



**Statement by The Colorado Association of Mortgage Brokers
To House of Representative Business Affairs Committee
Regarding HB09-1085, Mortgage Loan Originator Licensing Act
Presented January 28, 2009**

Mr. Vice Chairman, Mr. Rice and members of the House Business Affairs and Labor Committee, my name is Bill Kidwell. I am the 2009 Chairman of the Colorado Association of Mortgage Brokers Government Affairs Committee and its 2007 President. It is my pleasure to have the opportunity to offer comments on behalf of CAMB regarding HB 09-1085, the Mortgage Loan Originator Licensing Act.

I will begin my comments with a brief history of where we have been over the past three years, then finish with specific comments on the bill before us.

CAMB is the Colorado mortgage broker trade association mostly responsible for advocating registration of all individuals performing mortgage activities in Colorado.

CAMB's repeated submissions of sunrise applications led to the 2006 passage of a registration bill that became the Mortgage Broker Registration Act.

In 2007, additional legislation changed the Act's title to licensing, added education, testing and additional financial accountability for a subset of the individuals performing loan origination services for Colorado consumers. The 2007 legislation also increased the number of mortgage brokers covered by the law by repealing FHA exemption from licensing.

During the same two year period Colorado and the nation realized a tremendous increase in mortgage delinquency, default and foreclosure. The situation generated a national legislative debate focused on finding the group or groups to blame and on introducing legislation and regulatory change to attempt to cure the problem.

In July 2008, the President signed the Housing and Economic Recovery Act of 2008 into law. This law included the S.A.F.E Act that is the core of the bill before us today.

The purposes of the S.A.F.E Act are to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud.

CAMB encourages the legislature and the Division of Real Estate to be proactive with respect to the requirements of the S.A.F.E. Act. In our minds this requires Colorado's Division of Real Estate to aggressively and timely assert its position that the Colorado laws under its regulatory purview are compliant with the spirit of Section 1506 (d) (1)-(6) of the S.A.F.E Act and should with some minor modification be accepted by the Secretary.

CAMB offers the following comments specific to HB09-1085:

First, CAMB applauds the sponsors' initiative to offer a bill changing our statute to preempt the Secretary from acting under his authority in the Section 1508 of the S.A.F.E. Act. The last thing the Colorado consumers and its independent mortgage professionals need is to be subject to a unilateral law driven by national fiat.

Having said that, CAMB suggests that the sponsors could reduce HB09-1085 to the language modifying Title 12, Article 61, Part 903 on page 15 at lines 9 through 13 which authorizes the Director to adopt rules to implement provisions of the S.A.F.E. Act. A change of wording in this section from "may" to "shall" when supplemented with a few changes necessary to conform Colorado's statute with the S.A.F.E. Act's continuing education minimums, test score minimums and more frequent license renewal cycle would accomplish the first of 09-1085's two stated purposes.

Second, CAMB opposes the bill's second stated purpose of exempting certain financial institutions from the list of prohibited practices.

The nation has come to realize that mortgage professionals are not the ogres they were depicted to be early in the search for explanations for the increasing defaults and foreclosures. In fact, the attention has turned to loan products and the securities markets combined with lenders and relaxed underwriting standards. Further, at least some have recognized that we as consumers must assume accountability for doing our own homework before entering into what is described as the largest and most complex financial transaction most of us face.

Colorado consumers seek and obtain real estate financing from a variety of sources including federally chartered institutions, state chartered banks and credit unions, and through mortgage brokers who arrange mortgages between consumers and lenders.

It took CAMB and other supporters more than a decade to succeed in influencing legislation to protect consumers in Colorado by requiring registration and other controls. After all the work that has been accomplished it would be counter productive to exclude a material segment of the mortgage delivery system from accountability to the same regulations and rules governing business practices to which independent mortgage brokers must adhere. CAMB asks the sponsors to consider supporting the Director's position that while 12-61 Part 9 may exempt certain groups from licensing requirements, she should have full authority to regulate all persons and individuals who perform loan origination services with respect to activities which are mandated or prohibited under the law. Colorado consumers deserve no less and independent mortgage brokers should not be held to standards of conduct and performance that others delivering the same products to the same consumers are not accountable for.

Lastly, 12-61 Part 9 contains definitions and requirements that are inconsistent or unclear and make application of the law and interpretation by the regulator and industry difficult, if not impossible.

The present statute does require change.

CAMB suggests that instead of making the changes “on the fly” the sponsors direct a group of industry, consumer and regulatory representatives to convene in 2009 with the purpose of offering a comprehensive set of recommendations for changes in 12-61 Part 9.

Much has developed over the three years since CAMB’s Sunrise Application was forwarded to the General Assembly. 2009 is the right time for a group of experts and vested individuals to focus on providing clarity, conflict resolution and a comprehensive law that incorporates the lessons learned through three of the most tumultuous years we have faced in housing finance.

CAMB intends to offer more detailed input to the sponsors. So, while we prepare that input and in the event the sponsors don’t agree that the bill could be reduced as offered earlier in the comments, CAMB does want to go on record regarding our strenuous objection to the language on page 22, lines 16-27. We join others who believe that all of that language should be deleted. CAMB agrees with others that the combination of surety bond, errors and omissions insurance and education should be adequate proof of licensees’ financial responsibility. Incorporation of language even remotely similar to that presently in this section of the proposed bill places a standard of performance on independent mortgage loan originators that is well beyond reason and not evidenced in statutes or regulation enforcing any other industry.

In summary, it is clear the S.A.F.E. Act requires action. It is clear that Colorado’s existing statute requires minor modification to conform to certain provisions of the S.A.F.E. Act and it is clear that 12-61 Part 9 requires detailed attention and modification to improve its clarity and application.

CAMB requests the sponsors consider “eating this elephant” one bite at a time: 1) Make the minor modification suggested to authorize the director to implement the S.A.F.E. Act along with the technical changes to the statute required to conform to the education and renewal items and 2) do not exempt any additional individuals from mandates or prohibited acts. Then, 3) support the recommendation to direct a group to work on a comprehensive set of modifications to the existing statute that will reflect and incorporate the impact of the tremendous change that is being mandated in 2009. Appoint that group and then allow the sixty-eighth session of the General Assembly to pass the collaborative result.

Thank you for considering our comments.

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