

Approved: April 3, 2003  
Date

MINUTES OF THE HOUSE COMMITTEE ON INSURANCE.

The meeting was called to order by Chairperson Patricia Barbieri-Lightner at 3:30 on March 11, 2003 in Room 527-S of the Capitol.

All members were present.

Committee staff present: Bill Wolff, Legislative Research  
Ken Wilke, Revisor of Statutes  
Renaë Hansen, Secretary

Conferees appearing before the committee: **Pat Mulvihill**, Assistant Director, Financial Surveillance Division, Kansas Insurance Department

**David Hanson**, Kansas Insurance Association

**Tom Krattli**, KC Title, Inc

**Delores Dalke**, Real Estate Broker, president, Kansas Association of Realtors

**Bill Yanek**, Director of Governmental Relations, Kansas Association of Realtors

**Senator Edward W. Pugh**, Kansas Senate, District #1

**John Peterson**, Kansas Land Title Association

**Roy Worthington**, Kansas Land Title Association

**Jeff Amrein**, Attorney

Total attending: 25 total including some who signed the attached register.

Hearing on:

**SB 26 - Insurance; risk-based capital requirements.**

Pat Mulvihill, Assistant Director, Financial Surveillance Division, Kansas Insurance Department, (Attachment #1), spoke as a proponent on SB 26 that amends K. S. A. 2002 Supp. 40-2c01(j) dealing with the definition of "RBC instructions" for life and property & casualty insurance companies. This amendment helps the Insurance Department keep their accreditation.

David Hanson, Kansas Insurance Association, (Attachment #2), supports this bill with the proposed revisions to the current statutes.

Comments made by: Representative Ray Cox.

Hearing Closed on **SB 26.**

Representative Nile Dillmore moved to pass SB 26 to the consent calender, seconded by Representative Stephanie Sharp, passed unanimously.

Hearing on:

**SB 66- Title insurance; prohibiting certain actions.**

Proponents:

Tom Krattli, President, KC Title, Inc., (Attachment #3), in support of SB 66 presented testimony that showed how allowing real estate companies to have in house title companies would in fact lower

costs at the real estate companies and thus for the consumer.

Questions were posed by: Representatives, Mary Kaufman, Eber Phelps, Nile Dillmore, Ray Cox, Nancy Kirk, Patricia Barbieri-Lightner, Scott Schwab, Joe Humerickhouse, and RJ Wilson.

Mike McGrew, Partner and Officer, Caldwell Banker McGrew Real Estate, Lawrence, Kansas, (Attachment #4), presented testimony and comments that show the reasons why the Affiliated Business Law currently in place in Kansas that limit markets who are in counties with population over 10,000.

Questions were posed by: Representatives, Bob Grant, Scott Schwab, and Nancy Kirk.

Delores Dalke, Real Estate Broker, President, Kansas Association of Realtors, Hilsboro, Kansas, (Attachment #5), presented testimony from the perspective of the counties just over 10,000 showing how it would benefit the consumer because of the competitive markets it would create.

Questions were posed by: Representative Bob Grant.

Bill Yanek, Director of Governmental Relations, Kansas Association of Realtors, (Attachment #6), gave specific testimony on why the current laws on controlled business legislation need to be changed and how SB 66 would help to rectify the current laws. He also presented written testimony (Attachment #7) by Sue Johnson, Executive Director, Real Estate Services Providers Council, Inc., proponent.

Questions were posed by: Representatives Nancy Kirk, Scott Schwab, Bob Grant, Mario Goico, and David Huff.

Opponents:

Senator Edward W. Pugh, Kansas Senate, District #1, (Attachment #8), presented testimony that states that this bill does not create just a one-stop shopping real estate purchasing and closing situation, but in fact does not allow the consumer to see that he does have a choice, because the other options are not presented to him.

This bill deals with business and who gets the dollar.

Questions were posed by: Representatives Stephanie Sharp, Scott Schwab, and David Huff.

John Peterson, Kansas Land Title Association, (Attachment #9), stated that this issue has been presented to this committee at least five times since 1995, and despite considerable political clout of the proponents, has always been rejected. The Senate passed out a version with two amendments that make the bill more palatable, but do not go quite far enough.

Questions were posed by: Representative Nancy Kirk.

Roy Worthington, Kansas Land Title Association, (Attachment #10), presented testimony with several attached documents showing why it is not good to consumers to have a place fore real estate purchasing where the process is one stop shopping. He noted that leaving the process in a broken apart purchase, protects the consumer from someone wanting to hurry the sale and allows a thorough and unbiased business transaction to occur.

Questions were posed by: Representatives Stephanie Sharp, Scott Schwab, Bob Grant, and David Huff.

Jeff Amrein, Attorney, stated that he favored the 1980's legislation because consumers preferred doing business in regulated places. This bill was about money and who gets it and where it goes. He sited a case of a title company in Merian County that has been in business for 125 years and would possibly suffer losses should this bill be enacted. He believes that conflict of interest issues are high by combining real estate companies and title insurance companies.

No Questions were posed.

Hearing closed on **SB 66.**

Meeting Adjourned.

Next meeting March 13, 2003.

# HOUSE INSURANCE COMMITTEE GUEST LIST

DATE: March 11, 2003

NAME	REPRESENTING
BILL YANEK	KS Assn of REALTORS
JERRY REECE	REECE - NICHOLS REALTORS
TOM KRATZLI	KANSAS CITY TITLE
DELORES DALKE	KAR/REAL ESTATE CENTER HILLSBORO
MIKE MCGREW	CB MCGREW REAL ESTATE LAWRENCE
<del>Jeff Damm</del>	<del>KS Assn of Realtors</del>
Jeff Boekerberg	State Farm
Patrick Mulvihill	KS. Ins. Dept.
J. Paul Buntin	KID
David Hanson	KS Insur Assns.
Ewald R.	Kansas Senate
JEFF AMBRESA	LAW'S America 272-2900





# K a n s a s I n s u r a n c e D e p a r t m e n t

**Sandy Praeger** COMMISSIONER OF INSURANCE

**TESTIMONY  
ON  
SB 26**

**House Insurance Committee  
March 11, 2003**

**Patrick Mulvihill  
Assistant Director, Financial Surveillance Division**

Madam Chair and members of the Committee:

Thank you for the opportunity to discuss Senate Bill No. 26 with you regarding risk-based capital (RBC) requirements. Senate Bill No. 26 is a proposal to amend K.S.A. 2002 Supp. 40-2c01(j), which is the definition of "RBC instructions" for life and property & casualty insurance companies.

RBC is a method that has been used by the Kansas Insurance Department for several years to evaluate the financial solvency of insurance companies doing business in this state. The RBC statutes also prescribe various forms of regulatory action that may be taken, or shall be taken, in the event that a company's calculated RBC meets certain thresholds.

Companies must file financial reports with the Department using RBC instructions and formulas developed by the National Association of Insurance Commissioners (NAIC). These instructions, including the formulas, are amended each year to address various matters, such as changes to line references in the annual statement blanks and to reflect any necessary modifications or adjustments to the formulas.

House Insurance  
Date: 3/11/03  
Attachment # 1

The current law requires companies to use the December 31, 2001 version of the "RBC instructions". Senate Bill No. 26 would reflect a change in the date of the standard so that companies would use the "RBC instructions", including the formulas, in effect as of December 31, 2002.

The Kansas Insurance Department believes that the passage of Senate Bill No. 26 would be beneficial in our efforts to monitor and regulate the insurance industry and would, in turn, be in the best interests of policyholders.

Thank you. I would be happy to answer any questions.

# KANSAS INSURANCE ASSOCIATIONS

DAVID A. HANSON, LEGISLATIVE COUNSEL  
800 S.W. JACKSON, SUITE 900  
TOPEKA, KS 66612-1259

TELEPHONE NO. (785) 232-0545  
FAX NO. (785) 232-0005

## House Insurance Committee Testimony on Senate Bill 26

### Kansas Association of Property & Casualty Ins. Cos.

Member Companies:

Armed Forces Insurance  
Exchange  
Ft. Leavenworth

Bremen Farmers Mutual  
Insurance Co.  
Bremen

Columbia Insurance Group  
Salina

Farm Bureau Mutual  
Insurance Company  
Manhattan

Farmers Alliance Mutual  
Insurance Company  
McPherson

Farmers Mutual Insurance Co.  
Ellinwood

Federated Rural Electric  
Insurance Exchange  
Lenexa

Kansas Mutual Insurance Co.  
Topeka

Marysville Mutual Insurance Co.  
Marysville

Mutual Aid Association of the  
Church of the Brethren  
Abilene

Mutual Aid eXchange  
Overland Park

Upland Mutual Insurance Co.  
Chapman

March 7, 2003

Madam Chairperson and Members of the Committee:

Thank you for this opportunity to present information on behalf of the Kansas Association of Property and Casualty Insurance Companies and the Kansas Life Insurance Association, whose members are domestic insurance companies in Kansas.

The risk-based capital provisions referenced in the Bill were developed by the NAIC for adoption and use by the states as a standardized method of monitoring the solvency of insurers and assessing the need for corrective action. We had requested the reference date in the statutory definition of "RBC instructions" to make sure that the adopted instructions and formula were limited to those that we had had an opportunity to review, rather than potential future revisions, which could adversely affect our companies' risk-based capital evaluation and the resulting action or control levels. While we believe our companies remain in good standing under the previously adopted NAIC instructions and formula, we also believe any significant changes in those instructions and formula by the NAIC should be carefully considered before adoption in Kansas.

At this point, we do not believe there will be any substantial adverse effect from the latest revisions referred to in the Bill before you. Thank you for your consideration.

Respectfully,



DAVID A. HANSON

### Kansas Life Insurance Association

Member Companies:

The American Home Life  
Insurance Company  
Topeka

American Investors Life  
Insurance Company  
Topeka

Blue Cross/Blue Shield  
of Kansas  
Topeka

Employers Reassurance  
Corporation  
Overland Park

First Life America Corpora  
Topeka

Preferred Health Systems  
Wichita

The Pyramid Life Insurance  
Company  
Shawnee Mission

Security Benefit Life Insura  
Company  
Topeka

To: The House Insurance Committee

From: Tom Krattli

Re: Senate Bill #66

Date: March 11, 2003

Thank you for the opportunity to testify in favor of Senate Bill #66. This is an important bill for Kansas Consumers. Your YES vote for Senate Bill #66, allowing for affiliated title companies, will:

- Allow Realtors the opportunity to provide “one-stop shopping” for the purchase of residential real estate; and
- Increase competition for title insurance; benefiting consumers with lower costs and increased levels of service.

It is important to note that the federal government has provided consumer protection in affiliated business transactions through the Real Estate Settlement and Procedures Act (RESPA). The act requires full disclosure of affiliated business relationships. Among it’s required disclosures are the ownership of the affiliated title company, the cost of the services provided by the affiliated title company, and the prohibition of sales contingent upon the use of the affiliated title company.

### **One-stop Shopping**

A 2002 survey conducted by Harris Interactive, the parent company of the Harris Poll, indicated that 82% of all buyers desire the opportunity to have “one-stop shopping”. This is a significant increase from the 1999 National Association of Realtors survey that showed 58% of buyers were interested in “one-stop shopping” shopping. Convenience and simplicity were cited as the two important components of this trend.

### **Increased Competition**

Opponents argue that Senate Bill #66 will decrease competition - forcing consumers to pay more for title insurance. To the contrary, independent studies reveal an *increase* in the number of title companies and *lower consumer costs* in unrestricted markets.

House Insurance  
Date: 3/11/03  
Attachment # 3



March 11, 2003

Page Two

In 1992 Minnesota was considering a restriction on affiliated title businesses. Anton Financial Economics, Inc., an independent research company, was employed to determine the impact to Minnesota of such a law. Since Kansas had recently adopted a prohibition on affiliated title companies, their study involved a comparison of the unrestricted Minneapolis-St. Paul market and recently controlled business environment in Wichita, Kansas. The study resulted in the following conclusions:

- The Twin Cities market supported healthy competition. Expanding from eight title companies in 1981, before the emergence of affiliated business, to nearly one hundred sixty title companies in 1992 - half of which were affiliated businesses. Today there are over one hundred fifty title companies in the Twin Cities area.
- Consumers in the Twin Cities paid less for title services through an affiliated title company than a nonaffiliated title company.
- During the three years following the implementation of controlled business regulation in Kansas, the two largest title companies in Wichita raised their rates from 50% to 60%, depending on services offered.

Needless to say, Minnesota chose not to enact restrictions against affiliated title companies.

In 1994 Lexecon, Inc. analyzed title and closing costs on real estate sales transactions involving both affiliated and unaffiliated title companies in seven states. Their conclusion: Costs charged to consumers by affiliated title companies *were less than* those of nonaffiliated companies.

The findings of these independent studies were realized in Kansas last year, when federal bank legislation prohibited any restriction of title companies affiliated with the banking industry. As a result, Kansas banks formed affiliated title companies in several cities and counties in 2002. Consumers in Riley County, the seventh largest county in Kansas, previously served by only one title company, now have a choice between two title companies. Additionally, the benefits of unrestricted title markets are apparent in the Greater Kansas City area where Missouri law does not restrict affiliated businesses from the title insurance industry. My company, Kansas City Title, is an affiliated title company owned by Reece & Nichols and began business in Missouri in June 2000. Our charges to a consumer on a \$150,000 home in Jackson or Cass Counties Missouri, including title policy and closing services, range from 3% to 10% less than the three largest title companies in that market. All of the top three title companies are nonaffiliated.

March 11, 2003  
Page Three

### **Consumer Protection**

Opponents also suggest that affiliated title companies are anti-competitive, implying a consumer may be “forced” to use the affiliated title company, unaware that they can shop for the best price and service. Affiliated title companies are required by federal law (RESPA) to disclose:

- The referring real estate company has ownership in the title company and may profit from the use the title company.
- The use of the affiliated title company is not a condition for the purchase, sale, or refinance of the subject property.
- Other settlement companies (nonaffiliated title companies) provide similar services and the consumer is free to shop to make sure they are receiving the best services and the best rate for these services.
- The cost of all services and fees charged by the affiliated title company.

It should be noted that nonaffiliated title companies are not required to make such a disclosure when they receive a referral from a Realtor. I have included a copy of our current disclosure for you review.

Thank you for the opportunity to appear before this committee. This is an important issue and I ask for your support of Senate Bill #66.

Sincerely,

J. Thomas Krattli  
President, Kansas City Title

Enclosure



**NOTICE OF REAL ESTATE BROKERAGE AND TITLE INSURANCE RELATIONSHIP**  
(Affiliated Business Disclosure)

Reece and Nichols Realtors is acting as a Real Estate Broker involving the undersigned sellers. Kansas City Title, Inc. – An Affiliated Company - may be performing services for the undersigned seller for closing and title services.

**YOU ARE HEREBY NOTIFIED THAT REECE & NICHOLS REALTORS OWNS KANSAS CITY TITLE, INC.**

Kansas City Title, Inc. will, for normal compensation paid directly to Kansas City Title, Inc., provide title insurance and closing services in connection with the sale of your home. The normal range of fees you may expect to pay for closing services is \$225-\$275, and \$50-\$100 for document preparation. Please see the Kansas City Title, Inc. rate chart on the back of this disclosure for the cost of title insurance.

Reece & Nichols Realtors sincerely recommends Kansas City Title, Inc. because they will provide quality service, convenience to you and competitive title and closing costs. It is important that you understand that Reece & Nichols Realtors may benefit financially from your choice of Kansas City Title, Inc. *However, the sales associate of Reece & Nichols Realtors will receive no financial benefit from your choice of Kansas City Title, Inc.*

You are under no obligation to use Kansas City Title, Inc. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

I (we) hereby acknowledge receipt of this notice and understand its contents.

Date: \_\_\_\_\_

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

January, 2002

# Insurance Rates For



**KANSAS CITY TITLE**

<u>Amount of Insurance</u>	<u>Original Issue Rate</u>	<u>Rate if Prior Policy Furnished</u>
50,000 or less	\$310.00	\$186.00
50,001 to 55,000	\$330.00	\$198.00
55,001 to 60,000	\$350.00	\$210.00
60,001 to 65,000	\$370.00	\$222.00
65,001 to 70,000	\$390.00	\$234.00
70,001 to 75,000	\$410.00	\$246.00
75,001 to 80,000	\$425.00	\$255.00
80,001 to 85,000	\$440.00	\$264.00
85,001 to 90,000	\$455.00	\$273.00
90,001 to 95,000	\$470.00	\$282.00
95,001 to 100,000	\$485.00	\$291.00
100,001 to 110,000	\$505.00	\$303.00
110,001 to 120,000	\$525.00	\$315.00
120,001 to 130,000	\$545.00	\$327.00
130,001 to 140,000	\$565.00	\$339.00
140,001 to 150,000	\$585.00	\$351.00
150,001 to 160,000	\$605.00	\$363.00
160,001 to 170,000	\$625.00	\$375.00
170,001 to 180,000	\$645.00	\$387.00
180,001 to 190,000	\$665.00	\$399.00
190,001 to 200,000	\$685.00	\$411.00
200,001 to \$210,000	\$705.00	\$423.00
210,001 to 220,000	\$725.00	\$435.00
220,001 to 230,000	\$745.00	\$447.00

<u>Amount of Insurance</u>	<u>Original Issue Rate</u>	<u>Rate if Prior Policy Furnished</u>
230,001 to 240,000	\$765.00	\$459.00
240,001 to 250,000	\$785.00	\$471.00
250,001 to 275,000	\$835.00	\$501.00
275,001 to 300,000	\$885.00	\$531.00
300,001 to 325,000	\$935.00	\$561.00
325,001 to 350,000	\$985.00	\$591.00
350,001 to 375,000	\$1,035.00	\$621.00
375,001 to 400,000	\$1,085.00	\$651.00
400,001 to 425,000	\$1,135.00	\$681.00
425,001 to 450,000	\$1,185.00	\$711.00
450,001 to 475,000	\$1,235.00	\$741.00
475,001 to 500,000	\$1,285.00	\$771.00
500,001 to 525,000	\$1,310.00	\$786.00
525,001 to 550,000	\$1,335.00	\$801.00
550,001 to 575,000	\$1,360.00	\$816.00
575,001 to 600,000	\$1,385.00	\$831.00
600,001 to 625,000	\$1,410.00	\$846.00
625,001 to 650,000	\$1,435.00	\$861.00
650,001 to 675,000	\$1,460.00	\$876.00
675,001 to 700,000	\$1,485.00	\$891.00
700,001 to 725,000	\$1,510.00	\$906.00
725,001 to 750,000	\$1,535.00	\$921.00

\* For policies over \$750,000, rates will be furnished upon request.

An affiliate of Reece & Nichols Realtors  
 A complete real estate services company  
 focused on quality service and convenience to our customers.  
[www.reeceandnichols.com](http://www.reeceandnichols.com)



**TO: HOUSE OF REPRESENTATIVES INSURANCE COMMITTEE**

**FROM: Mike McGrew**

**DATE: March 11, 2003**

**RE: Senate Bill 66 – Repealing the Kansas Affiliated Business Law**

My name is Mike McGrew. I am a partner and officer at Coldwell Banker McGrew Real Estate, an independently owned and operated company with 65 agents located in Lawrence. We consider our primary market area to be Lawrence and Douglas County. Lawrence has about 80,000 people with about 100,000 total in the county. We do approximately 1/3 of the real estate business in our market.

While the Affiliated Business Law is often associated with large market areas such as Johnson and Wyandotte Counties, mid-sized markets like Lawrence are subject to the law as well. Only in the smallest markets, counties of 10,000 population or less, are real estate licensees free to participate in the title insurance business.

Increasingly, CB McGrew's customers and clients, and those of our competitors, are demanding the efficiency and convenience of one stop shopping in real estate transactions. Affiliated business arrangements allow for one-stop shopping, facilitate the bundling of services, and provide discounts to consumers. Convenient, efficient, superior service is available in many other areas of the country. Why are Kansans being adversely regulated against?

Our company has recently begun a joint venture with a local mortgage company. Our agents and customers are under no obligation to use our in house lender. The federal RESPA regulations prohibit us from offering any financial incentives to our agents. We hope to earn their business by providing convenient, superior service at competitive interest rates. We have another opportunity to work for our agents and customers ONLY if we can produce excellent value for them.

Many of our competitors are involved in the property insurance businesses. Many are in property management, land development or business brokerage.

Like real estate companies of all sizes, we continue to look for ways to provide better value for our agents and our customers. Meeting payroll and creating opportunities for our salespeople has become more difficult than ever. We need to have the freedom and flexibility to provide the products and services that customers want. Services that can be provided by everyone EXCEPT licensed real estate agents in Kansas.

House Insurance  
Date: 3/11/03  
Attachment # 4

More competition and more choices mean the opportunity for better service and better prices for consumers. My friends in the title business know this. I don't blame them for trying to defend their turf. But Kansas consumers deserve the benefits of more choices, more competition and potentially lower prices.

The title insurance lobbyists will talk about Realtors wanting to keep banks out of the real estate business. They'll say that we only want competition when it is in our favor.

The banking issue looks similar but it actually fundamentally different. Realtors are the essence of entrepreneurial spirit. Even when they work for large company owned firms, they function almost exclusively as independent agents. No matter how big a company we work for, we are the little guys.

Banks are the biggest of the big guys. And they have something that no one else has. They have the FDIC. If they go broke, the American taxpayer bails them out.

All we want is the chance to give customers and agents better service. If we get the opportunity and execute it well, then we will be rewarded. And if we don't do it well, no one will bail us out.

Mid-sized brokerages should have the option of offering affiliated title services.

*I urge the committee to pass Senate Bill 66.*

February 19, 2003

My name is Delores Dalke from Hillsboro, I have been a Real Estate Broker since 1979, and I am currently serving as President of the Kansas Association of Realtors. I am here to talk to you about Senate Bill # 66 regarding Affiliated Businesses.

Hillsboro is a town of 3,000 population in Marion County with a population of 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 need to 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, which effectively stopped real estate brokers from having ownership interest in title companies.

House Insurance  
Date: 3/11/03  
Attachment # 5

Page 2, February 19, 2003

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 \$60,000, 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 \$375. I reviewed a sale of the same price in one neighboring county from a few years ago at a time that county had only one title company and the cost was the same. Since that time, a second company has opened and the quote from the competing company was \$301.00, a savings of 20%. 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 consumer 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 situation could go on and on.....

I believe if those of you that represent smaller  
population areas of our State will help me verify that title  
company owners are involved in many other business, such as land  
development, and, in quite a number of communities, these same  
people are also acting as Mortgage Broker, originating mortgage  
loans,, as well as doing closings for a fee, so that buyers  
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?

Page 4, February 19, 2003

Those of us in small communities need the 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,

A handwritten signature in cursive script that reads "Delores Dalke".

Delores Dalke, CRB, CRS, GRI  
Broker

2-19-03



**TO: HOUSE INSURANCE COMMITTEE**  
**FROM: Bill Yanek, Director of Governmental Relations**  
**DATE: March 11, 2003**  
**RE: Senate Bill 66 – Repealing the 1989 Kansas Affiliated Business Law**

K.S.A. § 40-2404(14) (e) and (f), The Kansas Controlled Business Law, prohibits a title agency (in a county with a population of more than 10,000) from doing business with a consumer if that would cause the agency to derive more than 20% of its revenue from a controlled business source. Controlled business sources are entities that have an ownership interest in the agency.

**Impact on REALTORS®:** The law prevents real estate brokerages from creating and owning an affiliated title company. The 20% limitation is difficult, if not impossible to meet by requiring a controlled business title company to get 80% of its business from its competitors.

**Impact on consumers:** Increasingly, consumers are demanding one stop shopping in real estate transactions. Affiliated business arrangements allow for one-stop shopping. Affiliated business arrangements also facilitate the bundling of services and providing of discounts to consumers.

*The Kansas Association of REALTORS® believes that it is time for Kansas to repeal the Kansas Affiliated Business Law because in the sixteen years of the law's existence, the Kansas title insurance landscape has drastically changed.*

The law was purportedly enacted to “protect consumers” and “prevent vertical integration”. However, HUD, the Kansas Department of Insurance, and the Kansas Title Industry have set in motion a chain of events rendering the law useless in achieving its initial purposes.

*Instead of protecting consumers and preventing vertical integration in the real estate industry, the law acts as a protectionist bar to increasing competition in the title industry and deprives Kansas residents the benefit of HUD enacted consumer protections.*

**“Consumer protection circa 1989” – Federal law has changed to enhance consumer protection.**

The timeline below depicts the changes to affiliated business consumer protections since the Kansas Affiliated Business Law passed in 1989. Current Kansas Law remains the 1989 version.  
**Consumer Protection Enhanced**

House Insurance  
Date: 3/11/03  
Attachment # 6



785.267.3610  
VOICE

800.366.0069  
TOLL FREE

785.267.1867  
FAX

3644 SW Burlingame Rd  
Topeka, Kansas 66611  
www.kansasrealtor.com

1989 – Kansas passes its controlled business limitation.

1992 – HUD promulgates controlled business arrangement (CBA) disclosure form (**these forms must be provided prior to any referral to the controlled business title agency**).

1996 – Congress requires CBA form disclosure be acknowledged in writing.

1996 – HUD strengthens regulation of conditions under which controlled business arrangements are permissible.

2001 Kansas Department of Insurance rules that federal depository institutions are not subject to the statute.

**Since 1989 - “Preventing Vertical Integration” - The Kansas title industry is currently home to a number of national underwriters.**

Chicago Title Insurance Company (Illinois), Commonwealth Land Title Insurance Company (Virginia), The First American Corporation (California), and Stewart Title Guaranty Company (Texas) are examples of large national underwriters currently doing business in Kansas.

The First American Corporation is a multi-billion dollar company that currently engages in affiliated title businesses across the country. First American is a strong presence in the Kansas title industry. As the attached map indicates, First American owns and underwrites in counties across Kansas. With the presence of such national companies and the entrance of banks into the affiliated title marketplace: what vertical integration is being prevented?

### **Isolating Kansas Real Estate Brokerages**

- ❑ The Kansas 1989 Affiliated Business Law currently applies only to “producers of business”, namely real estate brokerages and builders, in counties with a population of more than 10,000.
- ❑ Bank-Title Affiliated Title Businesses are now operating in at least Riley and Cowley counties.
- ❑ Nationally, less than 10 states still prohibit affiliated title businesses. Missouri, Nebraska, Colorado, and Oklahoma do not prohibit affiliated title businesses.
- ❑ The Kansas Association of REALTORS® believes that consumers will be better served, the title industry will be made more competitive, and brokerages will escape marketplace isolation if Kansas repeals its 1989 Affiliated Business Law.

**SB 66 passed the Senate by a strong vote of 34 to 4, with 2 senators not voting.** On the senate floor there were two amendments attached to the bill. One, introduced by Senator Vratil, required disclosure. **We fully support this amendment.** The second amendment requires 20% of the affiliated title company’s revenue comes from outside the affiliated relationship. This amendment was offered in committee, but rejected 6 to 2. It was proposed again on the senate floor and passed by a narrow margin. **We oppose this amendment.** It is our hope that the House will reexamine and reject this floor amendment.



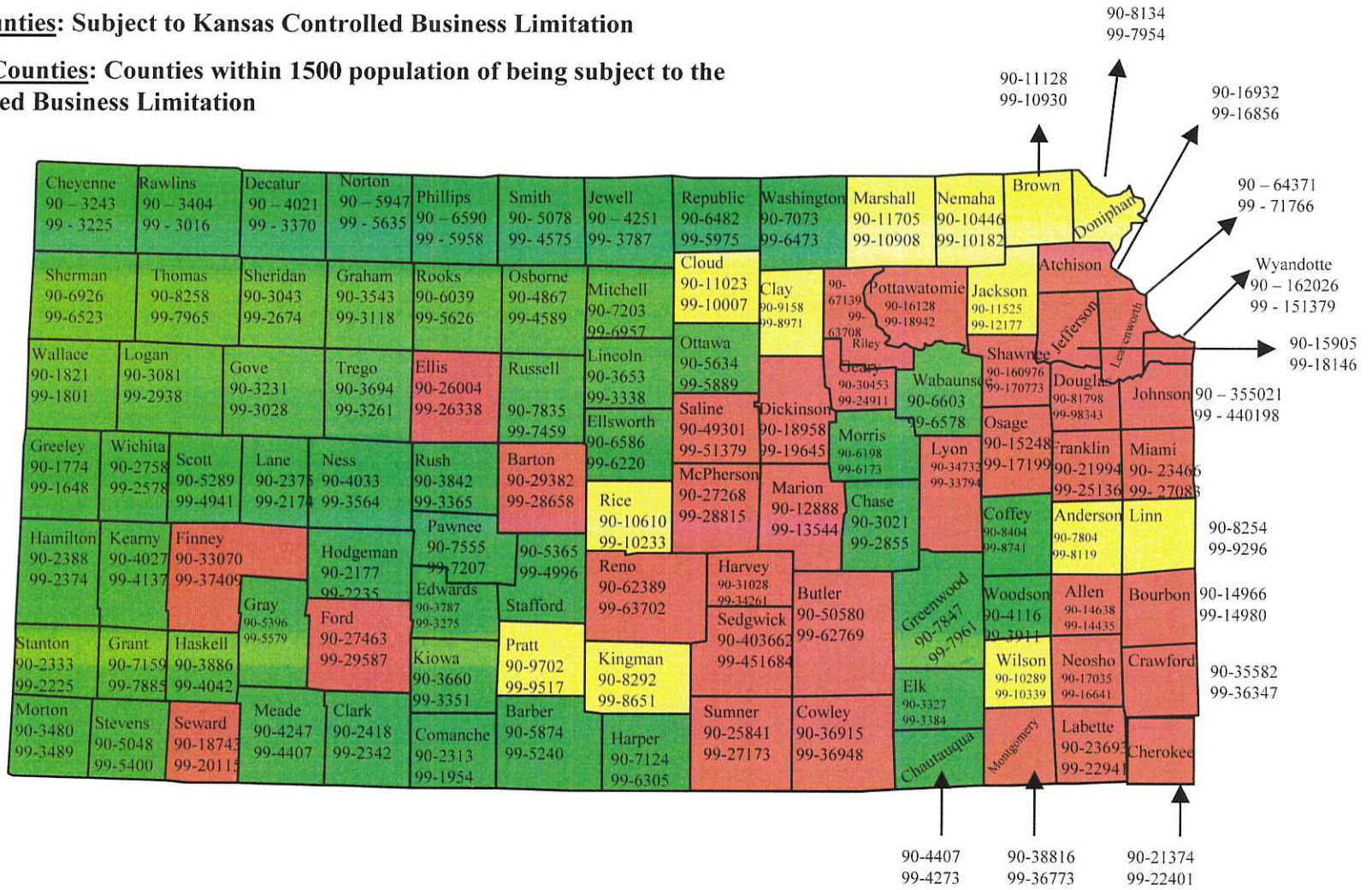


6-9

**Green Counties: No Controlled Business Limitation**

**Red Counties: Subject to Kansas Controlled Business Limitation**

**Yellow Counties: Counties within 1500 population of being subject to the Controlled Business Limitation**



6-4





March 11, 2003

Dear Representative Barbieri-Lightner:

On behalf of the Real Estate Services Providers Council, Inc. (RESPRO®) I would like to provide written testimony in support of Senate Bill 66, which would repeal the Kansas Controlled Business Law (K.S.A. Section 40-2404(f)) prohibiting a title insurer or title agent from deriving more than 20% of its gross operating revenues from "controlled" or "affiliated" business.

RESPRO® is a national non-profit trade association of settlement service providers from all segments of the industry, including real estate broker-owners, mortgage lenders, title agents/underwriters, builders, and financial institutions. Our members united in 1993 to promote a federal and state regulatory environment that promotes the delivery of convenient, innovative, and cost-effective settlement services for home buyers and owners through business alliances across industry lines.

RESPRO® has closely tracked regulatory debates over affiliated businesses for the last decade. After affiliated title businesses emerged in the 1970s, traditional title companies who fear the additional competition that affiliated businesses create in the marketplace have frequently attempted to prohibit or restrict their operations in state legislatures. It is important to note that proposals to restrict affiliated title businesses have always come from their competitors, never from the consumer who benefits from the additional competition they provide.

When trying to restrict affiliated businesses, these unaffiliated competitors tend to recite allegations of fraud or abuse, higher prices, or reduced competition. RESPRO® has researched every allegation to date that has been brought to its attention, and every one has been proven to be unfounded or unrelated to the existence of affiliated businesses.

**I. Economic Studies Show that Consumers Benefit from Affiliated Businesses**

The only empirical studies that have been performed on the impact of affiliated title businesses have shown that their emergence in the marketplace over the last 20 years has increased competition and lowered costs for home buyers:

**A. Anton Financial Economics, Inc. Study Of Affiliated vs. Unaffiliated Title Costs in Minneapolis-St. Paul and Kansas**

In 1992, Anton Financial Economics, Inc. researched the prices for a "basket" of title

House Insurance  
Date: 3/11/03  
Attachment # 7

services in the Minneapolis-St. Paul marketplace by sampling 16 firms that together operated 77 offices in the Twin Cities area (70% of the offices in the marketplace). Anton also researched title and closing rates in Wichita County, Kansas, before and after the 1992 implementation date of the Kansas Controlled Business Law, after real estate -owned title companies in the State of Kansas were forced to shut down.

The Anton study reached three significant conclusions:

- Unaffiliated title companies in the Minneapolis-St. Paul marketplace *charge approximately \$13 more for a basket of title services* than affiliated title companies.
- *The presence of affiliated businesses in the Minneapolis-St. Paul area has increased competition in the title marketplace* -- in 1981, before the emergence of affiliated businesses, there were 8 title companies in the Twin Cities area. In 1992, there were approximately 130-150 title companies in the area, approximately half of which are affiliated businesses.
- After the Kansas Controlled Business Law took effect in 1992, the two largest title companies in Wichita County, which had been the most competitive in the title marketplace, raised their rates 50 to 60%, depending on the service offered.

#### **B. Lexecon, Inc. Study of Affiliated vs. Unaffiliated Title Costs in Seven States**

In 1994, RESPRO<sup>®</sup> commissioned a study by Lexecon Inc., a national economic consulting firm specializing the application of economic data to legal and regulatory debates, which analyzed the title and closing costs of over 1000 home sales transactions for both affiliated and unaffiliated title agencies during a one-week period in September 1994. The transactions occurred in seven states -- Florida, Minnesota, Tennessee, Wisconsin, Mississippi, Pennsylvania and California.

The study concluded that title services for transactions involving affiliated title companies *not only are competitive with those provided by unaffiliated title companies, but actually result in a 2% cost savings*. Lexecon concluded its study with the following statement:

“We are skeptical of the claims by proponents of restrictions on controlled business arrangements that they represent the interests of consumers, because they fail to produce any evidence that consumers have been harmed by the practices they seek to outlaw. In addition, they stand to gain financially if consumers are instead actually harmed by the restrictions...Our results in this study, together with previous research, suggest that consumers are not being systematically harmed, and may be receiving significant benefits through controlled business arrangements ” (*Economic Analysis of Restrictions on Diversified Real Estate Services Providers, January 3, 1995, Lexecon, Inc.*)

**C. Department of Housing and Urban Development (HUD) Economic Analysis of Consumer Benefits of Affiliated Title Businesses**

In a written presentation to the Committee of its opposition to S. 66, the Kansas Land Title Association (KLTA) incorrectly implies that the Department of Housing and Urban Development (HUD) opposes affiliated businesses. Nothing could be further from the truth; in fact, HUD has often publicly recognized the potential consumer benefits of affiliated businesses:

For example, in a 1996 Economic Analysis accompanying a final Real Estate Settlement Procedures Act (RESPA) regulation, HUD stated:

“[T]here is some reason to expect that referrals among affiliated firms may reduce costs to businesses and consumers. Business may benefit from lower marketing costs and the ability to share information on the home purchase or refinancing among settlement service providers. In the long run, any cost savings should be passed on to consumers in most cases. Consumers may benefit additionally from reduced shopping time and related hassles.”

HUD went on to conclude that the above-mentioned Lexecon study may actually *underestimate* the cost benefits of affiliated companies:

“HUD is aware of only one study that compares prices of settlement services provided by affiliated and non-affiliated firms. RESPRO<sup>®</sup>, an association of controlled businesses, commissioned a study by an independent contractor, Lexecon, Inc...*[The study may be] biased in favor of the unaffiliated firms. Therefore, the [study] results might suggest that affiliated firms on average have lower prices than their competitors.*”

**D. Department of Justice Letter Concerning Consumer Benefits of Affiliated Businesses**

KLTA also refers to a 1977 U.S. Department of Justice study that speaks negatively of affiliated businesses, without stating that the Department *reversed* its position in 1983 and opposed proposed federal legislation supported by the American Land Title Association that was similar if not identical to the Kansas Controlled Business Law.

In an April 26, 1983 letter from DOJ Assistant Attorney General Robert A. McConnell to U.S. House Housing and Urban Development Subcommittee Chairman Henry B. Gonzalez, the Department stated:

"...[A]rrangements 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."

## **II. Consumer Survey Shows that Consumers Prefer One-Stop Shopping**

The most recent survey of consumer attitudes towards realty-based one stop shopping shows that consumers prefer to purchase services connected to their home purchase at one time and place, and that those who do have a better home purchase experience. Harris Interactive, the parent of Harris Poll, surveyed 2052 recent and future home buyers in March 2002 and found:

- ◆ That 82% of home buyers would "strongly" or "somewhat" strongly consider using a one stop shopping service for their home purchase.
- ◆ That when a home buyer is aware that a real estate brokerage firm offers a full range of services, it positively affects their selection of a real estate agent 44% of the time.
- ◆ That the three preferred sources of one-stop shopping programs are mortgage companies, banks and credit unions, and real estate brokerage firms.
- ◆ That 64% of home buyers who recently used one stop shopping programs had a much better overall experience with their home purchase transaction.
- ◆ That over 90% of home buyers who did not use one stop shopping programs believed that if they had used one, they would have had a better overall home purchase experience because they would have had just one person to contact, they would have saved money if the company offered discounted prices, it would have sped up the home buying process, it would have prevented things from falling through the cracks; and it would have assured one standard level of brand-named service from all providers of the home purchase services.

## **III. The Trend in the States Is Pro-Affiliated Business**

KLTA also attempts to convince the Committee that the majority of states disapprove of affiliated businesses by referring to a RESPRO<sup>®</sup> report that 38 states have laws that place percentage caps on the amount of business a title company can receive from an affiliate.

This is misleading. Most of the current affiliated business laws were enacted prior to the Kansas Controlled Business Law, when the National Association of Insurance Commissioners (NAIC) Model Title Agency Act recommended such restrictions.

After considering the arguments for and against state affiliated business restrictions in 1994 hearings, including the 1992 Paul Anton Economics Study and the 1994 Lexecon study, the NAIC dropped its recommendation for "percentage cap" laws in 1995 in its Model Title Agency Act and instead listed it as an option.

To our knowledge, no state has enacted a percentage cap law since that the NAIC dropped its recommendation. In fact, the Colorado Attorney General's office has since reversed its position that the state anti-remuneration statute prohibited affiliated title businesses in Colorado after reviewing the Lexecon study, the HUD Economic Analysis, and the Department of Justice letter. In a February 2, 1998 formal opinion, it stated:

*"However, the national current is moving toward allowing some kinds of ABAs. In 1996, an independent consulting group used empirical evidence to analyze the pros and cons of ABAs in the title industry from an economic standpoint. The study concluded that ABAs do not harm consumers, and often benefit the consumer through lower prices and the conveniences of "one-stop shopping." HUD favorably cited the Lexecon study in its 1996 economic analysis of its proposed RESPA revisions. HUD went further and stated that ABAs benefit the consumer and lower prices of settlement services. The Justice Department's retraction of its earlier stance, the Lexecon study, HUD's statements in its 1996 analysis of the 1996 RESPA revisions, and HUD's 1996 sham CBA policy statement demonstrate that there is less need for a strict interpretation of Colorado's anti-remuneration statute." (Emphasis added).*

In summary, affiliated title businesses conclusively have been shown to increase competition in the settlement service marketplace and to give home buyers greater choice and lower costs, without compromising the quality of their title services. We urge the Committee to pass SB 66, which would ensure that Kansas home buyers can also reap these benefits.

RESPRO<sup>®</sup> would be glad to provide copies of any studies or documents that we have mentioned in our comments. We appreciate the opportunity to provide our views to the Committee.

Sincerely,

Susan E. Johnson, Esq.  
Executive Director

EDWARD W. PUGH  
SENATOR, 1ST DISTRICT  
625 LINCOLN AVE.  
WAMEGO, KANSAS 66547  
(785) 456-9377  
  
ROOM 128-S, CAPITOL BLDG.  
TOPEKA, KS 66612-1504  
(785) 296-7379



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: TRANSPORTATION  
ASSESSMENT AND TAXATION  
REAPPORTIONMENT  
JUDICIARY

**Testimony on Senate Bill 66**  
presented to  
**House Insurance Committee**  
by  
Senator Edward W. Pugh  
March 11, 2003

I want to thank this committee for allowing me to testify as an opponent to Senate Bill 66. My testimony should be received by you with full knowledge of my background.

I have practiced law in Wamego, Kansas, for more than 25 years. For the last 15 years, my law firm has furnished title insurance and closing services to the general public. Before that, we examined abstracts and other evidence of title and we closed many real estate transactions.

The issue inherent in S.B. 66 is purely monetary. The proponents of this bill are engaged in real estate sales. This bill will enable large real estate brokerage companies to control a larger chunk of the economic rewards of each transaction. They will be able to take more money out of each deal now because they will control more of the deal.

The proponents want the bill passed because they can then legally represent the buyer, the seller, act as the transaction broker and sell the title insurance protection for a fee and premium without competition. The proponents call it one-stop shopping, and that is true since the consumer will never know that there is another place to shop or that he has a choice. He consequently will be charged more for the service.

I respectfully request that you not pass Senate Bill 66.

House Insurance  
Date: 3/11/03  
Attachment # 8



# WALL STREET JOURNAL

© 2001 Dow Jones & Company, Inc. All Rights Reserved.

DM \*\*

THURSDAY, JANUARY 25, 2001

WSJ.com

## Realtors Organize to Stop a Threat From Banks

By PATRICK BARTA

Staff Reporter of THE WALL STREET JOURNAL

NEW YORK—Realtors, already battling Internet companies that have entered the home-selling business, are now organizing to fight a joint proposal of the Federal Reserve and U.S. Treasury that would allow federally chartered banks to move onto their turf.

Under current law, national banks aren't allowed to perform many of the services real-estate agents now provide, such as listing properties, showing homes and connecting buyers and sellers. But last month, the Fed and Treasury released a proposed rule that would allow affiliates of banks to perform those services, as well as allow the affiliates to manage residential and commercial properties, including rent collection and lease negotiations. The two federal agencies have asked for public comment on the rule through March 2.

If approved, the rule could help simplify the highly fragmented home-buying

process, in which consumers have to deal with real-estate agents, title companies, mortgage bankers, insurance companies and others. It would also help banks lock in more customers, allowing them to "bundle" highly profitable brokerage services—real-estate agents typically charge 6% commissions—with their existing mortgage-lending and insurance functions.

### Heavyweights Lend Support

Not surprisingly, the rule is supported by banking heavyweights, including the American Bankers Association and the Financial Services Roundtable, a lobbying group whose members include J.P. Morgan Chase & Co. Citigroup Inc., Wells Fargo & Co., Fleet Boston Financial Corp., First Union Corp., Bank of America Corp. and others.

Realtors, naturally, see the rule as nothing short of a banking power grab, and one that could hurt consumers. In a memo written for distribution among reporters,

the National Association of Realtors wrote: "Like a voracious octopus, the banking industry—already bloated with recently acquired rights to deal in securities and insurance—has seen something else it wants—the highly successful real-estate brokerage segment." Indeed, the association wrote, "The buyout and annihilation of independent brokerages could begin this summer" if the rule is approved soon.

Realtors believe there are several problems with the rule. For starters, they say it would create a conflict of interest for banks, which they fear would try to market mortgage products and other services to home buyers that aren't necessarily in consumers' best interests. "I doubt a bank-controlled broker would spend hours scouring for the best mortgage product when their bank already has a mortgage that might not necessarily be the best deal," says Steve Cook, vice president of public affairs for Realtors' association.

Furthermore, the association worries that banks, which have reams of financial information about their clients, would have an unfair advantage over independent real-estate brokers, which wouldn't have as much information.

### Members Are Urged to Write

To fight the proposal, the association has asked its 780,000 members to write letters to the Fed, Treasury and their local congressmen arguing that real-estate brokerage firms are commercial—not financial—businesses, and therefore don't belong within the purview of banks' operations. The association also plans to file its own response to the Fed and Treasury along the same lines.

Bankers, for their part, argue that their move into real-estate services would only improve service for consumers, by allowing them to handle more aspects of

Please Turn to Page A10, Column 4

FYI  
John Peterson  
Kansas Land Title Assn

8-2

**Testimony of John Peterson  
Kansas Land Title Association  
March 11, 2003  
House Insurance Committee  
Opposition to SB 66**

Madam Chair, Members of the House Insurance Committee, my name is John Peterson and I'm pleased to appear before you today on behalf of the Kansas Land Title Association, in opposition to the repeal or minimization of the current controlled business law in Kansas. I would just like to offer a couple of remarks before turning the podium over to Roy Worthington, our legislative chair.

This Committee has faced this issues almost every year, at least five times since 1995. Despite the considerable political clout of the proponents, it has always been rejected. It has been rejected because the repeal of the controlled business law is not in the best interest of a competitive environment and of the Kansas consumer. The purpose of the law is to stimulate competition by decreasing vertical integration between producers of title business and title insurers. That's not just my view, that was the view of the Kansas Supreme Court when they unanimously upheld this law.

The law does not prevent realtors from being in the title business, but only requires them to compete for public business with other independent title companies - to compete for business other than "captured business" referred to it by its employees/agents. It is only by having title companies compete with each other for business that true free enterprise and fair competition result.

I will admit that SB 66 was improved by the Senate during floor debate. The proponents, in an effort to bolster its chance for passage, added a series of disclosures - but it is interesting to note that they did not add all of the disclosures which were contained in 1998 HB 2692, to which they themselves had agreed. I have attached the legislative supp note which outlines those disclosures. For example:

House Insurance  
Date: 3/11/03  
Attachment # 9

- that the disclosure statement be SIGNED by the consumer
- that it occur PRIOR to the commitment being made
- that the consumer be provided with the names and phone numbers of other title insurers operating in the county
- that the title company be prohibited from pre-printing on the form their name prior to the buyer or seller selecting that title company
- penalties - to the consumer in an amount equal to the premium and that the insurance commissioner could impose a penalty up to five times the premium
- that violation of the act would be a prohibited act under the realtor licensing law
- that there would be a course of action for enforcement of the law by other title companies/agents if the act was violated

Secondly, the Senate added an amendment allowing a controlled title insurance company to get up to 80% of their business from their own company, current law allows only 20%. We believe that this substantially weakens the current law, although it does at least require some business to come from the general public. We would suggest that a compromise position would be to go to 50%.

Early last year, an AG's opinion was requested by the proponents making many of the same arguments you hear today, they subsequently withdrew that opinion request. After the legislation was defeated, it was announced that litigation would be a certainty, no such litigation ensued. In January, with a new administration, they have once again requested an AG opinion and that opinion request is pending. Will that opinion be determinative of whether you should repeal this statute? No, but having the AG's view on the very arguments they presented to you, certainly would be advisable. At the very least this matter should be referred to a Summer study at which time you would have before you all relevant information.

Thank you for your time and consideration of our position.

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2692

As Amended by House Committee on  
Insurance

**Brief\***

H.B. 2692, as amended, addresses the issue of controlled title insurance business. The bill amends current law in the following manner.

- *Disclosure.* No title insurer or agent may accept an order for title insurance or issue a title insurance policy to a consumer referred by a producer of such business who has a financial interest in the title insurance company unless the producer has disclosed in writing to the consumer referred that
  - the producer has a financial interest in the title company to which the consumer is referred;
  - the nature of the financial interest and a written estimate of the charge or range of charges generally made for title services;
  - the person (consumer) is not obligated to use the title insurer in which the producer has the financial interest;
  - the consumer has received the names and telephone numbers of other title insurers or agents operating in the county; and
  - the disclosure statement is signed by the consumer prior to any commitment having been made to the title insurer or agent.

---

\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.ink.org/public/legislative/fulltext-bill.html>.

- *Tie-in Arrangements.* No title insurer or agent may condition the selling of property or the making of a loan to a consumer upon the purchase of title insurance from the producer having a financial interest in the title insurer or agent. Further, no title insurer or agent may accept an insurance order on a form with the title company name pre-printed prior to the buyer or seller selecting that title company.
- *Penalties.* Any producer who violates the provisions of this law would be liable to the consumer in an amount equal to the amount of the premium paid for the title insurance; be subject to a fine imposed by the Insurance Commissioner in an amount equal to five times the premium for the title insurance; and if the producer were a licensed real estate agent or broker, the producer would be deemed to have committed a prohibited act under the licensing statutes for such persons.
- *Financial Arrangements.* The owner of the title insurance company who is a producer of business for the company may receive income from the title business if the financial interest is disclosed as required, the payment is not in exchange for business, and the payment is only a return on the investment of the owner in the business.
- *Competitor's Cause of Action.* After the act becomes effective, any title insurer or agent who is a competitor of another title insurer or agent who violated the provision of this law has a cause of action against the violator and is entitled to damages as determined by the court. Court costs and attorney fees may be awarded to the successful party in any such action.
- *Rules and Regulations.* The Insurance Commissioner shall require title agents to provide core title services as mandated by the federal Real Estate Settlement Procedures Act and may adopt rules and regulations necessary to carry out the law.
- *Controlled Business.* The unfair trade practices act in the Insurance statutes relating to the percentage of business a title insurer or agent may control also would be amended.

The current exemption from any limitation on the amount of controlled business would continue for real estate transactions in counties of 10,000 or less and a new exemption would be added for real estate transactions in counties with a population greater than 50,000. The current limitation of 20 percent of controlled business would continue on real estate transactions in counties with a population greater than 10,000 but less than 50,000.

### Background

H.B. 2692 was supported by the Kansas Association of Realtors whose representative noted that consumers are better served when there is competition in the marketplace, that controlled business arrangements permit streamlined home purchasing opportunities and buyers and sellers want the convenience of one-stop shopping. The Kansas Building Industry Association, Inc., the Kansas Bankers Association, and several real estate agency representatives spoke or wrote in favor of the bill.

The Kansas Land Title Association opposed H.B. 2692.

The fiscal note on the bill indicates it would have no fiscal effect.

KANSAS LAND TITLE ASSOCIATION  
434 N. MAIN  
WICHITA, KS 67202

PRESENTATION TO HOUSE INSURANCE COMMITTEE

RE: Testimony in Opposition to Senate Bill 66

DATE: March 11, 2003

THE KANSAS LAND TITLE ASSOCIATION OPPOSES SENATE BILL 66 FOR THE FOLLOWING REASONS:

**FUNDAMENTAL ISSUE: DOES OWNERSHIP OF TITLE COMPANIES BY REAL ESTATE BROKERS CREATE PUBLIC POLICY CONCERNS THAT NECESSSITATE STATE REGULATION BEYOND THAT PROVIDED BY FEDERAL LAW.**

CONTROLLED BUSINESS IN THE TITLE INSURANCE INDUSTRY RESULTS WHEN A PRODUCER OF TITLE BUSINESS, SUCH A REALTOR, OWNS AN AFFILIATED TITLE COMPANY AND HAS THE ABILITY AND FINANCIAL INCENTIVE TO REFER TITLE BUSINESS TO THAT COMPANY.

THE KANSAS LAND TITLE ASSOCIATION, AND AS OF 2001 THIRTY-SEVEN (37) OTHER STATES BELIEVE THAT STATE REGULATION IS NECESSARY WHEN A CONFIDENTIAL RELATIONSHIP EXISTS BETWEEN 2 PARTIES AND IN THAT RELATIONSHIP 1 OF THE PARTIES HAS THE ABILITY TO REFER THE OTHER PARTY TO PURCHASE A PRODUCT OR SERVICES FROM A COMPANY IN WHICH THE REFERRING PARTY HAS A FINANCIAL INTEREST AND STANDS TO GAIN A FINANCIAL RETURN AS THE RESULT OF THE REFERRAL.

1. The current law, K.S.A. 40-2404 (14) (e) and (f), is part of the Kansas Unfair Trade Practices Act and was passed in 1989 to resolve significant problems involving controlled business title insurance companies existing at that time.

The current law does not prevent realtors from owning a title company, but does require a title company owned by a realtor to actively compete in the marketplace for title insurance beyond that referred to it by the realtors owning the title company

2. The current law is an extension of the federal Real Estate Settlement Procedures Act (RESPA) passed in 1974 to help eliminate abuses in the real estate settlement services industry - specifically prohibiting the payment or receipt of fees, kickbacks, rebates or any thing of value for the referral of business. **The federal law clearly allows the states to be more**



restrictive in the regulation of title insurance and real estate settlement services than the federal law.

In fact, HUD may not construe provisions of state law that impose more stringent limitations on controlled business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

3. **Kansas controlled business law provides more protection than RESPA.** For example, RESPA does not apply to loans on property of 25 acres or more and exempts loans primarily for business, commercial or agricultural purposes, while there is no such exemption under the Kansas law.

Another example is that RESPA allows an employer to pay an employee for a referral activity. Therefore a real estate brokerage company can provide a financial inducement to an office supervisor to refer business to the broker's captive title company, but if an independent title company tried to give that supervisor a referral fee to obtain business, the independent title company could be subject to prosecution for violating RESPA. The Kansas law prevents such arrangements.

4. In 1991 the law was upheld by the Kansas Supreme Court - the court indicated that "purpose of 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 the law is to stimulate competition by decreasing vertical integration between producers of title business and title insurers."

5. **Realtors do not want banks to enter the real estate brokerage business:** Realtors have introduced federal legislation to keep banks from entering the real estate brokerage business. The realtors are using the argument that "conflicts of interest" and "unfair competitive environments" will result if banks are allowed to sell real estate. The realtors further argue that competition would be reduced as banks gobble up real estate companies, and that the cost to consumers would unnecessarily increase. Apparently the realtors do not want banks in their business, but have no problem entering the title business without restriction. (See Exhibit "A")

THE ONLY WAY TO KEEP THE TITLE INSURANCE INDUSTRY COMPETITIVE AND CONSUMER FRIENDLY IS TO HAVE A RESTRICTION ON THE AMOUNT OF CONTROLLED BUSINESS AN AFFILIATED TITLE INSURANCE AGENCY CAN OBTAIN, THEREBY REQUIRING THAT ALL TITLE INSURANCE COMPANIES COMPETE FOR PUBLIC BUSINESS.

THE NEED FOR SUCH REGULATION IS TWO-FOLD:

**Consumer Issues:**

1. The need for the present restriction on controlled business is due to the following unique nature of title insurance, i.e.:

a. **in a controlled business marketplace, the consumer loses the ability to obtain the disinterested judgment of the real estate professional;** the consumer does not understand that title insurance can be shopped around for the best price and service, like property insurance, life insurance and the purchases of other consumer goods;

b. the placement of title insurance services is made by the real estate agent, who is in a **"fiduciary relationship" with the consumer and to whom the consumer looks for disinterested advice.** The duties of a realtor under existing license law are "to promote the interests of the client with the utmost good faith, loyalty and fidelity." **If realtor has a financial incentive to direct his client's title business to his broker's title company, is there a conflict of interest?**

2. It is naïve to think that a real estate broker, owning a title insurance agency, cannot offer incentives to its agents to use the affiliated title company. Attached as **Exhibit "B"** are examples of how a real estate broker "induces" an independent contractor/real estate agent, to use the affiliated title company.

3. **There is little incentive for the controlled business company to reduce rates or to improve policy coverage or service in order to attract business, because its business is "guaranteed" as a result of referrals.** If controlled business title insurance companies only service "captured consumers" and are not competing with other title companies for business, then the consumer will be subject to non-competitive prices. **Controlled business companies will eliminate price and service from the equation when selecting a title company.**

4. The sale of title insurance by affiliated business companies is recognized in Kansas as potentially involving methods of unfair competition or unfair or deceptive acts or practices.

a. The 1989 minutes of the Senate Financial Institutions and Insurance Committee reveal express statements by legislators - "problem with controlled business is that it is anti-competitive - the producers of title business try to steer customers to the title company they own and they have no incentive to look out for the consumer."

b. Dick Brock, of the Kansas Insurance Department testified in favor of bill on March 2, 1989 and indicated that the Insurance Department had been studying complaints about persons offering or receiving special inducements, rebates and other advantages in the sale or placement of title insurance that is not generally available to others similarly situated, causing increased cost to the consumer.

5. Many federal and state studies over the years have concluded that the growth of controlled business arrangements has created serious competitive and conflict of interest problems that adversely effect the interests of consumers. An example of 2 those studies are set forth below:

- The U.S. Department of Justice in a 1977 study concluded that while RESPA closed the front door to rebates and kickbacks, **the affiliated business arrangement may ultimately cause a problem worse than outright kickbacks.** Instead of receiving a kickback, the realtor will receive a corporate dividend and reverse competition will result since the affiliate's decision as to whom it chooses to underwrite its policies would be based on how much it would receive as compensation, not how much the policy will cost the consumer;

- A 1981 study performed for the Department of Housing and Urban Development by Peat, Marwick, Mitchell & Company, stated the following: "... a fundamental characteristic, generally referred to as **reverse competition**, serves to create a market in which traditional economic principles of a competitive market do not apply. **Since the consumer has no significant role in the selection process, there is little incentive to keep prices low or otherwise be concerned about the consumer....**"

6. **Disclosures:** The realtors argue that the "disclosure" of the relationship between the realtor and the "controlled business title insurance company" is sufficient to protect the consumer.

Consumers are not sophisticated enough to understand the consequences of controlled business in the title insurance industry and therefore a mere disclosure of the financial relationship between the realtor and the "controlled business title insurance company" is meaningless to protect the consumer. In fact the disclosures set forth in the Senate Bill 66 do not require the consumer to acknowledge the disclosure by signing it, nor require that the disclosure be made prior to any commitment having been made to the affiliated title company, nor provide for a range of charges generally made for title services, nor provide for any penalties. The consumer tends to rely on the recommendations or referrals of real estate professionals in the transaction. With all the forms required to be signed by sellers and buyers of real estate, another disclosure form will be meaningless to the consumer.

7. Minnesota, a state having no restrictions on controlled business, has seen tremendous acceleration in title insurance and settlement service costs in the Minneapolis area since 1987, the year after two large brokerage companies entered the title business. **Such costs in Minnesota have increased 35% from 1987 to 2002, compared to a 3% increase in Kansas City during the same time period. (See Exhibit "C")**

8. **"One Stop Shopping"**, which is talked about so much in the real estate settlement industry, really **results in "No Shopping"** because the consumer is directed to the controlled business title company by the realtor having a financial incentive to do so. Because the title insurance and settlement services are only a small part of a complicated and involved real estate sale process, which is not well understood by the consumer, the consumer defers to the recommendation of the realtor. **(see Exhibit "D" attached which is a Commentary from April 15, 2000 Condell Private Letter, and which refutes the benefits to the consumer of "One Stop Shopping.")**

**Competition issues:**

1. The proponents of the bill indicate that the present law restricts competition and free enterprise.

**THE IMPORTANT CONCEPT TO UNDERSTAND IS THAT CONTROLLED BUSINESS COMPANIES DO NOT COMPETE WITH ONE ANOTHER, THEREFORE THE NUMBER OF COMPANIES DOES NOT EQUATE TO COMPETITION.**

- lots of competition now between title companies - 23 companies doing business in Johnson Co., 1 of which is a bank controlled business company; 10 companies in

Leavenworth Co.; 13 companies in Sedgwick Co., 1 of which is a bank controlled business company; 4 companies Shawnee Co.; 3 companies in Riley County, 1 of which is a joint venture with a bank; 15 companies in Wyandotte Co.

- according to latest Kansas Land Title Association directory, 48 counties have more than 1 title company; 62 counties are under 10,000 population and are exempt from the law;

- all are independent and compete against one another based on price and service - realtors can select the company offering the best price and service for the client.

2. **In effect, the purpose of the present law is to encourage controlled business title companies to compete for "public business" and not to just service "captured consumers."**

3. Independent title companies realize the enormous competitive problems posed when a real estate broker can offer incentives to have title business referred to that the broker's captive title company.

4. Competitive prices and service for the consumer can only be forged in a competitive marketplace - **controlled business title companies, regardless of how many, will not compete with one another unless they are forced to seek out business beyond referrals.**

5. If controlled business title companies only service "captured consumers" and are not competing with other title companies for business, then the consumer will be subject to non-competitive prices. **(See Exhibit "C")**

**Reverse competition results when a marketplace is dominated by a controlled business title company, and actually competition decreases as independent title companies cannot compete for business and close their doors.**

6. An example of a by-product of unregulated controlled business, is a federal class action law suit filed in 2000 by 2 St. Paul, Minnesota residents alleging that controlled business title companies in the St. Paul/Minneapolis area offer fees that are not the lowest in the market and that real estate professionals are breaching fiduciary duties to their clients. This case is pending in federal district court.

7. Even if prices between a controlled business title company and an independent title company are the same, the independent title company never gets an opportunity to compete for the business, since the consumer will likely take the recommendation of the realtor and the realtor has a powerful incentive to recommend the affiliated title company when the realtor receives financial gain from such referral. **Such a practice results in unfair competition and an "unlevel playing field."**

8. **Joint Venture Title Companies:** Typically realtors enter the title business by entering into a joint venture with existing title companies - the result being the formation of an "affiliated title company" that performs minimal title services to conform to federal requirements and services the business of the realtor partner. The "affiliated title company" does not compete in the marketplace for title business because its business is guaranteed from the investing realtor - title company wants to make as much money as before - realtors want a return on investment - prices go up - consumer pays increased prices.

9. In 2001, the Real Estate Service Providers Council, Inc. (RESPRO) reported that 38 states had controlled business insurance legislation that placed a percentage cap on the amount of referrals a captive title insurance company can receive from a controlled business arrangement.

For example:

	Percentage Limitation on Controlled Business
Alaska	50%
Arizona	25%/50%
California	50%
District of Columbia	25%
Connecticut	20%
Idaho	25%/50%
Indiana	25%
New Jersey	25%/50%
New Mexico	50%
North Dakota	25%
Tennessee	40%
Utah	33%
Wyoming	25%

Nebraska permits the denial of a license if the applicant has obtained it for the purpose of writing controlled business, and if total commissions from controlled business sources exceed 10% of total commissions from all business sources, it is presumed the



license was obtained primarily for the purpose of writing controlled business.

Utah's law contains a complete prohibition on affiliated/controlled business where the expectation of financial profit resulting in whole or in part from the affiliated/controlled business is a substantial factor in the decision to have a financial interest in the title company by the producer of the title insurance business.

California's law requires that any applicant for title insurance indicate the applicant's intent to actively compete in the marketplace for title insurance in each county in which the applicant seeks to or does conduct business. The failure to do so will constitute grounds for denial of the license. Further, the company must demonstrate that its business conduct will not involve reliance for than 50 percent of its closed title orders from controlled business sources.

10. In conclusion, recommendations to consumers by knowledgeable real estate professionals regarding the selection of a title company can be of substantial benefit to the consumer if that recommendation is based exclusively on considerations that serve the best interests of the consumer; however, when the recommendations are influenced by the fact that the person making the recommendation will benefit personally from the consumer's decision, then the consumer is likely to be adversely affected and the system flawed by a conflict of interest. And, if producers of title business are allowed to control the market place, then that controlled business is effectively eliminated from the pool of business that independent title companies compete for, creating unfair competition and an "unlevel playing field."

Under present laws Kansas has a very healthy and competitive title insurance industry which protects the consumer and which allows consumers and real estate agents to select a title company which offers the best price and service. The proponents of this bill have introduced similar bills in 1991, 1995, 1996, 1998 and 2001 and all were unsuccessful. The Kansas Land Title Association requests that you defeat Senate Bill 66.

Respectfully submitted by,

Roy H. Worthington  
Legislative Chairman  
Kansas Land Title Association

QUOTE FROM NATIONAL ASSOCIATION OF REALTOR PRESIDENT MARTIN EDWARDS, JR., APRIL 2002 REALTOR MAGAZINE:

Allowing big banking conglomerates into our industry would harm commercial real estate markets in several ways. For one thing, conflicts of interest would develop between financial holding companies and their commercial real estate subsidiaries, and a rash of safety and soundness issues would eventually follow. No regulatory framework and no required amount of disclosure would be enough to prevent those problems from having a deep negative impact on commercial real estate. In addition, competition would be reduced as banks gobbled up real estate companies. We're not alone in believing so. The National Association of Home Builders told a House panel last year about apartment management, "The involvement of banking organizations in real estate management would create an unfair competitive environment for real estate management firms not affiliated with banks...and would unfairly alter the competitive marketplace and unnecessarily increase the costs for consumers." Support for our position is strong in Congress, where we're seeking legislation that would forbid banks from crossing the line into the real estate business. Nearly 200 cosponsors have signed onto the bill.

QUOTE FROM NATIONAL ASSOCIATION OF REALTOR PRESIDENT RICHARD A. MENDENHALL, JANUARY 22, 2001:

..."several large financial services holding companies will quickly dominate our industry by buying up brokerages or driving others out of business."

QUOTE FROM NATIONAL ASSOCIATION OF REALTOR PRESIDENT OF PUBLIC AFFAIRS STEVE COOK, JANUARY 2001:

"As far as the consumer is concerned... it would be a concern to have the lender and the broker be (more or less) the same entity. We're not sure that consumers would fair as well as they do when they have brokers who have their own best interest at heart."

# Spring Fling!!

## Winning team flies to Cancun\*



Contest runs  
February 1-April 30th

### SALE SIDE

	Plaza Mortgage Issues pre-approval letter	=	1 pt
	Loan to Plaza Mortgage	=	2 pts
*	Order to Kansas City Title	=	2 pts
	Co-up or other R&N sale	=	2 pts
	In house (our house) sale	=	3 pts

### LIST SIDE

	120 Day Listing (min)	=	2 pts
	Fee within attached commission guidelines	=	2 pts
*	KC Title requested on listing sheet	=	3 pts

All agents on team must have 30 points individually to be eligible for trip.



www.jcnichols.com

**J.C. NICHOLS  
RESIDENTIAL**

JACK W. FROST  
PRESIDENT

**MEMO**

To: All Agents

From: Jack Frost

Date: March 6, 2000

Re: **JCNR POLICIES REGARDING OUTSIDE MORTGAGE COMPANY RELATIONSHIPS**

1. **An agent will not accept anything of value from a mortgage lender or loan officer.**

A Federal Law – the Real Estate Settlement Procedures Act (RESPA) – clearly states that a real estate agent cannot receive "anything of value" for directing a loan or loans to a mortgage company or to a loan officer. "Anything of value" has been broadly defined by HUD to include virtually anything that would be worth giving or obtaining – money, lottery tickets, free lunches, TV sets, trips, etc. Section 8 of RESPA provides for criminal penalties - \$10,000 fine, jail – for both the "giver" and the "receiver".

**THIS LAW ALSO APPLIES TO TITLE COMPANIES.**

2. **It is a fiduciary responsibility for a sales agent – when acting in the capacity of a buyer's agent – to assist said buyer in securing a "market competitive" loan with respect to terms, rate, and points.**

This loan should be the best – or very close to the best – achievable loan available to the specific buyer in the market place at the time of application.

- \* We would strongly suggest that – in all cases – you secure a loan approval from Plaza Mortgage, even if the buyer already has a loan commitment from another lender.

3. **In the event that a buyer's agent incurs financial liability for not accomplishing number 2 above, J.C. Nichols Residential will not indemnify said agent, nor accept any financial responsibility for the failure of the agent to satisfy this obligation to the buyer.**

4. **No part of the company's advertising funds will be expended for ads, flyers, brochures, cards, etc. when an outside mortgage company is mentioned in said ad, flyer, etc., and/or an outside mortgage company participates in the cost of said ad, flyer, etc. This prohibition includes funds in the agent's advertising budget.**

Thanks for adhering to all of the above. I sincerely believe that these policies are in your best interest, as well as ours.

cc: Salesmanagers  
David Cooper, Larry Wallace, Tom Krattli

RESIDENTIAL SALES  
EXECUTIVE OFFICE  
7500 College Boulevard  
Suite 100  
Overland Park, KS 66210  
(913) 491-1333 Office  
(913) 469-1003 Fax

EXHIBIT "B" - PG 2



J.C. NICHOLS  
RESIDENTIAL

MEMO

JACK W. FROST  
PRESIDENT

To: All Sales Agents  
From: Jack Frost  
Date: January 19, 2001  
Re: Monthly Marketing & Technology Fee for agents with fewer than twelve (12) closed transactions or less than \$2,000,000 in closed volume during 2000. **This excludes members of the President's Roundtable and the President's Club.**

CORRECTED AND REVISED

*This memo supersedes all previous memos on this subject.*

We've made some changes in our previous policy announcements so that we conform to our Independent Contractor Agreement, and to expand the opportunities to avoid this monthly fee.

\* Commencing on January 1, 2001, there will be a \$75 monthly marketing and technology fee assessed to those agents who fail to achieve specific performance criteria. This is being implemented because we feel all agents should pay their fair amount for our marketing and technology endeavors. **All agents who have met or exceeded these standards in 2000 will not be subject to this fee.**

\* The monthly performance criteria required to avoid this fee is

One (1) closed transaction (a sale made, a listing sold, a mortgage placed and closed with Plaza Mortgage Services, a title policy issued thru Kansas City Title, \* or two (2) closings - in Kansas - thru Kansas City Title). The fee will be invoiced on a quarterly basis. If you have three (3) closed transactions (any of the above) during the quarter, or \$500,000 in closed sale volume, no fee will be due. If you have not met these standards for the quarter, you will be billed as follows:

- 0 closed transactions -- \$225
- 1 closed transaction -- \$150
- 2 closed transactions -- \$ 75

RESIDENTIAL SALES  
EXECUTIVE OFFICE  
7500 College Boulevard  
Suite 100  
Overland Park, KS 66210  
(913)469-8300 Office  
(913)469-1003 Fax

10-12



The cost of Affiliated Business Arrangements ?

	Minneapolis		Minneapolis after reissue	
	1987	2002	1987	2002
Mortgage Closing fee	200	250	200	250
Name Search	15	30	15	30
Plat Drawing	40	60	40	60
<b>Lenders and Owners Policy</b>	<b>690</b>	<b>845.5</b>	<b>480</b>	<b>578.7</b>
Abstract Update	70	150	70	150
Assessment Search	25	30	25	30
Sellers Closing Fee	160	250	160	250
Totals	1200	1615.5	990	1348.7

	Kansas City, Kansas		Kansas City, Kansas after reissue	
	1987	2002	1987	2002
Mortgage Closing fee	150	200	150	200
Name Search				
Plat Drawing				
<b>Lenders and Owners Policy</b>	<b>925</b>	<b>1005</b>	<b>619</b>	<b>681</b>
Abstract Update				
Assessment Search				
Sellers Closing Fee	100	0	100	0
Totals	1175	1205	869	881

1987 was selected because mid way through 1986 the two largest brokers in Minneapolis decided to enter the title business. Standard title rates in Minneapolis increased 35% versus 3% in Kansas City. Reissue rates increased 36% in Minneapolis versus 1% in Kansas City.

NOTE: TITLE ONE IS AN UNAFFILIATED (NON-CONTROLLED BUSINESS) TITLE COMPANY IN THE MINNEAPOLIS/ST. PAUL AREA AND COMPARES ITS RATES WITH CONTROLLED BUSINESS TITLE COMPANIES.

# TITLE ONE, INC.

## Actual Price Comparison of Buyer's Fees with 8 other title insurance companies\*

The following example is a typical transaction with a purchase price of \$200,000 and new financing in the amount of \$160,000. Title companies often rely on the fact that real estate consumers rarely compare title companies. As a result, title companies often charge exorbitant amounts for standard services. At Title One, Inc., we feel that we have a duty to set our fees at a reasonable amount. Just look at the difference:

\*These figures were obtained from verbal quotes on June 9th, 2000 and may vary or contain inaccuracies.

	Title One	Burnet Title \$334.50 difference	Northstar Title	Home Title
Closing Fee	\$195.00	\$250.00	\$250.00	\$295.00
Name Search	20.00	25.00	25.00	30.00
Plat Drawing	45.00	60.00	60.00	60.00
Recording Service Fee (2 documents)	31.00	43.00	30.00	29.00
Title Insurance Lenders	455.00	602.50	597.50	605.00
Owners	260.00	310.00	310.00	237.50
Adjustable Rate Rider	0.00	50.00	50.00	50.00
TOTALS:	\$1006.00	\$1,340.50	\$1,322.50	\$1,306.50
<b>TOTAL SAVINGS AT TITLE ONE:</b>		<b>\$334.50</b>	<b>\$316.50</b>	<b>\$300.50</b>

Even more savings: \$150 closing fee on most transactions involving new financing in which both the buyer and seller use *Title One, Inc.*

### MORE COMPARISONS:

	Title One	Edina Title	Old Republic Title	Walsh Title
Closing Fee	\$195.00	\$260.00	\$250.00	\$250.00
Name Search	20.00	25.00	25.00	30.00
Plat Drawing	45.00	50.00	60.00	60.00

10-14

Recording Service Fee (2 documents)	<b>31.00</b>	46.00	30.00	30.00
Title Insurance Lenders	<b>455.00</b>	610.00	572.50	592.50
Owners	<b>260.00</b>	262.50	310.00	275.00
Adjustable Rate Rider	<b>0.00</b>	50.00	50.00	50.00
<b>TOTAL:</b>	<b>\$1006.00</b>	\$1,303.50	\$1,297.50	\$1,287.50
<b>TOTAL SAVINGS AT TITLE ONE:</b>		<b>\$297.50</b>	<b>\$291.50</b>	<b>\$281.50</b>

Even more savings: \$150 closing fee on most transactions involving new financing in which both the buyer and the seller use *Title One, Inc.*

MORE COMPARISONS:

	<b>Title One</b>	Chicago Title	Stewart Title	Universal Title
Closing Fee	<b>\$195.00</b>	\$250.00	\$250.00	\$250.00
Name Search	<b>20.00</b>	30.00	25.00	25.00
Plat Drawing	<b>45.00</b>	60.00	50.00	60.00
Recording Service Fee (2 documents)	<b>31.00</b>	50.00	31.00	40.00
Title Insurance Lenders	<b>455.00</b>	605.00	485.00	560.75
Owners	<b>260.00</b>	237.50	340.00	284.75
Adjustable Rate Rider	<b>0.00</b>	50.00	50.00	.00
<b>TOTAL:</b>	<b>\$1006.00</b>	\$1,282.50	\$1,231.00	\$1,220.50
<b>TOTAL SAVINGS AT TITLE ONE:</b>		<b>\$276.50</b>	<b>\$225.00</b>	<b>\$214.50</b>

Even more savings: \$150 closing fee on most transactions involving new financing in which both the buyer and the seller use *Title One, Inc.*

Questions? E-mail [Title One](mailto:Title One)

10-15

# Another Perspective

\* **S**omething once thought to be a way to lower costs to consumers is now thought to actually increase them. What happened?

Back in 1992 those who advocated the one-stop advantages of controlled business arrangements were certain there would be monetary benefits to consumers. In addition to extra convenience they'd see lower prices, lower by as much as 10%, it was claimed. Not only would consumers like the idea of a single source for all settlement-related services, the arguments went, they'd also benefit from the efficiencies certain to result when a large array of products and services were offered at a single store.

\* There weren't any examples cited or studies offered showing that any such thing was going to happen, but that didn't seem to matter. Regulators came to believe what they were urged to believe, even though many thoughtful people argued that just the opposite would result, that once a firm got control of a customer it was much more likely to charge him more rather than less.

\* It is now eight years later and the idea of one-stop shopping has gained a great deal of ground. Virtually every metropolitan area has its realtor-owned and lender-owned multi-stores offering brokerage services, mortgages, title services, appraisals, and other things. No one is claiming that costs to the consumer are any lower. As a matter of fact, profit squeezes in the real estate brokerage business have created just the opposite effect. Brokers are now charging

extra for a host of minor tasks they have always done gratis. This in addition to what they are making on title insurance—and the usual hefty real estate brokerage commissions.

And now a new perspective on the effect of affiliated business arrangements is beginning to enter the debate. Congress and a number of state legislatures are considering legislation that would sharply rein in and regulate predatory practices engaged in by so-called "high cost mortgage" lenders, those who make mortgages to credit-impaired borrowers in exchange for a high interest rate and higher other fees. As the mortgage lending business has increasingly moved towards credit scoring, the need for such sub-prime lending channels has increased.

Most high-cost lenders are fair and honest business people, but some are not. So legislators are creating special regulations to prevent abuses.

Guess what? In doing so, these legislators see immediately that where lenders operate affiliated ancillary services they have special and not too visible opportunities to gouge borrowers. That AfBAs, by their nature, deprive borrowers of the comparisons they need to shop wisely. That interest rates and loan fees can be made to look attractively low while aggressive overcharging for title, credit, document prep, etc, can recoup it all for the lender, and more.

An early perspective urged AfBAs as a way to reduce costs to consumers. A new perspective understands them to be, as many feared, exactly the opposite. ❖

## THIS ISSUE'S HIGHLIGHTS

VISIT OUR WEBSITE AT [WWW.CONDELL.COM](http://WWW.CONDELL.COM)

<b>TG Express Wins Discovery Award Prize</b>	cover	<b>Fidelity and Tyler Technologies Form B2B Portal</b>	5	<b>Fidelity Transfers Chicago's Techies to Micro General's ACS Unit</b>	7
<b>First American Restructures its REI and Services Group</b>	3	<b>February's New Home Sales Remain Strong</b>	5	<b>Microsoft Invites Banks, Freddie Into Real Estate Venture</b>	8
<b>Metropolitan Keeps On Acquiring, Buys Michigan's Raisin Valley</b>	4	<b>UCLID's New AI Technology Turns Heads</b>	6	<b>Five Home Builders Launch Joint Web Site</b>	10