

Approved March 25, 1991
Date

MINUTES OF THE House COMMITTEE ON Insurance

The meeting was called to order by Representative Turnquist at
Chairperson

7:15 ~~xxx~~ a.m./p.m. on Thursday, March 21, 1991 in room 531 N of the Capitol.

All members were present except:

Representative Hayzlett, Excused
Representative Cornifield, Excused
Representative Wells, Excused

Committee staff present:

Bill Edds, Revisor
Chris Courtwright, Research
Nikki Feuerborn, Secretary

Conferees appearing before the committee:

Karen France, Kansas Association of Realtors
Doris Beard, Wichita Title
Francis Thorne, Tri-County Title & Abstract
Steve York, Coldwell Banker Realty
Joe Kisner, District Attorney, Sedgwick County
Roy Worthington, Kansas Land Title Association
William Malone, Kansas Land Title Association
Lee Kinch, Private Attorney
Bill Sneed, State Farm

Others Attending: See Attached List

Representative Sprague moved for the approval of the minutes for March 20, 1991, meeting.. Representative Ensminger seconded the motion. Motion carried.

Hearing on HB 2427 - Assignment of costs in personal injury protection benefits

Lee Kinch, a private attorney, appeared as a proponent of HB 2417. He stated that this bill would codify a universally accepted equitable principle that suggests that when a first party insurance carrier recovers, through the efforts of its insured, benefits paid to its insured under the Personal Injury Protection provisions of its policy it should have to pay its proportionate share of the expenses incurred in recovering such benefits. (See Attachment 1).

Mr. Kinch reviewed his experience in representing a plaintiff in a trial in which he was required to return to the client's insurance company the trial preparation expenses incurred during subrogation. Even though insurance clients pay a premium for personal injury protection benefits and insurance companies could intervene to represent their own interests, they usually rely upon the insured to collect its lien against the responsible third party and then refuse to pay their portion of the costs incurred to collect the lien.

Bill Sneed, representing State Farm Insurance, testified before the committee. He presented statistics regarding personal injury payment claims, net paid losses, and subrogation in the state of Kansas. He stated that these expenses should not be included in the statute inasmuch as they have no control over such expenses, and thus cannot evaluate the propriety of a particular expert, text, etc. (See Attachment 2).

There were no other conferees appearing before the committee. The hearing on HB 2427 was declared closed.

Hearing on HB 2413 - Regulation of title insurance.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insuranceroom 531 N, Statehouse, at 7:15 ~~am~~ p.m. on Thursday, March 21, 1991

Representative Henry Helgerson gave a legislative history of the bill. In 1989 legislation was passed which prohibited ancillary business arrangements in the real estate and title insurance business. If real estate brokers held ownership in a title company then only 20% of the business of that title company could come from the business supplied by the brokers holding ownership in that company. HB 2413 will repeal the prohibition of ancillary arrangements and further set forth that a broker with ownership in a title company that refers business must disclose that ownership. This is a consumer-oriented bill. The current legislation has put many title companies as well as real estate concerns out of business. The market place dictates we have joint businesses even though some must be regulated. Rep. Helgerson explained to the committee the different sections of the proposed balloon amendment. (See Attachment 3).

Karen France, Director of Governmental Affairs for the Kansas Association of Realtors, appeared as a proponent for HB 2413. She gave a background of the problem and the legislation involved. The backers for the 1989 legislation were title insurance companies who had an interest in maintaining the old or original title companies in the Wichita area, thereby eliminating any new title companies who had been opened in affiliation with real estate companies and were offering better rates. She requested that the new title companies be permitted in the marketplace with reasonable restrictions and without unreasonable restrictions on free enterprise. (See Attachment 4).

Representative Sprague requested that the committee be given copies of the legislative alert which was sent out the week of March 11, 1991.

Doris Beard, owner-broker of Coldwell Banker Dinning-Beard Realtors in Wichita, testified as a proponent of the bill. She re-emphasized that the old-line title companies had pushed through the legislation which has ultimately driven several companies out of business and caused some realtors to divest themselves of stock in such companies. Mortgage fees have gone up due to lack of a competitive market. She stated investors in Wichita Title Associates (one of the new companies) were paid dividends and not paid referral fees. (See Attachment 5).

Francis Thorne, an owner of a realty and a title insurance business, appeared before the committee as a proponent of HB 2413. He started the businesses 15 years ago and has found the biggest advantage to having both companies is the efficient and thorough type of service he is able to offer customers. It is more expedient to have all the information at hand when preparing for closing. In accordance with present legislation, he will be forced to close his title insurance business and become a customer of his long-time competitors. (Attachment 6).

Steve York, representing the Coldwell Banker Real Estate Group, testified in support of HB 2413. Fundamental changes have occurred in the residential real estate marketplace in the past few years. Many of the consumers want the convenience of purchasing services such as real estate brokerage services, mortgage brokerage, title insurance, etc., at one location. As a result, many real estate brokers are expanding their customer services by creating joint ventures, partnerships or affiliating with mortgage companies, title companies, or other real estate service providers. The enactment of the present law will stifle the further development of innovative products and services that customers demand in the state of Kansas. This law (HB 2502) sets a dangerous precedent that will encourage other settlement service providers who strive to protect themselves against competition to seek similar restrictions from the legislature. (Attachment 7).

RESPA (Real Estate Settlement Procedures Act) protects the consumer from unscrupulous tactics and hidden costs without preventing the consumer from taking advantage of the increased convenience and choice that results from purchasing more than one service from a single provider, such as:

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Insurance,
room 531 N Statehouse, at 7:15 ~~xxx~~ a.m./p.m. on Thursday, March 21, 1991

1. Full disclosure by the real estate broker of relationships with any other parties to the transaction.
2. Reasonable anti-tying requirements which prevent a provider from conditioning the supply of one product with the purchase of another without prohibiting legitimate discounts on the purchase of multiple services that offer cost savings to the customer.

John J. Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Officer of the Eighteenth Judicial District, Sedgwick County, Kansas, appeared before the committee as an opponent of HB 2415. He stated that the purpose of this bill was to replace the prohibition on controlled business contained in K.S.A. 1990 Supp. 40-240(b)(14)(f) with a requirement of disclosure of the existence of the controlled business relationship. His opposition is based upon the belief that in a free market economy any form of controlled business will ultimately result in higher prices and reduced service for the consumer. He could easily foresee a situation in which every title company would operate a controlled business entity and soon all of the title insurance would be placed with the title company which offered the highest realtor or banker "dividend" for the business. This would lead to a market wherein almost all title insurance would be controlled and directed primarily for profit. (See Attachment 8).

Roy Worthington, legislative chairman for Kansas Land Title Association, testified as an opponent to HB 2413. Controlled business arrangements are an attempt to circumvent the prohibitions on kickbacks and referral fees set forth in Section 8 of the Federal Real Estate Settlement Procedures Act of 1974 (RESPA) and in the Kansas Unfair Trade Practices Act. The effect of the law placing restrictions on controlled business in the title insurance industry is not to prevent realtors, lenders or other producers of title business from entering the title business, but only to require controlled business title companies to compete on a "level playing field" with other independent title companies. Problems created by controlled business arrangements were listed. (See Attachment 9). Mr. Worthington stated that HB 2413 is not necessary since current Kansas law placed adequate restrictions on controlled business in the title insurance industry.

William G. Malone, licensed abstractor and title insurance agent in Sedgwick and Butler Counties, testified as an opponent to HB 2413. He stated that controlled business arrangements inevitably result in higher prices for title services. The controlled agency is effectively insulated against competition, therefore, there is no incentive to reduce prices. Presentations have been made by controlled business cartels that their title insurance, as published, competitive or lower than other title service providers. Matters that are not explained in these statements are the handling of other costs items such as closing or settlement fees, escrow fees for handling funds, document preparation fees, and notary fees. (Attachment 10).

Other conferees were asked to appear at the continuation of the hearing on HB 2413 which will be set at a later date.

Meeting adjourned at 8:30 p.m.

March 7, 1991

TO: The House Committee on Insurance
FROM: Lee Kinch
RE: House Bill No. 2427

Mr. Chairman and Members of The Committee:

House Bill 2427 would amend K.S.A. 1990 Supp. 40-3113a(e) by codifying a universally-accepted equitable principle that suggests that when a first party insurance carrier recovers, through the efforts of its insured, benefits paid to its insured under the Personal Injury Protection provisions of its policy, it should have to pay its proportionate share of the expenses incurred in recovering such benefits. Our Supreme Court has endorsed this principle in Quesenbury vs. Wichita Coca Cola Bottling Company, 229 Kan. 501, 625 P.2d 1129 (1981), in the context of a property damage claim. For an annotation collecting the cases adopting the equitable principle in question, see 2 ALR 3rd 1441.

In April of 1990, I represented the plaintiff in a five-day trial which arose as a result of injuries sustained in an automobile collision in September of 1987. My client's insurance company paid my client \$10,450.00 in PIP benefits under her automobile insurance policy. It was accordingly subrogated to my client's rights against the responsible third party to the extent of PIP benefits paid under its policy.

The trial culminated in a verdict for the plaintiff and when the judgment was paid in, I mailed a check to my client's insurance carrier representing its subrogation interest less my attorney fee and its proportionate share of the trial preparation expenses which consisted of \$365.00 or 8% of the total trial preparation expenses. The insurance carrier in question responded not by thanking its insured for collecting its subrogation interest but, rather, by demanding that refund its share of the trial preparation expenses, namely, \$365.00.

The insurance company's position is not based solely upon a pervasive parsimony that pervades the insurance industry but is also based upon the legal proposition that while K.S.A. 1990 Supp. 40-3113a(e) provides for attorney fees, it is silent with reference to expenses incurred in collecting its subrogation interest and that it therefore is not compelled to contribute to the costs incurred in collecting its subrogation interest.

Although the insurance company's legal position concerning this issue is, as disclosed by the above-referenced authorities, without merit, I am nevertheless faced with being sued for \$365.00.

House Insurance
March 21, 1991
Attachment 1

Testimony - E.L. Lee Kinch - Page Two
To: The Committee on Insurance
March 7, 1991

The magnitude of this insurance company's parsimony may be further illustrated by recalling that my client pays a premium for the personal injury protection benefit she received and that although the insurance company could have intervened to represent its own interest, it did absolutely nothing and relied upon its insured to collect its lien. It then announces that it should not have to pay a portion of the costs incurred to collect its lien.

While the proposed amendment will not rectify the egregious injustice involved in this case, it will protect future insurance consumers from being victimized in similar cases.

Thank you and should you have questions, I will be happy to respond.

END TESTIMONY

MEMORANDUM

TO: Representative Larry Turnquist
Chairman, House Insurance Committee

FROM: William W. Sneed
State Farm Insurance Companies

DATE: March 7, 1991

RE: House Bill 2427

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I am Legislative Counsel for State Farm Insurance Companies. Thank you for the opportunity to appear concerning H.B. 2427.

It is my understanding that H.B. 2427, an amendment to K.S.A. 40-3113(a), would allow the court to not only fix attorney's fees but reasonable expenses. As I am sure will be explained by the proponents, this particular statute provides for subrogation by the carrier on those PIP benefits paid to the injured insured later recovered by the negligent tortfeasor.

My client has always taken the position that these expenses should not be included in the statute inasmuch as we have no control over such expenses, and thus cannot evaluate the propriety of a particular expert, test, etc.

Below please find some statistics regarding PIP claims, net paid losses, and subrogation in the State of Kansas.

State Insurance
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Attachment 2

YEAR	PAID CLAIMS	NET PAID LOSSES	SUBROGATION RECOVERED
1988	6,291	8,659,701	2,152,920
1989	6,672	10,585,439	2,243,709
1990	6,613	10,530,592	2,444,758

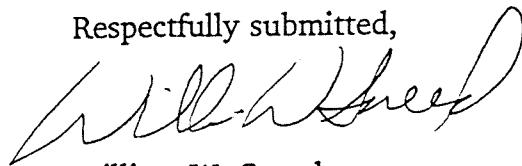
As you can see from the above statistics, the amount recovered under subrogation is substantially less than those losses paid. If H.B. 2427 is enacted, those amounts found under "Subrogation Recovered" would be reduced. To what extent the amounts would be reduced is unknown, but even the proponents of the bill would have to agree they would be reduced.

My client's point in this dissertation is simply that if the amount recoverable under subrogation is reduced, ultimately that will be reflected in rates. Clearly, the more that my client is able to recover in subrogation, the less the total amount of losses paid becomes, thus having an impact on the rates that we quote to our clientele.

However, we recognize that this is a public policy issue, and we therefore we are providing this information to assist the Committee in its evaluation of the bill.

I appreciate the opportunity to appear before the Committee, and if you have any questions or comments, please feel free to contact me.

Respectfully submitted,



William W. Sneed
Legislative Counsel
State Farm Insurance Companies

HOUSE BILL No. 2413

By Committee on Insurance

2-20

8 AN ACT relating to title insurance; requiring certain disclosures and
9 prohibiting certain transactions; repealing K.S.A. 1990 Supp. 40-
10 2404b.

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

13 Section 1. As used in this act, unless the context otherwise
14 requires:

15 (a) "Associate" means any firm, association, organization, part-
16 nership, business trust, corporation or other legal entity organized
17 for profit in which a producer of title business is a director, officer
18 or partner thereof, or owner of a financial interest; the spouse or
19 any relative within the second degree by blood or marriage of a
20 producer of title business who is a natural person; any director,
21 officer or employee of a producer of title business or associate; any
22 legal entity that controls, is controlled by, or is under common
23 control with a producer of title business or associate; and any natural
24 person or legal entity with whom a producer of title business or
25 associate has any agreement, arrangement or understanding or pur-
26 sues any course of conduct, the purpose or effect of which is to
27 evade the provisions of this section.

28 (b) "Financial interest" means any direct or indirect interest, legal
29 or beneficial, where the holder thereof is or will be entitled to 1%
30 or more of the net profits or net worth of the entity in which such
31 interest is held. Notwithstanding the foregoing, an interest of less
32 than 1% or any other type of interest shall constitute a "financial
33 interest" if the primary purpose of the acquisition or retention of
34 that interest is the financial benefit to be obtained as a consequence
35 of that interest from the referral of title business.

36 (c) "Person" means any natural person, partnership, association,
37 cooperative, corporation, trust or other legal entity.

38 (d) "Producer of title business" or "producer" means any person,
39 including any officer, director or owner of 5% or more of the equity
40 or capital or both of any person, engaged in this state in the trade,
41 business, occupation or profession of:

- 42 (1) Buying or selling interests in real property;
- 43 (2) Making loans secured by interests in real property; or

Attachments 3
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Shirley Harrison

Attachment 3

1 (3) Acting as broker, agent, representative or attorney for a per-
2 son who buys or sells any interest in real property or who lends or
3 borrows money with such interest as security.

4 (e) "Refer" means to direct or cause to be directed or to exercise
5 any power or influence over the direction of title insurance business,
6 whether or not the consent or approval of any other person is sought
7 or obtained with respect to the referral.

8 Sec. 2. No title insurer or title agent may accept any title in-
9 surance order or issue a title insurance policy to any person if it
10 knows or has reason to believe that such person was referred to it
11 by any producer of title business or by any associate of such producer,
12 where the producer, the associate, or both, have a financial interest
13 in the title insurer or title agent to which business is referred unless
14 the producer has disclosed to the person so referred the fact that
15 such producer or associate has a financial interest in the title insurer
16 or title agent.

in writing

(b) No producer of title business or associate of such producer shall mandate, coerce or attempt to influence any of its employees or other persons performing services therefor to promote usage of any particular title insurer.

17 Sec. 3. (a) No producer of title business or associate of such
18 producer shall require, directly or indirectly, as a condition to selling
19 or furnishing any other person any loan or extension thereof, credit,
20 sale, property, contract, lease or service, that such other person shall
21 purchase title insurance of any kind through any title agent or title
22 insurer if such producer has a financial interest in such title agent
23 or title insurer.

(c) 24 (b) Any producer of title business or associate of such producer
25 who violates the provisions of this section, or any title insurer or
26 title agent who accepts an order for title insurance knowing that it
27 is in violation of this section shall, in addition to any other action
28 which may be taken by any regulatory authority having jurisdiction,
29 be liable to the purchaser of such title insurance in an amount equal
30 to the premium for the title insurance.

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charged

(d) 31 (c) Nothing in this act shall prohibit any producer of title business
32 or associate of such producer from referring title business to any
33 title insurer or title agent of such producer's or associate's choice,
34 and, if such producer or associate of such producer has any financial
35 interest in the title insurer, from receiving income, profits or div-
36 idends produced or realized from such financial interest, so long as:

in writing

37 (1) Such financial interest is disclosed to the purchaser of the
38 title insurance in accordance with section 2;

39 (2) the payment of income, profits or dividends is not in exchange
40 for the referral of business; and

41 (3) the receipt of income, profits or dividends constitutes only a
42 return on the investment of the producer or associate.

43 Sec. 4. The commissioner of insurance may adopt rules and reg-

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Sec. 4. Any person acting as broker, agent, representative or attorney for a person buying or selling any interest in real property and any person making loans secured by interests in real property shall provide each client, prior to the signing of a contract by such client, with a notice made available by the commissioner of insurance listing all title insurers in that county, and the rates utilized thereby, which have filed with the commissioner pursuant to K.S.A. 40-1111 and amendments thereto. Such notice shall contain a statement in bold lettering that all of the companies listed therein can provide the same title insurance service. The provisions of this section shall not apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

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- 1 ulations necessary to carry out the provisions of this act.
- 2 Sec. [5.] K.S.A. 1990 Supp. 40-2404b is hereby repealed. 6
- 3 Sec. [6.] This act shall take effect and be in force from and after 7
- 4 its publication in the statute book.

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

TO: THE HOUSE INSURANCE COMMITTEE
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: MARCH 7, 1991
SUBJECT: HB 2413

On behalf of the Kansas Association of REALTORS®, I appear today to support HB 2413.

I represented our association as a member of the Title Insurance Study Group which examined this issue in 1988. The Kansas Association of REALTORS® stated then and continues to feel that disclosure of information is the best solution to the problems which the Department of Insurance sought to remedy in the legislation passed 1989. We recognize that, if there was more disclosure of known, factual information in a lot of business transactions, then perhaps we could all save ourselves from a lot of headaches. The problems being addressed here seem to be no different.

In 1989 there were two bills dealing with title insurance HB 2497 and HB 2502. We supported the provisions of HB 2497 which required rate filings of title insurance rates with the Kansas Department of Insurance. We feel that making the rates public information assists in insuring that the buying public can shop around for title insurance if they choose to. They can also shop comparable rates among companies with confidence that they are being treated the same way as the customer before or after them if they are buying title insurance in the same category.

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Attachment 4*

We also supported the provision in HB 2502 which required producers of business to disclose to prospective title insurance purchasers, at the time they refer them to a title agency, if they have a financial interest in the title agency which they are referring. This puts purchasers on notice of any financial connection between the two entities and if it bothers the purchaser that there is a financial connection, then they can choose to go somewhere else.

In conjunction with the rate filing requirement of HB 2497, we felt this disclosure process would prevent the problems which allegedly precipitated the introduction of the legislation.

However, we testified that the provision in paragraph (f) of HB 2502 did nothing to solve the problems and, in fact, would act as an unnecessary restraint of trade. In the Insurance Study Group meetings I attended, there was no evidence presented from which a reasonable person could draw the conclusion that consumers were somehow being ripped off or paying higher prices simply because a producer of business had an interest in a title insurance agency. The Department of Insurance admitted on several occasions that they had been able to handle all complaints under the existing Unfair Trade Practices Act.

The practice of producers of business having a financial interest in the title business was perfectly legal at the time and had been going on for some time. Yet, it seemed that some in the group were bent on trying to make it out to be dangerous to the public. The longer the Study Group meetings went on, the clearer it became that the ones who were painting this distorted picture were title insurance companies who had a stake in maintaining the status quo and blocking out any competition. It was ironic that they relied on "anti-competitive" arguments to justify putting their competition out of business. It was also disheartening that the Department of Insurance had let themselves become a tool in this process.

Many of you have have received correspondence from opponents of this bill. They contain some of the common arguments which have been fabricated by existing title companies in order to maintain their marketshare. I would like to address some of the arguments presented in a position paper presented last year by the Kansas Land Title Association:

1. "The real estate professional has a powerful incentive to refer his client's business to the title company in which he has a financial interest even if other companies may provide better service, policy coverage or rates;"

Any real estate professional who is in the business for the long term can tell you that one of your most valuable assets in the real estate industry is your referral network--one satisfied customer or client telling another person about the good job you did for them. Why then, would anyone who is serious about the real estate business jeopardize their referral base by referring customers or clients to a title insurance company who does not provide good service, has inadequate policy coverage or who charges more than the going rate? Why would a real estate professional jeopardize their career by even associating themselves with a title company that provided shoddy service?

2. "The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest;"

This statement presumes that the interests of the real estate professional are extremely different from those of a customer or client. Real estate contracts typically provide that the seller will provide "clear and marketable title" to the property. In order to carry out the terms of the contract all participants in the transaction have an interest in verifying that a "clear and marketable title" is delivered. In the event it was discovered at any point during the transaction, or even after the transaction closed that there was anything but clear title delivered, all parties to the transaction would be very upset and in all likelihood take it out on the real estate professional

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involved. Why would a real estate professional risk a transaction being completed in a shoddy manner which would cause problems for everyone at a later time? The best interests of the purchaser of the title policy are typically the same interests of the real estate professional.

3. "There is no incentive for the captive company to reduce rates or improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals from owners;

First, as others will attest to after me, the "controlled business" companies which have been effected by this statute offer the same service, if not better for the same rates as the competitors, and in some cases the rates are lower.

Second, any smart business person will look for ways to expand their base--there is no such thing as "guaranteed" business. How can they ever hope to get business beyond their own if they have a poor work product or charge more than the going rate?

Third, as the principles involved in these companies will testify, they do not require their customers or clients to utilize the title company in which they have an interest. They do not require their agents to utilize their title company. Everyone is free to choose the title company which they prefer.

4. "There are clear conflicts of interest present in controlled business arrangements. For example, there may be conflict between the interest of the real estate broker in avoiding a situation where a title problem discovered by his controlled company prevents the closing of the real estate sale (and thus prevents the broker from earning his commission) and the interest of the consumer in discovering potential title problems before the transaction is consummated."

This allegation goes against the common sense, good business practices discussed earlier. If your referral network is one of your most valuable assets, why would anyone who is serious about the real estate business jeopardize their referral base by hiding defects in the title? Defects are

bound to show up sooner or later, and once again most of the anger which arises concerning a transaction gone wrong is directed at the real estate agent involved. Why would anyone deliberately risk this?

Also, if there is any defect in the title and title insurance is issued anyway, the title insurance company who underwrites the policy will stop doing business with the individuals involved in any so called "cover-ups".

5. "All other independent title insurance companies face an almost insurmountable obstacle in competing for the business controlled by these real estate professionals. Indeed, if controlled business arrangements become pervasive, there may be no uncontrolled transactions to compete for;"

The truth is, the persons in the title insurance business who advocated the original legislation were protecting their own turf from entrepreneurial businesses which were created to meet the needs of the market. I ask you, except for these companies which have appeared on the scenes in the last few years, how many "new" title companies have been created in this state? The existing title companies had, in fact, kept a corner on the market by their repeat and referral business from real estate professionals who continued to utilize them. They had no incentive to lower their prices or expand their service because they had a neat, tidy niche carved out for themselves--or so they thought. One of these "controlled" title companies which you will hear from provided faster title commitments, performed preliminary title searches at no cost and as an added service they ordered the termite inspection and surveys. While the other title companies in town may do that now, they did not do it then. This is the stuff America is made of--entrepreneurship--seeing a gap in the market and creating a business to fill that gap.

The flawed presumption of the onerous provisions of the 1989 legislation was that "controlled" companies were inherently bad because they encouraged their owners to send them business so they could do shoddy work at more expensive

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prices. Let's flip that coin around--what is wrong with creating a new company which provides better service at a better price? Who gets hurt by this? Only the companies who do not adjust to meet the new demands of the market.

The bill before you today gives you the opportunity to correct an unintended effect of the legislation passed in 1989. If the legislature intended to completely put "controlled business" companies out of business then the legislature could have banned them outright. However, the legislature did not do this, it put the 20% requirement in the statute instead. The effect of this statute was to put several companies out of business. A representative of one of these companies is not here to testify today, ironically because their title company was recently bought out by one of the title companies who helped to push this legislation through in 1989. Wouldn't it be great if we could all come to the legislature and get legislation passed which would weaken our competition to the extent we could buy them out at a cheap price?

It is ironic that two of the other proponents here today are Coldwell Banker franchises. You see, in approximately 1981 Sears and Roebuck got into the residential real estate franchise business with their company named "Coldwell Banker". Their foray into the real estate business sent shivers up the spines of many of our members. They asked themselves over and over--how can we ever compete with this big giant, Sears and Roebuck? It made them even more worried when Coldwell Banker offered coupons to purchasers of homes which could be applied to major home appliances in Sears stores. They asked again, how can we little companies compete with this? This will be the death of us. We can't let them stay in business. Isn't this somehow illegal? In fact, some lawsuits were filed against Coldwell Banker, attempting to keep them out of the real estate business. All sorts of things were alleged--unfair competition, monopoly. Coldwell Banker won on all counts. Now 10 years later, we have Century 21

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franchises, ERA franchises, Prudential franchises along with the Coldwell Bankers. Yet, the majority of real estate companies are not franchises at all. They are still "independents" who may be small "mom and pops" or big ones. Nonetheless, the Coldwell Banker franchisees have taken their place and fit right in to the real estate industry--the mom and pops stuck it out and found a way to compete by providing the good service they always had.

We hope the title insurance industry can make the same adjustment.

The Kansas Association of REALTORS® supports the amendments offered here today by Representative Helgerson and would be willing to support any other amendments which would help to insure that the consumer is protected. We are not advocating that these title companies operate in the market without any restrictions. We are only advocating that these companies be permitted in the marketplace with reasonable restrictions and without unreasonable restrictions on free enterprise. We would be happy to work with the committee to make any further adjustments you deem necessary.

T. J. H.

As Amended by Senate Committee

As Amended by House Committee

Session of 1989

HOUSE BILL No. 2502

By Committee on Insurance

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AN ACT relating to title insurance; prohibiting transactions thereof under certain circumstances; amending K.S.A. 1988 Supp. 40-2404 and repealing the existing section,

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

Section 1. K.S.A. 1988 Supp. 40-2404 is hereby amended to read as follows: 40-2404. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

(b) misrepresents the dividends or share of the surplus to be received on any insurance policy;

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(d) is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates;

(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof;

(f) is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion or surrender of any insurance policy;

(g) is a misrepresentation for the purpose of effecting a pledg

By H

47 or assignment of or effecting a loan against any insurance policy; or
 48 (h) misrepresents any insurance policy as being shares of stock.
 49 (2) *False information and advertising generally.* Making, pub-
 50 lishing, disseminating, circulating or placing before the public, or
 51 causing, directly or indirectly, to be made, published, disseminated,
 52 circulated or placed before the public, in a newspaper, magazine or
 53 other publication, or in the form of a notice, circular, pamphlet,
 54 letter or poster, or over any radio or television station, or in any
 55 other way, an advertisement, announcement or statement containing
 56 any assertion, misrepresentation or statement with respect to the
 57 business of insurance or with respect to any person in the conduct
 58 of such person's insurance business, which is untrue, deceptive or
 59 misleading.
 60 (3) *Defamation.* Making, publishing, disseminating or circulating,
 61 directly or indirectly, or aiding, abetting or encouraging the making,
 62 publishing, disseminating or circulating of any oral or written state-
 63 ment or any pamphlet, circular, article or literature which is false,
 64 or maliciously critical of or derogatory to the financial condition of
 65 any person, and which is calculated to injure such person.
 66 (4) *Boycott, coercion and intimidation.* Entering into any agree-
 67 ment to commit, or by any concerted action committing, any act of
 68 boycott, coercion or intimidation resulting in or tending to result in
 69 unreasonable restraint of the business of insurance, or by any act of
 70 boycott, coercion or intimidation monopolizing or attempting to mo-
 71 nopolize any part of the business of insurance.
 72 (5) *False statements and entries.* (a) Knowingly filing with any
 73 supervisory or other public official, or knowingly making, publishing,
 74 disseminating, circulating or delivering to any person, or placing
 75 before the public, or knowingly causing directly or indirectly, to be
 76 made, published, disseminated, circulated, delivered to any person,
 77 or placed before the public, any false material statement of fact as
 78 to the financial condition of a person.
 79 (b) Knowingly making any false entry of a material fact in any
 80 book, report or statement of any person or knowingly omitting to
 81 make a true entry of any material fact pertaining to the business of
 82 such person in any book, report or statement of such person.
 83 (6) *Stock operations and advisory board contracts.* Issuing or

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84 delivering or permitting agents, officers or employees to issue or
 85 deliver, agency company stock or other capital stock, or benefit
 86 certificates or shares in any common-law corporation, or securities
 87 or any special or advisory board contracts or other contracts of any
 88 kind promising returns and profits as an inducement to insurance.
 89 Nothing herein shall prohibit the acts permitted by K.S.A. 40-232
 90 and amendments thereto.
 91 (7) *Unfair discrimination.* (a) Making or permitting any unfair
 92 discrimination between individuals of the same class and equal ex-
 93 pectation of life in the rates charged for any contract of life insurance
 94 or life annuity or in the dividends or other benefits payable thereon,
 95 or in any other of the terms and conditions of such contract.
 96 (b) Making or permitting any unfair discrimination between in-
 97 dividuals of the same class and of essentially the same hazard in the
 98 amount of premium, policy fees or rates charged for any policy or
 99 contract of accident or health insurance or in the benefits payable
 100 thereunder, or in any of the terms or conditions of such contract,
 101 or in any other manner whatever.
 102 (c) Refusing to insure, or refusing to continue to insure, or lim-
 103 iting the amount, extent or kind of coverage available to an indi-
 104 vidual, or charging an individual a different rate for the same
 105 coverage solely because of blindness or partial blindness. With re-
 106 spect to all other conditions, including the underlying cause of the
 107 blindness or partial blindness, persons who are blind or partially
 108 blind shall be subject to the same standards of sound actuarial prin-
 109 ciples or actual or reasonably anticipated experience as are sighted
 110 persons. Refusal to insure includes denial by an insurer of disability
 111 insurance coverage on the grounds that the policy defines "disability"
 112 as being presumed in the event that the insured loses such person's
 113 eyesight. However, an insurer may exclude from coverage disabilities
 114 consisting solely of blindness or partial blindness when such condition
 115 existed at the time the policy was issued.
 116 (8) *Rebates.* (a) Except as otherwise expressly provided by law,
 117 knowingly permitting or offering to make or making any contract of
 118 life insurance, life annuity or accident and health insurance, or agree-
 119 ment as to such contract other than as plainly expressed in the
 120 insurance contract issued thereon, or paying or allowing, or giving

121 or offering to pay, allow or give, directly or indirectly, as inducement
 122 to such insurance, or annuity, any rebate of premiums payable on
 123 the contract, or any special favor or advantage in the dividends or
 124 other benefits thereon, or any valuable consideration or inducement
 125 whatever not specified in the contract; or giving, or selling, or pur-
 126 chasing or offering to give, sell or purchase as inducement to such
 127 insurance contract or annuity or in connection therewith, any stocks,
 128 bonds or other securities of any insurance company or other cor-
 129 poration, association, or partnership, or any dividends or profits
 130 accrued thereon, or anything of value whatsoever not specified in
 131 the contract.

132 (b) Nothing in subsection (7) or paragraph (a) of this subsection
 133 shall be construed as including within the definition of discrimination
 134 or rebates any of the following practices:

135 (i) In the case of any contract of life insurance or life annuity,
 136 paying bonuses to policyholders or otherwise abating their premiums
 137 in whole or in part out of surplus accumulated from nonparticipating
 138 insurance. Any such bonuses or abatement of premiums shall be fair
 139 and equitable to policyholders and for the best interests of the com-
 140 pany and its policyholders;

141 (ii) in the case of life insurance policies issued on the industrial
 142 debit plan, making allowance to policyholders who have continuously
 143 for a specified period made premium payments directly to an office
 144 of the insurer in an amount which fairly represents the saving in
 145 collection expenses;

146 (iii) readjustment of the rate of premium for a group insurance
 147 policy based on the loss or expense experience thereunder, at the
 148 end of the first or any subsequent policy year of insurance there-
 149 under, which may be made retroactive only for such policy year.

150 (9) *Unfair claim settlement practices.* Committing or performing
 151 with such frequency as to indicate a general business practice of any
 152 of the following:

153 (a) Misrepresenting pertinent facts or insurance policy provisions
 154 relating to coverages at issue;

155 (b) failing to acknowledge and act reasonably promptly upon com-
 156 munications with respect to claims arising under insurance policies;

157 (c) failing to adopt and implement reasonable standards for the

158 prompt investigation of claims arising under insurance policies;

159 (d) refusing to pay claims without conducting a reasonable in-
 160 vestigation based upon all available information;

161 (e) failing to affirm or deny coverage of claims within a reasonable
 162 time after proof of loss statements have been completed;

163 (f) not attempting in good faith to effectuate prompt, fair and
 164 equitable settlements of claims in which liability has become rea-
 165 sonably clear;

166 (g) compelling insureds to institute litigation to recover amount
 167 due under an insurance policy by offering substantially less than the
 168 amounts ultimately recovered in actions brought by such insureds;

169 (h) attempting to settle a claim for less than the amount to which
 170 a reasonable person would have believed that such person was en-
 171 titled by reference to written or printed advertising material accom-
 172 panying or made part of an application;

173 (i) attempting to settle claims on the basis of an application which
 174 was altered without notice to, or knowledge or consent of the insured;

175 (j) making claims payments to insureds or beneficiaries not ac-
 176 companied by a statement setting forth the coverage under which
 177 payments are being made;

178 (k) making known to insureds or claimants a policy of appealing
 179 from arbitration awards in favor of insureds or claimants for the
 180 purpose of compelling them to accept settlements or compromises
 181 less than the amount awarded in arbitration;

182 (l) delaying the investigation or payment of claims by requir-
 183 ing an insured, claimant or the physician of either to submit a preli-
 184 minary claim report and then requiring the subsequent submission of
 185 formal proof of loss forms, both of which submissions contain sub-
 186 stantially the same information;

187 (m) failing to promptly settle claims, where liability has become
 188 reasonably clear, under one portion of the insurance policy coverage
 189 in order to influence settlements under other portions of the insur-
 190 ance policy coverage;

191 (n) failing to promptly provide a reasonable explanation of the
 192 basis in the insurance policy in relation to the facts or applicable
 193 law for denial of a claim or for the offer of a compromise settlement.

194 (10) *Failure to maintain complaint handling procedures.* F

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195 of any person, who is an insurer on an insurance policy, to maintain
 196 a complete record of all the complaints which it has received since
 197 the date of its last examination under K.S.A. 40-222 and amendments
 198 thereto; but no such records shall be required for complaints received
 199 prior to the effective date of this act. This record shall indicate the
 200 total number of complaints, their classification by line of insurance,
 201 the nature of each complaint, the disposition of these complaints,
 202 the date each complaint was originally received by the insurer and
 203 the date of final disposition of each complaint. For purposes of this
 204 subsection, "complaint" shall mean any written communication pri-
 205 marily expressing a grievance related to the acts and practices set
 206 out in this section.

207 (11) *Misrepresentation in insurance applications.* Making false or
 208 fraudulent statements or representations on or relative to an appli-
 209 cation for an insurance policy, for the purpose of obtaining a fee,
 210 commission, money or other benefit from any insurer, agent, broker
 211 or individual.

212 (12) *Statutory violations.* Any violation of any of the provisions
 213 of K.S.A. 40-276a or 40-1515 and amendments thereto.

214 (13) *Disclosure of information relating to adverse underwriting*
 215 *decisions.* Failing to provide applicants, policyholders and individuals
 216 proposed for coverage with the information required under K.S.A.
 217 40-2,112 and amendments thereto within the time prescribed in such
 218 section.

219 (14) *Rebates and other inducements in title insurance.* (a) No title
 220 insurance company or title insurance agent, or any officer, employee,
 221 attorney, agent or solicitor thereof, may pay, allow or give, or offer
 222 to pay, allow or give, directly or indirectly, as an inducement to
 223 obtaining any title insurance business, any rebate, reduction or abate-
 224 ment of any rate or charge made incident to the issuance of such
 225 insurance, any special favor or advantage not generally available to
 226 others of the same classification, or any money, thing of value or
 227 other consideration or material inducement. The words "charge made
 228 incident to the issuance of such insurance" includes, without limi-
 229 tations, escrow, settlement and closing charges.

230 (b) No insured named in a title insurance policy or contract nor
 231 any other person directly or indirectly connected with the transaction

Handwritten initials "AS" in the left margin.

232 involving the issuance of the policy or contract, including, but not
 233 limited to, mortgage lender, real estate broker, builder, attorney or
 234 any officer, employee, agent representative or solicitor thereof, or
 235 any other person may knowingly receive or accept, directly or in-
 236 directly, any rebate, reduction or abatement of any charge, or any
 237 special favor or advantage or any monetary consideration or induce-
 238 ment referred to in paragraph (a) of this section.

239 (c) Nothing in this section shall be construed as prohibiting:

240 (i) The payment of reasonable fees for services actually rendered
 241 to a title insurance agent in connection with a title insurance
 242 transaction;

243 (ii) the payment of an earned commission to a duly appointed
 244 title insurance agent for services actually performed in the issuance
 245 of the policy of title insurance; or

246 (iii) the payment of reasonable entertainment and advertising
 247 expenses.

248 (d) Nothing in this section prohibits the division of rates and
 249 charges between or among a title insurance company and its agent,
 250 or one or more title insurance companies and one or more title
 251 insurance agents, if such division of rates and charges does not
 252 constitute an unlawful rebate under the provisions of this section
 253 and is not in payment of a forwarding fee or a finder's fee.

254 (e) *No title insurer or title agent may accept any order for, issue*
 255 *a title insurance policy to, or provide services to, an applicant if it*
 256 *knows or has reason to believe that the applicant was referred to*
 257 *it by any producer of title business or by any associate of such*
 258 *producer, where the producer, the associate, or both, have a fi-*
 259 *nancial interest in the title insurer or title agent to which business*
 260 *is referred unless the producer has disclosed to the buyer, seller*
 261 *and lender the financial interest of the producer of title business or*
 262 *associate referring the title insurance business.*

263 (f) *No title insurer or title agent may accept an order for*
 264 *title insurance business, issue a title insurance policy, or re-*
 265 *ceive or retain any premium, or charge in connection with any*
 266 *transaction if: (1) The title insurer or title agent knows or has*
 267 *reason to believe that the transaction will constitute controll-*
 268 *business for that title insurer or title agent, and (2) 20% c*

269 *more of the gross operating revenue of that title insurer or*
270 *title agent during the six full calendar months immediately*
271 *preceding the month in which the transaction takes place to*
272 *derived from controlled business. The prohibitions contained*
273 *in this subparagraph shall not apply to transactions involving*
274 *real estate located in a county that has a population, as shown*
275 *by the last preceding decennial census, of 10,000 or less. No*
276 *title insurer or title agent may accept an order for title insurance*
277 *business, issue a title insurance policy, or receive or retain any*
278 *premium, or charge in connection with any transaction if: (i) The*
279 *title insurer or title agent knows or has reason to believe that the*
280 *transaction will constitute controlled business for that title insurer*
281 *or title agent, and (ii) 20% or more of the gross operating revenue*
282 *of that title insurer or title agent during the six full calendar months*
283 *immediately preceding the month in which the transaction takes place*
284 *is derived from controlled business. The prohibitions contained in*
285 *this subparagraph shall not apply to transactions involving real estate*
286 *located in a county that has a population, as shown by the last*
287 *preceding decennial census, of 10,000 or less.*

288 *(g) The commissioner shall adopt any regulations necessary*
289 *to carry out the provisions of this act.*

290 *Sec. 2. K.S.A. 1988 Supp. 40-2404 is hereby repealed.*

291 *Sec. 3. This act shall take effect and be in force from and after*
292 *its publication in the statute book.*

HOUSE BILL No. 2497

By Committee on Insurance

2-22

15
16 AN ACT relating to title insurance; concerning rate filings therefor
17 and other services in connection with certain real estate trans-
18 actions; providing for violations; amending K.S.A. 40-1111 as
19 amended by section 19 of chapter 156 of the laws of 1988 and
20 repealing the existing section.

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

22 Section 1. K.S.A. 40-1111, as amended by section 19 of chapter
23 156 of the laws of 1988, is hereby amended to read as follows: 40-
24 1111. (a) The purpose of this act is to promote the public welfare
25 by regulating insurance rates to the end that they shall not be
26 excessive, inadequate and unfairly discriminatory and to authorize
27 and regulate cooperation among insurers in rate making and other
28 matters under the scope of this act. Nothing in this act is intended:
29 (1) To prohibit or discourage reasonable competition, or (2) to en-
30 courage or prohibit, except to the extent necessary to accomplish
31 the aforementioned purpose, uniformity in insurance rates, rating
32 systems, rating plans or practices. This act shall be liberally inter-
33 preted to carry into effect the provisions of this section.

34 (b) This act applies to casualty insurance, including fidelity, sur-
35 ety and guarantee bonds, on risks or operation in the state except
36 reinsurance, other than joint reinsurance to the extent stated in
37 K.S.A. 40-935 and amendments thereto, accident and health insur-
38 ance, insurance against loss of or damage to, or against liability,
39 other than workmen's compensation and employers' liability, arising
40 out of the ownership, maintenance or use of any aircraft.

41 (c) As used herein, the term "casualty insurance" shall be con-
42 strued to apply to and include the classes of insurance authorized
43 to be transacted in this state pursuant to paragraphs (b), (c), (d), (e)
44 as limited by subsection (d) of this section, (i), (j), (k), (l) and (m)

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45 of K.S.A. 40-1102 and amendments thereto; paragraphs (b), (d), (e),
 46 (f), (g) and (h) of K.S.A. 40-1203 and amendments thereto; and K.S.A.
 47 40-1301 and amendments thereto, and this act shall also apply to
 48 credit insurance written by a mutual insurance company or by a
 49 reciprocal or interinsurance exchange. This act shall also apply to
 50 reciprocal or interinsurance exchanges organized or operating under
 51 article 16 of chapter 40 of the Kansas Statutes Annotated, with
 52 respect to the classes of insurance enumerated in the preceding
 53 sentence of this section. If any kind of insurance, subdivision or
 54 combination thereof, or type of coverage, subject to this act, is also
 55 subject to regulation by another regulatory act of this state, an insurer
 56 to which both acts are otherwise applicable shall file with the com-
 57 missioner a designation as to which rate regulatory act shall be
 58 applicable to it with respect to such kind of insurance, subdivision
 59 or combination thereof, or type of coverage.

60 (d) (1) Only for the purpose of ~~regulating~~ *filing* the rates for
 61 title insurance as specified in subsection (e) of K.S.A. 40-1102 and
 62 amendments thereto, all charges made in connection with the is-
 63 suance, sale and servicing of title insurance policies *or real estate*
 64 *transactions by title insurance companies, agencies and agents on*
 65 *property located* in counties having a population of more than
 66 ~~150,000~~ *10,000* shall be ~~construed as premium and~~ subject to
 67 ~~regulation~~ *filing* pursuant to this act; ~~but~~. *Only the portion of such*
 68 *charges made for the assumption of risk under title insurance policies*
 69 *shall not be construed as premium for the purposes of K.S.A. 40-*
 70 *252, and amendments thereto. Nothing in this subsection shall*
 71 *be construed to give the commissioner any authority to regulate*
 72 *the fees charged for any abstractor's services. No provision of*
 73 *this act shall apply to the filing or regulation of title insurance rates*
 74 *other than the requirements imposed by this subsection.*

75 (2) *Every insurance agent, agency or company authorized to*
 76 *transact title insurance in this state shall file with the commissioner*
 77 *every manual of classification, rules and rates, every rating plan,*
 78 *every rate card and every modification of the foregoing which may*
 79 *be used in connection with providing title insurance or other services*
 80 *in connection with real estate transactions on property located in*
 81 *counties having a population of 10,000 or more. No charge may be*

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82 *made by any title insurance agent, agency or company that has not*
 83 *been filed with the commissioner as required by this section. Any*
 84 *service customarily provided by a title insurance agent or affiliated*
 85 *entity that is not included in the rates shall be disclosed when the*
 86 *rates are filed with the commissioner.*

87 New Sec. 2. Failure to file the rates or disclose the information
 88 required by subsection (d) of K.S.A. 40-1111 and amendments
 89 thereto shall constitute a violation of K.S.A. 40-2404 and amendments
 90 thereto and shall be subject to the penalties applicable thereto.

91 Sec. 3. K.S.A. 40-1111, as amended by section 19 of chapter
 92 156 of the laws of 1988, is hereby repealed.

93 Sec. 4. This act shall take effect and be in force from and after
 94 its publication in the statute book.

(10) *Failure to maintain complaint handling procedures.* Failure of any person, who is an insurer on an insurance policy, to maintain a complete record of all the complaints which it has received since the date of its last examination under K.S.A. 40-222 and amendments thereto; but no such records shall be required for complaints received prior to the effective date of this act. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, the date each complaint was originally received by the insurer and the date of final disposition of each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance related to the acts and practices set out in this section.

(11) *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

(12) *Statutory violations.* Any violation of any of the provisions of K.S.A. 40-276a or 40-1515 and amendments thereto.

(13) *Disclosure of information relating to adverse underwriting decisions.* Failing to provide applicants, policyholders and individuals proposed for coverage with the information required under K.S.A. 40-2,112 and amendments thereto within the time prescribed in such section.

(14) *Rebates and other inducements in title insurance.* (a) No title insurance company or title insurance agent, or any officer, employee, attorney, agent or solicitor thereof, may pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to obtaining any title insurance business, any rebate, reduction or abatement of any rate or charge made incident to the issuance of such insurance, any special favor or advantage not generally available to others of the same classification, or any money, thing of value or other consideration or material inducement. The words "charge made incident to the issuance of such insurance" includes, without limitations, escrow, settlement and closing charges.

(b) No insured named in a title insurance policy or contract nor any other person directly or indirectly connected with the transaction involving the issuance of the policy or contract,

including, but not limited to, mortgage lender, real estate broker, builder, attorney or any officer, employee, agent representative or solicitor thereof, or any other person may knowingly receive or accept, directly or indirectly, any rebate, reduction or abatement of any charge, or any special favor or advantage or any monetary consideration or inducement referred to in paragraph (a) of this section.

~~(c) Nothing in this section shall be construed as prohibiting:~~

(i) The payment of reasonable fees for services actually rendered to a title insurance agent in connection with a title insurance transaction;

(ii) the payment of an earned commission to a duly appointed title insurance agent for services actually performed in the issuance of the policy of title insurance; or

(iii) the payment of reasonable entertainment and advertising expenses.

(d) Nothing in this section prohibits the division of rates and charges between or among a title insurance company and its agent, or one or more title insurance companies and one or more title insurance agents, if such division of rates and charges does not constitute an unlawful rebate under the provisions of this section and is not in payment of a forwarding fee or a finder's fee.

(e) No title insurer or title agent may accept any order for, issue a title insurance policy to, or provide services to, an applicant if it knows or has reason to believe that the applicant was referred to it by any producer of title business or by any associate of such producer, where the producer, the associate, or both, have a financial interest in the title insurer or title agent to which business is referred unless the producer has disclosed to the buyer, seller and lender the financial interest of the producer of title business or associate referring the title insurance business.

(f) No title insurer or title agent may accept an order for title insurance business, issue a title insurance policy, or receive or retain any premium, or charge in connection with any transaction if: (i) The title insurer or title agent knows or has reason to believe that the transaction will constitute controlled business for that title insurer or title agent, and (ii) 20% or more of the gross operating revenue of that title insurer or title agent during the six full calendar months immediately preceding the month in which the transaction takes place is derived from controlled business. The prohibitions contained in this subparagraph shall not

CASE ANNOTATIONS

2. All power under act vested in insurance commissioner; no language purporting to create private cause of action. *Earth Scientists v. United States Fidelity Ex Guar.*, 619 F.Supp. 1465, 1468, 1469 (1985).

40-2407. Same; cease and desist orders; penalties; suspension or revocation of license; hearing. (a) If, after such hearing, the commissioner shall determine that the person charged has engaged in an unfair method of competition or an unfair or deceptive act or practice, such commissioner shall render an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of K.S.A. 40-2404 and amendments thereto, the commissioner may in the exercise of discretion order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$100 for each and every act or violation; but not to exceed an aggregate penalty of \$2,500, unless the person knew or reasonably should have known such person was in violation of this act, in which case the penalty shall be not more than \$1,000 for each and every act or violation, but not to exceed an aggregate of \$10,000 in any six-month period;

(2) suspension or revocation of the person's license if such person knew or reasonably should have known such person was in violation of this act; or

(3) redress of the injury by requiring the refund of any premiums paid by, the payment of any moneys withheld from, any consumer and appropriate public notification of the violation.

(b) After the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, the commissioner may at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the commissioner's opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

History: L. 1955, ch. 247, § 7; L. 1972, ch. 189, § 6; L. 1976, ch. 219, § 1; L. 1988, ch. 356, § 111; July 1, 1989.

Attorney General's Opinions:
Definitions; prepaid legal and dental prepaid service plans act. 89-112.

apply to transactions involving real estate located in a county that has a population, as shown by the last preceding decennial census, of 10,000 or less.

(g) The commissioner shall adopt any regulations necessary to carry out the provisions of this act.

History: L. 1955, ch. 247, § 4; L. 1972, ch. 189, § 3; L. 1981, ch. 190, § 4; L. 1983, ch. 158, § 1; L. 1987, ch. 171, § 1; L. 1989, ch. 139, § 1; July 1.

Revisor's Note:

Section was amended twice in 1989 session, see also 40-2404.

40-2405.

CASE ANNOTATIONS

1. All power under act vested in insurance commissioner; no language purporting to create private cause of action. *Earth Scientists v. United States Fidelity Ex Guar.*, 619 F.Supp. 1465, 1468, 1469 (1985).

40-2406. Same; hearing conducted by commissioner. (a) Whenever the commissioner has reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice, whether or not defined in K.S.A. 40-2404 and amendments thereto, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such person a statement of the charges in that respect and conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(b) If, after such hearing, the commissioner determines that the person charged has engaged in any unfair method of competition or any unfair or deceptive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section shall be assessed against such person or the company or companies represented by such person as an agent, broker or adjuster who is a participating party to the matters giving rise to the hearing. As used in this subsection, "costs" shall include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

History: L. 1955, ch. 247, § 6; L. 1972, ch. 189, § 5; L. 1982, ch. 205, § 1; L. 1986, ch. 318, § 37; L. 1988, ch. 356, § 110; July 1, 1989.

3/21/91

Good Afternoon ladies and gentlemen. I appreciate the opportunity of addressing you. My name is Doris Beard and I am the owner, broker of Coldwell Banker Dinning-Beard, Realtors, a real estate company in Wichita, Kansas.

My company held stock in Wichita Title Associates until being forced to divest itself of it's interest in January of this year. The reason for the divesture was an unfair, unjust law passed last year by the Kansas Legislature. It is my belief that the law was not clearly understood and that perhaps, through the testimony you will hear to-day, it will become a clearer issue.

The issue, of course, is "Controlled Business" and does a Realtor have a right to own a business that relates to their primary business of listing and selling houses. Realtors are involved in lots of ancillary businesses. They own Insurance agencies, appraisal companies, mortgage brokerage operations, warranty companies and, of course, Title and Abstract companies. This is not new information, it's gone on since the start of the Real Estate industry.

"Controlled Business" is a fact of life in business. The Dillon's Super Market stores in Wichita have grown into one-stop shopping centers. In addition to buying groceries you can buy medicine, have your shoes fixed, do your banking, buy tickets to events, cash checks, rent videos, have film developed and other things too numerous to mention. This is a service to their customers. It's also good business for Dillon's when they satisfy their customers needs.

Pizza Hut owns food service businesses that provide the ingredients for their Pizzas. Eye Doctors own optical wear shops. Automobile Dealerships own service centers, parts houses, car rental agencies. I could go on and on, but I believe you see the facts as I do. None of the examples that I have used are in question by the Legislature that I am aware of. What makes the Title Insurance business a subject for such heated debate?

Doris Beard
March 21, 1991
Attachment 5

To answer my own question, competition is what it's all about. We have a number of good Title Companies in Wichita which we still do business with, but the truth is that a competitor, Wichita Title Associates, has invaded their turf and they worked hard to get a law passed that would keep competition from interfering in their business.

As a stock holder in Wichita Title Associates, we made full written disclosure in our contracts to both buyer and seller. Wichita Title rates were \$10.00 lower in homes over \$40,000 than any of the competitors rates. In fact, recently one Title Insurance Co. raised their Mortgagee's fees by \$28.00 which means it now costs the consumer \$38.00 more than it would have at Wichita Title.

Service continues to be improved by the entry of Wichita Title into the market place. After hours closings are now a reality. Competition is good for the consumer.

Under RESPA laws, buyers have the right to specify what Title Insurance they wish to use, if they pay any of the premium. If they desire another Title Co., we, of course, would not force them to use Wichita Title. It would be foolish on our part to upset a buyer and lose a sale.

Charges have been levied that the Realtor stock holders were paid based on referred business. Totally untrue, my friends. It was a stock company and dividends were paid not referral fees.

I'm asking you to-day to vote in favor of HB2413. If you do, then you have voted in favor of the free enterprise system which is the American Way.

Thank you for your attention ladies and gentlemen.

Tri-County Title and Abstract Co., Inc.

Title Insurance and Abstracting

113 South Fifth Street
Leavenworth, Kansas 66048
(913) 682-8911

January 22, 1991

TOTAL ORDERS FOR MONTH OF DECEMBER 1990 24

Source of Orders:

Thorne Larkin	5
D & D Realty	3
Larkin Homes, Inc.	3
Beneficial	3
Citizens	2
First State Bank of Lansing	2
Leavenworth National Bank	2
Reilly & Sons	1
First National Bank	1
Waszak Custom Builders	1
Individual	1
TOTAL	<u>24</u>

346

306

Tri-County Title and Abstract Co., Inc.

Title Insurance and Abstracting

113 South Fifth Street
Leavenworth, Kansas 66048
(913) 682-8911

February 26, 1991

TOTAL ORDERS FOR MONTH OF JANUARY 1991 25

Source of Orders:

Larkin Homes	5
Beneficial	4
Thorne Larkin	4
Citizens	3
Individuals	2
McGuire Mortgage	1
Army National Bank	1
Mutual	1
Chapman/Waters	1
D. Greenamyre	1
Leavenworth National Bank	1
First National Bank	1
TOTAL	25

Revised

4076

4076

1983

	MILLER	MCCAFFREE	ARANTEE	COMMUNITY
JANUARY	80	60	55	9
FEBRUARY	58	53	43	6
MARCH	94	90	86	16
APRIL	89	81	83	19
MAY	121	80	85	28
JUNE	125	90	91	40
JULY	85	60	55	39
AUGUST	84	81	60	37
SEPTEMBER	70	54	62	18
OCTOBER	71	63	48	15
NOVEMBER	58	43	40	23
DECEMBER	59	44	40	23
TOTAL PERCENTAGE	994 35.3%	799 28.4%	748 26.6%	273 9.7% <i>5 of 6</i>

549

ESTIMATED TITLE TRANSACTIONS

1990

FXT

	MILLER	GUARANTEE	McCAFFREE	TRI-COUNTY	TOTAL
January	38 22%	76 44%	27 16%	33 19%	174
February	46 31%	58 39%	18 12%	28 19%	150
March	60 32%	66 35%	20 20%	42 22%	188
April	50 25%	82 40%	26 13%	46 23%	204
May	72 33%	84 38%	31 14%	32 15%	219
June	74 33%	85 38%	23 10%	44 19%	226
July	68 29%	91 39%	25 11%	50 21%	234
August	76 36%	65 31%	27 13%	42 20%	210
September	48 26%	68 37%	27 15%	41 22%	184
October	52 25%	92 44%	31 15%	33 16%	208
November	46 28%	60 37%	28 17%	30 18%	164
December	43 31%	47 34%	21 15%	26 19%	137
TOTAL	673 29%	874 38%	304 13%	447 20%	2298

6/29/90

6046

1 1/17

**TESTIMONY
OF
STEVE YORK
ON BEHALF OF
THE COLDWELL BANKER
REAL ESTATE GROUP**

**BEFORE THE
HOUSE
INSURANCE
COMMITTEE**

MARCH 21, 1991

RE: HOUSE BILL 2413

*House Insurance
Attachment 7*

March 21, 1991

Mr. Chairman and Members of the Committee:

I am Steve York and I am appearing on behalf of the Coldwell Banker Real Estate Group. I would like to testify in support of House Bill 2413.

Coldwell Banker Real Estate Group is a wholly-owned subsidiary of Sears, Roebuck and Co., a major business employer in the state of Kansas. Coldwell Banker is also the parent of the Coldwell Banker Residential Group, Sears Mortgage Corporation, a nationwide mortgage lender, and Homart Development Company, a nationwide shopping centre/office building developer. Through the Coldwell Banker Residential Group, we operate both company-owned and franchised residential real estate brokerage offices throughout the country. In Kansas, for example, there are seven (7) company-owned offices and 16 franchised offices.

Marketplace Changes Since 1974

Over the last several years, we at Coldwell Banker have witnessed fundamental changes in customer demands in the residential real estate marketplace.

As you can see from Attachment 1, low-income households increased from 38 percent of the population in 1974 to 47 percent today and is expected to make up 52 percent of total households by 1995.

The percentage of women 25 to 52 years of age in the labor force has and will continue to rise dramatically -- by the year 2000, women will account for two-thirds

of the increase in the labor force. In addition, as you can see from Attachment 2, the amount of leisure time per household decreased from 28 hours in 1973 to 17 hours per week in 1987.

How do these demographic changes affect our customers' demands with regard to real estate and settlement services? They want more convenience. Many consumers no longer have the time or the desire to go to a real estate broker for brokerage services, a mortgage broker or mortgage lender for a mortgage, a title company for title insurance, and so on down the line. Many consumers want the convenience -- if they so choose -- of purchasing a part or all of these services at one place.

As a result, many real estate brokers are expanding their customer services by creating joint ventures, creating partnerships or affiliating with mortgage companies, title companies, or other real estate service providers.

Sears/Coldwell Banker is one of the most well-known of these diversified businesses. But even "mom and pop" brokers across the country are finding they can better meet their customer's needs in today's marketplace by creating a partnership, joint venture or other affiliation with a mortgage lender, insurer, title or escrow provider. Not only do these relationships allow brokers to more efficiently offer a full array of products to their customers, but it also increases the service and commitment of each of the affiliated companies. For example, all Sears real estate service providers are part of the Sears Financial Network. We know that our customers perceive all of our companies as one -- in our case, Sears. So we know that each of our companies needs to provide excellent service, because if there is a problem with one of our companies it reflects poorly on the Sears name.

Effect of HB 2502

Unfortunately, the enactment of HB 2502 in 1989 will stifle the further development of innovative products and services that customers demand in the state of Kansas.

In the long term, this law sets a dangerous precedent that will encourage other settlement service providers who strive to protect themselves against competition to seek similar restrictions from the legislature.

Such percentage restrictions have been soundly rejected in other arenas. For example, the U.S. House of Representatives' House Banking Committee's Housing Subcommittee soundly defeated a similar legislative proposal by voice vote in 1983 and has not considered other restrictions since that time. The Department of Justice has also publicly recognized the benefits of controlled business arrangements and has soundly rejected arbitrary restrictions on their development. I have attached a copy of an April 1983 letter from the Department of Justice to that effect. Finally, the Department of Housing and Urban Development recently testified before Congress on the consumer benefits to be derived from controlled business arrangements:

We believe that affiliations between companies involved in different aspects of a real estate transaction can, in many instances, benefit the consumer. If lenders affiliate with other settlement service providers, and incorporate the prices of these services into the interest rate on the loan, it is easier for consumers to compare the "package deal" than if they must shop separately for each service. I would add that in some states, the title insurers and escrow agents are tightly regulated, and can set monopoly prices through regulation. In those states, competition for those services can exist only if the services are part of an overall package. (Testimony of HUD General Counsel Frank Keating, September 18, 1990)

I would also like to bring the Committee's attention to an additional defect of HB 2502. By exempting referrals in counties with under 10,000 population, the legislature adopted a policy that says that "controlled business" referrals are inherently bad if they occur in counties over 10,000 population but would not be bad if they occur in smaller counties. Public policy in this area should impact Kansas consumers regardless of where they live. In fact, it is the consumer in the smaller county where there is no competition who may be totally at the mercy of the only title insurer in town who is owned by the only realtor of savings and loan in that town.

Recommendation

There are safeguards under the Real Estate Settlement Procedures Act (RESPA) which, if enforced, protect the consumer from unscrupulous tactics and hidden costs without preventing the consumer from taking advantage of the increased convenience and choice that results from purchasing more than one service from a single provider, such as:

- Full disclosure by the real estate broker of relationships with any other parties to the transaction. One example of a disclosure currently required under RESPA is the "controlled business" disclosure for affiliated companies like Coldwell Banker, which discloses the affiliation and the normal charges for each service offered.

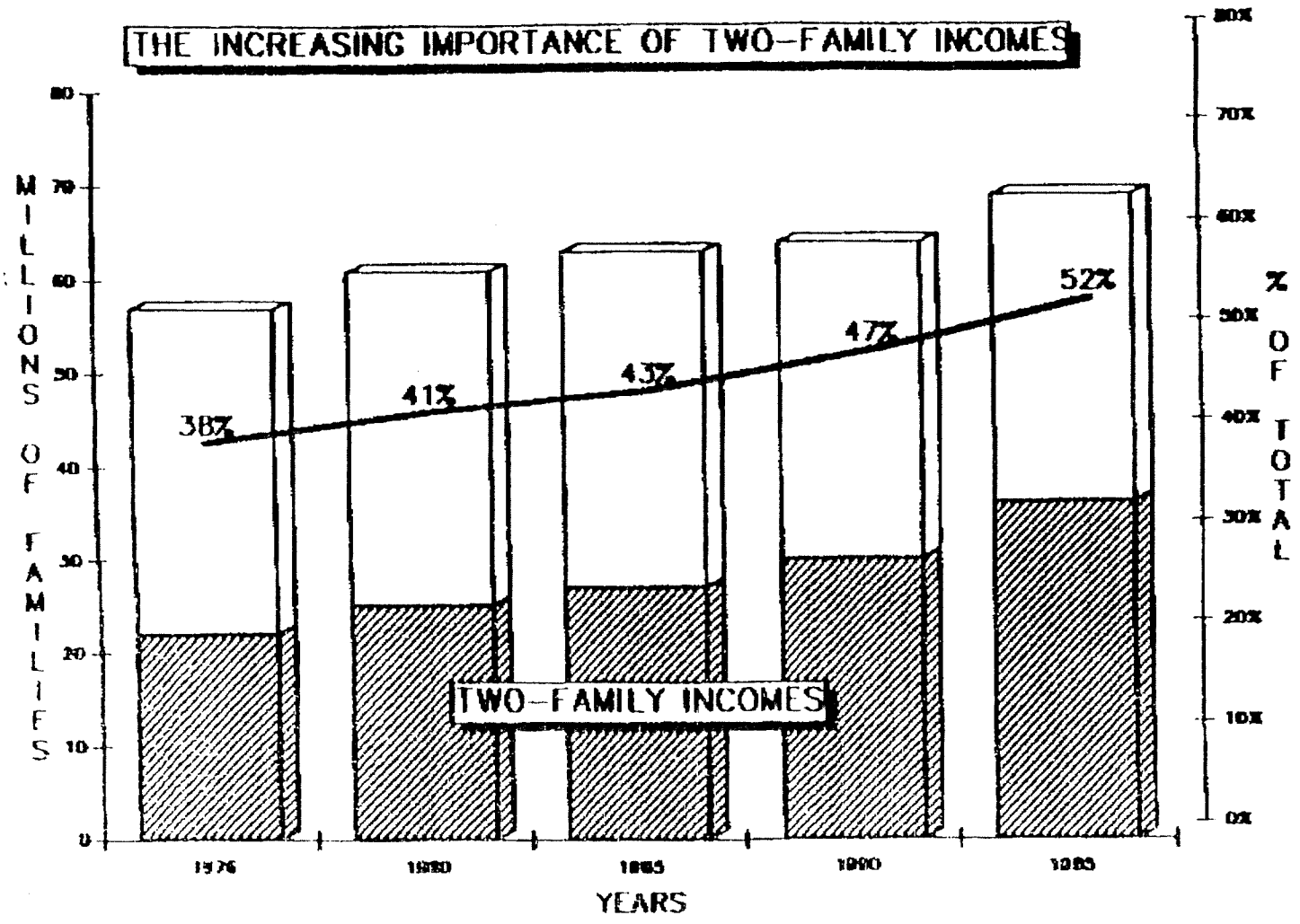
- Reasonable anti-tying requirements which prevent a provider from conditioning the supply of one product with the purchase of another without prohibiting legitimate discounts on the purchase of multiple services that offer cost savings to the customer.

We think House Bill 2413 supplements RESPA well, and we would be happy to work with the Committee to make any further adjustments you think are necessary to protect Kansas consumers. But to maintain the artificial restrictions contained in HB 2502 will substantially harm Kansas consumers by lessening competition and consumer choice and by unnecessarily increasing consumer costs.

We therefore urge the Committee to approve HB 2413.

ATTACHMENT 1

747

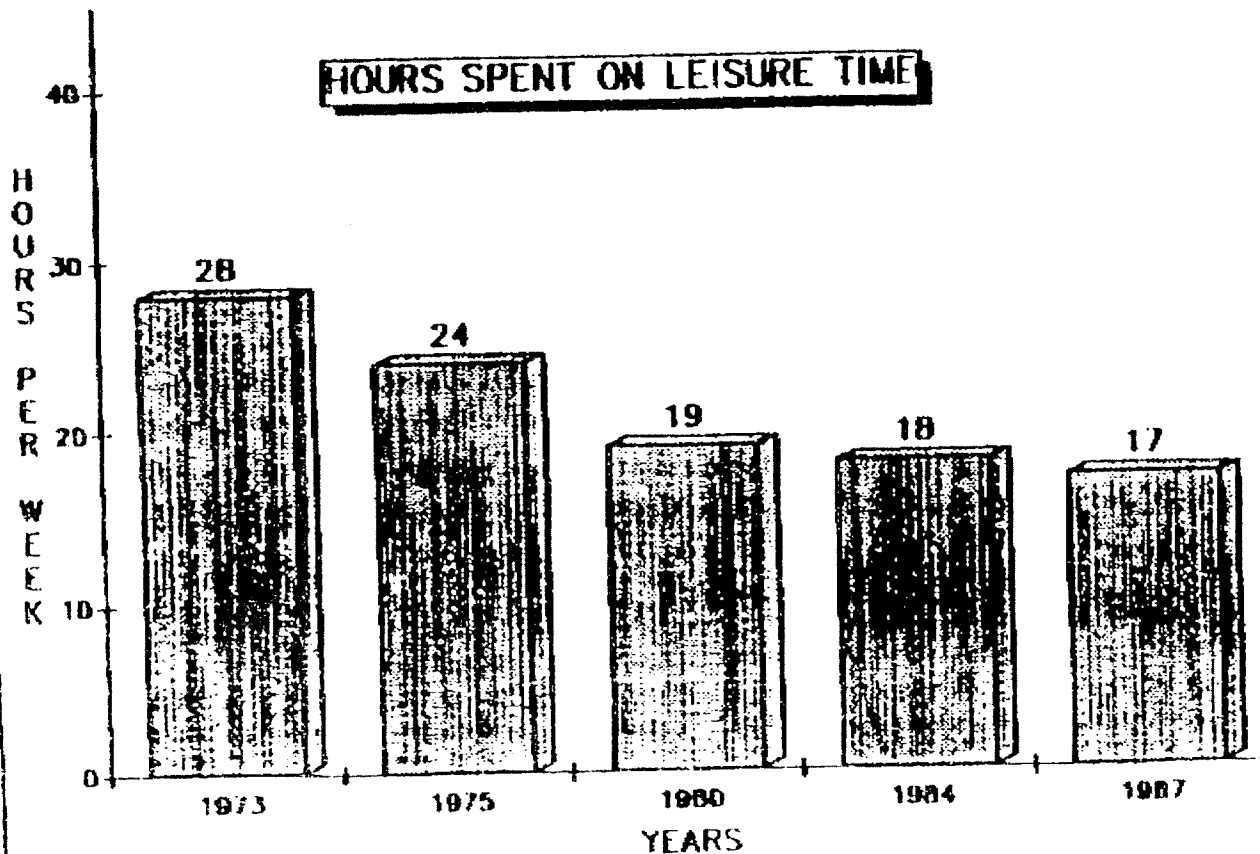


SOURCE: FUTURE'S GROUP

ATTACHMENT 2

8 of 7

AMOUNT OF LEISURE TIME CONTINUES TO DECLINE



SOURCE: LOUIS HARRIS ASSOC.



U. S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 26 1983

Honorable Henry B. Gonzalez
Chairman
Subcommittee on Housing &
Community Development
Committee on Banking, Finance &
Urban Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter sets forth the views of the Department of Justice on Section 542 of the Subcommittee print of an amendment that we understand will be offered as a substitute for Section 518 of H.R. 1, the "Housing and Urban-Rural Recovery Act of 1983." I understand that this bill is scheduled for action before your Subcommittee in the near future.

Section 542 of the Subcommittee print would amend certain sections of the Real Estate Settlement Procedures Act of 1974 ("RESPA"), 12 U.S.C. § 2601 et seq., most notably by imposing certain restrictions and limitations on payments of fees by one settlement service provider to a second settlement service provider if either provider or an associate of either has a direct or indirect ownership interest in the other -- a so-called "controlled business." Specifically, subsection (b) of that section provides that controlled business arrangements are not prohibited under Section 8 of RESPA, 12 U.S.C. § 2607, where the relationship to the controlled business is disclosed by the party making the referral, no unreasonable restrictions are imposed on the parties' choices of settlement services providers for which they pay the cost, and the only thing of

value received is the return on ownership interest. However, subsection (d) imposes certain limitations on the proportion of a controlled business' transactions that may derive from such referrals. Section 542 would also eliminate current criminal penalties for fee payments or kickbacks that violate Section 8 of RESPA, but it would retain the ability of persons to sue for three-times the amount of any unlawful charge paid by such person. That section would also create a new cause of action for injunctive relief and three-times actual damages sustained by any competitor injured in his business or property by reason of a violation of the section, as revised.

We understand that some supporters of Section 542 have been citing the Department of Justice's 1977 Report, "The Pricing and Marketing of Insurance," as support for their position. The purpose of this letter is to clarify the Department's position in this matter.

The Department of Justice recognizes that controlled business arrangements have resulted largely from RESPA's prohibitions against kickbacks and referral fees. However, we do not view such arrangements as necessarily anticompetitive. Rather, arrangements among providers of different goods or services who do not compete with one another -- including diversification by a single firm into the provision of additional complementary services -- may benefit consumers in a variety of ways. Regulatory efforts to interfere with such arrangements should not be undertaken in the absence of a strong showing that they are economically harmful to consumers. We are not aware that any such showing has been made. Further, to the extent that there is competition among the providers of these services, any referral fees or other similar payments that a provider receives (perhaps because of the controlled business arrangements) are likely to be passed on (because of the forces of competition) partly or wholly to consumers through lower prices for the services. Accordingly, we do not believe such arrangements should be prohibited by federal law. Moreover, we question the desirability of permitting suits by competitors who provide settlement services. Inefficient providers would have incentives to engage in litigation to prevent or inhibit competition from their more efficient competitors.

Our present view of controlled business arrangements is based upon study and economic analysis undertaken subsequent to issuance of the Department's 1977 Insurance Report mentioned above. Therefore, to the extent that the views stated in this letter are inconsistent with the findings and conclusions of that Report concerning controlled business arrangements, those findings and conclusions do not reflect the current views of the Department of Justice on this subject.

2000 1/91 2 "Rule" (Commentary #3-4) 10/87
Cites Blue report based on 7.11.87

Accordingly, the Department supports Subsection (b) of Section 542 of H.R. 1, which expressly recognizes the legality under Section 8 of RESPA of controlled business arrangements under the conditions set forth in the bill. Of course, if particular arrangements were found to be anticompetitive in their specific circumstances, the antitrust laws could be used to challenge them in the same manner as those laws are used to prevent other unreasonable restraints of trade. Nothing in H.R. 1 can be read to grant any immunity or defense to actions regarding such arrangements under the antitrust laws. We also support removing existing criminal sanctions for violations of Section 8 of RESPA. However, we do not support subsection (d), which arbitrarily and unnecessarily limits the beneficial effects of these relationships, nor do we support granting competitors the right to sue for damages. In addition, proposed Subsection 8(e)(3) and Section 16 of RESPA should be clarified to state expressly that the Attorney General of the United States will conduct any litigation involving the federal government. The most effective and efficient means of conducting the government's litigation is to place such litigation under the direct control of the executive branch official possessing the responsibility and competence to present the unified legal positions of the United States -- the Attorney General.

I hope this information is useful to you and your Subcommittee. I should note that the provisions of Section 542 dealing with controlled business arrangements constitute only a small portion of H.R. 1. The views expressed herein are intended to apply only to Section 542 of the bill and carry no implication whatsoever for the bill's other provisions.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

(Signed) Robert A. McConnell
Robert A. McConnell
Assistant Attorney General

cc: Honorable Bill Lowery

TO: Chairperson and Representatives of the Kansas House Committee on Insurance

BY: John J. (Joe) Kisner, Jr., Assistant District Attorney, Consumer Fraud and Economic Crime Division, District Attorney's Office of the Eighteenth Judicial District, Sedgwick County, Kansas

RE: House Bill No. 2413 - An Act Relating to Title Insurance; Requiring Certain Disclosures and Prohibiting Certain Transactions; Repealing K.S.A. 1990 Supp. 40-2404(b)

The essence of House Bill No. 2413 is to replace the prohibition on controlled business contained in K.S.A. 1990 Supp. 40-2404(b)(14)(f) with a requirement of disclosure of the existence of the controlled business relationship. The Consumer Fraud Division of the Office of the District Attorney of the Eighteenth Judicial District opposes this bill. Our opposition is based upon the firm belief that in a free market economy any form of controlled business will ultimately result in higher prices and reduced service for the consumer.

If House Bill 2413 were to become law, we could easily foresee a situation in which every title company would operate a controlled business entity and soon all of the title insurance would be placed with the title company which offered the highest realtor or banker "dividend" for the business. Since the referring entities provide little, if any, productive work to the final product, any payments made to the person or entity referring the business is simply a cost which will be passed on the ultimate consumer.

Controlled business also gives rise to situations where service to the customer can suffer greatly. Under free market economy, competition for business is based upon companies that compete to offer the best product or service for the lowest price. If competition for the business has been removed, there would be only a natural tendency to reduce service by hiring fewer employees and thereby creating a larger profit margin for all who have their hands in the pie.

House Insurance
March 21, 1991
Attachment 8

One situation where controlled business has been allowed is the area of doctors and medical labs. The law has allowed physicians to own the medical lab where they refer patients for X-ray and diagnostic tests. Studies have clearly indicated that in situations in which the doctor has an ownership interest in the lab, the doctor is much more likely to order X-rays and tests than where the doctor sends his patients to an independent lab. Studies also show that the price charged for the services rendered by physician owned labs tend to be slightly higher than independent labs - even though the physicians who own their own labs state that they make every effort to be competitive in the market place.

The passage of House Bill No. 2413 would lead to a market wherein almost all title insurance would be controlled and directed primarily for profit. Since the obtaining of loans or the purchasing of a house remains an extremely complex endeavor, consumers rely on the advice of their professional, whether that professional be a realtor or a lender. If you allow these professionals to monetarily benefit from their position of trust, the consumer's interest will uniformly suffer. For these reasons we request the committee on insurance reject House Bill No. 2413.

PRESENTATION TO HOUSE INSURANCE COMMITTEE

RE: House Bill 2413 or "a wolf in sheep's clothing"

DATE: March 7, 1991

**FROM: Kansas Land Title Association
Roy H. Worthington, Legislative Chairman**

During the past several years, a significant problem developed in Kansas affecting the healthy functioning of competition in the title insurance industry. This problem is the growth of "controlled business" arrangements whereby real estate brokers, real estate lenders and other producers of title business, have created title companies to which they steer the title insurance business of their clients and customers. Controlled business arrangements are an attempt to circumvent the prohibitions on kickbacks and referral fees set forth in Section 8 of the Federal Real Estate Settlement Procedures Act of 1974 (RESPA) and in the Kansas Unfair Trade Practices Act.

In the summer and fall of 1988, the Kansas Department of Insurance formed a study group composed of title industry professionals, realtors, lenders, attorneys and Department of Insurance staff personnel to study the question of controlled business and rate regulation in the title insurance industry. The result of this study group was legislation introduced in the 1989 legislative session which did not prohibit, but placed certain restrictions on controlled business title insurance companies. The restrictions in the legislation were derived from the American Land Title Association Model Title Code which has been approved by the National Association of Insurance Commissioners. The current law, which is contained in KSA 1990 Supp 40-2404b (14) (e) and (f), was passed during the 1989 legislative session by a vote of 39 - 0 in the Senate and 122 - 2 in the House - an overwhelming majority of the legislators saw the wisdom of placing certain restrictions on controlled business in the title insurance industry.

The effect of the law placing restrictions on controlled business in the title insurance industry is NOT to prevent realtors, lenders or other producers of title business from entering the title business, but only to require controlled business title companies to compete on a "level playing field" with other independent title companies.

Controlled business in the title insurance industry is not new. It has appeared in other states and in each case has been met with varying degrees of state regulation. The United States Department of Justice in its 1977 report entitled The Pricing and Marketing of Insurance indicated the following: "To sum up the major evils of controlled title companies, where a real estate settlement producer is able to direct the purchaser of title insurance to a particular title company and at the same time that

*House Insurance
Attachment 9
March 21, 1991*

producer owns the title company, the purchaser is likely to end up (1) paying unreasonably high premiums, (2) accepting unusually poor service, or (3) accepting faulty title examinations and policies from the controlled title company."

The problems created by controlled business arrangements are many, but the most obvious and well recognized are addressed in a 1977 study entitled "The Distribution of Title Insurance: The Unregulated Intermediary," Journal of Risk and Insurance, Vol. 3 (1977):

a. Home buyers and sellers have little familiarity with title insurance service providers, are not knowledgeable shoppers, and accordingly, are willing to accept the recommendations of the producers of the title business AND the producer of the title business has a powerful incentive to refer his client's business to the title company in which he has a financial interest, even if other title companies offer better service, policy coverage and/or rates; the selection of the controlled business title insurance company may not be in the best interest of the consumer when a collateral benefit flows from the title company to the producer of the title business;

b. Studies have shown that fees charged by controlled business companies usually start out at or below the competitive market and then rise in excess of competitive prices when a significant portion of the market is captured; the inevitable effect of the widespread growth of controlled business arrangements is to increase the prices paid by consumers for title insurance services;

c. Independent title companies face an almost insurmountable obstacle in competing for the business controlled by the producers of title business, creating unfair competition;

d. The consumer loses the ability to obtain the disinterested judgment of the real estate professional as to which title company will best serve his interest;

e. In a free and competitive consumer-oriented market, prices are restrained by competition, however there is no incentive for the controlled business company to reduce rates or improve policy coverage or service in order to attract business, because its

business is "guaranteed" as a result of referrals from the producers of the title business;

f. Title insurance underwriting standards drop and losses occur because the producer/owners of the controlled business title companies require real estate closings to occur, when prudent title industry standards would require a delay in closing to resolve title problems. The producer of the title business, having a financial interest in the title insurance company, may face a definite conflict between his own interest in receiving a commission from a completed sale and the consumers interest in receiving a clear and unencumbered title;

g. Controlled business arrangements defeat the 1974 Federal Real Estate Settlement Procedures Act's consumer oriented goals of providing greater information to and more effective shopping by, consumers of real estate settlement services;

The Michigan Insurance Commissioner, in June of 1977, summarized the impact of controlled business arrangements as follows: "The findings and conclusions by various executive, legislative, and judicial branches of the Federal and State Governments and the results of the Insurance Bureaus investigations have caused me to recognize that permitting real estate brokers to own or control a licensed title insurance agency for the purpose of channeling title insurance business is detrimental both to the consumer of title insurance and to actual and potential competition in the title insurance market.... The anti-competitive nature of such arrangement is obvious and widely acknowledged. Its effect on the title insurance industry and consumers can only be harmful."

Congress has already determined, in its enactment of Section 8 of RESPA, that it is appropriate and desirable to (a) establish prohibitions on the financial inducements that can be offered or accepted for the referral of real estate settlement business, and (b) to ensure to the maximum extent possible that selection of a settlement service provider is based on considerations of price, quality or service, etc., rather than with regard to financial benefits that may accrue to those who can influence the consumer's selection. The existing Kansas law placing certain restrictions on controlled business is a reasonable extension of the Congressional mandate to protect the consumer of title services.

The proponents of House Bill 2413 will tell you that the present law placing restrictions on controlled business title companies prevents them from owning a title insurance company and/or is an infringement on the free enterprise system. The truth

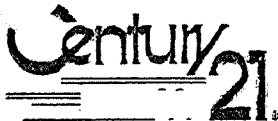
is that the current law does not prohibit anyone from engaging in the title business - the effect of the law is to make controlled business title companies enter the market place and compete on the same playing field as the independent title companies. The existing law will foster competition, not destroy it.

The Kansas Supreme Court unanimously upheld the constitutionality of the existing law by a decision rendered January 18, 1991. In its decision, the Supreme Court stated: "The purpose of the Unfair Trade Practices Act is to prevent unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. The purpose of (14) (e) and (f)* is to stimulate competition by decreasing vertical integration between producers of title business and title insurers." *[(14) (e) and (f) are the restrictions on controlled business]

In conclusion, the Kansas Land Title Association opposes House Bill 2413. House Bill 2413 is not necessary since current Kansas Law places adequate restrictions on controlled business in the title insurance industry. If realtors, lenders and other producers of title business are unrestricted in their ability to direct title business to their own controlled business companies, unfair competition will result, and eventually the consumer will suffer the consequences of a controlled marketplace.

Respectfully submitted by,

Roy H. Worthington
Legislative Chairman
Kansas Land Title Assn.



FOX REALTY

2409 East Pawnee
Wichita, Kansas 67211
(316) 681-1313

March 6, 1991

The Honorable Larry F. Turnquist
House Insurance Committee
State Capitol Building
Topeka, KS 66612

Dear Chairman Turnquist:

This is to voice my concern regarding HB2413. I strongly urge you and your committee to not consider this bill and keep it in committee.

I have been in the real estate business for many years and during that time have used the services of various title companies. I have found the competition for my business to be very keen. Additionally, I feel it is my right and the right of my clients to use any title company we choose. The choice should not be made by a realtor or lender that stands to gain monetarily from that choice.

HB2413 will only lead to higher prices. Whenever monopolies are allowed to exist, prices rise. Also, it seems that conflict of interest questions arise whenever the placement of an order for a service or product is made by someone who gains financially from that order.

Please leave the 1989 law intact. Defeat HB2413.

Thank you for the time from your busy schedule.

Respectfully,

Mary Wilcoxon
Realtor

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgersen
Honorable Tom Sawyer
Honorable Gwen Welshimer

KANSAS ASSOCIATION OF REALTORS

LEGISLATIVE NEWSLETTER

Karen France

Director Governmental Affairs

COMPILED BY THE GOVERNMENTAL AFFAIRS DEPARTMENT

earnest money dispute existed or the broker did not obtain written authorization of buyer and seller.

4. Would apply the 5 day escrow deposit rule to a broker who utilizes an escrow account.

5. Reduces the 30-20 hour requirement for new licenses down to only thirty hours of post licensure before the first renewal.

CONTROLLED BUSINESS, HB 2413

The controlled business bill was introduced on Wednesday by House Insurance Committee, at the request of Representative Henry Helgerson from Wichita.

The Kansas Supreme Court ruled on the controlled business case Friday, January 11. The Supreme Court upheld the constitutionality of the 1989 statute.

The bill would remove the onerous parts of the statute and would provide that a controlled business arrangement was fully legal as long as any financial interests are disclosed to the purchaser of the title insurance, the payment of income, profits or dividends is not in exchange for the referral of business and that such income profits or dividends constitutes only a return on the investment of the producer or associate.

As has been said here before, even if you do not have an interest in a title company, controlled business is your business. This is an issue which goes to free enterprise and the right of people in the real estate profession to have a financial interest in other real estate related businesses. In the future, will real estate agents be prevented from selling home warranty programs or homeowners insurance?

SELLING NEW HOMES WITHOUT A LICENSE

Still no sign yet of a Homebuilders bill. Last year the Homebuilders once again tried to get legislation passed which would exempt their employees from getting a real estate license before they are able to show and sell their homes. Many of you will remember, this was introduced back in 1984, when we were able to defeat it. They may be back again this year.

UNIFORM PLANNING, ZONING AND SUB-DIVISION LAWS, SB 22

The House Federal and State Affairs Initiative and Referendum subcommittee met several times this week to work out the problems which were raised in the Governor's proposals. They completed work on the Referendum proposal last week, but still have some work to do to get the Initiative proposals into shape.

Some of the issues the subcommittee are addressing are: how many signatures it should take to get the initiative on the ballot; whether there should be a requirement that the signatures come from each congressional district rather than just one part of the state; how many initiatives to permit on the ballot at any one election; whether certain subjects should be prohibited from being put on the ballot by initiative.

The subcommittee plans to meet one more time next week and then make their recommendations to the full House Federal and State Affairs committee.

KAR supports initiative and referendum.

CAMPAIGN FINANCE REFORM, HB 2169, SB 153, SB 2342, 2271

Several more campaign finance reform bills were introduced this week. One was directed at giving the state agency charged with regulating campaign finance more powers in the area of enforcing the statutes. The other would prohibit PACs from contributing to political parties and prohibit candidates from accepting contributions from PACs.

There were two bills already in the hopper. One would prohibit candidates and political parties from accepting any contributions from political action committees or corporations. The other bill proposes to establish an intricate system of public funding of elections in the state of Kansas. Essentially, the bill establishes a fund made up of contributions which individuals can check off a donation for on their income tax returns. Candidates can then apply for a "grant" from this fund if they agree to certain spending limits and if they agree to only take contributions from party committees and individuals.

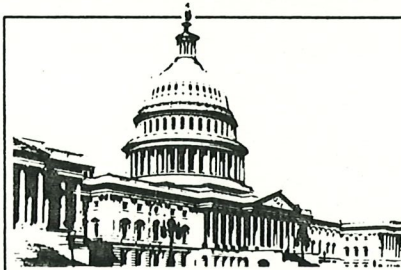
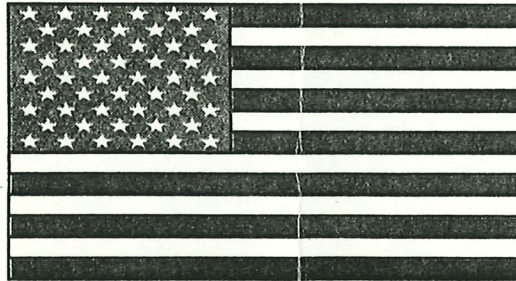
It would be a dramatic deviation from our existing campaign finance system where individuals contribute to candidates of their own choice, rather than have the government do it for them.

6079

Week of February 25, 1991

INSIDE

R NATIONAL ASSOCIATION
OF REALTORS®
REALTOR® The Voice for Real Estate™



■ Get ready for NAR's Midyear Conference and Trade Expo in Washington, D.C., April 26-May 1. See page 7 for details.

February 1991 Broker-Office Issue

REALTOR NEWS®

Volume 12, Number 4

Week of February 25, 1991

UPDATE

Signs of recovery: As the pace of residential real estate activity slowed in much of the country last year, many newspapers and broadcasters were quick to lead with the direst, direst bad news headlines they could concoct. So headlines earlier this month in *The Washington Post* were a breath of fresh air as the spring homebuying season approaches. *Real Estate Market Shows Signs of Revival—Worst May Be Over for Housing Market*. The front-page article accentuated the positive, citing “signs of renewed life” and noting that “helping entice buyers are mortgage interest rates at their lowest point in a decade.” The portion of the article continued on an inside page had this upbeat headline: *Low Mortgage Rates Bolster Optimism*. NAR members throughout the country have voiced a lot of complaints recently about negative reporting: maybe the tide is turning. If

NAR lobbying effort launched to block expanded bank powers

The NATIONAL ASSOCIATION OF REALTORS® is launching a major lobbying initiative—including a Call for Action issued by President Harley E. Rouda to the membership—to block potential congressional proposals to allow national banks to engage in real estate-related activities.

The U.S. Treasury Department proposed Feb. 5 that holding companies owning a national bank be allowed to engage in securities and insurance activities through separate subsidiaries.

While the Treasury Department recommended against permitting bank holding companies to expand into real estate-related activities, NAR is concerned that such a proposal may surface in Congress in debate on Treasury's proposals for restructuring the banking and deposit insurance systems, said Stephen D. Driesler, NAR senior vice presi-

dent for government affairs. Among the drawbacks to national banks' involvement in real estate brokerage is the “un-level playing field” that would be created in the real estate industry, Driesler said.

He explained that consumers likely would assume that preferential home financing terms would be available through a bank-affiliated real estate broker.

Upcoming NAR actions include:

- A Call for Action urging REALTORS® in key congressional districts to write to their representatives. See the upcoming March 11 all-member issue of REALTOR NEWS® for details;
- REALTOR® visits to Capitol Hill;
- Placement of advertisements in major newspapers to alert the general public to NAR's concerns.

6/2/91



EMERALD Real Estate



March 6, 1991

The Honorable Larry F. Turnquist
House Insurance Committee
State Capitol Building
Topeka, Kansas 66612

Dear Chairman Turnquist:

This is to voice my concern regarding HB2413. I strongly urge you and your committee to not consider this bill and keep it in committee.

I have been in the real estate business for many years and during that time have used the services of various title companies. I have found the competition for my business to be very keen. Additionally, I feel it is my right and the right of my clients to use any title company we choose. The choice should not be made by a realtor of lender that stands to gain monetarily from that choice.

HB 2413 is very much anti-consumer in these respects:

1. Once any market is "controlled" prices will rise.
2. "Controlled" markets lead to inferior products and services.
3. "Controlled" markets raise serious conflict of interest questions.

I thought this matter had been put to rest by the legislature in 1989, but apparently, a few interests didn't get the message. I, again, urge that HB 2413 not be sent to the floor.

Thank you for your time in this matter.

Sincerely,

Wilma L. Giese, Broker
Emerald Real Estate

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgerson
Honorable Tom Sawyer
Honorable Gwen Welshimer

Wilma L. Giese, Broker
Emerald Real Estate
137 N. Jackson-East
Wichita, KS 67206

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FOX REALTY

2409 East Pawnee
Wichita, Kansas 67211
(316) 681-1313

March 6, 1991

The Honorable Larry F. Turnquist
House Insurance Committee
State Capitol Building
Topeka, KS 66612

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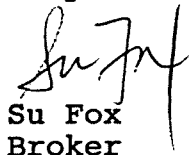
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HB2413 will only lead to higher prices. Whenever monopolies are allowed to exist, prices rise. Also, it seems that conflict of interest questions arise whenever the placement of an order for a service or product is made by someone who gains financially from that order.

Please leave the 1989 law intact. Defeat HB2413.

Thank you for the time from your busy schedule.

Respectfully,



Su Fox
Broker

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgersen
Honorable Tom Sawyer
Honorable Gwen Welshimer



PRIDE REAL ESTATE, INC.

925 North K-15 Hwy. / P. O. Box 286
Derby, Kansas 67037
(316) 788-3751

MARY "VAL" VALDOIS

Broker

March 6, 1991

The Honorable Larry F. Turnquist
House Insurance Committee
State Capitol Building
Topeka, Kansas 66612

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Thank you for your time in this matter.

Sincerely,

Mary "Val" Valdois, Broker

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgerson
Honorable Tom Sawyer
Honorable Gwen Welshimer.

10 of 9

March 6, 1991

The Honorable Larry F. Turnquist
House Insurance Committee
State Capitol Building
Topeka, Kansas 66612

Cleve Smith, Realtor / Broker
Ambassador Realtors, Inc.
3033 South Seneca
Wichita, Kansas 67217

Dear Chairman Turnquist:

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Respectfully,

Ambassador Realtors, Inc.


Cleve Smith, Realtor/Broker

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgerson
Honorable Tom Sawyer
Honorable Gwen Welshimer


AMBASSADOR
REALTORS, INC.

3033 South Seneca
Wichita, Kansas 67217
(316) 522-3454
Toll Free 1-800-369-5198

11 of 9
CLEVE SMITH
Realtor® / Broker
Res.: (316) 522-5376


MULTIPLE LISTING SERVICE
RE.

FIRESIDE
REAL ESTATE COMPANY

ELMER ARNOLD
REALTOR®

901 S. SENECA
WICHITA, KS 67213
Office: 316/269-0600

March 2, 1991

Mr. Jeff Otto
LAWYERS TITLE INSURANCE CORPORATION
P. O. Box 770
400 No. Broadway
Wichita, Kansas 67201-0770

Mr. David Armagost
COLUMBIAN NATIONAL TITLE INSURANCE
313 So. Market
Wichita, Kansas 67202

Dear Mr. Otto and Mr. Armagost:

I have attempted to provide you with some information on the subject of title insurance providers in the Wichita area as it affects the everyday real estate business and the ownership in title insurance companies in this area.

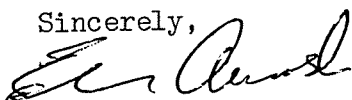
Attached are four pages, that I have tried to somewhat separate some of the considerations in the providing of title insurance. Further attached are some contracts that were changed by a broker who had ownership in a title insurance company and who "pre-prints" the name of the provider contrary to any known law.

You were selected to receive this from me because first of all, you indicated a desire to receive it, because you have indicated that you will attempt to discuss this in some manner with the legislature. I have placed title insurance orders through your firm as I have every title insurance firm in the area. I do have certain preferences in which title insurance company I like best to work with and it may or may not be your firm, that does not matter, I use them all to some extent and I try to go where the person paying for the service wants it to go.

What I have witnessed in the operation of real estate brokers who hold ownership interest appears to me to have been pressure tactics designed to provide them with an eventual control of the title insurance business in Wichita, not the normal opening and fairly competing with other firms. The pressure has been on members of their own firms and of other firms with whom they cooperate on sales. Pressure has been exerted on me, and they make no bones about it.

The legislature would be doing the people of Kansas a great service by not doing anything to permit ownership in firms that provide services to buyers and sellers, by real estate brokers. They should also address the ongoing problem of real estate brokers placing themselves in the position of being SELECTORS OF SERVICES, this should be left to the citizens who are paying the bill.

Sincerely,


Elmer Arnold, REALTOR®

1279



Display #1 - Jeff Otto
David Armagost

HOW A REAL ESTATE BROKER IN OWNERSHIP OF TITLE COMPANY INFLUENCES
THE PURCHASE OF TITLE INSURANCE.

1. Within their own real estate company, they insist of their own independent contractors, that they stress the use of the title company in which they hold interest.
2. Within the metropolitan area of Wichita, about 1/2 sales are co-operative sales with other brokers. When other brokers acting as the "selling agent" are working with a buyer, they will work out the title company and mention that firm in the contract by filling in a blank and then filling in blanks as to how the costs are to be borne, and when completed, the contract is sent on to the "listing agent" who is more directly involved with the seller.

BOTH AGENTS are generally the agent and sub-agent of the seller, with a fiduciary to the seller.

3. Some real estate brokers do not change the contract form and substitute a form of their own, they simply scratch through the title company of the buyers choice and substitute the one in which they hold ownership.
4. Some real estate brokers, upon receipt of the form signed by the buyer have it typed onto a new and different form, prior to it being presented to the seller. These forms carry PRE-PRINTED title companies by name, naturally, the firm is the one that the broker owns stock in or has a financial interest in.
5. This is akin to BLACKMAIL between real estate brokers, as in effect, the broker in title company ownership is saying - "if you don't proceed on my contract, this deal is dead." What they are really saying is, "I have pre-printed a title company in which I own stock or hold a financial interest and by God, you will have your buyer sign this."
6. EVEN THOUGH the Courts have ruled against brokers here being in ownership and sending over 20% of their business through it, they are following the same practice as before, because they believe the Kansas Legislature will change the law to accomodate them.
7. If the Kansas Legislature does change the law to accomodate them, they will be providing the real estate brokers in ownership with a golden opportunity to monopolize the title insurance industry through the unfair methods and deviasse methods above and some that have not been used yet. They will be granting them a license to kill the competition.

De Arnold 3/2/91

Display #2 - Jeff Otto
David Armagost

THE RESTRAINT OF TRADE AND POSSIBILITY OF MONOPOLIZING THE
TITLE INSURANCE BUSINESS THROUGH REAL ESTATE BROKER OWNERSHIP

1. A few large volume real estate brokers are not only in a position to control all of the contracts originated within their office, but in an area such as Wichita, where a MLS (MULTIPLE LISTING SERVICE) is in effect, and where there are many small offices not even members of the REAL ESTATE BOARD or MLS, and whereby these other offices often enter into cooperative transactions (cross-sales) with the larger firms, pressures can be brought to bear to encourage/demand cooperation or no transaction will successfully occur. In other words, they can certainly control a very high percentage of the provision of title insurance in a very short period of time.
2. They who have had ownership have already proven that they will do this.
3. They could also add to these pressure tactics the ability to make no profit or to absorb a loss over a period of time designed to drive all competing title insurance firms out of business and then at their own pleasure, increase their profits to any desired level, at the expense of the public. THE CLASSIC APPROACH TO GAINING A MONOPOLY ON A SERVICE IN AN AREA.
4. "Free enterprise" and "Constitutional Rights" are the best arguments that a broker can put forth when he wants to venture into ownership of a title insurance company to the detriment of other such firms. Whose "Constitutional Rights" and what "free enterprise" are these brokers acknowledging when they become the self appointed SELECTORS of providers of services that other parties are paying for?
5. The PARTIES who are being charged for these services, the providers being dictated by the brokers now, unchallenged by any law enforcement agencies, are the same PARTIES with whom they either have a FIDUCIARY RELATIONSHIP WITH and who is paying them their real estate commissions, or with whom they have an obligation of fair business dealings. They are the very persons, buyers and sellers, who have been the source of all real estate brokers existence since the license act was passed in 1947 and for many years before that act came into existence.
6. OWNERSHIP in title insurance companies if permitted, should be expanded, lets go with ownership in termite and pest control companies, home inspection services, and all of the other aspects of the typical real estate transactions, and create a complete and true monopoly of the business, and along the way, we can eliminate many of the small, non owning real estate companies and reduce the choice of the public down to a few firms even if the cost then is established by those brokers who have no one left to compete with them. Possibly we could someday have this reduced to one full service real estate firm in each city or possibly the entire nation!

Jeff Otto 3/2/91

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Display #3 - Jeff Otto
David Armagost

TYPICAL CHARGES FOR TITLE INSURANCE AS ASSESSED AGAINST THE PARTIES

Policy in a geographical area generally dictate how the costs of services provided in a real estate transaction are assessed or borne by the parties.

In some areas, the SELLER will pay all costs of title insurance as a matter of policy, but this remains open to change and negotiation.

In some areas, the SELLER and the BUYER split the costs in some manner, such as 50/50, but this remains open to change and negotiation.

The federal law, the RESPA and the USC at least speak of this, and mention that where the BUYER is paying any portion of the cost, the SELLER shall not direct where it is to be obtained.

No real estate broker is allowed to pre-print into a listing agreement, the term in days or months of his listing, they are not allowed to pre-print into the agreement the commission rate to be charged, they are not supposed to complete a carry-over or protection clause by pre-printing a specific number of days or a specific time period. All of these are supposed to be established through individual negotiations and completed by filling in of blank spaces with the agreed upon information.

Yet, we are seeing contracts that are pre-printed with the name of a specific title insurance company who is to be the provider; which means quite obviously that the real estate broker has taken it upon himself to be the SELECTOR of the provider of title insurance, with total disregard for restraint of trade regulations and the laws of the United States of America, while protesting any restraints placed against him for attempting to own stock in or to hold ownership interests in title insurance companies.

There should be as many title insurance companies in an area as the public business will support and they should be able to exist on the basis of the customers to whom they provide service based on their reputations and quality of service.

Real estate brokers who have interests in title insurance companies provide other disservices to the public, to their very own customers, by using pressure tactics on other brokers, creating hostilities and dissension that can cause a sale of property to fail, creating the situation where a seller who needed his home sold failed, or where a buyer needing a certain home did not acquire it and never did either know why, because negotiations can fail over the insistence of a certain provider, whether by the insistence of a broker in ownership of a title company, or by the broker representing a buyer exercising his free choice of firms when he is paying all or part of the costs. Everyone loses in these cases.

Real estate brokers should be prohibited from the conflict of interest that is apparent in ownership in service provision and further, they should be prohibited from becoming the SELECTORS of services that they are not paying for. BUYERS AND SELLERS, THE PUBLIC PAYS FOR TITLE INSURANCE AND THEY SHOULD BE CHOOSING THESE SERVICES BY THEIR OWN FREE DECISIONS.

Ernest 3/2/91

1509

Display #4 - Jeff Otto
David Armagost

WHY? WHO REALLY SELECTS THE TITLE COMPANY, WHO IS SUPPOSED TO SELECT!

1. I am not an attorney at law or a legislator but I know good business practices and fair trade from bad practice.
2. The RESPA and the USC (real estate settlement procedures act and the United States Code), address the costs of title insurance and the selection of the company to provide it. If my memory serves me correctly, RESPA came about to start with because of a legislator's bad experience with a real estate broker directing title insurance to a more costly firm for one of his relatives.
3. RESPA and the UNITED STATES CODE provide wording to the effect and not verbatim as follows:
4. WHERE THE BUYER IS PAYING ANY PORTION OF THE COST OF TITLE INSURANCE, THE SELLER SHALL NOT DIRECT THIS TO ANY PARTICULAR PROVIDER.

This is excellent. The problem is, it is not enforced and the penalty is minute. It is ignored.

Based on the letter and the spirit of the law, it is the person who is paying for the service who has the right to select the provider. This is generally true with the selection of home inspection services, termite and pest control companies, attorneys, or any other providers of services in and out of the real estate business. Perfectly acceptable practice.

5. BUT WHAT REALLY IS HAPPENING OUT THERE IN THE REAL WORLD, is that real estate brokers have become the SELECTORS of providers of real estate title insurance commitments and policies. No where that I know of has the law provided for this to be the case, everywhere that I know of, it is the party that is paying for the service who is to select the provider.

Even before the legislature considers the propriety of the real estate broker having some "free enterprise" or "constitutional right" basis for ownership in a title insurance company, they should consider the bad behavior of them right now by serving as self appointed SELECTORS of the provider and this should give great cause to wonder why they are so motivated to control the designation of providers? Generally some form of profit is a good motivator.

Ed Armagost 3/2/91

1649

CONTRACT ATTACHMENT A

Jeff Otto
LAWYERS TITLE INSURANCE CO.

David Armagost
COLUMBIAN NATIONAL TITLE INSURANCE

Mr. Otto:

The contract prepared by Fireside Real Estate was presented to the other firm who had the listing. It was signed by the buyer.

The information was transferred to their contract form and presented to the seller, who signed it, and then it was returned to us on the other firms contract form and we presented it to our buyer and he signed it.

The only significant change noted is that our contract states the title insurance to be obtained from COLUMBIAN NATIONAL TITLE, which was hand written into a blank space provided.

The other broker contract returned to us appears to have P^h PRINTED in for title insurance "Wichita Title Associates, Inc."

This obviously was not negotiated by buyer and seller as our contract was not returned to us and without receiving it back with a change indicated and initialed by the seller, there was no negotiation.

In this case, as in many others in file, it is simply a case of a broker DEMANDING and SELECTING where the title insurance would go.

If we chose to change this at the time it was presented to the buyer and had the buyer change it back to Columbian Title and initial the change and sent it back to the other firm for initialing, which would have been true negotiations, that would have been a dangerous thing to do, because the other broker could very easily have caused the transaction to fail. The different brokers take different approaches to this, some will caution you that a deal hinges on this, others are more subtle.

This is a problem because a bitter battle between brokers over the placement of title insurance can very easily result in no transaction and the losers are the parties, they are the buyers and sellers.

This is an example of what happens when brokers are allowed to own and operate title insurance companies.



FIRESIDE

REAL ESTATE COMPANY



FIRESIDE REAL ESTATE
 901 S. SENECA
 WICHITA, KANSAS 67213
 (316) 269-0600
 2812 S. MERIDIAN, #114
 WICHITA, KS 67213
 Office: 316/945 0880

ELMER ARNOLD
 REALTOR®

CONTRACT FOR PURCHASE AND SALE OF RESIDENTIAL REAL ESTATE

In consideration of the mutual agreements contained herein, OWNER agrees to sell and convey to BUYER, and BUYER agrees to buy and pay for, the following described real estate, together with the attached improvements thereon, subject to the terms and conditions stated in this contract.

OWNER: <u>As Signed Below</u>	
BUYER: <u>John E + Wendy D ELSSACK (Husband + Wife)</u>	
PROPERTY ADDRESS: <u>2421 S Bonn, Wichita, KS</u>	
LEGAL DESCRIPTION: <u>To be described in title search</u>	
PURCHASE PRICE <u>Forty-one thousand Dollars no cents,</u>	\$ <u>41,000</u>
EARNST MONEY <u>In the form of check</u>	\$ <u>500⁰⁰</u>
EXISTING MORTGAGE LENDER: _____	
Assumable rate of interest _____ %	
APPROXIMATE PRINCIPAL BALANCE OF LOAN AT CLOSING DATE:	
\$ <u>0</u>	
NEW MORTGAGE LOAN AS FOLLOWS:	
Term <u>30</u> Yrs. Interest rate not to exceed <u>9</u> %	
Approx. Monthly Principal & Interest Payment	\$ <u>372⁰⁰</u>
<input type="checkbox"/> Conv./fixed <input type="checkbox"/> ARM <input checked="" type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Other _____	
Discount points, if any, to be paid by <u>seller</u> not to exceed <u>2</u> %	
FHA Mortgage Insurance in the amount of \$ _____ shall be in addition to stated "Amount of New Mortgage."	
Loan Costs to be paid by <u>Buyer</u> in the approximate amount of \$ <u>1234</u>	
BUYER to pay prepaid items.	
AMOUNT OF NEW MORTGAGE:	\$ <u>43,750⁰⁰</u>
OWNER/OTHER FINANCING: (Described under "Miscellaneous")	
AMOUNT:	\$ <u>0</u>
APPROX. BALANCE OF PURCHASE PRICE DUE IN CASH FROM BUYER AT CLOSING, SUBJECT TO ADJUSTMENTS, CHARGES & PRORATIONS BUT DOES NOT INCLUDE ANY CLOSING COSTS OR PREPAID ITEMS. BUYER ACKNOWLEDGES ESTIMATE OF CLOSING COSTS AND PREPAID ITEMS. FUNDS DUE AT CLOSING MUST BE IN FORM OF CASHIERS CHECK OR CERTIFIED CHECK.	
\$ <u>250⁰⁰</u>	

- 1. **NEW MORTGAGE:** If financing is required, BUYER agrees to make immediate loan application and make every effort to secure financing to complete the transaction in accordance with the herein stated terms. In the event BUYER is unable to secure the above mentioned financing, all earnest money shall be returned and this contract shall become null and void. BUYER shall pay costs of credit report and appraisal directly to lender at time of loan application and understands that if expended and loan fails to close, fees will not be reimbursed to BUYER. If loan closes BUYER will receive credit for these prepaid items at time of closing.
- 2. **EXISTING MORTGAGE:** OWNER shall make payments required on the existing mortgage until closing. Interest shall be prorated as of closing date and BUYER shall reimburse OWNER for any reserves or escrow deposits thereunder if existing mortgage is assumed. If the mortgagee must consent to the transfer of existing mortgage and refuses, this contract is null and void and the earnest money shall be returned to BUYER.
- 3. **OWNER FINANCE/ASSUMPTION:** If OWNER is carrying the first mortgage or contract for deed, or a non-qualifying loan is being assumed, acceptance of this contract to purchase is subject to OWNER'S (at OWNER'S option) approval of credit report, job verification and verification of funds.
- 4. **CREDIT REPORT:** BUYER authorizes Broker to obtain a credit report.
- 5. **PROPERTY:** The real estate described herein together with improvements attached thereon shall include, if any, gas heaters, attic-fan, central air conditioning, lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, curtains and draperies, curtain rods and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), gas grill, gas lights, automatic garage door equipment including transmitters, attached and unattached wall to wall carpeting, built-in kitchen appliances, including but not limited to, disposal, dishwasher, range and oven; attached shelves, smoke alarms, installed burglar alarms, mail boxes, waterwell pumps installed, and all flowers, trees and shrubs and anything attached to premises or improvements thereon, and the following items, conditions and/or deletions: _____

TITLE EVIDENCE: OWNER agrees to furnish BUYER a policy of title insurance to insure the above described real property, showing merchantable title vested in OWNER, at the time of closing, subject to easements, restrictions and special assessments of record, if any, standard title exceptions, and any outstanding liens shown above. The cost of title insurance shall be paid 50 % by BUYER, and 50 % by OWNER. Title evidence shall be furnished to BUYER or as directed, and any requirements shall be furnished to OWNER as promptly and expeditiously as possible. It is understood and agreed that OWNER shall have a reasonable time (30 days) after title has been examined to correct any defects in title. Closing fee, if any be applicable, shall be paid 50 % by OWNER and 50 % by BUYER. BUYER and OWNER direct real estate brokers to order title insurance from Coldwell Banker Title. You are not required to use any particular provider of settlement services, including a title insurer, and may designate the provider of your choice.

EARNST MONEY: BUYER does hereby deposit with MHA ECK Trust Account the sum of \$ 500⁰⁰; in the form of check, as a guarantee that the terms and conditions of this Contract shall be fulfilled; said deposit to be applied towards the purchase price upon acceptance of title by BUYER and delivery of deed by OWNER. In the event BUYER shall fail to fulfill BUYER'S obligations hereunder, OWNER may, at OWNERS option, cancel this Contract, and thereupon the aforementioned deposit shall become the property of OWNER, or OWNER may, at OWNER'S option, enforce specific performance of the Contract or any other remedy allowed by law or equity. The parties have considered the reasonableness of the amount of earnest money and agree that it is a fair and reasonable sum for the purposes herein provided. PROVIDED HOWEVER, that, in the event OWNER is unable to provide merchantable title, or otherwise defaults hereunder, the earnest money deposited shall be returned to BUYER, and OWNER agrees to pay for any charges incurred, or BUYER may, at BUYER'S option, enforce specific performance of this Contract or any other remedy allowed by law or equity.

"Notwithstanding any other terms of this contract providing for forfeiture or refund of the earnest money deposit, the parties understand that applicable Kansas real estate laws prohibit the escrow agent from distributing the earnest money, once deposited, without the consent of all parties to this agreement. BUYER and OWNER agree that failure by either to respond in writing to a certified letter from broker within seven days of receipt thereof or failure to make written demand for return or forfeiture of an earnest money deposit within 30 days of notice of cancellation of this agreement shall consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto."

POSSESSION AND CLOSING: It is understood and agreed between the parties hereto that time is of the essence of this contract; thus, this contract shall be closed within a reasonable time after proof of merchantable title is submitted to BUYER and in no event later than 3-29-91. Possession shall be given at closing. If loan approval has not been obtained, but is in process, or if closing cannot take place on the above scheduled date because OWNER has not been able to give clear title, but clearing title is in process, then, at OWNER'S discretion, closing date on this contract shall automatically be extended for thirty (30) days.

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PRORATIONS: OWNER shall pay all taxes and special assessment* installments for the years p. . . the current calendar year. General t. . . special assessment installments, if any, for . . . current calendar year shall be prorated between the BUYER and OWNER. If the amount of such t. . . not be ascertained, proration shall be computed on the amount of the general taxes and special assessment installments for the previous year. . . the previous year's assessed valuation was based on a lesser improved property, in which event taxes shall be computed on a basis using the previous year's mill levy and on an estimate of the current year's assessed valuation. The BUYER shall assume all general taxes and special assessments other than those to be paid by the OWNER as described herein. Any special assessments paid out in the past calendar year will not be included in the proration. The rental from said property, if any, shall be prorated. All homeowner association dues, if any, for prior years shall be paid by the OWNER and for the current year shall be prorated. Homeowner's insurance, if assumed by BUYER, shall be prorated. All prorations shall be to DATE OF CLOSING.

10. CONVEYANCE OF PREMISES: OWNER warrants that any known defects in the described premises are disclosed herein and the real estate brokers and agents shall be held harmless for OWNER'S failure to disclose any known defects: _____

11. WARRANTIES/REPRESENTATIONS: The BUYER has carefully examined the premises and the improvements located thereon, and understands that the purchase price was negotiated after a consideration of any and all possible defects in the said real estate and the improvements thereon and that the OWNER, BROKER and Agents make no guarantees, express warranties, or express representations as to habitability, structural integrity, or any other type, except those expressly provided below: _____

12. PROPERTY INSPECTION: It is furthered agreed that BUYER may, at BUYER'S expense, inspect the electrical, mechanical, plumbing equipment, appliances, roof and structure now included in this property. Fireside Real Estate Company recommends that BUYER obtain an independent professional inspection. It is the responsibility of the BUYER, if the BUYER so chooses, to have the property checked for determination of good working order **NOT LATER THAN 7 DAYS AFTER ACCEPTANCE OF THIS CONTRACT.** If, as a result of these inspections, BUYER requests repair and/or replacement in writing, OWNER reserves the right to make such repairs or replacements or to withdraw from this contract and/or renegotiate this contract. In the event OWNER or Broker have not received from BUYER written notice of defects **WITHIN 10 DAYS OF ACCEPTANCE DATE OF THIS CONTRACT,** this provision shall be deemed waived. OWNER acknowledges that there may be certain repair requirements made by lender or appraiser and in the event any requirements are made by lender or appraiser, OWNER reserves the right to meet said requirements and/or renegotiate this contract.

13. TERMITE INSPECTION: BUYER shall have improvements inspected at BUYER'S expense by a licensed and bonded exterminator to determine whether there is any active, visible termite infestation, or existing visible substantial damage from prior termite infestation of the improvements. **BUYERS shall pay for and have an inspection report secured within 15 days after acceptance of this contract.** Within 3 days of receipt of said inspection report OWNER shall agree to comply with requirements of report and pay all costs for treatment and repairs, or renegotiate contract, or cancel contract. BUYERS must approve any treatment and/or repairs. OWNER shall have the option to have termite treatment performed by a Licensed Termite Company of his choice. In the event it should be determined at a later date that damage has been done to the premises as a result of termite infestation, BUYER agrees to hold harmless the listing/selling real estate company(ies) and any of its (their) representatives from any responsibility for the repair of said damage and agrees to take no action against the listing/selling real estate company(ies) and any of its (their) representatives as a result of the damage, if any.

14. INTERIM MAINTENANCE: Between the date of this agreement and closing (or possession if before closing), the entire property, including all mechanical equipment, appliances, plumbing, electrical system, lawn, shrubbery, trees, and pool if any, shall be maintained by OWNER in the same condition, ordinary wear and tear excepted, and BUYER shall satisfy themselves in this regard, prior to closing.

15. UTILITIES: OWNER agrees to pay for and to leave all utilities on until the date for possession and control temperature so as to avoid having the water lines freeze. OWNER will advise utility companies to read meters on the proper day for billing purposes but not to turn off such services.

16. INSURANCE/CASUALTY LOSS: The BUYER shall furnish at closing insurance policies necessary for the protection of the mortgagees and/or other holders, such as contracts for deed containing loss payable clauses to the mortgagees or others as their interest may appear. In the event of damage to the premises by fire or casualty prior to closing, and the estimated costs of repair are less than 10% of the purchase price, the OWNER shall restore same within a reasonable time. OWNER shall pay the deductible amount on the insurance covering said loss; if such estimated repair costs exceed 10% of the purchase price, BUYER may (a) take the property "as is" plus insurance loss proceeds, and any insurance deductible shall be payable to BUYER by OWNER, or (b) cancel this agreement and all earnest money shall be returned to BUYER.

17. SURVEY: BUYER may, at BUYER'S expense, obtain a survey of the Property before the Closing Date to assure that there are no defects, encroachments, overlaps, boundary line or acreage disputes or any other matter that would be disclosed by a survey. The parties agree that the results of the survey may be the basis for a timely objection to title to the property. A mortgage inspection report, loan survey or a boundary survey may or may not be a complete survey.

18. NET TO OWNER: OWNER hereby acknowledges receipt of a written estimate of expenses which shows an approximation of the costs of the sale of subject property and the approximate amount OWNER will receive at closing.

19. AGREEMENT APPROVAL/TRANSFER: This contract supersedes any previously executed contracts, verbal or written, by and between the undersigned to buy and sell the subject property. Neither this contract nor any interest herein shall be transferred or assigned by BUYER without the prior written consent and approval of OWNER.

20. MISCELLANEOUS: Seller to fix Broken Light Fixtures in home.
Seller to provide a property condition report on property.

21. RECEIPT OF AGREEMENT: The undersigned declare and represent that they have read the foregoing Real Estate Purchase Contract and fully understand it, and that no promise, inducement or agreement not herein expressed has been made to them. The parties whose signatures appear below are in agreement as to the above and foregoing terms of this Contract. BUYER and OWNER acknowledge receipt of a duly executed copy of this Contract.

22. AGENCY DISCLOSURE: All parties are hereby notified that all licensees involved in this transaction are agents for the OWNER with duty to represent the OWNER'S interest and are not the agents of the BUYER. Information given to the licensees will be disclosed to the OWNER. BUYERS may obtain a representative of their own as long as said representative does not participate in any fee paid by the OWNERS herein. BUYERS acknowledge that they were provided a copy of this agreement prior to any negotiations commencing on the above described property.

23. PRESENTATION OF OFFER: This offer is to be presented to the OWNER and to be returned to the BUYER no later than _____ on the _____ day of _____ 19 _____ or it shall be null and void with all earnest money returned to the BUYER.

24. THERE ARE ATTACHMENTS to this contract known as _____

This is a legally binding contract; if not understood, seek competent legal advice.

OWNERS: Executed this _____ day of _____ 19 _____

SS# _____

SS# _____
Listing Broker MPH ECK
Associate: MPH ECK
Phone No.: 942-7402

BUYERS: Executed this 11 day of Feb 19 91
James [Signature] SS# 515-76-338
Wendy D. Edwards SS# 514-68 2319
Cooperating Broker Fireside Real Estate
Associate: MARK ANOCI
Phone No.: 945-3553-269-0600

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5512 W. Central — Wichita, KS 67212
942-7402

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE
WICHITA AREA ASSOCIATION OF REALTORS® - UNIFORM PURCHASE CONTRACT

In consideration of the mutual agreements contained herein, it is mutually agreed by said parties, whether one or more, as follows:

- 1. **BUYER:** Leon E. & Wendy D. Elsasser (Husband and Wife)
CONVEYANCE TO BE MADE TO: _____
- 2. **SELLER:** Alberta Felts
- 3. **PROPERTY ADDRESS:** 2921 S. Bonn, Wichita
LEGAL DESCRIPTION: To be described in title search
- 4. **PURCHASE PRICE:** (Subject to terms and conditions herein)..... \$ 41,000.00
EARNEST MONEY: (see Paragraph #6)..... \$ 500.00
MORTGAGE ASSUMED: Type loan _____ Lender _____
Present interest rate _____ % Assumption rate _____ %
Approximate present payment \$ _____ per month including _____
(See Paragraph #7)..... \$ _____
NEW MORTGAGE PROCEEDS: (See Paragraph #8)..... \$ 10,350.00
OTHER: (See Paragraph #34)..... \$ _____
APPROXIMATE BALANCE DUE from Buyer at closing subject to adjustments
and prorations (not including closing costs)..... \$ 150.00

5. **OBLIGATIONS:** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and punctually pay for, the above-described real estate together with improvements thereon, subject to the terms and conditions stated in this Contract.

6. **EARNEST MONEY:** The Buyer does hereby deposit with Wichita Title Associates, Inc. (Company Name), in a Trust Account, Earnest Money in the form of a check _____ and in the amount of \$ 500.00, as a guarantee that the terms and conditions of this Contract shall be fulfilled by the Buyer. Buyer acknowledges that Earnest Money shall be deposited immediately upon acceptance of Contract. If transfer of funds is necessary to provide Earnest Money, said Earnest Money shall be deposited on 5 _____ (date), or before if Buyer authorizes same, in writing. Said EARNEST MONEY shall be applied to the purchase price at closing. In the event Buyer shall fail for any reason to fulfill any of Buyer's obligations hereunder, Seller may, at Seller's option, cancel this Contract, and thereupon the said deposit shall become the property of Seller. In the event the Earnest Money is forfeited as hereinabove stated, all expenses of the sale incurred to date by Seller and the broker, including, but not limited to, title insurance, appraisals, credit reports, and surveys shall be paid for prior to any remaining funds being released to Seller.

In the event the Seller is unable to provide merchantable title as herein provided or otherwise defaults, the Earnest Money shall be returned in full to the Buyer. In addition to forfeiture of Earnest Money to Seller or return of Earnest Money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the Earnest Money deposit, the parties understand that applicable Kansas real estate laws prohibit the Broker from distributing the Earnest Money deposit, without consent of all parties to this Contract. Buyer and Seller agree that failure by either to respond in writing to a certified letter from broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of any Earnest Money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the Escrow Agent or the Listing Broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the Escrow Agent and any Broker in connection with such dispute shall be reimbursed from the Earnest Money or other funds deposited with the Escrow Agent or Listing Broker.

7. **EXISTING MORTGAGE FOR ASSUMPTION:** The Seller shall punctually pay and comply with the terms of the existing mortgage, related note, or escrow Contract (Contract for deed) hereinafter referred to as "Instrument", until the date of closing and/or delivery of deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within 5 working days of Contract acceptance, unless Seller has waived, in writing, said requirement. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in Paragraph #4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the Earnest Money (less expenses as hereinabove stated) or of accepting the assumption of a modified Instrument and proceeding with the purchase. Any assumption fee(s) and/or modification fee(s) shall be paid by Buyer, unless as noted below. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing.

8. **NEW FINANCING:** Applicable when the purchase of this property is contingent upon the Buyer obtaining a \$ 40,350.00 (amount) FHA (VA, FHA, CONV-FIXED, CONV-ADJ, OTHER _____) first mortgage loan at an initial rate not to exceed 9.7 % plus required Private Mortgage Insurance or VA Funding Fee, and for a term of 30 years. If the loan is an adjustable-rate loan, subsequent interest rate variations from the beginning rate shall not exceed 0 % per 0 year(s) and 0 % over the loan's life. Buyer shall apply for said loan within 5 working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. Buyer shall pay for appraisal and credit report at loan application. If Property does not

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appraise for at least the Purchase Price, this Contract may be renegotiated or Contract will become null and void; or, in the event Buyer is unable to obtain such financing, the Buyer shall promptly notify the Seller or his broker in writing. If the Seller cannot or elects not to assist the Buyer in obtaining the required financing, then the earnest money, less accrued expenses, shall be refunded to the Buyer, and this transaction will be null and void. Buyer and Seller agree to execute any documents necessary to complete the nullification and return of Earnest Money. The Buyer _____ shall pay all loan costs, and the Buyer _____ shall pay all prepaid expenses including any private mortgage insurance. Discount points, if any, paid by the Seller shall not exceed 4% of the mortgage amount (plus included Private Mortgage Insurance or VA Funding Fee). Should FHA/VA appraiser or other lender/appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. Unless disallowed by lender, Buyer shall pay for any lender-required inspections (well & septic inspections included), compliance inspection fees, re-inspection fees and/or second appraisal fees.

9. **CLOSING AND POSSESSION:** The parties agree that time is of the essence hereof and Buyer agrees to make final settlement on or before _____ BUYER HEREBY CERTIFIES THAT BUYER WILL HAVE THE NECESSARY FUNDS AVAILABLE TO CLOSE THIS TRANSACTION, PAYABLE BY CASHIER'S CHECK OR CERTIFIED FUNDS. If closing cannot take place on the above scheduled date because Seller has been unable to give clear title, but clearing title is in process, or if loan approval has not been obtained, but is in process, then Buyer and Seller agree that the closing date shall be extended for thirty (30) days unless mutually agreed by Buyer and Seller. Seller agrees to give possession of closing _____ M. on 3/29/91. Should the Seller occupy the herein-described property after _____ Seller agrees to pay rent to the Buyer at the rate of \$ _____ per day. Should the Buyer be granted possession of the property prior to closing and after loan approval, if such approval is required, the Buyer agrees that all inspections required by them will be performed and that the property is in a condition acceptable to Buyer before Buyer takes possession. The party occupying the premises shall keep the property in a neat and clean condition and in good repair during the period of said party's occupancy.

10. **TERMITE INSPECTION:** The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/insurer, in which case the Buyer shall select a licensed termite treatment company and order termite inspection and the Seller shall pay for said inspection. If the dwelling, garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer hereby acknowledges that Buyer has been advised that the termite inspection will not necessarily reflect any or all damage to the premises, but will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas which are obstructed or inaccessible, areas behind dirt fills, finished walls, ceiling, rugs, furniture, fixtures and appliances and no comment can be made as to the presence or absence of termites in any obstructed or inaccessible areas. The report will not guarantee that infestation or damages does or does not exist. Nor will it be a guarantee that infestation or damage will not occur.

Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. Said inspection shall be made by a licensed building contractor at Buyer's expense. If said inspection reveals visible damage, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. The Buyer shall order said inspections and shall deliver copies of the written inspection reports to Seller and broker. These inspections shall take place as soon as possible but no earlier than thirty (30) days prior to the date of closing.

In the event Buyer does not cause the premises to be inspected and copies of the reports delivered to the Seller as provided herein, then Buyer shall be obligated to purchase Property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. In the event it should be determined at a later date that damage has been done to the Property as a result of termite infestation, Buyer agrees to hold harmless the listing/selling brokers and their representatives from any responsibility for the repair of said damage and agrees to take no action against the listing/selling brokers and their representatives as a result of the damage, if any. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the Closing Date.

11. **PROPERTY:** The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic-fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitter(s), attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke, and burglary detection systems (if owned), mail boxes, installed waterwell pumps, propane/butane tank(s) (if owned by Seller), swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with the following exceptions:

12. **PRORATION OF TAXES AND RESERVES:** Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as hereinafter provided. All ad valorem taxes, the current annual installment of special assessments, rentals, Homeowner's association dues, insurance (if policies acceptable to Buyer), and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the Closing Agent. The Buyer understands that Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the Closing Date and that Buyer is assuming all unamortized installments of special assessments. The amount of special assessments often cannot be determined with any degree of exactitude. Buyer represents that, prior to closing, Buyer will assume all responsibility for ascertaining information pertaining to said taxes and special assessments. Buyer acknowledges that the mill levy, classification, assessed valuation, and/or taxes may change from year to year during Buyer's ownership, and that periodic reappraisal, required by law, may result in a change in taxes.

13. **INSURANCES:** Seller shall maintain current insurance in force until Closing Date. Whether or not Buyer assumes Seller's existing hazard insurance, the Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to Federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

14. **CASUALTY LOSS:** In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. Buyer shall have the option to proceed with the estimated costs of repair being placed in escrow by the Seller, or Buyer IS GRANTED

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THE OPTION TO TAKE THE PROPERTY AS IS, PLUS INSURANCE PROCEEDS AND DEDUCTIBLES. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all Earnest Money shall be returned to Buyer less expenses.

15. **TITLE EVIDENCE:** The Seller shall cause to be furnished to Buyer a title insurance company's written commitment ("title binder") and issue after closing a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. The title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described herein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein. A copy of the title binder will be furnished to lender and/or Buyer's attorney as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title binder. Buyer shall pay for any lender's/mortgagee's/Instrument-holder's title insurance coverage. Once issued, the Buyer agrees that Buyer shall look solely to the title insurance company issuing said policy for any losses sustained as a result of any defects in the title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the Earnest Money shall be refunded promptly to the Buyer, and Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorney's fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder. BUYER and SELLER direct real estate brokers to order title insurance from Wichita Title Associates, Inc. Matt Eck Real Estate, Inc. has an ownership and financial interest in Wichita Title Associates, Inc. The charges generally made by Wichita Title Associates for owner's and loan policies of title insurance as described on lines 1109 and 1110 of the HUD-1 Settlement Statement are approximately the same as shown on the written estimate of charges provided with this disclosure, which is being made prior to the time of the referral of title insurance order. You are not required to use any particular provider of settlement services, including a title insurer, and may designate the provider of your choice. Unless otherwise specified in writing, Matt Eck Real Estate, Inc. is authorized to secure title insurance services from Wichita Title Associates, Inc. on the basis of the estimated charges described in HUD-1 settlement statement.

16. **DEED AND DOCUMENTS FOR CLOSING:** After the terms of this Contract are agreeable to both Buyer and Seller, the listing broker shall cause to be prepared, a proper Deed and Affidavit Of No Liens, and other necessary documents to complete this transaction. The Seller will sign same when requested by Broker only when all the terms and conditions of this Contract have been met. In the event a title or abstract company prepares such documents, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller.

17. **REPRESENTATIONS AND RECOMMENDATIONS:** It is hereby agreed and acknowledged by the parties hereto that neither the listing nor selling brokers, or their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject Property, including, but not limited to the following, if any: condition, age or operability of any appliances, heating or central air-conditioning, plumbing, electrical, mechanical systems, roof, walls, foundation or structure, swimming pool, property boundaries, dryness of basement, amount and type of insulation, septic system/laterals, and depth or quality of water wells. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to either the Seller or Buyer for performance or lack of performance of any other terms or conditions of the Contract or for damages arising out of or relating or incidental to the contents of this Contract or the performance or non-performance of either of the parties to the Contract. Again, it is emphasized that if the parties hereto feel representations have been made that are not set forth specifically in the printed form of this Contract, they must be set forth specifically and in writing herein and as herein provided if said "understood" or "implied" representations are to be effective or enforceable. Buyer acknowledges that Buyer has been informed that these documents may be reviewed by Buyer's attorney prior to Buyer executing same.

18. **INSPECTION:** The Buyer has carefully examined the premises and the improvements located thereon and in making the decision to buy the Property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any Contractors Buyer may have selected. Buyer represents that the purchase price was negotiated after consideration of any and all possible defects in the real estate and the improvements, including all plumbing, electrical, structural and mechanical components. Furthermore, Seller has disclosed Property facts, defects, and other Property information on the attached Seller's Property Disclosure form, which Buyer acknowledges herein having received and reviewed. Buyer hereby agrees to hold listing/selling brokers harmless for Seller's failure to disclose any known defects or material facts regarding the Property. However, Buyer's obligations hereunder are subject to Buyer's securing, at his expense, a full and complete inspection of the property, including but not limited to the roof, structure, all electrical, mechanical and plumbing equipment and appliances. Buyer further agrees that these inspections are not intended to ascertain the cosmetic imperfections of the property (i.e. walls needing painting, worn carpeting, chipped woodwork, missing cupboard knobs, etc.), or other items that Buyer has already considered in determining the Purchase Price.

These inspections shall be obtained as soon as possible, but not later than five (5) working days of the Contract acceptance. Seller shall cooperate in all respects in allowing Buyer's Contractors access to the premises, and will activate utilities, if necessary, to complete inspections. If Buyer has not notified Seller, or agent, in writing and within 72 hours of inspection completion of any defect revealed by the inspection(s), then this Contract shall be in full force and effect. However, if, as a result of these inspections, Buyer requests, in writing, repairs or replacements to rectify reported defects, Seller, at Seller's sole option, may make said repairs, renegotiate, or cancel this Contract; provided that, if Seller elects to cancel this Contract, Buyer may waive Buyer's request for repairs or replacements. If the estimated cost of repair exceeds ___% of the purchase price, either Buyer or Seller may cancel this Contract and all Earnest Money shall be returned to Buyer, less expenses. Seller agrees to give Buyer reasonable access to the Property before the Closing Date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS REQUIRED ABOVE, BUYER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO OBJECT TO ANY DEFECTS IN THE PREMISES AND FURTHER IS AGAIN DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in Paragraph #20. The parties agree and the Buyer represents that once the Contract has in fact been closed, that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, Escrow Agent, Closing Agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or Broker on behalf of either. Buyer and Seller both hereby acknowledge that they have been made aware of the availability of a Home Warranty Program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternative Home Warranty coverage.

19. **ENVIRONMENTAL CLAIMS:** Buyer and Seller, jointly and severally, agree to indemnify and hold broker harmless from any and all claims, actions, damages, liability and expense, including but not limited to attorneys and professional fees, incurred in connection with any preventive, remedial or other cleanup action necessary for the real property described in Paragraph #3 to comply with all applicable federal, state and local laws, rules, regulations or ordinances pertaining to air, water, soil quality, hazardous waste, waste disposal, air emissions and/or other environmental matters.

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20. **INTERIM MAINTENANCE:** Until Closing, or possession if prior to Closing, the Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to keep the roof watertight and to maintain the lawn, shrubbery, trees, and pool, if any. Seller agrees to convey the property covered herein and deliver possession of same in a like or better condition than it is now, reasonable wear and tear excepted. Seller will advise utility companies to read meters on the proper day for final billing purposes, but not to turn off such services.

21. **LIENS:** Seller represents and warrants that there are no unpaid bills for labor or material that might form the basis of a mechanic's lien against said premises, and that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales Contracts, financing statements, or security agreements affecting any future, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises which the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

22. **SURVEY:** Broker recommends that Buyer acquire a survey on the property being purchased, regardless of Lender's survey requirements. Buyer understands that the lender may order a survey called a "Mortgage Title Inspection," which does not include staking of property corners. For extra expense, the Buyer can request a "Boundary Survey & Improvement Location," which will include a staking of property corners. Buyer is also aware that their title insurance may not cover survey-related issues even if a recent survey has been completed. Brokers shall not be held responsible for any defects, encroachments, overlaps, boundary line disputes, acreage matters, or other matters which could be disclosed by a Survey.

23. **INGRESS AND EGRESS:** Seller warrants that there is ingress and egress to said Property.

24. **HEIRS AND ASSIGNS:** This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to Paragraph #27). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

25. **KANSAS LAW APPLIED:** This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

26. **PARTIES:** This is a Contract between Buyer and Seller. If two or more persons constitute either Buyer or Seller, the words "Buyer" or "Seller" shall be construed to read "Buyers" or "Sellers" whenever the sense of this Contract requires.

27. **AGREEMENT APPROVAL:** EACH PARTY SIGNING THIS CONTRACT ACKNOWLEDGES THAT HE OR SHE HAS READ THE ENTIRE CONTRACT. This Contract constitutes the entire agreement between the parties and supersedes any previously executed Contracts, representations, verbal or written, to buy and/or sell the Property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

28. **BROKERAGE FEE:** The party or corporation handling the closing of this transaction is hereby authorized and directed to withhold the brokerage fees from the sale proceeds upon Closing, and as set forth in the listing Contract between the Seller and the listing Agent and/or an attached Buyer Broker Addendum, if any.

29. **AGENCY RELATIONSHIPS:** Unless indicated otherwise by an attached Addendum. 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 Buyer on the _____ day of _____ 19____ (insert orally or in writing).

30. **ALTERATIONS:** Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

31. **SURVIVAL:** The provisions of Paragraphs 6, 9, 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 29 shall survive closing.

32. **CREDIT REPORT:** BUYER authorizes broker to obtain a credit report.

33. **MISCELLANEOUS:** Seller to fix broken light fixtures in home. Seller to provide a property condition report on property. FHA requirements not to exceed \$750.00

EACH PARTY INITIAL AND DATE THE BOTTOM OF EACH PAGE AND ANY MODIFICATIONS. THIS IS A LEGALLY-BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

*Buyer and Seller hereby acknowledge that they have received a copy of this preprinted contract prior to any negotiations commencing on the above described Property.

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this Property.

IN WITNESS WHEREOF, said parties hereunto subscribe their names.

EXECUTED BY BUYER THIS

22 day of Feb, 1991

[Signature]
BUYER

SS# 515-76-3365

Wendy D. Elsasser
BUYER

SS# 514-68-2379

COOPERATING AGENT: Mack Arnold

FIRM: Freddie

*REVWAARUC (4/5/90) #9, #10, #15, #18, #29, #32,

EXECUTED BY SELLER THIS

22 day of Feb, 1991

[Signature]
SELLER

SS# 432 22 410

SELLER

SS# _____

AGENT: _____

FIRM: _____

KREC File# _____

BI [Signature] DATE 2-22-91

BI WE DATE 2-22-91

SI [Signature] DATE 2/22/91

SI _____ DATE _____



2389



BARBARA JEAN PICKENS, GRI, CRS

10300 W. Central, Suite 200
Wichita, Kansas 67212
Phone (316) 722-9393
FAX: (316) 722-6210



March 7, 1991

The Honorable Larry Turnquist
House Insurance Committee
State Capitol Building
Topeka, Kansas 66601

Dear Chairman Turnquist:

I am writing to request your help to defeat House Bill 2413, which is before your committee. This bill is a very anti-consumer bill.

Passage of this bill would allow real estate brokers and lenders to own title companies and allow those realtors and lenders to force buyers and sellers to use that title company. Is this free enterprise? "Arrangements" such as these only lead to higher prices and poor service. It seems to me that it was "arrangements" such as this that led to the anti-trust laws in the early part of this century.

As a real estate broker here in Sedgwick County, I can tell you that during the time one of these title companies existed here, great pressure was applied to force transactions to that company, even after my clients or I had expressed a preference for other title companies. Such pressure should not be present in real estate transactions, especially from someone who stands to gain financially from the decision.

House Bill 2413 should not come out of your committee.

Cordially,

Barbara Jean Pickens

cc: Honorable Darlene Cornfield
Honorable Ann Cozine
Honorable Theo Cribbs
Honorable Henry Helgersen
Honorable Tom Sawyer
Honorable Gwen Welshimer

2413
2/8/91

THE
MARTENS
COMPANIES

(316)262-0000 • P.O.Box 486 • Wichita, Kansas 67201

March 4, 1991

The Honorable Larry F. Turnquist, Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 2413

Dear Representative Turnquist:

I am writing in opposition to HB 2413. Established in 1948, our firm is a full service commercial/industrial real estate brokerage company located in Wichita, Kansas. As a past president of the Wichita Area Association of Realtors and the Kansas Association of Realtors, I have visited with many in the real estate industry regarding this issue. There are three main reasons why people are opposed to this type of legislation:

(1) Real estate brokers who support HB 2413 are guilty of the old saying "...wanting your cake and having it to!" The National Association of Realtors is currently launching a massive nationwide campaign to block expanded powers of banks. Specifically, the NAR does not want banks to go into the real estate brokerage business (see attached article from the front page of the February 25, 1991 *REALTOR NEWS*). It is completely inconsistent to argue on one hand to keep banks out of the real estate brokerage business and on the other hand argue that real estate firms should be able to own title companies.

(2) The consumer and general public are at a distinct disadvantage if HB 2413 passes, given the current disclosure requirements in the Kansas Real Estate Brokers' and Salespersons' License Act. Most buyers of real estate do not have contact with title companies, and rely on their real estate agent to provide "objective" advice on which title company to use. How can a real estate agent or broker remain objective on which title company to use if he or she, or the agency they work for, has a financial interest in a particular title company?



2549

The Honorable Larry F. Turnquist, Chairman
House Insurance Committee
House of Representatives
March 4, 1991
Page Two

(3) The free enterprise system is already working. Attached is the SW Bell Yellow Pages listing, pages 637 and 638, of title companies advertising for business in the Wichita metropolitan area. There are six full service title companies (excluding Wichita Title Associates) that are independently owned and operated. Those companies more than adequately handle the volume of real estate transactions in Sedgwick County. All of us remember only too well how badly the airline industry argued for deregulation. We know how that story ended.

We ask that you do what is best to ensure that a fair and competitive market exist for the consumer and the general public. We ask that the House Insurance Committee not support HB 2413. Thank you for your consideration of this matter.

If we can answer any questions or provide additional information, please do not hesitate to contact us.

Respectfully Submitted,

THE MARTENS COMPANIES



Steven J. Martens, CPM
President

SJM/bs
Attachments

80 JAVIA *****
 AR30003973
 STEN J. MA
 ARTENS
 BOX 48
 MARKET

February 1991 Broker-Office Issue

REALTOR NEWS

Volume 12, Number 4

Week of February 25, 1991



Get ready for NAR's Midyear Conference and Trade Expo in Washington, D.C., April 26-May 1. See page 7 for details.

ATION
 ate™

DATE

The pace of residen- slowed in much of many newspapers l with the dourest, l concoct. So head- ington Post were a omebuying season hows Signs of Re- using Market. The e positive, citing at "helping entice their lowest point le continued on an ne: Low Mortgage mbers throughout mplaints recently tide is turning. If reporting such as give them a call or you appreciate it. is into a trend.

NAR lobbying effort launched to block expanded bank powers

The NATIONAL ASSOCIATION OF REALTORS® is launching a major lobbying initiative—including a Call for Action issued by President Harley E. Rouda to the membership—to block potential congressional proposals to allow national banks to engage in real estate-related activities.

The U.S. Treasury Department proposed Feb. 5 that holding companies owning a national bank be allowed to engage in securities and insurance activities through separate subsidiaries.

While the Treasury Department recommended against permitting bank holding companies to expand into real estate-related activities, NAR is concerned that such a proposal may surface in Congress in debate on Treasury's proposals for restructuring the banking and deposit insurance systems, said Stephen D. Driesler, NAR senior vice presi-

dent for government affairs. Among the drawbacks to national banks' involvement in real estate brokerage is the "un-level playing field" that would be created in the real estate industry, Driesler said.

He explained that consumers likely would assume that preferential home financing terms would be available through a bank-affiliated real estate broker.

Upcoming NAR actions include:

- A Call for Action urging REALTORS® in key congressional districts to write to their representatives. See the upcoming March 11 all-member issue of REALTOR NEWS® for details;
- REALTOR® visits to Capitol Hill;
- Placement of advertisements in major newspapers to alert the general public to NAR's concerns.

Relieving the squeeze

Strategy set to ease credit

By Pamela Geurds

Amid increasing signs that the Bush administration is heeding NAR's warnings about the credit crunch, the association is pursuing a multifaceted strategy aimed at alleviating the destructive effects of the squeeze on real estate values and the economy.

NAR repeatedly has expressed concern to federal financial institution regulators that restrictive investment real estate laws are not being removed because of extremely restrictive regulations. The association is working to remove these regulations and to encourage the development of new financing products.

ck, Allen Sabbag, irdens Real Estate that organization's ents were realistic: across the country, d have a significant lasts six months or as: "the real estate the surveyed firms: ow over, consumers with more willing to al decisions. • Sixty nising prices are at good time to buy • e the advantage of all below 10 percent and agents should ultations as the trend y can be successful o existing on their p

WETLANDS

At left, REALTOR® Patricia Campbell-White of Rehoboth Beach, Del., tells a congressional panel Feb. 6 that wetlands policies must protect private property rights. Below, Louisiana Gov. Buddy Roemer, center, meets with NAR Regional Vice President George L. Tucker of Universal City, Texas, and Jackie Clarkson, REALTOR® and New Orleans city councilwoman, to discuss REALTOR® concerns about wetlands policies in Louisiana, where more than 55 percent of the land is designated as wetlands. Tucker, whose region includes Louisiana and Texas, said the Jan. 22 meeting was encouraging because it opened the lines of communication between REALTORS® and the Louisiana government. (See article on page 6 of this issue, and look for a Special Report on wetlands in the March 11 all-member issue of REALTOR NEWS®.)

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Tire Dealers-Retail (Cont'd)

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KE-PERRIN TIRES INC
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E Harry St 681-4761
TOR SUPPLY CO
S W Kellogg 721-4797

POOR BOY TIRE MART
3250 W 13 945-7131
*FOR MORE INFORMATION
See Advertisement Page 636

TIRE COMPANY INC
State Augusta 775-1111
Lincoln Street Apco
E Lincoln 265-4584

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"BECAUSE SO MUCH IS
HANGING ON YOUR TIRES..."



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DER TIRE OF WICHITA
368 W 30 South 943-7979
NISON TIRE
15730 W Central 943-6555
NISON'S TIRE SERVICE
72 S Hillside 683-3931
MONTGOMERY WARD & CO
West Square 4600 W Kellogg
Auto Express 946-1264
S E Harry
Auto Express 681-4761
ERN AUTO
21 N Amidon 838-0324
22 W Kellogg 945-3222

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East 3072 S Hillside 683-3931

POOR BOY TIRE MART
4300 W Central 943-0161
*FOR MORE INFORMATION
See Advertisement Page 636

ROAT'S BUD STANDARD SERVICE
4807 E Kellogg 683-9072

Rock Road Standard Service Center
8002 E Central 634-2885

ROLLER'S AUTO ACCESSORIES
145 N Hillside 685-1355

SEARS TRUCK TIRE SALES AND
SERVICE CENTER 2940 W Pawnee 943-3211
*FOR MORE INFORMATION
See Advertisement Page 636

Seglem & Sons Texaco Station
4645 E Central 684-6941

SENECA TIRE & SERVICE INC
2402 S Seneca 264-0486
Or 2402 S Seneca 262-9342

*FOR MORE INFORMATION
See Advertisement Page 636

SHAMROCK TIRE 3001 S Broadway 522-2296

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Plain Ks Wichita Ks Tel No 264-7118

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SUPER SHOPS AUTOMOTIVE
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See Advertisement Page 635

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2044 Northern 529-2193
SHAMROCK TIRE
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WICHITA TIRE INC
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7 - 5:30 MON - FRI 7 - 12 SATURDAY
3144 S Southeast Blvd 686-9856

WESTERN AUTO

2021 N Amidon 838-0324
5725 E Kellogg 681-3099
6422 W Kellogg 945-3222
303 E Pawnee 269-4643

*FOR MORE INFORMATION
See Advertisement Page 635
Westlink Tire & Automotive Center
810 N Tyler Rd 721-0781
Wichita Tire Inc 8474 E Kellogg 685-2322

Tire Dealers-Used

A & A Auto Town Service Center
Broadway At McArthur-Northwest
3955 S Broadway 524-8835

BLASI TIRE & AUTO GLASS
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Kennedy Tire 3250 W 13 945-7131
Poor Boy Tire Mart 4300 W Central 943-0161

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Brown Distributing Co 2044 Northern 529-2193
Capitol Super Service
1400 S West 41
Topeka Ks Wichita Ks Tel No 262-4104

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Becker Bandag 1749 S Sabin 942-3183
Express Tire Co Inc 651-3823
Froman's Tire Service & Repair
524 W 21 832-9240

HOLLEICKE-PERRIN TIRES INC

Bandag
TRUCK TIRE RETREADING
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Center 115 N Washington 269-1107

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TRUCK TIRE RETREADING
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listings of this classification are
continued on next page

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Our Name Says It All

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262-0765

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116 W CENTRAL EL DORADO KS.
DIAL DIRECT 262-2849

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2809

Title Companies -(Cont'd)

CHICAGO TITLE INSURANCE COMPANY 434 N Main -----267-8371

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ABSTRACTS
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See Advertisement Page 637

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300 N Main -----262-8248

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151 N Main -----267-5333

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- ▶**TOILET COMPARTMENTS**-See Partitions

Toilets-Portable

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★FOR MORE INFORMATION
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★FOR MORE INFORMATION
See Advertisement This Page

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443 N St Francis -----267-0863

Tool & Die Makers

American Tool & Die
Rt 1 Box 149-AB -----775-6062

Art Roll Tech 3520 McCormick -----942-3951

Bly G L Company 1740 S Colorado -----942-8251

Casco Inc 2005 S West -----945-9351

FOUR STAR TOOL & DIE INC
1612 S Mead -----264-2913

Friesen Tool Co Inc 240 Wabash -----262-6808

General Tool Div Steve-Co
912 E Zimmerly -----265-3832

Gordon Tool And Die Inc
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Hallum Tooling Inc
3838 May -----942-5633

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DIES
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Sinn's Tool & Die 1940 Emmett--524-6341

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1623 S McComas -----942-7421

WICHITA TOOL COMPANY

Building & Rebuilding Of
INJECTION MOLDS
THERMOSET MOLDS
DIE CAST MOLDS



C.N.C. & F.D.M. MACHINING
3-D DUPLICATING & ENGRAVING

WICHITA TOOL CO INC
6053 S Seneca -----529-2222

Tool & Die Makers Equipment & Supplies

L D Supply Inc 3503 W Harry -----942-8374

▶**TOOL ENGINEERS**-See Engineers-Professional; Tool Designers; Tool & Die Makers

Tool Grinding Industrial

MARBARGER TOOL SERVICE
See Ad Tool & Die
1765 N Emporia -----262-6152

R W TOOL SERVICE 1320 S Handley--265-0048

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Lnd Mills Shear Blades-Cutters
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2727 W Pawnee -----945-0593

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1821 S Gordon -----945-8488

WICHITA STAR TOOL SERVICE INC
1736 S Knight -----943-1942

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TRW PUTNAM END MLLS
TRW CHICAGO LATMORR DE
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HUB TOOL & SUPPLY INC
DAYTON - JERGENS - MASTER CUT
MANCHESTER - LOVEJOY - WELFORD
DEVILIEG - 3M - SUNNETT EYES
354 Lulu -----

HURST WM F CO INC
SUPERIOR HOME
NEW YORK TWIST ECUA
ATI - F & D TOOL - CHAS
2121 S Southwest Blvd -----

L D SUPPLY INC
CLEVELAND DRILLS & END E
SANDVIK CARBIDE INSER
ONSRUD ROUTER BITS
3503 W Harry -----

MacDonald B C & Co
2433 W Douglas -----

Madill Carbide Inc 1504 E Waters
Mires Tool Co 910 W Harry -----

MURDOCK INDUSTRIAL SUPPLY
ISCAR CARBIDE
414 N Rock Island -----

Tools-Electr

AEG INDUSTRIAL POWER TOOLS - AUTHORIZED SE
RICHMOND ELECTRIC CO
911 Maple -----

Air Capital Power Tool Repair
3727 W Douglas -----

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DEPENDABLE
QUALITY
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RICHMOND ELECTRIC CO
911 Maple -----

SUNFLOWER SUPPLY CO
818 West Douglas -----

THORNTON COMPANY
1707 S Hoover -----

Brown's Supply 1343 N Hillside
Brush & Board Hardwoods
923 E Gilbert -----

DUNTZ TOOL SUPPLY
1831 Southwest Blvd -----

Harrington Hardware 3863 S Sel
LIGHTNER WELDING & INDUSTRIAL SUPPLY 1629 N Mosley -----

M K AND W SUPPLY
Black & Decker-Milwaukee-Porter Cable
504 S St Francis -----

M & M Supply Co
119 Pattie -----

listings of this classification continued on next page

T



P.O. BOX 532 • 733 N. BALTIMORE • DERBY, KS 67037 • (316) 788-6717

March 5, 1991

Larry S. Turnquist
Chmn House Ins. Committee
House of Representatives
State Capital Building
Topeka, KS 66612

Dear Sir:

The purpose of my letter is to inform you of my opposition to the concept of controlled business. I started Estates Unlimited Realtors in 1984 and have grown to be the largest Real Estate firm in Derby, Kansas.

I feel the system, as it now operates, is the most efficient and affords the customer the most protection. I urge you to maintain the Real Estate business as it now functions. When something works this effectively, we do not need to modify or change it.

Sincerely,

K. O. LaVergne

K. O. LaVergne
President
Estates Unlimited Realtors

KOL/jb

3079

Paul R. Brown & associates, inc.

102 Colorado Derby Bldg. / 202 West First / Wichita, Kansas 67202 / (316) 264-0394

Paul R. Brown, M.A.I.
Betty M. Spingler

March 5, 1991

The Honorable Larry F. Turnquist
Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: Controlled Business Legislation

Dear Representative Turnquist:

I am a Realtor and Appraiser here in Sedgwick County. My career began on June 5, 1938. I have been continuous with the same firm for nearly fifty-three (53) years. I earned the MAI designation in 1959 from the American Institute of Real Estate Appraisers, which was one of the Institutes of the National Association of Realtors.

As an MAI, I was thoroughly schooled against advocacy practices, or any business ethic that was purely self-serving or that in any way denied full openness and choice to the client.

I have served as President of the Board of Realtors here in Wichita in 1952 and as President of the Kansas Chapter #45 of the American Institute of Real Estate Appraisers in 1966.

This letter is to respectfully urge the defeat of HB 2413, because I believe it enables real estate representatives to unfairly control the client in the matter of choice, when title insurance is to be purchased.

Most respectfully yours,


Paul R. Brown, MAI

prb:s

3B of 9



Insurance...

Management — Appraisals — Real Estate



Paul R. Brown & associates, inc.

102 Colorado Derby Bldg. / 202 West First / Wichita, Kansas 67202 / (316) 264-0394

Paul R. Brown, M.A.I.
Betty M. Spingler

March 5, 1991

The Honorable Larry F. Turnquist
Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Representative Turnquist:

I am requesting that you give serious consideration to the defeat of HB 2413.

I am a Realtor, entering the real estate business May 2, 1952, tenure has been continuous with the same firm. I have been active in the Wichita Board of Realtors, serving as President; I have been active with the Kansas Association of Realtors, serving as director and chairman of the Professional Standards Committee for several years and one of the first to receive the Certified Professional Standard Procedures Instructor designation from the National Association of Realtors.

In my opinion Wichita is privileged to have the availability of service from several title companies. Over the years, I can speak to the fine quality service. Competition between the title companies has been wholesome. Fees have been competitive and increases only when the economy warranted.

The title companies in general have provided many benefits and certainly extended a hand of fellowship to Realtors and the community in areas where there was no compensation for them. They have been "team players" with the Realtors. To my knowledge, the title companies have no ownership in the real estate business.

In my opinion it would be difficult to suggest to anyone the use of another title company if you had financial interest in one. The involvement alone would cause explanation to be made which could easily be an unfair judgment.

I believe that the Realtors have taken a position on the Federal level to curtail activity of bankers in the real estate business. Ownership in a title company would be in direct conflict with their position relative to bankers. Then, support of HB 2413 could likely be self-serving.

I believe, Wichita Title is the only company that has a filing with the Insurance Department whereby an additional 15% of premium for an endorsement insuring over encroachment problems on surveys.



Insurance...

Management — Appraisals — Real Estate



The Honorable Larry F. Turnquist -2-

March 5, 1991

Realtors of long tenure have witnessed the transition from public skepticism to full-fledged respect. It would seem difficult for a Realtor to justify without reservation advising the public in two areas.

The old adage "do what you do best" is usually successful and respectful.

Thank you for your consideration.

Sincerely yours,

Betty M. Spingler
Betty M. Spingler

bms:s

38 of 9

March 5, 1991

Mr. Larry F. Turnquist
Chairman House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: House Bill 2413

Dear Mr. Turnquist:

This letter shall serve as my request for the denial and defeat of House Bill 2413.

The practice of a principal or proprietor of a real estate company or its agents being involved in a title insurance company, a controlled business raises definite issues of "Conflict of Interest". While disclosure laws attempt to inform the public of involvement, it does not eliminate the conflict of interest issue.

The assumption, that buyers of real estate using title insurance, are experts or even knowledgeable enough to protect themselves in these ever increasing complex issues is very naive and fails to provide consumers the protection they deserve.

As a commercial real estate company, we find most purchasers of title insurance do not even know why they are getting title insurance. They think it is required in order to close a real estate transaction.

Even the more sophisticated real estate buyers only know that title insurance is required to get a loan in order to close the transaction.

Seeing how an attorney's opinion of abstract is still an option, although seldom used, when asked if a real estate buyer would like title insurance, the comment quite often is "Do I need it?" and "What for?". This automatically puts the real estate agent as the person educating the public to the kind, type and need for title insurance.

This may put the public at the mercy of the real estate agent or more importantly at the agent's full discretion particularly if any ownership or association of a title company would provide the agent any benefit, i.e. time or other economic or non-economic value.

AT THE QUARTERS
310 W. Central At Waco #211
Wichita, Kansas 67202-1094
(316) 262-8585

34 of 9

34



Todd: Verbal agreement per
phone

- ① Absolutely will not pay specials
- *② Lawyer title ok if Buyer pays the extra paper work fees.
- ③ Financial statement on buyers
- ④ Terms of attached occupancy agreement to be met.

Sells owes a little over
\$95,000 so this is pretty
much bottom line.



425 North Broadway / Wichita, Kansas 67202 / 316-262-2311

March 1, 1991

Larry F. Turnquist
Chairman, House Insurance Comm.
House of Representatives
State Capitol
Topeka, KS 66612

Dear Representative Turnquist,

I am writing this letter to comment on the "controlled business" legislation pending before your legislative committee.

I am a commercial and investment real estate broker, with almost 20 years of experience in all sizes of commercial transactions in Wichita, Kansas. I deal with clients from both ends of our country. I have been the Chairman of the Wichita Urban Renewal Commission, and the President of the Wichita Economic Development Commission. In those capacities I have sold, or been involved in the sale, of many millions of dollars worth of properties. I have had occasions to experience most of the vagaries of title insurance in the State of Kansas.

So much for my credentials - to discuss controlled business legislation before your committee. Regardless of the stand taken by the Kansas Assoc. of Realtors, I believe that controlled business wherein a real estate agent is in a position to direct title business for his own profit is a bad idea. It is a bad idea because, rather than promoting competition, it stifles competition. By far, the bulk of the title insurance policies written in Kansas are residential policies. Most residential customers do not know where to get a loan, much less where to acquire title insurance. The more sophisticated clients, the commercial and investment brokers, are also in a position to suggest title agencies and closing agents.

It seems to me that if you suggest someone use a company in which you have a financial interest, you're no longer promoting the most efficient or the best title insurance company, or the best service for the client or the prospect. Instead, you are promoting your own pocketbook. In Wichita, in my twenty years of commercial and investment real estate brokerage, I have dealt with Realty Title, Security Title, Fidelity Title, Lawyers Title, and Columbian Title. Different title companies for different clients, and for different transactions. The more difficult the transaction, the more difficult the clients - the more I pay attention to which



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Representative Turnquist
Kansas House of Representatives

March 1, 1991
Page Two

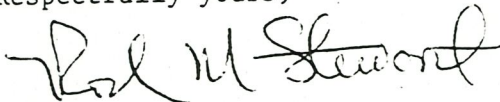
title company has the responsibility for the title work, and for the closing. My decisions are based upon the best good for my clients, and for the best set of information and work that can be done to insure prompt and accurate closings, rather than on whether or not I am going to make money from the title insurance business. I make my money from selling and closing real estate transactions.

There are many fine title companies in Wichita, Kansas. They compete hard; they provide a myriad of services; and they should be allowed to do so in a free market, competitive economy, rather than in a circumstance where real estate brokers are recommending title insurance based upon their ability to profit from the transaction. All of the title companies give good service, and some give better service than others - but there is plenty of competition, and plenty to choose from in our marketplace.

Inasmuch as a clear title and an accurate closing are the most integral parts of a real estate transaction; isn't it appropriate that a broker, in whose hands the vast majority of the negotiation lies, has a responsibility to both buyer and seller to guide them towards the best service, and the best rates, and the most accurate closing, than to one in which he stands to make a financial gain.

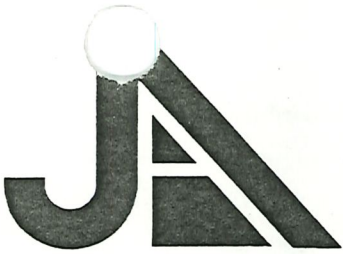
Please defeat the proposed legislation because, rather than stimulating good service to the buying public, it stifles that same circumstance. I appreciate this opportunity to comment on the legislation pending before you, and stand ready to answer any questions you, or other members of your committee, might have on this very important issue. I remain,

Respectfully yours,



Rod M. Stewart
Rod M. Stewart Realtor

RMS:slw



March 6, 1991

The Honorable Larry F. Turnquist, Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Good Morning Mr. Turnquist:

This correspondence is in opposition to House Bill 2413. John T. Arnold Associates, Inc., is one of the leading commercial/industrial real estate brokerage firms in Wichita, Kansas. As Chairman and CEO of our company, I have served several terms on the Board of Directors and as Vice President of The Wichita Area Association of Realtors, and I chaired the committee which funded The Wichita State University's Kansas Chair in Real Estate and Land Use Economics for both our local board and the University. In addition, I have served on a number of advisory committees within our industry. There are several reasons for my opposition to House Bill 2413, and I have listed same below for your consideration.

1. In my 20+ years of representing buyers and sellers in this market, I have found that the five Wichita title companies have more than adequately handled our real estate transactions in a timely and professional manner. A survey of most of my friends in the industry overwhelmingly supports my position.
2. My concern for and support of the free enterprise system dictates that the buyer/seller title business should be controlled by professionals rather than Realtors who are looking for additional profit.
3. We, as a national organization, are in opposition at the federal level to bankers who are attempting to invade our business. Therefore, I can not support the argument against bankers, and at the same time, support an action allowing real estate brokers to own and control title companies.
4. In our business, most buyers and sellers rely upon the professional integrity of the real estate broker when selecting vendors and/or title insurance companies. My concern is that, if a Realtor has a financial interest in an abstract and title company, his or her decisions may be influenced by the financial rewards of using his or her own company.

There are numerous reasons, other than those mentioned above, which cause me to ask for the defeat of House Bill 2413; however, I believe free enterprise, professionalism and concern for the consumer are reason enough to oppose the proposed bill. I, therefore, respectfully suggest that we not attempt to fix something that works, and works well, with a new program that places the consumer at risk.

Thank you for your time and consideration. If I can be of further service, please do not hesitate to contact me.

Sincerely,

John Arnold

JA:cl

4/8/91

SINCE 1954



WICHITA, KANSAS 67212

ALEX W GRAHAM, President

March 6, 1991

The Honorable Larry F. Turnquist
Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Representative Turnquist:

I am writing this letter asking for your help in the defeat of HB 2413.

I have owned and operated a residential real estate office in Wichita since 1954. I have belonged to the Wichita Area Association of Realtors since 1955.

In the course of doing business over the years, Graham, Inc., Realtors has been involved in thousands of transactions. The large majority of these transactions have involved the assistance of one of the many title companies in Wichita. With only the rarest exception, these title companies have provided outstanding service. In a large part I feel the excellent service provided by these title companies is a direct result of free enterprise. Competition brings out quality.

Therefore, I adamantly oppose the "controlled business" arrangement under which some title companies wish to conduct their business. In most transactions, buyers can be "steered" in the direction of a certain title company. The general public is often unaware of which title companies truly provide the best service and expect some guidance in their choice. Because of this circumstance, it is very easy for real estate agents to direct buyers to a title company in which they have a financial interest. Not necessarily because that company provides the best service, but because it will provide the agent with income. This arrangement is definitely not in the best interest of the consumer.

NEW HOMES • RESALE HOMES • CUSTOM BUILDING



REALTOR

3/20/91

Representative Turnquist
Kansas House of Representatives

March 6, 1991
Page 2

I strongly feel that the defeat of HB 2413 will help insure the continued quality of title insurance providers in Wichita and protect the free enterprise system in its truest sense.

Respectfully yours,
GRAHAM, INC., REALTORS



Alex W. Graham
Broker

GOLD KEY

REALTORS®

March 4, 1991

The Honorable Larry F. Turnquist
Chairman
House Insurance Committee
House of Representatives
State Capital Building
Topeka, Kansas 66612

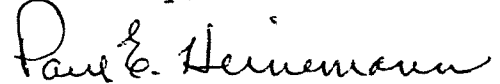
Dear Sir,

Through the thirteen years of my real estate career, six of those as a broker, I have pretty much sorted out the people in the real estate market that have worked in the best interest of my buyers and sellers. This list would include lenders, title companies, appraisers, escrow agents, banks, and pest control services. The vast majority of my clients sought my advice and guidance with whom to do business. After all, this is one of the services a realtor provides, and it is usually appreciated.

We in the real estate industry are justly compensated for our efforts in buying and selling property without the need for additional compensation of a "controlled business" arrangement.

In my opinion, the interest of our industry and its customers would best be served with the defeat of HB 2413. Thank you for your consideration in this matter.

Sincerely,



Paul E. Heinemann
Associate Broker

March 1, 1991

Mr. Larry S. Turnquist
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, KS 66612

Re: HB 2413

Dear Rep. Turnquist:

We now sign a disclosure with each real estate purchase contract stipulating we represent the seller. No matter what disclosures are made through the captioned bill this places title companies in a non-competitive arena. I've personally received contracts on property telling me what title company my seller must do business with. This decision on where title work is placed is a buyer/seller responsibility. The next thing we might legislate (if this goes through) is a disclosure on loan company, insurance company or lawyer. The present 80/20 split is fair.

Very truly yours,



F. Patrick Egan, Jr.

FPE:rmh



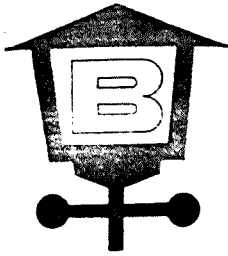
EGAN, REALTORS®

217 East Madison
Derby, Kansas 67037

316-788-2148

4/5/91

Each office independently owned and operated



Bill Bachman and Associates

1901 WEST THIRTEENTH • WICHITA, KANSAS 67203

Builders

Realtors

Developers

March 4, 1991

The Honorable Larry F. Turnquist
 Chairman
 House Insurance Committee
 House of Representatives
 State Capitol Building
 Topeka, Kansas 66612

Dear Sir:

It has recently come to my attention that there is again an attempt by the Wichita Title Association to alter the abstract and title system by the passage of HB 2413.

I have been actively engaged in real estate, land development and construction in Wichita since 1947 and together with my two sons have developed and built hundreds of homes in the Wichita area. We are also active in commercial real estate, the Homebuilders Association and other civic organizations. Frankly, I find it not in the best interests of the majority of Realtors, Builders and Developers for this small group of people to be actively engaged in the title business.

With the entrance of WTA into the title business, we have seen increases in costs by WTA where they would be least noticable, such as a 15% increase to insure across encroachments on surveys.

Realtors are now actively engaged in trying to keep bankers and others out of the real estate business. What is the difference between bankers being in the real estate brokerage business and Realtors in the title business?

This entire situation is a subterfuge to cover greed on the part of these Realtors and loan companies. We receive wonderful cooperation on all title work, competition keeps prices at a reasonable level and without WTA, there is no attempt by Realtors and loan companies to control the direction of title business.

Let me give you a future scene of a loan company directing business to itself. A builder needs a construction loan, he is

4679

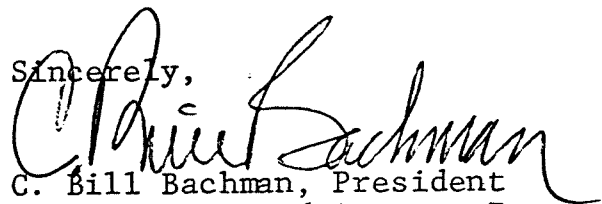
The Honorable Larry F. Turnquist
March 4, 1991
Page two

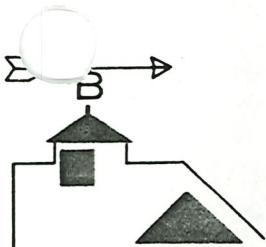
pliable because they are sometimes difficult to get. As a part of the leverage to secure a loan, the builder will naturally allow the loan company to direct his title business to the "friendlies", even at an additional cost. This is not what I call a healthy free enterprise system.

Nearly all buyers allow Realtors to control who title business goes to, and with that option, who do you think an associated Realtor will send it to? I would guess again the "friendlies".

Please do us all a favor and kill HB 2413. It isn't healthy, it's greed!

Sincerely,


C. Bill Bachman, President
Bill Bachman and Assoc., Inc.



BUSSART REALTY & AUCTION SERVICE, INC.

5050 E. CENTRAL WICHITA, KANSAS 67208
TELEPHONE: 684-3531 — 684-0211



GARY DEAN BUSSART, GRI.,
BROKER — AUCTIONEER

- RESIDENTIAL AND COMMERCIAL
- SALES AND APPRAISALS
- INVESTMENT COUNSELING
- “THE DEAN’S OF REAL ESTATE”

DEAN L. BUSSART, RM
FEE APPRAISER
MEMBER AMERICAN INSTITUTE
OF REAL ESTATE APPRAISERS

March 4, 1991

The Honorable Larry F. Turnquist, Chairman
House Insurance Committee
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Dear Mr. Turnquist:

I feel compelled to express to you my views on H.B. 2413.

There are many reasons why this bill should not pass. It is very apparent that sales personnel which are associated with a broker who is aligned with a title company will be obligated to use said title company. In an ideal world the decision should be left to the buyer and/or seller. Unfortunately, because they are only involved in real estate transactions once or twice in a lifetime, they have no idea what title insurance is and leave the choice to the agent. If the agent has an interest in a title company, then the spirit of competition would no longer exist in this instance.

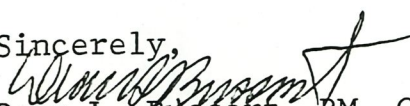
At the present time Realtors are in a struggle to try to prevent the banking industry from invading the real estate industry. The same arguments against bankers would seem to apply to real estate brokers owning title companies.

As a matter of my credibility, I tender the following credentials:

I have been exclusively in the business of real estate since 1951. I was named Wichita Realtor of the Year in 1967; was Board President in 1973; was President of the Kansas Association of Realtors in 1976 and was named Kansas Realtor of the Year for 1978. I have served on many National Committees, having been a National Director from 1976 through 1980, at which time I chaired the Kansas Political Affairs Committee.

I feel, as do my Associates, that H.B. 2413 creates a "captive" type situation and is totally inappropriate. I respectfully ask your consideration for its defeat.

Sincerely,


Dean L. Bussart, RM, GRI
DLB/rpb

WICHITA METROPOLITAN AREA BOARD OF REALTORS
MULTIPLE LISTING SERVICE



NATIONAL ASSOCIATION OF REALTORS

4849
KANSAS ASSOCIATION OF REALTORS
NATIONAL AUCTIONEERS ASSOCIATION



CONSOLIDATED REALTY, INC.

1107 North Broadway
Wichita, Kansas 67214
(316) 264-0653

March 4, 1991

Dear Senator/Representative:

I am the owner of a real estate company in Wichita. I have been in the business of real estate brokerage for nearly 20 years, most of that time spent as a Broker.

I am concerned about controlled title insurance business. The Kansas Supreme Court no sooner upheld the constitutionality of our statute which imposes reasonable regulation upon business of this sort [K.S.A. 40-2404(b)], than the owners of two controlled-business enterprises in the State are introducing legislation to repeal the existing statute and thus allow controlled-business title companies to return and dominate the market.

Disclosure in the context of title insurance is no substitute for the regulation imposed by the present law. Disclosure means absolutely nothing to the average real estate consumer. Except for a select few sophisticated investors, the average person generally knows nothing concerning title insurance or closing services. They leave such matters to their real estate and lending professionals. Any choice by them would be choice in name only -- illusory and meaningless -- regardless of the strength of the terms of any disclosure. People simply neither know nor care about title insurance, as a general rule. Few have any idea what it is or does: it is a requirement imposed by the lender, and recommended by the REALTOR, otherwise they would not think it necessary.

The real estate professional and the lender, all else being equal, direct the business of insuring the title and performing the closing to companies existing for that purpose, based upon a compendium of factors, including expense, competence, turn-around time, congeniality, people skills, and quality and reliability of service. That people should direct business in this manner is in the direct and immediate interest of the consumer. That professionals should be free to change service providers as needed keeps these companies responsive to the market place, and to the consumer's needs and interests. Any deviation from decisions made according to these principles is, clearly and axiomatically, contrary to the consumer's interest.

All this flexibility and freedom to follow the market changes where the person directing the flow of business owns the provider of services, or has a substantial financial interest in that company. The owner is no longer motivated primarily by items which affect the consumer; the owner becomes motivated by the bottom-line factors of the service provider, and the kind of dividend which will be paid based upon business referred. Business will, as a result, be directed primarily to the owned company regardless of the mix of consumer-friendly factors referenced above. And, the freedom to change providers when these cease to provide fully competitive service is no longer present. The business is "controlled" -- that is, the provider of services is

controlled by its owners, but the owners are controlled by owning a title company. They no longer can make free-market decisions based solely upon the matters which will benefit the consumer. The playing-field is no longer level.

The effect of the proliferation of controlled businesses will not only be larger and fewer title companies [with concomitant limitations of choice for the "independent" agent], but larger and fewer real estate companies and lenders, as well. Controlled business is generally quite profitable, and, consequently, the profit returned to the owner better enables the real estate company or lender to compete with others in the market who cannot afford to purchase controlled business companies of their own. As a consequence, the big companies become richer and bigger, and the small or medium-sized companies disappear. The net effect is, of course, less competition, which is not beneficial to the consumer: it is also not a desirable result for "free enterprise."

Perhaps this is the reason the 1989 Legislature passed the existing act, now sought to be repealed, with only 2 dissenting votes in both houses. Perhaps that is the reason the statute was the recommendation of a Kansas Insurance Department Task Force made up of real estate, lending and title professionals, lawyers, and Insurance Department staff. It was a broad-based group and made its recommendation unanimously.

Not all REALTORS favor repeal, regardless of the position taken by those who control the State Association. What will occur, if the statute is repealed, is to ultimately reduce consumer access to title insurance, closing services, real estate companies and lenders. It will result in trade being restrained. As an entrepreneur who prefers to compete in the spirit of free enterprise on a level playing-field with my peers, I absolutely oppose controlled business in Kansas.

I hope that you, when faced with the choice, and the tremendous power and influence of the persons introducing and supporting the new bill, will have the statesmanship to stand and deny the anti-free-market forces any foothold in our State.

Very truly yours,



Cindy Sundell-Guy
President and Broker



ELEGANT
HOMES

March 7, 1991

Larry S. Turnquist
Chmn. House Ins. Committee
House of Representatives
State Capital Building
Topeka, KS 66612

Dear Mr. Turnquist:

I am writing this letter in reference to "Controlled Business" legislation pending before your legislature committee, House Bill #2413.

I am a residential real estate broker with 16 years of experience. I am Broker/Owner of Elegant Homes, Inc., located in west Wichita. I am a member of the National, State and Local Board of Realtors and the Wichita Area Builders Association. I have been on the Board of Directors of the Board of Realtors and Chairman of the Sales and Marketing Council for the Wichita Area Builders Association.

I believe that controlled business where a real estate agent is in a position to direct title insurance business for his own profit, is unfair not only to the buyer and seller, but also to the competitive real estate companies he is doing business with. The majority of the title insurance written in Kansas is residential and most residential customers do not know where to go to get a loan, much less where to acquire title insurance. If you suggest a company in which you have a financial interest, you are not necessarily promoting the most efficient, or best, but simply promoting personal financial gain. A title company should be chosen based on what is best for the buyer and seller.

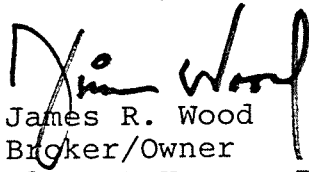
Wichita has several excellent title companies. Their prices are competitive, their service is good and there is more than enough of them to choose from. As a Broker, you have the responsibility to both buyer and seller to guide them to the best service and best rates available.

My understanding of business of a recent title company formed in Wichita did not have its own title plant, closing department and contracted everything out. They had very little invested compared to the competitors, and spent little or no money advertising and competing for business as the others do. Even so, we found the rates were not improved.

Before writing this letter, I sat down with my sales associate and discussed what was going on with this new title company and they told me of incidences of attempts to steer customers, contracts preprinted with that particular title company's name on it, etc.

I believe in "free enterprise," but I do not believe in unfair business and competitive methods. I feel that the defeat of HB #2413 will help ensure the continual quality and competitiveness of title insurance provided in Wichita and protect our free enterprise system.

Sincerely,



James R. Wood
Broker/Owner
Elegant Homes, Inc.

I N T H E S U P R E M E C O U R T
O F T H E S T A T E O F K A N S A S

DONALD PATTERSON
FISHER, PATTERSON, SAYLER & SMITH
400 BANK IV TOWER P.O. BOX 949
TOPEKA, KS 66601

GUARDIAN TITLE COMPANY AND
WICHITA TITLE ASSOCIATES, INC.,
V
W. FLETCHER BELL, AS COMMISSIONER OF
INSURANCE OF THE STATE OF KANSAS,

APPELLEES, NO. 90-64936-S

APPELLANT.

YOU ARE HEREBY NOTIFIED OF THE FOLLOWING ACTION TAKEN IN THE ABOVE ENTITLED CASE:

MOTION FOR REHEARING BY THE APPELLEES.
DENIED.

DATE: 03/14/91.

YOURS VERY TRULY,
LEWIS C. CARTER
CLERK, SUPREME COURT

53 of 9



5512 W. Central — Wichita, KS 67212
942-7402

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE
WICHITA AREA ASSOCIATION OF REALTORS® - UNIFORM PURCHASE CONTRACT*

In consideration of the mutual agreements contained herein, It is mutually agreed by said parties, whether one or more, as follows:

- 1. **BUYER:** _____
CONVEYANCE TO BE MADE TO: _____
- 2. **SELLER:** _____
- 3. **PROPERTY ADDRESS:** _____
LEGAL DESCRIPTION: _____
- 4. **PURCHASE PRICE:** (Subject to terms and conditions herein).....\$ _____
EARNEST MONEY: (see Paragraph #6).....\$ _____
MORTGAGE ASSUMED: Type loan _____ Lender _____
Present interest rate _____ % Assumption rate _____ %
Approximate present payment \$ _____ per month including _____
(See Paragraph #7).....\$ _____
NEW MORTGAGE PROCEEDS: (See Paragraph #8).....\$ _____
OTHER: (See Paragraph #34).....\$ _____
APPROXIMATE BALANCE DUE from Buyer at closing subject to adjustments
and prorations (not including closing costs).....\$ _____

5. **OBLIGATIONS:** Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase and punctually pay for, the above-described real estate together with improvements thereon, subject to the terms and conditions stated in this Contract.

6. **EARNEST MONEY:** The Buyer does hereby deposit with Wichita Title Associates, Inc. (Company Name), in a Trust Account, Earnest Money in the form of _____ and in the amount of \$ _____, as a guarantee that the terms and conditions of this Contract shall be fulfilled by the Buyer. Buyer acknowledges that Earnest Money shall be deposited immediately upon acceptance of Contract. If transfer of funds is necessary to provide Earnest Money, said Earnest Money shall be deposited on _____ (date), or before if Buyer authorizes same, in writing. Said EARNEST MONEY shall be applied to the purchase price at closing. In the event Buyer shall fail for any reason to fulfill any of Buyer's obligations hereunder, Seller may, at Seller's option, cancel this Contract, and thereupon the said deposit shall become the property of Seller. In the event the Earnest Money is forfeited as hereinabove stated, all expenses of the sale incurred to date by Seller and the broker, including, but not limited to, title insurance, appraisals, credit reports, and surveys shall be paid for prior to any remaining funds being released to Seller.

In the event the Seller is unable to provide merchantable title as herein provided or otherwise defaults, the Earnest Money shall be returned in full to the Buyer. In addition to forfeiture of Earnest Money to Seller or return of Earnest Money to Buyer, Buyer and Seller shall both have the option of enforcing specific performance of this Contract or any other remedy allowed by law or equity. Notwithstanding any other terms of this Contract providing for forfeiture or refund of the Earnest Money deposit, the parties understand that applicable Kansas real estate laws prohibit the Broker from distributing the Earnest Money deposit, without consent of all parties to this Contract. Buyer and Seller agree that failure by either to respond in writing to a certified letter from broker within seven (7) days of receipt thereof or failure to make written demand for return or forfeiture of any Earnest Money deposit within thirty (30) days of notice of cancellation of this agreement shall constitute consent to distribution of the earnest money as suggested in any such certified letter or as demanded by the other party hereto. If a dispute arises over disposition of funds or documents deposited with the Escrow Agent or the Listing Broker, Seller and Buyer agree that any attorney's fees, court costs and/or other legal expenses incurred by the Escrow Agent and any Broker in connection with such dispute shall be reimbursed from the Earnest Money or other funds deposited with the Escrow Agent or Listing Broker.

7. **EXISTING MORTGAGE FOR ASSUMPTION:** The Seller shall punctually pay and comply with the terms of the existing mortgage, related note, or escrow Contract (Contract for deed) hereinafter referred to as "Instrument", until the date of closing and/or delivery of deed. If said Instrument is being assumed by the Buyer, the Buyer shall, on and after the date of closing, punctually pay, defend, indemnify and hold Seller free and harmless from all of the terms, conditions and provisions of said Instrument. If Seller is carrying some or all of the purchase price, or if a non-qualifying Instrument is being assumed, acceptance of this Contract is subject to Seller's approval of Buyer upon Buyer providing a current credit report, job verification(s), financial statement and verification of funds within _____ working days of Contract acceptance, unless Seller has waived, in writing, said requirement. In such an event, the Seller shall furnish the Buyer, at closing, a copy of any Instrument to be assumed and an assumption statement with respect to the Instrument showing the principal balance, method of payment, interest rate, and sufficient information to show that said Instrument is not in default. If the Instrument requires acceptance of the Buyer by the Instrument holder, and the Instrument holder denies acceptance of the transfer; or, if this Contract (in Paragraph #4) is subject to Buyer's assumption of an Instrument at the original interest rate and with the original terms of said Instrument, and said original rate/terms are denied by Instrument holder, then the Buyer shall, prior to closing, have the option of either rescinding this Contract and obtaining a return of the Earnest Money (less expenses as hereinabove stated) or of accepting the assumption of a modified Instrument and proceeding with the purchase. Any assumption fee(s) and/or modification fee(s) shall be paid by Buyer, unless as noted below. Interest accruing on above-stated Instrument shall be prorated as of the date of closing. On loan assumptions any reserve or escrow account held by any mortgagee for taxes, special assessments, mortgage insurance and other insurance shall be purchased by Buyer at closing.

8. **NEW FINANCING:** Applicable when the purchase of this property is contingent upon the Buyer obtaining a \$ _____ (amount) _____ (VA, FHA, CONV-FIXED, CONV-ADJ, OTHER _____) first mortgage loan at an initial rate not to exceed _____ % plus required Private Mortgage Insurance or VA Funding Fee, and for a term of _____ years. If the loan is an adjustable-rate loan, subsequent interest rate variations from the beginning rate shall not exceed _____ % per _____ year(s) and _____ % over the loan's life. Buyer shall apply for said loan within _____ working days after the Contract is signed by all parties and use every reasonable effort to obtain the above-noted loan. Buyer shall pay for appraisal and credit report at loan application. If Property does not

BI _____ DATE _____

SI _____ DATE _____

BI _____ DATE _____

SI _____ DATE _____

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20. INTERIM MAINTENANCE: Until Closing, or possession if prior to Closing, the Seller agrees to maintain heating (sufficient to avoid frozen water lines), sewer, plumbing and electrical systems, and any appliances and equipment being conveyed, in proper working order, and to keep the roof watertight and to maintain the lawn, shrubbery, trees, and pool, if any. Seller agrees to convey the property covered herein and deliver possession of same in a like or better condition than it is now, reasonable wear and tear excepted. Seller will advise utility companies to read meters on the proper day for final billing purposes, but not to turn off such services.

21. LIENS: Seller represents and warrants that there are no unpaid bills for labor or material that might form the basis of a mechanic's lien against said premises, and that there are no unpaid (whether recorded or not) chattel mortgages, conditional sales Contracts, financing statements, or security agreements affecting any fixture, portion of the premises or item of personal property covered by this Contract. Any existing liens upon the premises which the Seller is required to remove under this Contract may be paid and discharged from the sale proceeds at the closing of the sale.

22. SURVEY: Broker recommends that Buyer acquire a survey on the property being purchased, regardless of Lender's survey requirements. Buyer understands that the lender may order a survey called a "Mortgage Title Inspection," which does not include staking of property corners. For extra expense, the Buyer can request a "Boundary Survey & Improvement Location," which will include a staking of property corners. Buyer is also aware that their title insurance may not cover survey-related issues even if a recent survey has been completed. Brokers shall not be held responsible for any defects, encroachments, overlaps, boundary line disputes, acreage matters, or other matters which could be disclosed by a Survey.

23. INGRESS AND EGRESS: Seller warrants that there is ingress and egress to said Property.

24. HEIRS AND ASSIGNS: This Contract shall be fully binding upon the parties, their heirs, executors, administrators, successors and assigns (subject to Paragraph #27). No assignment shall serve to release or relieve the party assigning from any responsibilities or obligations hereunder.

25. KANSAS LAW APPLIED: This Contract and its validity, construction and performance shall be governed by the laws of Kansas.

26. PARTIES: This is a Contract between Buyer and Seller. If two or more persons constitute either Buyer or Seller, the words "Buyer" or "Seller" shall be construed to read "Buyers" or "Sellers" whenever the sense of this Contract requires.

27. AGREEMENT APPROVAL: EACH PARTY SIGNING THIS CONTRACT ACKNOWLEDGES THAT HE OR SHE HAS READ THE ENTIRE CONTRACT. This Contract constitutes the entire agreement between the parties and supersedes any previously executed Contracts, representations, verbal or written, to buy and/or sell the Property. Neither this Contract, nor any interest herein, shall be transferred or assigned by Buyer without the prior written consent of Seller.

28. BROKERAGE FEE: The party or corporation handling the closing of this transaction is hereby authorized and directed to withhold the brokerage fees from the sale proceeds upon Closing, and as set forth in the listing Contract between the Seller and the listing Agent and/or an attached Buyer Broker Addendum, if any.

29. AGENCY RELATIONSHIPS: Unless indicated otherwise by an attached Addendum. 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 Buyer on the _____ day of _____ 19____ (insert orally or in writing).

30. ALTERATIONS: Any alterations of the terms and conditions of this Contract must be agreed to in writing by both Buyer and Seller.

31. SURVIVAL: The provisions of Paragraphs 6, 9, 10, 11, 12, 15, 17, 18, 19, 20, 21, 22 and 29 shall survive closing.

32. CREDIT REPORT: BUYER authorizes broker to obtain a credit report.

33. MISCELLANEOUS: _____

EACH PARTY INITIAL AND DATE THE BOTTOM OF EACH PAGE AND ANY MODIFICATIONS. THIS IS A LEGALLY-BINDING CONTRACT. IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE.

***Buyer and Seller hereby acknowledge that they have received a copy of this preprinted contract prior to any negotiations commencing on the above described Property.**

Buyer and Seller hereby acknowledge receipt of separate expense itemizations estimating approximate costs to be incurred in acquiring or disposing of this Property.

IN WITNESS WHEREOF, said parties hereunto subscribe their names.

EXECUTED BY BUYER THIS

____ day of _____, 19____

BUYER
SS# _____

BUYER
SS# _____

COOPERATING AGENT:

FIRM:

***REVWAARUC (4/5/90) #9,#10,#15,#18,#29,#32,**

EXECUTED BY SELLER THIS

____ day of _____, 19____

SELLER
SS# _____

SELLER
SS# _____

AGENT:

FIRM:

KREC File# _____

BI _____ DATE _____

BI _____ DATE _____

SI _____ DATE _____

SI _____ DATE _____



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appraise for at least the Purchase Price, this Contract may be renegotiated or Contract will become null and void; or, in the event Buyer is unable to obtain such financing, the Buyer shall promptly notify the Seller or his broker in writing. If the Seller cannot or elects not to assist the Buyer in obtaining the required financing, then the earnest money, less accrued expenses, shall be refunded to the Buyer, and this transaction will be null and void. Buyer and Seller agree to execute any documents necessary to complete the nullification and return of Earnest Money. The _____ shall pay all loan costs, and the _____ shall pay all prepaid expenses including any private mortgage insurance. Discount points, if any, paid by the _____ shall not exceed _____% of the mortgage amount (plus included Private Mortgage Insurance or VA Funding Fee). Should FHA/VA appraiser or other lender/appraiser require improvements or repairs, Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. Unless disallowed by lender, Buyer shall pay for any lender-required inspections (well & septic inspections included), compliance inspection fees, re-inspection fees and/or second appraisal fees.

9. CLOSING AND POSSESSION: The parties agree that time is of the essence hereof and Buyer agrees to make final settlement on or before _____ BUYER HEREBY CERTIFIES THAT BUYER WILL HAVE THE NECESSARY FUNDS AVAILABLE TO CLOSE THIS TRANSACTION, PAYABLE BY CASHIER'S CHECK OR CERTIFIED FUNDS. If closing cannot take place on the above scheduled date because Seller has been unable to give clear title, but clearing title is in process, or if loan approval has not been obtained, but is in process, then Buyer and Seller agree that the closing date shall be extended for thirty (30) days unless mutually agreed by Buyer and Seller. Seller agrees to give possession at _____ M. on _____. Should the Seller occupy the herein-described property after _____, Seller agrees to pay rent to the Buyer at the rate of \$ _____ per day. Should the Buyer be granted possession of the property prior to closing and after loan approval, if such approval is required, the Buyer agrees that all inspections required by them will be performed and that the property is in a condition acceptable to Buyer before Buyer takes possession. The party occupying the premises shall keep the property in a neat and clean condition and in good repair during the period of said party's occupancy.

10. TERMITE INSPECTION: The improvements shall be inspected by a licensed termite treatment company selected by the Buyer and at the cost of the Buyer, unless payment by Buyer is prohibited by lender/guarantor/insuror, in which case the Buyer shall select a licensed termite treatment company and order termite inspection and the Seller shall pay for said inspection. If the dwelling, garages (attached or unattached) or other improvements are found to have active or inactive termite infestation that was untreated or partially treated, treatment shall be made at Seller's expense by a licensed exterminator of Seller's choice. Buyer hereby acknowledges that Buyer has been advised that the termite inspection will not necessarily reflect any or all damage to the premises, but will be a report of the visual evidence of termite infestation based on inspection of accessible areas only on the date of the inspection. Normally, no inspection will be made in areas which are obstructed or inaccessible, areas behind dirt fills, finished walls, ceilings, rugs, furniture, fixtures and appliances and no comment can be made as to the presence or absence of termites in any obstructed or inaccessible areas. The report will not guarantee that infestation or damages does or does not exist. Nor will it be a guarantee that infestation or damage will not occur.

Buyer may at Buyer's option secure an inspection for visible damage including structural damage as a result of present or past termite activity. Said inspection shall be made by a licensed building contractor at Buyer's expense. If said inspection reveals visible damage, Buyer may request in writing the repair of said damage. Seller shall have the option to make said repairs and/or improvements, renegotiate the Contract or cancel the Contract. If Seller elects NOT to make said repairs/improvements, Buyer may make said repairs at Buyer's own expense. However, if Seller is unwilling to repair Buyer-requested termite damage, Buyer reserves the right to cancel or renegotiate this Contract. The Buyer shall order said inspections and shall deliver copies of the written inspection reports to Seller and broker. These inspections shall take place as soon as possible but no earlier than thirty (30) days prior to the date of closing.

In the event Buyer does not cause the premises to be inspected and copies of the reports delivered to the Seller as provided herein, then Buyer shall be obligated to purchase Property regardless of any termite infestation or termite damage and the Seller and broker are relieved and released of any obligations relating thereto. In the event it should be determined at a later date that damage has been done to the Property as a result of termite infestation, Buyer agrees to hold harmless the listing/selling brokers and their representatives from any responsibility for the repair of said damage and agrees to take no action against the listing/selling brokers and their representatives as a result of the damage, if any. Seller agrees that Buyer or Buyer's representative may inspect any repairs before the Closing Date.

11. PROPERTY: The real estate described herein, together with improvements attached thereto, shall include, if any, gas heaters, attic-fan and/or ceiling fans, central air-conditioning, all window air-conditioning unit(s), lighting, heating and plumbing equipment and fixtures, bathroom mirrors and attached mirrors, window and porch shades, shutters, storm windows and doors, screens, all window and door coverings now in place, attached curtain and drapery rods, awnings, television antenna and antenna equipment, keys, water softener (if owned), attached outside cooking units, gas lights, automatic garage door equipment including remote transmitter(s), attached and unattached wall-to-wall carpeting, built-in kitchen appliances, attached shelves, fire, smoke, and burglary detection systems (if owned), mail boxes, installed waterwell pumps, propane/butane tank(s) (if owned by Seller), swimming pool and all pool equipment, all flowers, trees and shrubs, and anything else buried, nailed, bolted, screwed, glued or otherwise permanently affixed to the premises, or any improvements thereon, with the following exceptions: _____

12. PRORATION OF TAXES AND RESERVES: Seller represents and warrants that all taxes and special assessments shall be paid from the proceeds of the sale as hereinafter provided. All ad valorem taxes, the current annual installment of special assessments, rentals, Homeowner's association dues, insurance (if policies acceptable to Buyer), and interest, if any, shall be adjusted and prorated as of closing date, unless otherwise agreed. General taxes shall be prorated for the calendar year on the basis of taxes for the previous year unless the previous year's assessed valuation was based on a lesser-improved property, in which case said taxes shall be determined from the assessed valuation and the officially-established mill levy prevailing at closing. Special assessments shall be prorated on the basis of the amount (for the calendar year) ascertainable at the time of closing by the Closing Agent. The Buyer understands that Buyer is responsible for payment of all ad valorem taxes and special assessments becoming due after the Closing Date and that Buyer is assuming all unmatured installments of special assessments. The amount of special assessments often cannot be determined with any degree of exactitude. Buyer represents that, prior to closing, Buyer will assume all responsibility for ascertaining information pertaining to said taxes and special assessments. Buyer acknowledges that the mill levy, classification, assessed valuation, and/or taxes may change from year to year during Buyer's ownership, and that periodic reappraisal, required by law, may result in a change in taxes.

13. INSURANCES: Seller shall maintain current insurance in force until Closing Date. Whether or not Buyer assumes Seller's existing hazard insurance, the Buyer at closing shall furnish insurance policies necessary for the protection of the Instrument holder(s), containing loss clauses in favor of the Instrument holder(s) as their interests may appear. If required and so specified, the insurance policies shall be held by the Instrument holder(s) or escrow agent until said lien is paid in full. Buyer agrees to purchase flood insurance policy if and when required by the lending agency pursuant to Federal law. Should possession take place prior to closing, Buyer shall secure hazard insurance for personal property effective on or before possession date.

14. CASUALTY LOSS: In the event of property damage to the premises by fire or other casualty prior to closing, the Seller shall restore same. Buyer shall have the option to proceed with the estimated costs of repair being placed in escrow by the Seller, or Buyer IS GRANTED

BI _____ DATE _____

SI _____ DATE _____

BI _____ DATE _____

SI _____ DATE _____

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THE OPTION TO TAKE THE PROPERTY AS IS, PLUS INSURANCE PROCEEDS AND DEDUCTIONS. If the estimated cost of repair exceeds 10% of the purchase price, either Buyer or Seller may cancel this Contract and all Earnest Money shall be returned to Buyer, less expenses.

15. TITLE EVIDENCE: The Seller shall cause to be furnished to Buyer a title insurance company's written commitment ("title binder") and issue after closing a title insurance policy in an amount equal to the full purchase price naming Buyer as the insured. The title binder shall show marketable title vested in Seller, subject to: Easements, encroachments which would be disclosed by survey, rights-of-way of record, trees, plantings and fences thereon; restrictions and protective covenants of record, provided no forfeiture provisions are contained therein; unmatured special assessments, zoning laws, ordinances and regulations; rights of tenants in possession; the liens, if any, described herein; and those exceptions which are standard to American Land Title Association's Form B or as specified herein. A copy of the title binder will be furnished to lender and/or Buyer's attorney as promptly as possible. The Seller and Buyer shall each pay one-half the cost of the title binder. Buyer shall pay for any lender's/mortgagee's/Instrument-holder's title insurance coverage. Once issued, the Buyer agrees that Buyer shall look solely to the title insurance company issuing said policy for any losses sustained as a result of any defects in the title. The Seller shall be responsible to use due diligence to resolve any title defects at Seller's expense subject to the foregoing exceptions. Should the Seller be unable to furnish marketable title subject to the foregoing exceptions, and should this Contract be terminated due to same, then the Earnest Money shall be refunded promptly to the Buyer, and Seller shall reimburse to the Buyer the cost of Buyer's accrued loan costs, attorney's fees for examining title, and title insurance cancellation fees, and all parties shall be released from any further liability hereunder. BUYER and SELLER direct real estate brokers to order title insurance from Wichita Title Associates, Inc. ~~XXXXXXXXXXXXXXXXXXXX~~. ~~XXXXXXXXXXXXXXXXXXXX~~ The charges generally made by Wichita Title Associates for owner's and loan policies of title insurance as described on lines 1108 and 1110 of the HUD-1 Settlement Statement are approximately the same as shown on the written estimate of charges provided with this disclosure, which is being made prior to the time of the referral of title insurance order. You are not required to use any particular provider of settlement services, including a title insurer, and may designate the provider of your choice. Unless otherwise specified in writing, Matt Eck Real Estate, Inc. is authorized to secure title insurance services from Wichita Title Associates, Inc. on the basis of the estimated charges described in HUD-1 settlement statement.

16. DEED AND DOCUMENTS FOR CLOSING: After the terms of this Contract are agreeable to both Buyer and Seller, the listing broker shall cause to be prepared, a proper Deed and Affidavit Of No Liens, and other necessary documents to complete this transaction. The Seller will sign same when requested by Broker only when all the terms and conditions of this Contract have been met. In the event a title or abstract company prepares such documents, the charge for same, in addition to the cost of closing the transaction, shall be shared equally between the Buyer and Seller.

17. REPRESENTATIONS AND RECOMMENDATIONS: It is hereby agreed and acknowledged by the parties hereto that neither the listing nor selling brokers, or their agents, employees, or associates have made, on their own behalf, any representations or warranties, expressed or implied, with respect to any element of the subject Property, including, but not limited to the following, if any: condition, age or operability of any appliances, heating or central air-conditioning, plumbing, electrical, mechanical systems, roof, walls, foundation or structure, swimming pool, property boundaries, dryness of basement, amount and type of insulation, septic system/laterals, and depth or quality of water wells. Any representations made herein have been made by the listing/selling brokers based on information supplied by sources believed to be reliable, and brokers and their associates have not assumed any responsibility, directly or indirectly, with respect to any representation or warranties which have been made, if any. Since the selling/listing brokers are acting as brokers only, they shall, under no circumstances, be held liable to either the Seller or Buyer for performance or lack of performance of any other terms or conditions of the Contract or for damages arising out of or relating or incidental to the contents of this Contract or the performance or non-performance of either of the parties to the Contract. Again, it is emphasized that if the parties hereto feel representations have been made that are not set forth specifically in the printed form of this Contract, they must be set forth specifically and in writing herein and as herein provided if said "understood" or "implied" representations are to be effective or enforceable. Buyer acknowledges that Buyer has been informed that these documents may be reviewed by Buyer's attorney prior to Buyer executing same.

18. INSPECTION: The Buyer has carefully examined the premises and the improvements located thereon and in making the decision to buy the Property, the Buyer is relying wholly and completely upon Buyer's own judgment and the judgment of any Contractors Buyer may have selected. Buyer represents that the purchase price was negotiated after consideration of any and all possible defects in the real estate and the improvements, including all plumbing, electrical, structural and mechanical components. Furthermore, Seller has disclosed Property facts, defects, and other Property information on the attached Seller's Property Disclosure form, which Buyer acknowledges herein having received and reviewed. Buyer hereby agrees to hold listing/selling brokers harmless for Seller's failure to disclose any known defects or material facts regarding the Property. However, Buyer's obligations hereunder are subject to Buyer's securing, at his expense, a full and complete inspection of the property, including but not limited to the roof, structure, all electrical, mechanical and plumbing equipment and appliances. Buyer further agrees that these inspections are not intended to ascertain the cosmetic imperfections of the property (i.e. walls needing painting, worn carpeting, chipped woodwork, missing cupboard knobs, etc.), or other items that Buyer has already considered in determining the Purchase Price.

These inspections shall be obtained as soon as possible, but not later than five (5) working days of the Contract acceptance. Seller shall cooperate in all respects in allowing Buyer's Contractors access to the premises, and will activate utilities, if necessary, to complete inspections. If Buyer has not notified Seller, or agent, in writing and within 72 hours of inspection completion of any defect revealed by the inspection(s), then this Contract shall be in full force and effect. However, if, as a result of these inspections, Buyer requests, in writing, repairs or replacements to rectify reported defects, Seller, at Seller's sole option, may make said repairs, renegotiate, or cancel this Contract; provided that, if Seller elects to cancel this Contract, Buyer may waive Buyer's request for repairs or replacements. If the estimated cost of repair exceeds 1 % of the purchase price, either Buyer or Seller may cancel this Contract and all Earnest Money shall be returned to Buyer, less expenses. Seller agrees to give Buyer reasonable access to the Property before the Closing Date so that Buyer and Buyer's representatives may, at Buyer's expense, re-inspect the property for confirmation of condition or to inspect any repairs made pursuant to this paragraph.

IN THE EVENT BUYER FOR ANY REASON DOES NOT OBTAIN SAID INSPECTIONS, AS REQUIRED ABOVE, BUYER SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO OBJECT TO ANY DEFECTS IN THE PREMISES AND FURTHER IS AGAIN DEEMED TO HAVE ACCEPTED THE CONDITION OF THE PROPERTY AS SATISFACTORY AND SELLER AND SELLER'S BROKER ARE RELIEVED FROM ANY AND ALL LIABILITIES HERETO, except for Seller's obligation as noted in Paragraph #20. The parties agree and the Buyer represents that once the Contract has in fact been closed, that Buyer in all respects again has acknowledged that Buyer has accepted the premises without condition or qualification. Broker(s) shall not be responsible for the conduct of third parties providing specialized services required or permitted by this Contract, including but not limited to lender, title insurance company, Escrow Agent, Closing Agent, wood infestation, mechanical, structural or other inspectors or repair personnel, whether those services were arranged by Buyer or Seller or Broker on behalf of either. Buyer and Seller both hereby acknowledge that they have been made aware of the availability of a Home Warranty Program for which the broker(s) may receive an administrative fee if said program is purchased and both have separately accepted/rejected purchase of the program. Although one program may have been specifically offered to Buyer and/or Seller, the broker(s) involved have made no representations about the quality of the programs offered, and all parties to this Contract understand that they may seek alternative Home Warranty coverage.

19. ENVIRONMENTAL CLAIMS: Buyer and Seller, jointly and severally, agree to indemnify and hold broker harmless from any and all claims, actions, damages, liability and expense, including but not limited to attorneys and professional fees, incurred in connection with any preventive, remedial or other cleanup action necessary for the real property described in Paragraph #3 to comply with all applicable federal, state and local laws, rules, regulations or ordinances pertaining to air, water, soil quality, hazardous waste, waste disposal, air emissions and/or other environmental matters.

BI _____ DATE _____

SI _____ DATE _____

BI _____ DATE _____

SI _____ DATE _____

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MY NAME IS WILLIAM G MALONE OF WICHITA, KANSAS.

I AM A LICENSED ABTRACTER AND LICENSED TITLE INSURANCE AGENT IN SEDGWICK AND BUTLER COUNTIES AND HAVE BEEN LICENSED FOR OVER 30 YEARS.

I AM PRESIDENT OF FIDELITY TITLE COMPANY. THE COMPANY WAS FOUNDED IN 1925 BY MY FATHER, FRANK T. MALONE, ABOUT THE TIME OF MY BIRTH. SO, I CAN STATE THAT I HAVE BEEN IN THE LAND TITLE BUSINESS ALL OF MY LIFE.

FIDELITY TITLE IS NOT OWNED OR CONTROLLED BY ANY TITLE INSURANCE UNDERWRITER. IN FACT, FIDELITY TITLE AGENCY IS A MULTI AGENCY COMPANY REPRESENTING THREE MAJOR TITLE INSURANCE COMPANIES.

IN THE OVER 30 YEARS OF EXPERIENCE COMMENCING WITH THE OLD METHOD OF ABSTRACTS OF TITLE, FORMAL ATTORNEY OPINIONS, AND BUILDING AND LOAN LENDERS, I RECOGNIZE THAT BUYERS AND SELLERS, THE PAYING CONSUMER, SELDOM MAKE A CONSCIOUS SELECTION OF THE PROVIDER OF THE TITLE WORK.

*House Insurance
March 21, 1991
Attachment 10*

THESE CONSUMERS ARE DEPENDENT UPON THEIR AGENT OR REPRESENTATIVE TO MAKE THE SELECTION. NOW WHILE THIS AGENT HAS A FIDUCIARY RELATIONSHIP TO HIS CLIENT, THE OPPORTUNITY FOR ENRICHMENT MAY PUT A HIGHER ORDER OF PRIORITY ON THE PLACEMENT OF THE TITLE ORDER THAN THE BEST PRODUCT IN TERMS OF COST, PROTECTION OR SERVICE.

THIS STRAIN ON OPPORTUNITY HAS BECOME EASIER AND MORE REWARDING AS THE TITLE SERVICE HAS MOVED TO TITLE INSURANCE WHICH IS A BETTER PRODUCT IN TERMS OF CONSUMER PROTECTION AND SERVICE, ONLY IF THE PRICE IS COMPETITIVE.

IN A TRUE - FREE AND COMPETITIVE CONSUMER ORIENTED MARKET - THE PRICE IS GENERALLY RESTAINED BY COMPETITION. BUT, IF THE SELECTION OF THE TITLE SERVICE OR PRODUCT IS MADE BY A PERSON WHOSE PRIMARY INTEREST IN THE SELECTION IS A COLLATERAL BENEFIT FLOWING TO HIM FROM THE TITLE ENTITY, THE MOTIVATION OF THE SELECTION BY SUCH AN AGENT OR REPRESENTATIVE MAY NOT BE IN THE BEST INTEREST OF THE CONSUMER.

CONTROLLED BUSINESS ARRANGEMENTS INEVITABLY RESULT IN HIGHER PRICES FOR TITLE SERVICES. THE CONTROLLED AGENCY IS EFFECTIVELY INSULATED AGAINST COMPETITION, THEREFORE, THERE IS NO INCENTIVE TO REDUCE PRICES.

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THE TITLE INSURANCE PREMIUM IS ONLY ONE OF THE MANY COSTS INCLUDED IN THE REAL ESTATE HOME SALE. PRESENTATIONS HAVE BEEN MADE BY CONTROLLED BUSINESS CARTELS THAT THEIR TITLE INSURANCE, AS PUBLISHED, IS A COMPETITIVE OR LOWER THAN OTHER TITLE SERVICE PROVIDERS. MATTERS THAT ARE NOT EXPLAINED IN THESE STATEMENTS ARE THE HANDLING OF OTHER COST ITEMS; AS EXAMPLE:

CLOSING OR SETTLEMENT FEES

ESCROW FEES FOR HANDLING FUNDS

DOCUMENT PREPARATION FEES

NOTARY FEES

IN SUMMATION:

CONTROLLED BUSINESS ARRANGEMENTS LEAD TO INCREASED PRICES AS INDEPENDENT AGENCIES MUST EITHER CREATE THEIR OWN CARTELS TO SURVIVE, OR MUST LET ITS SERVICE DECLINE OR ITS PRODUCT DECLINE.

MY KNOWLEDGE AND EXPERIENCE HAS SHOWN ME OVER THE YEARS THAT CONTROLLED BUSINESS ARRANGEMENTS HAVE REDUCED THE INCENTIVE TO PROVIDE CONTINUOUS HIGH QUALITY SERVICES. IN FACT, THE INCENTIVE IS TO MINIMIZE TITLE RELATED PROBLEMS - AT THE CONSUMER'S RISK - IN ORDER TO CONSUMMATE THE TRANSACTION.

I RESPECTFULLY REQUEST YOU OPPOSE HOUSE BILL NO. 2413.

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