for the V.A. mortgage, which was through another mortgage broker, was \$90. I called the Consumer Affairs Division about this mortgage company and they informed me that they had one complaint in the last two years. So, on that basis, I felt that they probably had a pretty good record. On October 19, I called the mortgage company and I got a verbal commitment. They said that everything was okay and that the papers would be in the mail within the next couple of days. I called several times thereafter and they indicated that the

papers were sent out, but the realtor never received them and my lawyer never received them. Later, I don't know exactly what the date was, the realtor did receive a commitment letter and it was dated October 19. This was for the mortgage at 10½%. My lawyer then sent in the information necessary for the mortgage company to fulfill their obligation, the package for the purchase, along with an additional survey, which they required, even though the house was surveyed, the land was surveyed less than two years ago. They required an additional survey. We sent all that in and I insisted that he send it by registered mail so I could be sure that they got it, because we never got their commitment letter, originally, and we set up closing for the 30th of October.

Now, in relocating from Connecticut, I had a sixty day limit on my interim living and the sixty days were up in the first week in November. We set up the closing for the 30th of October and that date came and went and we had no closing. My lawyer set up a few more closing dates and put an ultimatum to the mortgage company and they finally informed him that they couldn't get the money at 10½% and the best they could do was 13%. I had to get an extension of my interim living expenses from my company so I could wait for the V.A. mortgage to come through, and also, since I had sold my house in Connecticut and I had no place to live down here, I made a rental agreement with the sellers of the house which I purchased.

Now, they were held up also because they were buying a house in Indiana and they needed the money that I was going to give them from my purchase of their house to buy their house in Indiana. So, they had to get an interim loan at much higher interest rate to provide the down payment for their house in Indiana, until I could come through with my closing.

So, I was paying \$750 a month in rent until the sixth of December, when we finally did close for the V.A. mortgage. The reason I came down is because I don't want anybody else in my situation to go through the same thing again. If there was some legislation that would regulate these mortgage brokers, mortgage banks, mortgage companies, whatever, if they were, at least, licensed, it would reassure the purchaser that they're working through a reputable organization. As it stands now, when I was shopping around for a mortgage, it was a balance between the price, the interest rate. That is what I was really looking for. The V.A. mortgage I could get at a lower interest rate, but the points, I couldn't make up that difference in points by that half a percent, so I went with what I thought was a reputable mortgage company.

ASSEMBLYMAN MAYS: Was this company one of the 25 top companies?

MR. LANDA: I don't know what the 25 top companies are.

ASSEMBLYMAN BORNHEIMER: Mr. Kosco?

ASSEMBLYMAN KOSCO: When you were trying to get your mortgage, what procedure did you follow? You said you were shopping around for the interest rate. What procedure did you follow when you went out to get your mortgage?

MR. LANDA: Well, being from out of state and new to the area, I was not familiar with any of the banks in the area or the mortgage situation in New Jersey. What I did was I depended mostly upon my realtor. The mortgage rates were getting tight at the time and I asked me a realtor if they could find me a mortgage rate and they said they could find me one, that I could always go with a V.A., there's no problem with the V.A., since I am a veteran, but they have another mortgage company that is offering now a mortgage at 10½%. They provided me with the information, but I have to tell you, also, that if it wasn't for the realtor, I wouldn't have gotten my original application fee back. This mortgage company was mentioned briefly this morning and I had heard that their refund checks weren't credible. So, my realtor, along with my lawyer,

insisted on a certified check and they did come through with the certified check and I was very pleased with that.

ASSEMBLYMAN KOSCO: Now, you were talking about the fees before. You said that the difference between the fees of the two companies was from \$350 to \$90.

MR. LANDA: \$325.

ASSEMBLYMAN KOSCO: \$325 to \$90. Did you know that at the time or were you actually concerned about the fees at that time or were you concerned about the interest rate?

MR. LANDA: I was more concerned with the interest rate.

ASSEMBLYMAN KOSCO: Did you know what the fees were? Going back to the question asked before, when I heard some laughs from the audience, most people, in my opinion, and I purchased houses before, when I first was married and I was younger. I bought two houses. I don't ever remember--maybe it was my own stupidity--but if that was the case it probably the same with a lot of people. You don't ask about fees, because I just assumed, at that point, that these things were more or less standardized, but evidently, they are not, and I think most people think they are standardized and that's what I was bringing up before. Did you shop for fees or did you shop for interest rates?

MR. LANDA: No. I shopped for interest rates.

ASSEMBLYMAN KOSCO: So, your real estate man, in essence, and I'm not trying to put words in your mouth, the real estate person who sold you the house was the person who had a captive audience in selecting or helping you select a mortgage company?

MR. LANDA: He did, yes. I would say so.

ASSEMBLYMAN KOSCO: That's the point I was trying to get across before and I think that that's probably the situation with most people that go out and purchase a house today. Unless you're involved with it on a day-to-day basis, unless you deal with it as far as companies and builders who go out and look for mortgage monies, the individual home owner, in my opinion, goes to a real estate agent and says, "This is what I want, this is how much I want to pay, I'm interested in monthly payments for X number of dollars," and most people don't even care what the top price of the house is as long as it fits their monthly payment. Thank you, sir.

ASSEMBLYMAN BORNHEIMER: Thank you very much, sir. The next witness will be Frank Pignataro.

F R A N K P I G N A T A R O: My name is Frank Pignataro and I am a resident of the State of New Jersey and the town of Middletown. I too represent no one but myself. I am not an attorney and so on and so forth.

I went through a similar exercise in attempting to obtain a mortgage through a mortgage brokerage company. Starting back in October, when my wife and I saw a house that we thought we would like to buy, we filled out the necessary papers for the Veterans' Administration in the early part of November and began the operation at that point.

I might interject here, I'm kind of here by accident. I normally would not have gone to a mortgage company but for the fact that I thought I was doing a friend of mine a favor and that's why I did not go the conventional route, but ended up with this organization.

All along the line, everything appeared to be going all right, through the month of November. Since we were going to use a Veterans' Administration guaranteed loan, all those papers were filled out and I asked if there was anything more required and the answer was that everything was all right. We proceeded along and we were told

that we had a commitment, verbally, of 11½%. Now, we were targeting for an early February closing. As we got toward the end of January and I started asking more questions and I was getting very vague answers--I hadn't received a letter of commitment at that point--I was getting a bit nervous about it. Finally, I received a letter of commitment, which was dated January 30 and postmarked on the 15th of February and I received it on the 17th of February, with an expiration date of the 20th of February.

My attorney immediately began to suggest to me that I had better take a closer look at everything I was doing and we did. It is difficult to recant to you exactly which happened first and second and so on in the chain of events, but the mortgage company had been informed on many occasions and through many of their employees that, number one, we were compelled to close on the 15th of February or face a \$40.00 a day fine that was built into the contract. A copy of that contract, of course, had been given to the mortgage company at the time that the original papers were filled out. Number two, the lease on the place that we lived in was going to expire the last day of February, and again, we were reassured that there wouldn't be any problem. Now, I ask you, for just a moment, to think a few hours in advance today, to five or six o'clock when you all head home. What would you do if you got to the driveway and found all of your belongings in a furniture van and your wife looking at you and saying, "What do we do now?" What do you do. I just didn't believe it could happen, but it did. It's an extremely difficult situation and all along, we had been promised that everything was going to be just fine.

At that point, we really began to get very disturbed and began to wonder whether this organization was able to perform financially. So, immediately, I grabbed the telephone and started making a few phone calls. I called the Commissioner's office thinking that this will be taken care of in no time. I'm not quite sure how it happened, but I got the Commissioner on the phone. It's a refreshing change, but anyhow, I asked him, I said, I got this problem and can you help me. He said, "I'm terribly sorry, but I can't." I said, "You didn't understand my problem, let me go through it again." So I went through it again and he said, "No, I understand your problem, but I can't help you." I said, "Can you offer me any hope?" He said, "Not really. We have no jurisdiction over these people." He said, "I'm sitting here with a lot of complaints, but I have no jurisdiction." I immediately, then, got ahold of the Veterans' Administration. I figured that these people are doing business with the V.A. and F.H.A. and maybe I could twist an arm or two there. Everybody was stonewalling. Nothing, not a word. There were a lot of vague comments and pretty soon, I got the distinct feeling that I was out in left field and in a lot of trouble. As we began to apply a little bit more pressure, we got a verbal commitment in the office. That was the day that the van had come and what not and the van was down the road and my wife and I went into this company's office. We met there six people who told identical stories to what had happened to us. It was word for word, missing form for missing form, extension for extension, whatever it was, the stories were identical. It was as though the group of us had been given a mimeographed sheet to a play and recited it and practiced it for hours. I would make a comment like, "They asked for a certificate of occupancy on three different occasions." A guy would say, "Oh, but they got me four times for a certificate of occupancy." There was a flood search or whatever it's called, which I think is interesting since my house is at an elevation of over 300 feet. In the State of New Jersey, if that one goes, there's going to be a lot of other people in trouble too. I really don't want to bore the Committee with details, but let me assure you that there were many, many situations of, "Yes, we have the form; no, we lost it."

It was even to the point where information was not getting to the Veterans' Administration. I hand-delivered things that were requested from the realtor, from my attorney's office to their office, with the assurance that they would be forwarded to the Veterans' Administration on a Thursday or a Friday. I would then go to the V.A. on a Monday morning and they weren't there and would go a week after that and they still weren't there.

Obviously, of course, the interest rate moved up. We finally did close. We closed Monday night, at ten o'clock at night. The disruption to the family, of course, was quite considerable. Beyond that, I feel that I am very fortunate. You asked this morning, how many people could be here if everybody could take a day off with no great problem. You and I are in the same industry and we can always disappear and get away with it for a half a day or whatnot. The answer is that you would have a lot of people here, but, unfortunately, all the people that I've met, who were in similar circumstances, were those people who were either on an hourly wage or employed in some occupation where they don't have that freedom of movement where they could drive to Trenton and say their piece. But, I'll tell you something right now. I doubt this room be big enough to hold everybody, if you had the opportunity to have half of them here to tell you what happened to them. It's really a kind of very, very sad commentary when a resident of the State of New Jersey finds himself with absolutely no place to go. The HUD complaint doesn't work, I can assure you. I tried that. The V.A. complaint doesn't work. I tried going the federal route. I haven't received any response to that, although there has been some indication that I might. We are completely defenseless and we are in an area, as you mentioned, that none of us really have a great deal of expertise in. I mean, you buy a house a few times during your lifetime and you assume the people you're going to do business are reputable and you find yourself out and in difficulty, with no place to turn, absolutely no recourse. For me, the war is over. I hope that you will take some action in the very near future to prohibit the circumstances from putting other residents of this State in the same difficult position that I was in. Thank you very much.

ASSEMBLYMAN BORNHEIMER: Thank you. Assemblyman Adubato, do you have any questions?

ASSEMBLYMAN ADUBATO: Not really, except to thank you for coming down and, you know, coming from the same industry as I do--

MR. PIGNATARO: Which shall remain nameless.

ASSEMBLYMAN ADUBATO: Well, we sell life insurance. I assume that's what you do.

MR. PIGNATARO: Well, we're a general agency. I almost stopped breathing this morning, when you suggested the fee go up to \$25.00. That's fine if you're licensed with one company. Where you licensed with close to 70 companies as brokers, I would just as soon you didn't raise it to \$25.00.

ASSEMBLYMAN ADUBATO: That's a very good point. I'll have to reconsider that.

MR. PIGNATARO: Otherwise, I won't have my freedom of access anymore. I'll be working night and day.

ASSEMBLYMAN ADUBATO: We'll discuss that privately, but that's a good suggestion. I agree with you. But, coming from the same kind of an industry, I would hope that you also feel that while there should be some kind of controls in this situation, that the vehicle that we have before us in its present state may still need some amendments, especially in the area that we talked about. I haven't had an opportunity to talk to the Commissioner about it. He's always been fair in every exchange that I've had with him.

This really should be asked of the Commissioner, not you, but, you know, we have to sit for a test. When you got your life insurance license, you studied and you sat for a test. If you passed that State exam, the Commissioner really had no choice but to give you a license, as long as you passed that test. Now, I don't know if it's the right thing, the way the legislation reads, because I think that if a person, if it's a criteria that the Commissioner wants to set up, that's one thing. But, if it is just to arbitrarily say, "I may or may not give you a license," I think that's another thing. In fact, I don't even know if that meets the constitutionality question.

MR. PIGNATARO: I am certainly not making any comments on the bill itself. I certainly not qualified to comment on this bill, the pros and cons. My only comment is that we have in this State, at this moment, no protection and we apparently have some sort of a problem. If we didn't have a problem, we wouldn't have all these people here today and some very vocal, and I would imagine, relative expensive legal talent defending an association membership that says there aren't any problems.

ASSEMBLYMAN ADUBATO: Well, I think that horse already left the barn, that there aren't any problems. I think that's over with. I think there are problems. I think the people that are responsible in the industry will recognize those problems. Again, it is just unfortunate that it took the Chairman and the Commissioner, along with other people, to motivate this reaction, you know, to have people here today. But, all in all, I'm an optimist and I think we're going to have legislation soon that will meet the legitimate concerns that you spoke about, but, at the same time, will not put people in a different category, just because some people in that industry or that profession aren't doing what they're supposed to be doing. I don't think we ought to penalize those responsible people either.

MR. PIGNATARO: I'm still willing to bet that 90% of the organizations in this thing are probably smoothly operated, well adjusted, but sometimes even a really good actor can turn to be a bad actor because of some unforeseen circumstances. One of the things I noticed lacking through this entire arrangement was any sort of communication. If there was a problem, why can't you assume that the client would be adult enough to be informed of what that problem is and that there is going to be a delay. If you're going to have to live in a motel for a few weeks, tell somebody ahead of time, "Hey, you better make plans. We have a little bit of a problem here and it's going to be three or four weeks." But, to not answer a phone or to hang up, on top of doing these other things, coming up with strange little numbers and fees, is irresponsible. I glossed over that because everybody else mentioned that too. We're still trying to figure out what an engraving fee is. So, it is for those few people who are either bad actors or have temporarily stepped out of what, I'm sure, the industry would like to hold up as its standard. Thank you.

ASSEMBLYMAN BORNHEIMER: Thank you very much. Mr. Edward Blau?

EDWARD BLAU: I'm Edward Blau. I'm President of the Mortgage Bankers Association of New Jersey. I'm Chief Administrative Officer of Margaretten and Company. We're mortgage bankers and we operate throughout the country in six different states. We're headquartered in Perth Amboy. I've been active in the mortgage business for almost thirty years.

I would like you to know, first of all, that we acknowledge what appears to be a fact, that there seems to be problems within some mortgage operators. There are some unscrupulous people, apparently, out there. We don't believe that this bill

addresses that problem. It addresses an entire industry made up of dedicated people who are operating businesses. We also acknowledge that there are some complaints even against the legitimate operators. They are basically minor in nature. There will always be complaints when people interact.

I would just like to briefly discuss the economical and the political environment in New Jersey, as it relates to the flow of mortgage funds on one to four family homes. Historically, New Jersey has been what is called a "capital rich" state. That is, its various financial institutions have had enough funds to invest here and even ample funds to invest in other states. Interest rates were, traditionally, somewhat lower in New Jersey than in other states and, therefore, the competition from outside sources was not there. Financial institutions from other states invested here on a limited basis only. Since our own financial institutions adequately took care of our needs, we did not miss the funds from outside of our state. During those years, previous New Jersey Legislatures passed laws designed to help and to protect the New Jersey mortgagor or the mortgage applicant. Let me just briefly mention a few. There was a law to limit the amount of interest that was charged, usury laws. We traditionally have had one of the lowest in the nation. There was law to outlaw the charging of points on certain mortgages. There was a series of laws that reduced and finally eliminated the charges for pre-paying mortgages. There was a law that required giving twelve days' notice on the number of points, on those loans where points were allowed.

While those laws regulate all lenders doing business in New Jersey, they only affected the New Jersey institutions that were the ones that were lending here. These laws, at the time, had little effect on the out-of-state funds that were not flowing into New Jersey anyhow, for purely economic reasons.

Meanwhile, other states that have been, traditionally, "capital poor" states not only didn't pass this type of legislation, but, in effect, encouraged mortgage funds to flow into their states, by making it economically advantageous to invest there. Because there was little economic loss when New Jersey passed a series of laws, other than to the institutions that had to administer them, there was no hue and cry to stop them. Over a period of years, the economic environment in New Jersey has greatly changed. Now, our institutions no longer have an abundance of funds to invest in mortgage loans. That situation, I'm afraid, is not temporary, as a result of a short-term tight money problem. Rather, we are going through a fundamental change in the way savings are channeled into the mortgage market. Traditionally, the thrift institutions, mutual savings banks, and savings and loan associations, as well as life insurance companies, have been the depositories of savings and the investors in mortgage loans. Today, with the dramatic growth of the money market funds, the normal receptacles of savings are somewhat diminished in importance. As a result, New Jersey, as well as most other states, finds itself in a position where it is now capital short. That is, its own institutions do not have enough funds to invest in mortgage loans for the growth and the prosperity of the state. It is necessary for New Jersey, therefore, to change its traditional posture in order to attract mortgage funds. The primary vehicle in tapping the major capital markets and bringing funds into New Jersey is the mortgage banker. The mortgage banker acts as a conduit between the mortgagor or the applicant and the major capital markets. By selling mortgage loans into these capital markets, the mortgage banker, in fact, imports, actually imports badly needed money from those out-of-state capital markets into New Jersey.

At a time when this state should be encouraging the importation of money, we find pending in our Legislature bills that will require interest on escrows, a bill to override federal legislation that eliminates points, a bill to reduce late charges

and this bill that we're discussing today, which does everything to discourage lending here, rather than to encourage it.

It is interesting to note that over 60 mortgage banking companies have offices in Phoenix, Arizona, while no city in New Jersey has more than two. Our entire state has less than half of that amount. It is interesting to note that New Jersey has only two out-of-state companies doing business here, with branch offices here. There are many large, national mortgage banking companies with branches all over the United States. Apparently, they feel that the climate is not right in New Jersey to open branches here and to bring money here for our homebuyers.

This bill, which gives the Commissioner the right to approve branches or not, this bill which gives the Commissioner the right to deny licenses to people who qualify and pass their tests, this bill which gives the Commissioner the right to set guidelines to establish the reasonableness of fees and commissions, this bill which requires the posting of a bond in an unlimited amount does everything to discourage out-of-state companies from doing business here. In fact, it encourages those that are here to stop originating loans here. One company has recently done that, although it continues to operate in other states. A New Jersey mortgage banker has indicated that it might be forced to close its doors if these bills are passed.

The New Jersey Legislature should be considering legislation to provide more mortgage funds for its citizens. The thrift institutions are not attracting enough funds to do the job. We mortgage bankers will continue to tap the capital markets for mortgage funds if we are not saddled with legislation like this that will make us uncompetitive. Thank you for your understanding.

ASSEMBLYMAN MAYS: Mr. Blau, you are President of the Mortgage Bankers Association?

MR. BLAU: Yes, sir.

ASSEMBLYMAN MAYS: And you said you were aware that there were some problems in this field?

MR. BLAU: I am now.

ASSEMBLYMAN MAYS: Were you aware before you came here today?

MR. BLAU: I heard some rumors of some problems. I was not aware of some of the things that the prosecutor talked about, of companies that were selling life insurance. These companies are not in the mortgage banking business.

ASSEMBLYMAN MAYS: You mean, you are the President of the Association and you never heard of any of these problems?

MR. BLAU: I didn't say that.

ASSEMBLYMAN MAYS: Have you heard of any problems in the field of mortgage banking?

MR. BLAU: There are always complaints, yes sir. I've heard of many complaints.

ASSEMBLYMAN MAYS: Okay. What has your association done to eliminate these problems or what steps were taken? Did you ever call the Commissioner or did you ever talk to your assemblyman or your senator about these problems?

MR. BLAU: Yes. As a matter of fact, on an individual basis, the Commissioner's office has talked to various companies when a problem has existed and brought to the attention of the company and we believe that in every one of those cases, there was a positive and cooperative reply. The Association has not been involved in that, as such. The Association, as such, has not been involved in the problems and there have not been any problems of substance called to our attention.

ASSEMBLYMAN MAYS: But, your Association is involved with this bill, A-755, but never with the problems of the public when they have a problem?

MR. BLAU: Somebody has to tell us of the problem. We did meet with the Commissioner and we asked him, I would say October or thereabouts, if he would like to illuminate and identify the problems at that particular time. He did not. He recently did within the last 48 hours, but we did not know of the problems, sir.

ASSEMBLYMAN MAYS: You mean to tell me that you've been in this business for thirty years and you never heard of these shady deals or shady business deals?

MR. BLAU: There are some shady deals, apparently. They are not, in any way, involved with the companies that are in our association and we have not attempted to address ourselves to those problems.

ASSEMBLYMAN ADUBATO: I guess I was thinking or trying to think about some of the points that you raised. I'm trying to find a continuity to the problems that have been here today with mortgage solicitors and mortgage brokers and how they affect the bankers, themselves, who provide the funds, as opposed to those people who solicit the funds, and it is not easy. The people who are mortgage brokers can also be mortgage bankers, is that a fair statement?

MR. BLAU: I would say that that's not typically the case. The mortgage banker, typically, is not an individual, it is a company or a corporation. The mortgage banker closes mortgage loans with its own funds, with one intention, to sell that mortgage loan. A mortgage broker, typically, is an arranger of the loan between two people, between an applicant and a bank, let's say.

ASSEMBLYMAN ADUBATO: Now, the mortgage broker, normally, is a licensed real estate person, is that a fair statement?

MR. BLAU: He's supposed to be. I would guess that some of the people that we talked about here today might not have been.

ASSEMBLYMAN ADUBATO: The other term that is used in the legislation, "mortgage solicitor", doesn't have to have any kind of a license?

MR. BLAU: Today, a mortgage solicitor is licensed to a mortgage banker, as a licensed salesman, under the New Jersey Real Estate Commission. A mortgage banker is a licensed real estate broker and he employs solicitors who are license real estate salesmen. Under this legislation, that would continue.

ASSEMBLYMAN ADUBATO: Excuse me. Were you saying that all solicitors are licensed? Is that what you are saying?

MR. BLAU: Yes, sir, if they are employed by mortgage bankers.

ASSEMBLYMAN ADUBATO: What if they are not employed by mortgage bankers?

MR. BLAU: Well, if they are employed by a banking institution--

ASSEMBLYMAN ADUBATO: Is there any way you can set up an operation in New Jersey today to solicit mortgages, without having a license?

MR. BLAU: I don't believe so, legally.

ASSEMBLYMAN ADUBATO: Now, the license that we're talking about is a real estate license, isn't that correct?

MR. BLAU: That is correct. All of the salesmen must be licensed to the broker.

ASSEMBLYMAN ADUBATO: And the jurisdiction, naturally, comes under the Real Estate Commission, which is a very inactive, I would say, situation, more or less.

MR. BLAU: Well, your words--

ASSEMBLYMAN ADUBATO: Well, that's what it is, a very inactive situation. Is there anything in this bill that you could support?

MR. BLAU: I would think so. I, for one, find no problem with being licensed. We're licensed now and we're licensed under the Real Estate Commission. If it was

the thought that, for whatever reason, the Insurance Commission, which provides us the Real Estate Commission was not the proper place and we should be licensed under the Banking Department, that doesn't bother me. We have never advocated that we shouldn't be licensed. There are page after page of details that we find abusive and, I would say, make it difficult, if not almost impossible, to function. But, that doesn't mean that there are not other paragraphs that are worthwhile. The bill, taken as a whole, would be impossible to support, but, sure, there are places in there that I think are needed, someplace. I can't understand why we would have to be licensed under this bill and the New Jersey Real Estate Commission, which is what this bill provides for. It doesn't provide for relief from the other one.

ASSEMBLYMAN ADUBATO: Well, that's my next point. A person who sells real estate has to put in so many hours, I understand, and serve in a minor capacity for a number of years before he can go out on his own. But, there, a person is selling real estate. I think that speaks for itself. Hopefully, he has some knowledge of what he's doing. Now, you're talking about a funding mechanism. You're talking about putting together paper, which is a little different from selling real estate, I think. The people who are doing that--again, if you're dealing with a savings and loan, if you're dealing with a bank, again, the logical thing is that they come under the Banking Commissioner. If there's a problem, as was stated here, they can talk to the Commissioner of Banking. Now, you have these people who are really in the banking business and are licensed real estate people, and I don't know why, if they are involved with money in New Jersey, even though this is paper they are getting outside of the State, the cost effectiveness is going to affect the people that live in New Jersey, and I think that would make sense to put you under the Banking Commissioner. People who have testified here today, their biggest complaint is that there is no one to turn to. There is no one to turn to. No one listens. There's no control and, as you said, you don't mind being licensed yourself. I'm sure you don't and I'm sure you are a very reputable person. I think the people who would probably be concerned about this legislation aren't in this Chambers today.

MR. BLAU: That's not true. I'm concerned about this legislation.

ASSEMBLYMAN ADUBATO: You're concerned about it, but I think the people, for whatever reason, on principle, which is important and some of the other effects of the bill that are important that I might even agree with you with the over-regulation. I do agree with you, but what I was trying to get from you is that while there are some things in this legislation which I, as a legislator who is elected to vote, I can see things in here that I can support and I see some things I can't support and I'm ready to point to it. I have difficulty in talking to respectable people like yourself in the industry and understanding why you can't specifically tell us what would be helpful to police yourselves, to police the industry.

MR. BLAU: I can tell you that. I didn't know you wanted me to go through that. I can tell you that there are things in this bill that we have no objection to and, as a matter of fact, they probably are a benefit. There are all sorts of things in here. For instance, you take our license away if we commit fraud on the public and I would say that that is proper. That's an example. If we misrepresent, circumvent, or conceal the nature of any material or particular of any transaction, you can take our license away. There's a whole series of things in here. We have no problem, I have no problem to being licensed. We are licensed now. Many of the clauses in here come right out of the Real Estate Act. I have no problem with some of them. I have a serious problem with being regulated. There's a big difference between regulating

everything I do and licensing me. You know, I'm licensed to drive my car and if I don't drive well, you can take it away, take my license away, and that means that I can't drive my car anywhere. That's different that putting somebody in the next chair with me while I drive and telling me when I can turn left and when I can turn right. I don't object, personally, to the license. Nor do I object, personally, to having to transfer from one to the other. I do object to having two licenses, however, one with the Real Estate Commission and one with the Banking Commission, with different rules, where I only do one function.

ASSEMBLYMAN ADUBATO: Would you need two licenses if you weren't a mortgage banker? If you were just selling real estate, would you need two licenses?

MR. BLAU: One.

ASSEMBLYMAN ADUBATO: Under this bill?

MR. BLAU: Well, I don't know what the Commissioner has in mind by changing it. He referred to that paragraph. But, as it reads now, I believe I would need one license if I was a real estate broker only, but two licenses if I was a mortgage banker. So, I would be subject to the rules of the Department of Banking and the New Jersey Real Estate Commission, even though I was not a real estate broker from the standpoint of selling houses. So, I don't see why we have to have two sets of rules. That's the type of thing I mean. I don't think we want to go through this sentence by sentence in this Chamber, but the fact of the matter is that this bill is an overkill and I started by saying earlier that I, for one, would be happy to sit down and talk to anybody and talk about abuses that taking place, if that's the case. As I say, the details of those abuses, we've known about for about 72 hours. I would be very happy to sit down with that, but this bill is an overkill.

ASSEMBLYMAN ADUBATO: Mr. Blau, in all fairness to you, sir, I have to say, in the seven years that I've been sitting down here now and I've had the opportunity to listen to people from the private sector, one of the things that I've found out is that people are very reluctant to talk about anything that's positive in a piece of legislation, for whatever reason. However, again in fairness to you, the question must be asked, and as the Chairman pointed out, if you people don't know, if you people are not aware of some of these abuses, it's sad. It's very, very sad. Just think how bad it is that until 72 hours ago, you weren't aware of these things, you said.

MR. BLAU: That's not quite correct.

ASSEMBLYMAN ADUBATO: Unless I misunderstood you.

MR. BLAU: Maybe slightly. The Commissioner has a list of abuses. He gave us some numbers. We asked him, sometime ago, if we could see those and he gave them to us 72 hours ago. So, we saw the details. You know, if there are people that are ripping off the public, I really don't know that. I'm not in that business and there are people like that, apparently, I heard that this morning. I heard what the prosecutor from Monmouth County said and I heard a lot of other testimony. I guess my job every day isn't to police that industry that I am not in.

ASSEMBLYMAN ADUBATO: But, you don't want government to do it either.

MR. BLAU: I didn't say that.

ASSEMBLYMAN ADUBATO: You don't want to do it, but you don't want government to do it either.

MR. BLAU: Absolutely not, we'll help you.

ASSEMBLYMAN ADUBATO: The point is, Mr. Blau, that, you know, it was in these very chambers, about four years ago, if I can take thirty seconds to relate this, where the insurance sat in the chairs that you are sitting in and I asked them if they thought the system was fair, the things I spoke about, and they said, "No." I said, "Well,

why haven't you changed them? Why haven't you taken the initiative?" Their response to me was, "because life isn't fair and in life, you're always going to have people falling through the cracks." I asked if they really meant that and they said, "Well, no one has really ever asked us to change it." Now, Mr. Blau, these were all good people and you are good people. Unfortunately, I think I've learned something sitting here. I haven't learned too much, but I think I've learned one thing sitting here. That is that unless government acts, as distasteful as it is to me, believe it or not, until I see the initiative from the private sector that talks about private enterprise and no regulations and letting us have competition and everything else, damn it, you have a responsibility to insure that there isn't regulation and the only way you can meet that responsibility--not you as an individual, I'm talking about your whole industry--you have that obligation to police yourselves. You have an obligation to get away from code of the doctor, who doesn't turn in the other doctor, you know. That's what it's really all about. Forgive me. I get angry sitting here looking at legislation that I don't like. But, when I don't see an alternative out there and when I see people say, "Well, that's not our job," well, if it's not your job, who's job is it? I'm not saying this to you personally, but that's what I think this thing is all about. If we're really going to protect the private sector, if we're really going to have free enterprise, I think we better learn, all of us, to turn in that life insurance man that is doing something unethical, to turn in that guy in your business who isn't doing what he should be doing, because, if we don't do it, you're going to see more and more and more of this because there is a legitimate public outcry. You know, we've heard, as was pointed out and I agree, a very small, small part of the problem today. I'm sure we can multiply by whatever figure you want to use those people that are here as opposed to those people who have been hurt and been affected by it. This may not be the answer. It may not be the answer, but unless you people are more than willing to do something other than just be critical of people who are trying to do something, then you have no validity. I appreciate your coming down here, but I think you have to do more than that. Hopefully, we'll get a product out here that won't be a detriment, as much as it might be to free enterprise, but will also awaken some people that maybe you should be taxed, in a way, for your own industry, that government shouldn't have to pay to police you, that you should pay for yourself. Again, I apologize to you because, although it sounds that way, I'm not lecturing you, I'm not being critical of you the individual, but I just get frustrated as hell because I don't want to see regulations that overburden industry any more than you do. I just wish I knew what the hell the answer was.

MR. BLAU: If I might reply, I think I understand where you're coming from and I respect your point of view. I would like to say that our industry can be of help. One thing that we have to understand that the mortgage business, shall we say, is fragmented into various segments. We've heard, this morning, some things that were, well they bordered on the fraudulent, and apparently, there aren't laws, and maybe there should be. In my normal day, I don't hear of those things and if we can be of help to address that problem, that's one thing, but when we see legislation like this, that's what brings us out. It's like, you know, where was I last month, where were you last month. Something brings it out. This bill, in all due respect, does much more than attack the problem that you have just been talking about and the problem that you have been talking about is real. I'm not sure that this bill is real. It's like two different worlds between the world in which we operate and the things we're hearing about today. Maybe we can--I don't want to sit here and make false promises--

but maybe we can do something. One thing is for sure. This bill addresses another entirely different problem than what you've been addressing. That's really all I have to say.

ASSEMBLYMAN ADUBATO: I want to thank you for your patience with me.

ASSEMBLYMAN MAY: Assemblyman Kosco?

ASSEMBLYMAN KOSCO: I have just a couple quick questions that require a couple quick answers. I still haven't heard the reason why this piece of legislation will stop out-of-state money from coming into the State of New Jersey. I still haven't been told that.

MR. BLAU: There seems to be a question of intent in the language. Nevertheless, paragraph 13b of this bill gives the Commissioner the right to regulate our fees. Now, those fees, no matter what you call them, include charges that made upon us by out-of-state institutions for money. For example, when we want to reserve a million dollars of funds from an out-of-state institution, we might have to put up a fee. That institution imposes that fee on us. We buy a commitment, at some figure.

ASSEMBLYMAN KOSCO: But, this legislation doesn't say that you couldn't charge it. It says that that would have to be incorporated as one of the fee structures.

MR. BLAU: What I'm saying is that it inhibits the free market system because we are going to pay a fee and then hope that the regulation that allows us to get it back will be adequate. We can't operate under that system. We might have to put up \$25,000 for a commitment of \$5 million. We might have to put up a lot of money to get that commitment, to bring that money in here.

ASSEMBLYMAN KOSCO: So, if this Legislature addresses itself and if the Commissioner included that specific fee structure in his--

MR. BLAU: Well, he doesn't know it because each day it is negotiated differently. For example--

ASSEMBLYMAN KOSCO: Well, it certainly is not an arbitrary figure.

MR. BLAU: Yes, it is. It's arbitrary on the part of the institution that we're doing business with. We might deal with four institutions. One might want a fee for the delivery of mortgage loans a year from now that aren't going to be closed for nine months and we better know today what we're going to be able to charge nine months from now, otherwise we're not going to put up that money to get that money into the state. That's what we're dealing with. That's the real world. If we can't put the money up to get a commitment of \$5 million or \$10 million because we're afraid we won't be able to charge it on the other end, we're not going to do it. We'll do our business elsewhere.

ASSEMBLYMAN KOSCO: Okay. The states that do have this type of legislation--

MR. BLAU: Yes, sir.

ASSEMBLYMAN KOSCO: Does anyone in the audience know which states they are? Are any of them states that could be compared with New Jersey? Arizona, certainly, isn't the same.

MR. BLAU: We're doing business in six states and I'm not an expert on all states, but I guess I'm somewhat of an expert on the six that we're doing business in; Florida, Delaware, Arizona, and California have licensing bills. None of them impose any regulations on our fees and therefore, in answer to your question, the other states that have this type of legislation, does it impede the flow of money to those states, the question isn't applicable because the problem doesn't exist.

ASSEMBLYMAN KOSCO: Well, I'm not asking that question.

MR. BLAU: Well, I answered it. I'm sorry, I thought that was your question.

ASSEMBLYMAN KOSCO: As far as the dual licenses are concerned, you're talking about having a real estate license and a mortgage banking license and you don't seem to think that that's applicable.

MR. BLAU: Right.

ASSEMBLYMAN KOSCO: You also don't seem to think that it's applicable when a person or a Commissioner should have the discretion to approve or disapprove a license, and I think that has some validity, except that I could point out--and you gave the example of a drivers license. There is a certain criteria that you have to meet to get a drivers license. But, when you went down to take your drivers test, one person sat in that car and that one person decided whether or not you were going to get your drivers license, and it was his discretion whether or not you got your drivers license. So, I just point that out. There are licenses that are issued at the discretion of a certain person.

MR. BLAU: Except, if I pass my drivers test--

ASSEMBLYMAN KOSCO: Well, it is one person's decision as to whether or not you pass that test.

MR. BLAU: That is correct. But, under this bill, if I pass the test, he still may refuse the license, even if I pass the test. That's what we object to.

ASSEMBLYMAN KOSCO: Well, I think that possibly has a flaw in it because I don't think that's what the intent of it, obviously, is. As far as dual licensing is concerned, if you own an airport and have a license to own an airport, that automatically doesn't give you a license to fly an airplane. You have to go and get a license to fly an airplane. If you own a taxi company, that gives you the license to operate a taxi company, you still must have a license to drive the taxi. If you own an automobile dealership and you sell cars, you still have to have a banking license to handle financing. So, there are many, many businesses in the country that require dual licensing. Almost any business that you can name that is licensed under the State of New Jersey or any other state, chances are that that business will have more than one license that it has to apply for and I don't know what is so difficult about applying for another set of licenses, as long as you know what the purpose of the license is.

MR. BLAU: I'll answer that. I have no objection to two licenses if I perform two functions. If I am a licensed real estate broker and I'm going to sell houses and I'm also going to be a mortgage banker and provide the financing, then I ought to have two licenses. I have no problem with that. But, this bill says that if I am a mortgage banker and I only do one thing, I have to be licensed to the New Jersey Real Estate Commission.

ASSEMBLYMAN KOSCO: Where does it say that?

MR. BLAU: It says it in the New Jersey Real Estate Commission License Act.

ASSEMBLYMAN MAYS: Excuse me. Suppose the person doesn't want to be in real estate. He just wants to be a banker. As it stands now, he can't be because he has to have his real estate license, right?

MR. BLAU: Well, let me--

ASSEMBLYMAN MAYS: Answer the question, yes or no.

ASSEMBLYMAN KOSCO: That's a yes or no answer.

MR. BLAU: I'm not sure if I understand.

ASSEMBLYMAN KOSCO: I want to just be a mortgage broker, or a mortgage banker, first I have to get a real estate license.

MR. BLAU: Yes.

ASSEMBLYMAN KOSCO: Why can't you be just a mortgage broker without being a real estate salesman?

MR. BLAU: You could. The reason that you can't, under this Act, is that there is another statute that says that if I want to be in the mortgage business, I must be licensed by the New Jersey Real Estate Commission. That's already in another statute. There is nothing in this bill that repeals that and that's what we've been asking for. We would like to see that provision of the New Jersey Real Estate Act repealed before we're licensed under two.

ASSEMBLYMAN BORNHEIMER: Let me interject here, it was stated earlier that in order to be a mortgage banker and to be efficient and productive, you not only need to take and be approved by HUD, you have to be approved by "Fannie May" and you have to be approved by everything else. Aren't they all licenses?

MR. BLAU: Not really.

ASSEMBLYMAN BORNHEIMER: They are not licenses?

MR. BLAU: "Fannie May" is not a license.

ASSEMBLYMAN BORNHEIMER: It is a right to do business, though.

MR. BLAU: It's a right to do business.

ASSEMBLYMAN BORNHEIMER: Right, and there's no fee involved?

MR. BLAU: That is correct.

ASSEMBLYMAN BORNHEIMER: Fine. Thank you.

MR. LEVY: Mr. Chairman, to clarify, the Commissioner had told us that he had complaints. We had that information from the Commissioner. I had actually requested, for the first time, officially to see his files only a few days ago. So, it was not the Banking Department, in any way, which refused to let me see those. It was the fact that knowing of the hearing and so forth, that was the first time we made an official request. I do not want to, in any way, leave you with the impression that the Banking Department, in any way, inhibited us from seeing those complaints.

ASSEMBLYMAN BORNHEIMER: That will be on the record.

ASSEMBLYMAN BORNHEIMER: The next witness is Mark Posnick.

ASSEMBLYMAN MAYS: Mr. Posnick, before you begin, I would like to ask you to get on with some issues that we have not touched on.

M A R K P O S N I C K: Mr. Chairman, first of all, I'm the Executive Vice-President of Margaretten and Company. We are a nation-wide mortgage banking company that's headquartered in Perth Amboy. We operate throughout the State of New Jersey, but, in addition, have operations in five other states from coast to coast. I would like to restrict my remarks to those sections regarding fees and charges and what they mean to the mortgage banker as he performs his role in delivering mortgage services to the home-buying public.

In prefacing my remarks, I would just like to say that if there's any impression that's been left that those of us in our industry are unconcerned about abuses that are taking place in the market place, that erroneous. I think the question is that the Act that is before you, that you're being asked to enact into law has provisions within it, for instance, the fee setting powers under Section 13b, which really don't address the problems that have been raised. That's the thing that we're most concerned about.

As we meet today, we are all the victims of unrelenting inflation. This inflation has sent shockwaves throughout our entire economic system. The prime lending rate is now fixed at 19% and threatens to go higher in the days ahead. The results of the most recent auctions for conventional home loans require a mortgage rate of between 16½ and 17%. The federal government on several recent occasions has been required to pay in excess of 15% in order to attract investments--

ASSEMBLYMAN MAYS: I hate to interrupt you, but some people have been saying that already. We know that. Let's get to what you object to in the bill.

MR. POSNICK: Well, there is ambiguity in the paragraphs that I've mentioned, specifically, paragraph 13b and 14c. The ambiguity that's in the paragraph--for instance, the Commissioner just indicated a few moments ago that he didn't intend for that to mean that he was looking to regulate discounts or points. That may be the intention of this Commissioner, but the language in the bill, which transcends more than one banking commissioner, certainly does not lead to that absolutely finite conclusion. The language is ambiguous. It says that the commissioner can establish guidelines in those fees. If, in so doing, he does restrict our ability to charge fees, he restricts our ability to make a living. If this is all repetitive, we've accomplished all we want to today and I can refrain from any remarks except, perhaps, to tell you that I am very much active in the functioning of the flow of money in our markets and would be happy to answer some questions, if you have any with that regard.

I might add just one point and that is that the mortgage banking industry has been an instrumental factor in the development of tapping non-traditional sources of funds for mortgages. The principal method of this has been the development of securities which are backed by mortgages or mortgage backed security pools. The mortgage banking community has been, by far, the largest party involved in those mortgage pools. Conventional mortgage backed securities are undoubtedly going to be the wave of the future in bringing mortgage funds available to the nation's home buyers, and particularly the home buyers here in New Jersey.

In bringing a deal together for the placement of a conventional mortgage backed security, there are fees that are paid to investment bankers, to rating agencies like Standard and Poor's, to specialty hazard insurance companies who insure against earthquakes and other catastrophic losses not covered in normal insurance, and a variety

of other fees like accountant fees and lawyers fees. If the mortgage banker does not have the opportunity to recoup those fees that it is required to pay in order to obtain funds, and then spread those fees across a group of individual mortgages, it won't be able to function and make a profit. If it is denied making a profit, it won't enter into the transaction. That's what is at stake here. That's what is at the heart of what's being proposed in the regulation of our fees and I would suggest that as you attempt to address the problems of abuses in our industry, don't do so by setting out an atom bomb, which destroys the ability of the mortgage market in New Jersey to function.

ASSEMBLYMAN MAYS: In your opening statement, you said that you are concerned about the abuses. How can you be concerned, when your President just said a few minutes ago that he didn't find out until 72 hours ago about the complaints?

MR. POSNICK: First of all, this is the first time that I'm testifying in a public hearing, so I'm a little nervous. So, if I don't answer all of my questions as well as I would like to--if I only knew your questions before, I could answer them better. I know Mr. Blau, because we work together, and I know that he is very much concerned. Our industry has an Ethics and Standards of Practice Committee. That committee meets and actually entertains questions of whether members against whom complaints have been lodged have violated our own standards. The Association has by-laws and ethics and standards of practice that all members have to abide by and swear to in order to qualify as members. So, we are concerned. I think the answer is that we, perhaps, didn't know the extent, the specific extent of individual problems, so that we could have helped with them, and maybe we just didn't see the urgency and anger of some of the complaints.

ASSEMBLYMAN MAYS: You did say members. You're talking about the twenty-five corporations?

MR. POSNICK: I believe that we have 200 members, of which 25 are active mortgage bankers.

ASSEMBLYMAN MAYS: And you have by-laws and you discuss these problems at the so-called meetings that you have about the abuse that these people just finished telling us about, how he came home and his furniture was out on the street, they can't get their money back, the rubber checks that they've been getting? Have these things been addressed? If that was the case, we wouldn't be here today with this bill.

MR. POSNICK: I can't say, in all candor, that we sit around a table once a month at a Board of Governors meeting and discuss the problems of people who have a truck sitting at the table. But, that's the function of free enterprise. All of our companies have to perform services if they expect to stay in business. To the degree that we fail to perform those services, I don't think that the companies will be able to stay in business long.

ASSEMBLYMAN MAYS: Mr. Adubato?

ASSEMBLYMAN ADUBATO: Mr. Posnick, there's no need to be nervous. Just think how nervous people are when they have to take out a loan. I would like to ask you if the way we're talking about the fees involved, the accountant's fees, the fees to put the thing together with the investment bankers and so forth and so on, the complexity of that is beyond me, but I get in drips and drabs, what you're saying. The fees that I'm talking about that are directly passed on, naturally, to the person who is getting the mortgage--once you put this package together and you come down to a bottom line and you say, "Here is our expense in getting the money and now we have to pass it along." It appears that within the institutions themselves, there is such gap that I see, before

picture, they're the ones we're going to hear about. We're not going to hear about the person who charges a fee that's maybe twenty or forty dollars more. No one is going to bring that to our attention. You know whether you label it, as you pointed out before, a discount or a processing or an application or whatever, the bottom line is still the bottom line when you add it all up and when you get down to that bottom line, that's what it is. For clarity, maybe it might make sense for the Commissioner to have the controls to say that you can't charge for the process and say, "This is an application fee." He could say you could not charge more than X amount of dollars for that sort of paperwork.

MR. POSNICK: In my experience, these are set by administrative fiat. They are either inadequate to the function, in which case, the function stops and ceases to be performed or are excessive, in which case, the fees that are set above the market level for the service, everybody charges the maximum fees that have been made available to them because of the administrative fiat. The free marketplace will work. It does work. We're in an extraordinarily competitive business. I'm amazed that the assemblyman made the remark that he didn't think that people compete. In markets here in New Jersey and elsewhere in the country, we lose business over \$50 on a fee. That's \$50 on a \$50,000 house that we might lose because we charge an endorsement fee, for instance, in the State of Arizona that somebody else doesn't charge and we lose loans because of that. So, it is an extremely price sensitive business and price elastic business and the market will work, if you allow it to. The abuses need to be addressed, but they shouldn't be addressed through the fee making process. That's all I'm saying.

ASSEMBLYMAN ADUBATO: Again, I'm not an expert, but unfortunately, I'm one of the people that has to vote. So, you better make me an expert. Either that, or elect an assemblyman from the mortgage banking business.

MR. POSNICK: Obviously, we're not going to be able to that today, Mr. Adubato, but I would be happy to come by your office some day.

ASSEMBLYMAN ADUBATO: You can do that anyway, but, you know, I always lecture people who come here and I say, as I will say to you, do you know how many people that are in your industry that hold elected office in the State of New Jersey, in the Legislature? Do you have any mortgage bankers who are in the Senate or the Assembly?

MR. POSNICK: We ain't got no clout.

ASSEMBLYMAN ADUBATO: Well, maybe you ought to think about somebody, because, you know, it takes a little bit of a sacrifice, sometimes, and your time, but if free enterprise really is going to work, then different people from different sectors have to do a lot more than make money, which I'm not against, making money. But, you're also going to have to put something into the system as well as take it out and I'm going to lecture you and say that maybe one of you guys ought to run for office. You know, it may be a good idea. That way you can sit here with us. I think my colleague got beat by a mortgage banker.

MR. POSNICK: As long as you don't say he got taken by a mortgage banker.

ASSEMBLYMAN ADUBATO: I would just like to say, before you leave, the complexity evidently that we're talking about, if I can just repeat it, there seems to be no big deal with setting up some mechanism to license mortgage bankers. That's the first thing that I hear. There is a problem and we keep referring back to Section 13b, as it relates to Section 19c. That's been repeated over and over.

MR. POSNICK: Do you mean Section 13b as it relates to Section 14c?

ASSEMBLYMAN ADUBATO: Oh, I apologize. You're right. Now, hopefully, we're going to hear from the Commissioner again today and I can't wait. You see, the

we had this big money crunch, that, you know, it boggled my mind as a layman to see a person going to one institution with the cost of his mortgage being so much, as opposed to another institution for the same amount of money, the same circumstances, the same qualifications being so much less. Now, I realize that maybe the package that the one mortgage banker had cost more or whatever, but it doesn't appear that the level of the cost of money is at a time. I can't grasp why that money should be such a diversity, or is it because that some people want to make a lot more profit on the package than other people want to make? Is it possible that while it is true that the criteria that you're talking about of hindering the deal--no one, I don't think the Commissioner, I don't speak for the Commissioner, but knowing him, I don't think the Commissioner or any person on this panel wants to stop business or stop your business, or stop you from making a profit so you can pay your taxes. No one wants to stop that. However, I think we have an obligation to ask the question, why. At a certain period of time, is the cost of money relatively the same within institutions? Should one institution with the same criteria, same profile, charge so much more? It could be that maybe they're so much more greedy than the rest of us who are interested in profit. It could be that maybe they have a poor operation and they're not running it with good management and the cost of doing business is a lot more. Maybe those kind of people should fail and be out of the business, in all due respect to you, and if there's a way where we can adjust that bottom line problem, that's what I'm talking about. If the cost of doing business is X amount, none of us here can change that. I know it is beyond us to change that, but I don't think it is beyond us, once it reaches that level, that people should not be raped. That's all. I don't know what the answer is. I'm just proposing the question.

MR. POSNICK: If I may, let me give you some food for thought. First of all, I think that you have to go across the spectrum of the different institutions that are making the loans and compare the different institutions, because they provide different functions and have different methods and means of obtaining their operating income and profitability.

Secondly, there's a question of semantics that are involved. What one company calls a processing fee and another company calls an application fee and a third company calls an origination fee and a fourth company calls a discount becomes cloudy and very, very difficult to assess on an equal basis. I've always found it best to look at the total fees. What do these total fees mean, not any one specific fee? The total fees will be a function of the cost of doing business, the cost, both direct and indirect, in terms of the origination of the loan and a margin of profit above that. Some firms run high quality operations. They have messenger services running around with cars and they hand-carry different kinds of documents and promise very, very speedy delivery. Other companies prefer to compete more on price. That happens all day in the products that we deal in and it also happens in the financial services business. So, at the same time that an applicant may take advantage of somebody's lower rates and lower fees, he may be getting a discounting function as well and be taking his furniture out from a warehouse in a box. So, you have to be careful to try to determine what the differences are.

ASSEMBLYMAN ADUBATO: Forgive me if I gave you the impression that I'm looking to try to eliminate competition. I'm not. It may have appeared that way, but that's not what I'm saying. There are 1400 life insurance companies, at least, in this country and they're all different. So, I'm not asking you to be uniform. What I'm asking you is that there's got to be more of an equity. When you see that extreme come into the

Commissioner gets two bites out of the apple. He leads off and then he lets you talk and then he does a summation. So, I'm preparing you. But, I think that you will find, the next time you come down to Trenton, number one, you won't be as nervous because you're going to find that we're not here to tell you, as much as we are to learn. Sometimes, in our desire to do things, there's only one way we can get help and that's by putting in legislation to get you here. I think there a lot of good things in this bill. There are a few things in here I really don't fully understand the impact of, and, from a philosophical point of view, I don't agree with automatically. However, you people have to show more concern and more input and more expertise to all of us. When the Commissioner calls, I hope you will be cooperative and be more cooperative, not saying that you haven't been, but that you will even be more cooperative when someone from his office rings you and talks to you about a problem or whatever.

MR. POSNICK: I was hoping that you were going to ask for what I agreed with in the Act and I was going to say, the definitions.

ASSEMBLYMAN MAYS: Assemblyman Kosco?

ASSEMBLYMAN KOSCO: It seems to me that there are two major problems with the bill from the discussion that we've listened to so far. One is the fees and the other is the power vested in the Commissioner to approve or disapprove those specific powers. It seems to me that that's what we've been discussing most of the time. First of all, maybe--

MR. POSNICK: May I stop you for a second, sir? I think there is the question of equity, which has not been addressed yet. That is of major, major concern to us all. It's not my role in this particular dialogue to address that particular problem.

ASSEMBLYMAN KOSCO: Well, I'm just talking about up to this point now. What happens from this point on--

MR. POSNICK: There is also the question of the powers of the Commissioner to be able to audit and go into our records.

ASSEMBLYMAN KOSCO: I understand that. That's what I meant. But, let me just go back one minute. You were pointing out that you were very nervous because this was your proverbial first time. I want you to also know that this is my first time in this role. I'm wondering, as far as the fee structure is concerned, would it be acceptable to you, as an alternative, to accept a fee menu, if you will, that would have to be disclosed to the person who is coming in to apply for a mortgage? When they apply for a mortgage, you would say, "These are the fees that this company charges," and I haven't the slightest idea of what the fees are or what you would disclose to the person at that point. You would say, "We're going to sit down and negotiate a mortgage, but in addition to everything else we discuss, as far as the interest rates and points and whatever it is, these are the fees that we have. We have this fee and this fee," and whatever they may be, but they are disclosed to the person at that point and he is told exactly what it will be. In that way, if he is going to go and shop fees, he will be able to logically and intelligently do just that.

MR. POSNICK: Speaking for myself, I would respond favorably to something like that. Our company does that right now. I'm sure that the people with whom we compete here in New Jersey do that and I believe that just about every possible lender in the mortgage market today, be it mortgage banker or thrift institution, does that.

ASSEMBLYMAN KOSCO: So, that would be a possible alternative?

MR. POSNICK: Yes. In other words, to mandate that instead of our doing it ourselves, my first reaction to that is a positive one. I thought we were doing that because we were good guys. Thank you.

ASSEMBLYMAN MAY: Felix Beck. I would like to remind the speakers coming up and the assemblymen that we do have meeting after this and we have some more speakers. So, please try to stay with the bill and what you dislike about it.

F E L I X B E C K: Good afternoon. My name is Felix Beck and I am Chairman of the Board of Margaretten and Company, a mortgage banker in Perth Amboy. I'm a past president of the Mortgage Bankers Association of New Jersey.

With respect to your statement, Mr. Adubato, we may not have any elected officials, but my wife is a councilperson and former mayor of Livingston. So, I do have some clout with an elected official. I want you to know that when the Commissioner talks, I listen. By that I mean to say that it is important to us when we get a letter in from Commissioner Bianchi. It gets the same treatment as it gets from the Secretary of HUD in terms of how we look at it, what we want to do, fast answers and, hopefully, correct answers, and I would say that we've had complaints against our company and we believe that most of them have been resolved. I'm not aware of any complaint that is presently existing that we haven't resolved through the Commissioner's office.

With respect to the same group of 25, they only have one thing in common. They are all FHA approved mortgagees. After that, they are not perfect. I'm one of that group. I'm the first one to say that I'm not perfect. We do some things inefficiently. We make some mistakes along the way. Sometimes, people have complaints against us. Sometimes, they are justified and sometimes, they are not. They are justified when somebody in my organization--I have 200 people in my organization--does something that I would disapprove of, and lead somebody on erroneously. That happens from time to time. When it comes to top management, we try to please ourselves and and resolve our own situation.

My job today, and I'm not going to do it and I know you'll be pleased to know that, because I know you're under time pressure, would have been to talk to you about mortgage banking because with all that we talked about today, nobody really settled on the subject of, what is a mortgage banker, what does he do and how does he operate. I think that it would be presumptuous of me, under the time limits that you're talking about, to talk about that, unless you would like me to.

ASSEMBLYMAN ADUBATO: Talk about that a little bit.

MR. BECK: Okay, I will talk about that and bring together--

ASSEMBLYMAN ADUBATO: If that's okay with you, Mr. Chairman? I guess it's okay.

MR. BECK: I'll talk about that because I think you're absolutely right when you admit that you're not an expert because I'm not an expert either, and I've been in the business for thirty years. So, what I'm trying to do is tell you a little bit about our business in a five minute period and point out that mortgage banking--and I'm going to define the difference between mortgage banking and mortgage brokerage, because that's come up today. Mortgage banking is the origination, the sale and the servicing of mortgages. In its simplest version, the process begins with the mortgage banker using short-term money that we borrow from commercial banks to make mortgage loans to home buyers. These loans are then assembled and either sold to institutional investors such as savings and loan associations, savings banks, commercial banks and life insurance companies or to the Federal National Mortgage Association. In recent years, the business has become very sophisticated. Now, what happens is that we take VA and FHA mortgages and we put them into pools and we sell them to the investment banking community in what are known as "Ginnie May" mortgage backed securities, and the good

thing about that is that as we get paid on everything that we sell, we replenish our capital and we have the money to use once again. But, the mortgage banker doesn't disappear from the scene after he has received his money, because, in most instances, he continues to have an involvement with that loan because he services that loan on behalf of the institution to whom he has sold it. Servicing consists of collecting the monthly payment, forwarding the proceeds to the investor and acting as the investor's representative, should any problems arise.

In the origination function, the mortgage banker is a principal to the transaction. We are the mortgagee. This is known as the primary market when the loan is first made. When an existing loan is sold from one lender to another, my company sells it to a bank. That transaction is said to take place in the secondary market. Mortgage bankers are a principal component of the primary market and also of the secondary market. Unlike the savings institutions, we're not dependant to get our money from a local supply of consumer deposits. Per se, the mortgage banker doesn't receive any money from individual depositors. Thus, we can continue to make loans of all types, when other lenders have exhausted their supply of money. In periods of tight money and high interest rates, mortgage bankers continue to lend, as we have today, utilizing as a source of funds an inexhaustible supply of money that comes from the "Ginnie May" markets as a vehicle.

The interest rate structure now prevailing is absolutely mind boggling. You said it boggled your mind on something else, so I'll use that same word. Mortgage interest rates are at their highest rate in history. At "Fannie May's" last bi-weekly auction, March 17, the yield requirements reached 17%. We are absolutely in the midst of a structural revolution in mortgage financing.

Mortgage bankers have been, and continue to be, supporters of federal programs. We originate and service more FHA insured and VA guaranteed loans than all the other lenders put together. VA and FHA programs, because they have low down payment features, embrace the low and moderate income purchasers. Therefore, mortgage bankers focus particularly on serving the financing needs of this economic group, and with respect to these federal programs and national housing policy, Congress seeks the views of the Mortgage Bankers Association of America. I'm on the Executive Committee of the Mortgage Bankers of America and in my role as Chairman of the Legislative Committee of M.B.A. of America, I am privileged to testify, on a number of occasions, and will again next week, before Congress on these relevant housing matters. The expertise and the professionalism of the mortgage banker is clearly recognized on the Washington scene. Mortgage bankers have assumed a growing role in conventional lending, utilizing "Fannie May" and "Freddie Mac" programs to make available, what I would say, is desperately needed money for New Jersey home buyers. The recent federal pre-emption of state usury laws have had a salutary effect on conventional lending and will enhance the capacity of the mortgage banker in the conventional market. In the near future, we expect conventional loans, unimpeded by by artificial usury limits and discount limitations, to be marketed in the form of conventional mortgage backed securities. That will invigorate the conventional market just the way the VA and FHA markets have been invigorated by mortgage backed securities on "Ginnie Mays". Mortgage banking companies service approximately one sixth of all the mortgages outstanding in the United States. They are, by far, the largest servicer for "Fannie May", and they have issued over 90% of all "Ginnie May" securities outstanding, and that's over \$60 billion. Mortgage banking companies have originated and serviced over two thirds of the mortgages in the Neighborhood Loan Programs of the New Jersey Mortgage Finance Agency. Mortgage bankers are active in all fields of mortgage finance, residential, commercial, industrial and agricultural.

I would now like to talk to you about the mortgage broker, as opposed to the mortgage banker, as promised. The mortgage broker is an intermediary between principals to the transaction. He is not a principal to the transaction. Some mortgage brokers, and they are highly sophisticated, deal in placing very large loans on apartment houses, shopping centers and the like. There are, however, a number of mortgage brokers who operate in the one to four family field. These brokers are not principals to the transaction. They do not use their own funds. They are poorly capitalized. They do not have FHA approvals. They are not under HUD's rules and regulations. They do not service loans.

In conclusion, the mortgage banker's role has increased, as sophisticated financing has changed the business. So, it seems to be less of an art and more of a science. The industry's purpose has always been to broaden the range of its services and meet the growing need for real estate financing without discrimination as to race, creed, color, sex or age. Thank you.

ASSEMBLYMAN ADUBATO: Very briefly, Mr. Chairman, could you tell us, what are the differences when a person is charged points on a conventional mortgage, as you are allowed to do today in New Jersey, as opposed to charging points under VA and FHA? Who pays those points? What is the difference?

MR. BECK: Okay, under FHA and VA regulations, there is a one percent limit that the buyer can pay. The FHA and the VA rate is set by the Secretary of HUD. That rate today is 13%. The amount of points that have to bring the mortgage up to the yield that the investor needs, the rest of it is paid by the seller. So, if you have a 14 point yield requirement and you have a 13% interest rate, one point is paid by the buyer and the difference to bring it up to an acceptable yield may be five points. On conventional, especially with the federal pre-emption arrangement today, you can choose, pick and choose a rate. That makes sense to a borrower. If a borrower can pay and afford a 14% rate, then it might be 14% or it may be one point or it may be two points. Part of that covers cost. But, to the extent that you have a borrower who will not qualify for 14%, a little guy that just doesn't make it, but will qualify for something less than 14%, then the discount mechanism is used so that the end result might be that you would have 13½% loan with four points and the same yield to the institutional lender.

ASSEMBLYMAN ADUBATO: Thank you, Mr. Beck. I was just wondering--it's not a question. It's an observation. I'm wondering when we are going to deal, all of us, with whatever capacity we have to deal with it, with the fact that everything that appears to be being done by the feds is to stop the flow.

MR. BECK: You're talking about the Federal Reserve?

ASSEMBLYMAN ADUBATO: Yes. The philosophy appears to be that with the higher interest rates, people won't buy homes, that it will slow things down. It doesn't seem to be working too well. I was just wondering, again, just talking out loud, if you think that maybe we're not making a mistake, you know, the Catch 22 again, of saying that we're not going to go beyond that point.

MR. BECK: That we're not going to go beyond what point?

ASSEMBLYMAN ADUBATO: Whatever that point is.

MR. BECK: Well, let me say that the Federal Reserve is doing its job with respect to an inflation rate that is higher than the mortgage rate today, and obviously, none of us are happy about high mortgage rates. We make more money during low mortgage periods than high mortgage periods. In fact, we are collecting 13% on our FHA and VA mortgages and we're paying 19% prime on the mortgages while we're holding them. So, we have a substantial loss during the warehouse or holding period. We're in favor of

lower rates. I think that the Federal Reserve, based on Administration policy, is carrying the brunt of the monetary policy and trying to fight inflation. Recently, the President has indicated that there will be some other things in the area of fiscal restraint. You're more aware of that than I am. I think that the federal government has done something and I was testifying and I was asked by Senator Proxmire if I want the government to come in and have a new regulation which is going to pre-empt state usury laws. I said that I thought some state regulations are very good because they are, in effect, deregulations and I think that that move out of Washington was a very, very constructive one at a very, very important time and I think there is a move in Washington towards deregulation.

ASSEMBLYMAN ADUBATO: Well, let me leave you with this thought. If you are in the business to make mortgages, then I'm sure that you would support anything that would open up that market to do that, to make it available. One of the previous speakers mentioned the fact that there was a proposal around where New Jersey, as you know, has an option where an institution can grant a forty year mortgage. It is not mandated. The average mortgage in New Jersey, I believe, is 25 years. I don't know what it is today. I'm going back a couple years, to tell you the truth. I was just wondering, you know, without going through the whole thing of turning over money and the rollovers and so forth, why is there such a great outcry, why a person who we all say should have the right to buy a home, in spite of the high interest rates, isn't given that opportunity? Let's take a mortgage at today's rate on a twenty year rollover, let's say, and the next twenty years, pay the existing rate. But, actually, you have the first twenty years at a forty year level. That would appear, to me, to do no great harm to the industry. I don't understand why there is such a great opposition to that.

MR. BECK: This industry is interested in alternative mortgage instruments. We want things to occur with respect to them. Number one, there should be safeguards for the consumer, and number two, they should be marketable in the secondary market. We're an interim lender. We have to sell what we buy, what we originate. So, we're not the decision makers. Forty year loans would be swell as far as we're concerned because it means more people would qualify. We just have to find that last resort, that permanent investor who is willing to do it. As I say, in these rollover situations, we have to make sure there are safeguards and we have to make sure that somebody who takes out a mortgage today with a rollover at 6% isn't going to find that he's paying 16%. There has to be some kind of a safeguard for the consumer.

ASSEMBLYMAN ADUBATO: Thank you.

ASSEMBLYMAN BORNHEIMER: Thank you very much. At this time, I will take and discontinue this meeting. It will continue on April 2, at ten A.M. for further testimony.

COMMISSIONER BIANCHI: Mr. Chairman, when I looked at my schedule, I have an appellate court decision, I'm really not too happy about it, but I have to sit on all hearings for branches of banks and institutions and there is a hearing scheduled for that date.

ASSEMBLYMAN BORNHEIMER: We will assume that April 3 will be the day for the hearing. It will be at ten o'clock. It will be held either here or else in the Assembly Chambers. The same line will be continued. The only person who will be added to it will be Mr. Larson, who has requested that I take and continue the hearing because he's in Washington with the "Fannie May" group or one of the groups that serves on a committee with. We will continue the hearing until that date, April 3, at ten A.M., here. I call this meeting adjourned. (Hearing Concluded)

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