

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on March 8, 2005 in Room 241-N of the Capitol.

All members were present except:

Dale Swenson- unexcused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Norm Furse, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

June Evans, Committee Secretary

Conferees appearing before the committee:

Dan Sight, Kansas Association of Realtors

John Peterson, Legislative Committee Kansas Land Title Association

Kathy Olsen, Kansas Bankers Association

Jim Edwards, Kansas Association of School Boards

Others attending:

See attached list.

The Chairperson opened the hearing on **SB 215 - Commercial real estate broker lien act.**

Staff gave a briefing on **SB 215** stating the bill would enact the Commercial Real Estate Broker Lien Act. Staff said on page 2, line 34, it was not clear who the current owner was. The key to the bill is: (a) A broker may enforce a lien attaching against commercial real estate by filing a petition to foreclose such lien in the district court of the county in which such real estate is located. Failure to file such petition within two years of recording a lien shall extinguish such lien. A claim for a lien extinguished pursuant to this section may not be asserted in subsequent proceedings. On page 5, line 4, there is no time limitation set out in Section 8 and that should be changed to Section 11. This only covers one county. Where should the filing be when two or more counties are involved? There is no fiscal note.

Dan Sight, Sight Commercial Realty, Inc., Overland Park, KS, and immediate past President of the Kansas Association of REALTORS, testified as a proponent to **SB 215**. Currently 21 other states have enacted this type of legislation. This would strengthen the legal rights of Kansas real estate brokers in order to collect commissions in a fair and timely manner. Commercial real estate brokers have a contractual right to a commission based upon his/her written agreement with landlords or sellers of property. Brokers could pursue an unpaid commission through costly litigation with no guarantee that the party owing the commission would have the cash or assets sufficient to satisfy the broker's claim years later. It makes sense to seek a means by which a broker can place a lien on the property, since the value of the property has been increased by the broker's efforts. The purpose of the lien law is to prevent lawsuits, not encourage them (Attachment 1).

Roy H. Worthington, Chairman, Legislative Committee, Kansas Land Title Association, provided written testimony opposing **SB 215**. The bill is far too complicated. Brokers already have judicial remedies available to seek payment of a disputed commission. This act would make it far too easy for liens to be filed unilaterally by a broker and without the advice and expertise of an attorney, the result being erroneous liens which encumber real estate to the detriment of sellers and buyers (Attachment 2).

John Peterson, in the audience, stated he supported Mr. Worthington's testimony. There are adequate remedies in place and attorney fees should be included.

Kathy Taylor Olsen, Kansas Bankers Association (KBA), testified stating **SB 215** would create a new statutory lien for the commissions of commercial real estate brokers. The KBA supports the amendments made by the Senate Judiciary Committee in two areas. One of our concerns with the bill is that there are no procedures for filing a release of the lien. When a broker no longer has a claim to the property (the broker has been paid in full or the time for taking action to collect the lien has passed), the broker will be responsible for filing a release of the lien, paying the required fee. This would help to ensure that there would be no

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on March 8, 2005 in Room 241-N of the Capitol.

unwanted blemishes on the title of the property down the road.

KBA recommends two amendments: (1) Page 5, line 4, relating to the release of the lien being filed by the broker with the Register of Deeds. (2) On Page 5, line 2, states that if a broker has been paid in full or if he or she fails to take action to collect the lien within the time period provided in the bill, and upon written demand of the owner, the broker would acknowledge satisfaction of the lien. There may be instances where a broker knows that he or she is not going to take action to collect the broker fee. This decision could occur well before the time period for taking such action has expired. In those instances, the broker may be willing to give the property owner or the lender with a security interest in the property a lien waiver or lien subordination to signify that he or she no longer has a claim to the property (Attachment 3).

The Chairman closed the hearing on **SB 215**.

The Chairman opened the hearing on **SB 107 - Unemployment benefits; disqualifying certain persons**.

Staff gave a briefing on **SB 107**. As amended, the bill would prohibit an employer's account under employment security law from being charged unemployment benefits if the employee was a part-time employee, defined as less than 20 hours per week or less than \$2,500 in base period wages.

Jim Edwards, Governmental Relations Specialist, Kansas Association of School Boards, a proponent for **SB 107**, testified this measure would prohibit an employer's account under employment security law from being charged unemployment benefits if the employee is a part time employee. Part time employees would be persons that work less than 20 hours per week or earn less than \$2,500 in base period wages. This bill would have no effect on a full time employee receiving benefits. The employee's full time employer's account would be charged if the employee is terminated; however, if the employee also was a part time school district employee, the school district account would not be charged with the termination by the full time employee. This was intended primarily for coaches that coach part time and have a full time job. If they were laid off from the full time job, they could also draw from the school (Attachment 4).

Wayne Michaels, Kansas Department of Labor, was in the audience and said the Department of Labor was glad to see on Page 3, lines 2 - 14 stricken. The Department of Labor defines full time and anything less is part time. This will make it much easier. There is no fiscal note because of the definition of part time.

The Chairman closed the hearing on **SB 107**.

The Chairman said the Minutes of February 11, 14, 15, 16, 17, 18 and 21 were distributed on March 3. If there are any corrections, additions, or deletions, contact the secretary before 5:00 p.m. today or they stand approved.

The meeting adjourned at 10:00 a.m. The next meeting will be March 9.



Testimony in Support of
Senate Bill 215
March 8, 2005
The House Commerce & Labor Committee
Chairman Don Dahl

Honorable Chairman Dahl and members of the Committee:

I am Dan Sight. I am the owner of Sight Commercial Realty, Inc., in Overland Park, KS. I have a real estate broker's license in Kansas and Missouri and have practiced commercial real estate for the past 21 years. I am the immediate past President of the Kansas Association of REALTORS®, and here today representing the association.

I am speaking today in favor of SB 215. Currently, 21 other States have enacted this type of legislation. It is the goal of our National Association of REALTORS® to strengthen the legal rights of Kansas real estate brokers in order to collect commissions, in a fair and timely manner.

Commercial real estate brokers are unlike other professionals who also add value to real estate -- such as architects, surveyors, builders, electricians, bricklayers and suppliers of materials -- real estate brokers have no statutory right to a lien on real property.

Commercial real estate brokers have a contractual right to a commission based upon his/her written agreement with landlords or sellers of property. So while a broker can pursue an unpaid commission, he would have to pursue it through long and costly litigation, with no guarantee that the party owing the commission will have the cash or assets sufficient to satisfy the broker's claim years later.

Commercial brokers are often pressed into reducing or negotiating new commissions at the closing table -- something we believe is grossly unfair after a contractual amount has been agreed upon during the sales process.

So, it makes sense then, to seek a means by which a broker can place a lien on the property, since the value of the property has been increased by the broker's efforts.

Included in the other 21 states that have enacted this type of legislation is both Illinois and Missouri. According to the real estate associations in those states, the amounts of commission lawsuits have been reduced. The purpose of the lien law is to prevent lawsuits, not encourage them.

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Senate Bill 215
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The brokerage claim must be based on a written agreement, signed by the involved parties. Once sellers/landlords know brokers can file a lien notice, not paying the commissions is risky.

Why is this a hot topic? It's simple economics. Companies facing harder times are unwilling to pay the brokerage fees they're contractually obligated to pay. It would be really helpful to the smaller brokerage firms. The pressure comes when the people who owe an earned commission don't pay because they know the broker can't afford the time and expense of litigation.

This can happen with a sale of a building or a broker doing a lease in a building. Most listing agreements call for a lease commission to be paid upon occupancy of the space by a tenant. Many times those agreements call for commissions to be paid upon lease renewals as well. This bill covers that situation as well.

This law has very specific timing in regards to when a lien can be filed, recorded and released. It has protection for all parties by making the non-prevailing party pay for all legal fees.

KAR has had discussions with both the Kansas Bankers Association and the Kansas Land Title Association prior to the Senate Hearing. Their concerns were discussed and the proposed amendments accepted by KAR to address their concerns.

The Kansas Association of REALTORS® believe this bill is worthy of your consideration and support. Thank you very much for your time. I would gladly answer any questions you might have.

**KANSAS LAND TITLE ASSOCIATION
8621 E. 21ST NORTH
SUITE 150
WICHITA, KS 67206**

March 8, 2005

To: House Commerce and Labor Committee

Re: Senate Bill 215 – Commercial Real Estate Broker Lien Act

Dear Committee:

The Kansas Land Title Association requests the committee defeat Senate Bill 215 for the following reasons:

1. This proposal is far too complicated and may result in erroneous liens being filed by brokers which will needlessly encumber real estate; we already see erroneous mechanic's liens filed by contractors and subcontractors who do not use knowledgeable real estate attorneys, the result being that real estate is encumbered wrongfully to the detriment of sellers and buyers, but encumbered nonetheless;
2. Brokers already have judicial remedies available to seek payment of a disputed commission. Why should real estate brokers have an ability to file liens not available to others involved in commercial disputes? In a lease situation, a judgment can be obtained and a garnishment action taken to receive lease payments to the extent of any judgment rendered.
3. Question? What happens if a broker claims a commission is owed by a seller, and the seller disputes this claim, and the broker files a lien? The buyer, who is not responsible for paying the commission, may be adversely affected by having his purchase delayed, a subsequent refinance delayed on account of the lien being filed, and/or find his title subsequently encumbered by a lien that does not involve the buyer.
4. This act would make it far too easy for liens to be filed unilaterally by a broker and without the advice and expertise of an attorney, the result being erroneous liens which encumber real estate to the detriment of sellers and buyers. Unlike mechanic's liens, no value has been added to the real estate as a result of improvements made.

The Kansas Land Title Association believes that real estate brokers already have adequate judicial remedies to enforce the payment of disputed real estate commissions.

Sincerely,

Kansas Land Title Association

Roy H. Worthington
Chairman, Legislative Committee

Comm & Labor
3-8-05
Atch #2



March 8, 2005

To: House Committee on Commerce

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 215: Commercial Real Estate Broker Lien Act

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today with regard to **SB 215**, which would create a new statutory lien for the commissions of commercial real estate brokers.

It has long been the policy of the Kansas Bankers Association to closely monitor the addition of new statutory liens as they potentially are a competing creditor of a lender and may create a blemish on the title of the property owner that unless satisfied, would prevent transfer of the property with clear title.

We are here today in support of amendments that were made by the Senate Judiciary Committee in two areas.

Provisions for the release of the lien. One of our concerns with the bill was that there were no procedures for filing a release of the lien. There is language in both Sections 8 and 14 that indicates a lien will be "extinguished" if no action has been taken to collect the lien as provided in those sections. In addition, Section 16 attempts to address the case where a lien is paid in full or an action to collect the lien is not filed as directed in Section 8.

We recommended that in these circumstances, the broker would record a lien release with the Register of Deeds in the office where the notice of lien was recorded. It is our hope that the mechanics of this would operate similar to K.S.A. 58-2309a, the mortgage release statute. In other words, when the broker no longer has a claim to the property (the broker has been paid in full or the time for taking action to collect the lien has passed), the broker will be responsible for filing a release of the lien, paying the required fee. This would help to ensure that there would be no unwanted blemishes on the title of the property down the road.

The mortgage release statute does contain an incentive – a penalty - to encourage the lender to release the lien within 30 days after such demand of the owner. Such a provision helps to ensure that the lien does actually get released.

Kansas Bankers Association
SB 215: Commercial Real Estate Broker Lien
Page Two

These amendments appear beginning on line 4, Page 5 of **SB 215**. These amendments relate to the release of the lien being filed by the broker with the Register of Deeds.

Discharge of Lien Claim. The second amendment that we recommended begins on Line 2, Page 5 of the bill. This section states that if a broker has been paid in full or if he or she fails to take action to collect the lien within the time period provided in the bill, and upon written demand of the owner, the broker will acknowledge satisfaction of the lien. There may be instances where a broker knows that he or she is not going to take action to collect the broker fee. This decision could occur well before the time period for taking such action has expired. In those instances, the broker may be willing to give the property owner or the lender with a security interest in the property a lien waiver or lien subordination to signify that he or she no longer has a claim to the property.

We believe the statute should acknowledge the possibility that something other than payment in full could discharge the lien of the broker. This amendment does just that.

KANSAS
ASSOCIATION



OF
SCHOOL
BOARDS

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Testimony on **SB 107**
before the
House Commerce and Labor Committee

by

Jim Edwards, Governmental Relations Specialist
Kansas Association of School Boards

March 8, 2005

Chairman Dahl and Members of the Committee:

Thank you for allowing me the opportunity to appear today to present KASB's support for **SB 107**, a measure which would prohibit an employer's account under employment security law from being charged unemployment benefits if the employee is a part-time employee. Part time employees would be persons that work less than 20 hours per week or earn less than \$2,500 in base period wages.

We had asked that this measure be introduced due to the fact that in some recent unemployment decisions the question of qualification for benefits had been separated from the question of whether an employer's account should be charged. As a result, schools were being charged for unemployment benefits in these cases unless the employee was fired for engaging in misconduct. After our request to have this bill introduced in Senate Commerce, we had several meetings with Kansas Department of Labor attorneys and staff and cooperatively developed the language defining "part time employees."

This bill would have no effect on a full time employee receiving benefits. The employee's full-time employer's account would be charged if the employee is terminated; however, if the employee also was a part time school district employee, as defined in **SB 107**, the school district account would not be charged with the termination by the full time employer.

Thank you for allowing me to appear today in support of **SB 107** and I would be happy to answer questions.

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