

Approved February 13, 1990  
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at  
Chairperson

9:00 a.m./p.m. on February 8, 1990 in room 531-N of the Capitol.

All members were present except:

Sen. Burke - Excused

Committee staff present:

Mike Heim, Legislative Research  
Theresa Kiernan, Revisor of Statutes  
Emalene Correll, Legislative Research  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Janet Stubbs, Home Builders Association  
Bob Hogue, Robert Hogue Construction, Inc.  
Brad Taylor, Home Builders Association of Greater Kansas City  
Gene Yockers, Kansas Real Estate Commission  
Jim Mayer, Kansas Association of Realtors

The hearing began on SB 577 relating to exemptions from licensure for real estate brokers and salespersons. Janet Stubbs of the Home Builders Association of Kansas testified in support of the bill. (See Attachment I). She also summarized the testimony of Stephen Critchfield of Wichita in support of the bill as he was not able to attend the meeting. (See Attachment II.)

Bob Hogue, Robert Hogue Construction, Inc., followed with further testimony in support of SB 577. (See Attachment III). Sen. Petty asked Mr. Hogue if he would have objections if safeguards were put in the bill to assure that the consumer buying through a contractor's staff would be protected. Mr. Hogue said he could support that if the bill presents that problem.

Brad Taylor, Home Builders Association of Greater Kansas City, testified further in support of the bill. (See Attachment IV). Sen. Steineger asked Mr. Taylor what percentage of home builders belong to his association and if they have standards or rules of conduct to comply with. Mr. Taylor said about 50% of the builders belong, and there are no written rules except the insurance statutes. Ms. Stubbs said there are ethics or grievance committees or a panel to arbitrate in larger local associations, and they encourage warranty insurance on new homes.

Gene Yockers, Kansas Real Estate Commission, testified in opposition to SB 577. (See Attachment V). At Sen. Lee's request he defined the difference between a broker and a licensed real estate salesperson.

Jim Mayer, Kansas Association of Realtors, testified further in opposition to SB 577. (See Attachment VI). Sen. Langworthy had questions about what subjects are covered in the required 30 hour course for real estate salespersons, specifically as to if anything is offered regarding structure of homes. Mr. Mayer answered that structure of homes is not covered in the course, but reiterated that there is a need for public protection provided by licensure. Staff determined that at present a contractor would be required to employ both a broker and a realtor in order to allow his employees to sell for him. Sen. Petty asked if the bill spells out that the home builder is responsible for the actions of his employees when acting as an agent for him. Staff said it is implied but not spelled out clearly.

Sen. Allen began a discussion with Mr. Yockers regarding the need for public protection from the approximately 20% of home builders who do not follow ethical practices. Mr. Yockers concluded that he would have no problem with the bill if it had a provision for a state agency for home builders to answer

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on February, 1990

to. He maintained that his concern is about the protection of the consumer and not about competition.

Sen. Petty asked Ms. Stubbs how closely this bill parallels the Colorado law mentioned in her testimony. Ms. Stubbs said the Colorado law specifies that the agent for the home builder must be a salaried employee. Sen. Petty asked how it has worked in Colorado. Ms. Stubbs said it was under a sunset provision but there were no qualms with the renewal. Staff asked Ms. Stubbs if her organization would be interested in a compromise of limiting the bill to the sale of residential structures. Ms. Stubbs said she would have to talk to her group but felt that this might be a step in the right direction. She added that she would support a provision in the bill that the money go into a title company escrow account as a public protection measure.

See attachment IV 2-15-90 + attachment V 2-15-90

There being no further time, the hearing was continued to February 13.

The minutes of February 6 were approved.

The meeting was adjourned at 10:00 a.m.



SENATE  
LOCAL GOVERNMENT COMMITTEE  
FEBRUARY 8, 1990

SB 577

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Home Builders Association of Kansas, appearing before you today to ask your support for SB 577.

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, able to conduct business on their behalf for which they the builder\developer are responsible.

It is their view that this type individual will be able to answer questions regarding the house on which they have worked, either on actual construction or drawing of plans, or have strong involvement in the business and have the confidence of and in the builder and his product.

Although I have been unable to compile a complete list of other states which have laws in effect such as we are asking you to pass, my counterparts in Oklahoma and Colorado have advised me they operate under such an exemption. I have our National Association attempting to obtain this information for me but do not have it available at this moment.

With me today, are builder and developer members who can furnish first hand information and answer questions.

Senate Local Gov't  
2/6/90  
Attachment I

SENATE  
LOCAL GOVERNMENT COMMITTEE  
FEBRUARY 8, 1990  
SB 577

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE:

My name is Stephen Critchfield, President of Critchfield Inc. & Signature Homes. I am writing in support of SB 577.

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 effect 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 (See attached) 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 lost 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.

Senate Local Gov't  
2/6/90  
Attachment II

The same freedom, I might add that the financial institutions and attorneys now enjoy. I contend that the consumer is not being taken advantage 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.



# BUILDING CONTRACT

THIS CONTRACT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_ hereinafter referred to as "Builder" and \_\_\_\_\_ and \_\_\_\_\_ hereinafter referred to as "Purchaser."

### THE BUILDER AGREES AS FOLLOWS:

1. To provide or cause to be provided for the Purchaser, all of the material, labor and supervision for the erection and completion, in accordance with the plans and specifications which have been signed or initialed by the parties hereto, and by this reference made a part hereof, a single residence hereinafter referred to as Residence on land commonly known as \_\_\_\_\_ in the County of Sedgwick and State of Kansas described as follows:

Block \_\_\_\_\_, Lot \_\_\_\_\_, \_\_\_\_\_ Addition, hereinafter referred to as the "property."  
 Plan # \_\_\_\_\_. To be otherwise known as: \_\_\_\_\_ Elevation # \_\_\_\_\_  
 \_\_\_\_\_ for the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which said sum shall include the cost of said land as said land is to be furnished by the Builder.

2. To commence the fulfillment of the builder's obligations hereunder within fourteen days (14) after mutually satisfactory financing arrangements have been made, utilities provided and permits secured; and to complete the residence with reasonable diligence unless prevented therefrom by weather conditions, strikes, fires or other causes beyond the control of the Builder.

3. To secure a policy, or policies, of insurance to insure the parties hereto, as their respective interests may appear, in said residence from loss by fire and windstorm.

4. To permit during construction the Purchaser, persons financing the cost of said Residence on behalf of the Purchaser and all public authorities to inspect the work and materials provided hereunder by the Builder.

5. To provide a one year limited warranty (see attached limited warranty).

6. To, upon receipt of all sums of money due the Builder on the completion of said Residence, with the exception of any items contained in any work order as hereinafter provided, to deliver to the Purchaser a sworn statement and Waiver of Lien showing all claims for labor and material furnished in erecting said residence have been paid in full, and, that in the event said residence is erected on land of the builder, to convey the same according to the terms of this contract to the Purchaser by Statutory Warranty Deed, excepting therefrom any encumbrances placed on said land for the purpose of financing the Purchaser's obligations hereunder, restrictions and easements of record and agreements and acknowledgements contained in the conveyance filed of record whereby Builder acquired title to property, to furnish the Purchaser with a Policy of Title Insurance evidencing a marketable title to said land to be in the Builder subject to the foregoing. In the event an owner's Title Insurance Policy is furnished, the cost of the commitment to insure and the Title Policy will be paid 50% by Builder and 50% by Purchaser. Builder shall receive any premium discount or prepaid credit if any as provided by Title Co. The Purchaser shall apply for a \_\_\_\_\_ mortgage on the premises covered by this contract, in the amount of \$ \_\_\_\_\_ for a period of \_\_\_\_\_ years, within 5 days from the date hereof. In the event a mortgage commitment in the above amount and term is secured on or before \_\_\_\_\_ or in another amount and/or term acceptable to Purchaser, then this contract shall continue in full force and effect. In the event such mortgage commitment is not secured, then upon notice by either party to the other, this contract shall be void, and all sums paid hereunder by the Purchaser less costs due lender shall be returned to him by the Trust Account Agent.

## PURCHASER AGREES AS FOLLOWS:

1. To pay to the Builder, or on the Builders order, for said Residence the sum of \_\_\_\_\_ (\$ \_\_\_\_\_). In the manner following: Upon signing of this agreement, receipt of which is hereby acknowledged by the Builder a sum of \$ \_\_\_\_\_ as an earnest deposit and upon Purchaser's loan approval an additional sum of \$ \_\_\_\_\_ all to be deposited in Critchfield, Inc. Trust Account and then forwarded to Builder at the time of Purchaser's loan approval. The balance will be paid at closing to include all normal loan costs and prepaid items.
2. That in the event the Purchaser is in default in performing any of the obligations assumed by, or imposed upon, the Purchaser by this contract, the Builder may retain any sum or sums paid by the Purchaser under this contract on account of the contract price herein provided, and upon completion of said Residence sell the same and the said land at private sale and refund to the Purchaser any excess received by the Builder above the contract price contained in this contract, or the Builder may retain said sums above the contract price as compensation for the damages sustained by the Builder as a result of such default. In the latter event this agreement shall be terminated and of no further effect. If the Residence is unfinished at the time of any default by the Purchaser and the completion in whole or in part is necessary in the opinion of the Builder to secure payment to the Builder for work completed prior to default, the Builder may at his option complete said building, or as much of it as is deemed necessary, and all amounts expended therefore shall be further lien on said premises and shall be included in the amount owing by the Purchaser and secured to the Builder under the terms of this agreement.
3. To pay to the Builder upon the completion of said Residence the Builder's cost, plus twenty percent (20%), or such sum as may have been agreed upon by these parties, for any alterations to said Residence, or incidents thereto, which the Purchaser has directed to be made in writing.
4. To provide any work and/or materials not an obligation of the Builder at such time and in such manner as not to delay the progress of the work of the Builder and in default thereof to, upon completion of said Residence, reimburse the Builder for any loss thereby sustained by the Builder.
5. It is further agreed by and between the parties hereto that all taxes and special assessments and homeowners' service fees shall be adjusted and prorated as of closing. Taxes shall be prorated for the calendar year on the basis of taxes levied or for the prior year.
6. That when the building is substantially completed or ready for occupancy but lacks completion of minor details, or should weather or other conditions beyond the control of the Builder prevent the completion of cement work, grading, exterior painting and other similar items, the Builder may make an allowance for such unfinished items and furnish the Purchaser with a work order specifying the materials and labor to be furnished by the Builder to complete said building in accordance with this agreement. The Purchaser shall thereupon make full payment of all sums herein provide less credit for the allowance set forth in said work order and that upon the completion of the items contained in said work order by Builder, to pay to the Builder forthwith the amount of the allowance contained in said work order.
7. That the Builder shall have full and exclusive possession of said Residence and Land until the Builder has received full payment for all sums due the Builder under this agreement, less any credit for an allowance contained in any work order as hereinbefore provided, and until Builder has received final approval of any financing companies or its agencies, whose inspection and approval is required for the financing of said Residence and/or this agreement.
8. That the Builder may exhibit said Residence to prospective customers of the Builder for other building projects without cost therefore, at any time prior to the turning over of the possession thereof to the Purchaser.
9. That upon receipt from the Builder of a notice in writing of the completion of said Residence, or completion thereof except for items as are shown in any work order as hereinbefore provided, to within three days inspect the said Residence for acceptance to within five days from the receipt of such notice deliver to the Builder in writing all reasons for the failure to accept the said Residence as fully completed under the terms of this agreement, and that the failure of the Purchaser to deliver to the Builder any such reasons in writing within the aforesaid time for occupancy of said residence by the Purchaser shall constitute an acceptance thereof as fully completed in accordance with the terms of this agreement.
10. To refrain from selling, transferring, conveying or encumbering said Land without the written consent of the Builder until the Purchaser has fulfilled all of the duties and obligations of the Purchaser under this agreement.
11. That in addition to the security for the payment of money to the Builder under the terms of this agreement, the Builder has a lien on the said Land and all improvements thereto to secure to the Builder the payment of all sums due, or to become due, the Builder under this agreement.



12. Purchaser shall forthwith, upon written request from Builder, indicate in writing to Builder all necessary selections for house completion, and the Purchaser failing to do so upon demand does thereby authorize the Builder to make such necessary selections, and the Purchaser does agree to accept such selections as his own. Materials must be selected from Builder's suppliers and any overages must be paid at time of selection unless otherwise agreed to in writing.

13. Building plans are and shall remain the property of Builder. The home is to be constructed as nearly as practical to the set of Master Plans which are kept in Builder's office at all times. Any change order after approval by all parties is subject to a change order charge in addition to the cost of performing the work requested.

14. Builder reserves the right to make the final decisions regarding placement of the house on the lot, elevations of all improvements, and finish grading required to provide proper drainage. If at, or prior to the time excavation upon the lot described in said contract has been completed the Builder shall find in his opinion that the ground conditions existing upon the lot are such that they will not support a house built upon normal foundations or if construction were complete, the Builder will not be able to warrant this structure against all normal settling, the Builder may at his option void the contract and return all monies paid to him thereon in full and complete settlement of any obligation which he may owe to the Purchaser thereon. Failure to exercise this option shall indicate that in the judgement of the Builder the ground conditions on said lot are satisfactory for the construction of the house described in said contract.

IT IS MUTUALLY AGREED BY THE BUILDER AND THE PURCHASER AS FOLLOWS:

1. It is mutually agreed that this agreement contains the entire agreement between the parties, that no agent, representative, salesman or officer of the parties hereto has authority to make, or has made, any statement, representation of agreement, oral or written, in connection herewith that modifies, adds to, or changes the terms of this agreement, that no modification of this agreement shall be binding upon any of the parties hereto unless the same be executed in writing signed by the party to be charged thereby, that the plans and specifications as well as this agreement shall not be binding upon the Builder unless the same be signed by the Builder, and that this agreement shall not be assigned by the Purchaser without the written consent thereto signed by the Builder.

2. That this agreement shall be binding upon the parties hereto their respective heirs, advisees, successors, executors, administrators and subject to the provisions of the immediately preceding paragraph 1, their assigns.

3. Purchaser shall pay all costs and discounts, if any, relative to obtaining a mortgage on this property.

4. I / We the undersigned hereby acknowledge receipt of copies of the following documents which have been signed by all parties and are incorporated herein:

- Declaration of Covenants, Conditions and Restrictions
- Specifications (Materials of equal or better quality may be substituted by Builder, if in Builder's opinion, availability or substantial cost changes so warrant.)
- Addendum
- One year limited warranty

5. Closing shall occur within \_\_\_\_\_ days from start of construction and not later than \_\_\_\_\_ subject, however, to delays caused by weather, strikes, availability of materials from Builder's suppliers, availability of qualified subcontractors, and other conditions not within the reasonable control of Builder. Time is of the essence.

6. Pursuant to K.S.A. 1989 Supp. 58-3062 (14) (Senate Bill 45), the licensee hereby notifies the undersigned buyer in writing as part of this contract as follows: .

- a. The licensee is or will be acting as agent of the seller with the duty to represent the seller's interest.
- b. The licensee will not be the agent of the undersigned prospective buyer.
- c. Information given to the licensee will be disclosed to the seller.
- d. The undersigned acknowledge that the above disclosure notice was given to the undersigned buyers on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, (orally or in writing) \_\_\_\_\_.

### ADDENDUM

The following items and changes are to be included in the purchase price of the house to be built on Block \_\_\_\_\_, Lot \_\_\_\_\_, \_\_\_\_\_ Addition.

Witness our hands and seals the day and year first above written.

\_\_\_\_\_  
BUILDER

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
PURCHASER

|                             |                             |
|-----------------------------|-----------------------------|
| Listing Broker dba:         | Cooperating Broker dba:     |
| Associates Name & Phone No. | Associates Name & Phone No. |
|                             |                             |



**NEW HOME REAL ESTATE  
PURCHASE AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, hereinafter referred to as "Seller," whether one or more, and \_\_\_\_\_, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed the following described real property, situated in the State of Kansas, to-wit:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 commonly known as: \_\_\_\_\_

2. The Buyer hereby agrees to purchase, and to pay to the Seller, as consideration for the conveyance to him of the above described real property, the sum of \_\_\_\_\_ Dollars in manner following, to-wit: Upon the signing of this agreement, a sum of \$ \_\_\_\_\_ shall be paid as an earnest deposit to be deposited in Critchfield Inc. Trust Account. The Buyer shall apply for a \_\_\_\_\_ % mortgage in the amount of \$ \_\_\_\_\_ for a period of \_\_\_\_\_ years. The balance of the purchase price will be paid at closing to include all normal loan costs and prepaid items.

If Buyer is unable to obtain a mortgage within terms and conditions acceptable, then upon written notice by either party to the other, this contract shall be void and all sums paid by the Buyer less costs due lenders shall be returned to him by Trust Account Agent. If financing is required, Buyer shall make a loan application within 5 working days from acceptance of this agreement.

3. Seller shall furnish the Buyer with a Policy of Title Insurance evidencing a marketable Title to said property subject to easements, general and special assessments and covenants of record. In the event an owner's Title Insurance Policy is furnished, the cost of the commitment to insure and the Title Policy will be paid by the Buyer.

The cost of Title Insurance, when used, shall be paid 50% by Seller and 50% by Buyer. Seller shall receive any pricing discount or prepayment credit if any is provided by Title Co. The Title Evidence shall be sent to Lending agent for examination by the Buyer as promptly and expeditiously as possible and it is understood and agreed that Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. This agreement is subject to the terms, specifications, conditions, and covenants contained in the following documents and Buyer hereby acknowledges receipt of a copy of each of the following:

- NEW HOME SPECIFICATION SHEET
- NEW HOME WARRANTY
- RESTRICTIVE COVENANTS
- HOME OWNERS ASSOCIATION INFORMATION

5. Under no circumstances shall Buyer take physical possession of the property or move any belongings onto the property prior to closing without the prior written consent of Seller.

6. Any alteration, modification, or deviation from plans and specifications requested by Buyer in writing which involves extra cost will be added to the purchase price and Paid in Full by Buyer at closing.

7. Seller shall not be responsible for delays caused by change orders, labor disputes, materials shortages, fire, unusual delays in transportation, weather conditions, unavoidable casualties, or other causes beyond Seller's control.

8. Buyer hereby deposits earnest money with Critchfield, Inc. Trust Acct. in the sum of \$ \_\_\_\_\_, in the form of \_\_\_\_\_, as a guaranty that Buyer shall fulfill the terms and conditions of this agreement. The amount of the earnest money shall be applied at closing as a credit to Buyer against the purchase price. In the event that Buyer fails to fulfill Buyer's obligations hereunder, Seller may, at Seller's option, cancel this agreement and retain the earnest money deposit as liquidated damages and not as a penalty.

9. This agreement contains the entire understanding of the parties and may not be modified except in writing signed by the parties.

10. All rentals, Homeowners Service Fees and interest, if any shall be adjusted and prorated as of date of closing. General taxes shall be prorated for calendar year on the basis of taxes levied or for prior year. Special taxes shall be prorated as of date of closing.

11. Pursuant to K. S. A. 1989 Supp. 58-3062 (14) (Sevak Bill 45), the licensee hereby notifies the undersigned Buyer in writing as part of this contract as follows:

- a. The licensee is or will be acting as agent of the Seller with the duty to represent the Seller's interest.
- b. The licensee will not be the agent of the undersigned prospective buyer.
- c. Information given to the licensee will be disclosed to the letter.
- d. The undersigned acknowledge that the above disclosure notice was given to the undersigned buyers on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, (orally or in writing) \_\_\_\_\_.

12. This transaction shall close on or before \_\_\_\_\_.

WITNESS OUR HANDS AND SEALS the day and year first above written.

|                             |                             |
|-----------------------------|-----------------------------|
| SELLER                      | BUYER                       |
| Listing Broker dba:         | Cooperating Broker dba:     |
| Associates Name & Phone No. | Associates Name & Phone No. |

II-8

In Support of SB 577

Bob Hogue  
Builder/Developer  
Topeka, Ks

The Homebuilders Association of Kansas supports SB 577 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 SB 577 were to pass. There is nothing else this legislature can do to so painlessly reduce the cost of new homes in Kansas.

SB 577 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 SB 577.

Senate Local Gov't  
2/6/90  
Attachment III



**Home Builders  
Association**

of Greater Kansas City

600 EAST 103rd STREET • KANSAS CITY, MO 64131 • PHONE 816-942-8800 • FAX 816-942-8367



S E N A T E  
Local Government Committee  
February 8, 1990

Mr. Chairman and members of the Committee: My name name is Brad Taylor and I am President of Sturgeon & Taylor Company, a development and building company located in Prairie Village, Kansas. I am a Past President of the Home Builders Association of Kansas and currently serve on the Board of Directors and the Executive Committee of the Home Builders Association of Greater Kansas City.

I am here today to testify in favor of Senate Bill 577. First, I would like to point out that there is a basic issue of fairness to be considered. The home building industry is presently one of the only industries in the State where an employee of the company is not allowed to sell the companies product without being licensed. As an employee of a development or building company, an individual should be able to sell their companies product without owning 5% of the stock in the corporation as the law now requires.

Additionally, when operating a business in a metropolitan area encompassing two states, you must consider the economic advantages one state can hold over another. In Missouri, a builders employee can sell their product, while on the other side of the state line the employee must own 5% of the stock in the corporation to perform the same services. This creates an economic disadvantage for those builders doing business in Kansas and competing with their counterparts in Missouri.

*Senate Local Gov't  
2-8-90  
Attachment IV*

Senate Local Government Committee  
February 8, 1990  
Page 2 of 2

Finally, Senate Bill 577 would give builders more direct control of their businesses by allowing their employee to represent them in the sales process. Real Estate agents are mostly independent contractors and do not always effectively represent the interests of the builder in this process.

Thank you for the opportunity to address the Committee on this issue which we feel is of vital concern to the home building industry. Again, we are in favor of Senate Bill 577 and look forward to passage of the Bill.

If you have any questions, I would be happy to answer them.

Senate Local Government Committee  
February 8, 1990  
Senate Bill 577

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 Senate Bill 577.

1. The purpose of the license act is to protect the public. It is based on the concept that I may sell my own property. If I hire someone else to sell it, that person has to be licensed. Regardless of the number of properties I want to sell -- whether 1 or 50 -- any salesperson I hire has to 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 the property. The builder may not employ someone who is not licensed to sell the property.
4. Licensed real estate salespersons 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. They are regulated for the protection of the public. This amendment would allow unlicensed individuals to sell real estate which is owned by someone else. These individuals would not be regulated. The public would not be protected.

The commission respectfully requests that SB-577 be allowed to die in committee.

Senate Local Gov't  
2-6-90  
Attachment V





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

TO: THE SENATE LOCAL GOVERNMENT COMMITTEE  
FROM: JIM MAYER, EXECUTIVE VICE PRESIDENT  
DATE: FEBRUARY 8, 1990  
SUBJECT: SB 577

Thank you Mr. Chairman and members of this committee. I am Jim Mayer, Executive Vice President of the Kansas Association of REALTORS®. I appreciate the opportunity to testify before you today.

On behalf of the Kansas Association of REALTORS®, I appear today to oppose Senate Bill 577.

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.

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.