

Approved 2-27-90
Date

MINUTES OF THE Senate COMMITTEE ON Federal and State Affairs

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:05 a.m./p.m. on February 26, 1990 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

Mary Torrence, Revisor of Statutes Office
Mary Galligan, Legislative Research
Deanna Willard, Committee Secretary

Conferees appearing before the committee:

David Craig, Amer. Inst. of Real Estate Appraisers
Jim Turner, KS/NE League of Savings Institutions
Ronn Karr, Office of Thrift Supervision
Jim Maag, Ks. Bankers Assoc.
Courtley Jackson, Ks. Appraisers for Certification
Dennis Totman, Nat'l Assoc. of Master Appraisers
Lori Callahan, KaMMCO, requested introduction of a bill to enable
KaMMCO to join other carriers in the state in bidding on the Joint
Underwriting Association. (Attachment 1)

A motion was made by Senator Bond and seconded by Senator Daniels
that the bill be introduced. The motion carried.

Senator Daniels introduced her pages: James Porter, her grandson;
Corey Bogunovich, and Brian Nelson.

Hearing on: SB 324 - Certification of real estate appraisers

David Craig, American Institute of Real Estate Appraisers, discussed
a glossary of appraisal terms. (Attachment 2) He distributed a
proposed substitute for SB 324. (Attachment 3) The language for
requirements for certification have been taken out of the bill;
an appraisal board will pass regulations to meet federal guidelines.
He said that certification is voluntary unless one wishes to do
those appraisals for which the federal government requires state
certified appraisers.

Jim Turner, KS/NE League of Savings Institutions, said that similar
legislation is moving through Nebraska and that there is an emergency
to get this out this year and get mechanism in place and start the
education process. He said this is a federal mandate, that an oversight
group will look over state regulations to determine if they are
approved. States are to draw up a certification bill that creates
a certification board. Grandfathering is specifically disallowed.

Ronn Karr, District Director, of Office of Thrift Supervision, gave
testimony regarding the provisions of the FIRREA. (Attachment 4)

Jim Maag, Kansas Bankers Association, requested favorable consideration
of the substitute for SB 324. (Attachment 5)

Courtley Jackson, Kansas Appraisers for Certification, said they
are a group of ten real estate organizations. They support the
substitute bill and feel it is critical to get this out so they
can start meeting requirements.

Dennis Totman, National Association of Master Appraisers, gave testimony
in "cautious" support of the proposed substitute. (Attachment 6)
He also distributed a handout which dealt with concerns of the Kansas

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 Senate COMMITTEE ON Federal and State Affairs,
room 254-E, Statehouse, at 11:05 a.m./~~pm~~ on February 26, 1990.

Chapter of the National Association of Master Appraisers. (Attachment 7)

A motion was made by Senator Bond and seconded by Senator Morris to introduce the substitute for SB 324. The motion carried.

The Chairman appointed a subcommittee for the substitute for SB 324: Senator Bond, Chairman; Senator Walker, and Senator Yost.

The meeting was adjourned at 12:00 noon.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: 2-26-90

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
JEFF SONNICH	TOPEKA	KNLSI
RONN KARR	TOPEKA	OTS
Jim Irish	Topeka	OTS
Virginia Clegg	Topeka, Ks.	President, Ks ^{AIREA} Chap. 45
DOUGLAS JENNINGS	TOPEKA	SREA.
WM M. DURRELL	TOPEKA	IRWA
Phil Lloyd	Topeka	SREA
Dennis Totman	Arcadia, KS	NAMA
DAVID W CRAIG	TOPEKA Ks	AIREA
Courtly Jackson	Wichita	SREA/Ks App for Cert
Jim Turner	Topeka	KNLSI
Judith Wright	Topeka	KCUZ
Kathy Zupn	Topeka	Ks Bankers Assn.
Chuck Stone	"	"
Jack M. Gleichenhaus	"	APPRAISER
Alan Steppat	Topeka	Pete McGill & Associates
Gene Yockers	Top.	KREC
Jean Duncan	Topeka	KREC
Jean McBride	Topeka	202 2nd St
Cori Callahan	Topeka	KammCO
James Stubbs	"	HBAK
Jim Mearns	"	KBA

KaMMCO
KANSAS MEDICAL MUTUAL INSURANCE COMPANY
AND
KANSAS MEDICAL INSURANCE SERVICES CORPORATION

February 26, 1990

MEMORANDUM OF BILL REQUEST

TO: Senate Federal and State Affairs Committee

FROM: Lori M. Callahan
Legislative Counsel

The Kansas Medical Mutual Insurance Company, KaMMCO, is a Kansas, physician-owned, non-profit professional liability insurance company formed by the Kansas Medical Society. KaMMCO currently insures 400 Kansas doctors and has capitalized and anticipates insuring in the next few months 400 more.

On April 3, 1990, the Kansas Insurance Department will accept bids on the servicing carrier for the Kansas Medical Malpractice Joint Underwriting Association. KaMMCO's enabling legislation was such that KaMMCO could not bid on the JUA. The Kansas Insurance Department and KaMMCO have determined that the attached legislation would change KaMMCO's enabling legislation so that KaMMCO could join other carriers in the state in bidding on the JUA on April 3, 1990.

KaMMCO therefore respectfully requests your consideration for introduction of this legislation.

Senate F&SA
2-26-90
Att. 1

Bill No. _____

An Act authorizing certain insurance companies to contract with and issue policies for plans for the equitable apportionment among insurers of applicants for professional liability insurance; amending K.S.A. 1989 Supp. 40-12a06, and repealing the existing section.

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

Section 1. K.S.A. 1989 Supp. 40-12a06 is hereby amended to read as follows:

(a) Any company organized under the provisions of this act shall be empowered to make contracts of insurance as provided herein and to cede to any insurer or accept from any insurer reinsurance on any portion of any such risk for the following kinds of insurance:

1. ~~(a)~~ Against loss or liability arising out of the performance of professional services rendered or which should have been rendered by an insured.

2. ~~(b)~~ Against loss or liability to persons or property for which the insured may be liable or have assumed liability, including but not limited to liability of any person who is a director or officer of a health care provider arising out of acts performed or which should have been performed by such director or officer.

3. ~~(c)~~ Against loss or liability to persons or property resulting from the ownership, maintenance or use of any ambulance, aircraft or other vehicle used by an insured in connection with rendering professional services.

(b) Any company organized under the provisions of this act shall be empowered to contract with the governing board of any plan created pursuant to K.S.A. 1989 Supp. 40-3413 to issue policies to any applicant for liability insurance under the provisions of any such plan, to service and manage such policies and in all respects to administer and carry out the functions of any plan as the same may be authorized by the contract. Policies may be issued to persons and corporations under the provisions of such contract even though the insured is not a member of the association of health care providers forming the insurance company. No provision of this act or of Article 12 of Chapter 40 regarding the issuance of assessable policies, voting rights of members or the payment of dividends shall apply to policies issued under this subsection.

Section 2. K.S.A. 1989 Supp. 40-12a06 is hereby repealed.

Section 3. This act shall take effect and be in force upon publication in the State Register.

GLOSSARY

FIRREA (Financial Institutions Reform, Recovery, And Enforcement Act) (Saving & Loan Bailout Bill)

Title XI of this act which was signed into law in September of 1989 establishes an **Appraisal Subcommittee** under **FFIEC** to monitor State appraisal certification and licensing systems: monitor appraisal standards and determinations regarding which Federally related transactions will require the use of certified appraisers and which licensed appraisers.

FFIEC (Federal Financial Institutions Examinations Council) Representatives from Comptroller of the Currency, Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision and National Credit Union Administration Board.

Title XI states that "State Certified Appraiser" means any individual who has satisfied the requirements for State certification as a real estate appraiser currently meeting the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation.

Title XI states that not later than July 1, 1991, all appraisals performed in connection with federally related transactions shall be performed only by individuals certified or licensed in accordance with the requirements of this title.

Title XI states that "The Appraisal Subcommittee shall monitor State appraiser certifying and licensing agencies for the purpose of determining whether a State agency's policies, practices, and procedures are consistent with this title."

Appraisal Board An initial 7 member board appointed by the Governor which will by rules and regulations establish the type of educational experience, appraisal experience and equivalent experience that will meet the requirements of the **Appraisal Subcommittee**; establish examination specifications; approve applications for certification and renewal; continuing education requirements; review standards for the development and communication of real estate appraisals; suspend and revoke certifications.

OTS (Office of Thrift Supervision). The agency under the Department of the Treasury which regulates Thrifts. (Formerly the examination staff of the Federal Home Loan Bank Board.)

PROPOSED SUBSTITUTE FOR SENATE BILL NO. 324

By Committee on Federal and State Affairs

AN ACT enacting the state certified real estate appraisers act; providing for certification and regulation of certain real estate appraisers; prohibiting certain acts and providing penalties for violations.

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

Section 1. This act shall be known and may be cited as the state certified real estate appraisers act.

Sec. 2. As used in this act:

(a) "Appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis. A valuation is an estimate of the value of real estate or real property. An analysis is a study of real estate or real property other than estimating value.

(b) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested party in rendering an unbiased analysis, opinion or conclusion relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.

(c) "Appraisal report" means any communication, written or oral, of an appraisal.

(d) "Board" means the real estate appraisal board established pursuant to the provisions of this act.

(e) "Certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state certified real estate appraiser.

When identifying an appraisal or appraisal report as certified, the state certified real estate appraiser must indicate which type of certification is held. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in this act.

(f) "Commission" means the Kansas real estate commission.

(g) "Federal act" means title XI of the financial institutions reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et seq.) and regulations adopted pursuant thereto.

(h) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(i) "Real estate appraisal organization" means any nationally recognized organization of professional appraisers.

(j) "Real property" means one or more defined interests, benefits and rights inherent in the ownership of real estate.

(k) "Specialized services" means those appraisal services which do not fall within the definition of appraisal assignment. Specified services may include valuation work and analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an appraisal assignment and not specialized services.

(l) A "state certified real estate appraiser" means a person who develops and communicates real estate appraisals and who holds a current, valid general or residential certificate issued to such person under the provisions of this act.

Sec. 3. (a) No person, other than a state certified real estate appraiser, shall assume or use the title of state certified real estate appraiser or any title, designation or abbreviation likely to create the impression of certification as a real estate appraiser by this state. A person who is not certified pursuant to this act shall not describe or refer to any appraisal or other evaluation of real estate located in this state as a state certified appraisal.

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(b) The provisions of this act requiring certification or the issuance of a certificate of authorization to engage in the practice of real estate appraisal shall not be construed to prevent a person who is not a state certified real estate appraiser from appraising real estate for compensation if state certification is not required pursuant to the federal act.

Sec. 4. (a) There is hereby established the real estate appraisal board which shall be attached to the commission for purposes of administrative functions.

(b) The board shall consist of seven members appointed by the governor. One member shall be a public member and not less than three shall be real estate appraisers. No two real estate appraiser members shall be members of the same real estate appraisal organization. Upon expiration of the terms of the first members appointed to the board and thereafter, no real estate appraiser member of the board shall be eligible to serve unless such member is a state certified real estate appraiser. Not more than two years after the effective date of this act at least two of the appraiser members shall hold a current, valid general appraisal certificate. The public member of the board shall not be engaged in the practice of real estate appraising.

(c) Members of the board shall serve for terms of three years except that, of the members first appointed to the board, two shall serve for terms of two years and two shall serve for terms of one year, as designated by the governor. Upon expiration of a member's term, the member shall continue to hold office until the appointment and qualification of a successor. No person shall serve as a member of the board for more than two consecutive terms.

(d) The governor may remove a member of the board for cause.

(e) The board shall hold meetings and hearings in the city of Topeka or at such times and places as it designates, on call of the chairperson or on request of two or more members.

(f) The members of the board shall select a chairperson from among the members to preside at board meetings.

(g) A quorum of the board shall be four members.

(h) Each member of the board shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto for attendance at any meeting of the board or any subcommittee meeting authorized by the board.

Sec. 5. (a) The board may adopt such rules and regulations as necessary to implement, administer and enforce the provisions of this act.

(b) The board shall:

(1) Establish by rules and regulations, consistent with requirements pursuant to the federal act, the type of education and experience that will meet the requirements of this act with respect to each class of state certified real estate appraiser;

(2) establish, consistent with requirements pursuant to the federal act, examination specifications for each class of state certified real estate appraiser and administer, or designate a testing service to administer, examinations required by this act;

(3) approve or disapprove applications for certification and renewal of certification;

(4) establish by rules and regulations, consistent with requirements pursuant to the federal act, the continuing education requirements for the renewal of certification that will meet the statutory requirements provided in this act with respect to each class of state certified real estate appraisers;

(5) review from time to time the standards for the development and communication of real estate appraisals provided for in this act and to adopt rules and regulations explaining and interpreting the standards;

(6) suspend and revoke certificates pursuant to disciplinary proceedings provided for in section 18; and

(7) perform such other functions and duties as necessary to carry out the provisions of this act.

(c) In adopting rules and regulations pursuant to subsection (b), the board shall determine the education, experience and

examination requirements necessary to provide appropriate assurance that an applicant for certification is competent to perform appraisals within the scope of practice of the certified appraisal work authorized for the classification of certification applied for. In making such determination, the board shall take into consideration the following:

(1) Appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;

(2) understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in gathering, interpreting and processing data in carrying out appraisal disciplines;

(3) understanding of the standards for the development and communication of real estate appraisals as provided in this act;

(4) knowledge of theories of depreciation, cost estimating, methods of capitalization and mathematics of real estate appraisal that are appropriate for the classification of certificate applied for;

(5) knowledge of such other principles and procedures as may be appropriate for the respective classifications;

(6) basic understanding of real estate law;

(7) understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state certified real estate appraiser, as set forth in this act;

(8) the requirements of the federal act; and

(9) such other matters as the board determines appropriate and relevant.

(d) The board may enter into such contracts for the services of attorneys and appraisers as necessary to administer and enforce the provisions of this act.

(e) Actions of the board shall not be reviewable by the commission.

Sec. 6. (a) The commission shall:

(1) Receive applications for certification and renewal of

certification;

(2) issue certificates after the board has approved applications for certification and renewal of certification;

(3) maintain a registry of the names and addresses of persons certified under this act and transmit the registry to the federal financial institutions examination council on an annual basis in accordance with the federal act;

(4) maintain all records submitted to it;

(5) collect fees prescribed pursuant to section 7;

(6) make such expenditures as are necessary to properly carry out the provisions of this act; and

(7) submit the board's annual budget, assisted by the board, to the department of administration.

(b) The commission may assist the board in such other manner as agreed upon by the board and commission.

Sec. 7. (a) The board shall adopt rules and regulations prescribing the fees provided for by this act in amounts necessary to administer and enforce this act, subject to the following:

(1) For application for certification, a fee not to exceed \$50.

(2) For any examination required for certification, a fee in an amount equal to the actual cost of the examination and administration thereof.

(3) For original certification, a fee not to exceed \$150.

(4) For renewal of certification, a fee not to exceed \$100.

(5) For late renewal certification, a late fee not to exceed \$50.

(b) In addition to the fees prescribed above, the board shall collect any registry fee required pursuant to the federal act. Such registry fee shall be transmitted by the commission to the federal financial institutions examination council in accordance with the federal act.

(c) Except as provided in subsection (d), the commission shall collect all fees provided for by this act.

(d) If a testing service has been designated by the board to administer the examination, each applicant shall pay the examination fee to the testing service.

(e) The director of the commission shall remit to the state treasurer at least monthly all moneys, received pursuant to this act. Upon receipt thereof the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit, other than amounts collected for federal registry fees, shall be credited to the state general fund and the balance shall be credited to the appraiser fee fund, which is hereby created in the state treasury. All expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the commission or by a person or persons designated by the director.

Sec. 8. (a) Applications for original certification and renewal of certification shall be made in writing to the commission on forms approved by the board and shall be accompanied by the appropriate fees prescribed pursuant to section 7.

(b) Applications for examination shall be made in writing to the commission on forms approved by the board and shall be accompanied by the appropriate fee prescribed pursuant to section 7. If a testing service has been designated by the board to administer the examination, applications for examination shall be made in writing to the testing service on forms approved by the testing service.

(c) At the time of filing an application for certification, each applicant shall sign a statement agreeing to comply with the standards set forth in this act and stating that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against a state certified real estate appraiser, as set forth in this act.

Sec. 9. (a) There shall be two classes of certification for state certified real estate appraisers:

(1) The state certified residential real estate appraiser classification shall consist of those persons meeting the requirements for certification relating to the appraisal of residential real property of one to four units, agricultural real property and small commercial real property, except appraisals required pursuant to the federal act to be performed by a state certified general real estate appraiser.

(2) The state certified general real estate appraiser classification shall consist of those persons meeting the requirements for certification relating to the appraisal of all types of real property, including appraisals required pursuant to the federal act to be performed by a state certified appraiser.

(b) The application for original certification and examination shall specify the classification of certification being applied for.

Sec. 10. The term of a certificate issued under this act shall be one year. The expiration date of the certificate shall appear on the certificate and no other notice of its expiration need be given to its holder.

Sec. 11. If, in the determination of the board, another state has certification requirements substantially equivalent to those of this state, an applicant who is certified under the laws of the other state may obtain certification under this act upon such terms and conditions as prescribed by the board.

Sec. 12. (a) To obtain a renewal certificate as a state certified real estate appraiser, the holder of a current, valid certificate shall make application and pay the fee prescribed pursuant to section 7 to the commission not earlier than 120 days nor later than 30 days prior to the expiration date of the certificate then held. With the application for renewal, the state certified real estate appraiser shall present evidence in the form prescribed by the board of having completed the continuing education requirements for renewal specified in this act.

(b) If a person fails to renew a certificate as a state

certified real estate appraiser prior to its expiration or within a period of extension granted by the board pursuant to this act, the person may obtain a renewal certificate if the person, not later than three months after expiration of the certification, satisfies all of the requirements for renewal and pays the renewal and late fees prescribed pursuant to section 7. If the applicant satisfies the requirement for renewal during the extended term of certification, the beginning date of the new renewal certificate shall be the day following the expiration of the certificate previously held by the applicant.

Sec. 13. (a) The board may refuse to issue or renew a certificate as a state certified real estate appraiser on any applicable grounds enumerated in section 18.

(b) If the board, after an application for certification or renewal of certification has been filed with the proper form, accompanied by the proper fee, denies an application for certification or renewal of certification, it shall give notice to the applicant setting forth the reasons for such refusal. Such notice and an opportunity to be heard shall be given in accordance with the provisions of the Kansas administrative procedure act, unless the application is denied solely because of the applicant's failure to pass a required examination.

Sec. 14. (a) Each state certified real estate appraiser shall advise the commission of the address of the appraiser's principal place of business and all other addresses at which the appraiser is currently engaged in the business of preparing real property appraisal reports.

(b) When a state certified real estate appraiser changes a place of business, the appraiser shall immediately give written notice of the change to the commission.

(c) Each state certified real estate appraiser shall notify the commission of the appraiser's current residence address. Residence addresses on file with the commission are exempt from disclosure as public records.

Sec. 15. (a) A certificate issued under authority of this

act shall bear the signatures or facsimile signatures of the chairperson of the board and a certificate number assigned by the commission.

(b) Each state certified real estate appraiser shall place the appraiser's certificate number adjacent to or immediately below the title "state certified residential real estate appraiser" or "state certified general real estate appraiser" when used in an appraisal report or in a contract or other instrument used by the certificate holder in conducting real property appraisal activities.

Sec. 16. (a) The term "state certified real estate appraiser" may be used only to refer to individuals who hold the certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation or group, or in such manner that it might be interpreted as referring to a firm, partnership, corporation, group or anyone other than an individual holder of the certificate.

(b) No certificate shall be issued under the provisions of this act to a corporation, partnership, firm or group. This shall not be construed to prevent a state certified real estate appraiser from signing an appraisal report on behalf of a corporation, partnership, firm or group practice.

Sec. 17. (a) As a prerequisite to renewal of certification, a state certified real estate appraiser shall present evidence satisfactory to the board of having met the continuing education requirements.

(b) The basic continuing education requirement for renewal of certification shall be the completion by the applicant, during the immediately preceding term of certification, of the number of hours of classroom instruction required by the board in courses or seminars which have received the approval of the board.

(c) The board shall adopt rules and regulations for implementation of the provisions of this section to the end of assuring that persons renewing their certifications as state

certified real estate appraisers have current knowledge of real property appraisal theory, practices and techniques which will provide a high degree of service and protection to those members of the public with whom they deal in a professional relationship under authority of the certification. The rules and regulations shall prescribe:

(1) Policies and procedures for obtaining board approval of courses of instruction pursuant to subsection (b); and

(2) standards, monitoring methods and systems for recording attendance to be employed by course sponsors as a prerequisite to board approval of courses for credit.

(e) No amendment or repeal of a rule and regulation adopted by the board pursuant to this section shall operate to deprive a state certified real estate appraiser of credit toward renewal of certification for any course of instruction completed by the applicant prior to the amendment or repeal of the rule and regulation which would have qualified for continuing education credit under the rule and regulation as it existed prior to the repeal or amendment.

(f) A certification as a state certified real estate appraiser that has been revoked as a result of disciplinary action by the board shall not be reinstated unless the applicant presents evidence of completion of the continuing education required pursuant to this act. This requirement of evidence of continuing education shall not be imposed upon an applicant for reinstatement who has been required to successfully complete the examination for state certified real estate appraiser as a condition to reinstatement of certification.

Sec. 18. (a) The certificate of a state certified real estate appraiser may be revoked or suspended, or the holder of the certificate may be otherwise disciplined in accordance with the provisions of this act, upon any of the grounds set forth in this section. The board may investigate the actions of a state certified real estate appraiser and may revoke or suspend the rights of a certificate holder or otherwise discipline a state

certified real estate appraiser for any of the following acts or omissions:

- (1) Procuring or attempting to procure a certificate pursuant to this act by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification or any form of fraud or misrepresentation;
- (2) failing to meet the minimum qualifications established by this act;
- (3) paying money, other than provided for by this act, to any member or employee of the board to procure a certificate under this act;
- (4) a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others;
- (5) an act or omission involving dishonesty, fraud or misrepresentation, with the intent to substantially benefit the certificate holder or another person or with the intent to substantially injure another person;
- (6) violation of any of the standards for the development or communication of real estate appraisals as provided in this act;
- (7) failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;
- (8) negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal;
- (9) willfully disregarding or violating any provision of this act or rules and regulations of the board for the administration and enforcement of the provisions of this act;
- (10) accepting an appraisal assignment, described in section 22, when the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis or opinion, or when the fee to be paid is contingent upon the opinion, conclusion or

valuation reached, or upon the consequences resulting from the appraisal assignment;

(11) violating the confidential nature of governmental records to which the appraiser gained access through employment or engagement as an appraiser by a governmental agency; or

(12) entry of a final civil judgment against the person on grounds of fraud, misrepresentation or deceit in the making of any appraisal of real property.

(b) In a disciplinary proceeding based upon a civil judgment, the state certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

(c) All administrative proceedings pursuant to this section shall be conducted in accordance with the Kansas administrative procedure act.

Sec. 19. The costs of any hearing before the board may be assessed against the state certified real estate appraiser or applicant if the order of the board is adverse to the appraiser or applicant. The board may reduce any such assessment to judgment by filing a petition in the district court of Shawnee county. No certification shall be reinstated, renewed or issued if an assessment for costs has not been paid by the holder of or applicant for such certification. Costs shall include:

(a) Statutory fees and mileage of witnesses attending a hearing or for the taking of depositions used as evidence;

(b) reporter's or stenographic charges for the taking of depositions used as evidence or for transcripts of the hearing; and

(c) such other charges authorized to be taxed as costs, as specified in K.S.A. 60-2003 and amendments thereto.

Sec. 20. Any person aggrieved by an order of the board may appeal the order in accordance with the provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 21. A state certified real estate appraiser must comply with the uniform standards of professional appraisal practice

promulgated pursuant to the federal act.

Sec. 22. A client or employer may retain or employ a state certified real estate appraiser to act as a disinterested third party in rendering an unbiased estimate of value or analysis. A client or employer may also retain or employ a state certified real estate appraiser to provide specialized services to facilitate the client's or employer's objectives. In either case, the appraisal and the appraisal report must comply with the provisions of this act.

Sec. 23. (a) A state certified real estate appraiser shall retain for three years originals or true copies of all written contracts engaging the appraiser's services for real property appraisal work and all reports and supporting data assembled and formulated by the appraiser in preparing the reports.

(b) The three-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the submittal of the appraisal to the client unless, within such three-year period, the appraiser is notified that the appraisal or report is involved in litigation, in which event the three-year period for the retention of records shall commence upon the date of the final disposition of such litigation.

(c) All records required to be maintained under the provisions of this act shall be made available by the state certified real estate appraiser for inspection and copying by the board on reasonable notice to the appraiser.

Sec. 24. Not more than two years after the effective date of this act, the board shall hold public hearings to address the question of implementation of mandatory licensing of appraisers. Such hearings shall be held at such reasonable times and places as to provide adequate opportunity for input by all interested parties. At the end of the two-year period, the board will present evidence of the hearings and make a recommendation to the legislature, based upon the results of the hearings, as to whether mandatory licensing should be implemented. If, as a

result of the hearings show evidence of the need for mandatory licensing of appraisers, the board shall draft such legislation and request its introduction by an appropriate committee of the legislature.

Sec. 25. If any provision of this act or its application to any person or in any circumstance is declared by a court of competent jurisdiction to be invalid or unenforceable, provisions constituting the remainder of the act and the application of those provisions to other persons and in other circumstances shall not be affected.

Sec. 26. This act shall take effect and be in force from and after its publication in the Kansas register.

MESSAGE TO THE KANSAS STATE SENATE COMMITTEE
ON FINANCIAL INSTITUTIONS AND INSURANCE

Subject: Requirements placed on individual states pursuant to the provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") regarding the performance of real estate appraisers.

INTRODUCTION

Mr. Chairman and members of the Committee:

On behalf of the Office of Thrift Supervision, Topeka District, I am pleased to have this opportunity to ^{comment}~~testify~~ with regard to the newly-enacted provisions of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (commonly known as "FIRREA"), as the Act pertains to the state certification and licensing of real estate appraisers. My name is Ronn Karr, District Director of the Office of Thrift Supervision, Topeka District ("OTS"); I am accompanied by Jim Irish, Assistant District Appraiser of the OTS, Topeka District.

As we are all too familiar, in the last several years we have experienced an unprecedented number of federal and state thrift failures in the State of Kansas. While a number of significant factors contributed to the demise of these financial institutions, without question, the soundness of real estate loans and investments made by these institutions, and the underlying adequacy of the underwriting or analysis used to support these transactions

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played a significant role. The utilization of real estate appraisals is one of several critical components in the loan underwriting process.

In response to concerns that real estate appraisals used in connection with transactions undertaken by financial institutions are performed in accordance with uniform standards by individuals whose competency has been demonstrated, Congress adopted Title XI of the FIRREA. In promulgating Title XI of the FIRREA, Congress intended to protect federal financial and public policy interests in real estate related transactions which require the services of an appraiser. In order to do so, Congress left with the States the responsibility to develop certification and licensing criteria for real estate appraisers.

The impact of the appraisal requirements mandated under Title XI are far-reaching, as these requirements apply to all financial institutions under the jurisdiction of any of the federal financial institutions regulatory agencies (e.g., the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision). The appraisal requirements found in Title XI of the FIRREA also apply to the Resolution Trust Corporation (RTC), the federal agency charged with the responsibility of disposing of failed thrifts placed under its jurisdiction. Furthermore, the role of the states in undertaking the lead to adopt the policies, practices and procedures necessary

to ensure the appropriate certification and licensing of appraisers is clearly contemplated by FIRREA (see Section 1117 concerning the establishment of state appraiser licensing and certification agencies).

I do not appear before this Committee today to suggest that the U.S. Congress has mandated that the states must adopt policies, practices and procedures for the certification and licensing of appraisers. Indeed, such a position would involve a lengthy and complex discussion of "states rights" and the application of the U.S. Constitution to the issues presently before the Committee. On the contrary, I appear before the Committee to suggest that, regardless of the absence of such a written mandate, the intent of Congress in delegating this specific function to the states is clear. Title XI is drafted assuming that each state will adopt standards and procedures consistent with its purposes. Moreover, the ramifications for a state that fails to accept and fulfill the responsibilities it is charged with under Title XI are considerable.

Pursuant to Title XI, each of the federal financial institutions regulatory agencies (listed above) and the Resolution Trust Corporation must proscribe standards for the performance of real estate appraisals on "federally related transactions" within their respective jurisdictions. These are defined in the Act (Section 1121) as all real estate-related financial transactions requiring the services of an appraiser. Therefore, in order for a

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lending institution regulated by the OTS, FDIC, OCC, FRB or NCUA to enter into a transaction involving almost any form of real estate, it is required to obtain an appraisal from an individual who is recognized by an appropriate state agency as possessing the requisite skills and competence to be considered a certified or licensed appraiser. The potential consequences for lending institutions, and commerce in general, in a state which does not assure the availability of appraisers for federally related transactions are obvious.

PROPOSED RULES OF THE OFFICE OF THRIFT SUPERVISION

As mentioned previously, each federal financial institutions regulatory agency, including the OTS, is charged with the responsibility of promulgating regulations to ensure that the appraisal standards of Title XI of the Act are met. Section 1110 of the FIRREA requires ~~the following~~ minimum standards for the agencies to utilize in promulgating the required regulations:

1. appraisals must be performed in accordance with generally accepted appraisal standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation; and
2. such appraisals be in writing.

On February 15, 1990, the Office of Thrift Supervision published a

notice of proposed rulemaking in the Federal Register (55 Fed. Reg. 5464) to amend its current regulations to include certain additional standards regarding the performance of real estate appraisals. While each federal agency, including the RTC, are statutorily obligated to promulgate regulations, it should be noted that the proposals are virtually uniform in substance.

The OTS proposal (currently in its public commentary period until April 10, 1990) specifically identifies those transactions which require an appraisal, the minimum standards for performing appraisals, and distinguishes between appraisals requiring the services of a state certified appraiser from those requiring a state licensed appraiser.

* A "state certified appraiser" is defined as an individual who has satisfied the requirements for state certification (the criteria of which meet the minimum criteria as issued by the Appraiser Qualification Board of the Appraiser Foundation) and has achieved a passing grade upon an examination administered by the state which is equivalent to the Uniform State Certification Examination.

* A "state licensed appraiser" is defined as an individual who has satisfied the requirements for state licensing where the licensing procedures comply with Title XI of the FIRREA.

On January 18, 1990, the Appraisal subcommittee of the Federal Financial Institution's Examination Council (FFIEC), released guidelines intended to help states establish certification and licensing procedures for appraisers involved in federally related transactions. The guidelines are designed to help states more quickly ~~to~~ implement ^{the} provisions in Title XI, promote the independence of the regulatory function, reduce conflicts of interest, and address concerns about grandfathering and dual licensing requirements for appraisers.

It should also be noted that the Appraisal Subcommittee, in fulfilling its responsibilities for monitoring the certifying and licensing agencies established by the states, may issue findings that a certain state's policies, practices or standards are inconsistent with Title XI of the FIRREA, and thereby effectively revoke the status of all such appraisers in the state.

CONCLUSION

In concluding my brief statement before the Committee, I would like to express that the OTS is firmly committed to the licensing and certification of real estate appraisers. Through the timely adoption of State licensing and certification programs for real

estate appraisers, we can be assured that real estate appraisals are performed in accordance with uniform standards by individuals whose competency has been demonstrated and whose professional conduct is subject to effective supervision.

We appreciate the opportunity to offer for your consideration the views of the Office of Thrift Supervision on this issue. If any members of the Committee have specific questions concerning the issues, Mr. Irish and I will gladly try to respond.

SEE pages 3-5 of Jim Irish's January 23, 1990 memo for:

1. Transactions requiring a state certified or licensed appraiser. (12 C.F.R. §564.3)
2. Specific standards (§564.4)
3. Appraiser independence (§564.5)
4. Professional memberships and appraiser competency (§564.6)
5. Enforcement issues (§564.7)

Refer to the Appraisal Subcommittee's notice of guidelines for additional general guidance.



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 26, 1990

TO: Senate Committee on Federal and State Affairs
RE: Proposed **Substitute for SB 324**

Mr. Chairman and Members of the Committee:

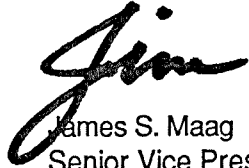
Thank you for the opportunity to discuss this vital issue with the Committee. Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 has given each state until July 1, 1991, to establish state law providing for the certification, licensing, and regulation of real estate appraisers who are involved in appraisals rendered in connection with "federally related" transactions. **Substitute for SB 324** would fulfill that provision of the federal law.

Each of the federal regulatory agencies for banks has now published guidelines on what will be acceptable as appraisals on bank loans involving real estate. Generally, these guidelines require that any such loan in excess of \$15,000 must have the appraisal work done by a state-certified appraiser. This obviously would mean that the vast majority of real estate loans would require a certified, rather than a lesser-qualified, appraiser. The biggest concern of our industry is whether there will be a sufficient supply of qualified appraisers in the more sparsely populated areas of Kansas to handle, in addition to residential loans, agricultural and small business loans involving real estate. This is why we do not want the certification requirements to be so onerous that they discourage people in our industry from becoming qualified. On the other hand, we know that any law which you, the Legislature, enact must be acceptable to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC).

We believe **Substitute for SB 324** contains, on the whole, the best possible provisions we can get for Kansas and still comply with federal law. There is no doubt that the certification process required by this bill will be costly and time-consuming for every bank in Kansas and those costs will ultimately have to be passed on to the bank's customers in some form. Even the federal regulators recognize that there will be a price to pay for these new federal mandates. In the bulletin outlining appraisal standards for member banks, the Federal Reserve Board stated: "On balance, the Board believes that adoption of this proposal would have a *significant adverse economic impact* on a substantial number of small business entities. . . ." [emphasis added]. Nevertheless, the federal law leaves us no alternative but to put some type of certification and regulation process in place quickly at the state level. The sooner the Legislature approves this measure the sooner we can begin the huge task of getting people certified prior to July 1, 1991, when the appraisal provisions become effective.

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Therefore, Mr. Chairman and Committee members, we would request that you give rapid and favorable consideration to **Substitute for SB 342**.

A handwritten signature in black ink that reads "Jim". The signature is written in a cursive, flowing style.

James S. Maag
Senior Vice President

The NAMA position of Senate Bill #324
presented by Dennis Totman, President
Kansas Chapter of the National Association of Master
Appraisers

As you may recall, last year I stood before you in total opposition to this bill. Today, I stand here in cautious support of this bill.

The coalition of appraisal groups have effectively addressed the majority of our concerns. There are, however, some issues still unresolved. Partly because of Federal indecision.

In revision of 324 we have tied a large portion of our requirements to the Federal directives which presently remain under revision. While the uncertainty of Federal Regulation continues in Washington we have forged ahead cautiously in hopes of meeting the Federal deadline. The fact remains, however, that until the Feds determine the actual course of our direction, we may be slightly premature in sealing our fate with this bill through immediate passage. However, amendments to this bill can address the changes as they come from Washington.

The Kansas Chapter of the National Association of Master Appraisers met in Wichita, Saturday, to review this bill and to vote on the support of it. I cannot stand here and tell you that we endorsed it, nor can I tell you that we rejected it. We are concerned about some issues and until they are resolved we will not lend total support to 324.

The concerns that we have are laid out before you so that you can review them on your ~~our~~ own time and make this legislative decision based upon your views toward our perspective. I am not going to urge you to pass this bill immediately any more than I am going to urge rejection. The appraisal groups have done a commendable job this past year to strike several compromises and we are leaning toward passage. However, we defer the final decision to you.

I am not prepared to get into legislative maneuvering as it applies to amendments because I am unfamiliar with that territory. Our main concern is that this bill be right the first time and not to blindly jump on the bandwagon just because of a federal deadline. Especially when an extension of that deadline is available.

Please understand that we largely favor this bill. All I ask is that you review our concerns and make a decision based upon your expertise in this arena. Thank you.

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Senate Bill #324 concerns of the Kansas Chapter
of the National Association of Master Appraisers.

Dear Senator,

Today I come to you with hat in hand. To seek your counsel and guidance as a Kansas legislator, to assist us in entering the regulatory waters that lie ahead for our industry.

I have enumerated the concerns of our association below and hope you will take the time to review those concerns, thereby, leading us by your experience and wisdom.

With respect to Senate Bill #324 the following provisions have met with unanimous resistance by our members. They are:

Section 4. Real Estate Appraisal Board.

Concern: A seven member board with not less than three appraiser members, one public member.

The other three members have not been accounted for.

Specificly: Federal directives dated January 18, 1990 from the Federal Financial Institutions Examination Council-Appraisal Subcommittee, state: "If the agency (appraisal regulating agency) is directed by a board or commission, the members of that board should represent the broad public interest, and the statute, regulation, or order creating that body should not permit a majority of the board to come from or be dominated by any one industry or profession. Moreover, after it's initial establishment, the composition of the board should continue to remain free from domination by any one industry or profession.

Originally, our association proposed a seven member board instead of a five member board to provide for broad representation of the several appraisal groups with no more than one representative from each group sitting on the board at a time. This would prevent stacking the board by any of the several appraisal groups. This Federal directive theoreticly allows barbers, beauticians, bankers, doctors, truck drivers, etc., to sit on the Kansas Appraisal Board. All appraisal associations object to this directive. Our group feels that appraisers should regulate appraisers. However, in our opinion, instead of vehement objection and resistance to this directive, the other appraisal groups have bowed their collective knee to the Feds in order to get a law on the books just to meet the federal deadline. We are not so eager to comply with a directive that allows bankers to be involved with appraisal regulation because we feel it is a conflict of interest to mingle the two industries. The two have different objectives. Bankers to make loans, appraisers to establish a reasonably accurate opinion of value. Therein lies the conflict of interest.

Our group voted on this provision and unanimously opposed this board make-up.

I had a conversation with a Mr. Lawrence of the FFIEC Appraisal Subcommittee (phone #202-357-0181) on February 23rd and asked for his opinion on our original board make up. He stated that particular directive is under revision at the moment and would be clarified the first week of March. He also noted that Congressman Barnard of Georgia (a pioneer of this appraisal legislation) had also objected

to this directive and urged it to be changed.

In addition, I explained our viewpoint and inquired about possible rejection of 324 by the Appraisal Subcommittee due to non-compliance. He agreed that our board make-up would not meet the directive, however, he did not feel that our "law" would be rejected on that provision alone as this was merely a directive, not a regulation or law.

As such, we would like to see Kansas appraisers stand up against this directive and have the courage to continue our original course, rather than passively accept the directive as the definitive word on the matter. We hold to our original appraisal board proposal.

Section 5. (1) Board authority as it applies to experience. Concern: By allowing the board to establish the experience requirements they can subjectively eliminate all newcomers from the industry.

Explanation: Residential appraisers, given the proper education and testing, are prepared to perform residential appraisals. This has long been the procedure of our national association. By requiring experience for the residential appraiser we overlook a fundamental problem. How can experience be gained without actual involvement. Some would argue that a new appraiser can work for lawyers on estate sales, and for individuals to gain the needed experience. This overlooks the rural appraiser who has a shallow market to participate in. In addition, why would anyone hire an appraiser who is not certified? The perception being that a certified appraiser is qualified while a non-certified newcomer is not. This erroneous perception is harmful to the growth of not only the associations but the industry as a whole. How many rural appraisers could make a living for two years appraising estates or for individuals? None that I know of.

Solution: Require two years experience for General Certification only and legislate it in 324. Residential certification should be granted after the proper instruction and testing only. The new appraiser has demonstrated competence by testing and as such should be allowed to participate in the business just as the newly licensed real estate salespersons do. Let the open market determine who they want to appraise for them. That gives the newcomer a chance to make a living as well as gain his experience for general certification should they so desire. We unanimously feel this should be clearly stated in 324.

Section 6. The role of the Kansas Real Estate Commission. Concern: Presently there is a disagreement between our association and the real estate commission over annual payment of certification fees. The reported source of this is Jean Duncan, administrative assistant to the director of the commission, not the Commission per se.

Explanation: For starters, we question and object to this involvement. We have been told that this is Ms. Duncan's position, not that of the Kansas Real Estate Commission. As an assistant, we feel she has no authority to intervene in this matter. In addition, the same Federal directives issued January 18, 1990 indirectly state that there is to be no involvement of the Real Estate Commission as it

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applies to Appraisal Board policy making. Therefore we feel that her input is moot and should be disregarded.

In the same February 23rd conversation with Mr. Lawrence, of the Appraisal Subcommittee, I inquired about the payment of fees to the FFIEC. Mr. Lawrence stated that the money for support of the Appraisal Subcommittee is to be sent no less than annually as they depended on this expenditure for continued operation. I then asked if the money could be sent one year in advance. In other words, if Kansas had a two year certification could we send that second year fee in advance or would we have to hold it for annual payment. Mr. Lawrence replied that it was a state matter to decide but that the Subcommittee would not object to bi-annual payment as it was merely a routine bookkeeping matter. Two year payment in advance would be acceptable and favorable as the Subcommittee would have the second year fee in advance which would increase their coffers.

Which brings me to our next concern;

Section 10. One year Certification.

Concern: Our association is not willing to be stampeded into accepting a one year certification. We are vehemently and unanimously opposed. Federal law does not require it, nor do Federal directives. This is simply a nuisance, nothing more. While it may exist, I know of no industry that requires annual recertification. This appears to be a result of the requirement of the commission to transmit an annual registry or names of certified appraisers to the FFIEC (see Section 6 {3}). Regardless there is no valid basis for an annual certification requirement. All of the appraisal associations prefer bi-annual renewal and all of them are willing to accept anything they can get through the legislature. We are not so blind or eager.

Realtors have a bi-annual renewal, why shouldn't appraisers? Are the two industries so vastly different that there needs to be a one year certification for appraisers? Considering the fact that Realtors routinely work up competitive market analysis to establish values much along the same line that appraisers do? We think not. One year certification is nothing more than harassment of our vocation and 324 should be changed to reflect bi-annual renewal. We are very firm on this matter. Deadline or no.

Finally, our chapter meeting the 24th raised the concern of getting ahead of the Feds. The main concern was the wasting of state monies and time. Several states jumped headlong into certification only to find that they had passed unacceptable legislation and were faced with starting from scratch once again. We are concerned with duplication of this scenario.

Senator, our livelihood is at stake. We have tried to compromise as much as is practical but the aforementioned concerns persist. Had we more time, perhaps these problem would have been resolved by now. Nevertheless, we are willing to rely on your legislative judgement to help us reach our goal of equitable appraisal regulation. Should you feel that we can safely arrive at our destination by amending the preceeding issues, we would urge passage. However, if you feel more time is needed to await final federal direction, we would not object to any delay, whatsoever.

Our association is committed to excellence in appraising and in determining the future course of our industry. Sensible legislation will benefit all in the industry and that is our goal. The ideal would be effective and final Federal leadership to be in place at this moment, however, since that has not happened we place our future in your hands and ask that you make a decision on this legislation based upon your best judgement as a legislator. We will accept your leadership as respectfully as we hope you will review our concerns.

Thank you,

Dennis Totman, Pres.
KS Chapter of NAMA

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