Approved: February 3, 1999
Date

MINUTES OF THE HOUSE FINANCIAL INSTITUTIONS.

The meeting was called to order by Chairperson Ray Cox at 3:30 p.m. on January 27, 1999 in Room 527-S of the Capitol.

All members were present except: Representative Henry Helgerson - Excused
Representative Carlos Mayans - Excused

Committee staff present: Dr. Bill Wolff, Legislative Research
Bruce Kinzie, Office of Revisor
Maggie Breen, Committee Secretary

Conferees appearing before the committee: Kathy Olsen, Kansas Bankers Association
David Brant, Securities Commissioner and Acting Consumer Credit Commissioner

Others attending: See Attached List

Chairman Cox introduced **Kathy Olsen**, Kansas Bankers Association, who requested the Committee introduce a bill on behalf of the Kansas Bankers Association Trust Fund Division **(Attachment 1)**. The bill would create a creditor's claim statute for decedents dying with assets in a living trust. The bill was introduced as **HB 2702** last year. It was then postponed due to anticipation of a major rewrite of the Kansas Uniform Trustee's Power Act. The rewrite didn't happen and probably won't any time soon. The request is that the legislature enact a law which would require that creditor's claims for payment, when the decedent's assets are in a living trust, be handled as they are when the assets are in an estate. It would require the trustee of the living trust to give notice to creditors that they must present their claims within four months from the date of the notice.

Representative Humerickhouse made a motion for the Committee to introduce the bill. Representative Empson, seconded the motion. The motion carried.

Chairman Cox introduced **David Brant**, Securities Commissioner and Acting Consumer Credit Commissioner, who gave an overview of the Securities Department and the Consumer Credit Department.

1. Securities Department **(Attachment 2)**:

Agency Functions:

- Registration - In 1998, the agency reviewed 112 registration filings and 364 exemption filings, processed 1,449 new mutual fund filings and 4,858 mutual fund renewals. (Nationwide there are 12,000 - 13,000 mutual funds available).
- Compliance and Licensing - They license stockbrokers and investment advisors. Currently there are approximately 1,600 broker dealer firms, 39 of these based in Kansas; 58,000 brokers nationwide licensed to do business in Kansas, 2,000 - 3,000 of these are based in Kansas; 615 investment advisory firms, about 170 based in Kansas; and 1,525 investment adviser representatives with about 1,100 based in Kansas.
- Enforcement - They prosecute "white collar crime" and investment fraud. They had 31 criminal convictions last year.
- Investor Education - Have Yellow Page ads in more than 2 million telephone directories encouraging investors to call an 800 telephone number and "Investigate Before You Invest."
- Federal and Industry Regulation - They are the state counterpart to the Securities and Exchange Commission (SEC) which is the federal regulator. There has been an evolving

partnership between the federal and state governments and it is a good one, as it has continued to be refined over the years.

2. Office of Consumer Credit Commissioner (**Attachment 3**):

The Consumer Credit Commissioner regulates primarily nonbank lenders. The colored chart in the handout shows the growth in supervised lender licensees since 1995. The pink sheet handout shows a summary of nonbank financing transactions. It shows 1) the types of transaction, i.e., credit cards, retail sales, consumer loans, auto loans, first and second mortgages, rent to own, pay day loans, or loan brokers; 2) example lenders; 3) type of state regulation; and 4) the Kansas regulator. The largest growth in the consumer loan area, particularly in the last couple of years, has been in the second home mortgage home equity business and has created the biggest challenge. It has raised a number of issues for the agency, an increased workload being one of them. The agency has 7 employees: a commissioner, 4 examiners, an administrator officer, and a secretary. It started out regulating finance companies and has continued to expand. The number of examinations of the supervised lenders continues to increase. In 1997 they had 242 exams and they are behind in the exams of ou-of-state mortgage companies.

Consumer education in the consumer credit area is as critical, if not more critical, as it is in the securities area. The agency continues to fund the Kansas Council on Economic Education to provide teacher training for economics in the classroom. Acting Commissioner Brant is committed to increasing the education efforts and recommends that the legislature continues to make it a focus for the agency in the future. High school students need to know how to use a credit card responsibly when they graduate, as they are getting credit card solicitations even before they graduate. The population in general needs to be educated on how to deal with solicitations which sound very enticing. Some lenders say "we will save you $600 a month" if you consolidate short term consumer debt. What consumers don't realize, because it's in fine print, is that they are converting it into a 25-year mortgage debt. For some high risk individuals it's probable at the same interest rate as a short term consumer loan. They may end up paying $50,000 to $100,000 more in interest over the next 25 years. So education in that area is critical.

Instances of consumers being taken advantage of have increased in the "subprime" lending area. These people have lower credit rating and are a greater risk, so their borrowing rates are higher. However, they are a growing concern, as they have become targets for unscrupulous lenders who are taking advantage of them. Consumer Credit deserves more attention from the state. The agency needs a full time commissioner, additional staff, an additional examiner, and the code needs to be updated.

Chairman Cox presented the committee minutes for the January 20, 1999 committee meeting for approval. Representative Grant made a motion to accept the minutes as presented. Representative Vickrey seconded the motion. The motion carried.

The meeting was adjourned at 4:11 p.m.

The next meeting is scheduled for Wednesday, February 3, 1999.

HOUSE FINANCIAL INSTITUTIONS COMMITTEE GUEST LIST

DATE: January 27, 1999

NAME	REPRESENTING
Roger Franzke	KGC
Shelley King	McGill, Gaches, Assoc.
Kathy Olsen	KBA
Alan Steppat	CBA
Sue Anderson	CBA

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 27, 1999

To: House Committee on Financial Institutions

From: Kathleen Taylor Olsen

Re: Request for Introduction of Bill

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee today to request introduction of a bill on behalf of the Kansas Bankers Association Trust Division. The proposed bill would create a creditor's claim statute for decedents dying with assets in a living trust.

This bill was introduced last year and a hearing was held in this committee (HB 2702). However, action was postponed as we were informed that this was to be part of a larger rewrite of some of the provisions of the Kansas Uniform Trustee's Powers Act.

Such a rewrite has not come to pass and we believe it is unlikely to occur any time soon. Thus we are asking for consideration of this issue in this legislative session.

We are requesting that the legislature enact a similar law for creditor's claims for payment when the decedent's assets are in a living trust, as already exists for creditor's claims when the assets are in an estate.

Basically, the proposed language would require the trustee of the living trust to give notice to creditors of the decedent, that they must present their claim for payment to the trustee within four months from the date of the notice. If a creditor fails to bring a claim before the four months have expired, the claim is forever barred.

On behalf of the KBA Trust Division, we request introduction of this bill to give the opportunity for more in-depth testimony and analysis of the issue. Thank you.

House Financial Institutions
1-27-99
Attachment 1

800 SW Jackson Suite 1500 • Topeka, Kansas 66612-1265 • (785) 232-3444 FAX (785) 232-3484
email kbaoffice@ink.org

New Section to Chapter 58, Article 12: Uniform Trustees' Powers Act

Be it Enacted by the Legislature of the State of Kansas:

(a) Any trustee who has the duty or power to pay the debts of a decedent shall give notice to creditors thereof. Such notice shall be published in some newspaper, authorized by law to publish legal notices, in the county in which the decedent was domiciled. Such notice shall be published once a week for three consecutive weeks in substantially the following form:

> *To all persons interested in the estate of ______________________________, decedent. The undersigned, _________________________________, is acting as Trustee under a trust the terms of which provide that the debts of the decedent may be paid by the Trustee(s) upon receipt of proper proof thereof. The address of the Trustee is ____. All creditors of the decedent are noticed to present their claims to the undersigned within four months from the date of the first publication of this notice or be forever barred from bringing such claim.*

(b) Any trustee filing a notice to creditors under the provisions of Section (a) above, shall also give actual notice to known or reasonably ascertainable creditors prior to the expiration of the nonclaim statute.

(c) If such publication is duly made by the trustee under Section (a) above, and actual notice is given to known or reasonable ascertainable creditors under Section (b) above, any claim not presented to the trustee within four months from the date of the first publication of the aforesaid notice shall be forever barred as against the decedent, trustee and the trust property.

KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER
House Committee on Financial Institutions
January 27, 1999

David Brant
Commissioner

OFFICE OF THE SECURITIES COMMISSIONER

History
Kansas was the first state in the nation to adopt a "blue sky" law in 1911 to regulate securities. The Banking Commissioner at the time, J.N. Dolley, promoted the legislation because the state was a hunting ground of promoters of fraudulent investment schemes. It was said that some of the frauds "became so barefaced that promoters would sell building lots in the blue sky in fee simple." Thus, the term "blue sky" was coined to refer to state securities laws.

Statutory Authority

Securities Act	K.S.A. 17-1252 et seq.
Uniform Land Sales Practices Act	K.S.A. 58-3301 et seq.
Loan Brokers Act	K.S.A. 50-1001 et seq.

Agency Mission
To protect and inform Kansas investors, to promote integrity and full disclosure in financial services, and to foster capital formation.

Agency Staff, Budget, and Revenues
27 Total FTEs: 1 Commissioner, 4 Attorneys, 9 Investigators (certified law enforcement) 2 Certified Public Accountants, 6 Examiners / Auditors, 1 Office Administrator and 4 Support Staff. Seven of the staff work out of the agency's branch office in Wichita.

FY 1998	Beginning Fund Balance	50,102
	Revenues	+7,080,110
	Budget Expenditures	- 1,756,460
	Transfer to General Fund	- 5,323,752
	Ending Fund Balance	50,000

Advisory Council
Since 1983, the Commissioner has appointed an Advisory Council. Currently, the 20 member council meets once or twice a year to discuss agency operations, industry and regulatory developments, and proposed legislation.

House Financial Institutions
1-27-99
Attachment 2

Investor Services 1-800-232-9580
http://www.ink.org/public/ksecom

618 S. KANSAS AVENUE
TOPEKA, KANSAS 66603-3804

Office (785) 296-3307
Facsimile (785) 296-6872

Agency Functions

Registration: We review the disclosure and fairness of smaller offerings of stocks, bonds, and limited partnerships and we accept filings for exempt offerings such as mutual funds and non-profit organizations. In FY 1998, we reviewed 112 registration filings and 364 exemption filings, and we processed 1,449 new mutual fund filings and 4,858 mutual fund renewals.

Compliance and Licensing: Our agency conducts on-site examinations of main and branch offices and we license investment professionals. In addition, we handle investor complaints regarding sales practices, churning, or misleading information. Currently, we have granted licenses to 1,559 broker dealer firms (39 of which are based in Kansas); 58,081 broker dealer agents (2,123 of which are based in Kansas); 615 investment adviser firms (178 of which are based in Kansas); and 1,525 investment adviser representatives (1,110 of which are based in Kansas).

Enforcement: We have investigators and attorneys that investigate and prosecute fraud, "white collar crime," and unregistered activity. In the last fiscal year, we conducted approximately 206 investigations which resulted in 152 administrative orders, and 31 criminal convictions, and over $2.4 million in restitution orders and recision offers to be repaid to investors.

Investor Education: Our agency now has a Yellow Pages ad in over 2 million telelphone directories which encourages investors to ***"Investigate Before You Invest"*** by calling our 800 number hotline to inquire about the disciplinary background and registration of brokers, investment advisers, and the investment products being promoted. This past April, we joined in a nationwide campaign to promote Saving and Investing Education. Copies of the book *How to Be An Informed Investor* have been provided by our agency to state legislators, county and district attorneys, and to every public library in Kansas. We also sponsored two investor education seminars and our staff has made numerous presentations at senior fairs, service clubs meetings, and schools.

The agency currently provides $20,000 annually to the Kansas Council on Economic Education ("KCEE") to sponsor *The Stock Market Game*. In the coming year, we will be also be working with KCEE to launch the Financial Literacy 2001 Project. This program will provide a curriculum guide and training for high school teachers to introduce a new edition of *A Consumer Approach to Investing*.

Federal and Industry Regulation

The shared system of state and federal regulation of securities began in 1933 when the federal Securities and Exchange Commission (the "SEC") was created by Congress. In addition, the S.E.C. has authorized certain self-regulatory organizations ("SRO's") such as the National Association of Securities Dealers (the "NASD").

Recent Developments

In 1996, Congress enacted the National Securities Markets Improvement Act ("NSMIA" or "the Act") which ended a 14-month long debate in the U.S. Congress over proposed reforms to federal and state securities regulation. The new federal securities act is a sweeping attempt to modernize and rationalize the nation's securities regulatory system to correct and improve areas of duplicative and unnecessary regulation.

The new federal Act created a national unified system of regulation whereby securities offerings that are national in character will now be defined as "covered securities" and regulated only by the SEC. Covered securities include mutual funds, stocks traded on the national exchanges, and securities sold to sophisticated investors. The legislation confirms the important role of state securities regulators as "the local cop on the beat" and preserves state licensing and enforcement powers.

The second most significant NSMIA change was to divide the regulation of investment advisers between the states and the SEC. The states are now the sole regualtor of investment advisers managing less than $25 million in client assets, while the SEC retains the primary responsibility for investment advisers managing mutual funds or large portfolios.

Summary

Overall, the federal, state, and industry regulatory structure is working to protect investors while promoting capital formation. The Kansas Securities Commissioner's office has a good track record and a very capable and knowledgeable staff. Investor education should continue to be a priority and further expanded.

Education is the key to investing wisely

2-4

Press Clipping Division
Kansas Press Assn., Inc.
5423 SW 7th Street
Topeka, Kansas 66606-2330

KANSAS
Hays Daily News
D. 12,916

APR 26 1998

By CAROL CRUPPER
HARRIS NEWS SERVICE

TOPEKA — As the stock market surfs Wall Street's high tide, more people find themselves taking the investment plunge.

Trouble is, when it comes to investments, many are wet behind the ears.

People need to educate themselves, said Marsha Meyer, president of InvestEd, a Chicago firm that offers investment education programs.

"Your company is not going to support you, the government is not going to help you," she said. "We have to do this stuff ourselves."

Meyer, former editor of "Morningstar Investor" and past contributor to "Money" magazine, was featured Friday at a seminar sponsored by the Kansas Securities Commissioner.

The session was part of an educational push by the U.S. Securities and Exchange Commission. Its focus was mutual funds.

This form of investment lures many.

Some 437,000 Kansans hold shares in mutual funds, with investments of $39.3 billion, said Kansas Securities Commissioner David Brant.

In the past 15 years, Meyer said, the number of mutual funds in the United States has grown from 1,000 to 9,000.

The key to selecting funds right for you, she said, is in weighing risk and return.

And that starts with education.

Meyer listed five advantages of mutual funds:

- Instant diversification. "This is your most important tool for reducing risk."
- Liquidity. If you call the broker, your investment can be pulled at the end of that day.
- Accessibility. You can purchase mutual funds from the comfort of your living room.
- Professional management. Specialists know trends in fields the investor may know nothing about.
- Convenience. Record keeping is minimal.

But, Meyer said, mutual funds also display some distinct disadvantages:

- They are not insured. "There are no guarantees. You can easily lose money as well as [illegible] money."
- Investors have unrealistic expectations. People have grown accustomed to this unprecedented bull market and assume it will continue, Meyer said.
- It's complex. Managers use strategies and risks many people don't understand. "A mutual fund manager's job is not to take care of your money," Meyer said. "His or her job is to pursue a particular investment strategy that may or may not be in your best interest."
- May give a false sense of security.
- Pricing confusion. People need to know how the different fee payments work.

Investment can reap rewards, said Meyer, who expressed concern that the national savings rate has dropped to 3.8 percent of income.

But it's important to know the risks. Mutual funds aren't like savings accounts.

"We need to adjust our savings so the amount we're saving is enough to support our financial well being no matter what the market does."

Today's market will eventually stop its upward spiral, she said. It's just a matter of when.

"We don't want to incur losses we can't handle," she said.

People who invest need to know the market, and they need to know themselves.

Myers urged folks to head to their public library to research their investments.

Education is the key, Meyer said.

"How much return do we need and how much risk are we willing to take?" she said. "Pain and gain are two sides of the same coin. You don't get one without the other."

The higher the investment's potential returns, the greater the risk.

"The trick is to understand what is most appropriate for your circumstances," she said.

People need to know their own risk tolerance.

"Seventy percent of all investors are risk-averse," she said.

Too many investors entering market are ill-prepared, state official says

By CAROL CRUPPER
HARRIS NEWS SERVICE

Mass migration into a soaring stock market has securities officials concerned.

"Many people confuse a bull market with brilliance on their part," said Arthur Levitt, chairman of the U.S. Securities and Exchange Commission.

A record 41 percent of American families now own stock and mutual funds.

But three out of four Americans don't know what they need for retirement. And the savings rate has slipped to 3.8 percent, the lowest in 58 years.

Those statistics alert Kansas Securities Commissioner David Brant, who said too many arrive at the market ill-prepared.

"You should at least spend as much time choosing an investment as you do choosing a refrigerator," he told an investment seminar recently at Washburn University.

Officials said while the industry is basically honest, investors must stay alert.

Brant said his office handles from 200 to 250 cases of investment fraud a year. Last year, courts ordered $8 million returned to Kansas investors.

He offered some investment tips:

- Ask questions.
- Be informed.
- Realize that the securities products, including those you buy in banks, are not federally insured. You could lose your money.
- There are legitimate businesses on the Internet — but check them out carefully.
- Be extremely cautious when investing over the telephone.
- Don't let your guard down. "Affinity fraud" happens when investors trust people because of church connections, ethnic affiliations or the like and don't bother to check them out.

Those with questions about an investment may call the Kansas Securities Commissioner's investor services hot line at (800) 232-9580.

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KANSAS
Atchison Daily Globe
D. 6,170

APR 08 1998

2-5

U.S. facing 'financial literacy' crisis

David Brant 158
Kansas Securities Commissioner

There's good news and bad news about Wall Street's historic bull market. The good news is that stock and mutual fund ownership has doubled in the past seven years to reach a record of 41 percent of U.S. families. The bad news is that three out of four Americans don't have any idea how much they need to save for retirement, and the U.S. savings rate last year was 3.8 percent, the lowest in 58 years.

Just as disturbing, while 63 percent of Americans know the difference between a football halfback and a quarterback, only 14 percent know the difference between an income stock and a growth stock. Surveys show that four out of five Americans are "financially illiterate," meaning they don't know the answers to even the cost basic questions about handling money. At a time when Americans are increasingly responsible for their own financial futures, all this spells trouble.

There's an old saying that "knowledge is power." When it comes to investing, however, knowledge is protection. Uninformed, unsophisticated investors make tempting targets for crooks. Securities regulators fear the fundamentals could be in place for a long-term bull market in fraud. These fundamentals include record numbers of Americans investing in the equity markets, many with unrealistic expectations: baby boombers worried about having enough money for retirement; and older Americans trying to live on fixed incomes in an era of low interest rates.

That's why a grass-roots education effort to fight financial illiteracy was launched nationwide on March 29 by the U.S. Securities and Exchange Commission, state securities regulators and others. The campaign's slogan is "Get the Facts. It's your money. It's your future."

The Office of the Kansas Securities Commissioner is promoting investor education in a number of ways. Already our toll-free telephone number (1-800-232-9580) is listed in more than 2,000,000 Kansas telephone directories statewide as a resource to call to obtain background information on any broker or investment adviser. Governor Bill Graves has declared the month of April as "saving and Investing Education" month in Kansas highlighting the need for consumers to take responsibility for their financial future. We have provided a copy of the recently published book "How to be an Informed Investor" to every public library in the state. On April 17, in Topeka, and April 18, in Wichita, our agency will sponsor a free investor education seminar. And, we will be speaking at schools, fairs and civic clubs statewide delivering the investor education message.

Investors themselves are the true first line of defense against crooks. Investors need to be well armed — with knowledge and a healthy skepticism. Wall Street is no short cut to Easy Street.

Success takes persistence, patience and practice. In fact, Wall Street can be a mean street for those who aren't careful with their money.

There are, however, a few simple steps investors can take to protect themselves:

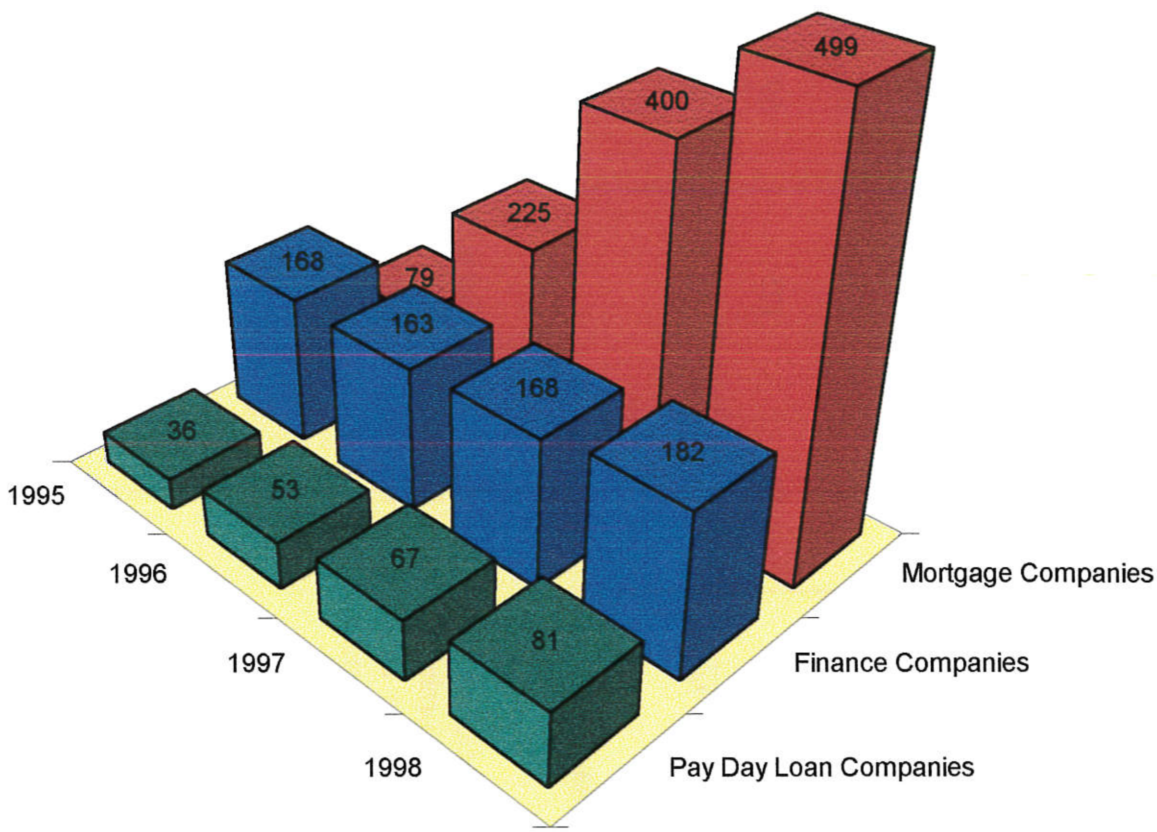
One — Get the facts, always check up on your investment professionals and their firms by calling the Office of the Kansas Securities Commissioner to see if they're licensed to sell in Kansas and what, if any, disciplinary record they have.. Call us at 1-800-232-9580.

Two — Hang up on aggressive, cold-callers and never allow yourself to be pressured into making an investment over the phone.

Three — If you have problems, after you have written your broker, his or her supervisor and the compliance officer of the firm, always forward a copy of your complaint to our office.

You're never too young, or too old, to learn about money and investing. Knowledge, skepticism and good investing habits will pay dividends for a lifetime. So get the facts. It's your money. It's your future.

OFFICE OF CONSUMER CREDIT COMMISSIONER



Growth of Supervised Lender Licensees

House Financial Institutions
1-27-99
Attachment 3

OFFICE OF CONSUMER CREDIT COMMISSIONER

1995-1998 Growth of Supervised Lender Licensees

Type	Number Licensed in 1995		Number Licensed in 1996		Number Licensed in 1997		Number Licensed To Date in 1998	
	In-State	Out-of-State	In-State	Out-of-State	In-State	Out-of-State	In-State	Out-of-State
Finance Company	150	18	149	14	148	20	135	47
Pay Day Loan Company	36	0	53	0	67	0	81	0
Mortgage Company	23	56	50	175	59	341	70	429
Total	209	74	252	189	274	361	286	476
Total Number Licensed	**283**		**441**		**635**		**762**	

Note: The total number of licensees includes both main and branch offices. For example, a national corporation may hold 14 Kansas supervised loan licenses consisting of one home office in California, 9 branch offices in Kansas and 4 other branch offices located in Colorado, Oklahoma, Missouri and Nebraska. These fourteen locations are either making supervised loans, or taking assignment of and undertaking direct collection of payments or enforcement of rights against debtors arising from supervised loans.

3-2

KANSAS

Bill Graves
Governor

OFFICE OF CONSUMER CREDIT COMMISSIONER

David R. Brant
Acting Commissioner

House Committee on Financial Institutions
January 27, 1999

OFFICE OF CONSUMER CREDIT COMMISSIONER

Commissioner Transition

David Brant was appointed as the Acting Consumer Credit Commissioner in May 1998 due to the resignation of Bill Caton.

History

The agency was created in 1955. In the late 1960s, consumers were only beginning to make widespread use of open-end credit and nation-wide credit cards. Kansas was the seventh state to enact the Uniform Consumer Credit Code (the "U3C") which became effective on January 1, 1974. The Kansas U3C placed all aspects of consumer credit under one statutory umbrella: closed-end and revolving credit, loans and sales, motor vehicle loans, interest rates and limits on creditors remedies, truth-in-lending and credit insurance regulation. In 1993, the Kansas U3C was amended to also require "payday loan" lenders to be licensed and regulated as supervised lenders.

Statutory Authority

Uniform Consumer Credit Code	K.S.A. 16a-1-101 et seq.
Fair Credit Reporting Act	K.S.A. 50-701 et seq.
Credit Service Organizations	K.S.A. 50-1101 et seq.

Agency Mission

To protect Kansas consumers from unfair practices by suppliers of consumer credit by enforcing the laws governing retail installment sales, consumer credit transactions, and consumer loans.

Agency Staff, Budget, and Revenues

7 Total FTEs: 1 Commissioner, 4 Examiners, 1 Office Administrator and 1 Secretary. Two of the examiners work out of Topeka and the other two are based in Overland Park and Wichita.

FY 1998	Beginning Fund Balance	368,243
	Revenues	+ 733,710
	Budget Expenditures	- 454,439
	Transfer to General Fund	- 146,345
	Ending Fund Balance	501,169

JAYHAWK TOWER, 700 S.W. JACKSON, SUITE 1001 / TOPEKA, KANSAS 66603 / (785) 296-3151 / FAX: (785) 296-6037

Advisory Council

The Acting Commissioner reestablished a 15 member Advisory Council which met on July 21, and on December 9, 1998.

Agency Functions

- **Licensing**: The agency registers all supervised lenders, retail credit grantors, and assignees of consumer credit transactions. Attached as Exhibit A is a chart which shows the growth in the number of licensees since 1995. Currently, there are a total of 762 licensees as compared to a total of 283 at the end of 1995, an increase of 169% in the past four years.

- **Compliance**: The agency conducts examinations of every supervised lender. The examiners may travel out-of-state (at the lenders' expense) to conduct some exams. The examiners review the permissibility of finance charges, closing costs, insurance premium charges, delinquency charges, and the disclosure statements provided to the borrower. The examiners conducted 242 exams in calendar year 1997. In addition, we handle consumer inquiries and complaints regarding interest and insurance overcharges or refund errors, lien releases, and disclosures.

- **Consumer Education**: One of the agency's objectives is to increase the level of knowledge about consumer finance and the laws regulating consumer credit. The agency currently provides $70,000 annually to the Kansas Council on Economic Education ("KCEE") to provide training to primary and secondary teachers in personal finance and consumer credit education. Also, the agency currently provides $12,500 to Housing and Credit Counseling, Inc. ("HCCI") to pay for credit counseling for consumers in need. The Acting Commissioner is very interested in exploring additional consumer education services and the agency is installing an 800 number for consumers.

Federal and Industry Regulation

The Federal Trade Commission (the "FTC") has jurisdiction over most non-bank lenders to enforce the Truth in Lending Act ("TILA") and other federal consumer protection laws. There is no industry self-regulatory organization. However, there are some efforts to promote voluntary standards such as the American Financial Services Association encouraging members to finance home improvement loans only when the work has been completed.

Recent Developments

The biggest challenge facing federal and state regulators is the recent growth in subprime lending, particularly for home equity loans. "Subprime" (also commonly referred to as "B/C") borrowers are consumers with relatively low incomes, or credit histories that are limited or tarnished. Credit card delinquencies and personal bankruptcies are at record levels, which negatively affect borrowers' credit histories, pushing more consumers into higher risk categories.

The subprime mortgage market has flourished because such lending has been profitable, demand from borrowers has increased, and secondary market opportunities are growing. Some large creditors now securitize nearly all home equity loans that they originate. In 1997 alone, subprime lenders originated over $125 billion nationwide in home equity loans. In Kansas, 161 mortgage companies reported originating loans totaling $862 million in 1997.

An example of a subprime home equity loan is a $30,000 second-mortgage loan to a Wichita woman. The loan was originated in July 1997 for 20 years at 15.25% for the purpose of bill consolidation. Among the costs paid out of the loan proceeds was a 10% or $3,000 fee to a California mortgage broker. The lender is a mortgage company located in San Diego, California.

The Wichita home appears to have been purchased in 1996 for $49,500 and the amount of the first mortgage outstanding is $48,700. The combined total of the two mortgage loans is now $78,700. The loan application reports that the home is valued at $80,000 (but there appears to have been no appraisal fee paid at the time of the second mortgage) which would make the loan-to-value ratio ("LTV") for the two loans at approximately 98%. However, the Sedgwick County Appraiser estimates the value of the home at $45,400 which would make the LTV ratio at approximately 173%.

In July, the Federal Reserve Board and the U.S. Department of Housing and Urban Development (HUD) released a joint report which will require new federal legislation to amend the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) in order to reduce settlement costs, eliminate predatory lending abuses, and strengthen enforcement provisions for home mortgage loans.

Agency Needs

1. **Staff.** For the past six years, the agency has had a part-time Commissioner. The current challenges demand the time and attention of a full-time administrator. In addition, the agency needs a staff attorney to assist the Commissioner in drafting legislation, administrative interpretations, rules and regulations, answering legal questions, and in handling administrative hearings. Further, the Governor's FY2000 budget recommends one additional examiner to assist in reviewing license applications and in conducting exams on loans made by out-of-state mortgage companies.

2. **Legislation.** In the coming week, I will be submitting a proposed bill containing a number of technical and substantive amendments to the Kansas Code. This bill is a collaborative effort of the Advisory Council and a "drafting" committee which has included attorneys, law professors, legislative staff, finance companies, and consumer representatives.

   The proposed amendments will address a number of issues, including: licensing; origination fees; usury rates; first and second mortgage loans (including high loan-to-value loans); deceptive advertising; and administrative powers of the Commissioner.

Summary

Federal and state regulation of consumer credit is in need of review and reform. The subprime mortgage business is presenting numerous challenges. The Kansas Consumer Credit Commissioner's office is in transition and is in need of direction, additional staff, and additional substantive regulatory tools. The current staff members are experienced and dedicated. Consumer education should continue to be a priority and further expanded.

RAT VERPAYMENT NOTIFICATION

EQUITYPLUS
Community Bank of Northern Virginia

THIS IS NOT A CHECK

168-564
12417

147817980915

September 16, 1998

	DOLLARS	CTS
THE SUM OF Forty Three Thousand Nine Hundred Fifty	$43,950	00

NON-NEGOTIABLE
COUPON

To the order of
S2P1
David Brant
1823 SW Collins Ave
Topeka, KS 66604-3220

E142920

NON-NEGOTIABLE. THIS IS NOT A CHECK. NON-TRANSFERABLE

You are pre-approved for $43,950* or more ...

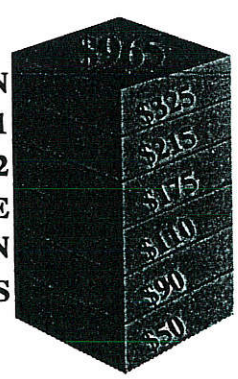
Dear David Brant :

Think what you could do with $43,950 or more right now! You could pay off high interest debts and even have some cash left over. Because you're a homeowner, EQUITYPLUS can help you keep more of your hard-earned paycheck in your pocket and get the cash you need!

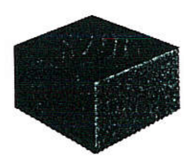
An EQUITYPLUS Debt Consolidation Loan can cut your monthly payments in half or more, letting you save hundreds of dollars every month. This chart gives you an example of how much you could lower your monthly payments with a Debt Consolidation Loan from EQUITYPLUS.

Your Current
Total Monthly Payments

AUTO LOAN
CREDIT CARD #1
CREDIT CARD #2
NEW FURNITURE
HOME COMPUTER LOAN
MEDICAL/DENTAL PAYMENTS



Your EQUITYPLUS
Monthly Payment



THAT'S A SAVINGS OF $669 EVERY MONTH OR $8,028 THE FIRST YEAR!

NO EQUITY REQUIRED! Even if you haven't built much equity in your home, call for **EQUITYPLUS** at **1-800-528-0011** today. We can usually give you an answer in 15 minutes or less.

Call now—this is a limited-time offer.

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Axiom

FINANCIAL SERVICES

15030 Avenue of Science, Suite 100, San Diego, CA 92128

*************** ECRLOT ** C021
Deba M. Brant
1823 SW Collins Ave.
Topeka, KS 66604-3220

Loan Eligibility Amount:
$110,000.00
Reservation Number: DM-17-33-A1-49806
This Offer Expires: January 5, 1999

Dear Deba M. Brant:

Your status as a Preferred Homeowner means that you now have the financial power — up to $110,000.00 or more — with a custom-tailored program that helps you make the most from the equity in your home.

Your Reservation Number is the key to a home loan that gives you the best of all worlds. Great rates. The ability to use more of your available equity. And unparalleled convenience — every step of the way.

More lending power. More financial freedom.
More from the equity in your home.

At Axiom Financial Services, we believe in always giving you more than you'd expect.

That's why we'll tailor a program that meets your needs and your budget. Ready to refinance? You'll appreciate our low monthly payments. Self-employed? You'll appreciate our flexibility. And with our 125% equity programs, we can help you even if you have little or no equity. Even if your past credit is less than perfect.

This makes an Axiom home loan the perfect way for you to get the cash you need for home improvements, college expenses, a new car or anything you'd like. You have the spending power you need now — and the peace of mind that comes from knowing that you're prepared for future expenses.

Take advantage of the best rates in years.

Best of all, Axiom can help you with some of the best rates available for home loans.

With interest rates down, this is the perfect time to pay off your higher-rate debts and enjoy one low monthly payment. And better yet, because home loans are one of the few ways left to enjoy a possible tax advantage*, you'll enjoy the benefits now — and at tax-time, too.

Start enjoying this powerful financial tool today.

You'll love how easy it is to use your new Axiom home loan anytime you need additional funds. And it's just as easy to apply. Because of your Preferred Customer Status, you simply need to return the attached Acceptance Certificate, or better yet, call us toll-free at 1-888-322-6478. Or, if you prefer, fax your response to 1-888-322-6473. After that, you can complete the entire process by mail.

over, please

The Wichita Eagle
BUSINESS&FARM

If you have a news tip, or a question or comment about a story

Contact: Steve Zuckerman, 268-6312

3-8

SUNDAY September 20, 1998

Home equity loans draw state scrutiny

■ Growth of subprime mortgage lending could get consumers in financial trouble, regulators say.

By Scott Rothschild
Eagle Topeka bureau

TOPEKA — A Wichita woman takes out a $30,000 second-mortgage loan on her home in order to pay off bills.

The loan is for 20 years at 15.25 percent interest, and she paid a $3,000 fee to a mortgage broker. She purchased the home two years ago for $49,500, and currently owes about $48,700 on the first mortgage.

Now she is making payments on two mortgage loans totaling $78,700 on a home that the Sedgwick County appraiser has valued at $45,400.

Acting Consumer Credit Commissioner David Brant said this kind of loan is troubling. It is an example of a fairly recent phenomenon in what is called subprime mortgage lending.

Subprime mortgage lenders make home equity loans to people with either limited or bad credit.

But sometimes those loans carry exorbitant interest rates or hidden costs that may result in consumers losing their homes, money or property, officials say. Federal officials say they have uncovered a wide range of abuses in this kind of lending, calling it a "serious national problem."

The abuses "generally aim either to extract excessive fees and costs from the borrower or to obtain outright the equity in a borrower's home," said Jodie Bernstein, director of the Federal Trade Commission's bureau of consumer protection.

Brant echoed these sentiments recently at a meeting of the Special Committee on Financial Institutions and Insurance.

"Some borrowers are being lured into borrowing more than they can afford and are being charged interest rates that don't need to be so high," said Brant.

Brant declined to identify the Wichita woman or the California company that made the loan because he said his agency was looking into the transaction.

Of the loan, he said, "The consumer may be thinking she did herself a favor. I'm troubled whether she realizes she has her home so

See **EQUITY**, *Page* **5B**

For more information

The Federal Trade Commission enforces a number of federal laws involving consumer credit. The FTC has a pamphlet called "Home Equity Loans: Buyers Beware!" that details fraudulent lending practices.

To receive a free copy of the pamphlet or a complete list of FTC publications, contact **Consumer Response Center, Federal Trade Commission, Washington, D.C. 20580;** or call **202-FTC-HELP**, or click on Consumer Protection and Publications at

EQUITY

From Page 1B

heavily leveraged."

But subprime lenders say they are providing a service by loaning money to people who otherwise might not be able to get a loan.

"On a general scale, these loans have a high satisfation rate, but any industry is going to have instances of dissatisfaction," said Lynn Strang, spokeswoman for the Washington, D.C.-based American Financial Services Association, which represents a wide range of loan companies nationwide.

Brant said that "the good news" of subprime mortgage lending is that credit is being provided to borrowers who wouldn't be able to get conventional loans.

But, he said, there has to be a balance between letting the free market rule and protecting consumers. The balance, he said, has tipped in favor of aggressive lenders who loan to people who sometimes are either in desperate financial shape or are duped by high-pressure sales tactics.

Every day, many Kansans are contacted either through the mail, by telephone or on the Internet by lenders offering home equity loans to help pay bills.

Subprime mortgage lenders generally target poor and minority borrowers, according to federal and state officials. Elderly homeowners also are frequent targets because they often have substantial equity in their homes, yet have reduced income, according to the FTC.

But Joe Stroop, a spokesman for Dallas-based Associates First Capital Corp., the nation's largest home equity lender, which does business in Kansas under the name Associates Financial Services, said his company doesn't "target" any particular group.

"We make credit available to people from all walks of life," Stroop said. He said the average home equity customer at Associates is a 45-year-old to 54-year-old white male who makes between $40,000 and $50,000 per year and wants to consolidate his bills.

One thing consumer advocacy groups, lenders and regulators agree on is that the subprime market is exploding.

More than 90 percent of all subprime mortgage loans have been made since 1993, according to the FTC.

In 1997, subprime lenders originated more than $125 billion nationwide in home equity loans. The Kansas portion of that amount was more than $860 million.

Officials say the loans are profitable and demand from borrowers has increased as credit card delinquencies and bankrupticies hit record highs.

But officials say that with the growth has come unscrupulous methods used by some lenders.

One abuse is when the lender encourages a borrower to pad their income on the application form to get the loan approved. When the payments come due and the consumer can't afford them, the lender forecloses.

Another scheme is when the lender offers low monthly payments that cover only the interest, but at the end of the loan term, a "balloon" payment of the entire principal is due. Other scams include lenders charging borrowers high fees for "benefits" that aren't necessary, such as credit insurance.

Brant said he will be convening a committee to "address the need for additional substantive regulation, particularly of the growing subprime mortgage market."

Brant said the Consumer Credit Office has an experienced staff of seven people but more staff and tighter restrictions are needed to adequately regulate the industry.

The number of lenders licensed in Kansas by the Consumer Credit Office has grown from 283 in 1995 to 762, an increase of 269 percent.

Of that amount, the largest growth has been in out-of-state mortgage companies, from 46 to 429. During that same period, the Consumer Credit Office has been given one additional finance examiner to bring the total to four.

Brant is working part-time at the Consumer Credit Office because he also is in charge of the larger Office of the Securities Commissioner, which regulates investment services and prosecutes fraud and other white-collar crimes.

The Consumer Credit Office needs a full-time commissioner, two more examiners and a staff attorney, Brant said.

But lenders say current regulations and the free market should do be able to get rid of the bad actors.

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KANSAS

DEC 12 1998

Consumers Urged to "Borrow Wisely: Shop Around"

If you own a home, you've likely received a wastebasket full of solicitations urging you to borrow up to 125 percent — or even more — of the value of your home.

The mail ads often come in official looking envelopes, with fake checks for more than $40-,000. The come-ons include: "Consolidate you debts and lower your monthly payments;" and "Some credit problems OK"

These ads are especially tempting for consumer facing debt problems and for those who have high credit card balances from holiday shopping.

David Brant, the Acting Consumer Credit Commissioner, is urging Kansas consumers to "Borrow Wisely: Shop Around."

"Consumers should shop around for the best rates and fees o home equity loans and they should carefully analyze the 'savings' in a lower monthly payment from debt consolidation," cautioned Brant.

The "savings" can be extremely costly over the long term. For example, ads may claim a $709 payment on a $20,000 credit card and car loan debt can be reduced to $271 a month with a high loan-to-value home equity loan. Without refinancing, the consumer would be debt-free in three years. With the high-LTV loan, the consumer would pay $271 per month for another 22 years and shell out an extra $55,000 in interest.

Brant noted Consumer Credit examiners have found: 20 year home equity loans at rates of 15 percent and higher; loan-to-value ratios of 170 percent and higher based on no appraisal; and broker's fees of 10 percent in addition to other origination fees and closing costs.

Kansas consumers are urged to:

- **Shop Around!** Many consumers reply to enticing ads from lenders without checking local credit sources. Consumers should comparison shop at a bank, credit union, finance company, or a local mortgage lender. Ask about the interest rate, the amount of origination fee or points, the annual percentage rate, other charges and if there is a separate broker's fee.
- **Be suspicious of "guarantees" and "up-front" fees.** It is illegal for a company to guarantee a loan in exchange for an advance fee.
- **Seek help, if deep in debt.** Consumers should visit with a local credit counselor to get help with existing debt. A good credit counselor should be able to help a consumer work out a budget and also negotiate with creditors. Once recent study indicates 2/3 of people who take out home equity loans to pay down credit card debt just end up back on the same treadmill, but now with their home placed at risk of foreclosure if financial problems worsen.

The Kansas Consumer Credit Commissioner's office, toll free 1-877-387-8523, is offering a number of free information pamphlets entitled: "Home Equity Loans" Borrowers beware;" "Advanced-Fee Loan Sharks;" and "Knee-Deep in Debt." The pamphlets were prepared by and are also available from the Federal Trade Commission. The FTC can be reached at 202-FTC-HELP or at www.ftc.gov. ▲▲▲

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NON-BANK FINANCING TRANSACTIONS

	Example Lenders	Type of State Regulation	Kansas Regulator
CREDIT CARDS	Visa MasterCard	None unless home state	Exempt unless home state
RETAIL SALES	Ed Marlings Best Buy	Notification & UCCC*	Consumer Credit Commissioner
CONSUMER LOANS	Household American General	Licensing, Notification, & UCCC	Consumer Credit Commissioner
AUTO RETAIL SALES	Auto Dealers GMAC; Ford	Notification & UCCC	Consumer Credit Commissioner
1ST MORTGAGE BROKERS	Nationwide	Registration	Bank Commissioner
2ND MORTGAGES (HOME EQUITY)	First Plus The Money Store	Licensing, Notification, & UCCC	Consumer Credit Commissioner
RENT TO OWN	Rent-A-Center Rent-ALL	Contract Terms	Attorney General
PAY DAY LOANS	QuikCash Mister Money	Licensing, Notification & UCCC	Consumer Credit Commissioner
LOAN BROKERS	(Unregistered)	Enforcement	Securities Commissioner

** transactions subject to the Uniform Consumer Credit Code*

Poverty Inc.

IT'S BOOM TIME FOR BUSINESSES THAT TARGET PEOPLE STRAPPED FOR CASH AND CREDIT.

Fred Wood, a part-time short-order cook from Atlanta, wanted money to pay off bills. His credit wasn't great, but he owned a modest home, thanks to his late father. Wood was flattered when a finance company let him borrow money, until reality set in: He couldn't afford the $39,000 loan, which was based on the value of his house—not on his ability to pay it back. Monthly payments were three-fourths of his income. "Lots of nights I'd wake up and sit on the edge of the bed worrying," says Wood, 58, an eighth-grade dropout whose father feared that someone might take advantage of him. "It just makes me want to cry every time I think about how stupid I was. . . . Daddy, I wish you were here."

These days, as federal and state consumer protections have been eroded in many areas, there are a lot of Fred Woods. And they're being targeted by companies that thrive on their naivete and lack of cash. Throughout the country, these unsuspecting consumers are losing homes, money, and property to aggressive home-mortgage lenders, car financers, rent-to-own companies, and others—a whole system of "fringe banking," to borrow the term coined by Swarthmore College economist John Caskey.

That this is happening in the midst of a national economic boom is just one irony. Another is that a much bigger group of unsuspecting consumers is helping to spur the industry. Many large finance companies and rental-purchase centers that court low-income consumers are publicly traded. The stocks of these companies—some of whose profits are growing faster than Microsoft's—are part of the portfolios of myriad pension funds and mutual-fund companies, including Fidelity, Janus, and Oppenheimer. Your bank and insurance company may also invest capital in these companies—or own them.

Photo by Sonny Williams

Lax laws also boost the poverty industry. For example, the kind of loan Fred Wood obtained is perfectly legal (although he's contesting it). In some states, so are car loans and rental-purchase agreements with annual interest rates of more than 250 percent. Usury laws and disclosure laws don't kick in because lawmakers have defined the costs as fees, not interest.

"Consumer protection is politically incorrect these days. Instead, it's economic Darwinism," says Kathleen Keest, an assistant attorney general in Iowa and an expert on companies that prey on the poor. "Why, for the poor, does every commercial transaction have to be an exercise in self-defense?"

A ripe market

As credit-card delinquencies grow and personal bankruptcies are at record levels, more and more consumers have credit histories that can be classified as spotty or "subprime," as the industry calls them. It's unclear how many consumers this involves. But subprime lending is growing wildly, and in 1997 accounted for 15 percent of home-equity loans, says a Federal Trade Commission report submitted in March to a Senate committee investigating the industry. Further, subprime loans account for 8 percent of new-car financing and 14 percent of used-car loans, according to a recent dealer survey by J.D. Power and Associates.

Abuses are also increasing, especially against the poor, the elderly, and minorities, say public officials and consumer advocates.

Of course, people are usually responsible for their own blemished credit records. As a consequence, sometimes they don't qualify for loans from traditional banks, or they don't try such establishments because they *think* they won't qualify. But other factors are also at work:

- Bank fees rose and many branches left the inner city in the wake of banking deregulation in the 1980s. This has driven the working poor and people on public assistance toward the higher-priced, alternative lenders that remain in their neighborhoods.
- The 1980s real-estate boom created a new class of homeowners—cash-poor and often uneducated, but with lots of equity in their homes. They're perfect targets for companies that loan money based on the value of the house—not on the borrower's income—and then can foreclose when the high payments aren't met.
- Consumer protections have been cut. One federal law, for example, preempts state laws capping interest and fees for first home mortgages.

Three areas in particular have grown

3-11

Unsuspecting Fred Wood may lose his modest home to a loan that consumes three-fourths of his income. It's all perfectly legal.

3-12

in this climate: subprime mortgage lending, car lending, and the rent-to-own industry.

Subprime mortgages

Some of the most successful companies that court consumers with spotty credit are mortgage lenders called subprime lenders. On a scale where A is the best credit rating, "subprime" refers to borrowers with a rating of B, C, or D.

The $125 billion industry is relatively new, the FTC says, and there are no rating standards or solid market statistics. Still, "The potential in subprime lending has never been more clear," says an upbeat pamphlet from a market-research company aimed at these lenders, "partly because there haven't been so many subprime Americans since the Great Depression."

Business has thrived for several reasons. Some lenders aren't dependent solely on depositers for capital but tap the stock market and other sources, freeing them to loan money at high rates and to take bigger risks for bigger profits. Nationscredit Financial Services Corp., a subsidiary of NationsBank Corp.; The Money Store, which is being acquired by First Union Corp.; and First Alliance Mortgage Co. are among these market-funded lenders.

Bankrupt Mary and Wilton Burton needed money to repair their roof. They ended up with a mortgage they couldn't repay.

Some subprime lenders have found a way to free up billions of dollars more: bundling subprime mortgages and selling them as securities to investors and institutions.

But the practices of some lenders have created nightmares for many consumers, advocates say. For example, some lenders engage in so-called asset-based lending—an entirely legal practice in which a high-interest loan is based not on the ability to repay, but on the equity one has in one's home. Monthly payments sometimes amount to nearly all of a consumer's income, making foreclosure almost certain. The National Association of Consumer Advocates, a nonprofit group of attorneys, law professors, and students, calls asset-based lending "equity theft." Targets are plentiful; 40 percent of people with incomes below the poverty level own their own home.

Lenders funded by the stock market can take more risks for bigger gains.

Home-improvement loans are often a foot in the door for subprime lenders. Judith Fowler, a single mother from Philadelphia, says she hired a contractor to install new doors for $4,000 after the contractor said he'd arrange financing. What she wound up with was a 13 percent, $11,000 loan she could barely afford from United Companies Lending, which she'd never heard of. The lender ran up her loan by paying off a gas bill and charging 10 points, her attorney says. Fowler never even got the doors and is suing the company.

Philip Henderson, an attorney for United Companies Lending, says that Fowler herself decided what bills she wanted to pay off. The money for the doors didn't come, he added, because of a title-company error.

Bill Brennan, director of the Atlanta Legal Aid Society's Home Defense Program, says he has encountered numerous lending scams. "My experience is that the subprime mortgage-lending industry is riddled throughout with abusive, predatory-lending practices," he says. But, "for every abuse that we're seeing, there's not a corresponding law that makes the practice illegal."

Mary and Wilton Burton, in their 80s, answered a lender's mailings three years ago when they needed to repair the roof in their home, outside Boston. Through Ford Consumer Finance, then a subsidiary of Ford Motor Co. (and now part of Associates First Capital Corp.), they got about $2,000 in cash for the repairs, but they had to refinance their home. The loan, which included a $3,800 origination fee, increased their monthly mortgage payment by hundreds of dollars to $708—on a fixed monthly income of $850. "They didn't ask me how much my income was," Wilton Burton says.

The application, which the Burtons say a loan officer prepared and they signed, shows their monthly income as $2,061. This includes disability income from the Burtons' children—who didn't co-sign for the loan.

When the bills began arriving, Burton told Ford he couldn't pay. Anxious to keep their home of 25 years, Burton says he let a Ford representative visit weeks later and sign him up for a new loan with a new 5 percent origination fee, raising his debt to $83,000.

At this point, Burton called his nephew, a financial consultant, who had the couple rescind their signatures on the new loan. Ford, meanwhile, moved to foreclose. The Burtons filed for bankruptcy, and their homestead is safe—at least for now.

Photo by Webb Chappell

3-13

Sports heroes pitch for subprime lenders

They're famous. They're beloved. They're sports stars, pitching not balls, but subprime loans, to homeowners everywhere.

What do lenders gain? Former Pittsburgh Steelers quarterback Terry Bradshaw "epitomizes hard work, honesty and integrity, which are the very attributes we hope our customers see in us," Keith W. Hughes, CEO of Associates First Capital Corp., said in a press release. The corporation, including numerous subsidiaries, is the nation's largest home-equity lender.

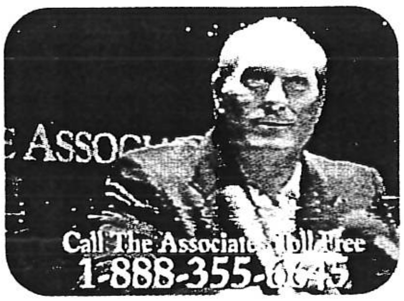
Maybe you've seen these ads:

"Thanks, Terry!" Texas legalized home-equity loans this year, and Associates is trying to woo viewers with a dream-sequence ad featuring Bradshaw. The NFL Hall-of-Famer may have won four Super Bowls, but what he's "thrilled" about now is Associates. Bradshaw daydreams about all those he'll help. "Thanks, Terry!" a neighbor coos.

Bradshaw has only recently learned of questions raised by activists and officials about the corporation's lending practices, says his publicist, David Gershenson, who adds that "Terry feels very strongly about people being ripped off."

All in the family. Miami Dolphins quarterback Dan Marino, and his father and son (also Dans), are featured in ads for FirstPlus Financial. They add a touch of family warmth to the dubious proposal of turning your bills into a secured, long-term debt-consolidation loan. Marino spokesman Ralph Stringer says FirstPlus has a good reputation, although he "can't justify the whole industry."

"Holy cow!" Former Yankee shortstop Phil Rizzuto is with a new team, National Finance Corp., a subprime lender that hopes to overtake Phil's old team, The Money Store. This company, like the others, was willing to preapprove our reporter by phone, but wouldn't mail information so he could comparison-shop. Rizzuto declined to comment.



Dreaming Terry Bradshaw

Family man Dan Marino

The original Phil Rizzuto

Fred Stern, senior vice president of Associates First Capital Corp., says the loan was "prudent."

Nationally, the corporation is being investigated by the Justice Department and the FTC for possible violations of federal lending laws. Stern declined to comment.

As for the Burtons, they live in fear of being evicted from the home they waited 40 years to afford. "We're living on the edge," Wilton Burton says. "For two years now, going on three years, we don't know if we have a home or we don't."

Car loans

Car schemes have always plagued the poor and desperate. "You cannot live without a way to take your children to the doctor, a way to go to the grocery store. You can't live without a car," says Melonie Stewardson, 32, of Crescent Beach, Fla. The single mother of three, who works two jobs, wishes she still had hers.

Stewardson is the victim of a new but widely growing practice called car-title lending or car-title pawn. It's insidious, critics say, because it encourages the poor to pawn a necessity—their vehicle. When they hand over the title, they get some cash and the use of the car. But the vehicle can be repossessed if high monthly payments aren't met. In Georgia, lenders legally charge up to 25 percent per month in interest, or 300 percent per year.

The title-lending industry is expanding nationally. A driving force has been Georgia-based Title Loans of America, whose principals also own title-lending outlets in various states. "The last thing we want to do is repossess the car and sell it," says Alvin Malnik, the beneficiary of a trust that owns half of the company's stock. Malnik's reputation has raised questions. In 1993, the New Jersey Casino Control Commission said he should be denied casino access, citing its 1980 finding that he "associated with persons engaged in organized criminal activities, and that he himself participated in transactions that were clearly illegitimate and illegal." Malnik calls the allegations "entirely baseless," adding that he wasn't convicted of a crime.

Title Loans of America is financed, in part, with credit from well-known institutions. They include a subsidiary of Union Planters Corp., one of the 50 largest banks in the U.S., and Fleet Capital, a subsidiary of Fleet Financial Group.

The industry has become a political force in some states. A lobbyist and former speaker in the Florida House reportedly helped draft that state's 1995 title-lending law, which allows annual interest rates of 264 percent. Since then, the industry, mainly Title Loans of America, has given more than $94,000 to Florida legislators in both parties. For two years, lawmakers have refused to pass reform legislation, even after their own task force recommended repealing the 1995 law.

Stewardson's story began last year at National Title Loans in St. Augustine, Fla., when she wanted money to tag and insure her Ford Probe.

Her contract for a $480 loan had a 264 percent annual rate, with monthly payments of $105. She says she paid a late fee of $100 once, but that the lender repossessed her car anyway, demanding $900 for its return. She says the lender told her that the car was worth far more than she borrowed and

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Cleaned out Cherese Lindsey and her son Stefan Jones say they came home to find their door kicked in and their rental furniture taken, along with many of their own items.

that it wanted the car, not the money.

To get to work, Stewardson walked or rode with friends. Once she commuted on her 11-year-old son's BMX bicycle. Now she borrows a friend's car.

She'll probably never get her own car back. After the repossession, National Title Loans sold the car to a used-car company owned by National Title Loans' corporate secretary, Ron Meardy. In a lawsuit, Stewardson says someone else signed her name on the title. Meardy concedes the car was sold to his used-car lot, but says that at that point he owned the car. He says he doesn't know who signed Stewardson's name.

The rent-to-own business

About 3 million people walk into the nation's 7,500 rent-to-own stores each year and spend $4 billion to take home anything from a washer to a dinette.

These stores appeal especially to low-income consumers who may have the money to make monthly payments on an item—however inflated the total cost—but not enough cash or no credit card to buy it from a retailer.

The most controversial aspect of rent-to-own stores is their pricing, which has led to lawsuits and multimillion-dollar judgments in several states. You'd expect these businesses to charge more than a typical retail store (even though sometimes the same item is rented over and over again). But full-term rent-to-own prices are often two to five times retail prices.

Recently in an Aaron's Rental Purchase store, a microwave oven that sells for $140 at an appliance store cost nearly $360, based on 12 monthly payments of $29.99. An outdated 166-MHz personal computer, worth $1,200 at most, cost more than $3,800, based on 24 monthly payments of $159.99. Last year the U.S. Public Interest Research Group conducted a 17-state survey of rental-purchase stores. The nonprofit consumer group estimated the average effective annual percentage rate on merchandise at 100 percent, with some stores charging as much as 275 percent.

Forty-five states have laws that prevent such rates from being subject to interest laws—businesses don't even have to disclose the annual percentage rate. That's because the industry has convinced states that their rates aren't interest, but fees for services such as free delivery and repairs.

Besides high pricing, some rent-to-own stores engage in other untoward practices. Patrick Sherman says he worked in the industry for 10 years in several states, in jobs including store manager. Some stores he worked in rented used items as new, threatened arrest, and called tardy customers' employers, he says.

Cherese Lindsey, of Brooklyn Park, Minn., says she knew she might lose the couch and love seat she rented from the local Curtis Mathes store after she fell behind on payments. But she says collect[illegible] once visited when only her 14-year-old son was home, and cursed him when he wouldn't let them in. Arriving home on another day, Lindsey says she found her door kicked in. The rental furniture was gone—and so was her own property, including her TV set, VCR, and microwave. "I just started crying," says Lindsey, who is suing the company. Curtis Mathes officials declined comment.

Now, an industry-supported bill before a House committee would prohibit all states from regulating a rent-to-own transaction as a credit, retail, or installment sale. And it would not allow a consumer who successfully sues a merchant to collect costs and attorney's fees. Few private attorneys would likely agree to represent a low-income consumer. And considering the workload of legal-aid attorneys (exacerbated by the 30 percent Congress cut from the Legal Services Corp. budget two years ago), passage of this bill would effectively strip low-income consumers of legal representation against the rent-to-own industry.

Meanwhile, the industry prospers. Renters Choice, a major chain, reported record profits in 1997. Rent Way announced its seventeenth consecutive quarter of record revenues; first-quarter 1998 profits grew 199 percent over first quarter 1997. And Aaron Rents, parent company of Aaron's Rental Purchase, announced its twenty-fifth consecutive quarter of record earnings.

A solution—or a bane?

Consumer advocates say banks can play a key role in preventing abuse of poor consumers. If the poor are brought into the mainstream banking system and helped to establish better credit, the thinking goes, they will rely less on fringe institutions.

A federal program to take effect next year could go a long way toward making this happen—or it could exacerbate problems. The Electronic Funds Transfer program requires that the Treasury Department electronically deposit government-assistance checks instead of mailing them, as is done now. The program is expected to save the government $100 million per year—about 40 cents per check—and inject $100 billion or more per year into financial institutions.

But what happens to the 10 million

3-15

Your money at work? *How to find out*

Publicly traded subprime lenders include Associates First Capital Corp., Credit Acceptance Corp., First Alliance Corp., and United Companies Financial Corp. Public rent-to-own businesses include Alrenco Inc., Aaron Rents Inc., Renters Choice Inc., Rent Way Inc., and Thorn PLC (Rent a Center).

It's difficult to keep track of a mutual fund or pension plan's holdings, which change often. But you can ask fund managers and pension-plan administrators about screening policies; if you don't like what you hear, consider investing elsewhere.

The list at right shows some of the 398 recent institutional investors in Associates First Capital, the nation's largest home-equity lender and a Standard & Poor's 500 company. The Justice Department and the Federal Trade Commission are investigating Associates for possible violations of lending laws.

The American Association of Retired Persons, which recently issued a report alleging abuses by subprime lenders including Associates, wasn't aware that one of its funds invested in the corporation, says Craig Hoogstra, AARP's mutual-funds director. Many funds are managed passively, by mirroring a stock index.

Here is a partial list of Associates First Capital Corp. investors: AARP Capital Growth Fund, Allstate Retirement Plan, American Express Financial Corp., Banc One Corp., Bank of New York Co., Bankers Trust Co. (New York), Bear, Stearns & Co., California State Teachers Retirement System, Chase Manhattan Corp., Citicorp, Colorado Public Employees Retirement Association, Dean Witter (5 funds), Dreyfus (3 funds), Equitable Cos., Fidelity (25 funds), Fleet Financial Group Inc., Founders (2 funds), Hartford Fire Insurance Co., Hewlett-Packard Co., IDS (2 funds), Janus (11 funds), Mainstay (3 funds), Manufacturers Life Insurance Co., Mellon Bank Corp., JP Morgan & Co. Inc., NationsBank Corp., N.Y. State Teachers Retirement Board, Oppenheimer (6 funds), Painewebber Group Inc., PBHG (4 funds), Putnam (4 funds), Scudder (3 funds), Stagecoach (5 funds), Teachers Insurance and Annuity Association, Travelers Group Inc., USAA (8 funds), US Steel & Carnegie Pension Fund, US Trust Company of New York, Vanguard (3 funds), Virginia Retirement System, Wells Fargo & Co., YMCA Retirement Fund.

recipients of Social Security, Supplemental Security, veterans benefits, and other government aid who don't have bank accounts? "What's the point of opening an account for the check if I'm going to withdraw it all?" asks Pablo Lora, 64, of New York City, who has used a local check-casher to pay bills instead. He recently learned that a nearby bank offers free checking that would save him $7 per month. Lora plans to switch. Under the program, others will also have to select a financial institution that their checks can be deposited to, or one will be selected for them.

But questions remain. Will there be sufficient exceptions for hardship cases? What services will banks offer, and what will fees be? Will check-cashers be allowed to receive direct-deposit checks, and will fees be capped?

Recommendations

Consumer advocates including Consumers Union are seeking change in these key areas:

• **State laws.** States should hold home-equity lenders to higher standards concerning borrowers' ability to repay loans. And states that now allow triple-digit annual percentage rates—such as those associated with car-title loans and rental-purchase agreements—should make rates conform to usury limits. State legislatures should also cap check-cashers' fees at not more than 1 percent of the check's value.

• **Banks.** Congress and regulators should ensure that low-cost bank accounts are available to low-income consumers. A first step is a bill that recently passed the House of Representatives, which requires this of banks affiliated with financial-services holding companies.

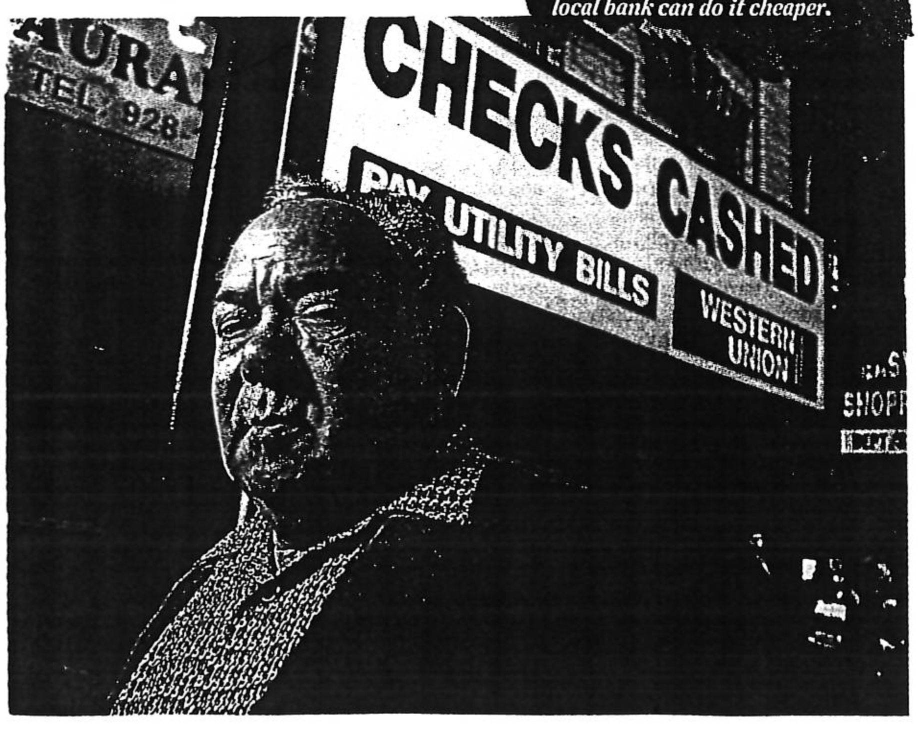
• **Consumers.** Those with spotty credit should still seek out all sources of loans. The nonprofit Neighborhood Assistance Corporation of America (888 302-NACA) has a home-lending program with interest rates at 6 percent to 8 percent and no points or fees, supported by major lenders.

Ask about all charges. Never sign a blank document or one you don't understand, and walk away from a deal if the salesperson promises something you don't see on paper.

• **Investors.** Ask about screening policies for your mutual-fund company and pension plan. If you're dissatisfied, let fund managers know, and consider investing elsewhere.

• **Communities.** Local groups can take action, as did 36 churches that formed The Milwaukee Innercity Congregations Allied for Hope. Five years ago, the group pressured a lender to make more community loans. The bank—and 16 others—agreed. The pledge: $500 million. CR

Misinformed For years, a check-casher charged Pablo Lora to pay his bills. He didn't know that a local bank can do it cheaper.



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