

Approved

Thomas F. Walker
Date 3-2-90

MINUTES OF THE House COMMITTEE ON Governmental Organization

The meeting was called to order by Representative Thomas F. Walker at
Chairperson

9:00 a.m./p.m. on Tuesday, February 27, 1990 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Janet Stubbs - Executive Director, Home Builders Association of Kansas
Robert Hogue - Builder/Developer, Topeka
Ron Hageman, Manhattan
Mike Everhart - Overland Park
Veryl Thurmon - Olathe
M.S. Mitchell, Wichita
Gene Yockers - Kansas Real Estate Commission
Karen France - Director of Governmental Affairs, Kansas Association of Realtors

Chairman Walker called the meeting to order. He announced that March 19 had been set for the Governmental Organization dinner given by John Peterson.

HB 2948 - real estate brokers and salespersons

The Chairman, because of a conflict of interest on the bill, turned the meeting over to Vice-Chairman Ramirez, who called on the first conferee, Janet Stubbs, Executive Director, Home Builders Association of Kansas.

Ms. Stubbs stated the builders and developers in the Association give strong support to this issue. It is their belief that they should be able to have an employee who works on their houses or in their businesses conduct business on their behalf. A prospective buyer can obtain more knowledge about new construction from the person who has worked on the house and knows the builder's method of construction practices. The builder is legally liable to the customer for the actions of his employee just as the broker is liable for the actions of the salesperson.

A builder is quite knowledgeable in the area of finance. An attorney prepares his contracts when he sells the product. Requiring education courses through the Kansas Association of Realtors would be of little or no benefit to him.

Regarding the question of earnest money, the Homebuilders would agree to an amendment that would place earnest money in a title company's escrow account. In conclusion, Ms. Stubbs asked for favorable consideration of the bill. (Attachment 1)

Robert Hogue, Topeka builder and developer, spoke next in support of the bill. He provided an attachment for the committee. (Attachment 2)

Mr. Hogue stated that under present Kansas law homebuilders are forced to personally sell their homes, sell 5% of their stock to a staff member so the staff member can sell homes, or let a licensed real estate associate sell homes. A licensed real estate associate is for the most part no better educated about new construction than the public at large. The builder has little control over what is said about his product or the way it is demonstrated to a potential buyer. Many of the things a real estate sales associate was trained to do when selling new homes has become obsolete. This is due to tighter banking criteria, a better lien law and more restrictive title and closing requirements. The present Kansas law is costing Kansas millions of dollars in monopolistic fees that add no value to the consumer.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Governmental Organization,
room 522-S, Statehouse, at 9:00 a.m./p.m. on Tuesday, February 27, 1990

Mr. Hogue stated that he is liable for anything a licensed real estate agent tells a purchaser about his product. He would prefer to have that person on his payroll. Mr. Hogue would support amendments that would define that person as an agent of his company.

Ron Hageman, Manhattan, spoke next in support of HB 2948. He stated that no one is better qualified than the builder to show people around a house and to answer their questions accurately. Many new homes are purchased and sold directly without a realtor involved. People place their trust more in the builder than the realtor. The law needs to be changed to allow an employee to sell the builder's product without having to obtain a license.

Mike Everhart, Overland Park, spoke next as a proponent to the bill. He stated he must hire a broker, who, in turn must hire an agent to sell his product. His employees, who know his product, must not discuss price or in any way become the cause of selling a home without committing an illegal act. He has little or no control over a sub-contractor other than not to rehire. Mr. Everhart said he is responsible for the actions and statements of his employees. He is also responsible for the actions and statements of the broker and agent although he cannot legally control what they say and do. The market reality is that the agents are representing the buyer, even though those same agents are legally representing him. This is the only industry Mr. Everhart knows of where the manufacturing company cannot sell its own product. It must hire an independent contractor and hope that he will represent the person paying the fee. Mr. Everhart sees no problem with escrow monies being placed in a title company escrow account. (Attachment 3)

Veryl Thurmon, Olathe, addressed the bill as a proponent. He has been a developer and is now trying to phase into retirement. He started a large development 6 years ago; 300 acres under development in homesites. He has personally done most of the work. Recently Mr. Thurmon started recruiting new people. He has one gentleman who has been with him 18 years. He knows his people and does not have to educate them. They have knowledge of ground source feed pumps and septic systems - things which many realtors don't know. They don't understand how the soil is prepared so problems don't arise. They want 10% commission to take people through a house. Realtors have no corner on honesty, integrity or intelligence. Mr. Thurmon said he resents the premise that after 45 years he is not capable of hiring people to represent him.

M.S. Mitchell, Wichita, summarized testimony by Stephen Critchfield, who was unable to appear before the committee. (Attachment 4) There is at least one key employee in a company. This may be the secretary, bookkeeper, or superintendent. This person knows about as much of a builder's business as he does. He knows floor plans, price warranties, schedules and so forth. A real estate license does not insure the listing agent will always have as much information. Passage of HB 2948 would allow a secretary or some other employee to answer phone inquiries, quote prices, show homes and fill out prepared contracts. The builder has his attorney prepare a contract form or use one provided by a title company. A real estate license does not guarantee the holder the knowledge to fill out such pre-printed form. Mr. Critchfield's testimony stated that in order to make the consumer feel comfortable in making an earnest deposit to the builder, the check could be held in a title company's trust account.

Gene Yockers, Kansas Real Estate Commission, appeared in opposition to HB 2948. (Attachment 5) Real estate licensees are required to pass an examination and take a 30 hour course prior to licensure. They must take continuing education, work under the supervision of a real estate broker, and must comply with the license act. This bill would allow unlicensed persons to sell real estate. They would not be regulated and the public would not be protected. The potential of license suspension or revocation is a deterrent to wrongdoing if the Page 2 of 4 license is required in order to engage in real estate activities.

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MINUTES OF THE House COMMITTEE ON Governmental Organization,
room 522-S Statehouse, at 9:00 a.m./p.m. on Tuesday, February 27, 1990

Members of the public who suffer monetary damages may make claim for recovery from the real estate recovery revolving fund. The public would not have access to the fund for damages caused by individuals exempt from licensure by the proposed legislation.

Mr. Yockers respectfully requested that this bill be allowed to die in committee. An attachment entitled, "Payments from real estate recovery revolving fund" was distributed along with Mr. Yockers testimony and labeled (Attachment 5a)

Karen France, Director Governmental Affairs, Kansas Association of Realtors, spoke in opposition to HB 2948. She had a clarification to make. Realtors are the only people who are members of her organization. The other people are licensees.

The Association believes it is the inherent right in this country of a person to sell his own property. However, the state recognizes that there are certain rules which need to be followed when a person begins to sell real estate on behalf of another individual. Ms. France reviewed some of the requirements of the Kansas Real Estate Brokers and Salespersons License Act. It entailed education, background search, and auditing of brokers records. She mentioned the Real Estate Recovery Revolving Fund, which was set up in lieu of making licensees being bonded.

Ms. France ended her testimony by saying that homebuilders can earn their license by taking educational hours and passing a minimum competency exam and then going about the business of selling homes. This is the least they can do to ensure the protection of the people. (Attachment 6)

Ms. France answered several comments. Legal recourse is had when there is a violation by a licensed person. The recovery fund will trigger. Many times a bankruptcy occurs and the home builder is gone. People are not protected from sales pitches and promises about what the surroundings will look like; if there will be sewers, curbs, gutters, streets and so forth.

One of the committee members commented that a builder is in a better position to talk about the property regarding such things as septic tanks and this type thing. Ms. France replied the builder may know but the people he hires may not know or may not have the knowledge of complete real estate terminology. Passing the real estate test would ensure that these people would know about contracts and the inherent meaning of real estate transactions.

The statement was made that it seemed part of the problem or objection of the builders was the cost of doing business with a broker. It was also commented that it would seem the recovery funds needed to be enlarged. Another comment had to do with the buyer not knowing who the realtor is representing. Bonding and some type of trust fund were discussed, and the type of recourse a buyer would have in a bankruptcy by the builder. After several further comments, the Chairman closed the hearing on HB 2948.

Chairman Walker took over the meeting. He thanked the Vice Chairman for his excellent job and directed attention to HB 2829.

HB 2829 - communications from state agencies

Representative Gjerstad recommended HB 2829 favorably for passage.
Representative Weimer gave a second to the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Governmental Organization,
room 522-S Statehouse, at 9:00 a.m./p.m. on Tuesday, February 27, 1990.

HB 2840 - division of services for the blind

Representative McClure moved that HB 2840 be recommended favorably and placed on the consent calendar. Representative Graeber seconded the motion.

Discussion brought up the fact that wording in the bill was unclear to members. There was no consensus on how some of the language should read. Representative McClure withdrew his motion and Representative Graeber withdrew his second.

More discussion ensued. Several suggestions were offered as to language. It was finally decided that floor amendments could be made, if needed.

Representative Ramirez moved the favorable passage of HB 2840. Representative Graeber seconded the motion. The motion carried.

HB 2851 - civil service board

Representative D. Miller moved to table HB 2851. Representative Graeber seconded the motion. The motion carried.

HB 2973 - employment security law

This bill had problems concerning council members. The comment was made that if the bill is not passed, a resolution could possibly be introduced.

Representative D. Miller moved to table the bill until Wednesday, February 28. Representative Graeber seconded the motion. The motion carried.

HB 2617 - human resources; unemployment insurance services; employment and training services

Representative Brown moved to amend the bill by making the hours 8:00 a.m. to 5:00 p.m., with the 4:00 p.m. to 5:00 p.m. hour for clerical duties. Representative Gjerstad seconded the motion.

The Chairman stopped the meeting, stating it was already time for the House to be in session. House bill 2617 would be taken up on Wednesday, February 28.

The meeting was adjourned.

HOUSE
GOVERNMENTAL ORGANIZATION COMMITTEE
FEBRUARY 27, 1990

HB 2948

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Home Builders Association of Kansas, a trade association representing approximately 2000 members across the State. We are appearing today to ask your support of HB 2948.

This is an issue about which the builder and developer members of my association give strong support based upon their belief that they should be able to have an employee, who works on their houses or in their business, conduct business on their behalf for which they the builder/developer are responsible.

It is our view that the prospective purchaser can obtain more knowledge about new construction from the person who has worked on the house in some capacity and knows the builders method of construction practices. The employee of the builder will have the confidence of and in the builder and his product.

You will hear arguments from opponents of this legislation that to pass HB 2948 "will cause harm to the public" because a licensed salesperson is not handling the transaction. I remind the Committee that a builder may sell his own property without licensure under current law and often does. If a builder were lacking in integrity as is perceived by the Realtors, then he could take advantage of the buyer under current law without involving another party.

As you listen to the testimony to follow, please keep in mind that anyone the builder/developer employs in his construction company is an "employee" and subject to control by his "employer" in an employee/employer relationship. The builder is legally liable to the customer for the actions of his employee just as the broker is liable for the actions of the salesperson. However, the salesperson is an "independent contractor" of the broker and not subject to the same controls the builder has of his "employee". This was specifically spelled out in SB 176 of 1986.

New construction sales is a different business than is the sale of existing structures. Requiring education, even the 30 hours of the basic real estate license courses, contains little, if any, information beneficial to the builder's employee for the type situation we envision. For example, the builder is quite knowledgeable in the area of finance, He must be to run his own business, acquire construction loans, etc.

A builder of today has an attorney prepare his contracts for use in selling his product and would not benefit from a course in contract

Attachment 1
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law provided by the Real Estate Association. Home Builders Associations, at all levels, provide many courses each year on many subjects to professionalize and train the builders to compete in this very competitive market place. To require education courses through the Kansas Association of Realtors for the purpose we are seeking, would have little, if any, benefit to anyone except KAR.

The builder/developer is a merchant manufacturer. He is asking to be permitted to market his product in the most economical and efficient method possible, just as other merchants do. The opposition will tell you that a purchaser of a new home is investing his "life savings" which will be at risk under this proposal. We agree that consumers work hard to save a down payment for their dream home and that dream will not be jeopardized more by the provisions of HB 2948 than it is today.

I would point out to you that a farmer makes just as large an investment, and sometimes greater, when he purchases a new combine or tractor. However, no one is suggesting that the dealer be required to employ a salesperson who has completed a specific number of hours being trained and tested in the operation of these machines before he can be employed. We trust the implement dealer to employ a person who will represent him by instilling confidence in the customer with the knowledge of the product because it is beneficial for all concerned, not because he is required to pay for educational seminars which may or may not assist in the marketing of the product.

The question has been raised by the opponents regarding the safety of earnest money. Although the builder currently transacts sales and handles earnest money, we would agree to an amendment which places earnest money in a title company's escrow account, if the Committee would be more comfortable with the inclusion of such a provision.

In conclusion, my information advises that Colorado, Oklahoma, and Missouri have such an exemption as proposed in HB 2948. We ask your favorable consideration of this measure for Kansas builders.

In Support of HB 2948

Bob Hogue
Builder/Developer
Topeka, Ks

The Homebuilders Association of Kansas supports HB 2948 because existing law is in direct conflict with free market principles and it artificially increases the cost of building a new home without adding anything of value.

Building homes for a living has become a high risk, highly technical, and very complicated business. Under present Kansas law, home builders are forced to:

- 1) Personally sell their homes.
- 2) Arbitrarily sell 5% of their stock to a staff member so that the staff member can sell the home.
- 3) Let a licensed real estate associate sell the home

Typically, the sole owner of stock in a building company is the President of the company. This person has little if any time and energy left at the end of the day to meet with customers, explain the technical ramifications of this product vs. that, detail and demonstrate the functioning of various design elements, compare methodology to alternatives and all the other things that should be done to properly educate a potential new home purchaser. That leaves only the licensed real estate associate who for the most part is no better educated about new construction than the public at large. A new home today is nothing like yesterday's generic home. A new home salesperson must be specially trained in a wide variety of complicated issues if the consumer is to be well served by the process. Current Kansas law issues a defacto monopoly to real estate firms who have little if any incentive to properly train their personnel to sell new homes. The builder has little if any control over what is said about their product or how it is demonstrated to a potential purchaser.

Not only are the new homes different today from the ones in existence when current Kansas law was written, but the ancillary functions relating to mechanics liens, titles, and banking have also changed. Many of the things a real estate sales associate was trained to do when selling new homes have become obsolete due to tighter banking criteria, a better lien law, and more restrictive title and closing requirements. In short, real estate sales associates have outlived their usefulness as the front-line information dispenser for new home sales and the buying public would be better served by persons who may or may not own 5% of the stock of the company.

Kansas is still blessed with affordable home prices when compared to national averages. However, the present law is needlessly costing Kansans millions of dollars in monopolistic fees that add no value for the consumer. In 1989 in Topeka, considering only those new homes listed by MLS (about 70% of the total new home sales), consumers spent \$1,047,000 on real estate commissions to licensed real estate associates. On a typical \$80,000 new home in Topeka, a potential savings to the consumer of \$2400 to \$4800 would exist if HB 2948 were to pass. There is nothing else this legislature can do to so painlessly reduce the cost of new homes in Kansas.

Opposition to this bill is based on the premise that the public needs to be protected from unscrupulous homebuilders. The fact is that any unscrupulous person can now sell any home they build if they own 5% of the company. I believe that the law was written this way to make it more apparent that the person doing the selling was acting as an agent of the corporation by virtue of their stock ownership. I am liable for anything that a licensed real estate agent tells a purchaser about my product. I would prefer to have that person on my payroll and would support amendments that would define that person as an agent of my company.

HB 2948 would increase competition in the market place, allow builders to better demonstrate their products, result in better educated purchasers, reduce the cost of building a new home, and increase new home affordability. I urge you to pass HB 2948.

Attachment 2
H.O.
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Everhart Homes

7620 Slater, Overland Park, Kansas • (913) 642-7240

2/26/90,

Kansas House Governmental Organization Committee

Thank you for allowing me a chance to speak on behalf of bill #2948. Let me first talk about what is going on out there in the market place. A large number, perhaps even a majority of the real estate agents I have dealt with over the last several years do not represent me even though their fiduciary responsibility is to me as the Seller. That is the way it is, not the way it is supposed to be. I must hire a sub-contractor (the broker), who in turn hires another sub-contractor, (the agent), to sell my product. I must legally, keep my distance in order to maintain that relationship. My employees, who know my product intimately, may not discuss the price of my homes, financing, or become in any way the procuring cause in selling one of my homes without committing an illegal act. I have little or no control over a sub-contractor other than not hiring them again. This doesn't help the house that has been sitting and costing me thousands of dollars. It also isn't realistic since I am forced to hire a realtor to sell my product. Catch 22!

I am responsible for the actions and statements of my employees in my business. The frustrating fact is that I am also responsible for the actions and statements of the broker and agent who are sub-contractors, even though I cannot legally have control over what they say and do and even though they may not truly be representing me. Even with the advent of written acknowledgements stating whom the realtor is working for, I continue to hear the majority of agents I am in contact with confirm that the market reality is that the agents or cooperative agents are representing the buyer even though that same agent is legally representing me. This is the only industry I know of where the manufacturing company cannot sell its own product and must hire an independent contractor and hope that contractor will represent the person paying their fee. I am frustrated and tired of hearing realtors saying they cannot talk about the unique features of my homes because they might offend the other builders. I contracted with them to sell my product. Twice in 10 years I have been able to get a realtor into one of my homes to demonstrate it so they would know what my product was all about, and yet I still have to hire them.

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I have also heard and read many things lately about affordable housing. Most builders and developers in the U.S. spend 1.5 - 3.5% on marketing. In my area I must spend 5 - 7%. I recently listened to Mr. Yockers of the Real Estate commission and Mr. Mayer of the Kansas Realtors association speak about commissions being negotiable. Reality is that you pay 5 - 7% or you don't get the realtor to list your home. I as a builder and developer am forced to pay an average of 2 - 4 % more to market my homes than is typical elsewhere. Frankly, this additional 2 - 4% expense on a home is a large stride away from affordable housing.

Finally, this bill will not adversely affect the consumer. I as a builder, have no problem with escrow monies that I might collect at contract stage from a consumer being placed in a title company escrow account for the protection of all. I am currently responsible for any contract to sell my product even if a realtor wrote it. If someone sues over the transaction, I am the one they sue. The line of responsibility leading directly to the builder is already well established. We simply wish to have some control over one of the most important ingredients in home building: the marketing.

HOUSE
GOVERNMENTAL ORGANIZATION COMMITTEE
FEBRUARY 27, 1990

HB 2948

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE:

My name is Stephen Critchfield, President of Critchfield Inc. & Signature Homes. I am writing in support of HB 2948.

My company is an eight year old firm that develops, builds, and markets new homes and new home neighborhoods. In addition, I act as a consultant and sales company for several large and small building operations. I have been involved in this business for over fourteen years, and hold an active brokers license as well as membership in the Wichita Area Board of Realtors and the multiple listing service. I believe this bill will help the states builders and not negatively affect the consumer or the real estate industry.

The builder is ultimately responsible for all representations to the consumer, no matter who makes them on his behalf. Both in my company and in all of the ten or more building companies that I have represented, there is at least one key employee. This secretary, bookkeeper, or superintendent knows as much about the builders business as he does. This person knows floor plans, prices warranties, schedules and the past list of satisfied customers. A real estate license does not insure that the listing agent will always have such information. The passage of this bill will at least allow my secretary and others to answer phone inquiries, quote prices, show homes and fill out prepared contracts. Each builder has either his attorney prepare a contract form or use one provided by a title company. A real estate license does not guarantee the holder the knowledge to fill out such a pre-printed form.

In order that the consumer will feel comfortable in making an earnest deposit to the builder, the check could be held in a title company's trust account. This practice is already widely used by builders and licensed real estate brokers alike. In addition, my contract gives the builder the right to receive the earnest deposit as soon as the purchasers loan is approved or some other contingency is removed. Many custom homebuilders receive the price of the lot as the earnest deposit.

Finally, licensed real estate people who do a good job and provide the builder a quality, affordable service will still have a job with a builder. But a builder who chooses to hire unlicensed sales people, or would like to have his secretary or superintendent be able to legally show and sell a home should have that freedom. The same freedom, I might add that the financial institutions and attorneys now enjoy. I contend that the consumer is not being take advantage

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of by either the financial or legal communities, nor will it be by the builders.

This is not an issue of consumerism, it is an issue of having the freedom to better serve the consumer in a difficult market.

House Committee on Governmental Organization
February 27, 1990
House Bill 2948

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am here on behalf of the Kansas Real Estate Commission to testify against House Bill 2948.

1. The purpose of the license act is to protect the public. It is based on the concept that an owner may sell his or her own property. If the owner hires someone else to sell it, that person has to be licensed. Regardless of the number of properties, any salesperson hired by the owner must be licensed.
2. The law provides that a corporation may sell its own property. An employee of the corporation must own at least 5% of the stock of the corporation in order to be exempt from licensure requirements. This again is the "ownership" concept.
3. If a homebuilder is a corporation, the same 5% ownership test applies. If the homebuilder is an individual, the builder may sell his own property. The builder may not employ someone who is not licensed to sell the property for him.
4. Real estate licensees are required to pass an examination and take a 30-hour course prior to licensure. They must take continuing education. They must work under the supervision of a real estate broker. And they must comply with the license act. Licensees are regulated for the protection of the public. This amendment would allow unlicensed individuals to sell real estate. These individuals would not be regulated, and the public would not be protected.
5. The Real Estate Commission examines records of real estate brokers. A primary purpose of examinations is to determine that funds received by brokers in real estate transactions are properly handled. Examiners track funds to be sure that they are properly deposited, that there are no unauthorized or early disbursements, and that funds are not commingled or converted to personal use. The proposed amendments would result in no regulation of employees who would handle the funds of the public.

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6. The Real Estate Commission takes disciplinary action for violations of the license act. Acts which are prohibited by the law are for the protection of the public. The potential of license suspension or revocation is a deterrent to wrongdoing if the license is required in order to engage in real estate activities.
7. Members of the public who suffer monetary damages may make claim for recovery from the real estate recovery revolving fund. The public would not have access to the fund for damages caused by individuals exempt from licensure by the proposed amendments.
8. We are unable to determine the number of persons who would sell or lease real estate under the exemptions and not obtain a real estate license. The fiscal impact on this agency would be the amount of revenue that would be received from those persons who do not obtain or renew real estate licenses and who would maintain real estate licenses under current law.

We respectfully request that this bill be allowed to die in committee.

February 27, 1990

Yockers

Payments from real estate recovery revolving fund:

| <u>Fiscal Year</u> | <u>Number</u> | <u>Amount</u> |
|---------------------------|---------------|---------------|
| 1977 | 2 | \$ 3,278 |
| 1978 | 1 | 1,034 |
| 1979 | 3 | 10,729 |
| 1980 | 2 | 18,186 |
| 1981 | 1 | 10,000 |
| 1982 | 0 | |
| 1983 | 1 | 17,901 |
| 1984 | 2 | 30,000 |
| 1985 | 7 | 60,452 |
| 1986 | 2 | 21,364 |
| 1987 | 0 | |
| 1988 | 1 | 11,693 |
| 1989 | <u>3</u> | <u>30,488</u> |
| | 25 | 215,175 |
| <u>To date in FY-1990</u> | 1 | 15,000 |

Attachment 5a
L.O.
2/27/90



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

TO: THE HOUSE GOVERNMENTAL ORGANIZATION COMMITTEE
FROM: KAREN FRANCE, DIRECTOR GOVERNMENTAL AFFAIRS
DATE: FEBRUARY 27, 1990
SUBJECT: HB 2948

Thank you Mr. Chairman and members of this committee. On behalf of the Kansas Association of REALTORS®, I appear today to oppose House Bill 2948.

Some may think that we oppose the bill merely because we want our members to sell the houses for the homebuilders. Ladies and gentlemen, this issue goes far beyond any desire our members might have to make a few dollars. This issue goes directly to the protection of the public. We ask that you take some time to examine those public policy issues.

We have always recognized, as does our license law, the ability of owners to sell their own property. We believe that is an inherent right in this country to have the ability to sell your own property. However, the state has recognized since 1947, when the first Real Estate Brokers' and Salespersons' License Act was passed, that there are certain rules which need to be followed when a person begins to sell real estate on the behalf of another individual.

The Kansas Real Estate Brokers' and Salespersons' License Act exists for the protection of the public. I would like to take a few minutes to review some

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of the requirements of that law so that you can get a picture of exactly what it is that these employees for the builders want to exempt themselves from.

This license law requires that persons who will be selling real estate, dealing with people's life savings, have proven they have a working knowledge of the real estate laws and procedures of the state. Anyone who seeks a real estate license in this state must have a minimum of 30 hours of pre-license education and must pass an exam which demonstrates at least a minimum competency level of understanding of the real estate transaction.

While no system is perfect, we believe these requirements help to insure that individuals who take on this serious responsibility have some sort of education and understanding to carry the real estate transaction out legally.

It is human nature that people will make mistakes. But when people are dealing with people's life savings and possibly the largest purchase of their lives, ignorance of the law on the part of an employee selling the property, could mean drastic consequences for the innocent buyer.

The Kansas Real Estate Commission has a KBI background search performed on all applicants to make sure they have no criminal convictions or judgments against them which would indicate any history of dishonesty. We believe the public should not be dealing with people selling real estate who have a history of extortion or embezzlement, or larceny.

The buying public probably does not know that such a background search is performed. Perhaps many of you did not know. But I am sure that you, as public policy makers, feel better knowing that someone is looking out for the unknowing public to help insure that people with a proven track record of these kinds of offenses are not put in a position to take advantage of vulnerable people.

Under the license law, the Kansas Real Estate Commission audits the records of brokers to insure that there is no double contracting, to insure that earnest money deposits are deposited on a timely basis, to insure that there are no unlawful withdrawals from the trust accounts. In general, these audits help to insure that people involved in the sale of real estate are dealing with the public's money in a fair and legal manner.

In general, it is the function of the Kansas Real Estate Commission, under the statutory guidelines of the license law, to not only make sure people have demonstrated some sort of competence in the understanding of the real estate transaction, but also to keep a lookout over the licensees to make sure that their methods of business are in the best interest of the public.

Our license law also provides added protection of the public by providing the Real Estate Recovery Revolving Fund. Money from this fund is used to reimburse persons who suffer monetary damages by reason of violations of the license law. This fund comes into play when a person from the public has received final judgment in court against a licensee, and the licensee has no assets to pay the judgment. This typically arises where the licensee has filed bankruptcy.

This Recovery Fund was set up in lieu of making our licensees be bonded. The bonding proposal was made in order to insure the public was protected in the event a licensee defrauded the unwary public and then went bankrupt, which would have left the injured consumers out in the cold. If this bill passes, there is no similar protection for persons who happen to purchase a home from a homebuilder's employee, rather than from one of our licensees. There are no bonding requirements for homebuilders. There is no recovery fund to fall back on, in the event a consumer incurs damages. These consumers are left out in the cold.

It has been pointed out that employees for other types of businesses can sell real estate without a license. Employees of lending institutions can sell property owned by the institutions without a real estate license. However, we would like to point out that lending institutions are regulated and there is someone providing oversight of the practices and procedures to insure that the public's trust is not violated. As we have seen in the Savings and Loan Industry, when that public trust is violated there is recourse against the perpetrators.

Attorneys for corporations can sell property without being licensed real estate agents. However, attorneys are trained in the legal knowledge of the real estate transaction and the inherent duties and responsibilities of acting as an agent for another person. They are also bound by a Code of Ethics which puts their license to practice law at risk, if they do not follow the law.

Ladies and gentlemen, we do not care if the homebuilders sell their own homes. We are not concerned that they be a member of our organization. We do not feel they are forced to utilize the services of one of our members in order to sell their homes.

What we do believe is, that these employees can go and earn their license by taking educational hours and passing a minimum competency exam and then going about their business of selling homes.

We believe this is the least they can do in order to help insure that the buying public, the prospective purchasers who place their trust in them, will have a better chance at dealing with honest, knowledgeable individuals. We believe the public is entitled to this protection. We hope you believe this too.

Thank you for your attention. I will be happy to answer any questions you might have.