SUNRISE REVIEW

OF

MORTGAGE BANKERS, BROKERS AND LENDERS

Submitted by
The Colorado Department of Regulatory Agencies
Office of Policy & Research
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September 8, 1994

The Honorable Vickie Agler, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Representative Agler:

We have completed our evaluation of the sunrise application for licensure of mortgage bankers, brokers and lenders and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

Joseph A. Garcia
Executive Director

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INTRODUCTION

Sunrise Process

The Department of Regulatory Agencies has completed its evaluation of the three applications for regulation of mortgage bankers, mortgage brokers and mortgage solicitors submitted by the Colorado Mortgage Lenders Association, the Metro Denver Fair Housing Center, and the Colorado Association of Mortgage Brokers. The applicants seek regulation of mortgage brokers, bankers and solicitors. Pursuant to the Colorado Sunrise Act, C.R.S. 24-34-104.1, the applicants must prove the benefit to the public of the proposal for regulation according to the following criteria:

1. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;

2. Whether the public needs, and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;

3. Whether the public can be adequately protected by other means in a more cost-effective manner.

The scope of this review was comprehensive in nature. As part of this sunrise review process, the Department of Regulatory Agencies performed a literature search, interviewed members of the community desiring regulation, contacted pertinent professional associations, and reviewed other states' statutes regarding mortgage lender licensure. Results of this process are reflected in the recommendations section of this report.

BACKGROUND

The Mortgage Industry

Most consumers, when purchasing a home, need financing, thus creating a need for a variety of financial services. This need has been filled by banks, savings and loan institutions and mortgage banking companies A mortgage can be defined as a "conveyance of an interest in property as security, for the repayment of money borrowed."[1] Mortgage loans are offered by a variety of institutions, including banks, savings institutions, credit unions, industrial loan companies, mortgage banking firms, and private service companies.

The mortgage loan industry has undergone tremendous changes in the last fourteen years. In 1980, 61% of all mortgage loans in the United States were held and usually serviced by financial institutions. By 1991, however, the situation was very different. Only 37% of all mortgage loans in the U.S. were held by financial institutions. In addition, 38% of all mortgage loans in the U.S. were held in mortgage-backed security pools. These pools were serviced by companies specializing solely in servicing mortgages and often not located near the borrower's home. No longer does the same company originate, hold and service a mortgage. It is not unusual for an individual to have their mortgage originated by a mortgage banker, held by a mortgage pool and serviced by a loan servicing company.

Mortgage bankers make loans on residential and commercial real estate, package these loans and sell them in the secondary mortgage market to agencies such as the Federal Home Loan Mortgage Corporation or to investors. Mortgage bankers may deal directly with customers or they may make loans through intermediaries, the mortgage broker. Mortgage bankers make money from points and loan fees charged in originating a mortgage loan. These are calculated according to a percentage of the loan, ranging usually from 1% to 2%.

Mortgage bankers also make money from servicing mortgage loans. This is the most profitable aspect of the business. It involves collecting principal and interest payments from the homeowner for the mortgage holder. The mortgage servicer is paid a fee based on the outstanding principal.

Mortgage brokers are intermediaries between mortgage bankers and those looking for financing. Brokers are brought in to assist consumers in their loan applications, get the necessary documentation, look for the best interest rates, bring the parties to settlement, and officially close the loan. They may also continue to service the loan for the borrower and lender until it is paid off. They collect and pay principal and interest payments, real estate taxes and other

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[1]51 American Jurisprudence, 2d., "Licenses and Permits,"

assessed charges. Mortgage brokers, in addition to helping with the loan application process, also follow-up on delinquency problems, arrange foreclosure proceedings where necessary, keep records, communicate, and remit funds to the actual lenders. The functions of mortgage bankers, brokers and lenders, in the mortgage lending industry have evolved into four separate areas: the solicitation of loans, the processing of loan applications, the underwriting of the loan and the closing of the loan.

First, loans may be solicited from individuals. The seeking of referrals of loans may be solicited from builders, real estate agents and other parties in the residential housing industry. This area includes the taking of applications from the individuals seeking the loan.

The second area is the processing of the loan application. The processing of the loan entails the obtaining of information necessary to determine the mortgage-ability of the property and the creditworthiness of the applicants. During this phase, title information is obtained and a survey and appraisal of the property is performed.

Underwriting of the loan is the third area that mortgage bankers, brokers and lenders are involved with. Underwriting of the loan determines whether the information obtained on the mortgage-ability of the property and the creditworthiness and ability to pay the loan of the applicants meets the criteria determined under standards set by the secondary market for such loans.

The fourth function includes the loan closing process. Sometimes loans are closed in the name of the mortgage broker with financing provided by the mortgage banker. These loans are then immediately transferred to the mortgage banker. These loans are then sold by the mortgage banker in the secondary market to Federal National Mortgage Association (FNMA or Fannie Mae), Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac), or investment bankers for packaging into Government National Mortgage Association (GNMA or Ginnie Mae) pools.

PRESENT REGULATION OF THE MORTGAGE INDUSTRY

Consumer complaints about the industry have resulted in increased federal and state regulation. Complaints have ranged from non-delivery of promised loan rates, false advertising, inability to arrange for financing on schedule, and undisclosed points. The intensity and number of complaints have led to a strong responsive trend to expand federal and states' regulation to the consumer.

Federal Mortgage Industry Laws

1. Real Estate Settlement Procedures Act, 12 U.S.C.A. §§ 2600 et. seq. 1989 (West Supp. 1994)

This is a consumer protection law which provides consumers with greater and more timely information on the nature and cost of the settlement process when obtaining a home mortgage. The law requires lenders to disclose the fees and costs involved in closing a home mortgage loan. Each lender is required to provide a written disclosure form which lists all of the fees incurred in obtaining a loan. The Secretary of Housing and Urban Development is required to develop the standardized disclosure form.

2. The Fair Housing Act, 42 U.S.C.A. §§ 3600 et. seq. 1977 (West Supp. 1994)

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of residential housing due to race, color, religion, sex or national origin. This law is enforced by the Secretary of Housing and Urban Development although there are provisions in the act for private citizen enforcement. It is also unlawful to discriminate by preventing access or membership to a mortgage brokering service.

3. The Home Mortgage Disclosure Act, 12 U.S.C.A. §§ 2800 et. seq. 1989 (West Supp. 1994)

Most mortgage lenders who sell in the secondary mortgage market must comply with the HMDA, which requires these lenders to compile and make available to the public information on dollar amounts of mortgage loans extended by these institutions according to census tract. Included in this information are the number and total dollar amount of mortgage loans which were originated or purchased by the institution during each fiscal year. The disclosure must be itemized and clearly disclose the number and dollar amount of loans secured by property within different census tracts.

4. Truth in Lending Act, 15 U.S.C.A. §§ 1600 et. seq. 1982 (West Supp. 1994)

The truth in lending act seeks to assure meaningful disclosure of the terms of a loan so that the consumer can fairly compare credit terms. The law requires that the Board of Governors of the Federal Reserve System develop model disclosure forms and guidelines. Required information to be disclosed includes the determination of finance charges, identified applicable charges, and charges that are exempt. The most important feature of this law is the required disclosure of the annual percentage rate. This is the interest rate that includes the up-front costs of the loan.

5. The Equal Credit Opportunity Act , 15 U.S.C.A. § 1691 1982 (West Supp. 1994)

This act prohibits discrimination by creditors against applicants on the basis of race, color, religion, national origin, sex, martial status, or age. Regulation B identifies specific requirements for credit application processing and extending credit in a non-discretionary way. For example, each creditor must promptly furnish the applicant, upon written request, a copy of the appraisal report used in connection with the borrower's application.

Regulation in Colorado

There are numerous Colorado state laws that apply to the mortgage lending industry. The most significant laws are listed below:

a. **C.R.S. 38-40-101 to 38-40-104.** Restrictions on mortgage broker fees, disclosure of good faith estimate, restrictions on servicing of mortgages, causes of action relating to the above;

b. **C.R.S. 5-3-101 to 5-3-605.** Uniform Consumer Credit Code provisions concerning restrictions on interest rates, loan charges, and loan practices as to loans to individuals for personal, family or household purposes and loans primarily secured by an interest in land;

c. **C.R.S. 5-1-101 and following sections.** Uniform Consumer Credit Code provisions concerning disclosures equivalent to Federal Truth-in-Lending Act;

d. **C.R.S. 38-35-125.** Good funds required at loan closing;

e. **C.R.S. 38-39-101** and following sections. General provisions concerning mortgages and deeds of trust.

Regulation in Other States

Many states have been tightening up their regulation of mortgage brokers. There is no widespread regulation of the mortgage industry as such. They are regulated under usury laws, laws regulating interest rates, privacy regulation, consumer protection statutes, or licensing laws. Regulatory agencies vary extensively and may include the Banking Department, the Real Estate Commission, the Securities Department, the Bureau of Consumer Credit, the Office of Financial Institutions, the Division of Savings and Loan, and the Department of Regulation and Licensing. Although some states do not regulate mortgage brokers, established rules of conduct exist.

The following chart of selected states illustrates the degree of regulation practiced throughout the United States.

State	Regulates Mortgage Brokers		Mortgage Broker Requirements			Regulatory Agency	In-State Requirement?
	Licensure or Registration	Education	Net Worth	Experience	Other		
AZ	Yes	Yes	No	3 Years	Exam, Bond-$10,000 or $15,000	Superintendent of Banks	Yes
AR	Yes	No	No	No	$25,000 Bond	Securities Department	No
CA	Yes	Yes	No	2 Years Education or Equivalent Experience	Exam	Department of Real Estate	Yes
CT	Yes	No	No	Yes	$25,000 Bond or Letter of Credit	State Bank Commissioner	No
DC	Yes	Yes	No	2 Years	Exam and Continuing Education	Real Estate Commission	No
FL	Yes	Yes (24 hours)	No	No	Test	Department of Banking and Finance	Yes
GA	Yes	No	No	No	$50,000 Bond or $25,000 Net Worth	Department of Banking and Finance	No
HI	Yes	No	No	Yes*	$15,000 Bond	Director of Commerce and Consumer Affairs	Yes
IL	Yes	No	$35,000	No	$100,000 Fidelity Bond and $20,000 Surety Bond	Commissioner of Savings and Residential Finance	Yes
IN	Yes	No	No	No	$15,000 Bond or pledge of collateral	Department of Commerce - Division of Banking	No
IA	Yes	No	No	No	$25,000 Bond; Submit sample disclosure document	Securities Commissioner	No
KY	Yes	No	No	No	Resident 6 months. $5,000 Bond, Letter of Credit or Deposit	Office of the Commissioner of Financial Institutions	Yes

LA	Yes	No	No	No	$25,000 Bond or Trust Account	Office of Financial Institutions	No
ME	Yes (Credit Services)	No	No	No	$10,000 Bond	Bureau of Consumer Credit Protection	No
MD	Yes	No	No	Yes*	$12,500 Bond, Letter of Credit or Trust Account	Commissioner of Consumer Credit	No
MA	Yes	Yes*	No	Yes	No	Division of Banks and Loan Agencies	No
MI	Yes	No	$25,000	No	$15,000 Bond, Letter of Credit or deposits*	Financial Institutions Bureau	No
MN	Yes	Yes	No	2 years or otherwise qualified	Exam and Continuing Education	Department of Commerce	No
MS	Yes	No	No	No	$25,000 Bond	Department of Banking and Consumer Finance	No
MO	Yes	No	No	No	No	Division of Savings and Loan	No
NE	Yes	No	No	No	$50,000 Bond	Department of Banking and Finance	No
NV	Yes	Training and/or experience in Accounting and Bookkeeping	No	2 Years	N/A	Financial Institutions Division	No
NH	Yes	No	$100,000 or equiv. Bond	No	$20,000 Bond	Banking Department	No
NJ	Yes	No	$50,000	Yes	Exam, $25,000 minimum bond, (maximum bond is $125,000 for corporation with over 16 individual licensees)	Commissioner of Banking	Yes
NM	Yes	No	No	No	$25,000	Financial Institutions Division	Yes
NY	Yes	Yes*	No	Yes*	$25,000 bond may be imposed	State Banking Department	No
NC	Yes	No	No	Yes*	$5,000 Bond, cash or securities	State Banking Commission	Yes*
OH	Yes	No	$25,000 Letter of Credit	Yes*	N/A	Division of Consumer Finance	No
OR	Yes	No	No	3 Years	$10,000 Bond or Letter of Credit	Division of Finance and Corporate Securities	No
PA	Yes	No	No	No	$100,000 Bond or deposit, Exempt, if do not accept advance fees.	Department of Banking	Yes
RI	Yes	No	No	No	$10,000 Bond	Banking Division	No
SC	Yes	No	No	Yes*	$10,000 Bond or deposit	Department of Consumer Affairs	Yes
SD	Yes	No	No	No	Exam	Real Estate Commission	Yes

TN	Yes	No	$25,000	Yes	$25,000 Bond or Letter of Credit	Commissioner of Financial Institutions	No
UT	Yes	No	No	No	N/A	Department of Financial Institutions	No
VA	Yes	No	No	Yes*	$5,000 Bond	Bureau of Financial Institutions	No
WA	Yes	No	No	2 Years	$40,000 Bond	Department of Financial Institutions	Yes
WI	Yes	No	No	No	N/A	Department of Regulation and Licensing	No

* Statutes generally state that sufficient business experience and general fitness of the applicant are criteria for obtaining the license.

THE PROPOSAL FOR REGULATION

The Department of Regulatory Agencies received three different applications for the regulation of mortgage brokers/lenders. Applications were received from the Colorado Mortgage Lenders Association, Colorado Association of Mortgage Brokers, and HOUSING FOR ALL, the Metro Denver Fair Housing Center.

As the applicants differ in their request for regulation, the following summarizes their individual proposals.

The Colorado Mortgage Lenders Association (CMLA) represents approximately 87 mortgage bankers, 59 mortgage brokers, 13 commercial banks, 6 savings and loan associations, 1 credit union, 1 trust company, 7 non-profit organizations, 2 governmental agencies and 64 vendors such as title companies, lawyers, accountants, and mortgage insurance companies.

The CMLA requires its members to submit to a Code of Ethics which includes fourteen principles ranging from ensuring that personnel are knowledgeable in the areas of mortgage banking in which they participate and are acting in compliance with sound industry practices to considering that a servicing contract is an integral part of the mortgage lending correspondent system.

They maintain that extensive federal regulations exist concerning the mortgage lending industry, and if a problem exists, it is mainly created by the failure of the federal regulators to enforce existing laws. The CMLA does not advocate a regulatory scheme calling for actual licensing with experience, education and examination requirements.

Rather, the regulatory scheme is envisioned as follows:

All mortgage bankers, mortgage brokers and mortgage servicers would be required to maintain a net worth of $50,000 or keep on file a surety bond of $25,000.

Bankers, brokers, and servicers would be prohibited from carrying on their business until they gave notification to the regulatory authority of necessary facts and of their intent to engage in the business and thus submit to the regulatory scheme.

The regulatory authority would have the power to take complaints, investigate matters, issue regulations, hold hearings and terminate the authority of such bankers, brokers and servicers to do business in this state because of the violation of either applicable federal or state statutes and regulations.

The CMLA believes that the regulations should not extend to loan officers or loan solicitors employed by such bankers or brokers. The employers of these persons should bear all responsibility for their actions.

The Colorado Association of Mortgage Brokers (CAMB) proposes a registration program because there already exists numerous laws and regulations which control mortgage bankers and brokers. They argue that the state should regulate mortgage brokers/lenders to "level the playing field" in the industry by providing a local enforcement authority which would ensure stricter compliance with mortgage lending laws, which are observed by the majority of mortgage lenders and brokers, but are ignored by a few.

The applicant further argues that consumers would benefit from regulation of this occupational group for the following reasons:

- Consumers would be able to engage in "one stop shopping" by calling a single number to request information or lodge complaints regarding mortgage lending issues. (Today, there is no single authority.); and

- The state regulatory authority could bring local violations of the Federal Truth-in-Lending Act to the attention of the federal authorities charged with enforcement.

HOUSING FOR ALL, the Metro Denver Fair Housing Center proposes the licensure of mortgage lenders, mortgage bankers and mortgage brokers to best protect the interests of the consumer. The applicant contends that currently anyone can advertise themselves as a mortgage broker without any real knowledge or experience in how the lending process works successfully.

The regulatory scheme is envisioned as follows:

- Licensing program administered by the Department of Regulatory Agencies.

- The establishment of minimum educational and/or experience standards.

- A program for licensing, testing, education and experience modeled on current appraiser and real estate agent/broker procedures.

IS THERE A NEED FOR REGULATION?

Public Harm

The applicants have submitted information regarding instances of harm which members of the public in Colorado have suffered in the past. These synopses were brought to our attention by the applicants in order to support their claim that regulation of mortgage lenders/brokers/bankers is needed to protect the Colorado public.

A review of these cases reveals that some mortgage lenders/brokers are alleged to have caused significant harm, while others are alleged to have engaged in inappropriate conduct. The synopses are reproduced as submitted by the applicants.

Case 1

A family applied for a loan, paid for their credit report and the cost of appraisal of the property. Through a series of lender errors the loan was not processed in a timely fashion. The seller received another offer for the house and sold it to someone else while the family was still waiting for loan approval. In the meantime, the family had relinquished their rental property. When loan approval finally came through the loan applicants found that they did not have a house to buy and had to start looking all over again plus paying for another appraisal and inspection.

Case 2

A mother and daughter attempted to refinance their home. They placed an application with the mortgage lender in October 1992. In November 1992 they were told that their file had been lost and that the application would need to be completed again. As of December 1993, their file had been lost four times, the mortgage interest rate had increased substantially.

Case 3

A family applied for a streamline refinance of their VA loan in May 1993. The process should have gone smoothly in forty-five to sixty days maximum. In December 1993, they had a closing canceled and went to another closing which was not completed. Their appraisal is approaching the end of its timeliness and credit may need to be checked again to close the loan if the process is not completed soon.

Case 4

In April 1993, a loan officer pre qualified a family to purchase up to a $90,000 home. In June 1993, the family found a home for $69,000 and entered into a contract to purchase it. At the same time, they completed their mortgage application and began the marketing of the home they owned and lived in at that time. They successfully sold their home, closing on that transaction in approximately 60 days. They moved into the new house with the understanding that they would close on their loan within the month. In November 1993, their lender said that the underwriter was having some problems and that they probably did not qualify for the loan. The loan file has been moved to a more experienced lender who may be able to complete the transaction. They remain unsure about where they will be living.

Case 5

A mortgage solicitor prepared a loan application with erroneous and untruthful information knowingly inserted in the application by the solicitor without knowledge of the applicant and demanding the application to be signed at closing by the loan applicants. This action by the mortgage solicitor resulted in the consumer's loss of the anticipated loan at closing, and the consumer being forced to obtain a high interest interim loan until a new loan could be applied for, processed and closed.

Case 6

Mortgage bankers and brokers gave written letters to applicants locking in an interest rate but subsequently failed to abide by the terms of the lock letters. The consumers were forced to accept loans at higher interest rates than for which they contracted causing a financial loss.

There is documented evidence of public harm in several other states in the United States as described in a report published in 1990 by the Attorneys General of California, Florida, Massachusetts, Minnesota, New York and Texas entitled Overcharging on Mortgages: Violations of Escrow Account Limits by the Mortgage Lending Industry. This report concludes that the mortgage lending industry systematically violated federal law for more than a decade by extracting excessive escrow payments from the majority of mortgage paying homeowners. This report further maintains that the industry at the time of the report's publication, may have held several billion dollars of homeowners' money unlawfully.

A report published by Texas State Auditor in 1992 entitled Mortgage Loan Problems: Texas Homeowners at Risk finds that problems occur at all stages of the mortgage loan process and with all kinds of entities. Lock-in agreements are not honored, credit discrimination continues, escrow payment calculations vary widely, payments out of escrow taxes and insurance are late, interest rate charges are miscalculated, loan transfers are poorly handled, and some foreclosures appear premature.

Consumer Complaints

Several Colorado legislators have received complaints about mortgage lending and refinancing practices from their constituents, from consumer protection offices and from the mortgage lending industry. The complaints consist of such problems as misleading mortgage loan advertisements, misrepresentations about loan costs, promises about interest rate lock-ins, undue delays in closings, sloppy or poor service, and lenders refusing to provide loan documents and appraisals paid for by loan applicants.

The Colorado Mortgage Lenders Association (CMLA) has two programs for consumer complaints. The first is a "Hotline" for telephone inquiries and complaints that has been in existence for fifteen months and is maintained by volunteers from the member companies. The second program is a more formalized complaint procedure requiring written complaints from consumers and this program is handled by the ethics committee of the CMLA.

The Hotline has received approximately 2100 telephone calls in the last fifteen months with about 58% being general questions and 42% being complaints. Of the complaints about 69% were regarding refinance issues and the remaining 31% related to purchase money mortgage transactions. Of the complaints, 18% were against member companies and 82% against non-member lenders. The CMLA estimates that 97% of the complaints were successfully resolved.

In 1993, the ethics committee program received 125 written complaints, 33% being against CMLA members and 67% against non-members. Thirty-one percent of these written complaints concerned loan processing and rate locks, 19% concerned loan servicing issues, 46% concerned misinformation and ethical matters and 4% related to discrimination. So far in 1994, there have been 40 written complaints handled by the ethics committee.

The Division of Banking, the Division of Financial Services, the Division of Real Estate and the Office of Regulatory Reform, all within DORA, report receiving numerous consumer complaints. For example, the Division of Banking estimates receipt of 40-50 complaints per month. All of these regulatory agencies report that complaint activity is higher during peak times of mortgage activity.

CONCLUSION

There is evidence that the problems in evidence may be caused by, or exacerbated by, change in the mortgage industry itself. Over the last decade, the mortgage industry has increased both in size and complexity. Mortgage loans themselves can be long-term, short-term, have an adjustable fixed interest rate, be held individually, or pooled and sold as securities.

Mortgage bankers, banks, savings and loans, credit unions, servicing companies, mortgage brokers, and federal mortgage associations all play a part in the mortgage loan process. Entities specializing in part of the mortgage process, such as loan servicing companies, have increased their market share. Regulated financial institutions, on the other hand, have a smaller role in the mortgage process and are losing market share. All this makes mortgage transactions complicated.

There is little assurance that these problems will not continue to occur, given the existing regulatory structure. Existing regulatory agencies and laws at both the state and federal levels are still oriented toward traditional financial institutions. When consumers have a problem with their loan, they may have to contact several different regulatory agencies in order to locate the appropriate one. In some cases there may not be any agency with regulatory authority over the consumer's problems.

Changes are needed if consumers are to be protected from the consequences of the mortgage loan problems that are occurring. An appropriate regulatory response should benefit consumers while not penalizing those companies currently following good business practices.

The historic approach to imposing new regulation through Colorado's sunrise process is to impose the least restrictive regulation that can reasonably be expected to protect consumers. Regulation that provides the highest benefit for the least expenditure is preferable. Further, the effect of regulation on industry is also an important factor. The costs of regulation are borne by the industry and passed along to consumers, home buyers in this case.

This report finds no compelling evidence that members of the mortgage industry are unqualified, on the whole, to practice their occupations. It does not appear that most complaints allege incompetence or lack of knowledge by the lender or broker. If it were clear that members of the occupation did not understand the lending process, the need for appraisals, or deeds, for instance, than an argument could reasonably be made for state licensing. This level of regulation, the most intrusive by the state as well as the most expensive, would require all those who would practice to meet minimum educational requirements and pass examinations.

Rather, it appears that consumers complain most about loan servicing, violation of agreements, and general service. This is the complaint experience of the various divisions of the Department of Regulatory Agencies that tend to receive mortgage complaints.

As mentioned previously, the Colorado Mortgage Lenders Association (CMLA) does record the activity of its consumer compliant avenues such as its telephone "Hotline. CMLA responding to DORA's request, reported that as of May 31, 1994, it had received approximately 2,100 calls in the previous 15 months. Of those, about 42% were complaints. Further, about 69% of those were related to refinancing and the remainder concerned purchase money mortgage transactions. CMLA also brought to DORA's attention that 80% of the complaints were against individuals not associated with CMLA.

CMLA also reports receiving 125 written complaints in 1993. These complaints fall into the following categories:

1. misinformation and ethical violations (46%)

2. loan processing and rate locks (31%)

3. loan servicing (19%)

4. discrimination (4%)

As of the end of May, 1994, the organization reported receiving another 40 written complaints. Over 70% of these involved processing and rate locks (55%) or loan servicing (17%). Almost 60% of the 1994 written complaints were made against non-members of CMLA.

Problems with existing regulation of the mortgage industry (other than traditional financial institutions) appear to be twofold:

1. Consumers who have been harmed or who have complaints do not know where to complain.

2. There is no single regulatory agency empowered to investigate and take direct action against violators.

This review finds that the problems faced by consumers in the present mortgage marketplace can be addressed through a simple registration system. Registration is primarily used to combat "fly-by-night" businesses that attempt to make quick, often illegal, profits and depart before authorities can locate them. Although problems in the mortgage industry are not that simple, a registration system can be

devised to meet consumer's needs. Maximum consumer protection through a registration system would provide the following:

- The regulatory authority to deny registration to applicants who have been denied, revoked, disciplined or prosecuted in other states for actions that would constitute a violation of Colorado's laws applying to mortgage lenders and brokers. This would prevent lenders and brokers who have already harmed consumers from relocating in Colorado.

- The regulatory authority to discipline or fine those who violate Colorado's law applying to lenders, brokers or servicers. This would enable the state to revoke the authority of a broker or lender to practice or otherwise take action against the registration (such as probation or a letter of admonition). This would be a new remedy for Colorado and would provide an increased level of consumer protection

Further grounds for discipline, such as penalties for false or misleading advertising or refusal to permit an examination as part of an investigation conducted by the Commissioner of Financial Services should be established in statute.

RECOMMENDATION

The General Assembly should regulate the professions of mortgage brokers and mortgage lenders through the creation of a registration requirement administered through the Division of Financial Services in the Department of Regulatory Agencies. The registration scheme should incorporate relevant legislation resulting from the recommendations of the Discrimination in Mortgage Lending Task Force.