

Approved: 2-2-98  
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Dennis Wilson at 1:31 p.m. on January 29, 1998 in Room 527-S of the State Capitol.

All members were present except: Representative Broderick Henderson, excused

Committee staff present: Bill Wolff, Legislative Research Department  
Robert Nugent, Revisor of Statutes  
Beth James, Committee Secretary

Conferees appearing before the committee: Karen France, KS Association of Realtors  
Tom Krattli, Eugene D Brown Realtors  
Barry West, Caldwell Banker, Dinning-Beard  
Chuck Stones, KS Bankers Association

Others attending: See attached list

The meeting was called to order at 1:31 p.m. by Chairperson Dennis Wilson. The Chairperson pointed out to the Committee that the minutes of the January 27, 1998 meeting had been handed out, and asked them to look them over so they could be voted on at the end of the meeting. The Chairperson introduced former state Representative Jill Grant .

Chairperson Wilson opened up the hearing on HB2692.

**HB2692:** **Title insurance, requiring certain disclosures and prohibiting certain actions.**

The Chairperson called Karen France, the first proponent, to the podium. Ms. France essentially read her testimony. (Attachment #1). She gave an overview of the bill, followed by a timeline of how we got to where we are today, etc. When she was finished the Chairperson called for questions from the Committee.

Representative Empson asked how many realtors/brokers owned title companies or a substantial interest in title companies prior to the 20% change? Ms. France said that there were atleast five that can be identified. Representative Empson asked if that was in the larger cities. Ms. France said there was one in southeast Kansas, one in Leavenworth, three in Kansas City and one in Wichita. Representative Empson asked if these companies had branch offices or just the one office. Ms. France said they had just one office. Representative Empson asked how many states have adopted this change. Ms. France said it is about 50/50.

Representative Kirk asked about the penalties for not disclosing the ownership of the title company. Ms. France said that information is in new section 3 paragraph B. The amount of the insurance premium would be returned to the purchaser, and the broker or agent who gave the referral without disclosing could possibly be subject to civil damages, in Ms. France's opinion. Several other questions were asked in regard to clarification or sections of this bill.

The next proponent to speak was Tom Krattli. Mr. Krattli read his testimony. (Attachment #2).

The next proponent to speak was Barry West. Mr. West read his testimony. (Attachment #3).

Written testimony was submitted from Delores Dalke. She too, is a proponent of this bill. (Attachment #4).

**CONTINUATION SHEET  
HOUSE COMMITTEE ON INSURANCE, JANUARY 29, 1998  
ROOM 527 AT 1:30 P.M.**

The last proponent to speak was Chuck Stones. He said that the Kansas Bankers Association supports this bill because this is the way the real estate transaction ought to be handled. They feel that there are adequate safeguards and disclosures in the law to provide protection for the consumer. (Attachment #5).

Chairperson Wilson asked if anyone had any questions. Representative Empson said that she did not remember the bankers being involved in this issue before, and remarked that they are currently restricted, too. She wanted to know if there are now bankers who are interested in getting into the title business. Mr. Stones said that the bankers involvement in the insurance business, including title insurance, revolves around a town population size of 5,000 verses a county population size. Banking regulations will allow banks to be involved in this business in towns of less than 5,000. Representative Empson asked if the bankers were very interested in this. Mr. Stones said he did not think so. That his guess was that not very many banks would be interested. But, the Kansas Bankers Association's position is that if there are opportunities that can be made available they want them to be available. There were no further questions or proponents.

The Chairperson said that the hearing on this bill will be continued on next Tuesday.

Representative Tomlinson made a motion to accept the minutes of January 27, 1998. The motion was seconded by Representative Myers. The committee voted to accept the minutes.

The meeting was adjourned at 2:43 p.m. The next meeting is scheduled for February 2, 1998.

# HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: 1-29-98

NAME	REPRESENTING
KAREN FRANCE	Ks. Assoc. of REALTORS
BARRY WEST	Carpenter Walker Dunning - Beard
TOM KRATZLI	Eugene J. Brown Co - Rea 0 km
Chuck Stokes	KBA
Bill Regier	KLTA
John P. Wheeler	KLTA
John Peterson	KLTA: 16 Assn
ROY WORTHINGTON	KLTA
John M. Bell	KLTA
JILL GRANT	KLTA
JOHN DOZIER	KLTA
STEVE LEWIS	KLTA
Craig L Burns	Security Title, Wichita, Ks.
Tom Wilder	Kansas Insurance Dept
MARTIN HAZEN	KANSAS INSURANCE DEPT.
Pat Morris	KAIA
Janelle Wilhite	Div. of Budget
Karen Schee	Ks Assoc of Realtors
Vera Sutton	Kansas Secured Title

HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: 1-29-98

NAME	REPRESENTING
<i>Hayden St John</i>	KLTA
<i>Chris St John</i>	KLTA

*MS*



Kansas Association of REALTORS®  
The Voice for Real Estate™ in Kansas

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**TO: HOUSE INSURANCE COMMITTEE**  
**FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS**  
**DATE: JANUARY 29, 1998**  
**RE: HB 2692, AFFILIATED TITLE COMPANIES**

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I ask for your strong support of this legislation.

Passage of this legislation will correct an error made when this statute was put on the books. It will return true competition to the title industry in Kansas. It will let the market decide what services will be provided to consumers for what prices, rather than an having a state legislated monopoly control the marketplace. What you hear through these hearings may make you uncomfortable, and for that we apologize. Our members who owned perfectly legal title companies when this statute went into effect felt very uncomfortable when they had to close their title companies and have felt uncomfortable ever since.

#### OVERVIEW

First, I would like to highlight the provisions of the bill. New Section 1 is a definitional section. New Section 2 prohibits a title insurer or agent from issuing title insurance if the customer was referred by someone who has an ownership interests in the title company unless the individual making the referral has disclosed to the customer that they have a financial interest in the title company. New Section 3, paragraph (a), prohibits a title insurer or agent from requiring a customer directly or indirectly to use their title company, if the person referring the customer to the title company has a financial interest in the title company. Paragraph (b) provides penalties for violating this statute. Paragraph (c) provides that an owner of a title company who is in a position to produce business for the title company can receive income, profits or dividends from the title company only if the financial interest has been disclosed to the customer, and the amount of the return is based upon a return on the investment of the producer and is not based purely on the volume of referrals. New Section 4 gives the Commissioner of insurance the ability to adopt rules and regulations necessary to carry out the provisions of the law.

The other substantive change is found on page 9 of the bill. Paragraphs (e) and (f) are stricken. The language in paragraph (e), regarding disclosure of an interest in the title company has now become the New Sec. 2 which you saw on page 2. Paragraph (f) is stricken. This is the onerous provision which require a title insurance company owned by persons in a position to produce title insurance customers to have no more than 20% of its business come from its owners. This is the provision which essentially prohibits our members, lenders and builders from owning title companies.

*House Insurance  
Attachment #1-1  
1-29-98*

## TIMELINE

Since many of you are new to this issue, I think it would be informative to see how we got here.

**1986** Legislation introduced by a Representative requiring the regulation of title insurance rates. Final version has 1 year delayed effective date in order to allow time for Insurance Commissioner to study the issue.

Study group appointed and worked during the summer. Made up of representatives of: many title companies, the Home Builder's Association of Kansas, the Kansas Association of REALTORS® (KAR), and the Kansas Real Estate Commission. Topic began to turn from regulating rates to doing something about Controlled Business Arrangements (CBAs). The Committee was divided into subcommittees to study various aspects of title insurance issues. The report of the Subcommittee KAR served on specifically said that CBA's were all right as long as there was full disclosure to consumers of the ownership interest.

The initial draft of the full committee report recommended passage of legislation with the 20% restriction. KAR sent a written dissent to that portion of the report. After that, KAR was no longer notified of Committee meetings.

**1987** CBA legislation was introduced, one provision required disclosure, the other contained the 20% restriction. Counties with populations less than 10,000 were exempted from the 20% restriction.

Since it was a House bill, it was heard first in House Financial Institutions and Insurance Committee. KAR was able to get the 20% restriction removed from the bill during committee discussion. The bill went to the floor of the House for debate without the 20% restriction and was passed by the full House on a 123-2 vote.

The bill was sent to the Senate Financial Institutions and Insurance Committee where the 20% restriction was put back in the bill. The bill passed the Senate with the 20% provision in the bill.

When it was sent back to the House, the Chairman of the House Committee told the full House that the Senate amendments were "minor" and recommended concurring in the Senate amendments, which the House did on a vote of 122 to 3. The Governor signed the bill into law in that form.

Wichita Title Associates (WTA) filed for an injunction against the Insurance Department to prevent enforcement of the new statute and asking that it be ruled unconstitutional on the basis of the Equal Protection Clause, in light of the 10,000 population rule and/or that the statute was unconstitutionally vague, since no terms were defined in the bill. KAR filed an amicus brief in the case. WTA won at the trial court level.

**1988** Court of Appeals overturned district court decision. CBA's, legitimately formulated under Kansas law, forced to close their doors.

**1991** KAR requests introduction of corrective legislation. Killed in House Committee.

**1996** Corrective legislation introduced. Committee hearings discussion or vote. 1-2

### **THE ISSUE AT HAND**

The opponents to this bill would have you believe that the legislation passed by the 1987 Legislature was based upon protecting consumers, that title companies owned by real estate brokers and lenders were damaging consumers. You should know that the Insurance Department did not testify to any consumer complaints against controlled business companies. Any complaints which had been filed regarding title insurance related to violations of existing laws and in fact, had nothing to do with controlled business arrangements. Most important, the Insurance Department had been able to issue cease and desist orders based upon the Unfair Trade Practices in effect at the time.

The opponents will present consumer protection arguments to you when they testify. They are even likely to present you with letters from our members who ask you to oppose this bill. There are 6,800 members of our association. It will be the rare day when we get every one of those members to agree on something. Our position in strong support of this legislation comes from a 140 member Board of Directors elected on a representative basis, from across the state, just as you are. That board of Directors unanimously voted to support this legislation. Some of the letters you might see from our members come from Past Presidents of our Association. I would remind you that we have had 77 past presidents, and the day we get them all to agree on something is rare. Those past presidents who are still alive are lifetime members of our Board of Directors. Not one of them stood up to oppose the position in support of this legislation, when it was debated.

We won't provide you with letters from members of the Kansas Land Title Association, because we haven't gone out and solicited them. We would hazard a guess that not every member of that Association agrees with that position. It is very easy, in these times of ever changing technology which expedites the rate of change for all industries to incite fear. The fear of not being able to keep up with change or technology or your competitors is alive and well in our industry, just as it is in many others. It is no surprise that someone telling our smaller members that "this legislation will only help the big get bigger and push you out of business", would move them to write a letter urging you to oppose the bill. Some of the letters submitted in the past have contained comments like, "there are enough title companies in our town". We come today to ask you to remove the artificial monopoly created by this 20% restriction and let the market, not the legislature or competitors decide whether there are enough title companies.

### **REBUTTAL**

The following is a point by point response to the arguments put forward by the opponents as reasons for opposing the removal of the 20% limitation for controlled business arrangements. The studies relied on by the opponents in the past were done in 1977 and 1981. More recent studies are now available which were presented to the National Association of Insurance Commissioners working group assigned to study this issue in 1994.

Much of the rebuttal information comes from the state of Minnesota and the Twin City area of Minneapolis and St. Paul where no restrictions are placed upon controlled business title companies. While this is a metropolitan area larger than that found in Kansas, it is a market area in the Midwest rather than one of the coasts. Additionally, the area has a large number of title agencies, both independent and controlled arrangements and a market which has received much attention in the form of economic and regulatory research. I will be happy to provide the appendices referred to in the text to any of you who are interested.

## Argument # 1

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 interests of the consumer when a collateral benefit flows from the title company to the producer to the title business.

### RESPONSE:

Competition is always in the best interests of the consumer. The more title companies the consumer has to choose from, the more competitive the rates are likely to be. A real estate broker's livelihood depends on repeat business from buyers and sellers over a long period of time. An agent is not going to refer business to title agents who offer poor service, reduced policy coverage or higher rates and thus put their long term real estate professional reputation at risk.

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## Argument # 2

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.

### RESPONSE:

In 1992, Paul Anton of Anton Financial Economics, Inc. researched the prices for typical settlement services in the Twin Cities area of Minneapolis and St. Paul Minnesota. Their survey sample included 16 firms which together operated 77 offices in the Twin Cities area, representing 70% of the title insurance offices in the marketplace. The sample included all eight firms in the market which operated five or more office locations. It included five firms which were part of controlled business arrangements and 11 which were not.

The research indicated that the controlled businesses **do not** appear to charge significantly higher prices for services. Of the 16 firms surveyed, controlled businesses placed fifth, sixth, seventh, thirteenth and sixteenth from the top in terms of list prices. In fact the prices at the controlled firms were somewhat lower, on average. Even after making adjustments for the volume done by the various offices (some of the entities surveyed had many more locations and handled many more transactions than others did in the sample) the results indicated that the independent firms tended to charge roughly \$13 more for the settlement services. (Paul Anton, "Economic Issues Relating to the Title Industry in Minnesota: Would Further Regulation be Helpful?", p. 6-8, Appendix A)



### **Argument #3**

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

### **RESPONSE:**

In 1981 there were eight title companies in the Twin Cities area of Minneapolis and St Paul Minnesota. Today, there are approximately 130-150, of which approximately 50% are controlled business arrangements. Thus, the presence of controlled business arrangements in the marketplace has not reduced the number of title companies. Conversely, the 1991 Controlled Business legislation in Kansas removed at least five companies from the marketplace, thus reducing the competition.

In 1994, Lexecon Inc., a national economic consulting firm specializing in the application of economic data to legal and regulatory disputes, analyzed the title and closing costs of over 1000 home sales transactions involving diversified real estate services companies during September of 1994. The transactions occurred in seven states -- Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania and California.

In their analysis of the transactions, they came to this conclusion:

“Diversified settlement service providers may have lower costs for providing a package of services than the total costs incurred by a set of independent firms providing the same services. In competition with one another, they will tend to reduce the package price below that which prevailed before controlled business arrangements came into existence. This would explain the hostility to diversified firms by independent firms, who will be less effective competitors in the long run if they cannot match the cost of efficiencies of diversified firms.” (Lexecon, Inc., Economic Analysis of Restrictions on Diversified Real Estate Services Providers”, Footnote 3, page 3 Appendix B)

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### **Argument # 4**

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.

### **RESPONSE:**

The best interests of the consumer are served when they receive the service which they seek in a convenient format, at a price which is competitive. Everywhere in the marketplace we see businesses adjusting to consumer demand for value and convenience. A prime example is the advent of grocery “super stores” whereby grocery stores do not merely sell groceries but also contain branch banks, dry cleaners, post offices, pharmacies and even McDonald's restaurants. In the fast changing real estate market, we see consumers demanding the same things--value and convenience. The consumer would be better served to be able to get brokerage, title and closing services under one roof, rather than having to deal with multiple individuals, making multiple phone calls in order to complete a transfer of real estate.

The Lexecon study concluded, "Critics of incentive compensation for referrals to controlled business arrangement affiliates claim that such payments induce persons, in whom consumer have invested their trust, to make referrals that are not in the best interest of their customers. In particular, they allege that the affiliate's prices are higher and service quality lower than those provided by independent firms. Higher prices only benefit a firm if it does not lose its current and future customers. Diversified companies that develop a reputation for high prices or poor service will tend to sell less of all of the services they offer."

Additionally, there are no limits on the amount of entertainment dollars which can be spent by title companies on the potential "producers of business". The independent title companies continuously create a presence with agents in order to influence the agent to refer business to their company. Their obvious conclusion is that real estate professionals are capable of exercising disinterested judgment only if they refer consumers to the independent title companies.

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### **Argument # 5**

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 consumer's interest in receiving a clear and unencumbered title;

### **RESPONSE:**

In a 1994 letter to the Working Group of National Association of Insurance Commissioners assigned to study the controlled business issue, the Commissioner of Commerce for the state of Minnesota wrote:

"We do not feel there is either a market share, solvency, or consumer abuse problem in Minnesota.

The residential real estate industry involves real estate brokers mortgage originators and title insurers. This industry has seen significant changes in the last ten years. I think its fair to say that during the next ten years we are going to see even more changes as technology drives new systems for delivering information and services be a single service provider. Where the industry will be in ten years we cannot accurately forecast, but we should not be adopting regulation which would hamper the ability of businesses to respond to changes in the marketplace and technology.

The proposed 20% rule on business from an affiliated company will inhibit and perhaps preclude businesses from providing fully integrated service by a single service provider in the residential real estate industry."

(Letter, James Ulland, Minnesota Commissioner of Commerce - February 3, 1995, Appendix C)

A controlled business title company must have underwriters insure their title policies. Underwriters would not continue to write for CBA's who provide shoddy title work. There has been no evidence presented that CBA companies have any more title claims than independent title companies.

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During the NAIC CBA Working Group deliberations, several underwriters sent correspondence to the committee regarding their experience in underwriting for CBA companies. In a letter from Nations Title Insurance of New York Inc., (a national underwriter) to the Chairman of the NAIC Title Insurance Working Group the Regional Counsel wrote about their experience in underwriting for a large CBA in Minnesota, "Nations Title Insurance has found First Security Title (FST) to be an excellent title insurance agency. FST underwrites the issuance of a title insurance policy very conservatively. I have found that FST will not jeopardize future business (it, or its affiliated companies could obtain) with sloppy title insurance underwriting of the current transaction. FST employs more than 150 people, has the financial ability to provide a complete in-house training program and is able to afford a staff of title insurance experts." (Letter, Patrick J. Nolan, III, Regional Underwriting Counsel, Appendix D)

Charles Keith, Executive Vice President of Lawyers Title Insurance Corporation (the third largest underwriter in Kansas) writes, "The NAIC representatives appear to want higher solvency criteria for controlled business agents. We have stated to the NAIC that the risk of defalcation exists from all types of agents and we have had no worse experience from one type or another." (Appendix E)

No records of complaints regarding CBA title companies were ever presented during the legislative debate in 1989. In a 1992 speech to the Minnesota Land Title Association, the Minnesota Commissioner of the Department of Commerce said that "1991 was a record year for calls received by the Department. A total of 75,000 calls from the public were received, including both complaints and inquiries.

Of the 75,000 calls, 8,000 were complaints that warranted formal investigation by the Department. Of the 8,000 investigations, only 13 dealt with title insurance companies and three dealt with closers. None of these 16 investigations resulted in any formal actions by the Department." (Letter, Mark A. Ludwig, Minnesota Office of Commissioner of Commerce, August 4, 1993, Appendix F.)

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## **SUMMARY:**

One of the basic tenets of the free enterprise system is that consumers are better served when there is competition in the marketplace. CBA's increase, rather than decrease competition, as is exemplified in Minnesota. There is no evidence available in the states which permit CBA's to operate which indicate that CBA's generate more complaints from consumers than their independent counterparts. CBA's will always need underwriters. No underwriters presented complaints to the NAIC working committee that CBA's have more claims.

The state of Kansas was the first state to have limitations on controlled business arrangements. It is a dubious distinction that we created the model for eliminating competition in the title insurance marketplace. Those states which permit CBA companies to operate did not report any problems to the NAIC Study Group studying the issue, and in fact, many states reported that CBA companies fill an important niche in the market place.

Controlled business arrangements permit stream lined home purchasing opportunities. The pressure for the packaging of real estate services is going to become more intense as technology advances and consumers demand greater efficiency in all aspects of their lives. The current law puts businesses and consumers at a disadvantage in meeting the demands of modern life. Market research done in April of 1997 clearly reflects that home buying and selling consumers in the 1990's want the convenience of one-stop shopping. (Please refer to attachment.)

We ask for your support of free enterprise and this bill.

OUTLOOK FEATURE

# WHAT CONSUMERS WANT: RESEARCH OF RECENT HOMEBUYERS

by Forrest Pafenberg, Director, Real Estate Finance Research

Below is a follow-up article on RESPA, the Real Estate Settlement Procedures Act. In October's Real Estate Outlook, we looked at some of the provisions of the current Act and the momentum to revise RESPA to meet homebuyers' desires for protection from abusive practices and a more streamlined settlement process. Here we discuss some of the consumer research findings that support the move to reform RESPA.

Changes in technology, communications and information processing over the last two decades have irretrievably altered the marketplace for goods and services in the world economy. The real estate industry is no different from any other industry. It's quite possible that real estate has been affected more than most industries, since it is fundamentally an information business and the primary changes have been to improve information management. The impact of innovation to real estate brokerage and residential lending has been far reaching and is continually changing the way business is being done.

What is different for the real estate industry versus other industries, however, is the level of federal regulation imposed by the Real Estate Settlement Procedures Act (RESPA) on the business practices of firms providing services to the homebuying public, and the stifling of innovation into this industry as a direct result of this regulation. The NATIONAL ASSOCIATION OF REALTORS® is currently working with other industry and consumer groups in developing an alternative to the present Act. As part of that effort,

NAR contracted with two outside vendors to explore recent homebuyers' perceptions, opinions, attitudes, and beliefs about the homebuying process. Specifically, the research focused on the closing process.

### QUALITATIVE RESEARCH: FOCUS GROUPS

Kinsey & Day Qualitative Market Research conducted 2 focus groups each in New York, Kansas City and Los Angeles in April 1997.

The results of these focus groups showed that today's homebuyers, just like other consumers in the 1990's, want service, not just lowest price, and that RESPA, while originally designed to protect unsophisticated homebuyers from unnecessary costs, has evolved into a mechanism which hinders settlement service firms from providing services such as one-stop-shopping.

Key findings from this research include:

- Participants in all three cities complained that the process of buying a home is time consuming and can be very stressful and anxiety-producing. Many said they did not understand the process (particularly the first-time buyer), and said they felt that they had to learn the process because they had "no one to protect their interest."

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## OUTLOOK FEATURE

- Participants found three areas of the homebuying process both most time-consuming and frustrating: searching for a home; getting the mortgage; and the closing. Participants in all three cities said that having one person or company coordinate closing would be much more convenient and should make the process faster and more efficient. In Los Angeles, participants stressed that it would reduce their worry and anxiety.
- Participants in all three cities also reasoned that having one person coordinate everything would also be cheaper, because they could utilize efficiencies of scale. Some participants in New York and Los Angeles said they would pay more for the convenience and time-savings.
- Participants in both New York and Los Angeles saw enough advantages in the "bundling of services" to be very interested in the idea, as long as they were always given the choice of which services they wanted the company to provide.

In addition, participants said the Federal Government should encourage, or at least not discourage "one stop shopping" as an option. They felt that disclosure laws would be perfectly adequate to explain any financial involvement among parties.

### QUANTITATIVE RESEARCH

Between May 13 and 14, 1997, the consumer polling firm of Hart-Riehle-Hartwig Research interviewed a representative cross-section of 808 homebuyers nationwide who purchased their homes within the past two years. Survey respondents were asked about their experiences in the purchase of their home. Specifically, homebuyers were asked about:

- the difficulty of the homebuying process;
- their satisfaction with current settlement services and the closing process;
- the appeal of one-stop-shopping for settlement services;
- their understanding and satisfaction with disclosures in the real estate transaction; and
- their opinions on the practice of one-stop-shopping.

Key findings from this research include:

- Homebuyers want the convenience of one-stop-shopping for homebuying services at the real estate company. More than three in four (78%) recent homebuyers say the opportunity to handle some or all their homebuying services through their real estate company would be appealing to them.

- Two in three (66%) say that if they had to do it all over again, they would choose a real estate company that offers one-stop-shopping. In fact, one in three (32%) say that they would be willing to pay more for the convenience of handling some or all of their homebuying services through their real estate company.

- Simple disclosure of potential conflicts gives homebuyers confidence. Disclosure works. Looking back to their own homebuying experience, three in four (74%) recent homebuyers were satisfied with the disclosure process.

- Even after hearing all the arguments raised against one-stop-shopping at the real estate company, recent homebuyers continue to favor changes in the rules in order to allow one-stop-shopping. Nearly half (46%) of those surveyed favor government rule changes to make it easier for real estate companies to offer one-stop-shopping while only 30% opt for no rules change, and only 12% support stricter rules.

A majority of respondents endorse arguments in favor of the changes, saying there is a great deal of merit to the argument that one-stop-shopping would be more convenient (53%), easier to manage with just one contact person (52%), and that some services might be cheaper when contracted through the real estate company (54%).

### CONCLUSION

The NATIONAL ASSOCIATION OF REALTORS<sup>®</sup>, and its partners in the Mortgage Reform Working Group,\* are using the results of this research as we continue our efforts to reform RESPA. Sentiment favoring a rules change is all the more convincing given the basic level of satisfaction that most recent, successful homebuyers express with the homebuying process. Almost all (92%) of recent homebuyers are satisfied with the homebuying services they used, and 76% are happy that the closing process was thorough rather than indicating that they are frustrated that it took so long. When most of these homebuyers, who are satisfied with the current system, favor change it is an overwhelming indication that one-stop-shopping makes sense to homebuyers. ■

\*For details, see "Revising RESPA: On the Way to One-Stop Shopping," in the October 1997 Real Estate Outlook.

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Asking for your support of HB2692, which allows member Realtors to own their own title company without the artificial restriction on affiliated business arrangement's.

A perception exists that Real Estate Brokers exert enough control over the real estate transaction that we are able to direct affiliated business, i.e., homeowner's insurance, mortgage origination, and title insurance to a particular company or provider of these services without competing with other suppliers. It is further assumed that if we indeed owned one of these providers, we would be able to direct that business to the possible detriment of a home buyer or home seller.

Nothing could be further from the truth. In fact those of us that have mortgage companies and property insurance companies have to be better than our competition or our own agents will not direct their business our way. Since the agents cannot, by law, be compensated for these referrals, they can only lose if their company fails to satisfy their customers. Therefore, many will not even take the chance and in some cases even refuse to let us quote for the business. This attitude exists because the primary relationship in a real estate transaction is one established between the client/customer and an individual sales associate, an independent contractor. This primary relationship is closely guarded by the independent contractor because the agent's livelihood depends on the transaction being handled smoothly. If it is not, the agent will lose a customer, an income source and most likely, the referral business from that customer for future business. The repeat customer and customer referrals are the lifelines of successful sales associates. To think that the person who exerts the most control over the transaction, the agent/independent contractor, would risk their livelihood and reputation by referring business to a service provider who is not competitive in terms of price and service is ludicrous. The agent/independent contractor is looking for a service provider who provides a high level of customer service at a competitive price that helps facilitate the closing of the transaction. They do not get paid unless a closing occurs. They are not going to risk their livelihood on their broker if that broker/owner is not performing in such a way as to insure the protection of their customers, and indeed, themselves.

HOUSE INSURANCE  
Attachment #2-1  
1-2998

While it is true that some buyers and sellers are not knowledgeable of the various service providers they are, none the less, protected by the laws of agency. When buyer's and seller's enter into an agency agreement with the independent contractor that independent contractor is obligated, by law, to represent their best interests. Recommending a service provider that does not operate in a customer's best interest, whether it be price or service or both, would be contrary to their fiduciary responsibility.

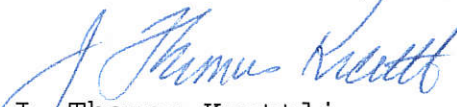
I find it unusual that Kansas places no restriction on Realtors owning mortgage and property insurance businesses but does restrict entrance into the title business. Competition tends to promote better service and lower prices. It is my opinion that more entrants into the title insurance field, i.e., more competition, would impact the title insurance industry in the same manner. Competition is good for the consumer. The National Association of REALTORS has conducted surveys with consumers that indicated a primary need that buyers and sellers have is to simplify the process. There is no reason to complicate the real estate transaction, both in terms of time and energy, by separating all of the buying components rather than dealing from one point of sale provider.

Free enterprise demands competition, the consumer demands it. The service providers who do not respond to the customers needs, in terms of price and service will not stay around. Realtor owned companies will have to provide better, faster and less expensive service or we will not get the business. We will not jeopardize our core business, real estate sales commissions, for the sake of profit in a title policy. We'd be cutting our own throat. Our independent contractors would leave if we put their business at risk and our underwriters would cease doing business with us. Instead of affiliated business we would have no business if we do not perform to protect everyone's interest.

Thank you for the opportunity to present our case. The title companies that support us now do an excellent job and serve a vital role in our business. Rather than fear our joining them in providing this service, I hope that they will compete with us to insure the buying and selling public is truly served.

Respectfully submitted,

EUGENE D. BROWN COMPANY, REALTORS

  
J. Thomas Krattli  
President



DINNING•BEARD,  
REALTORS®

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January 29, 1998

To: Members of House Committee on Insurance

Thank you for giving me the opportunity to address you regarding HB2692. My name is Barry West and I am owner of Coldwell Banker Dinning Beard, in Wichita, KS. I have been a broker for 26 years in Overland Park and for the past 11 years in Wichita. I speak in favor of the proposed change in the law.

I would like to share briefly with your a bit of background regarding the "Controlled Business" bill of 1989.

1. In January of 1989 the insurance department introduced a House Bill HB-2502 known as the controlled business bill which would add a paragraph (f) to the existing statute (40-2404) that would limit the amount of business obtained by title insurance companies from controlled business sources, or its shareholders, to 20%. The effect of this, of course, was to shut down or cause to be sold approximately 7 existing title companies operating in the state of Kansas, approximately 5 in Kansas City, 1 in Leavenworth, and 1 in Wichita. Furthermore, this law exempted all counties with a population of under 10,000. There was no clear rationale for this exemption except that the industry seemed to say that it was harder to make a living in the small counties without doing other services related to the title business. This provision might have been politically motivated.

2. Wichita title Associates, Inc., a Kansas corporation, was formed in approximately August of 1988 with all proper disclosures complying with federal law under RESPA and also with written approval from the state insurance commissioner's office legal department. The letter from Mr. Tim Elliott, attorney for the state insurance commissioner's office at that time, clearly stated that the structure of Wichita Title Associates would not violate Kansas' Unfair Trade Practices Act. Wichita Title was initially comprised of five Wichita based real estate brokerage companies, two savings & loans, and one title company. All were shareholders holding stock proportionate to the amount of their investment.

House Insurance  
Attachment #3-1  
1-29-98





3. It was argued by the people who had supplier owned title companies that the addition to the law of the 20% provision was completely unnecessary because they already complied with RESPA, the federal law that governed this area, and all necessary disclosures were being made. The law, however, was passed by both the House and Senate and signed into law by the Governor in the spring of 1989.

4. Later in the spring of 1989 a lawsuit was filed by a group of the title companies that were being forced out of business as a result of this law, challenging the constitutionality of said law. The lawsuit was filed in Shawnee County District Court and a temporary restraining order was issued prohibiting the law from going into effect until an adjudication could be made on the constitutionality of said law. In January of 1990 a District Court judge in Shawnee County ruled the law unconstitutional.

5. Supported by the Kansas Land Title Association and the insurance commissioner's office, the judge's ruling was appealed to the Kansas Supreme Court and in January of 1991 the Supreme Court of Kansas upheld the law as being constitutional. They overturned the District Court judge's ruling and said it was legal but did not necessarily say it was fair or a just law.

6. The effect of this law caused all of the companies doing business with supplier owned shareholders to either go out of business, sell their companies, or redeem their stock at book value in February of 1991.

7. In the fall of 1992, HUD issued more clear definitions of Section 8 of the Real Estate Settlement Procedures Act which controls this area and it made it clear that the federal law felt that supplier owned title companies were and should be legal. Two things must occur: (1) The producer of title insurance would need to disclose his ownership interest in advance to the client, and (2) not require the client use their company to affect the transaction. Also, no referral fees could be paid -- only legitimate profits from shareholders of a corporation or partners of a partnership.

8. Kansas currently has the most restrictive "anti-controlled business" law in the nation and it is completely unnecessary. This law legislates competition and is anti-free enterprise in nature.

In today's business climate the term "controlled business" as it relates to our industry is almost an oxymoron. With the growth of Buyer Agency, unless a provider of services owned or partially owned by a broker was at a minimum, less expensive, as safe as or safer and higher quality than competition, the agent would recommend another provider - regardless of ownership.

Full and complete disclosure to buyers and sellers is also a requirement.

The old law, as I have stated earlier, is anti-competitive, anti-business and in no way consumer friendly.

I speak in strong support of the proposed change.

Sincerely,

Barry West



# Real Estate Center, Inc.

116 North Main St. • Hillsboro, KS 67063 316/947-2321 • FAX 316/947-5616  
 206 East Main St. • Marlon, KS 66861 316/382-8871 • FAX 316/382-8871

JAN. 29, 1998

To Committee on Insurance

RE: House Bill # 2692

Ladies and Gentlemen:

I had planned to be in Topeka to testify today regarding the above captioned bill. It is quite ironic that I was not able to come to Topeka because of title insurance. Our office had ordered a title commitment on Jan. 8, 1998. It was not delivered to us until Jan. 28, 1998. This caused quite a lot of frustration for all parties involved because of the seller having a loan which must be paid off before the end of the month or an additional 30 days worth of interest would be added to his pay off, even if it was to arrive on Feb. 2, 1998.

The lender is in Wichita; therefor the title commitment was FAXED in and we had to have our office drive to Wichita to pick up the papers so that the closing could happen as per schedule.

I believe this only serves to emphasize how important competition is in a community.

Respectfully submitted,

Delores Dalke, CRB CRS  
Broker

Att.

House Insurance  
Attachment # 4-1  
1-29-98



January 29, 1998

My name is Delores Dalke from Hillsboro. I have been a Real Estate Broker since 1979. I am here to talk to you about House Bill #2692 regarding Affiliated Businesses.

Hillsboro is a town of 3000 population located in Marion County, whose population totals 13,000.

We have one title insurance company in our county, and I will be the first to say they do an excellent job in providing title insurance for those who wish to buy or sell property or mortgage their property. I believe there are quite a number of rural areas in our state that have only one title company. What this situation does is create a monopoly for those offices. This is not necessarily in the best interest of the consumer. I know that our state leaders believed they were assisting the public when the bill to control affiliated businesses was passed: This had the effect of stopping Real Estate Brokers from having ownership interest in title companies.

I am here to point out that this bill was not in the interest of the consumer. For instance, I did my own telephone survey as to the cost of title insurance in several areas. I focused on a home sale of \$47,500, which is a very affordable home to a low to moderate income home buyer in our area. I found that the cost of providing an owner's title policy on this sale in our county is \$335.00. I reviewed a sale of the same price in one neighboring county from a few years ago. At the time, the county had only one title company, so the cost was the same. Since that time, a second company has opened and the fee from the competing company was \$267, a savings of 20%. I called another neighboring county where we had also done business with even more dramatic results. The original cost was the same, but now with a second company the cost was \$333. However, they said, if the property is in Sedgwick County, the cost would be only \$276. Why? Competition!!!

Why must the consumers in small counties suffer because there's only one company? If restrictions were erased, perhaps some of us who

work in the area could invest in this industry and provide the consumers a choice and a chance to save money when they need title work.

If we are going to keep competition out of this industry, what will happen should the insurance agents come to you and say, "Don't let Real Estate Brokers own insurance agencies." It isn't fair!!! What if a group of Home Builders come in and say, "Don't let Real Estate Brokers develop property." This could go on and on.....

I believe those of you who represent smaller population areas of our state will help me verify that title company owners are involved in many other businesses, such as land development, and in quite a number of communities, these same people are also agents for Commercial Federal Bank, formerly Railroad Savings, originating mortgage loans so that buyers and those needing mortgages can have one stop shopping!!! I have no problem with this.... It is the American Way that we look for opportunities and become involved. Why are Real Estate Brokers singled out?

Those of us in small communities need to opportunity to expand our business opportunities so that we can better serve our clients as well as save them money.

Please consider that when government protects one business from competition, the consumer is the one who suffers.

Respectfully submitted,

Delores Dalke, CRB  
Broker

# Kansas Bankers Association

800 SW Jackson, Suite 1500

Topeka, KS 66612

785-232-3444 Fax - 785-232-3484 e-mail - kbacs@ink.org

1-29-98


TO: House Insurance Committee  
FROM: Chuck Stones, Director of Research

RE: HB 2692

Mr. Chairman and Members of the Committee:

The Kansas Bankers Association is supportive of HB 2692. We feel this legislation more accurately defines the way the Title Insurance business works in Kansas and better protects the consumer with the proposed disclosures.

We urge your favorable consideration.



Charles A. Stones  
Director of Research

House Insurance  
Attachment #5  
1-29-98