2005 SUNRISE REVIEW

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Mortgage Brokers

October 14, 2005

STATE OF COLORADO

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Bill Owens
Governor

October 14, 2005

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the sunrise application for regulation of mortgage brokers and is pleased to submit this written report. The report is submitted pursuant to section 24-34-104.1, Colorado Revised Statutes, 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,

Tambor Williams

Tambor Williams
Executive Director

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The Sunrise Process

Background

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:

> (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
>
> (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
>
> (III) Whether the public can be adequately protected by other means in a more cost-effective manner.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation. Applications received by July 1 must have a review completed by DORA by October 15 of the year following the year of submission.

Methodology

DORA has completed its evaluation of the proposal for the regulation of mortgage brokers. During the sunrise review process, DORA performed a literature search, interviewed consumers and consumer advocates, representatives of the Colorado Association of Mortgage Brokers, representatives of other, related professions, such as real estate brokers, real estate appraisers and mortgage lenders and reviewed licensure laws in other states. In order to determine the number and types of complaints filed against mortgage brokers in Colorado, DORA contacted representatives of the Denver/Boulder Better Business Bureau, the Office of the Attorney General Consumer Protection Section, the Colorado Division of Real Estate and the Colorado Division of Civil Rights.

Proposal for Regulation

The Colorado Association of Mortgage Brokers (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state registration of mortgage brokers as the appropriate level of regulation to protect the public.

Mortgage brokers act as intermediaries between the actual lender and the borrower in a mortgage transaction. The Applicant defines "mortgage broker" as:

> Any person, acting individually or as an officer, partner, member, employee or agent for any entity, that engages in negotiating or offering or attempting to negotiate for a borrower, and for commission, money or other thing of value, a loan to be consummated and funded by someone other than the one acting for the borrower.

The Applicant specifically does not seek to regulate banks, trust companies, savings and loan associations, credit unions, supervised lenders, insurance companies, Federal Housing Administration (FHA)-approved mortgagees, land mortgagees, farm loan associations, duly appointed loan correspondents, or their affiliates, subsidiaries, or individuals associated with them.

Additionally, the Applicant proposes excluding from any definition of "mortgage broker," any person, firm, partnership, association or corporation that does not deal directly with borrowers. Any person, firm, partnership, association or corporation that deals directly with borrowers and reviews, analyzes, or evaluates a potential borrower's financial statements, income, property characteristics and credit history would be required to register as a mortgage broker.

In short, the Applicant seeks to regulate those who facilitate the coming together of borrowers and lenders. Put another way, the Applicant seeks to regulate those who lend the money of others.

The Applicant proposes that anyone who practices as a mortgage broker in Colorado first register with the state. The application does not specify the state agency that should administer this program. As a precondition to such registration, a candidate would be required to submit to criminal and regulatory history background investigations.

The state agency charged with administering this regulatory program would be granted the authority to deny, and presumably revoke, a registration to any applicant or registrant who:

- Has had his or her registration, license, certification or the equivalent to work as a mortgage broker or in a closely related occupation, such as an agent for a securities brokerage, a real estate broker, or an insurance producer in Colorado or in any other state, revoked or suspended (this may be referred to as "regulatory history");

- Has been convicted of, or pleaded guilty or *nolo contendere* to any felony under the laws of any state or of the United States; or

- Has been convicted of, or pleaded guilty or *nolo contendere* to any crime, an element of which is dishonesty, fraud or misrepresentation, under the laws of any state or of the United States.

In short, the Applicant's proposal seeks to eliminate from Colorado's mortgage brokering industry, felons, those who have committed crimes involving dishonesty and those who have had other, professional, business-related licenses suspended or revoked.

This information would be obtained through self-disclosure and the criminal and regulatory history background checks mentioned earlier.

Registrations would be valid for three years. Upon renewal, registrants would again submit to criminal and regulatory history background investigations and could be denied renewal if any of the disqualifiers discussed above applied.

Finally, the Applicant proposes that this regulatory program be entirely cash funded and that applicants and registrants bear the costs associated with any criminal or regulatory history background investigations.

Profile of the Profession

A mortgage broker is an intermediary between a lender and a borrower in a mortgage transaction. Mortgage brokers are involved in securing initial financing and refinancing of real property, as well as secondary mortgages, including lines of credit.

In general, there are two types of mortgage brokers: 1) those who solicit loan funds from individual investors for particular borrowers, and 2) those who sell loan products of institutional lenders to individual borrowers. The second type of mortgage broker is the focus of this sunrise report.

The first type of mortgage broker is actually considered a broker of securities. Federal and state definitions of "security" include "notes." Mortgages are notes secured by real property. Under state and federal law, those who sell securities must be licensed securities brokers. Importantly, securities laws are intended to protect investors, which in the case of mortgages are lenders, not the issuers of securities, which in the case of mortgages are borrowers.

The second type of mortgage broker, the one who obtains funds from financial institutions, is the focus of this sunrise review. This type of mortgage broker will typically contract with one or more lenders to sell the lenders' loans to the mortgage broker's clients, who are borrowers. By signing contracts with multiple lenders, a mortgage broker can offer a greater variety of mortgage products that are likely to satisfy the needs of the mortgage broker's clients' diverse needs. In such cases, the loans are typically closed in the name of the lender, not the mortgage broker.

The best way to draw the distinction is to consider Mr. and Mrs. A, who approach Mortgage Broker to find them a mortgage for their new house. If Mortgage Broker solicits Mr. B or Ms. C to invest in a mortgage or note for the As, Mortgage Broker must be licensed as a securities broker. However, if Mortgage Broker offers Mr. and Mrs. A a mortgage product offered by an institutional lender, mortgage broker need not be licensed as anything.

It is important to note that most lenders relevant to this sunrise review, though certainly not all, are large financial institutions or investment groups. They are rarely individuals.

Alternatively, a mortgage broker may obtain from a lender a "warehouse line of credit," whereby the lender floats a certain sum of money to the mortgage broker who then closes loans in the mortgage broker's own name. Once this sum of money has been exhausted, the mortgage broker bundles these loans together and sells them to the lender, who then resells them on the secondary market. In purchasing the loans from the mortgage broker, however, the lender replenishes the mortgage broker's line of credit, enabling the mortgage broker to continue writing loans.

To initiate a transaction, every mortgage broker gathers personal and financial information from the client, including Social Security and bank account numbers, obtains the client's credit report, verifies employment or income and arranges for an appraisal of the property that will secure the loan. This documentation is commonly referred to as "the loan package."

The mortgage broker then matches the client's needs to the mortgage broker's portfolio of mortgage products in order to find the best match. The mortgage broker then submits the loan package to the lender. If the lender's underwriter approves the loan, a closing date is arranged. After closing, original financial documents are forwarded to the lender and deed of trust documents are filed with the appropriate county clerk.

If the mortgage broker works under a line of credit, the mortgage broker may review the loan package and determine whether to approve the loan. The safeguard here is that the lender will try to sell the loan on the secondary market. If there is a defect in the loan, the lender will be unable to sell it and will go back to the mortgage broker with any problems. This may jeopardize the mortgage broker's line of credit, thus providing incentive to write good loans.

Most mortgage brokers are compensated in the form of fees that are paid by the client and commissions that are paid by lenders. The total of all fees may not exceed six percent on first mortgages or eight percent on secondary mortgages. Fees are the mechanism by which mortgage brokers recover their legitimate out-of-pocket, fixed costs, such as funds paid for credit reports, appraisals and title work, but also including less tangible fees to cover overhead and operating costs. Typically, fees in Colorado average between one and two percent of the total value of the loan. Thus, the larger the loan, the greater the fees collected by the mortgage broker.

Commissions are determined, in large part, by the size of the loan, the interest rate to be charged and the type of mortgage product being closed. In general, the higher the profit potential for the lender on a particular loan, the higher the mortgage broker's commission is likely to be. For example, a 30-year fixed rate mortgage with an interest rate of seven percent likely pays a higher commission than a 30-year fixed rate mortgage with an interest rate of five percent.

Specialized education is typically not necessary to become a mortgage broker, though knowledge of the real estate and/or mortgage lending business is helpful.

Mortgage brokers can be either self-employed or work for larger brokerage houses.

Although the Applicant has 630 members, it is impossible to determine the number of mortgage brokers either working in Colorado or working on loans concerning property located in Colorado. The popularity of Internet commerce only complicates this situation, because there could be thousands of mortgage brokers in other states, or even other nations, working on financing for Colorado properties or working with Colorado residents.

Summary of Current Regulation

The Colorado Regulatory Environment

Although mortgage brokers are not directly regulated at the federal level, a large number of federal laws directly impact the nation's, and thus Colorado's, mortgage lending industry.

The Equal Credit Opportunity Act prohibits discrimination based on race, color, religion, national origin, sex, marital status, age or receipt of public assistance funds against applicants with respect to any aspect of a credit transaction.

The Fair Credit Reporting Act ensures the privacy of information used in consumer credit reports and requires companies providing information to credit reporting agencies to provide accurate information and to include notices of account closures and consumer disputes.

The Federal Trade Commission Act authorizes the Federal Trade Commission to take legal action against those engaging in unfair or deceptive trading practices.

The Fair Housing Act generally protects against housing-related discrimination and provides for legal action against lenders who engage in predatory lending, such as targeting traditionally credit-starved communities with loan products that carry interest rates and fees that are significantly higher than those offered in other communities.

The Home Mortgage Disclosure Act requires lenders to maintain records by census tract of the borrowers to whom they make loans.

The Home Ownership Equity Protection Act (HOEPA) generally addresses high interest rate secondary mortgages and generally prohibits prepayment penalties, increased default interest rates, balloon payments on loans with terms of less than five years, negative amortization, and pre-closing prepayment of more than two periodic payments.

The Real Estate Settlement Procedures Act (RESPA) prevents lenders from charging excessively high settlement charges on federally guaranteed loans and requires lenders to fully disclose all costs and fees associated with the loan.

Finally, the Truth In Lending Act requires lenders to disclose finance costs to borrowers within three business days of the loan application. This disclosure must include the annual percentage rate, any finance charges, and any other costs associated with the loan.

While none of these federal laws specifically regulate mortgage brokers, two Colorado laws address certain mortgage lending and mortgage brokering practices.

Section 38-40-101, *et seq.*, Colorado Revised Statutes (C.R.S.), imposes a number of requirements on mortgage brokers and mortgage lenders.

Section 38-40-102, C.R.S., requires any person who regularly makes mortgages to provide a borrower with a disclosure of all costs and fees associated with the loan. This is substantially similar to the requirements imposed under RESPA, but a violation constitutes an actionable violation of the Colorado Consumer Protection Act (CPA).

Furthermore, pursuant to section 38-40-105, C.R.S., it is a violation of the CPA for any mortgage broker or mortgage lender to:

- Knowingly advertise, display, distribute, broadcast, televise, or cause or permit to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms or conditions for a mortgage loan;

- Knowingly make a false promise or misrepresentation or conceal an essential or material fact to entice either a borrower or a lender to enter into a mortgage agreement;

- Knowingly and with intent to defraud, present, cause to be presented, or prepare with knowledge or belief that it will be presented to or by a lender, any written statement or information in support of an application for a mortgage loan that he or she knows to contain false information concerning any fact material thereto or if he or she knowingly and with intent to defraud or mislead, conceals information concerning any fact material thereto; and

- To facilitate the consummation of a mortgage loan agreement that is unconscionable given the terms and circumstances of the transaction.

Finally, the provisions of section 5-3.5-101, *et seq.*, C.R.S., the Colorado Consumer Equity Protection Act (CCEPA), are substantially similar to HOEPA in that CCEPA prohibits certain practices when dealing with high interest rate, consumer credit transactions that are secured by a consumer's principal residence, such as secondary mortgages. CCEPA prohibits balloon payments, call provisions, negative amortizations, increased interest rates upon default, and advance payments.

CCEPA also limits prepayment penalties to six months' interest for prepayments made within the first three years of the loan. No prepayment penalties or fees may be assessed after the third year of the loan or pursuant to refinancing with the same lender.

Both HOEPA and CCEPA were enacted to address predatory lending practices. Importantly, however, neither HOEPA nor CCEPA apply to first mortgages, or the refinancing thereof; they apply only to secondary mortgages. Regardless, mortgage brokers can work with these types of loans, so they are discussed here.

Additionally, CCEPA applies to lenders who close loans in their own names. Recall that certain mortgage brokers close loans in their own names, so they could be covered by CCEPA in this manner.

CCEPA is part of Colorado's Uniform Consumer Credit Code, and is enforced by the Office of the Attorney General (AGO). Lenders who make loans falling within the jurisdiction of CCEPA, such as high interest rate secondary mortgages, must be licensed by the AGO. As of June 2005, 1,960 such lenders held such licenses. Of these, 1,186 (61 percent) were mortgage companies. The AGO was unable, however, to determine how many of these were mortgage brokers, as opposed to mortgage lenders.

Regulation in Other States

When Wyoming enacted the Wyoming Residential Mortgages Practices Act in July 2005, Colorado became one of only two states that do not regulate mortgage brokers. Alaska shares this distinction with Colorado.

Thus, 48 states, plus Washington, DC, regulate mortgage brokers. The table in Appendix A on page 33 provides more detail regarding the various licensing requirements imposed by these 49 jurisdictions.

Although 28 jurisdictions require some combination of experience, training and passage of an examination, there is little consistency among such requirements. Three jurisdictions require some level of experience, training and passage of an examination. Two jurisdictions require some combination of experience and training only. One jurisdiction requires experience and passage of an examination, and one jurisdiction requires some level of training and passage of an examination. Two jurisdictions require some level of training only, and two jurisdictions simply require the passage of an examination. The most consistent component of these requirements, then, is the fact that 14 jurisdictions require some level of experience only.

Many jurisdictions also require mortgage brokers to post surety bonds, to maintain a certain net worth or some combination of both. Twelve jurisdictions require the posting of a surety bond and the maintenance of a certain net worth. Two jurisdictions allow licensees to either post a bond or to maintain a certain net worth. One jurisdiction only looks to a licensee's net worth. Finally, 25 jurisdictions require licensees to only post surety bonds.

The requisite value of these surety bonds varies greatly by jurisdiction, from a low of $10,000 to a high of $120,000. Most jurisdictions, however, have established bond values somewhere in the $25,000 to $50,000 range.

The table in Appendix A also reveals that 21 jurisdictions require mortgage brokers to have a physical presence in their jurisdictions when the property that is the subject of the mortgage is in that particular jurisdiction. Of these, two exempt licensees who satisfy certain bonding and net worth requirements. This is an important issue given the level of mortgage lending that occurs over the Internet. For example, the Internet makes it possible for a mortgage broker in Maine, to work with a client in Florida, concerning a property in Oregon.

To determine the extent to which other states require background checks, as the Applicant proposes for Colorado, DORA examined the laws of seven neighboring states: Arizona, Kansas, Nebraska, Nevada, New Mexico, Utah and Wyoming. Of these, four (Arizona, Kansas, Nevada and Utah) require background checks.

Remarkably, the background checks required by these four states are quite similar. All four require criminal background checks based on finger prints, which enables criminal history investigations based on Federal Bureau of Investigation and state law enforcement databases. Three of these states (Arizona, Kansas and Nevada) also examine the credit reports, and conduct personal history investigations, of applicants and renewing licensees.

This review of neighboring states' laws also revealed considerable commonality with respect to the grounds for discipline upon which regulators may discipline licensees:

- Making a material misrepresentation in any mortgage transaction
- Engaging in any conduct constituting fraud, deceit or dishonesty
- Pleading guilty or *nolo contendere*, or being convicted of any crime involving fraud, misrepresentation or moral turpitude
- Having a similar license revoked in another state
- Refusing to allow the regulator to examine the mortgage broker's books
- Employing an unlicensed person in a capacity that requires a license

Although not necessarily common among neighboring states' laws, the following grounds for discipline are highlighted as points of interest:

- Being insolvent
- Commingling client funds with mortgage broker's personal funds
- Pleading guilty or *nolo contendere* or being convicted of any felony
- Charging, collecting or receiving excessive fees
- Giving or receiving compensation for referrals
- Acting in more than one capacity (i.e., real estate appraiser, real estate broker, escrow agent or title insurance agent) in any mortgage transaction
- Recommending or encouraging default on any debt
- Delaying any closing for the purpose of increasing the interest rate, fees or charges
- Accepting, at closing, any previously undisclosed fees

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

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

In other words, regulation of mortgage brokers is justified only if the public is being harmed. But what is harm? During the course of this sunrise review, a representative of the Department of Regulatory Agencies (DORA) spoke with representatives of the real estate and mortgage industries, regulatory and law enforcement agencies, consumer advocacy groups and members of the legal profession in an effort to identify whether consumers are harmed by mortgage brokers, what types of harm are being inflicted and the prevalence of such harm in Colorado.

For most people, the purchase of a home represents the largest investment they will ever make. The complexities and intricacies involved in closing a real estate transaction are mind-boggling. As a result, the types of harm that unscrupulous mortgage brokers can inflict on consumers range from the relatively insignificant to the truly catastrophic. When discussing mortgages, however, even relatively insignificant harm can cost a single consumer thousands of dollars.

Mortgage brokers earn their money from two primary sources, commissions and fees. Commissions are paid by mortgage lenders to mortgage brokers on the back end of each mortgage transaction. A typical commission ranges between zero and five percent of the amount of the loan. Loans with higher interest rates pay higher commissions because the higher the interest rate, the greater the lender's profit.

The more troubling aspect of the fact that commissions are tied to the interest rate of the loan, however, is the premise upon which many consumers go to mortgage brokers in the first place. Many consumers believe, and many mortgage brokers advertise, that because mortgage brokers work with multiple lenders, mortgage brokers can get the best interest rate and best loan product for the consumer. However, the commission structure creates an inherent conflict of interest between the consumer and the mortgage broker. The consumer wants the lowest interest rate possible. The mortgage broker wants to earn the highest commission possible, and that is attained on loans with higher interest rates.

It is clear how this can harm the consumer. However, a mortgage broker who delivers only high interest rate loans will not stay in business for long, so it is reasonable to conclude that higher volumes of business compensate for the loss of higher commissions.

Mortgage brokers also charge fees on every loan they process. The total of all fees charged on first mortgages may not exceed six percent of the loan, and all fees must not exceed eight percent on secondary mortgages. In Colorado, fees between one and two percent are generally recognized as legitimate and fair.

Fees, in general, represent the manner in which a mortgage broker recovers many fixed, out-of-pocket costs associated with closing a loan, such as credit reports, appraisal fees, escrow agent fees and title fees. They also represent one means by which the mortgage broker can earn a profit, such as through discount fees, origination fees and processing fees.

Discount fees are typically charged when the commission on a particular loan is zero percent due to a low interest rate. This is often referred to as “buying down the loan.” So that the mortgage broker may deliver a lower interest rate to the consumer, the mortgage broker charges a fee for the discount, thereby partially replacing the lost commission. Since discount fees are not “fixed,” this is one area where an unscrupulous mortgage broker can charge more than necessary.

Origination and processing fees are intended to permit the mortgage broker to recover the costs of doing business, such as overhead and operating expenses, and as a means to increase profits. Standard origination fees run around one percent of the amount of the loan. Origination and processing fees, too, represent areas where an unscrupulous mortgage broker can charge more than necessary.

It is reasonable to question how “exorbitant” fees can be charged when there are legal caps on the total amount of fees that may be charged. When tales of “exorbitant fees” are told, they typically encompass fees and commissions.

This is best illustrated by way of an example. Mr. and Mrs. A approach Mortgage Broker, seeking a $100,000, 30-year fixed rate mortgage. Mortgage Broker could offer the A’s a 5.25 percent loan. Such a loan, on this particular day, pays no commission because the interest rate is so low. In fact, to secure such a loan, the lender will charge a discount fee of 0.589 percent. Mortgage Broker passes this fee on to the A’s, and will very likely add an additional percentage in order to compensate for the loss of commission. So long as the total of all fees does not exceed six percent, this is perfectly legal.

Alternatively, Mortgage Broker could offer the As a 7.0 percent loan. Such a loan pays a commission of 4.711 percent. If Mortgage Broker is unscrupulous and charges six percent in fees, Mortgage Broker stands to make almost 11 percent ($11,000) on this single transaction. This is considered “exorbitant” by many in the industry because an honest mortgage broker would have secured a lower interest rate loan and would not have charged six percent in fees when such a mortgage broker needed to charge only one or two percent in fees to cover costs and still make a profit.

Therefore, what are often characterized as “exorbitant fees” are perfectly legal. They become unscrupulous, however, when the consumers to whom these mortgage brokers market are considered: the unsophisticated and the desperate.

Unsophisticated consumers cover a wide-swath of society. Indeed, given the complexity of even the most simple mortgage transaction, it would be relatively easy to characterize most highly educated individuals as “unsophisticated” when it comes to mortgages. However, in the mortgage industry, the unsophisticated are typically those individuals who lack the financial savvy to know what they are getting into. Unfortunately, this typically encompasses the poor and those whose English language skills are poor.

Desperate consumers are those who, for whatever reason, have found themselves on the brink of financial ruin. They are desperate to extricate themselves from their financial situations and to avoid foreclosure and, thus, the loss of their home. These are the most likely to seek secondary mortgages or risky refinancings.

Since fees are often rolled into the loan itself, it is not difficult to see how these two populations could be duped into paying such exorbitant fees. A relatively unsophisticated or desperate consumer may not even notice the size of the fee to question it, or if the consumer does notice, the consumer ignores it because it does not represent cash to be placed on the closing table. Rather, it is part of the loan and can be paid-off over the life of the loan, and securing the loan, after all, is foremost in the consumer’s mind at the time.

Therefore, exorbitant fees, however they are characterized, can harm those members of the public least able to bear it and least likely to know that they are being harmed. Mortgage brokers are in a position to capitalize on the misfortune and disadvantages of others. In simple economic terms, this is inefficient because the balance of knowledge and resources is unequal.

Mortgage brokers can also inflict harm by changing the interest rate on the loan at the last minute. This is, perhaps, the largest complaint lodged against mortgage brokers by those in the real estate sales industry. Real estate brokers place equal blame for this at the feet of mortgage lenders and mortgage brokers.

Ideally, a real estate broker receives closing documents (which set forth the fees being charged, the interest rate and monthly payments, among other things) from the mortgage broker several days before the scheduled closing. This allows time for the real estate broker and the consumer to review the documents to make sure they are complete and accurate.

However, it is not unusual for the real estate broker or consumer to receive the closing documents mere hours before closing or at the closing itself. In such situations, it is also not unusual for the interest rate to be higher than what the consumer had been quoted earlier. While the interest rate may only be a quarter or half point higher than what was disclosed in the good faith estimate provided at the time of application approval, over the life of a 30-year loan, that quarter or half point could amount to tens of thousands of dollars. Worse, it may result in monthly payments that exceed the amount the consumer is able to pay.

Additionally, since the mortgage broker's commission is determined, at least in part, by the interest rate of the loan, an unscrupulous mortgage broker may provide a good faith estimate at one rate to induce the consumer to move forward with the loan, but all along the mortgage broker intends to close the loan at a higher interest rate so that the mortgage broker can collect a higher commission.

Although a sophisticated consumer may delay the closing until things can be sorted out, the unsophisticated or desperate consumer is unlikely to do so. Even a sophisticated consumer, however, is unlikely to walk away from the closing table without finalizing the transaction just because the loan is going to cost more than originally anticipated.

Where the mortgage represents initial purchase money, as opposed to a refinancing or a secondary mortgage, the consumer also stands to lose any earnest money deposited on the property if the consumer walks away from the closing table without finalizing the transaction. This, too, can represent thousands of dollars.

How and why interest rates change at the last minute is subject to speculation and much finger pointing, none of which was DORA able to corroborate. However, some allegations include mortgage brokers being overwhelmed by too much business and not submitting loan packages to lenders in a timely fashion, resulting in the loss of the interest rate the mortgage broker promised to the consumer. Also, it is alleged that some mortgage brokers actually alter the good faith estimate to reflect an interest rate and monthly payments they know to be false, then, when questioned on it, they insist that the good faith estimate is just that, an estimate.

Another type of harm occurs when the loan money fails to reach the escrow agent prior to the time of closing. This then forces the closing to be delayed or cancelled.

In the case of a refinancing or a secondary mortgage, this can result in the delay of the consumer receiving cash that may be needed immediately.

In the case of an initial purchase, this can also result in the loss of earnest money paid. It can also impact the ability of the seller of the property to fulfill its obligations if the money from the sale of the first property is to be used as a down payment on the purchase of a second property. Thus, the failure of funds to arrive in a timely manner can cause harm many steps removed from the initial consumer.

Again, however, why funds arrive late or not at all is subject to great debate. At the height of the refinancing boom, mortgage brokers and mortgage lenders were processing so many loans that it was not uncommon for the underwriters of the mortgage lenders to delay analyzing loan packages until the day before the scheduled closing simply because they had other loans scheduled to close even earlier.

The next type of harm comes from the sale of an inappropriate product. In recent years, the mortgage industry has begun to offer a wide range of products to suit many, diverse needs.

Mortgage products now include adjustable rate mortgages (ARMs) that offer a defined term at a fixed rate and then gradually adjust to the market rate. For example, with a five-year ARM, the interest rate is fixed for the first five years of the mortgage and then fluctuates annually each year thereafter according to the market at that time. While many ARMs contain provisions that the rate may increase by no more than a certain percentage per year, for example two percent, not all ARMs contain such provisions.

The interest rates for the fixed period of ARMs is generally below the rate for a 30- or 15-year fixed rate mortgage, which makes them attractive. However, the long-term risks associated with ARMs, with respect to where interest rates will be at the end of the fixed term, render ARMs unsuitable for some consumers. The consumer's plans and goals, such as how long the consumer plans to own the property and the purpose for which the property is being held, determine whether an ARM is suitable.

ARMs are not new, and in terms of the risk posed by various mortgage products, they are relatively safe, although attention must be paid to whether the interest rate is fixed or whether the payments are fixed. On fixed payment ARMs, the interest rate may adjust upward, but the payments remain fixed with any unpaid interest added to the principal. More troubling still are mortgages that require no down payment and, even worse, interest-only mortgages.

Mortgages requiring no money down typically carry higher interest rates because the lender is assuming a greater risk, and they often contain an ARM provision. This can result in an unsavvy consumer acquiring a property that is truly out of the consumer's price range. This consumer assumes a huge mortgage because he/she can afford it at the time. Over time, however, as the interest rate fluctuates, the consumer becomes burdened with mortgage payments that are impossible to make. Since there was no money paid down, there is little equity in the property with which to secure refinancing. The consumer then must sell the property, seek risky refinancing or refinancing at unfavorable terms, or go into foreclosure. In any case, a desperate consumer has been created.

These types of loans have become very popular, given the historically low interest rates that have been available recently. Nationally, 42 percent of first-time homebuyers made no down payment in 2004.[1]

A newer mortgage product is the "interest-only" loan. Under the terms of these loans, the consumer pays only the interest that accrues on the mortgage's principal, without paying down any of the principal. The typical interest-only loan, however, is interest-only for a fixed term. At the end of that term, the payments on the principal become due. This results in a huge increase in the monthly payment, which can create a desperate consumer.

[1] "Risky Mortgage Business," *The New York Times*, July 6, 2005.

As with all mortgage products, interest-only mortgages are suitable for some consumers and not for others. Unfortunately, their popularity poses a grave risk to the financial stability of Colorado. In 2004, 54 percent of the mortgages in the Boulder-Longmont area and 50 percent of the mortgages in the Denver area were interest-only loans.[2]

When an interest-only mortgage is combined with no down payment, the consumer can really get into trouble. When the fixed term on the interest-only portion of the loan ends, there is literally no equity in the property to secure refinancing. The consumer stands to lose everything. This provides a partial explanation as to why Colorado ranked fifth in the nation in foreclosures for the four consecutive months ending in July 2005.[3]

Admittedly, the poor choices made by a consumer in electing to obtain a mortgage product that is inappropriate for that individual is that consumer's responsibility. The state cannot regulate ill-advised decision-making. However, the existence of such diverse and complex products, when combined with unsophisticated and desperate consumers on the one hand, and with unscrupulous mortgage brokers on the other hand, is, quite simply, a recipe for disaster.

Additionally, inappropriate loan products are discussed here because of the sales tactics employed by some mortgage brokers. Any good businessperson would periodically re-contact former clients to determine if any new services are needed. The unscrupulous mortgage broker, however, would push a client into an inappropriate product and then work on subsequent refinancings. On each refinancing, the mortgage broker collects more fees and commissions, and the consumer, potentially, loses increasingly more equity.

Common mortgage fraud schemes include equity skimming, inflated appraisals, property flipping, silent seconds, straw buyers, false identities and air loans. While many of these schemes require individuals in addition to a mortgage broker, at least one mortgage broker is almost always involved. Fraud is pervasive and growing in the mortgage industry.[4]

Equity skimming is, perhaps, the original form of mortgage fraud. In a typical scenario, a mortgage broker approaches a desperate consumer with promises of aid. The mortgage broker solicits financial information from the desperate consumer and then forges some of the documentation to qualify the consumer for a loan that is larger than what the consumer needs. This makes the consumer think that the consumer is getting desperately needed cash out of the home. Once the loan closes, the consumer quit claims the property to the mortgage broker who rents the property back to the consumer at monthly payments that are less than what the mortgage payments would have been. However, the mortgage broker does not pay the mortgage and the property goes into foreclosure. The consumer is left with nothing because the mortgage was in the name of the consumer, but the mortgage broker has actual title to the property, so the consumer cannot even sell the property to try to pay off the mortgage.

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[2] John Rebchook, "Foreclosures rising," *Rocky Mountain News*, August 9, 2005.
[3] "Colo. among tops for foreclosures," *The Denver Business Journal*, August 25, 2005.
[4] "FBI: 80% of Fraud Attributed to Insiders," downloaded on May 12, 2005, from http/originatortimes.com/content/templates/standard.aspx?articleid=1065&zoneid=1

Inflated appraisals are, perhaps, the most widespread, but silent, type of mortgage fraud in the industry today, and they typically occur when a consumer seeks a secondary mortgage or when the consumer wants to pull equity out of a property during a refinancing. In both situations, the greater the equity in the property, the more cash the consumer can obtain.

In this type of scenario, the mortgage broker prepares the loan package and gives the consumer an estimate as to what the mortgage broker thinks the property is worth. Since the mortgage broker's fees and commission depend upon the value of the loan, the mortgage broker has an incentive to overestimate the value of the home, and, according to a recent report published by the Federal Bureau of Investigation, most people want to believe their home is worth more than it is.[5]

Therefore, when the mortgage broker hires a real estate appraiser, the mortgage broker "encourages" the appraiser to "meet value." This means that the mortgage broker tells the appraiser what the mortgage broker wants the property's value to be, rather than allowing the appraiser to actually determine the true value of the property.

An inherent conflict here is that appraisers depend on mortgage brokers for business. If an appraiser consistently refuses to meet value, because the appraiser is ethical and sets the appraisal at the level at which the appraiser calculates to be accurate, rather than at a level at which the mortgage broker wants, that appraiser risks losing future business from the mortgage broker. Anecdotal evidence suggests that mortgage brokers have even gone so far as to refuse to pay appraisers for appraisals that do not meet value.

Thus, the mortgage broker, not the real estate appraiser, determines the value of the property. This can result in several different types of harm. First, the consumer may be left with less equity in the property than the consumer expected. Worse, if the consumer pulls out too much cash, the consumer may be stuck with a mortgage for more than the property is worth.

The lender, too, can be harmed in such a situation because the collateral securing the loan (the real property) is insufficient. If the borrower defaults and the loan goes into foreclosure, both the borrower and the lender suffer harm. Further harm is inflicted on future borrowers when interest rates increase to cover the lender's loss. Everyone loses except the mortgage broker, who walks away with his or her commission and fees.

Inflated appraisals also have an effect on the overall real estate market. Since most selling and purchasing prices are determined, at least in part, by the value of comparable properties in the same neighborhood, and these, in turn, are partially determined by recent closings on such comparable properties, inflated appraisals on a few properties can lead to inflated values in an entire neighborhood or market. What may start as an inflated appraisal of only a few thousand dollars on a single property can quickly turn into over-inflated values in the tens of thousands of dollars for an entire market.

[5] "FBI: 80% of Fraud Attributed to Insiders," downloaded on May 12, 2005, from http/originatortimes.com/content/templates/standard.aspx?articleid=1065&zoneid=1

In the end, consumers may hold properties that are so over-leveraged that they cannot afford to sell. Additionally, property taxes will likely increase as entire neighborhoods' and markets' values over inflate.

During the course of this sunrise review, many Colorado-licensed real estate appraisers contacted DORA to report incidences of what they characterized as undue pressure to meet value. As illustrated above, this pressure consists of refusal to pay for completed appraisals and threatening to refuse future business.

How much of the appreciation in Colorado real estate is due to inflated appraisals? It is impossible to say for sure and such a conclusion is tenuous, at best, but it is, nevertheless, a distinct possibility. If true, mortgage brokers who push real estate appraisers to inflate appraisals, as well as the appraisers who accommodate such demands, may harm all Colorado consumers and landowners, not just their individual clients.

Property flipping occurs when a mortgage broker and associates conspire together to artificially inflate the valuation on a target property. In this scenario, the mortgage broker prepares a loan package, using forged documents and fraudulent information to create a false identity for the purchaser (who is also a conspirator), and has a conspiring real estate appraiser prepare the appraisal on the target property that is higher than what the property is actually worth. When the transaction closes, they do the same thing again and again, each time inflating the value of the target property. It is not uncommon, in this type of scenario, for the property to be "flipped" five, six or seven times in the span of just a few weeks. In the end, the mortgage payments are not made and the lender must foreclose on the property, resulting in tremendous losses.

The victims in this type of scenario include the lenders, who, ultimately, pass on their losses to all future borrowers in the form of higher interest rates. Additionally, since property flipping involves inflated appraisals, other properties in the area may become over-inflated, too, thereby harming the owners of those properties.

Another type of harm involves silent seconds. In this scenario, the buyer of a property borrows the down payment from the seller through the issuance of a non-disclosed second mortgage. For example, a mortgage broker has a client who wants to buy a $50,000-house with nothing down, but does not qualify for such a loan. The mortgage broker gets an inflated appraisal of $75,000 and arranges for the seller to "gift" the extra $25,000 to a quasi-charity that will then gift the money to the buyer for use as the down payment. The lender thinks this is a traditional, 20-percent-down-loan because the lender doesn't know where the down payment is coming from, so the loan is approved. The seller gets the $50,000 the seller wanted, but the buyer now has a $75,000-mortgage on a house that is worth only $50,000. The buyer then receives a notice requiring payment of taxes on the $25,000-gift. Unable to pay the mortgage and taxes, and unable to sell the house to cover the loss, the buyer has to walk away and the lender has to foreclose. The mortgage broker, however, collected fees and commissions on a $75,000-loan.

Finally, there are air loans, which directly harm lenders, thereby indirectly harming consumers through higher overall interest rates. Air loans are simply loans on property that does not exist. A mortgage broker prepares a loan package for a fictitious buyer on a fictitious property and simply collects the loan amount plus the related commissions. The lender is left with no property on which to foreclose. Again, lender losses are ultimately passed on to all consumers in the form of higher interest rates.

During the course of this sunrise review, DORA collected ample anecdotal evidence to suggest that many, if not most, of these types of fraudulent schemes occur throughout Colorado, often in combination with one another. Additionally, DORA collected evidence documenting several specific instances of harm.

The first group of cases involve allegations where criminal proceedings are still pending. In each of the following cases, if the individuals discussed are convicted, upon their release from prison, they can come to Colorado to inflict additional harm as mortgage brokers because there are no laws to stop them.

Case #1[6]

Two individuals in Denver were indicted for their involvement in alleged mortgage scams that led to home foreclosures. They solicited buyers, telling them that they would help such buyers qualify for loans and that they would make the mortgage payments. The mortgage broker submitted false information to lenders to qualify the buyers and then did not make timely payments. The loans went into foreclosure and the buyers lost their homes. Lenders lost an estimated $1 million and buyers lost their homes.

Case #2[7]

Three individuals, a real estate broker, an unlicensed real estate salesperson and a mortgage broker, were indicted for procuring fraudulent loans amounting to $7.7 million in Jefferson and Gilpin counties. The real estate broker used the unlicensed salesperson to solicit homebuyers in the Hispanic community. They allegedly targeted buyers that did not qualify for mortgages either because of their lack of credit or citizenship. Most buyers lost their homes in foreclosure.

[6] John Rebchook, “Two indicted in alleged mortgage fraud,” *Rocky Mountain News*, July 22, 2005.
[7] John Rebchook and Marilynn Robinson, “3 indicted in Jeffco in alleged mortgage fraud,” *Rocky Mountain News*, August 10, 2005.

Case #3[8]

A Parker couple who owned a mortgage brokering business was indicted in 2003 for submitting false or altered documents to obtain $4.5 million in fraudulent loans for their clients. They were also charged for charging borrowers a portion of the loan beyond the customary origination fees and points.

The next group of cases involves allegations where criminal charges have been proven. These individuals may not currently practice as mortgage brokers in Colorado, but with no restrictions on such practice, they could come here at any time and begin inflicting harm on Colorado consumers and lenders.

Case #4[9]

A Georgia-licensed mortgage broker was convicted of conspiracy to commit mortgage fraud. The mortgage broker, along with co-conspirators, submitted false and fraudulent mortgage applications to multiple lending institutions for Atlanta-area residential properties. The loan documents were false in that they misrepresented the borrowers' financial standing and inflated the fair marked value of the subject properties. The mortgage broker was sentenced to five years in prison, three years of supervised release and ordered to pay more than $2.8 million in restitution to the lending institutions that had been defrauded.

Case #5[10]

A Denver-based mortgage broker was sentenced to 14 months in federal prison in January 2005 and ordered to pay $142,434 in restitution for conspiring to defraud the United States government. This mortgage broker ran a mortgage fraud ring involving mortgage brokers, real estate brokers and borrowers who falsified Social Security numbers, verifications of employment, credit reports and income documentation in order to obtain government-insured loans. Many borrowers have already defaulted on the loans, requiring the federal government to compensate the lenders for the losses. The mortgage broker was indicted in 2004 along with 26 co-defendants, some of whom pleaded guilty to felony charges and some of whom pleaded down to misdemeanors.

The final group of cases involves perpetrators with prior criminal histories and who are, or have been, practicing in Colorado as mortgage brokers and inflicting still more harm. These are exactly the types of people the Applicant's proposal seeks to prohibit from acting as mortgage brokers.

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[8] Kristi Arellano, "Brokers accused of loan fraud," *The Denver Post*, August 26, 2003; Indictment for criminal case number 03CR408, filed in U.S. District Court for the District of Colorado on August 19, 2003.

[9] "Broker Sentenced to 5 Years For Mortgage Fraud," *Originator Times*, April 25, 2005.

[10] Rachel M. Dollar, "Denver Fraudster Sentenced: Fourteen Months for Mortgage Fraud Scheme Ringleader," *Mortgage Fraud Blog*, January 17, 2005; "Man given 14 months in mortgage scheme," U.S. Department of Justice press release dated January 14, 2005.

Case #6[11]

In 1991, a Denver-area individual pleaded guilty to check fraud and theft of less than $300. This individual worked as a mortgage broker until sometime in 1999. In May 2005, this individual was arrested in Longmont for stealing the Social Security number of a client, opening credit card accounts and accumulating $40,000 in debt. Although this individual was not working as a mortgage broker at the time of arrest, the Social Security number belonged to a client from six years earlier, when this individual had practiced as a mortgage broker.

Case #7[12]

A Lakewood man was serving 10 months of probation for a fraud conviction when he and his wife owned and operated a mortgage brokering business. The couple allegedly falsified application forms (inflating income and disguising prior credit histories) for their clients, without their clients' knowledge, before submitting the loan requests to various lenders. They also inflated the values of properties by using selected real estate appraisers to obtain larger loans, thus generating higher commissions. They also pressured some clients into selling their homes and turning the equity over to them for investing in bridge loans to the couple's other clients so they could make down payments on their homes, but most of this money ended up in the wife's personal bank account. Fifty-two victims lost approximately $5 million. He pleaded guilty to two counts of securities fraud in April 2004, and he was sentenced to 40 years in prison on July 9, 2004.

Case #8[13]

A Broomfield-based mortgage broker was convicted of felony larceny in 1996. As of the time of this writing, this mortgage broker is under indictment in Colorado for running three fraud schemes that netted over $35 million. **Fraud #1** – the mortgage broker had a warehouse line of credit whereby the mortgage broker would close loans and then sell them to the lender for resale on the secondary market. The proceeds from these sales replenished the mortgage broker's line of credit so that the mortgage broker could write more loans. However, the loans were all fictitious. **Fraud #2** – the mortgage broker used the money from Fraud #1 to buy homes in Littleton at substantial discounts because the homes had structural damage due to expansive soils. The mortgage broker performed cosmetic repairs and then resold the homes at full price without disclosing the structural defects. Purchasers found themselves owning structurally flawed, over-valued homes. **Fraud #3** – the

[11] Jenn Ooton, "Clients of ex-broker urged to review credit," *The Daily Times-Call*, May 18, 2005.
[12] "Mortgage scammer gets 40," *MileHighNews.com*, July 15, 2004; "Lakewood Mortgage Broker Sentenced for Bilking Investors," *TheDenverChannel.com*, July 9, 2004; "Lakewood couple charged in scam worth $2 million," *MileHighNews.com*, February 3, 2003; John Fosholt, "Mortgage firm charged," *9News.com*, January 28, 2003.
[13] "ID theft leads to charges for six," *American Data Bank*, downloaded on May 3, 2005, from www.americandatabank.com/news02.htm; conversation with Special Agent of the Federal Bureau of Investigation on May 3, 2005.

mortgage broker ran employment advertisements, offering $100,000 per year with no experience. The mortgage broker induced applicants into providing copies of driver's licenses, Social Security numbers and other personal information. The mortgage broker then used those identities to take out loans. The mortgage broker defrauded at least 100 victims of their identities, plus the homebuyers and the banks that bought the false loans. Damages are estimated to be approximately $5.7 million.

Case #9[14]

In 1999, a Denver-based mortgage broker told borrowers that they could qualify for over 100 percent-financing, providing such borrowers with sufficient funds to purchase a home and have funds left over to pay all closing costs, fees and/or additional credit card debt. The mortgage broker initiated the fraud by providing, as part of the borrowers' loan applications, a fraudulent closing statement to a prominent Colorado bank (first bank), falsely representing to the first bank that the borrower had already closed on the home, had ownership and had equity in the home – in essence, making it look as though the borrowers were seeking second mortgages. Based on this fraudulent document, the first bank issued a loan to the borrower, thinking the borrower already owned the home. The loans averaged $50,000. With these funds in place, the mortgage broker then submitted a loan package to a first mortgage lender (second bank) for the actual closing, representing to the second bank that the borrower had received the funds for the down payment from a family relative as a gift. The mortgage broker did not disclose to the second bank that the borrower had in fact taken on additional debt by signing for a second mortgage from the first bank before the borrower even purchased the home. When necessary, the mortgage broker supplemented the loan submissions with fake pay stubs and W-2 forms to inflate the borrowers' annual income so the borrower would qualify for the loan. Between May 1998 and February 1999, this mortgage broker closed approximately 114 loans, leaving the first bank with fraudulent loans totaling $5.1 million, and various second banks with fraudulent loans totaling $11.9 million. The mortgage broker received commissions and fees totaling $362,500 for closing these loans. Additionally, borrowers had financed their homes at over 100 percent of value, making refinancing almost impossible and making it difficult to sell because the borrowers owed more than the homes were worth. This mortgage broker pleaded guilty to two felony counts of bank fraud and wire fraud. The mortgage broker was sentenced in November 2000 to six months in prison and ordered to pay $118,903 in restitution. As of June 2005, this mortgage broker was again acting as a mortgage broker in Colorado, and, according to printed sources, went back to work the day after being released from prison.

[14] David Olinger, "Agencies can help in home dealings," *The Denver Post*, March 1, 2001; Federal Bureau of Investigation case summary; Plea Agreement and Statement of Facts Relevant to Sentencing for criminal case No. 0CR347M.

Case #10[15]

In 1995, a mortgage broker was barred from the mortgage industry in Illinois, and in 2003, this same mortgage broker was convicted of a felony in Colorado for filing a fraudulent claim for unemployment compensation. By 2005, this mortgage broker was in Colorado Springs telling clients that if they applied for two loans, one at a competitive rate and one at a higher-than-market rate, lenders on the higher rate loans would pay a premium to the mortgage broker that in turn would be used to pay fees associated with the lower-interest loan. The mortgage broker claimed that the low interest loan would then be used to pay the higher interest loan, leaving the client with a low interest, no fee loan. Instead of receiving the promised loans, however, clients possessed high interest loans. The mortgage broker also failed to pay appraisal fees, leaving many clients with liens on their properties.

Case #11[16]

In Douglas County, a former stockbroker turned day trader solicited funds from mostly unsophisticated, elderly investors, promising to repay them as much as 30 percent. This individual was indicted in 2004 on 16 counts of securities fraud, 2 counts of theft from an at risk adult and 1 count of theft over $15,000 or more – all 19 counts are Class 3 felonies. This individual solicited money from investors under the guise that he would invest it in day trading. However, the individual never disclosed losses and used the money from investors either for personal purposes or used it to pay obligations owed to earlier investors. In the end, this individual solicited approximately $3 million from investors. This individual is now a mortgage broker based in Denver, grossing over $20,000 per month, and supposedly paying $30,000 every three months in restitution to the victims of his securities fraud.

Additional, anecdotal, incidents of harm include:

Case #12

One mortgage broker in Colorado was previously convicted of a felony in Wisconsin. This individual now prepares fraudulent documents (pay stubs and W-2 Forms) so that people will qualify for larger loans.

[15] "Colorado Mortgage Broker Barred from Making Deceptive Claims," Federal Trade Commission press release dated March 28, 2005; Complaint for Injunctive and Other Equitable Relief for civil case number 04F1065(M&W), filed on May 26, 2004, in U.S. District Court for the District of Colorado.
[16] John Accola, "Plea bargain in fraud case: Ex-Douglas County broker pledges to repay victims," *Rocky Mountain News*, July 27, 2005; Indictment in criminal case number 04CR0002, filed in Colorado District Court for the City and County of Denver.

Case #13

There is an appraiser in Colorado who can no longer find work because the appraiser is the victim of fraud. The appraiser conducted an appraisal on a home, and the appraisal was altered to reflect a value of $100,000 more than the appraiser's actual valuation.

Case #14

A military veteran was sold a sub-prime loan, rather than a Veterans Administration (VA)-backed loan. The mortgage broker told this veteran that obtaining a VA-backed loan was difficult. In truth, the mortgage broker was not qualified to write a VA loan and wanted to keep the business, so the mortgage broker sold the veteran a less than desirable loan that had high payments and that the veteran could not get out of. The veteran experienced health problems and ended up in bankruptcy. The veteran ultimately lost the house in foreclosure.

Case #15

Property in Crowley County sold in early February 2004 for $25,000. Ten days later, it sold for $52,000. Ten days after that, it sold for $70,000. A month later the home was in foreclosure. The group involved in this conspiracy (a real estate appraiser, a real estate broker and a mortgage broker) had done this same thing on at least 40 properties in southern Colorado.

Case #16

In 2003, collusion between a real estate appraiser and a mortgage broker in Pueblo resulted in at least 27 cases of homes being over-valued by approximately 50 percent. Economic damages are estimated to be approximately $100 million.

Case #17

A Colorado consumer called a national mortgage brokering business in 2003 to refinance a home. The mortgage broker charged $14,000 in fees and had the house appraised at $335,000. Despite repeated requests for the appraisal package, the consumer did not receive it until 2005. The consumer was forced to sign a document promising not to divulge the appraisal package for which the consumer paid two years earlier. This consumer runs an in-home daycare business and the consumer's spouse will lose a job of 20 years at the end of 2005. This couple now is obligated to make mortgage payments of $3,100 per month. As of the time of this writing, the house is on the market with an asking price of $280,000. The consumer contacted the appraiser, who blamed the mortgage broker for forcing the appraiser to meet value.

Case #18

A subdivision in Pueblo consists primarily of manufactured homes (about 100 homes in all). In 2002, the subdivision's developer, who is also a real estate broker, sold homes and referred buyers to a particular mortgage broker. This mortgage broker helped buyers obtain construction loans with interest rates in the 10 percent to 15 percent range, so that buyers could fund the construction of the homes. The mortgage broker retained the services of a real estate appraiser for purposes of the construction loans, and the appraiser inflated the values on the homes by as much as 50 percent. Upon completion of the homes, buyers moved in and attempted to secure more traditional mortgages. However, when lenders ordered new appraisals and discovered the true value of the properties, none would fund the mortgages. As of the time of this writing, approximately 78 percent of these homes have either been foreclosed on or are in the foreclosure process.

In addition to these specific examples of harm, other evidence of harm caused by mortgage brokers abounds.

Recall that the Colorado Attorney General's Office (AGO) has some jurisdiction over certain types of mortgage brokers under the Colorado Consumer Protection Act (CPA), the Uniform Consumer Credit Code (UCCC) and the Colorado Consumer Equity Protection Act (CCEPA). Between June 3, 2000, and June 3, 2005, the AGO received 156 complaints against mortgage lenders/brokers pursuant to the UCCC and CCEPA. Additionally, the AGO received 933 complaints under the CPA involving mortgage-related issues.

In 2002, the Denver/Boulder Better Business Bureau (BBB) closed 228 complaints involving mortgage brokers. In 2003, the BBB closed 473 such cases, and in 2004, 397 cases.

Additionally, the Colorado Mortgage Lenders Association (CMLA) also operates a consumer assistance center. In 2004, the CMLA logged 773 consumer contacts, approximately 283 of which involved origination issues. While the CMLA data is not limited to mortgage brokers, it is indicative of the larger, overall problem – consumers are harmed when mortgage transactions go bad.

Finally, during February 2005, the Colorado Division of Real Estate (DRE) tracked the number of inquiries it received regarding mortgage brokers, even though the DRE has no jurisdiction over such individuals. During this one-month period, the DRE fielded 144 inquiries regarding mortgage brokers.

While not all of these cases involve the types of issues discussed in this sunrise report, these figures are indicative of widespread public discontent.

Taken together, these 18 case studies and numerous complaints and inquiries clearly demonstrate the types of harm Colorado consumers are suffering at the hands of unscrupulous mortgage brokers and that this harm occurs alarmingly often.

Need for Regulation

The second sunrise criterion asks:

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

Most of the harm identified during the course of this sunrise review was the direct result of fraud. The logical question to ask, therefore, is whether regulation will help to reduce the commission of fraud by mortgage brokers.

In its 2001 sunrise review of mortgage brokers, DORA concluded that Colorado consumers are harmed by the fraudulent practices of mortgage brokers, rather than by incompetent practice. The harm caused by mortgage brokers has little to do with incompetent practice. On the contrary, most of the harm was, and still is, caused by individuals who know how to manipulate the system.

As a result, any attempts to impose competency-based regulation on mortgage brokers would represent a regulatory program that is overly restrictive. Competency-based regulation focuses on ensuring that practitioners are minimally competent to practice. Such programs generally require candidates for licensure to satisfy educational or training requirements, experience requirements or both. Perhaps the most common feature of competency-based regulation is the licensing examination. Such examinations ensure that the candidate is minimally competent to practice.

However, since competency is not the issue with respect to mortgage brokers, such requirements should be avoided. Regulation of mortgage brokers, if any is imposed, should be tailored to address the harm identified, which is fraud.

The result of the 2001 sunrise review, House Bill 02-1259, "Concerning Protection of Consumers' Home Ownership Equity," which created CCEPA, attempted to address some of this fraud by prohibiting certain predatory lending practices. Most industry representatives acknowledge that CCEPA had a slight impact initially, but that since CCEPA establishes thresholds, most mortgage brokers now simply work just below those thresholds.

Regardless, CCEPA simply places limitations on otherwise legal practices. The harm identified by this sunrise report relates to fraud, an inherently illegal act.

To be sure, the practice acts governing most professions contain, as grounds for discipline, some provision prohibiting practitioners from engaging in fraudulent or deceitful conduct. However, with few exceptions, regulation of those professions is not premised on the commission of fraud. Rather, regulation of those professions is premised on the harm caused by practitioners who are incompetent.

This leads back to the original question – can regulation serve to reduce or eliminate fraud? Fraud is an inherently criminal activity. As such, regulation may not represent the most efficient means of addressing it.

However, a regulatory program based on barring practitioners who are known to have committed fraud can serve to protect the public. Not everyone who commits fraud is caught, tried and convicted, but the Colorado Association of Mortgage Brokers' (Applicant's) proposal addresses, by the most narrow means possible, this very issue. The Applicant's proposed registration system is designed to detect, initially and on an on-going basis, the commission of fraud by those who would be mortgage brokers. Those who are known to have committed fraud in the past could be barred from registering as mortgage brokers. This, at the very least, would serve to reduce the harm inflicted on Colorado consumers.

Recall also that the type of information solicited by mortgage brokers, even legitimate mortgage brokers, is sufficient to steal a consumer's identity, thereby enabling a fraudulent mortgage broker to commit even further harm. For example, in completing an application for a mortgage, the consumer must provide to the mortgage broker the consumer's full name, address, Social Security number, date of birth, bank account numbers, credit card numbers and other sensitive financial information. In the wrong hands, this is all that some unscrupulous person needs to steal the identity of another.

Additionally, a credible argument can be made that since Colorado is one of only two states in the nation that does not regulate mortgage brokers, and the only state in the lower 48 contiguous states, mortgage brokers who are disciplined or barred in other states will come to Colorado to continue to practice. Furthermore, since there are no requirements in Colorado as to who can become a mortgage broker, all sorts of individuals can become mortgage brokers in Colorado, such as those convicted of securities, insurance or other types of fraud, as well as other professionals who have had other types of licenses revoked due to fraud.

This argument is particularly salient with respect to mortgage brokers due to the huge sums of money involved. When a mortgage broker can legitimately earn upwards of $15,000 per transaction, and depending upon the ambition of the individual, can close anywhere from 10 to 20, or even 30 or 40 loans a month, the attraction becomes undeniable. The evidence presented in this report illustrates that greed and the profit potential involved in practicing as a mortgage broker combine to attract the most unsavory types of people into the mortgage brokering business, all to the detriment of the Colorado consumer and, potentially, to the overall economy of the state.

Finally, public perception must be considered. It is widely known that the banking and financial services industries, in general, are heavily regulated. Members of the general public very likely assume that mortgage brokers, too, are regulated. This creates an environment in which unscrupulous mortgage brokers can operate because the public trusts that the mortgage broker with whom they work has been approved by the state and that what may appear to be questionable practices are legitimate and legal.

This premise was confirmed during the course of this sunrise review. During summer 2005, a mortgage broker ran a number of advertisements on Denver radio stations. Each advertisement began with the recitation of a license number. A representative of DORA called this mortgage broker anonymously and enquired about the license. The mortgage broker confirmed that the mortgage broker was licensed in Colorado, but when pressed, the mortgage broker conceded that it was merely registered with the Colorado Secretary of State. A member of the general public who did not know any better, could very well have been led to believe that this mortgage broker was regulated by the State of Colorado.

Alternatives to Regulation

The third sunrise criterion asks:

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

Colorado is one of only two states that does not regulate mortgage brokers. Yet mortgage fraud and fraud perpetrated by mortgage brokers continues to be a problem in every state in the nation. Clearly, then, regulating mortgage brokers will not completely eliminate the fraud committed by those mortgage brokers intent on committing fraud.

So, what then, will serve to eliminate fraud? Since fraud is an inherently criminal act, it seems only logical to consider criminal penalties.

Colorado currently criminalizes various types of fraud and, as the case studies presented in this sunrise report illustrate, various district attorneys have brought criminal cases against those known to have committed fraud.

However, it takes time and resources to build such cases. As a result, very few are ever actually brought to justice.

More troubling, however, is the fact that since Colorado has no requirements dictating who may or may not practice as a mortgage broker, even those who are convicted of fraud can become mortgage brokers, thus jeopardizing the economic security of more, perhaps all, Coloradans.

Therefore, more criminal statutes will not prevent the harm caused by those who have committed fraud or other crimes. Indeed, the monetary rewards involved in the mortgage broker business are too good to pass up. As the cases cited earlier in this sunrise report clearly illustrate, criminals from other states are even willing to relocate to Colorado to take advantage of Colorado's lack of regulation.

As a result, the only type of regulatory program that could legitimately claim to begin to address the types of harm identified by this sunrise report would be a program that seeks to exclude those known to have previously engaged in fraudulent activity. Such a program would, at the very least, restrict the ability of such individuals to inflict additional harm.

Conclusion

According to a June 2004 report of the Mortgage Asset Research Institute, Inc. (MARI), on a national basis, mortgage originations, including initial purchases, refinancings and secondary mortgages, approached $4.0 trillion in 2003.[17] According to the Mortgage Bankers Association (MBA), the total value of all mortgage originations for Colorado single-family homes reached $91.5 billion in 2003. Obviously, then, mortgage lending and the real estate market have a significant overall effect on the nation's, and Colorado's, economy.[18]

According to the MBA, 522,609 residential mortgages were originated in Colorado in 2003, and 386,294 (74 percent) of them involved refinancings.

According to estimates made by Colorado real estate and mortgage industry representatives, mortgage brokers process between 60 and 70 percent of all mortgages in Colorado. Therefore, the role mortgage brokers play in Colorado's economy is undeniable.

This fact, combined with the evidence this sunrise review revealed concerning harm inflicted on the public by unscrupulous mortgage brokers provides sufficient evidence to support regulation.

The types of harm that can be inflicted by unscrupulous mortgage brokers go beyond the loss of equity or the subject property itself. Identities can also be stolen. As of July 2005, Colorado ranked fifth in terms of identity theft per 100,000 of population.[19] Additionally, for the years 2000 through 2003, Colorado ranked eighth on MARI's fraud index.

Opponents of regulation argue that the mortgage industry, as a whole, is already subject to extensive regulation. Rather than impose more regulation, they argue, the government should focus on enforcing existing laws.

While there is some truth to this argument, it fails to address the fact that no existing regulation addresses who may act as a mortgage broker. The fact that 48 other states regulate mortgage brokers and Colorado does not, leads to the inevitable conclusion that someone who is denied the ability to practice as a mortgage broker in another state is highly likely to come to Colorado to practice.

While general economic theory dictates that consumers benefit from professionals competing with one another, it is reasonable to conclude that consumers are harmed when that competition allows those known to have committed fraud to drive legitimate business people out of the market.

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[17] "Sixth Annual Case Report to Mortgage Bankers Association," Mortgage Asset Research Institute, Inc., June 2004, p. 1

[18] "FBI: 80% of Fraud Attributed to Insiders," downloaded on May 12, 2005, from http:/originatortimes.com/content/templates/standard.aspx?articleid=1065&zoneid=1

[19] "Seminars to educate notaries about ID theft," *Denver Business Journal*, July 29, 2005.

Due to the complexity of mortgage products and the real estate industry itself, consumers lack the resources to determine whether the mortgage brokers with whom they work are legitimate or fraudulent. This is exactly the environment in which regulation is justified.

Admittedly, regulation will not completely eliminate the fraud that seems to be pervasive in the mortgage industry, but an analysis of the Applicant's proposal reflects a regulatory program that is tailored to address the types of harm outlined in this sunrise report.

In short, the Applicant proposes a registration system for mortgage brokers. The only requirements for registration envisioned by the Applicant are for candidates to submit to criminal history and regulatory history background investigations. These would be necessary because the regulator would be authorized to deny or revoke the registration of any mortgage broker who had been convicted of a felony or of any crime involving fraud and deceit, or who had had a license in the mortgage, insurance, securities or real estate industries revoked or suspended. At a minimum, these disqualifiers would ensure that those individuals who had previously been caught engaging in fraudulent activity could not engage in similar conduct as mortgage brokers in Colorado.

Additionally, under the Applicant's proposal, mortgage brokers would have to reapply for registration every three years, at which time they would again submit to these background checks. These subsequent background checks are intended to ensure that mortgage brokers, once registered, do not engage in fraudulent activity.

The General Assembly should enact many aspects of the Applicant's proposal, including initial and recurring criminal and regulatory history background checks. Additionally, the regulator charged with administering this program should be directed to deny, refuse to renew and revoke the registration of any applicant or registered mortgage broker who, within the previous five years, has been convicted of or pleaded guilty or *nolo contendere* to any crime in any jurisdiction an element of which includes fraud, deceit, material misrepresentation, theft or the breach of a fiduciary duty. Additionally, registrations should also be denied, not renewed or revoked for applicants or registered mortgage brokers who have had one of the following licenses revoked or suspended, in any jurisdiction, for fraud, deceit, material misrepresentation, theft or the breach of a fiduciary duty:

- real estate broker;
- real estate appraiser;
- insurance producer;
- attorney;
- mortgage broker;
- securities broker-dealer;
- securities sales representative;
- investment advisor; or
- investment advisor representative.

In doing so, the General Assembly should craft a definition of “mortgage broker” that is narrowly confined to those who facilitate the coming together of borrowers and lenders, so as not to encompass, for example, employees of banks or lenders. This definition should also specify that it applies to mortgage brokers who close loans in their own names, such as those who work with warehouse lines of credit.

Additionally, registered mortgage brokers should be required to post bonds of at least $100,000. At least 41 other jurisdictions require mortgage brokers to post bonds. Bonds provide additional protection to consumers by providing a source of possible restitution funds.

The Applicant’s proposal does not specify an administrative home for this new regulatory program. As a result, DORA examined a variety of options, including the Division of Securities, the Division of Registrations (DOR) and the Division of Real Estate (DRE). The Division of Banking and the Division of Financial Services were not examined because those agencies specialize in the regulation of institutions, rather than individuals.

The DOR and the DRE both regulate individuals and both possess expertise in administering large regulatory programs. However, there is a logical nexus between the DRE and the mortgage brokering industry. Indeed, the DRE consistently receives telephone inquiries from individuals regarding the mortgage industry, so there is already evidence that consumers would instinctively know where to go with complaints. Additionally, the DRE regulates real estate brokers and appraisers. This places the DRE in the ideal position to identify trends and patterns among individuals as well as within the industry as a whole.

Additionally, the regulatory program envisioned by the Applicant and this sunrise report involves criminal history background checks. The DRE, in its regulation of real estate brokers, possesses the expertise and internal processes to deal with such types of information. Therefore, the mortgage broker registration program should be placed at the DRE.

Importantly, a board or advisory committee is not necessary for this type of registration program. Rather, the General Assembly should grant to the Director of the DRE (Director) all disciplinary and licensing authority. Regulatory boards and advisory committees are necessary where a regulatory practice act addresses standards of practice and where professional or technical expertise is necessary to determine whether a violation has occurred. With respect to mortgage brokers, however, no such expertise is necessary.

Furthermore, the General Assembly should authorize the Director to receive complaints against mortgage brokers and to share this and other relevant and appropriate information with state and federal law enforcement agencies, the state’s district attorneys and the Attorney General, as appropriate. This will serve two functions. First, it will enable the DRE to serve as a formal repository of information regarding complaints against mortgage brokers. Secondly, and perhaps more importantly, it will enable the state’s district attorneys and the Attorney General to pursue legal action when appropriate.

Additionally, the Director should be authorized to summarily suspend the registration of any mortgage broker for whom any of the above-mentioned disqualifiers apply subsequent to registration and prior to renewal. Although the Director will be required to institute revocation proceedings against such a registration, the ability to summarily suspend such a registration has considerable merit.

It can take months to prepare, schedule and complete a revocation proceeding, during which time such an individual can inflict additional harm on additional consumers. The ability to summarily suspend a registration will enable the Director to prevent the infliction of that additional harm. Any due process concerns can be allayed by the Administrative Procedure Act's requirement, as set forth in section 24-4-104(4), Colorado Revised Statutes (C.R.S.), that a hearing in a summary suspension case be held within 60 days.

This sunrise report recommends regulation in order to curtail the commission of fraud. Unfortunately, those individuals most likely to commit fraud would have little problem ignoring a state statute requiring them to register as mortgage brokers. If they had committed fraud elsewhere and one of the disqualifiers applied to them, they very likely would not attempt to register, but practice anyway. The monetary rewards are too high to be ignored.

Most practice acts authorize the regulator to issue an order to cease and desist from engaging in unlicensed practice, and this authority should be expressly granted to the Director. This will provide the Director with an administrative mechanism with which to enforce compliance with the registration requirement.

Furthermore, the General Assembly should make it a Class 1 misdemeanor to engage in the practice of mortgage brokering without being registered as such, and the statute should specify that each mortgage that an unregistered mortgage broker closes constitutes a separate offense. Pursuant to section 18-1.3-501(1), C.R.S., conviction of a Class 1 misdemenaor entails imprisonment of between 6 and 18 months, imposition of a fine of between $500 and $5,000, or both. The prospect of prison terms and substantial fines should deter many individuals from engaging in the practice of mortgage brokering without being duly registered.

Finally, the Attorney General, as well as the state's district attorneys, should be given express jurisdiction over such matters. This is necessary due to the nature of the mortgage industry. It is highly likely that a single mortgage broker would work in various judicial districts, particularly if the unregistered mortgage broker is seeking to avoid attention. Such a mortgage broker may write only a few loans in each judicial district to avoid attention and to play the odds that the local district attorney will focus resources on more serious crimes.

By authorizing the Attorney General to pursue criminal charges, however, cases spanning judicial districts could be combined into a single, large case, thus justifying the expenditure of resources to pursue the matter. Furthermore, the Attorney General is more likely than a local district attorney to recognize statewide patterns and to take a more strategic approach to enforcement.

Recommendation – Require all mortgage brokers working in Colorado to register with the Director of the Division of Real Estate. To register as a mortgage broker, all candidates should submit to criminal history and regulatory history background checks and post bonds worth $100,000. Direct the Director of the Division of Real Estate to deny, refuse to renew or revoke any registration of a mortgage broker found to have been convicted of or pleaded guilty or nolo contendere to any crime an element of which includes fraud, deceit, material misrepresentation, theft or the breach of a fiduciary duty, or who has had a license to work in the legal, mortgage, securities, insurance or real estate industries revoked or suspended for similar reasons. Grant to the Director the authority to issue cease and desist orders and to summarily suspend registrations. Finally, make it a Class 1 misdemeanor to practice as a mortgage broker without being registered and grant to the Attorney General, as well as the state's district attorneys, jurisdiction over such offenses.

Appendix A – Licensing Requirements in Other States

	Regulatory Agency	License Required?	Experience Requirements	Education Requirements	Examination Required	Surety Bond Required	Minimum Net Worth Required	In-State Office Required
Alabama	State Banking Department, Bureau of Loans	Yes	No	No	No	No	$25,000	Yes
Alaska	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable
Arizona	State Banking Department	Yes	3 years	24 hours	Yes	$10,000	No	Yes
Arkansas	Securities Department	Yes	3 years	No	No	$50,000	$25,000	No
California	Department of Real Estate	Yes – as real estate brokers	2 years	No	No	No	No	Yes
Colorado	Not Applicable	Not Applicable	Not Applicable	Not Applicable	No	Not Applicable	Not Applicable	Not Applicable
Connecticut	Banking Department, Consumer Credit Division	Yes	3 years	No	No	$40,000	$25,000	No
Delaware	State Bank Commissioner	Yes	No	No	No	$25,000	No	No
District of Columbia	Department of Insurance, Securities and Banking	Yes	No	No	No	$12,500 - $50,000 depending on volume of business	$10,000	No
Florida	Department of Financial Services, Office of Financial Regulation	Yes	No	24 hours	Yes	No	No	No
Georgia	Department of Banking and Finance	Yes	2 years	40 hours	No	$50,000 if net worth is less than $100,000	$100,000 or surety bond	Yes
Hawaii	Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division	Yes	No	No	No	$15,000	No	Yes
Idaho	Department of Finance	Yes	3 years	No	No	$10,000	$10,000	No
Illinois	Department of Financial and Professional Regulation, Division of Banks and Real Estate	Yes	No	No	No	$20,000	$50,000	Yes
Indiana	Secretary of State, Securities Division	Yes	No	24 hours	No	$50,000	No	Yes
Iowa	Division of Banking	Yes	No	No	No	$15,000	No	No

	Regulatory Agency	License Required?	Experience Requirements	Education Requirements	Examination Required	Surety Bond Required	Minimum Net Worth Required	In-State Office Required
Kansas	State Bank Commissioner	Yes	No	No	No	$50,000 if office in Kansas OR $100,000 if no office in Kansas	No if office in Kansas OR $50,000 if no office in Kansas	Yes, or satisfy bonding and net worth requirements
Kentucky	Department of Public Protection, Office of Financial Institutions	Yes	No	30 hours	No	$50,000	No	Yes
Louisiana	Office of Financial Institutions	Yes	No	No	No	$50,000 if net worth is less than $50,000	$50,000	No
Maine	Department of Professional and Financial Regulation	Yes[20]	No	No	No	$10,000	No	No
Maryland	Department of Labor, Licensing and Regulation, Division of Financial Regulation	Yes	3 years	No	No	$25,000 - $75,000 depending on volume of business	No	No
Massachusetts	Office of the Commissioner of Banks, Division of Banks and Loan Agencies, Consumer Compliance Division	Yes	1 year	No	No	No	No	No
Michigan	Department of Labor and Economic Growth, Office of Financial and Insurance Services	Yes	No	No	No	$25,000	$25,000	No
Minnesota	Department of Commerce, Financial Examinations Division	Yes	No	No	No	No	No	No
Mississippi	Banking and Consumer Finance Department, Mortgage Lending Division	Yes	2 years	No	No	$25,000	No	Yes
Missouri	Division of Finance	Yes	No	No	No	$20,000	$25,000	Yes

[20] Maine licenses all those who arrange for the extension of credit, whether in a mortgage context or otherwise.

	Regulatory Agency	License Required?	Experience Requirements	Education Requirements	Examination Required	Surety Bond Required	Minimum Net Worth Required	In-State Office Required
Montana	Department of Administration, Division of Banking and Financial Institutions	Yes	3 years	No	No	$25,000	No	Yes
Nebraska	Department of Banking and Finance, Financial Institutions Division	Yes	No	No	No	$50,000	No	No
Nevada	Division of Mortgage Lending	Yes	2 years	No	No	No	No	Yes
New Hampshire	Banking Department	Yes	No	No	No	$20,000	No	No
New Jersey	Department of Banking and Insurance, Division of Banking, Licensing Services Bureau	Yes	No	No	Yes	$100,000	$50,000	Yes
New Mexico	Regulation and Licensing Department, Financial Institutions Division	Yes	No	No	No	$25,000	No	No
New York	Banking Department, Mortgage Banking Division	Yes	2 years	No	No	$10,000 - $100,000 depending on volume of business	No	No
North Carolina	Office of the Commissioner of Banks	Yes	3 years	8 hours	Yes	$50,000	No	Yes
North Dakota	Department of Financial Institutions	Yes	No	No	No	$25,000	No	No
Ohio	Department of Commerce, Division of Financial Institutions	Yes	3 years	No	No	$50,000	No	Yes
Oklahoma	Department of Consumer Credit	Yes	3 years	No	Yes	No	No	Yes
Oregon	Department of Consumer and Business Services, Division of Finance and Corporate Securities	Yes	3 years	Yes	Yes	$25,000	No	No
Pennsylvania	Department of Banking	Yes	No	No	No	$100,000	No	Yes
Rhode Island	Department of Business Regulation, Division of Banking	Yes	5 years	No	No	$10,000	$10,000	No
South Carolina	Department of Consumer Affairs, Legal Division	Yes	2 years	No	No	$10,000	No	Yes

	Regulatory Agency	License Required?	Experience Requirements	Education Requirements	Examination Required	Surety Bond Required	Minimum Net Worth Required	In-State Office Required
South Dakota	Department of Commerce and Regulation, Division of Banking	Yes	No	No	No	No	No	No
Tennessee	Department of Financial Institutions	Yes	No	No	No	$90,000	$25,000	No
Texas	Savings and Loan Department	Yes	1.5 years OR 3 years if licensed attorney or real estate broker	Bachelor's Degree OR Licensed attorney or real estate broker OR 3 years experience	No	$50,000 if net worth is less than $25,000	$25,000 or $50,000 bond	Yes
Utah	Division of Real Estate	Yes	No	No	Yes	$10,000	No	No
Vermont	Department of Banking, Insurance, Securities and Health Care Administration, Division of Banking	Yes	No	No	No	$10,000	No	No
Virginia	State Corporation Commission, Bureau of Financial Institutions	Yes	No	No	No	$25,000	No	No
Washington	Department of Financial Institutions, Division of Consumer Services	Yes	2 years	No	No	$20,000 - $60,000 depending on volume of business	No	No
West Virginia	Division of Banking, Mortgage Division	Yes	No	No	No	$50,000	$10,000	No
Wisconsin	Department of Financial Institutions, Division of Banking	Yes	No	No	No	$10,000 if office in Wisconsin OR $120,000 if no office in Wisconsin	None if office in Wisconsin OR $100,000 if no office in Wisconsin	Yes, or satisfy bonding and net worth requirements
Wyoming	Department of Audit, Division of Banking	Yes	No	No	No	$25,000	No	No