COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: HB 942 and HB 983
Open-End Mortgages

Stenographic report of hearing held in Room 140, Main Capitol Building, Harrisburg, Pennsylvania

Friday,
September 8, 1989
10:00 a.m.

HON. THOMAS CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman, Crime and Corrections

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Also Present:

William Andring, Majority Counsel
Katherine Manucci, Majority Staff
Paul Dunkleberger, Minority Research Analyst

Reported by:
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CHAIRMAN CALTAGIRONE: I'd like to call the House Judiciary Committee meeting to order considering open-end mortgages, House Bills 942 and 983, and at this point I'd like to turn it over to Representative Bortner, who would like to make some comments on House Bill 942.

REPRESENTATIVE BORTNER: Thank you, Mr. Chairman, and I'm really not going to comment on any specifics of the bill, only to say that as the sponsor of one of two bills that have been introduced on this subject, I realize that for a lot of the members this is a fairly complex legalistic kind of issue, and as with other members of the committee I think who are here or will be here, frankly, I'm here to listen and to learn and to hopefully myself become a little more educated on the issue, and I really don't want to take any more time this morning on my comments, Mr. Chairman, and would ask that we begin the hearing and start to learn a little bit more about this subject.

CHAIRMAN CALTAGIRONE: Okay. With that, we'll call Ronald L. Hankey, President of the Adams County National Bank, and if you could introduce yourself for the record.

MR. BIERY: Mr. Chairman and members of the committee, I'll just make some brief introductions and then ask Mr. Hankey to proceed.

For the record, I'm James R. Biery. I'm Vice President of Government Relations for Pennsylvania Bankers Association. Along with me is Louise Rynd, who is the resident counsel for our association, and Mr. Ron Hankey will be doing the testimony on our behalf and he can introduce himself, and I'll ask him to proceed.

Thank you.

MR. HANKEY: Good morning, Mr. Chairman and members of the committee. My name is Ron Hankey. I'm President and Chief Executive Officer of Adams County National Bank in Gettysburg. We're a community bank with $360 million in assets, and our bank principally serves consumers and small businesses in our area. I really appreciate the opportunity to be with you today to present the views of the Pennsylvania Bankers Association. I currently represent banks similar to my size on the Pennsylvania Bankers Association Executive Committee, and previously served on the association's Government Relations Policy Committee, which has analyzed this legislation in depth over the past few years.

By way of background, the issue of mortgages for future advances has been around in the legislature for some time. The Pennsylvania Bankers Association has been intensely interested in its progress and has made enactment of House Bill 942 one of its highest legislative priorities.

In February of 1984, the Pennsylvania Bar Association introduced a bill to alleviate the technicalities arising out of court decisions that had complicated construction mortgage financing. We were interested in that issue and expanded our research and investigation and concluded that the main concern of lenders lay with the consumer credit field and home equity financing. Thus, we looked to other States for guidance, which led to the development of the bill which is now House Bill 942.

The subject of open-end mortgages, or mortgages for future advances, is of particular concern to me and community bankers like me who extend a great deal of credit to consumers in the form of residential mortgages. I don't have to tell you about the increased demand for home financing, especially in southern Pennsylvania. In addition, all banks have experienced a sharp increase in demand for home equity loans, which is a type of mortgage for future advances. This was due in part to the 1986 revision in Federal tax law which generally eliminated deductions for interest payments on consumer loans except for those secured by residential mortgages. The balance of the increased demand can be explained by the sizable increase in the value of home equity in our State, which presents borrowers with bankable collateral for borrowing for future home improvements, education of their children, and other major endeavors while preserving the tax deductibility of the interest paid on those loans.

I should add that clarification of the lien priority of mortgages for future advances would substantially aid in financing loans to small businesses through the use of revolving lines of credit. My bank and many others do a great deal of financing of this type and are very interested in this aspect of the legislation.

Unfortunately, lenders in Pennsylvania lack the clear ability to rely on the recorded liens as security for mortgages for future advances which permit the borrower to draw on a line of credit as he sees fit at any point in the future and possibly repay such advances and make new draws. This uncertainty results because Pennsylvania lacks a statute clearly providing for the priority of open-end mortgages.

Pennsylvania lien priority law is built upon the principle known as the "obligatory advance doctrine," which provides that a mortgage may secure only a loan made at the time of the mortgage or at a later date pursuant to a binding commitment. Without a binding commitment which obligates the lender to make an advance, a loan made under a mortgage previously recorded is subject to any liens that have been filed between the date of the recording and the date of the advance.

Thus, we now lack a judicial interpretation which holds that advances under open-end mortgages, such as home equity loans and other lines of credit, are indeed entitled to priority as of the date of recording of the mortgage. This is because the longstanding interpretations of lien priority law were made under statutes which do not directly address this issue. House Bill 942 is simply an effort to update Pennsylvania statutory law to reflect the increased use of these mortgage instruments and provide direction to the courts should a dispute regarding the priority of an open-end mortgage arise.

I'm not a lawyer, but I have discussed this gap in Pennsylvania law with our bank's attorneys who have stressed to me the fact that if a future advance loan, such as a home equity loan, is to remain dependent on the availability of home equity as collateral, then the only safe choice I have under existing common law and statutory authority is to incur the time and expense necessary to check the records before each advance to determine if any liens have intervened since our bank last recorded this lien for the previous advance. This impediment has not stopped many banks from making home equity loans. We simply have to make those loans because of consumer demand, but it does restrict the amounts committed and heightens the credit standards substantially. We need a method which is efficient, relatively inexpensive, and most of all, reliable.

House Bill 942 provides just such a method. It would add to Pennsylvania lien priority law the necessary provisions to cover optional future advances and permit a lender to give a borrower a line of credit for a stated amount that could be on a revolving credit basis and require only a single check of the real estate records to determine if the lien priority for all subsequent advances under the line. It includes a definition of "obligated," which clearly provides that the holder of a mortgage is obligated if he has made a contractual commitment to advance money, even if advances may be made up to three years following the time the mortgage is recorded. With enactment of House Bill 942, lenders could prudently make more credit available to borrowers at lower cost, and I wouldn't expect any possible objections to that.

House Bill 942 is drafted the way it is for particular reasons. It is modeled on an Ohio statute in place there for over 20 years and is similar to statutes on this subject in a number of other States as well. The Pennsylvania Bankers Association has contacted the Bankers Associations in those States to determine the effectiveness of their statutes on mortgages for future advances and have found them to be heartily endorsed as useful and efficient.

By its nature, an open-end mortgage establishes a continuing relationship between the borrower and the lender so that all credit extended at any time can be covered by the lien of the mortgage as of the date of the recording. The question arises as to how a borrower may terminate that relationship if he wishes to do so. Ordinarily, a mortgage simply remains on record until the amount secured is paid in full, as in the case of the ordinary purchase money first mortgage. That procedure, however, would be very disadvantageous to a borrower on an open-end mortgage. If the borrower has no balance outstanding or if the amount of the outstanding balance is much less than the amount that could be borrowed against the value of the property, the borrower is effectively prevented from taking advantage of more favorable loan terms that might be offered by another lender until that mortgage is satisfied of record or the maximum amount which the mortgage can cover is reduced to the current balance.

House Bill 942 includes a very important consumer protection to preclude that problem from occurring. This provision enables a borrower to give notice to terminate an existing open-end mortgage on record if there is no outstanding debt or to limit the lien of that mortgage to the outstanding balance, if there is one, by filing a notice to the current lender. This method is also employed by the Ohio and other State statutes, and we strongly support it as a workable procedure for Pennsylvania as well.

Without such a consumer protection, a borrower with an earlier open-end mortgage on record would face obvious difficulty in going to another lender for a better rate or terms due to the delay in having to obtain all recorded satisfaction of the first open-end mortgage before the new lender could obtain effective security in the same real estate. It is our experience that the normal procedure for satisfying recorded mortgages has a consequence of giving the first lender a near monopoly on the mortgagor's future business. House Bill 942 includes the consumer protection provision necessary to relieve consumers of this monopoly.

House Bill 942 is sharply different from another version of legislation on this subject introduced into the House as House Bill 983, which does not include such a consumer protection. In fact, House Bill 983 includes what would constitute a statutory laundry list of conditions which would permit the lender to decline to advance money to the borrower and still retain its right to lien priority. House Bill 942, on the other hand, while permitting future advances to be conditioned on certain events, would provide that such conditions be included in the agreement to be negotiated by the lender and the borrower rather than limiting the parties to the overly broad conditions in House Bill 983, which would even include the right of the lender to discontinue the business of making loans secured by real estate which require future advances. The Pennsylvania Bankers Association cannot support House Bill 983 for this reason, and because it does lack the important consumer notice provision that I previously discussed.

I want to thank you for the opportunity to present the views of our banking industry on the issue of mortgages for future advances, and I would certainly hope that your committee will make every effort to take favorable action on House Bill 942 as soon as possible.

I would be happy to entertain any questions you have about my testimony.

CHAIRMAN CALTAGIRONE: Thank you.

Questions from the members?

REPRESENTATIVE BORTNER: Just one or two.

BY REPRESENTATIVE BORTNER: (Of Mr. Hankey)

Q. Just a couple questions. I guess first question, you referred to -- I guess there's really two different situations where this comes up, there may be more, but one is certainly the construction lending situation, the other is more for consumer credit, I guess. Do you see the main problem, from your point of view, in the construction mortgage arena and is that the main area where you feel that this creates a difficulty or a hardship?

A. No, it's not really at all. I think present statutes do cover that very well. I think the real arena that we have problems is with the home equity lines of credit where we cannot, without some fairly great exposure, advance moneys on lines of credit that we've committed to our customers because Pennsylvania statutes do not protect us on lien priority.

Q. One other question. Now, as you read or would understand House Bill 942, let me just kind of give a hypothetical. If I have, let's say I have $50,000 of equity in my home and I borrow -- get a loan from you, line of credit, I get $20,000, say, immediately and I have $30,000 as a line of credit. You record that?

A. Yes.

Q. Are you obligated to advance that to me as I want to draw on it?

A. I think various institutions differ on that. I know at our particular bank when we make a commitment such as that, we are obligated to make the advances.

Q. That would depend on the language of the instrument then?

A. Yes.

Q. Now, in those cases where you're obligated, the instrument obligates you to advance that money, I mean, assuming that certain conditions are met, in that case you would be able to record your lien up to the full amount, even though the advances have not been made, and be protected, is that correct?

A. That's correct.

Q. And anybody can answer these, by the way.

A. For the $30,000 in example, yes, we'd record a lien for the $30,000.

Q. So I guess what I'm trying to get to, the real problem occurs in situations where the line of credit is there but because of the language of the instrument, you may or may not be obligated to advance it, and at the time you make a decision to advance you would then have to re-record your lien and do another title search, is that--

A. Yes, basically that's right. I think

there's two real important things here. One is the consumer protection aspect of this bill, and that is to permit the consumer to choose their lender without putting undue hardships on the consumer, and I think that's very important. I don't think any consumer should be impeded at all from choosing their lenders, so this bill does provide for those protections for the consumer. Again, the second area is that under current statutes, if I have a line of credit to a customer and I advance, in your case, let's say the $30,000, supposing I advance the full $30,000 to you and you pay some back and want to have other advances in the future on that $30,000, under current statutes--

Q. So I would free up some more of my equity by having paid back $5,000?

A. Yes.

Q. Okay.

A. However, under current Pennsylvania statutes, I, as a lender, could have a potential problem because I am not protected on my lien priority on that next advance to you without checking the records.

Q. Okay.

A. And that's extremely important to lenders. So I think we have a bill here that gives additional protection to lenders in the sense of clearing up statutes on open-end mortgages and it provides, I think, very good protection to consumers to permit them to go to other lenders.

Q. Okay.

REPRESENTATIVE BORTNER: Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: Kevin.

REPRESENTATIVE BLAUM: Thank you, Mr. Chairman.

BY REPRESENTATIVE BLAUM: (Of Mr. Hankey)

Q. You and I -- I agree with you and the same as the situation here and in one of your statements that I'm not a lawyer either. I'm also not a banker. I'm just a consumer out there who has a mortgage and I'm trying to figure out what I can't do now that you want me to be able to do, what the situation is now and what 942 will allow me to do that I'm currently, I guess, not permitted to do. I have a mortgage and let's say I have, you know, a third of it -- not even a third of it, very little of it paid off. What does 942 do for me?

A. Okay. If it's an open-end mortgage that we're talking about, and I assume it is, because that's what this legislation is really about, it has nothing to do with residential first purchase money mortgages. If it's an open-end mortgage, I think the great protection it gives you is if you're dealing with me currently and I've extended a line of credit to you and you find, very frankly, that there's another bank or financial institution offering a better deal elsewhere, I think it makes it very easy for you to choose that other lender, and I think you ought to have that right as a consumer. I'm a banker but I'm also a consumer, and I feel very strongly about that. So it provides you, I think, as a consumer with much more latitude to choose your lender, but again at the same time, it does clear up this lien priority issue for lenders, which is an extremely important issue to us.

Q. Let's say I have an open-end mortgage with a financial institution. Why am I not allowed to go to--

A. Well, okay, it's not that you're not allowed, Representative, but under current procedure--

Q. Why would it not?

A. --under current procedure, if you would come to me as a new lender and there's already a lien of record, and say that's a substantial lien but you have very little borrowed against it, probably the only way I'm going to consider your credit request is to say to you, you must go get that lien removed of record so that I can pick up the priority that I feel I need for security. Under this legislation, you have a notification provision that you could put the lender on record to say, and let's use some examples, let's say you have a $30,000 line of credit but you only owe $5,000, you can put the lender on record to say I owe you $5,000, that is the limit of my line that I want to use with you and that goes on public record, and then when you come to me, I can very readily see that you only owe that lender $5,000 and I'd probably be much quicker to entertain your obligation and not go through with the satisfaction on the original. And I think that is a key provision. Otherwise, you have to go to the original lender almost and ask him to remove that lien, and I think that provides somewhat of a stranglehold on the consumer. It takes, in some cases, a great deal of time to get liens removed of record. It's not unusual at all to take weeks to have that done, whereas you can do this within about a 3- to a 5-day period under this legislation.

CHAIRMAN CALTAGIRONE: Bob.

REPRESENTATIVE REBER: Thank you.

BY REPRESENTATIVE REBER: (Of Mr. Hankey)

Q. Just to follow up on that, what's the procedure that you go through to, in essence, give notice to the world that that open-end $30,000 is now a fixed amount of $5,000? What's the record, what's the filing that has to take place? What's that procedure, just real quickly?

A. In effect, the bill calls for a format that you would actually deliver to the Recorder of Deeds in the local county and at the same time deliver at least three days prior to your lender which it lays out in very simple form what you have to do to put everyone on notice what your lien exposure is. It's not a complicated process. It's basically stating the amount, I think referring to the original recording and having it certified by a notary public, or someone like that, and having it recorded.

Q. And that gets recorded, and then from the bank's standpoint you feel comfortable that this does not destroy your lien position because you are altering in some way, shape, or form that original document dating back to an earlier recording date?

A. No, because I think that's done all the time. Even now if we have real estate as collateral, we can make releases on real estate by simply having notations put on the courthouse records.

Q. So it follows that theory?

A. Yes.

Q. Shifting gears, does your bank charge annual fees or maintenance fees for open-end equity loan type mortgages?

A. Our bank does not. I think the thing this legislation would help, though, in the arena of the cost of open-end mortgages, if we have to consistently run to the courthouse to check the liens of record to protect our current liens, we do pass that cost on to the consumer, and it is very costly. In our county, the very cheapest we can get that done and have a certification and our records to that extent is $40, and that's the very cheapest, and in most cases it's much more than that.

So again, I think this legislation will reduce the cost of implementing this type of credit and save the consumers considerable dollars. We use this type of credit a great deal in financing local small businesses because many Mom and Pop businesses use their real estate collateral to secure lines of credit, and it's very cumbersome for us to administer this kind of credit under the current State statutes.

Q. If I understand you then, your bank does not charge an annual fee for a consumer that has a home equity loan?

A. We do not.

Q. You do not, but there are a lot that do, is that correct?

A. I suspect there are, but I can't really say that with certainty.

Q. I know for a fact that there are some.

Okay, as to how many, I'm not sure.

My thought is this, or my concern is this: I think to some extent we opened a Pandora's box when we allowed that annual fee concept to be placed on the credit cards, from a consumer standpoint I'm talking about. It would seem to me that at the outset of the application for an open-end mortgage a person should fully understand and in essence pay to you as part of that loan processing fee the necessary filing costs. Additionally, when they go to satisfy that particular document, again, I think they should be on the hook for that. But I think what is troublesome to me is the in-between situation where a person is in fact activating his line of credit, is paying the interest which arm's length is dealt with between the parties, and included in that, in my mind, should be those so-called maintenance charges as an occupational hazard or a part of doing business on behalf of the bank. I think what is really bothersome is where that person is using that during the course of the year, making timely payments, et cetera, and then to have him have to pay on top of that an annual fee that the same person pays that does not, in fact, use the account at all during that particular banking year, calendar year, whatever it might be, is just somewhat bothersome to me.

And then I guess what's additionally

bothersome is that banks like yourselves do not even charge it to begin, with but other ones do, and it just seems to me that some CEO is getting an inflated salary as a result of that fund as being derived as a result of those fees being paid, and I guess speaking as a consumer, we don't always get to speak as consumers when we're on the Republican side of the aisle, but we try to look to it occasionally, and while I had the opportunity to look at this and see that that was referenced in there that you have your rights to, among other things, go after those charges, I thought I'd just have a little inquiry on that.

Now, your response and your philosophy?

A. Well, I'm not sure I should respond on my philosophy. I think each bank has to set their own criteria and their own fees, and, you know, we're in a free marketplace so it would be unfair for me to, I think, respond on what someone else might do. I think what's more important though, there is Federal legislation in place that consumers must be provided with information as to the cost of those loans, as to what kind of fees they will be subjected to. That is not a part of this bill because it's already in place under Federal law, and I think it's very important that the consumer be informed of those things, and they are. They are required to be informed of those matters, which gives them then the opportunity I think to choose the lender they feel is going to do the best job for them, and again, that's the way it should be. That's what a free marketplace is all about.

MR. BIERY: If I could add, Bob, on that. It's called the Home Equity Disclosure Act, or something along those lines, and I think it just went into effect September 1. I've been seeing it in all the trade press. It was a bill that passed the Congress, it was approved, it had the support of the banking industry. There's some analyses of this legislation around which we'll be happy to provide to you.

REPRESENTATIVE REBER: That's my problem, because I am aware of abuses that predate that particular situation from a disclosure standpoint, but I guess over and above that I also have some personal feelings about how far do you go to, you know, call an apple an apple or an orange an orange?

MR. BIERY: Just from the central Pennsylvania area, and as one who has a second mortgage, I'm not aware of many of the central Pennsylvania banks that operate right in this market area that are charging a fee. I can't say that for everyone. I can say that mine doesn't and the ones that I see in the Harrisburg Patriot, you know, there might be an upfront fee for the application and doing the mortgage checks and everything. There may be an appraisal required by a certified appraiser and those costs are listed and they're done, but I'm not aware of any annual fees, however, on the credit card situation is very different, as you know.

REPRESENTATIVE REBER: Well, I'm aware of it from two standpoints. One, very personally, I got my equity loan account just about a week and a half ago and I saw this annual fee on there which I had heard about from clients in other areas and now all of a sudden it really, really hit home, so it stuck in my mind. I don't miss those kind of things when I make application, but I did on this one, and it just sort of, you know--

MR. HANKEY: May I leave my card with you?

REPRESENTATIVE REBER: You certainly may. You certainly may.

MR. HANKEY: But, no, you have a legitimate concern there, but I think this Federal legislation, without a doubt, will cover that. It's very extensive disclosure. They've expanded on that quite a bit.

REPRESENTATIVE REBER: Thank you.

Thank you, Mr. Chairman.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

BY REPRESENTATIVE LASHINGER: (Of Mr. Hankey)

Q. I apologize. I came in late. I understand the priority lien section, and maybe you replied to this earlier, and I apologize if you did. I'm unsure as to why the section that I think expands current law where you're now going to allow mortgages to secure advances, why that's in the priority of lien legislation. Has something new happened that we need to know?

A. Under current statutes, and again, I'm not a lawyer, I'm speaking as a banker, under current statutes, if you have a mortgage, in order to make future advances, you must have a commitment or an obligation to do so. On many, many home equity lines of credit, once the original amount is advanced that you have committed to the customer for future advances stand in peril as far as lien priority for the lender is concerned, and the only way the lender can be certain that their lien priority is in effect what they think it is is to continuously check courthouse records to make certain of that. So this law would simply provide a mechanism that by statute would clarify that situation for lenders.

Q. I apologize. I'm not sure I'm understanding. What is going to happen now under Section 8144 on page 6 of the bill? This mortgage will now -- and I'm assuming it applies to more than just second or open-end mortgages, that now if you've got maintenance charges, insurance premiums, costs that are unpaid, the mortgage will now secure the lender, the mortgagee, for all of those additional costs if it's so noted in the mortgage.

MS. RYND: Right.

REPRESENTATIVE LASHINGER: Is that correct?

MS. RYND: The problem is the need to clarify. The future advances relate back to the original recording rather than just to the date on which they're made, and as Mr. Hankey explained, the need is to be able to record this once and not have to go into the courthouse subsequently with each advance as borrowers advance moneys, repay them, advance again. So the relation back concept has to be clarified.

REPRESENTATIVE LASHINGER: What are maintenance charges? What does that encompass?

MS. RYND: The charge sections are in here principally because part of this could involve construction, a line that is advanced on a construction, and as you know, there are a number of charges that may be incurred in addition, just with regard to the real estate, and it's clear that you have to preserve your security there, too.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

BY REPRESENTATIVE GRUITZA: (Of Mr. Hankey)

Q. Mr. Chairman, I'm confused on this relation back. We occasionally do a title search and file mortgages and record them, and I've never -- I'm totally unaware of this problem. I always figured when I put that mortgage on record after I put that deed that I'm all right and I've done everything, I don't have a problem. Maybe you'd better tell me what the problem is again.

A. Well, the main problem -- if you have a mortgage where the money has been advanced to you, such as to purchase a home, then there is no problem. It's a one-time advance, the mortgage is set--

Q. Okay.

A. --and you have your lien established. The problem does occur though on open-end home equity financing in particular, which is something that's a very hot topic nowadays because of Federal legislation, primarily for tax purposes. A lender cannot be protected under current State statutes without taking additional steps when they do make future advances at certain times.

Q. Now, by open-end you're saying that you have a mortgage document that doesn't have a stated amount?

A. No, it has a stated limit. However, there is a maximum limit, it is stated, but once the advances are made and you, as a consumer, would like to pay back an advance and have advances made later, that is where the lien priority issue comes into effect. I, as a lender, under current statute, am not possibly protected against those future advances and the only way to be sure of that is for me to go to the courthouse to make sure no other intervening liens have been entered between those advances to protect my position. It's time-consuming and very costly. That's really, I think, the basic premise of this legislation, not to have to be concerned about that as a lender, nor as a consumer to be faced with additional costs possibly due to the fact that the lender is incurring costs to make sure your loan is adequately secured.

Q. So this is if you go beyond the limit?

A. No. If you have a home equity loan, an open-end mortgage, and it's recorded for--

Q. So you're on record for $45,000 on a home worth $100,000 ostensibly to remodel a kitchen or something and you're making advances as this project goes along--

A. That's different.

Q. --and you have a mortgage document note with a top limit of $45,000 written on there. There's no other liens or anything. You're saying that I go out and borrow some money again and put another lien on there--

A. If I've entered into an agreement with you and made a commitment to you to advance that $45,000 for the purpose that you stated, which was construction, in effect, or home improvements, as long as I have an agreement with you, a written agreement of commitment, I am protected. Okay? And that situation is not quite the same as what we're talking about. What I'm talking about, again, is you, as a consumer, you just want to get a home equity loan to go out and buy anything you want to buy, a television set or a car, anything, and let's say, again, using numbers, I've committed you for $25,000, and let's say over some period of time you have drawn down that $25,000 and have repaid some of it or all of it and you want to use the $25,000 again, that's where this bill comes into effect. The second time we make the advances to you in that we do not have -- we're not assured of our lien priority.

Q. Okay. Okay.

A. And we must check the courthouse records to make sure of that. This would preclude that from having to occur. Once you're on record for $25,000, if you want to continue to use $25,000 with me you can use it for some period of time without concern.

Q. Okay, I understand.

REPRESENTATIVE BORTNER: I just want to make one comment. Maybe I have more experience with these than other people, but in a lot of these situations, isn't that right, I mean, you, as a consumer, essentially make your own loans when you have a line of credit and you draw on it as you choose, whenever you choose, just by writing a check and you then begin being -- if you have a $25,000 line of credit you're approved for and haven't drawn on it, unless you're in the situation that Representative Reber talked about, and I'm not familiar with that, you're not really paying anything. Once you start drawing on it, you then are obligated to make whatever the agreement calls for, some minimum payment, and you begin paying interest. So you're really writing your own loans as you need them or as you want them up to the limit that you're approved for.

MR. HANKEY: That's correct. That's correct.

MR. BIERY: And how do you know to go to the courthouse to check a future advance when the customer has their own little checkbook and can make their own loans, in essence, to themselves? If I'm going to write myself a $10,000 loan to buy something, my lender isn't going to know that I'm about to do that and be able to run to the courthouse and check whether there have been any intervening liens. That's the situation.

MR. HANKEY: And that's extremely important in this legislation to lenders. It's extremely important. We have a great deal of exposure on lien priority for that very reason.

REPRESENTATIVE LASHINGER: If I'm another creditor, however, I'm going to look at that now and I'm going to say, I'm not going to loan this person any additional money because the fact that it relates back for expenses incurred by the mortgagee by reason of default by the mortgagor - assessments, taxes, costs, which I assume include attorney's fees, which used to be a separate section, I assume the attorney's fees in the mortgage itself - aside from unpaid balances, it could be up to the limit, it could be the $40,000 or $60,000, whatever you lended in the open-end mortgage. I mean, I think it's really going to dry up any of the secondary market for borrowers, isn't it? I mean, if I'm another creditor, I'm going to look at that and say, well, that person has only drawn $10,000, and the exposure really is much more than $10,000 in this thing because that bank or that mortgagee can come back and come after the mortgagor for all of these additional expenses that might have been unpaid - insurance premiums, taxes, assessments, costs.

MR. HANKEY: Well, I think that would be no different than what we have now in any given mortgage.

Those kind of mortgage-related costs are protected by law, as I understand the law. I think, again, here though, from a consumer's viewpoint, the point that you just raised does provide you, I think, with a lot more latitude with this legislation because it permits you, as a borrower, to go to a new lender and establish the amount of money you already have borrowed from a previous lender and you can go on record to that amount, and that lender, the second lender then can be pretty comfortable with dealing with you as a consumer. It does not require you, as a consumer, to come back to me if I'm the original lender though, and I don't think any consumer should have to do that. I should not have any kind of grasp on my customer that really almost makes him come to see me. If he chooses to go elsewhere, that's his privilege. So, you know, the bill, I think, actually would provide more opportunity for home equity credits in the open marketplace and as a consumer provide him more choices.

REPRESENTATIVE LASHINGER: I'll accept as fact, is that current law? Is that current law that first mortgages secure all of those additional costs?

MS. RYND: If you agree to it upfront.

REPRESENTATIVE LASHINGER: If it's in the mortgage document itself?

MR. HANKEY: Yes, that's correct. Almost

all first mortgages protect you against nonpayment of taxes, fire insurance, and things of that nature. Almost all mortgages cover you for that.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: Chris.

REPRESENTATIVE McNALLY: Yes, sir.

BY REPRESENTATIVE McNALLY: (Of Mr. Hankey)

Q. As I understand it, you'd like to see the obligatory advance doctrine eliminated or modified in some way, is that correct?

A. Well, I think it would be modified to some extent, but not eliminated.

Q. And it seems to me that that would make these open-end mortgages more attractive for you as from a business standpoint, and certainly with Federal tax law today they are more attractive than personal loans for their consumer, and the one thing that I would be concerned about, I come from the Steel Valley and we've had a lot of problems with mortgage foreclosures over the last nine years. You know, I question whether we really want to encourage more second mortgages, you know. We've certainly seen over the last several years, you know, unsettling financial practices in the financial industries all across the board, and, you know, I'd be afraid of people in my district being attracted to this type of loan because it is their home that's involved. I think, you know, it's much riskier for the consumer.

Q. Well, you know, again, I guess though that's the consumers' choice, whether or not, you know, they want to borrow money or not and whether they qualified, you know. It's pretty tough for me, as a lender, to say to you, gee, you really shouldn't have that money. But I think, on the other hand, to be very honest with you, if a borrower goes out and borrows money on some other form of credit, he or she could still be exposing their home to that credit obligation.

Now, there are other methods that lenders can go back on the home without having a mortgage, so I'm not so sure that we're exposing the consumer here to any greater potential liability. But, on the other hand, I think consumers do need to make financial decisions and then intelligent financial decisions, too.

CHAIRMAN CALTAGIRONE: Are there any more questions?

(No response.)

CHAIRMAN CALTAGIRONE: Thank you.

MR. HANKEY: Thank you very much.

CHAIRMAN CALTAGIRONE: Is anybody here from AFL-CIO? There was supposed to have been testimony submitted for Julius Uehlein.

(No response.)

CHAIRMAN CALTAGIRONE: There will be testimony submitted then for the record that will be coming in to the committee on behalf of the Pennsylvania AFL-CIO on the legislation.

We'll next move to Owen O. Freeman.

MR. FREEMAN: Thank you very much, Mr. Chairman, members of the committee. Thank you very much for this opportunity to present the views of over 200 locally owned and operated community banks serving thousands of depositors and borrowers across the Commonwealth.

My name is Chip Freeman. I'm a member of the Board of Directors of the Community Bankers of Pennsylvania, and I am chairman of its legislative committee. I also have with me today Paul Adams, our legal counsel, and Roseann Cordelli, our legislative director.

I am chairman of the board of Commonwealth State Bank, which is located at Newtown Township, Bucks County. I'm also chairman of the board of First Capitol Bank, which is located at Springettsbury Township, York County. Both of these banks are new charters. Commonwealth State Bank was the first new charter in Bucks

County in 17 years and is currently a $40 million asset institution. First Capitol Bank was the first new commercial bank charter in York County in 54 years and currently has assets of $15 million.

I've been involved in banking for 32 years, most of which was spent in Harrisburg, Pennsylvania and some in Trenton, New Jersey prior to starting these two new banks. I have written testimony here which I will get into, but I would like to just make a few comments, after listening to some of your concerns and questions, because I happen to think they're very valid.

First of all, I think you will find, at least it's my personal philosophy and that of my two banks, that we happen to take the whole subject of home equity loans extremely seriously. Equity in the person or primary residence of a consumer is extremely important. It's probably the most important asset to most consumers. Without getting too homespun, my own personal philosophy is I rate the equity in my house right after my wife in the order of importance.

REPRESENTATIVE HAGARTY: No children?

REPRESENTATIVE HAYDEN: They're a liability.

REPRESENTATIVE BORTNER: They're the other side of the ledger.

MR. FREEMAN: Fortunately, my children are all grown and out of the house and gainfully employed, so I don't have to worry about them anymore.

REPRESENTATIVE REBER: They're additional collateral.

MR. FREEMAN: Neither of our banks charge any annual fees whatsoever for home equity loans. They won't do it now and they never will, and I think you will find that most banks don't either, although you are perfectly correct that there probably are some institutions that do this.

I want to use -- let me just use an example to see if I can address some of your concerns here for a minute. Let's take a house that's appraised at $200,000, and let's assume that there is a $100,000 first mortgage against that property. Most institutions, you will find, will take a combined value in the first mortgage and equity in their home up to 80 percent of the appraised value, so that's $160,000. That means we have $60,000 equity in this home which is available to be borrowed against.

On home equity loans -- there are really two types of home equity loans, first of all. In this particular case, the consumer comes in and wants to borrow $30,000, an institution can either make a loan at settlement of $30,000. That is still a purchase money mortgage, so if you go through the proper recordings, the loan is on the books and repayment begins. That is a one-time term loan. The other type of a home equity loan is what we're all here about today really, and that's the open-end mortgage or home equity line of credit. And in this particular case, the bank approves a $30,000 line of credit, and at settlement, the mortgage is recorded, and nothing is drawn down by the consumer or the borrower. That is all done subsequently. It is either done by the financial institution when the consumer calls up and asks for a draw-down against that line of credit or, as has been previously stated, some institutions give the consumers checks and they can write their own loans.

In addition, it is also correct that the consumer can borrow over the course of a year that $30,000 and then pay it back over the next year and have that available again, so it's still basically an open-end mortgage, and the problem basically revolves around what happens after this example I've just given you, the mortgage is recorded and there's subsequent draws, what happens, and it is the problem of intervening liens.

Now, I have written testimony here and I will try not to bore you with its length, and if any of you get bored while I'm reading this, please raise your hand and I'll see if I can't ad lib a little bit.

REPRESENTATIVE HAGARTY: It was too good an offer.

MR. FREEMAN: If you want to interrupt at any time to ask questions, or if you'd rather ask questions--

REPRESENTATIVE REBER: I liked your ad libbing.

REPRESENTATIVE BLAUM: I think you've explained it better than anybody so far. I think I understand it now. Don't complicate it.

MR. FREEMAN: Okay, fine. Yes, sir.

REPRESENTATIVE BORTNER: I just want to make one quick comment, not so much a question.

First of all, I appreciated your comments and it's nice to meet you because I'm familiar with the bank opening in York, never had that chance. I also just want to very quickly apologize to you and some other members. I have to leave now. I made a previous commitment some time ago to cut the ribbon at the Great York Interstate Fair--

MR. FREEMAN: Very important.

REPRESENTATIVE BORTNER: --and would very much like to complete this. I will be sure, however, to read all the testimony that's been submitted and if there's some that comes later, Mr. Chairman, I'd like to have that.

As I said at the beginning when I opened the hearing, I think this is going to be very informative for most members of the committee on something that is really somewhat outside the expertise even of those of us who are lawyers and think that maybe we know a little bit about this. Thank you.

Thank you, Mr. Chairman.

BY REPRESENTATIVE HAYDEN: (Of Mr. Freeman)

Q. Mr. Freeman, I have a question about how much of a problem this has actually been, and I'd like to have you respond in your capacity as CEO of your two banks. Let me ask this question: When you make an open-end mortgage, you are charging a rate which is based on a secured loan, because from the bank's perspective you're making a secured loan.

A. Right.

Q. And obviously that rate, to the consumer, is much more attractive than a regular consumer loan, which is unsecured. In the process, when you go ahead and make your determination as to what the amount of the limit would be on that secured loan, someone goes out, and this is the person who obviously you're concerned about in terms of jeopardizing the bank's security, someone then goes out and uses that same line of equity or that same security and has other institutions pledge against that same security. I'm curious to know as to in terms of the failure rate or the jeopardy of your two institutions' security has been in those kinds of situations. How prevalent a problem is that or has that been in your situation with your two banks?

Q. Well, first of all, I should tell you that the bank in Bucks County opened on April 28, 1987, and the York County bank opened November 21, 1988, so I'd like to get some--

Q. You're doing pretty well so far.

MR. ADAMS: They don't have any defaulted loans.

MR. FREEMAN: Actually, so far the loans are very good. Let me knock on wood here for a minute.

I can only think of one situation where we have had a problem, and that was basically on a commercial loan where the equity in the home of the guarantor became a problem. But on the straight-out home equity loans, I can't think of any problems, and I think one of the reasons for that is -- there are a couple of reasons. First of all, we have two new banks, and secondly, we do try to check people out very carefully. And I want to emphasize again, we really think that equity in the primary residence is a very important asset, so we try to analyze the thing very carefully and we try not to ever make any frivolous type loans based on home equity. I think in spite of all of that, if next year we have a couple of problems, as chairman of the board of the bank I would have some very interesting explaining to do to our shareholders as to why we didn't express our concern, even though we checked everything out, we haven't any problems yet, but that possible problem of intervening lien is something that we all would like to get resolved.

REPRESENTATIVE HAYDEN: But also in terms of the risk factors to where the real exposure would be to a lender, it seems to me then that the majority of those types of loans would be the construction type loans then where you would probably be lending out greater amounts of money, get a desperate builder or developer who is constantly looking to try to get more capital to finish a project, so then because of your protection on the consumer mortgage equity, then your exposure then would probably lie more openly in the construction loan industry?

MR. FREEMAN: Well, actually, construction loans are treated a lot differently than the home equity loans to consumers for that very reason, and I believe I'll let my attorney, Paul, here, correct me if I'm wrong, but I believe current law does adequately address construction loans.

MR. ADAMS: Well, I wouldn't go so far to say that it adequately protects. There is some case law, and here's really what we're talking about today is that we are relying on case law and common law which creates uncertainty, and when banks face an uncertainty, that must be reflected in the cost to the consumer, whether it is a consumer that's a commercial borrower, whether it's a construction borrower, or whether it's somebody getting a home equity loan. And the major purpose for us today is to try to get some legislation passed that is going to reduce this uncertainty and therefore lower interest rates, because banks have less risk to bear. It's that simple.

REPRESENTATIVE HAYDEN: Thank you.

Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: Following up on that, I think Jim is still here. I'd just be curious to find out if you have any information that you could forward to the committee on the number of home equity loans that you've had, and we don't need to know specifics, just generally the amounts of losses that have been incurred, because it was interesting, the question that was asked by Representative Hayden, that you really, because of the relatively newness of your institutions, you really haven't had that problem. I'm just curious if you have some facts and figures on that and if you could share that with the committee. I think we would be interested in knowing that.

MR. ADAMS: If I may follow up on that point. We can certainly try to provide you with that information. I'm sure Jim Biery could also try to provide you with the information. But I think there's a more important part to this, rather than just saying how many dollars have been placed actually in jeopardy. The real concern that we have is that we are under common law and we have no case law in this Commonwealth that says how a court would look at a home equity product and what lien priority we are going to get. So, therefore, we have to price those products according to that certainty, so whether there's $1, $10 million, or $100 million that has been in jeopardy, it is still an issue, it's still a problem, it's serious and it needs to be resolved.

BY REPRESENTATIVE REBER: (Of Mr. Adams)

Q. Mr. Adams, I think you, to some extent, answered my question, but I thought I would just zero in on it specifically. Since the advent and popularity of the home equity loans, is there any appellate court cases in Pennsylvania that are more or less adverse to the financial industry that has really caused some concern, or when you talk about common law and in relationship there to case law interpreting it, that you're just concerned about, and justifiably so, about a scenario developing that could be adverse without this legislation in place? Is there a recent case that is causing some trouble, or a progeny of cases?

A. To my knowledge, and there's several lawyers in this room and I'll ask them to fill in if they know of any case, I'm not aware of any case in this Commonwealth that deals with a home equity loan. Most of the case law that deals with obligatory advance doctrine comes out of the '30's and up, I think the last case is somewhere in the '50's, but we are very much concerned because that body of case law cannot provide us with any certainty, and when I advise a client as to a home equity line of credit and I help them put the loan documents together and set the program, I can't write them an opinion letter to tell them what their lien priority is, and that's a problem.

Q. Fine. So then I guess my pre-legislative years, 1980, financial representative case law interpretation is still pretty much intact?

A. That is correct.

Q. Okay. I didn't waste any time not reading your advance sheets.

A. No, you haven't.

Q. At least in that area.

CHAIRMAN CALTAGIRONE: Kevin.

REPRESENTATIVE BLAUM: Thank you, Mr. Chairman.

BY REPRESENTATIVE BLAUM: (Of Mr. Freeman)

Q. I'm now beginning, I think, to understand this. If you write these open-end mortgages, we have been talking mostly about lines of credit for $30,000. Are there any for $5,000 where people would, because of perhaps a lower interest rate and if you issue them checks and they're able to write themselves a loan that, you know, would like to replace their credit cards with this because now I assume the interest would be deductible?

A. There may be some as low as $5,000, but I'm not aware of any. But please don't misconstrue that, because there could well be some for $5,000.

MR. ADAMS: If I may interject.

Major law in this State under which home equity products are given out to the consumers is the Secondary Mortgage Loan Act, which requires the initial line of credit to be at least $5,000.

BY REPRESENTATIVE BLAUM: (Of Mr. Freeman)

Q. Do you see this happening? What's the difference in interest rates between -- do you have a bank credit card? Does your bank issue one?

A. Yes, we do.

Q. Between your bank credit card and the interest they would give somebody for a secured open-end mortgage of $10,000?

A. Right now, the difference would be about 3 percent.

Q. Why shouldn't I do that?

A. But our credit card rates are lower than most.

Q. Why should I not turn in my credit card and take out a $10,000 line to save the interest, which not only do I get a lower interest rate but it's now deductible?

REPRESENTATIVE REBER: Use the credit card and you pay off within 20 days and you buy your home equity loan.

BY REPRESENTATIVE BLAUM: (Of Mr. Freeman)

Q. I mean, do you see this happening? Because now that I understand it, I'm going to go home and check it out.

A. I can certainly see that it's possible there could be a lot of requests, but your example, the key thing is the banker or whoever the lender is should see to it that you do turn in your credit cards because you don't want to have a home equity loan and keep you credit cards at the same time, or else you're going to be right back in the soup again.

Q. I'm not talking about in the soup. I'm not talking about somebody who would be in financial difficulty. I'm just talking about--

A. No, no I understand.

Q. It seems to me a better way to go.

A. Well, if you're strong enough to do it, that's one thing. But the point I'm trying to make is a lot of requests that I've considered are people who are in financial difficulty, and in those couple of cases where we have approved loans of this nature, we've made sure that the credit cards are turned in. There are a lot of people who obviously can take advantage of lower interest rates and still keep their credit cards, but you have to look at these cases individually.

CHAIRMAN CALTAGIRONE: He raised, if I could, if I could interject, he raised a very interesting point there, and I would like to pursue it a little further.

The example that Representative Reber pointed out that if I wanted to use my Gulf credit card, which I just got a bill for $384 for my gas bill, and I pay that each month so I don't get hit with the interest, but if I wanted to borrow on my home equity to pay that, okay, if I wanted to pay it off, the interest rate is much lower, correct, so if my wife would go to Boscov's and charges $1,000 for whatever and has a nice Christmas plan for her wardrobe and whatever, it does make sense for the consumer, it, in fact, as Representative Blaum is indicating, rather than carry that interest rate on your credit cards, shift it over to your home equity to pay that off, you're going to get a lower interest rate on a home equity, correct?

REPRESENTATIVE BLAUM: And it's now tax deductible.

REPRESENTATIVE LASHINGER: It's bad public policy.

REPRESENTATIVE HAGARTY: Well, we're the only ones who know about it now.

REPRESENTATIVE LASHINGER: Now you're putting your house up.

MR. ADAMS: There's nothing in the law that prevents a credit card, per se, from being secured by a residential mortgage, and I think that in the future, and I have some clients that are interested in this, is you will see credit card programs that are secured by residential real estate. Now, there are some prohibitions under truth in lending as to things that you can do that you can't do if you have that type of security, but I think you're going to see that product become more available.

REPRESENTATIVE HAGARTY: Do you think the rates will go down then on credit cards?

MR. ADAMS: Yes, it should because there is more security, therefore the risk has been reduced.

REPRESENTATIVE BLAUM: Then you won't be coming back in and asking us to keep it at 18 percent, right?

MR. ADAMS: I'm not a banker, so I don't ask these things.

MR. FREEMAN: We don't charge 18 percent on our credit cards to begin with.

REPRESENTATIVE BLAUM: Very good.

CHAIRMAN CALTAGIRONE: Joe.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

BY REPRESENTATIVE LASHINGER: (Of Mr. Freeman)

Q. Are all your open lines on a float? Are they all adjustables?

A. Yes, they are. That is, now, if you're addressing the two banks of which I am chairman, the answer to that is yes. I can't speak for the other community banks.

Q. What's your average -- what do you charge in term of points on your adjustables?

A. Oh, we don't charge any points for home equity loans.

Q. That's always -- do you think you're in the majority in that regard or do you--

A. I believe we are in the majority.

Q. Do you shelve all your -- is there a market now or is there a newly created market now for reselling these mortgages, or do you shelve all of them?

A. Actually, we shelve all of them in our two banks. There probably are, and again, don't forget, our banks are very new. Banks that have been in business for years and have many millions of dollars of home equity loans may well have a market to do just that.

Q. So for some of the majors, possibly there's not that much exposure because they're reselling some of these seconds or open lines?

A. Well, I really can't answer that because the purchasers of these packages from large institutions, I'm sure, would be interested in whether or not there's any problem with lien priority, so that could create a problem of trying to sell these.

A. Your counsel said something interesting, and this is somewhat rhetorical, I don't think he meant this as a result. We pass 942, then your rates are going to come down on your home equity lines? That's what you inferred. You inferred because of the risk factor inherent in seconds or open lines that your rates were higher on these mortgages. You're saying if we pass 942 you think that something will happen regarding rates for adjustables in the Commonwealth?

A. It's possible that rates will come down, but I'm not 100 percent sure of that. But again, one thing that will definitely come down is you will eliminate the need to refile and have other costs which are now exactly the problem because of the intervening lien problem, and you will eliminate those costs.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: Thank you, gentlemen. Appreciate your testimony, and lady.

MS. CORDELLI: Thank you.

Actually, I think in closing, it's important to mention, although Mr. Freeman did such a wonderful job ad libbing, I think he probably neglected to state that we are in support of House Bill 942. We think it's good for the banking industry, we think it's good for consumer concerns. There is an amendment there on that very back page, and I believe legal counsel might like to address that.

CHAIRMAN CALTAGIRONE: We didn't want to cut you off, by the way, if you had some other remarks that you wanted to make.

MR. FREEMAN: Well, actually I see the lady member of your committee, I don't know whether she's gone--

CHAIRMAN CALTAGIRONE: No, she just stepped out.

MR. FREEMAN: But I had got the message when I volunteered to ad lib.

REPRESENTATIVE BLAUM: You did a great job.

CHAIRMAN CALTAGIRONE: Very informative.

MR. FREEMAN: We do have our written testimony, and I would like Paul to highlight a few of the things and then I'd like to make a couple of comments, but I'd much rather do what we just did than bore you by reading all of this.

CHAIRMAN CALTAGIRONE: Some of us would like to have your business card before you go.

MR. FREEMAN: Cards? Would you like both of them?

MR. ADAMS: Let me address the amendment that we have attached to our testimony, and let me go into the background of why we think this is important.

As Chip has said, the major reason we're here is because of the home equity lines of credits and the problems with the uncertainty, and we are concerned and we've taken a look at House Bill 942 and we generally think that that is a very good way to approach the situation, but we're asking for even more certainty than what we think is involved with House Bill 942. And therefore, we would ask that a safe harbor be put into Pennsylvania statutes, and that is that any home equity line of credit that is subject to the Home Equity Loan Consumer Protection Act of 1988, and this is a very recent amendment, it was passed last November, it amends the truth in lending law and it was alluded to in the previous testimony by the Pennsylvania Bankers Association, what that legislation does is very materially restrict the ability of a financial institution to say no when a borrower comes in and you've given them a home equity line of credit and they want another advance. Just very specific points that you must be able to qualify for to be able to say no to that borrower.

So therefore, we think from a public policy standpoint it really meets the common law underpinnings of the obligatory advance concepts, so therefore we would add a provision that if any loan is made pursuant to that act and is subject to that act, then we're going to give it lien priority.

Secondly, the House Bill 942 only provides for a 3-year lien priority. I know of no community bank that restricts their home equity lines of credit to three years, and therefore we would ask that this type of loan not be subject to that 3-year limitation because the loan programs go more than three years, and if we have to go back in at the end of a 3-year period and refile, well, that is going to cost the consumer. We don't see where that really benefits the consumer. So that is the reason that we have proposed this amendment.

Now, Chip, do you want to the talk about the notice provisions?

MR. FREEMAN: Well, actually, what I want to do is just re-emphasize the importance of the Home Equity Loan Consumer Protection Act of 1988. This spells out specifically what it takes for a lender not to continue to make advances. That's extremely important. It also makes a lender disclose all of this to his borrower upfront. I mean, I think they are two very important items because even if a lender is very concerned about equity in home and everything else and he spends a lot of time working on the application to make sure that the consumer understands everything, these two items are very important because that, I hope, addresses the concerns that some people have of an open-end mortgage being recorded and then the lender refusing to be obligated to make advances, and I think this addresses those two concerns. I think they are both extremely important.

MR. ADAMS: And the effective date of the new act into regulations is November 7th of this year. So some banks are voluntarily complying with the regulations that were published, I think, sometime in the spring, but on November 7th of this year this new Federal act is going to become mandatory and all financial institutions making home equity lines of credit are going to have to comply with it, and it has substantive provisions in it.

MR. FREEMAN: The only other thing I wanted to say is that in the testimony we do address the ability of the consumer to give notice if he wants to go elsewhere to borrow, and I believe that is well covered also.

CHAIRMAN CALTAGIRONE: Thank you.

We'll now hear from Melvin C. Breaux, attorney for the Pennsylvania Association of Savings Institutions.

MR. BREAUX: Good morning, Mr. Chairman and members of the committee. My name is Melvin C. Breaux. I'm an attorney with Drinker, Biddle & Reath in Philadelphia, and I'm here with Jim Stoup, Vice President of Government Affairs of the association.

I was going to read my written testimony until I saw the hand go up. I dare not now.

REPRESENTATIVE HAYDEN: See, it worked, Lois.

REPRESENTATIVE HAGARTY: He did it.

REPRESENTATIVE REBER: You're tough, Lois.

REPRESENTATIVE HAGARTY: See what men make us do? Excuse me.

MR. BREAUX: So what I'm going to do is just very briefly summarize my testimony in a couple of sentences and then open the floor for questions if you all have any.

The association vigorously supports the passage of 942. We think that bringing certainty into the area of lien priority with respect to open-end mortgages is very important because we feel that the obligatory advance doctrine is too thin a reed to rely on in this area. We think that -- that 942 in essentially modifying the obligatory advance doctrine to make it clear that advances made subsequently after the recording of the mortgage will receive priority that dates back to the recording of the mortgage is essential.

On the other hand, we feel this bill is good because it prevents the owner's property from being tied up forever by that lien because the owner can give notice to the lender that we're not going to permit any more advances to be made and get priority and therefore free his property from future advance liens so that he can go to other lenders and obtain credit.

We also feel that it protects other creditors who might get a lien against their property because it provides for them to give notice to the open-end creditor that there is this lien and if you make any subsequent advances with respect to that property, then you won't get lien priority. And we think that's very important, and we think that the most important issue is with respect to home equity loans as opposed to construction lending, because after all, the obligatory advance doctrine came up through the case law with respect to construction loans. Borrowers and lenders are fairly used to dealing with the obligatory advance doctrine with respect to construction loans, and construction lenders have more control, more information, and are able to monitor more closely what's going on with respect to construction lending. But when you take a doctrine that arose in another area, such as construction lending, and try to apply that in a new area, home equity loans, then you have problems, you have uncertainty, and we feel that 942 brings adequate assurance and certainty to lenders in this area.

I'll take any questions that you may have.

CHAIRMAN CALTAGIRONE: Joe.

BY REPRESENTATIVE LASHINGER: (Of Mr. Breaux)

Q. Melvin, this is probably better directed at some of the bankers when they were here before. What do the banks use as a basis? Do they use the same evaluation that they would on a first mortgage when they evaluate a home equity loan? I mean, do you look at the income and then use your formulas for deciding whether the person has the ability to repay?

A. Yes, I think essentially they do look at the same criteria, but it, of course, varies from institution to institution.

Q. My sense of what the battle is is that sometime into the future, and we were just talking about it, should the economy go south, there's going to be a major shake-out because of the home equity. I think Representative McNally was partly correct. There will be a shake-out and people will be scrambling to secure themselves in terms of the money that they've lent, and that's why this battle is raging today. In our county, Representative Reber, Representative Hagarty, and myself, what has happened in the real estate market is we've got homes that are inflated. People bought $90,000 -- I saw one just the other day, a home bought for $90,000 in 1972 appraised at $650,000 today. That person bought that

$90,000 home based on an income that justified the acquisition of a $90,000 home. That person surely didn't have a 600-percent increase in their income, yet the home inflated 600 percent, now is able to go out and get a second or an open-end mortgage for a dramatic amount of money to go to the shore and construct a new home at the shore but is not at that income level that might warrant the construction of that $300,000 or $400,000 home at the shore. This is where the shake-out is going to be. This is my concern. Maybe that doesn't apply to the priority of lien situation, but part of my concern is that banks are lending on these artificially inflated primary residences and they've created part of their own problem because the market conditions are good today because repayments are good, but they're lending dramatic amounts of money for people who originally were valuated for much smaller mortgages.

Do you see that? I mean, do you--

A. I think, first of all, it's not my impression that the reason the institutions are interested in getting this bill passed is that they expect a shake-out or a crisis to come. This issue of lien priority has been a concern since the very first days of the making of this kind of product, the open-end product. I think bankers who engage in secured lending, their first interest, their knee-jerk reaction is, well, I'm supposed to have collateral that I can sell if there is a problem. What do I have to do to make certain that I indeed can sell that collateral if I have a problem? I think that is what happened, not that anybody foresees or expects a great Armageddon sometime in the future with respect to these loans.

Also, as was previously testified, certainly bankers are very interested in prudent lending and in borrowers exercising prudent judgments with respect to taking on credit. I don't think that anyone wants or anticipates that anybody is going to be crazy in getting these kinds of loans, but I think that home equity loans are here, the decision is for the consumers to make whether they want them, and I think that the lenders in considering these loans, the applications for these loans, are underwriting them in a very prudent way so that you don't have people making foolish loans and getting over their heads. Of course, a lender cannot always assure that his decision with respect to the creditworthiness, the future ability of a borrower to repay, is going to be perfect, but that effort definitely is made, because nobody wants to buy into a foreclosure. Even if the lender is convinced that the equity is there, the cushion is there to protect his loan, nobody wants to buy into a foreclosure. It's just too much trouble and it's just not good from a public relations standpoint.

Q. How prudent is a bank that makes that home equity line decision in less than 24 hours? There are now institutions in the Philadelphia market, I'm sure you're familiar with them, that would lend up to that 80-percent level in less than 24 hours, and they guarantee 24-hour turn around. I mean, no appraisals.

MR. STOUP: No appraisal?

REPRESENTATIVE LASHINGER: Well, you can't get appraisals in 24 hours.

MR. BREAUX: Well, obviously, I can't speak for all banks, but 24 hours may not sound as quick as it would have sounded 20 years ago given the technology and the information that's available and the networks of underwriting a mortgage loan.

MR. STOUP: Can I respond to the question also please, Joe?

Nobody ever made a bad loan, ever. It wasn't bad when you made it. It got to be bad later on. Also, no matter how good your collateral is, you get a loan that goes south, it costs you money. Okay? So the point was made about the Steel Valley and the problems they had out there, and I've said this before, I stand very proud of the people I represent and the job that they did in keeping people in homes, and I think anybody from that area knows that the savings and loan associations did one heck of a job in that regard to give as great a deal of forbearance as possible.

The point that I'm making is that it's daggone expensive, and if you're making bad loans, I don't care how good your security is, and I know my members are not in the business of making bad loans.

In regard to a 24-hour turnaround, I can tell you that you're going to see a quicker response in terms of loans. City Bank is talking about making first mortgage loans and being able to turn them around in a 24-hour period, the applications. You're going to see, and as Mel made the comment that today with computers and with the electronic equipment we have, you can expedite the same process that used to maybe take a month or so to get a loan approval. And you're going to see more of that. And this is in response to competition. You're going to see quicker reaction on loan applications. But I don't think that the quality of reviewing those loans is going to be reduced.

REPRESENTATIVE LASHINGER: Jim, my reason for making those remarks, and I'm not trying to be cynical, but in the credit card debate when we were asked to make decisions on credit cards, you will hear this throughout the debate on this issue, was that if your costs are increasing in the credit card area, then don't send applications to every Tom, Dick, and Harry and say, just call us on the phone and we'll open up a credit card account for you. And what I'm suggesting is that possibly the same thing is happening in this area. The costs could be increasing and you're coming back to us and saying, these are problem areas, and yet the lenders, in my opinion in some cases, are partly responsible for the problem because of this idea of just if you've got home equity, come to us and we'll let you cash out on that home equity. Just an observation. You don't have to respond.

MR. STOUP: No, you make a good point. And there were some institutions, some of our folks when they got into the credit card business bought lists, they bought some bad lists and they made some extension of credit to non-creditworthy people and then the costs were there, but I certainly don't think that that's gone on here.

CHAIRMAN CALTAGIRONE: Representative Reber.

REPRESENTATIVE REBER: Thank you, Mr. Chairman.

BY REPRESENTATIVE REBER: (Of Mr. Breaux)

Q. Counselor, in the course of your testimony on page 3, you noted in the last paragraph, besides protecting the lender, the bill contains several protections for the borrower, and then in the latter part of that paragraph in the bottom you talk about the written notice procedure. There was some earlier testimony, I think even in response to a question by myself, that this notification procedure and the appropriate indexing could be done in three to five days. Would you agree to that amount of time?

A. Yes. The bill itself provides for the 3-day period.

Q. And I'm looking at that also on page 3 of the bill, paragraph (c), beginning on line 16 and continuing over to the next page, it talks about that process. And I'm a sponsor of the bill and I think it's necessary, but what I'm trying to get around to is making sure that we don't make this any more cumbersome and/or costly for the consumer in exercising that particular desire to limit his indebtedness by going through this notice procedure. So my question is this: The way the language is written currently in the bill, it appears to me that the obligation is on the mortgagor to secure the information, prepare the notice, have it notarized, acknowledged, et cetera, and deliver it to the mortgagee. I would suspect, myself included, I'm not going to have necessarily that information at my disposal. I'm not going to have the expertise maybe to prepare a sufficient notice. I'm wondering if we should have, and I hate to incorporate forms into legislation, but I'm wondering if there should not be some very specific type of form that is made available by the institution, by the mortgage holder to that person so it's a lot easier and a lot more expeditious to get this accomplished. I'm just wondering if there might not be some clarification that's needed there?

A. Well, I can't say that you're incorrect, but it seems to me that the procedure here is not terribly complicated. It's not a long document we're talking about, and the borrower could obtain the information required to prepare the document simply by contacting the lender.

Q. Okay, now, that was my next question, which leads me to my final question. Is there going to be a maintenance charge or a fee assessed to the consumer for this action similar -- would this be considered a type of satisfaction and/or release process and assessment?

A. Well, this bill would not address that point. It doesn't prohibit it and it doesn't appear to permit it specifically, but I would not advise my clients to impose a fee on the exercise by a borrower of his rights under this bill to give notice.

Q. Now, there's going to obviously be a charge by the Recorder of Deeds or wherever the document is. Is that charge going to be charged to the consumer?

A. I would think so.

Q. I mean, I'm not--

A. Well, that's not addressed in this bill, again, but I would think that obviously if the consumer were to go to record the document that there would be some nominal recording charge, $25, $50. I'm just guessing.

REPRESENTATIVE REBER: Thank you.

BY CHAIRMAN CALTAGIRONE: (Of Mr. Breaux)

Q. There were a couple issues raised, if either one of you would like to answer this. If somebody wants to go out and buy a new car and they need a cash advance and they go to the bank where they have their home equity, or an S&L, whatever, it's a $10,000 cash advance. You're saying that you're not notified of that, okay, or how are you notified? Is there a filing? If you have the advance on the open-end--

A. I'm sorry, I think I missed the first part of your question.

Q. Rather than taking a straight loan for a new car, you prefer to take it against the home equity.

A. Okay. The person who wants to purchase a new car has a home equity line?

Q. All right, would you walk me through that just to see how that--

A. Well, I'm trying to understand your question. And he wants to use that line to pay $10,000 to buy a new car?

Q. Um-hum.

A. Okay, now what's your question under that scenario?

Q. How would it work? How are you notified? What's the recording device right now?

A. There is no -- once the line is set up and the mortgage has been recorded--

Q. Okay. Right.

A. --there is no device for the bank to be notified other than the customer will have received a book of checks, let's say. He goes into the car dealership with his book of checks and he writes out a check for $10,000.

Q. So if he bought it cash he'd probably save a hell of a lot more money and still have a deduction at the end of the year on his home equity, okay, and the interest rate is a lot lower than going to the bank for a car loan.

A. That's an excellent point.

REPRESENTATIVE REBER: But God forbid if he loses his job and doesn't have the cash flow, he's jeopardized then the residence, which you don't under traditional other areas. It's okay for upper middle or upper class, but you get into a lower income bracket and that potential problem is there.

MR. BREAUX: But he's going to buy the car, he wants to buy the car anyway. It's a question of whether he gets the funds elsewhere or uses this line, which, I would think, is more advantageous to him.

CHAIRMAN CALTAGIRONE: I was just curious how that--

MR. BREAUX: And that's the way it's set up, that's what the agreement between the consumer and the lender contemplates. What we're concerned about is if another creditor would have made an advance to this borrower between the time the mortgage on the home equity loan was recorded originally and the homeowner writes his check to buy the car. The agreement is that my priority on that $10,000 advance should relate back to when the home equity mortgage was recorded in the first place. But if another creditor has come in and has a lien and perhaps, to refine your hypo just a little bit, perhaps when the consumer goes to write his check he has a monthly statement on his desk at home which calls for a payment due date of the 5th, and it happens to be the 7th of the month, he's late in making that payment, technically under the contract, perhaps the lender is not obligated to honor that $10,000 check when it comes in because technically the consumer is in violation of the agreement because he's two days late in making his payment.

It's our position that in that case the $10,000 advance still should benefit from the lien date of the recording of the mortgage rather than have to argue that we were obligated to make that loan, and the intervening creditor is going to say, no, you weren't because he was two days late in making his monthly payment, it wasn't obligatory, therefore the priority of my lien supersedes the priority of your lien with respect to that $10,000. And if you're in bankruptcy or something and there isn't enough within the home for everybody to get something, I might lose out, notwithstanding the agreement contemplated between the consumer and myself with respect to that advance.

MR. STOUP: I think what we're doing here is, and Paul Adams made the point very eloquently just a few minutes ago, that the rate is going to be determined by the amount of risk involved and what you have now is a loan that involves a greater risk than you need to have, and this legislation reduces that risk, and when that risk is reduced, then it's reasonable to expect that these types of loans are going to be made at better rates.

REPRESENTATIVE LASHINGER: We'll quote you on that later, Jim.

MR. STOUP: Well, that's simply the way the things works.

MR. ADAMS: I think we can say one thing with certainty. If case law comes down and says that we don't have priority, you're going to see those rates go up materially. I mean, that I can say with certainty.

MR. STOUP: Maybe that's a better way to approach it.

REPRESENTATIVE HAYDEN: As a follow-up on that point made, Mr. Breaux, we've already heard that there are no appellate level decisions which really offer any guidance in terms of certainty on this issue. Are you aware of, through your representation, any Common Pleas level cases where this issue is now being brought in?

MR. BREAUX: No, I'm not. I'm not. Not in Pennsylvania.

REPRESENTATIVE HAYDEN: Okay, thank you.

CHAIRMAN CALTAGIRONE: Thank you, gentlemen. Thank you for your testimony. We appreciate it.

Mike Catarino, Director of Government Relations, Beneficial Management Corporation.

Mike, to expedite things, because I know members have things that they want to get to this afternoon, could we have Jim Novinger and Dave Ward come up at the same time and we'll let the three of you go right through your testimony and then we'll open it up for questions, if that's all right?

MR. CATARINO: That sounds fine.

Mr. Chairman, members of the House committee, good morning. I think it's still morning. My name is Michael Catarino, and I'm the Government Relations Director for Beneficial Management Corporation. I would think that yesterday's subject matter would be more appropriate when you find out what 942 would actually do to the consumer.

As you know, Beneficial Mortgage Company of Pennsylvania and its affiliated companies have been making open-end real estate loans in Pennsylvania since 1975 under the existing law pertaining to the priority of liens. Those companies presently have in excess of $103 million outstanding, and these bills would affect the law governing them.

We support the concepts of House Bill 983 and we oppose the concepts of House Bill 942. As in prior years, as a provision relating to construction contracts, which is identical in both bills and which is not in dispute, I would point out that that debate is run over a number of years in essentially the same format. I'll point out again, too, that 983 essentially codifies the existing law, whereas House Bill 942 causes a total change in the concept of the law, which consequences would most certainly be harmful and are at best unpredictable.

Although the proponents of House Bill 942 have sought to change this law for many years, they have produced no evidence at all of the need to do so. On the contrary, existing law continues to work properly and without problems and more and more loans outstanding under every day. There simply has been shown no reason to change the law, as is proven successful by the prosecution of this business every day.

There are two general types of loans which provide for advances after a mortgage has been recorded, both of which have been used for many years. Number one is the construction loan, and that was my understanding that was the basis and sole purpose of the original portion of 942, and a letter from Jim Biery back in April of '86 makes that statement. And then the community bankers have mentioned that they don't have a problem with the construction lending. So there's a little conflicting stories there.

Each of the bills, anyway, in question deal with both the construction loans and the open-end revolving loans, which differ from construction loans since instead of just one series of advances multiple advances are contemplated with regular repayments and with additional advances at later dates. Of course, a limit is set as to the total amount that can be outstanding at any one time.

In the construction loans, both bills would add a section to the law dealing with advances under the construction loans. This language is identical in each bill, so I'll skip over that. I'll move over to the open-end or revolving loans.

Although Section 8144 of House Bill 942 would solve the construction loan problem, the bill as proposed by the PBA goes on to make major changes in the existing law and the other type of future advances contracts - the open-end or revolving loans. The PBA statement says that it is a copy of an Ohio statute but gives no understandable reason for doing so. In other words, they are proposing making major changes in Pennsylvania's law similar to Ohio's. Just Xerox a copy of the law and put it into effect. If you will recall, we testified -- we had an opinion from a major Columbus, Ohio firm, Jones, Day, Revis and Pogue, back in 1985 that said they certainly would not recommend that any other State use the Ohio law as a model. They considered it defective.

As I pointed out, Beneficial has been making open-end mortgages in Pennsylvania for a dozen years under the existing law. We have $103 million in those loans outstanding, and we are aware of no problem that exists with regard to existing law. We have made tens of thousands of these loans. Tens of thousands have been paid off. We have litigated over them and we are still making them with no problems related to priorities. Let me just say, you can't have a fail-safe way of doing business, and if you want to shift that burden of doing business from the lender onto the backs of the consumer, I think those priorities are mistaken.

Despite the lack of a problem solved, House Bill 942 makes tremendous changes in the existing law, completely reversing the moral and logical basis for the law. House Bill 983, on the other hand, would merely codify the law essentially as it is. This is not a consumer issue but it's an issue between creditors, and the lawyer for the PBA, John Brennan, in earlier testimony said it's a 99 1/2 percent competitive battle, turf battle. Now, I don't know where the other one-half percent comes in. You'll have to ask John that.

First, it is not a consumer issue, although one very adverse effect on the consumers would result from the passage of House Bill 942 that I will describe later.

The issue in lien priority is one of conflicting claims between creditors to a security given a debtor for a loan. In virtually every instance before there is a dispute on priority, the loan is already in default and the borrower is out of the picture. The only question involved is which of the competing creditors gets the security? It is relevant to point out that the issues here are the same, whether or not purchase money or first mortgages are included in the law. In other words, a priority issue arises only between two or more lenders and is really not significant whether they are first or second or third. We believe that that priority law should be the same for all open-end mortgages, and House Bill 983 would provide that.

What is the basis for giving priority for one creditor over another? Since the purpose of either of these bills it's a set of rules for deciding which creditor gets paid first, we should look for some reason or logic for establishing these priorities between creditors. Obviously, the first criterion would be time. Which creditor advanced the money first? Time seems to be a fair test if the later creditors are given some reason to know that loans have been made earlier, and accordingly we have a system for recording mortgages that establish the time when the loan was made and provides notice to later lenders.

Advances after recording. The rationale for the obligatory advance rule. Under both types of future advance contracts, the common law had to decide whether advances made after the date of the mortgage instrument was recorded should be given priority over loans made by some other creditor at a date earlier than the date of the advance but later than the date of the recording of the open-end mortgage. Under the circumstances, this common law came to a logical and morally correct conclusion. If the open-end lender had contractually obligated himself to make the future advances and the mortgage he recorded showed that to be the case, then a later lender should not be entitled to lend on the security of that same property and expect to have the priority over advances the first lender makes to comply with his obligation. Put another way, if the lender has placed himself at risk and has agreed that that borrower has the authority to draw down the money, and as a few of the questions earlier pertained to, write out his check, then a later lender should not be entitled to lend on security of that same property and expect to have priority.

As a corollary, of course, if the first lender has actual knowledge that a later lender has made a loan and the borrower has pledged that same property, this would be a breach of the agreement by the borrower and would relieve the first lender of his obligation to make that advance. If the first lender thereafter made permitted advances, they would be voluntary and not entitled to relate back to the date of the original mortgage. Simply stated, this is what the law is today. If a lender has placed his entire line of credit at risk by obligating himself to make advances up to that credit limit and those advances date back to the date of the mortgage when it was recorded and are protected, I have seen no logical reason put forward as to why we should change this basic rule which states succinctly that its obligatory future advances will relate back to the date of recording of the mortgage for priority purposes.

In the construction loan area, the concern as expressed by the PBA memorandum is uncertain as to how closely a lender must comply with the construction agreement between and retain obligatory character of the advances. In both bills, the construction loan problem is addressed, so I will move on from that.

The rest of House Bill 983, unlike House Bill 942, does not drastically change the lien priority law but codifies it essentially as it is today. We think it clarifies the law by stating explicitly the types of conditions that a lender could place on his obligation without it becoming illusory and thus not obligatory.

House Bill 983 thus preserves the same moral base that the current law has. If a lender has placed himself at risk by obligating himself to make an advancement, then he is entitled to the protection against the claims of later lenders. If not, then I ask what would be the justification for giving the priority? The fundamental error with House Bill 942, it would turn this law on its head. It eliminates the requirement that the lender be at risk by being obligated to make advances. Under House Bill 942, a lender could have priority on any loan for later advances simply by typing "open-end mortgage" at the top of the mortgage, even though that lender never intends to make later advances.

The consumer issue requiring the borrower to notify a prior lender before being able to borrow again. House Bill 942 would create a myriad of practical problems and one fundamental consumer problem. The consumer issue is that the borrower, whether he knows it or not or wants to be or not be, would be tied to the first lender simply because of the words "open-end mortgage" being typed at the beginning of the loan, although as a borrower he would have absolutely no right to any future advances whatsoever. Since there is no risk to the lender in typing "open-end mortgage" at the top of the papers, there is no reason not to tie the borrower down in this way.

Obviously, since there is no obligation on the lender to lend the money, the borrower receives absolutely no benefit by having his mortgage called an open-end mortgage. Instead, he only gets the right to go back to that lender and ask for a loan as though he was a new customer, and he can't get a loan from another lender without going through the expense, delay, trauma of notifying the first lender that he is doing so, in effect getting his permission.

Under existing law, the borrower has no duty to notify the prior lenders at all to take out another loan. The PBA bill proposes to require this and to require the borrower to incur this additional expense and delay. For what purpose? The only purpose that I can see is this would give a tremendous competitive advantage to the first lender who could cut out later lenders and monopolize that customer. This can only lead to higher rates, contrary to what you've heard prior.

None of the notices and the very confusing and complicated rules and arrangements spelled out in House Bill 942 are necessary at all.

I'm going to skip over a little bit and just say, Mr. Chairman, members of the committee, House Bill 942 would result in the consumer's equity virtually being held hostage. How is that a consumer benefit, as the proponents of 942 claim? That claim is a cruel hoax guised to shift the risk of doing business from the lender and intended to evade the obligatory commitment. 983, on the other hand, codifies and improves existing law.

Thank you, very much.

MR. NOVINGER: Mr. Chairman, if I may, for the record, I'll just identify myself. I am Jim Novinger, President of the Pennsylvania Financial Services Association, which is a State association in consumer and secondary mortgage lenders. We have 118 members presently conducting business in the Commonwealth. And testifying for the PFSA today is David B. Ward, Senior Vice President of Beneficial Management Corporation. Dave is also a member of the Federal Reserve Board Consumer Advisory Council in Washington, D.C.

Dave.

MR. WARD: I've considered just abandoning the testimony and passing out some loan applications. It might make the day worthwhile. I had prepared written testimony.

REPRESENTATIVE HAGARTY: You may have to reject some of us though and that won't help your position.

MR. WARD: No, that would not be wise, I agree. I couldn't turn down anybody.

I have written testimony which I would ask you to take a look at it you have a chance, but rather than reading it, since much of it would be perhaps repetitious at this point, I would point out one computer error that crept in there. We called House Bill 942 982 consistently throughout. If you will read 982 as 942, I think it will work out correctly.

If I could just make a few comments and then I'd be happy to discuss this and answer some questions. The fundamental difference between the two approaches here is that one of these concepts contains the obligatory advance notion and the other does not. There is law in Pennsylvania on this point. I think perhaps there's some misunderstanding of that. There are cases in Pennsylvania, they are old cases. They go back, I think -- I didn't go back and research this, but they go back into the '50s, I think, and earlier, and they establish the obligatory advance concept as a reason for permitting relation back of advances made on an open-end mortgage to the date of recording of the mortgage, and therefore in a contest between creditors and a foreclosure to prevail over advances that had been made by another lender prior to the actual date of those advances but subsequent to the date of recording of that first mortgage. And that's what this whole thing is about. It's a dispute between two creditors who are in a foreclosure proceeding and the consumer is out of the picture. He's defaulted and he's gone and we're selling the property and going to distribute the proceeds. That's really what this whole mortgage priority issue is.

The law is there and members of the Pennsylvania Financial Services Association have been making these home equity loans. We didn't call them that then. We've been making these since 1975. That's 10 years, 11 years before the 1986 Tax Reform Act which made these home equity loans, as they've come to be called, much more attractive for people for the very reason that this is now essentially the only consumer credit debt for which the interest payments will be deductible for Federal income tax purposes. So the banks and everyone has become more interested in these, they've become more publicized and they've become a much wider known product, but they are certainly not new and the members of this association have a very, very substantial amount of money invested in Pennsylvania and have had since the late '70's.

We agree with the concern that's been expressed here by the community bankers that there is some uncertainty in the law. This is not statutory law, it's case law. And the uncertainty lies in the case law which obviously is capable of change as the judges interpret specific fact situations, and it's not entirely clear under what circumstance a judge will view your promise to make advances and the limitations that all creditors want to put on that promise and say, you've crossed the line, your promise is no longer obligatory, therefore you lose your priority. It's not clear where that line is today, and there have not been, to my knowledge either, any recent cases that try to define it in any way that's adverse to creditors or favorable to creditors or, you know, in any way that would affect this issue.

We are proposing in 983 to try to define by statute where that line is, and we're trying to do that by saying that loans which call for obligatory advances will be given priority relating back to the date of recording of the mortgage and they'll retain that even though they have a certain laundry list, as somebody called it, of conditions in the contract. Now, a creditor who wants to make this type of loan here in Pennsylvania, should that become the law, would be able to write his contract with the type of conditions that he wants in it to protect himself against the security being damaged, against the borrower's default, and against the other specific type of items that are listed in 983, and have the assurance that a judge looking at it now has some rules in which to decide priority and therefore you can put out a contract like this recorded and feel confident that your security will have the priority you expect it to have. That's exactly what we're trying to do in 983.

942 does something totally different. It eliminates the obligatory concept entirely and it creates a whole new scheme, and I'm not going to try to tell you what it does because it's just too confusing to me. There are too many questions in it for me to be able to describe to you exactly how it would work, and I think you'd have to send it through the courts many, many times and let the judges read it, figure out what they were trying to do, figure out how these notices work, figure out how all this complicated limitations on the lines of credit that you're going to put on work and what happens. There's a section in it that says if 983 becomes law, the existing law stays in effect. So we've got all these loans on the books where we're making advances every day and there's a new set of loans that are going to be created under 942, and somehow the judge has got to put those together. I don't think he can do it. I mean, he does it because a judge has to do it, but he'll have to make just arbitrary decisions, and I think with 942, a simple scheme that I can explain to you, I think it makes sense, it makes sense to me as to how it works, the simple scheme would be destroyed and substitute all this major, major uncertainty

over here.

I want to mention one other thing that I think is very, very relevant and then I'll quit, and that is the new home equity loan rules that the Federal Reserve Board has put out under Regulation Z they don't deal with priority. They are rules that deal with disclosures and some of the substantive rules of how you make home equity loans. But Regulation Z is primarily a disclosure law that tells you what the consumer ought to know before he guess one of these animals and gets into it and gets himself into trouble.

What they have done with this relevant part of the new rules is say that if you put out a home equity loan and you give a line of credit to a consumer, you can't take it back. The first statement in there is you cannot terminate it and accelerate it and close it, and when I read that the first time through these things when we started in that process, I said, my God, we've got to stay in business forever. I mean, this guy is going to die some day and he's not going to pay us, I know, and what do you do? So it does go on past that statement and say, you can limit it in certain specific ways. And there's three groups of them, I think, that are different types, and basically they are default, the loss of the security, and other specifically listed things that are in the reg that will become effective November 7th.

Those lists, not by coincidence, really are almost identical in their language to the provisions of the six listed items in Bill 983. They are the normal limitations that creditors put on home equity lines of credit. And I've read those, too, and I can say to you that in my opinion, they are absolutely consistent with the provisions of 983. I think they're totally 180 degrees in opposition to the provisions of 942 because 942 says at the outset that you don't have to keep this thing open, you don't have to make any advance whatsoever under it. You've got priority without any risk to you at all. Well, the Federal Reserve's home equity rules say, hey, when you put this line of credit out there, you've got to give that guy credit, and so the concept, again, is I think 180 degrees off, although I'm not trying to represent that the two, you know, directly have anything to do with one another. My fear is that if you pass 942 and people tried to make home equity loans here -- no, my fear, I don't think you could make a home equity loan under 942 and get priority by a voluntary advance loan and be in compliance with truth in lending. I don't think you could do it, but that's just my opinion and I have not studied that relationship that closely, but I don't believe you could to do it. If 983 was passed and those regs come into effect, I think they're absolutely consistent. No conflict, no problem, and the business could continue as it has for many, many years here under the now codified existing law.

With that, I think I'll stop.

REPRESENTATIVE HAGARTY: Thank you.

BY REPRESENTATIVE HAGARTY: (Of Mr. Ward)

Q. I have a question, I guess, for you, sir. Let me understand. The reason, at least as to the priority scheme, not the notice scheme, that you feel disadvantaged as a second lender on an open-end mortgage and not on an obligatory advance, correct me if I'm wrong, which I probably am, but you're saying that since it's an open-end scheme without an obligation, without an obligation, that first lender could perhaps make that a large amount, thereby when you're looking at it, I take it it causes you to be less likely to lend, therefore less likely to do what you're in the business to do because you know that has priority over you? Is that right? I mean, I want to get away, for a minute, from your arguing the case on behalf of the consumer and just try to figure out exactly why you're disadvantaged, because it seems to me that whether it's open-end or obligatory, you're in the same risk because you know how much is ahead of you.

A. Okay.

Q. You know the maximum potential amount that's a priority over your loan. So I'm not sure why, given that, you're at any greater risk if this were to become law.

A. I'm not. I'm not.

Q. That's my question. You're not at greater risk, but it seems to me what you are is at a disadvantage in doing business because you're less likely to loan because there's an amount out there that's ahead of you?

A. Let me step back. This is not a conflict between banks and secondary mortgage lenders or savings and loans or anything.

Q. It sounds it to me.

A. It's not.

Q. Then why do you disagree? That's what I call a conflict, because I have to believe that you're disadvantaged in some way as a secondary lender.

A. No, it's not, and I'll try to explain. The disagreement happens to just have fallen along the lines that it's bankers that happen to feel they want it one way and it's us that happen to feel we want it the other way. But when the law, we're only going to have one law, and the contest is between a banker and a secondary mortgage lender, and we might be the first one, he might be the second, or vice versa. It doesn't matter. The contest is based on this same structure of law. The thing we don't like about the 942 legislation is not that it would disadvantage us. I also work for Beneficial. Beneficial is, I believe, Jim, the largest second mortgage lender in our association, probably the largest second mortgage lender in the State. If 942 was passed, Beneficial could, by simply typing "open-end mortgage" on the top of all of our mortgages, eliminate any obligation on ourselves to make advances whatsoever, lock in all of those existing customers and have one heck of a competitive advantage over the banks and everybody else here.

Q. Can I just stop you for one second?

A. We don't think the law ought to do that.

Q. Do you typically, as a secondary lender though, do open-end mortgages? I mean, it sounds to me like--

A. Absolutely. We were the originators of it. 75 percent of our mortgage portfolio is open-end loans, and I'm talking about a portfolio nationally of $4 billion. And it's 75 percent open-end. We are making exactly the same type of loan that the community banker is. There's no difference at all. It's direct head-to-head competition. And we do not feel that the law should allow us to have an unfair advantage over other lenders - community banks, other secondary mortgage lenders or anything else - because we think the system works when there is competition. We don't think that the law should set up these notices and limits so that there are not second lenders but second, third, fourth, and fifth lenders. You realize that the only way you have a limit put on a loan, you're not talking now about making a secondary mortgage loan, it's a third loan. Now you've got a consumer with three mortgages on his house that he's juggling around, and then a fourth if he gives a notice to the third. I don't think the bank examiners would allow banks to make third mortgage or fourth mortgage loans as a regular process. I really don't think they do. I think the risk is--

Q. When you make an open-end mortgage then, in other words, you evaluate the creditworthiness of that loan on each successive occasion that the consumer wants to -- I mean, I guess my question is--

A. No, we do not do that. We feel we do not have to do that. We give them a checkbook, he has a line of credit and he can write checks until he gets to that line of credit, which may be $10,000, $20,000.

Q. Well, then why isn't that an obligatory loan?

A. It is. Ours are obligatory. That's why -- we make them obligatory so that the case law allows us in

Pennsylvania to relate those advances. Every time he writes a check, we don't have to know anything about it until it clears the bank and comes back to his account.

Q. Well, if yours are obligatory then but you're indicating that the banks would not be using obligatories such as yours, they would be using, under this, open-end mortgages.

A. No, if you noticed, the banker who testified here today said that his bank did use obligatory advance loans. Everyone in Pennsylvania, I believe, is doing that today. Now, some may not be. I don't know.

Q. Well, then why are you concerned? As I understand it then, you don't have any problem if it's an obligatory loan with it relating back.

A. No, we don't.

Q. I guess what I don't understand then is why is there such a concern on open-end mortgage? It still seems more that for a subsequent lender, you know, there's still the risk.

A. An open-end mortgage is a general term. There's no difference between an open-end or an obligatory mortgage.

Q. I thought you said under an obligatory mortgage you're required to make an advance?

A. No, an open-end mortgage simply says it's a mortgage under which advances will be made after the original date of loan. I mean, I can define it that way. You can either be as an open-end lender obligated to make those advances or not obligated to make those advances. You still have an open-end loan. And if you're not obligated, that means your customer's got to come to you and say, I'd like some more money, and we say, uh-huh, we don't want to do it today. If you're obligated, all he does is write a check and he's got his money.

Q. I don't understand it. You're comfortable, or you're not, I take it, with statutorily creating a lien priority that dates back to, because you're telling me case law is that now in the obligatory area, so why are you uncomfortable with a statute which creates a scheme, maybe this isn't the right scheme to do it, but a scheme that relates back in priority to the date of the first loan?

A. That's what 983 would do. 983, simply by statute, says what the judges have been doing and allowing you to do all the way along is good, right, correct, and here it is in statutory form.

Q. On home equity loans as well as construction mortgages?

A. Yes. The construction mortgage is a separate subject.

Q. Because I had understood Mr. Catarino to indicate that it was all right on construction mortgages but not on home equity loans.

Is that not right, Mike?

MR. CATARINO: No, what I had said was that there was an agreement in the construction lending problem.

REPRESENTATIVE HAGARTY: But I don't care about what agreement existed. I'm concerned about what your position is on home equity loans.

MR. CATARINO: I'm confused with the question.

REPRESENTATIVE HAGARTY: Are you satisfied that in home equity loans, just as in construction loans, that the priorities should date back to the date of the initial loan?

MR. CATARINO: Yes.

REPRESENTATIVE HAGARTY: Okay, so what is it that I'm confused? If you're comfortable with that, which is what I thought we were talking about, what is it, other than this notice requirement which I can understand is onerous, what is it in this other bill, 942 I guess it is, that you object to?

MR. WARD: Let me try to get at it. The only reason to relate back, see, I'm sitting here as a lender and I make you a mortgage and I give you a book of checks. A year goes by and you borrow from another lender and he records a mortgage. Then two months later you write some checks. That's the fact situation that's involved here. Then you default and it's a contest between me and this later lender as to who gets your home. The question is whether the checks you wrote later relate back to when I made you the loan or they are dated up here later when you do it.

REPRESENTATIVE HAGARTY: Right.

MR. WARD: If they're dated up here, I lose. If they're dated back here, I win. Now, the common law says the only time you're going to win when you make a loan, an advance, after this second lender made his advance and recorded a mortgage, the only time you're going to win is if you had obligated yourself to make that advance.

BY REPRESENTATIVE HAGARTY: (Of Mr. Ward)

Q. And if you hadn't obligated yourself, you don't win.

A. If it was a voluntary advance, you don't win.

Q. So my question is, what's wrong with making the law even if it was not obligatory?

A. The difference is this: The banker's bill, the 942 bill says that even if you're not obligated to make those advances, you're going to win. Okay? And what we see as a problem with that is that as soon as I type "open-end mortgage" on my loan, and the law says I'm going to win, that guy in the middle knows he can never have priority over me. So that second lender can't make a loan unless he does something. And what their bill would say he's got to do, he's got to come to me and tell me that he's making the loan and give me five days to beat his price.

Q. But that's what you object to? That's what I'm trying to get to.

A. Absolutely. I absolutely object to that.

Q. It's the notice that you object to, not the priority?

A. Well, it's the notice that's there--

Q. It still seems to me that you know the risk.

A. It's the notice that's there to fix the priorities because all of a sudden the law has been changed and we don't know who's got priority, so we've got to figure it out.

Q. But isn't the open-end mortgage up to a certain amount?

A. Yes, there's a maximum--

Q. Don't you and your secondary lender know what the maximum amount is?

A. Yes.

Q. So you know your risk as a secondary lender because you know what's in front of you.

A. No, no. The maximum amount may be $100,000, let's say. They look at the equity of the home and it's $200,000. Well, if that second lender knows there's $100,000 of equity in there and only makes a $20,000 loan, and he really probably doesn't care about the priority rules because there's going to be enough equity to pay us both because he knows I'm only going to give the guy a hundred and he's going to give him 20. That probably would work. But if he wants to make a loan that's going to exceed the equity in total while I've got this line of credit out but no money out, I've got a problem.

Q. But that still goes back what I'm convinced I'm right for you, even though you're not convinced you're right for you, presumptuous of me, it still seems to me that the reason you're disadvantaged, and I think it's a legitimate reason, is you can't do what you're in the business to do then is make loans because there's an amount before you, even though it may never be realized, is too large for you to be assured when you make a loan that there's any equity left that you're going to take priority on?

A. That's right. Because the first guy who makes one of these loans, the first guy who makes a home equity loan could theoretically write every single one of them for a million dollars.

Q. Okay. All right.

A. Then nobody else can ever make that guy a loan again.

Q. Okay, I'm satisfied now I understand it, but I still go back to I think that's what the problem is, and I don't think I understood that in the beginning. The problem is you can write an open-end mortgage for any amount because you're never obligated.

A. It would be a tremendous competitive advantage for Beneficial because we're the first guys in the market, we could lock it up.

Q. The reason you're saying they aren't out there now, as I understand it, is because they don't take priority and that if we create this law you're telling me there's going to be a lot of them out there, open-end mortgages, not obligatory, right?

MR. CATARINO: All of them would be.

MR. WARD: All of them would be.

REPRESENTATIVE HAGARTY: Sure. Why not?

MR. WARD: Every single mortgage made would be an open-end mortgage becuase there's no risk to you by typing that at the top of the page.

REPRESENTATIVE HAGARTY: I think that's right, except Jim Stoup is shaking his head no.

MR. WARD: Well, I say every mortgage. They have taken purchase money mortgages out. That may be what he's objecting to. Purchase money mortgages would be set aside, every other mortgage but a purchase money mortgage, all you do is type "open-end" on it, you got an open-end mortgage, you've got the guy locked up until they come and tell you they're going to make him a loan and you've got to five days to beat them. Think about it in terms of a Chrysler dealer and a Ford dealer, if the law was the same.

REPRESENTATIVE HAGARTY: Thank you.

CHAIRMAN CALTAGIRONE: Representative Lashinger.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

BY REPRESENTATIVE LASHINGER: (Of Mr. Ward)

Q. What is the 3-year provision then in the bill under obligated?

A. That's not in our bill.

Q. No, I want to know in 942. I just want to be fair. Is that a 3-year obligatory period? Is that what that means?

A. I guess, yeah. They say that if there's conditions on the loan that don't go beyond three years, I guess it can still be an obligatory loan. But that's only relevant because of a subsection of theirs in their scheme where they do certain things with obligated advances and different things with unobligated advances. I don't really know why that definition is in there.

Q. The community bankers have recommended an amendment to take that three years out and further expand it.

A. Yeah, we'd agree with that as a concept, you know.

Q. Okay.

A. It doesn't make any sense to limit it to three years because these loans are generally done as 15-year mortgages.

Q. That was my next question. Is that the general term, 15 years?

A. What they do with them is they're usually callable or terminable after 10 or 15 years, because again, you don't assume these things are going to go on forever. They could be renewed at the end of that term.

Q. Most of these are drafted that they are not like purchase money mortgages in that they generally only require minimum payments, don't they? They're not generally principal and interest payments on them?

A. No, ours would require a minimum payment. The minimum payment is set like a credit card is, but it would be set so as to liquidate the loan within a 10-year term.

Q. I've seen them drafted--

A. They can be interest only or non-liquidating, but we don't do it that way.

Q. Which creates further concern for me again is that people at the end of 10-year and 15-year terms with these purchase money mortgages are going to have balloons at the end of these things and there are people who are maxed out and are going to be faced with a crisis.

A. Everyone in our association, under the Secondary Mortgage Loan Act, has to liquidate these loans, so that there is a principal and mortgage payment, minimum payment, required to liquidate the loans over a term.

Q. Would this be a fair assessment: A person has a $200,000 home and they go out and they take a second for $80,000. They already have $100,000. It's $180,000, $80,000 of it is an open-end mortgage. They draw down $20,000 to buy a car and whatever else, appliances, and it's on a float and they decide that rates are now up on their open-ended 14, 15 percent. They now have an employer that they work for, new employer, that decides now they need to buy another car and the employer is going to write them, sign a note, hold a mortgage for 9 percent, 8 percent, whatever, because it's an employee benefit. The employer wants to do it. That employer is now at risk, right? Because he's, I guess he's, under this new act, under the proposed act, he has no priority, even though the consumer could get a better rate from the employer. He's boxed out on that equity in the home under 942. Is that correct?

A. Yes, he would be.

Q. Well, subsequently then the person comes to borrow and borrows the additional amount, the other $60,000 on the second, so they're out the full $80,000, but that employer who offered the note to the employee for the $10,000 to go out and buy a car or whatever is now behind?

A. He'd be subordinate under the existing law.

Q. He'd be subordinate to that?

A. Yeah. And as a creditor, if you were going to make a third mortgage in that situation, you would have to assume, as a third mortgagee, and there aren't many of them, that that full credit line is out. Okay? And we say that's the way the law ought to be. You can pay it off if you want.

Q. Well, what's this notice requirement now? I mean, what if the market does change and the consumer does have something better out there? I mean, aren't we cutting the consumers off then?

A. No. I did not bring the statistics with me, but all that happens is those loans are paid off. And they should be. People shouldn't have three mortgage loans on their house, I don't think.

REPRESENTATIVE REBER: They shouldn't have any.

MR. WARD: No, they probably shouldn't have any, but at best you ought to have one home equity line, not two or three of the darn things. But all that happens is it pays off. You go to the other creditor. Obviously, if he's going to make a loan behind this loan, then the guy's good for the first part. He's also good for the third part. So why not make the whole thing? Lenders want to get their outstandings up, not limit them. And you're paying off a higher rate loan so the guy knows they're going to take it from you, and if you're making money on a lower rate at $20,000, you'll make money at $40,000 so, you know, if you're extending more dollars at the same rate, you're going to make more money, so you pay them off.

And the law requires you send them a check and send them the checkbook and that mortgage is paid off and the satisfaction has to be recorded within 10 days under the existing law. So that that's all you have to do. And it happens every single day in the State of Pennsylvania to Beneficial and to the other members of the Pennsylvania Financial Services Association. Payoffs happen on a routine basis. And the market works under the existing law. And 983 would work exactly the same way - quick, efficient. There aren't any of these notices, limitations, 5-day waiting periods, 3-day waiting periods. That stuff doesn't exist.

If you put this 942 in, then everybody's got to go through all of these mechanical things. We're not clear how they really function. They're expensive and they have that anti-competitive aspect that you're giving that prior lender a chance to say, you can't make that new loan. I'll just write you a check because I can do that when I want to and I always get priority as long as I haven't fallen outside of that 5-day notice period. 942 is a bad law we think; would be a bad law.

Q. Are your rates higher in the open-end market because of the risk factor or because your cost of money is higher? You heard the banks say that the risk factor in open-end mortgages is what keep rates popped up.

A. They are trying to say, if I understood them correctly, that the priority risk is the thing that's tending to keep rates up. I absolutely disagree with that because our competitors, and everyone I think that's actively doing this business, may feel some uncertainty. Their lawyers may be worried, but they're doing the business and they're making obligatory advances, and they are relying on this priority. They'd like to nail it down, just like I would, as I said at the beginning. I'd like to nail it down in the 983 way, and then all the lawyers would sleep a little better at night. But I don't think there's any rate effect of significance because of this priority question.

REPRESENTATIVE LASHINGER: Thank you, Mr. Chairman.

CHAIRMAN CALTAGIRONE: Any other questions?

REPRESENTATIVE HAGARTY: I have one.

BY REPRESENTATIVE HAGARTY: (Of Mr. Ward)

Q. I have one out of curiosity. What do your secondary rates run in interest? How much higher than first mortgages, typically?

A. Well, we're not in the first mortgage market in a big way.

Q. No, you're in the second mortgage market.

A. Yeah.

Q. So I'm wondering, how much higher are your interest rates than the first mortgage?

A. There's a wide range depending on geographical areas and other things, but our variable rates run from the 2, 1 1/2, 2 over prime range, which would probably be 1 1/2 to 2 over first mortgage fixed rates, I suppose, to about the same differential, up to, I suppose in certain areas, as much as 5 or 6 over prime.

Q. And I take it the reason you charge more is because your risk is greater because you're second as a secured creditor?

A. Yes.

Q. So if you were to lend under this new scheme, I take it your rates would similarly have to go up because if you would do it on an open-end mortgage and not make the assumption on the full amount, then you're at greater risk clearly?

A. Well, if 983 passed, nothing would happen.

Q. No, I mean under 942.

A. But under 942, I can't say. I don't know that it would have any rate effect one way or another. What it would do is the first thing we would do is consider getting out of the business in Pennsylvania, because it really seriously impairs the ability to understand what the priority law is. And we would seriously consider dropping the business. We'd have to. If we did, that has only one effect - rates go up, because you're taking a major competitor out of market.

Q. I'd have to agree with that.

A. And if other people got concerned over this as well and started to back off from home equity, the volume of money is not there, it's going to force rates up.

Q. Has any other State done anything like 942 proposes to do?

A. The only one that I'm aware of is Ohio, and the Ohio statute is not the same as 942, it's similar. Now, a lot of the pieces came out of there, but it is not identical by any means. And the Ohio bill, we operate there, is essentially ignored in practice. As far as I know, it's never been litigated. The people there do use obligatory advance concept and essentially act as though the common law was the common law there as well. It's never been tested, to my knowledge. We don't think it's a sensible law, and as far as I know, nobody gives the notices and goes through the rigmarole because they can't, again, figure out how to do it.

Q. Is the reason now that people aren't doing these open-end mortgages is because they don't have priority and that's why you're indicating there will be a proliferation of them? You only get priority now if they're obligatory?

A. No.

Q. I don't understand why there's going to be, you know, this large number of open-end mortgages subsequent to our passing 942.

A. No, I said the opposite. I think if 942 passes it will tend to constrict the market because it will create uncertainty -- more uncertainty than exists.

Q. No, but I thought you said that all the documents will be stamped "open-end mortgages," which are not now?

A. That's right.

Q. Because you'll get priority, and you don't now?

A. Yeah, but they wouldn't be open-end mortgages. All they'd be is a piece of paper that says "open-end" on it because if the lender has no obligation to make the loan, it ain't a loan. That's my opinion. It's not an open-end mortgage unless you're obligated to give the guy some money, and if you're not obligated to give them some money and all you've done is typed "open-end mortgage" at the type of the piece of paper, sure, it's an open-end loan because it says so, but you don't have the basic fundamental obligation to make the advance, which is how this whole business got started in the first place.

Q. So the consumer isn't going to get those anyway?

A. The consumer will get an open-end because it says so, but he ain't going to get any money.

Q. Thank you.

CHAIRMAN CALTAGIRONE: Gentlemen, I want to thank you very much for the testimony.

MR. WARD: Thank you.

CHAIRMAN CALTAGIRONE: We'll now adjourn the hearing.

(Whereupon, the proceedings were concluded at 12:30 p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney

ANN-MARIE P. SWEENEY

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