

Approved \_\_\_\_\_  
Date 2/7/89

MINUTES OF THE Senate COMMITTEE ON Federal & State Affairs

The meeting was called to order by \_\_\_\_\_  
Chairperson Senator Edward F. Reilly at

11:10 a.m./~~pm~~ on February 2, 1989 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Mary Galligan, Legislative Research  
Mary Ann Torrence, Revisor of Statutes Office  
Marty Robison, Secretary

Conferees appearing before the committee:

Gene Yockers, Director of Kansas Real Estate Commission  
Karen France, Kansas Association of Realtors  
Ron Hein, Kansas Auctioneers Association

Chairman Reilly called the meeting to order.

Senator Morris moved the minutes of February 1 be approved. Senator Anderson seconded and the motion carried.

A hearing was held for SB 45 which deals with the regulation of real estate brokers and salespersons.

Gene Yockers appeared in support of SB 45 and explained the changes that are requested in each Section (Attachment 1). Committee members expressed concern over the requirement that "ringmen" at real estate auctions have to be licensed and thought "ringmen" ought to be better defined.

Karen France told members that her organization supports SB 45 and that they especially support Section 7, subsections 14, 15, & 16. This would require licensees to disclose to the customer they deal with whether they are representing the buyer or the seller in the real estate transaction (Attachment 2). The disclosure is made orally or in writing before the seller or the seller's agent shows a house to the buyer or his agent. The rest of the bill is essentially cleanup and they would support it all. In response to questions, the committee was told that the Association's members in the rural areas do not want a required written only disclosure up front. The disclosure is still to be written into the contract.

Ron Hein appeared on behalf of the Auctioneers Association and said they support SB 45 (Attachment 3). In response to concern for licensing of "ringmen", Mr. Hein said that if the auctioneers are in the process of procuring a bid, they feel they should be licensed and trained in that area.

Committee members said they thought the language needed to be better defined. If a "spotter" or "ringman" was not actively communicating or engaged in soliciting bids, they should be exempt. Members asked Mr. Hein to check with his Association and report back to the committee.

The meeting was adjourned at 11:47.



Senate Federal and State Affairs Committee  
February 2, 1989  
Senate Bill 45

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the director of the Kansas Real Estate Commission.

Section 1

"Agency agreement" is defined in subsection (b) [line 32].

An amendment in (f)(5) [line 58] is intended to clarify that "ringmen" at real estate auctions have to be licensed.

Sections 2, 3, 4 and 5 - no amendments other than references to amended sections.

Section 6 [line 213]

Deletes the requirement for annual publication of names and addresses of licensees. A computer print-out is generated annually in order to meet the statutory requirement. However, since the agency changed from annual licensing to two-year renewals (with a group of licensees renewing every two months), an annual publication is immediately out-of-date.

Section 7 [line 238]

Subsection (a)(4) prohibits a Kansas licensee from paying a rebate. The purpose of the amendment is to prohibit participation in plans through which the Kansas licensee would pay a referral fee to a broker licensed in another jurisdiction, who in turn pays a rebate to the principals.

Subsection (a)(13) requires that agency agreements be in writing.

The bill further provides that real estate licensees disclose agency relationships. Subsections (a)(14), (15), and (16) set out specific disclosures, and the time that each disclosure is to be made, depending on whether the licensee represents the seller, the buyer, or both the seller and the buyer.

Other amendments relating to agency may be found in (a)(10), (11), (12) and (17) and in subsections (b) and (c).

SF & SA  
2-2-89

Attachment 1

Testimony  
February 2, 1989  
page two

Section 8

[Lines 430 and 431] - amended due to references to amended sections.

We request that the committee amend lines 469 and 470 to clarify the language:

(2) the person ~~who~~ acted as principal or agent in the real estate transaction which is the subject of the claim and is a licensed broker or . . .



KANSAS ASSOCIATION OF REALTORS

Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

TO: SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: FEBRUARY 2, 1989  
SUBJECT: SB 45

On behalf of the Kansas Association of REALTORS®, I appear today to support SB 45.

First, we want to say that we have worked with the Kansas Real Estate Commission for the past four years now in order to educate our membership about the issue of agency relationships and also to develop legislation which is both helpful to the public and workable for our people in the field. We are satisfied that this piece of legislation does both.

One of the major purposes of the Kansas Association of REALTORS® is to promote professionalism within the real estate industry and so, in effect, to better serve the public.

The major proposal in this piece of legislation would require licensees to disclose to the customers they deal with exactly who it is they are representing in the the real estate transaction. If they are representing the seller, which is currently the typical arrangement, when a buyer comes to them and asks their assistance in finding a piece of property with particular characteristics, the real estate agent must tell the prospective buyer up front either orally in writing that:

SFASA  
2-2-89

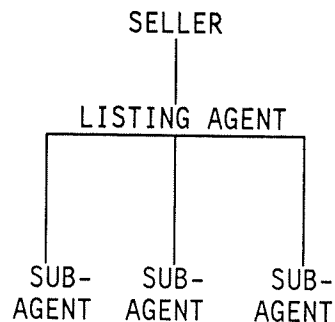
Attachment 2

1. They are acting as the agent of the seller with the duty to represent the seller's interest;
2. They will not be the agent of the prospective buyer; and
3. Any information given to the agent will be disclosed to the seller.

Then, the disclosure must be in writing as a part of any contract, acknowledging that the disclosure has been made.

What this does is merely disclose to homebuyers exactly what is going on in a real estate transaction. The public knows when they go to buy a new car that the salesman in the showroom represents the car dealership and they know they should not tell them exactly how much they are willing to pay for a car when they are in the middle of the bidding process. For some reason, the would-be home purchasers forget this same relationship exists when they go to buy a home. What we are doing is telling them up front what is what.

This legislation also acknowledges a new trend in the real estate industry. That is, the concept of buyer's brokerage. Up until recently the typical real estate transaction meant a real estate licensee agreed to be the agent of the seller through the agreement called a listing. When a house was put on the multi-list system, the agent who showed the house who was not the listing agent was also acting as the agent of the seller and was called a "sub-agent" of the seller.



The new trend in the industry is for real estate agents to sign agency agreements with buyers, whereby all fiduciary responsibilities are owed to the buyer. The real estate agent then, is looking out for the best interests of the buyer, which before this development, had not happened unless the buyer enlisted the assistance of an attorney. Under this kind of agreement the commission could be paid by the buyer, by the seller, or could be split between the buyer and seller. This is a negotiable item of the agency agreement.

We think this is a great new development and may actually serve the public better in the long run. In order to have everyone clear about this type of arrangement, this bill provides that where there is a buyer's broker involved, the agent must disclose to any seller or seller's agent that:

1. The agent will be acting as agent of the buyer with the duty to represent the buyer's interest;
2. The agent will not be the agent of the seller; and
3. Any information given to the agent will be disclosed to the buyer

The disclosure is made orally or in writing before the seller or the seller's agent shows a house to the buyer or buyer's agent. That way everyone knows who is representing whom. The disclosure must also be made in any contract.

There is also a provision in the bill what disclosure needs to be made if a real estate agent chooses to represent both buyer and seller. This is called dual agency and we highly discourage it because we all know it is difficult to serve two masters. However, disclosed dual agency is legal and we have needed guidelines as to how to do it for some time.

The rest of the bill is essentially cleanup work which is necessary in the statute in order to accomodate these new requirements or to clarify ambiguities in the law which have become apparent. We also support these provisions.

In particular, Sections (11) and (12) on page 8 clarify that a licensee cannot directly go to negotiate in any way with a buyer or seller if the licensee knows that the buyer or seller is represented by an agent. Section (13) on the same page states that all agency agreements must be in writing. We have encouraged this all along and, in this age of high litigation levels, it just makes good sense to put it into law, particularly in this new area of buyer's agency.

I believe the balance of the amendments have been discussed. I thank you for the opportunity to speak about this bill. We ask that you pass the bill with a favorable recommendation.



Ronald R. Hein  
William F. Ebert

HEIN AND EBERT, CHTD.  
ATTORNEYS AT LAW  
5845 S.W. 29th, Topeka, Kansas 66614  
913/273-1441

TESTIMONY TO SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
ON BEHALF OF KANSAS AUCTIONEERS ASSOCIATION  
RE: SB 45  
BY RONALD R. HEIN  
FEBRUARY 2, 1989

Mr. Chairman, members of the committee:

My name is Ron Hein and I am legislative counsel for the Kansas Auctioneers Association. We want to go on record as supporting SB 45 as introduced. We will not go into detail in light of other presentations made to you today.

I would be happy to answer any questions if I can.

Respectfully submitted,

HEIN AND EBERT, CHTD.



Ronald R. Hein

RRH/jp  
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SF & SA  
2-2-89  
Attachment 3