

Approved 2-20-92

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Sen. Edward F. Reilly, Jr. at 11:00 a.m. on February 4, 1992 in Room 254-E of the Capitol.

All members were present except:

Committee staff present:

Mary Galligan, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

See attached list

Senator Reilly called the meeting to order and asked members to review January 22 Minutes. Senator Morris moved the Minutes be approved, and the motion was seconded by Senator Vidricksen. The motion passed, and the Minutes were approved.

Senator Reilly introduced Gene Yockers, Director of the Kansas Real Estate Commission, who spoke to the committee on SB 514 (Attachment 1). He explained he would be discussing several amendments to the bill which had been unanimously approved by the Commission.

Members of the committee questioned Mr. Yockers regarding publication of the amendments in the Kansas register, and if the amendments would change the criminal statutes and penalties for a felony. It was pointed out that Sen. Brady introduced a similar bill two years ago and recommended that Mr. Yockers talk with Sen. Brady and Rep. Vancrum.

Senator Reilly introduced Jean Duncan, who is Administrative Officer for the Real Estate Commission. She introduced amendments (Attachment 2) to SB 515 and answered questions from the committee.

Jim Irish, Greater Kansas Chapter of the Appraisal Institute, asked to be heard and offered an amendment (Attachment 3) to SB 515 on Page 2, Line 38 through Page 3, Line 4. This amendment affects fees and will result in a more level fee structure for appraisal professional practitioners, according to Mr. Irish.

Senator Reilly announced the time of the Joint Senate and House Committee meeting on Thursday, and stated the bills discussed today will be considered later.

Meeting adjourned at 11:40.

GUEST LIST

COMMITTEE: Senate Federal & State Affairs

DATE: Feb. 4, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
SUSAN SOMERS	Topeka	KSEPA
Teen Duncan	Topeka	KREC
Gene Yockers	TOP	KREC
Chuck Stoner	"	ICBA
Jim Irish	"	Secretary Kansas Chapter APPRAISAL INSTITUTE
KAREN FRANCE		KAR
DANA NELSON	TOPEKA	KRC
Janet A. Chubb	Topeka	KRC

Attach 1

Senate Federal and State Affairs Committee
February 4, 1992
Senate Bill 514

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the Director of the Kansas Real Estate Commission. We are asking for several amendments to the "prohibited acts" section of the statute.

Lines 24-25, page 1

This past year, the commission learned that a real estate broker had collected funds to pay off the mortgage in two different transactions and had converted the funds to his own use. One case amounted to more than \$61,000 and the other to more than \$35,000. Although his license was revoked under various provisions of the statute, we had no provision that adequately reflected what he had done. The amendment to paragraph (3) will give us stronger language where licensees are guilty of more than commingling funds.

Lines 22-25, page 2

The commission is often asked what happens to listing agreements when companies close or merge. Although this is a civil matter, the license act gets involved because licensees want to know if they can solicit listings without violating the license act. The commission feels the new language is needed and that it will address at least part of the problem. The amendment provides that a licensee shall not "assign, sell or otherwise transfer a written agency agreement to another broker without the express written consent of all parties to the original listing agreement."

Lines 34-35, page 2; lines 1 and 9-10, page 3

Disclosure of agency relationships must be contained in contracts for sale or lease. The commission wants to address any confusion as to whether the disclosure is required in a lot reservation agreement by simply adding the language.

Lines 25-30, page 3

New paragraph 21 results from a case where a broker had a provision in the listing agreement that "the seller hereby nominates, constitutes and appoints (broker) seller's attorney-in-fact for and in seller's place and stead, to make, execute and deliver an agreement of sale . . ." Thereafter, it was a sad story for the owner.

The commission feels strongly that a power of attorney should not be included in an agency agreement (in either the listing agreement with the seller or an agency agreement with the buyer). This is covered in the first sentence of the new language (lines 25-28).

Att. 1
1

Testimony - SB-514
Senate Federal and State Affairs Committee
page 2

The first part of the second sentence prohibits a licensee from committing forgery. Again, stronger language, for situations that warrant it.

We request that the committee amend the language in line 29. As written, a licensee would be prohibited from signing or initialing any document on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney. In proposing the amendment, the commission did not have in mind prohibiting a licensee from approving and signing a closing statement on behalf of the principal or completing a sales validation questionnaire. Substituting "contractual agreement" for "document" would address what we want to prohibit. Please amend the last sentence to read:

"The licensee shall not commit forgery or sign or initial any contractual agreement on behalf of another person in a real estate transaction unless authorized to do so by a duly executed power of attorney."

Lines 24-32, page 4

The existing statute (paragraph 29, lines 20-23) requires a licensee to present all written offers which are received prior to the acceptance of the offer by the principal. The problem here is that a licensee may comply with this provision and still violate the fiduciary responsibility to the seller. The courts are holding that offers must be presented until closing.

The new language in paragraph 30 replaces the existing language in paragraph 29 and covers offers submitted when the licensee represents the seller. Paragraph 31 has been added to cover offers submitted when the licensee represents the buyer.

Section 2 (page 6)

All amendments in this section are to update references which were amended by Section 1 of the bill.

Section 4 (page 7)

Please amend this section to provide that the act take effect upon publication in the Kansas register.

Thank you for your consideration.

Att. 1
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Senate Federal and State Affairs Committee
February 4, 1992
Senate Bill 515

Mr. Chairman and members of the committee:

My name is Jean Duncan, and I am the Administrative Officer for the Kansas Real Estate Commission. The Real Estate Appraisal Board is attached to the commission for administrative purposes, and I am here on behalf of the Board to request that the appraisers act be amended as proposed by the Board in Senate Bill 515.

The state law was passed based on requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Congress recently amended Title XI to extend the time for implementing licensing and certification systems to no later than December 31, 1992. The amendments permit, but do not require, states to delay the effective date. The Appraisal Subcommittee urged states to implement Title XI as soon as reasonably possible, and the Kansas Board has notified the Appraisal Subcommittee that our state system is operative even though state law does not require licensure or certification until the federal deadline.

Under federal law, the Appraisal Subcommittee has the responsibility to monitor state compliance with Title XI. The first two amendments in Senate Bill 515 are the result of their review of our law.

Lines 20-22 on page 1

Deletion of the provision: "No two real estate appraiser members shall be members of the same real estate appraisal organization."

The Appraisal Subcommittee expressed the opinion that the provision is inconsistent with Title XI. They commented that Title XI and its legislative history express Congressional intent that certain discriminatory practices be avoided. Congress was concerned that applicants for licensing and certification might be discriminated against on the basis of membership or non-membership in certain appraisal organizations.

Line 18 on page 2 and line 31 on page 3

The Appraisal Subcommittee will maintain a national registry, and the states are to furnish rosters of licensed and certified appraisers, along with an annual registry fee. The registry fee is currently \$25. The amendments are to stipulate that both the roster and registry fees are to be transmitted to the appraisal subcommittee of the council.

Section 3, beginning on line 29 of page 2
When legislation set fees for a totally new program, it was difficult to project the number of appraisers who would make application or the amount of expenditures that would be needed to implement and operate the program. By the time the Board set fees by regulation, it was obvious they had to be set at the statutory maximum. It is now obvious that fee increases will be necessary to administer the act. In addition to its own operating budget, the appraiser program owes \$25,000 to the Real Estate Commission's fee fund.

The Board requests that the maximum fee be raised for original and renewed certificates and licenses. [The original fee is prorated if the certificate or license is issued for less than a full year. The renewal is for one year.]

The current fee for an original certificate or license is \$150, and the renewal fee is \$100. The Board proposes that the original and renewal fee be the same but that different fees be set for each classification.

\$200 for licensed
250 for certified residential
300 for certified general

Lines 17-20, page 3
The Board asks for authority to provide a wall certificate at a cost of \$10 to those appraisers who want one. The wall certificate would be optional.

Section 5, page 4
It appears advisable for the Board to implement a fee increase, if at all possible, in time for the renewals which will be due at the end of May. We therefore ask you to make the act effective upon publication in the Kansas register.

Thank you for your consideration.

ATTACH. 3

Jim Irish
(Attach 3)

Session of 1992

SENATE BILL No. 515

By Committee on Federal and State Affairs

1-22

8 AN ACT amending the state certified and licensed real property
9 appraisers act; amending K.S.A. 1991 Supp. 58-4104, 58-4106 and
10 58-4107 and repealing the existing sections.
11

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

13 Section 1. K.S.A. 1991 Supp. 58-4104 is hereby amended to read
14 as follows: 58-4104. (a) There is hereby established the real estate
15 appraisal board which shall be attached to the commission for pur-
16 poses of administrative functions.

17 (b) The board shall consist of seven members appointed by the
18 governor. At least one member of the board shall represent the
19 general public, at least two shall represent financial institutions and
20 at least three shall be real estate appraisers. ~~No two real estate~~
21 ~~appraiser members shall be members of the same real estate~~
22 ~~appraisal organization.~~ Upon expiration of the terms of the first
23 members appointed to the board and thereafter: (1) No real estate
24 appraiser member of the board shall be eligible to serve unless such
25 member is a state certified or licensed appraiser; and (2) at least
26 one appraiser member shall be a certified general real property
27 appraiser. Any member representing the general public shall not be
28 affiliated with any financial institution or in the practice of real estate
29 appraising.

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

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

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

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

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

Att. 3
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1 (h) Each member of the board shall be paid compensation, sub-
2 sistence allowances, mileage and other expenses as provided in
3 K.S.A. 75-3223 and amendments thereto for attendance at any meet-
4 ing of the board or any subcommittee meeting authorized by the
5 board.

6 (i) The provisions of the Kansas sunset law apply to the real
7 estate appraisal board established by this section, and the board is
8 subject to abolition under that law.

9 Sec. 2. K.S.A. 1991 Supp. 58-4106 is hereby amended to read
10 as follows: 58-4106. (a) The commission shall:

11 (1) Receive applications for certification and licensure and re-
12 newal of certificates and licenses;

13 (2) issue certificates and licenses after the board has approved
14 applications for certification and licensure and renewal of certificates
15 and licenses;

16 (3) maintain a registry of the names and addresses of persons
17 certified and licensed under this act and transmit the registry to the
18 *appraisal subcommittee of the federal financial institutions exami-*
19 *nation council on an annual basis in accordance with federal law;*

20 (4) maintain all records submitted to it;

21 (5) collect fees prescribed pursuant to K.S.A. 1990 1991 Supp.
22 58-4107 and amendments thereto;

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

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

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

29 Sec. 3. K.S.A. 1991 Supp. 58-4107 is hereby amended to read
30 as follows: 58-4107. (a) The board shall adopt rules and regulations
31 prescribing the fees provided for by this act in amounts necessary
32 to administer and enforce this act, subject to the following:

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

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

38 (3) ~~For original certification or licensure, a fee not to exceed~~
39 ~~\$150.~~ ⁵⁰⁰

40 (4) ~~For renewal of a certificate or license, a fee not to exceed~~
41 ~~\$100.~~

42 (5) ~~an original or renewal license as a state licensed real property~~
43 ~~appraiser, a fee not to exceed \$200.~~

1 (4) For an original or renewal certificate as a state certified
2 residential real property appraiser, a fee not to exceed \$250.

3 (5) For an original or renewal certificate as a state certified
4 general real property appraiser, a fee not to exceed \$300.

5 (6) For late renewal of a certificate or license, a late fee not to
6 exceed \$50.

7 ~~(6)~~ (7) For certification to another jurisdiction that an individual
8 is certified or licensed, an amount not exceeding \$10.

9 ~~(7)~~ (8) For approval of a course of instruction approved pursuant
10 to K.S.A. 1990 1991 Supp. 58-4105 and amendments thereto, an
11 amount not to exceed \$100.

12 ~~(8)~~ (9) For renewal of a course of instruction approved pursuant
13 to K.S.A. 1990 1991 Supp. 58-4105 and amendments thereto, an
14 amount not to exceed \$25.

15 If a certificate or license is issued or renewed for a period other
16 than one year, the fee shall be prorated to the nearest whole month.

17 (b) *In addition to the certificate or license issued pursuant to*
18 *this act, the board may offer to provide a wall certificate, which*
19 *shall bear no expiration date and may charge a fee of \$10 to each*
20 *appraiser requesting the issuance of a wall certificate.*

21 (c) The board may prescribe a fee not to exceed \$50 for regis-
22 tration of an appraiser pursuant to subsection (b) of K.S.A. 1990
23 1991 Supp. 58-4103 and amendments thereto.

24 ~~(e)~~ (d) The board may establish different classes of courses of
25 instruction for the purpose of establishing fees pursuant to subsec-
26 tion ~~(a)(7)~~ and ~~(8)~~ subsections (a)(8) and (9) and may establish a
27 different fee for each such class.

28 ~~(d)~~ (e) In addition to the fees prescribed above, the commission
29 shall collect any registry fee required pursuant to federal law. Such
30 registry fees shall be transmitted by the commission to the *appraisal*
31 *subcommittee of the federal financial institutions examination council*
32 in accordance with federal law.

33 ~~(e)~~ (f) Except as provided in subsection ~~(f)~~ (g), the commission
34 shall collect all fees provided for by this act. No original or renewed
35 certificate or license shall be issued unless all appropriate fees, in-
36 cluding any federal registry fee, have been paid.

37 ~~(f)~~ (g) If a testing service has been designated by the board to
38 administer the examination, each applicant shall pay the examination
39 fee to the testing service.

40 ~~(g)~~ (h) The director of the commission shall remit to the state
41 treasurer at least monthly all moneys, received pursuant to this act.
42 Upon receipt thereof the state treasurer shall deposit the entire
43 amount in the state treasury. Twenty percent of each such deposit,

1 other than amounts collected for federal registry fees or for civil
 2 fines imposed pursuant to K.S.A. 1990 1991 Supp. 58-4118 and
 3 amendments thereto, shall be credited to the state general fund and
 4 the balance shall be credited to the appraiser fee fund, which is
 5 hereby created in the state treasury. All expenditures from such fund
 6 shall be made in accordance with appropriations acts upon warrants
 7 of the director of accounts and reports issued pursuant to vouchers
 8 approved by the director of the commission or by a person or persons
 9 designated by the director.

10 ~~(b)~~ (i) All amounts collected for federal registry fees shall be
 11 credited totally to the federal registry clearing fund, which is hereby
 12 created in the state treasury. All disbursements from the federal
 13 registry clearing fund shall be made upon warrants of the director
 14 of accounts and reports issued pursuant to vouchers approved by
 15 the director of the commission or by a person or persons designated
 16 by the director. Amounts credited to the federal registry clearing
 17 fund under this section shall not be subject to any limitations imposed
 18 by any appropriations act of the legislature.

19 Sec. 4. K.S.A. 1991 Supp. 58-4104, 58-4106 and 58-4107 are
 20 hereby repealed.

21 Sec. 5. This act shall take effect and be in force from and after
 22 its publication in the statute book.

Leilly

 (M) (M) McNeill
 (M) (M)
 (F) (M) Walker
 (M) (M) Webb
 McClure (F)
 Bond (M) (M)

*Jean
 Gene
 Jim I
 Chuck Stoner
 Karen France
 Jeff Sennich*

*(1) Buy Equity, Not Assum, Collect Rent but not pay Mtg + let be paid
 2000-01-22*

*Att. 3
 4*