

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:25 A.M. on February 6, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused
Broderick Henderson- excused
Candy Ruff- excused
Mike Kiegerl- excused
Ronnie Metsker- excused
Jill Quigley- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Renaë Jefferies, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Luke Bell, Kansas Association of Realtors
Ron Hein, Kansas Association of Real Estate Inspectors
Jeff Barnes, President, Kansas Association of Real Estate Inspectors
Callie Hartle, Kansas Association for Justice
Stacey Van Houtan, Home Inspector
Dan Bowers, Home Inspector

Others attending: See attached list.

The chairman called for any bill introductions. Kathleen Outlaw representing the Kansas State Nurses Association and on behalf of the Kansas Coalition for Workplace Safety introduced two bills. The first addresses the crisis in regard to the Workers Compensation system that was caused by the recent Kansas Supreme Court decision in *Casco v Armorswift- Eskrich* on bilateral injuries and the second was about Workers Compensation Benefits. They were received without objection.

Representative Grange introduced a bill on Electrical Licensing Requirements. It was also received without objection.

The chairman opened the hearing on **HB 2315, Home inspectors Competency and financial responsibility**. He called for testimony from proponents of the bill.

Luke Bell presented his testimony and stressed the changes that have been made to the bill since 2007 (**Attachment 1**). He said that 32 states have passed similar legislation but Kansas has no regulations for Home Inspectors. The Kansas Association of Realtors believes that the home inspectors need to have some regulation. The seller and the buyer are not usually property inspection experts. They rely on an independent third party inspector to protect them. If the inspector is not qualified it causes problems in the transaction. Many inspector contracts limit liability to the cost of the inspection. If the damage is more than that the inspector denies responsibility.

Representative Grant asked if the inspectors are allowed to work statewide. Luke said that it would be a statewide license.

Representative Tietze asked where the 80 hours of classroom training would be available. Luke indicated that there are several approved schools in the state. He mentioned Leavenworth as one source.

Representative Huntington asked about the many new homes being built in Greensburg and Coffeerville. Should home inspections be a requirement in home buying transactions? Luke said that they looked at this at the Federal level to require home inspections. The concern is that there may not be enough home inspectors to meet the demand if home inspections are required. Currently 70 to 80% of new home buyers have an

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:25 A.M. on February 6, 2008 in Room 784 of the DSOB.

inspection done. We are concerned that the home inspectors have the competence to back up their inspections.

Representative Grange asked what proof do we have that consumers are being harmed by these home inspections? Luke mentioned anecdotal evidence and suggested that the trial lawyers testimony could supply more evidence. How many problems do we have in Kansas? Luke said that they know about the problems because the Real Estate Commission tracks the information. One problem is that the home buyer has no one to complain to except the Attorney General's office.

Ron Hein appeared to make sure that everyone was aware of the Balloon Amendments that had been made by the Revisor's Office since the bill was heard in the 2007 Legislative Session (**Attachment 2**).

Jeff Barnes presented Balloon Amendments proposed by the Kansas Association of Real Estate Inspectors (Attachment 3). The majority of the Balloon Amendments are related to the dates in the bill. The other Amendment was the striking on page 4 of the requirement for having a board member from each congressional district in the state of Kansas.

Representative Pauls asked if western Kansas was being left out by striking the requirement about congressional districts. Jeff said that they were concerned about having qualified inspectors in western Kansas. The purpose was to not bind the governor to have one in each congressional district.

Representative Grange said that he did not find a definition of non-invasive in the bill. What does it mean? Jeff said it refers to dismantling, opening up walls or other covers that are not normally removed by an inspector.

Ron Gaches appeared to thank the committee for working and modifying the bill.

The Chairman then called for testimony from those who are neutral on the bill.

Callie Hartle said that they are no longer opposed to the bill as they had been in the 2007 session because of the changes that have been made to the bill. She recommended that the committee require the disclosure of the \$10,000 cap to consumers, allowing inspectors to offer more liability than \$10,000 and change the statute of limitations to two years (**Attachment 4**).

Then those who are opposed to the Bill appeared to testify.

Stacey Van Houtan gave verbal testimony only to the effect that there was no demonstrated need for the legislation. He claimed that the consumer did have recourse through the courts.

Representative Grant indicated that Callie's testimony did indicate need.

Dan Bowers appeared as an opponent of the bill. He said that home inspectors who find multiple problems are not appreciated by the sales people because they slow down the process of selling the house. Many times parts are old and they wear out without any advance notice (**Attachment 5**).

Representative Grant asked how many inspections he did. Dan indicated that he did about 250 per year.

John Lyle appreciated the exemption in the bill for professional engineers. He said that he would align himself with this law even tho he is not bound by it. He said that the bill would raise the cost of home inspections. He said that the one year liability should be the maximum for home inspectors since home builders only give a one year warranty on a brand new house.

There being no more testimony the chairman closed the hearing on **HB 2315** and adjourned the committee at 10:45 AM.

COMMERCE & LABOR COMMITTEE

DATE: 2-6-08

| NAME | REPRESENTING |
|------------------|--|
| Callee Huttie | KS Assn for Justice |
| Kathleen Outland | Kansas State Nurses Assn. |
| John Glason | |
| Randy Sipe | Great Plains chapter "ASHE" |
| Jeff Barnes | Kansas Assoc. of Real Estate Inspectors |
| Luke Bell | KS Assoc. of REALTORS |
| Marsha Ann Smith | KMAIA |
| Janiel Stack | federico Consulting |
| Sherry C. Diel | KS Real Estate Commission |
| Bill Speed | State Farm |
| Ron Gacher | KSPE |
| John Lyle | Professional Engineering Inspection Inc. |
| Lou Reed | CEO ABC Inspection |
| Buck Hartley | MID AMSCAIA PROPERTY INSPECTION'S |
| Dan Bowes | Holmes Company |
| Wil Laska | KS AFL-CIO |
| Terri Spulman | KAFIA |
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To: House Commerce and Labor Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: February 7, 2008
Subject: **HB 2315** – Kansas Home Inspectors Professional Competence and Financial Responsibility Act

Chairman Brunk and members of the House Commerce and Labor Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in support of **HB 2315**. KAR has faithfully represented the interests of the 10,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

HB 2315 would establish the Kansas Home Inspectors Registration Board and create a regulatory framework for the home inspection industry in the state of Kansas. At this time, 32 states have passed legislation that regulates the home inspection industry. This number increases each year as more states see the need for more regulation of this industry.

As the number of consumers taking advantage of home inspections in the home-buying process continues to increase, it is increasingly important that consumers receive home inspection services from a qualified professional who will adequately identify defects and problems. The intent of this legislation is not to enact overly burdensome regulations on the home inspection industry or unfairly restrict actions in the private marketplace. Instead, it is to create a minimum level of regulation that ensures consumers receive at least a basic level of service in the home inspection setting.

KAR believes that **HB 2315** is a major step forward in protecting consumers from receiving home inspections services from unqualified home inspectors and ensuring that the home inspection industry is regulated by the state in a manner that will benefit consumers. As a result of nearly two years of continuous discussion with members of the home inspection industry, this legislation represents a carefully-constructed compromise to protect consumers while not unduly harming the home inspection industry.

Under K.S.A. 58-30-106(d)(1), real estate licensees are required to disclose to the buyer all “material facts actually known” by the real estate licensee. REALTORS® are not property inspection experts; therefore, they routinely recommend that their clients seek home inspection services from a qualified home inspector in order to ascertain the true condition of the property which is for sale. As a result, clients rely on the expertise and qualifications of the home inspector for protection in the transaction.

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House Commerce & Labor
Date: 2-6-08
Attachment # 1

In a 2001 study conducted by the National Association of REALTORS® (NAR) and the American Society of Home Inspectors (ASHI), 99 percent of REALTORS® responded that they recommend their clients have a home inspection conducted before they purchase a home. Therefore, REALTORS® and their clients rely on the expertise of qualified home inspectors to identify material defects in the systems and components of a home prior to the sale of real estate.

Under current Kansas law, there are absolutely no requirements that an individual must meet to offer his or her services as a home inspector to members of the public. If an individual wanted to begin the practice of home inspection in the state of Kansas, all he or she needs to do currently is to place an advertisement in the yellow pages offering his or her services as a home inspector. There are absolutely no mechanisms in place by which consumers can ascertain whether or not a home inspector is qualified to conduct home inspections or has received any training or education in the profession.

HB 2315 would establish the Kansas Home Inspectors Registration Board to oversee the regulation of the home inspection industry. **HB 2315** would create an independent state board made up of a majority of home inspectors who would regulate the home inspection industry by establishing registration qualifications, requiring proof of liability insurance and financial responsibility assurance mechanisms and disciplining home inspectors who harm consumers through negligent or deficient home inspections.

This state already regulates many professions that provides services to members of the public. These regulated professions include numerous professions that range from accountants, real estate licensees, attorneys and medical professionals to cosmetologists and athletic agents. Surely if the Legislature has decided to regulate a profession as trivial as hair stylists and nail salons, it is also important to regulate a profession that serves consumers who are making a major financial commitment in purchasing a home.

HB 2315 would also prohibit home inspectors from limiting their liability for errors and omissions during the home inspection to the price of the home inspection. Currently, nothing prevents a home inspector from including a provision in a home inspection contract which limits their liability for errors and omissions to the price of the home inspection. In fact, it is quite common for home inspectors to limit their liability in the home inspection contract to the price of the inspection.

For example, if the price of the home inspection is \$250, then a consumer's recovery for any errors and omissions of the home inspector is limited to less than \$250. In most cases, the home inspector will simply refund the home inspection fee directly to the consumer. There are currently no other professions in the state of Kansas which are allowed to contractually limit their liability to less than the price of the contractually-provided services.

When a home inspector fails to adequately follow his or her standards of practice in conducting a home inspection and a consumer suffers a harm which directly results from the errors and omissions of the home inspector, it is fundamentally unfair for that consumer to have absolutely no recourse against the home inspector for his or her negligence. A major responsibility for someone who purports to call themselves a professional is accepting responsibility and providing recovery to a consumer who is harmed by errors and omissions made in the process of providing professional services.

HB 2315 would prohibit a home inspector from including any provision in an agreement to conduct a home inspection that would disclaim liability for any errors and omissions that may arise during a home inspection or limit the amount of damages for liability for any errors and omissions to less than \$10,000 in the aggregate for each home inspection.

Some will argue that this would drive a great deal of home inspectors out of the business and increase home inspection fees to a point where home inspections would no longer be affordable. However, this argument is superfluous and an obvious red herring. In most of the 32 states that currently regulate home inspectors, the cap on liability limitations is much higher than the proposed \$10,000 cap in **HB 2315**. There is no evidence to support the fact that any increased regulation has driven home inspectors out of the business or made home inspections unaffordable for consumers.

Furthermore, ensuring that a home inspector is liable for at maximum \$10,000 for his or her errors and omissions will not make home inspectors a target for increased litigation from trial attorneys and plaintiffs with frivolous claims. Instead, **HB 2315** will simply ensure that if a consumer is legitimately harmed by a negligent home inspection that the consumer has the ability to obtain reasonable compensation from the negligent home inspector to recover for the harm which directly resulted from the negligent home inspection.

KAR wholeheartedly supports the concept of home inspector regulation and would ask you to support **HB 2315** so that home inspectors who fail to adhere to professional industry standards are identified and regulated in a way that protects consumers to the maximum possible extent. I have attached several frequently asked questions on this issue in Attachment 1.

Frequently Asked Questions on HB 2315 – Kansas Home Inspectors Professional Competence and Financial Responsibility Act

Q. Would this legislation require any new funding from the State General Fund?

A. No. The Home Inspectors Registration Board would be entirely fee-funded through registration and renewal fees from home inspectors registered under this act. Modeled after the Hearing Instruments Board of Examiners (Attachment 2) and the Abstracters Board of Examiners (Attachment 3), it is estimated that it would cost no more than approximately \$20,000 to \$25,000 per year to operate the board.

Q. How many home inspectors will be registered under this act and how much annual revenue will this generate for the board?

A. It is estimated that approximately 200 to 250 home inspectors would register under this act. If these home inspectors were to register under this act, it would generate approximately \$40,000 to \$50,000 in annual operating revenue for the board.

Q. What are the necessary qualifications to register as a home inspector under this act?

A. In order to be registered as a home inspector under this act, an individual must meet the following requirements:

- (1) Be at least 18 years of age;
- (2) Complete high school or its equivalent;
- (3) Maintain liability insurance coverage;
- (4) Submit proof of financial responsibility for errors and omissions;
- (5) Maintain membership in a nationally-recognized association of home inspectors approved by the board;
- (6) Successfully complete a written or electronic home inspection exam approved by the board;
- (7) Annually obtain 16 hours of continuing education approved by the board; and
- (8) Complete 80 hours of classroom training or have been engaged in the practice of home inspectors for not fewer than three years and have completed not less than 300 home inspections.

Q. Are home inspections required as part of the real estate transaction process?

A. No. Even though home inspections are not required as part of the real estate transaction process, they are highly encouraged to help buyers identify defects in the purchased property. If buyers do not conduct an independent home inspection of the property, they are assumed to be purchasing the property “as is.”

Q. Will this legislation significantly increase the cost of home inspections or decrease the number of home inspectors operating in the state?

A. No. The evidence from other states where similar legislation has been enacted does not show that the price of home inspections will significantly increase or that the number of home inspectors will significantly decrease. In fact, numerous studies have shown that the number of home inspectors has actually increased in states where similar legislation has been enacted.

Q. What is the difference between general liability insurance coverage and errors and omissions insurance coverage?

- A. **HB 2315** requires home inspectors to maintain general liability insurance coverage of at least \$250,000 or more. General liability insurance covers the home inspector in situations where their actual negligence damages the physical residence or the occupants during an inspection. An example of this conduct would be starting a fire in the residence through negligence or knocking over a ladder negligently and striking an occupant of the residence or client.

HB 2315 requires the home inspector to maintain financial assurance mechanisms to cover at least \$10,000 in liability for errors and omissions occurring during the home inspection process. Errors and omissions are a negligent or intentional failure to identify material defects in the residence that require remediation or repair by the client. This legislation caps liability for errors and omissions to no more than \$10,000 in the aggregate for each home inspection.

Hearing Instruments Board of Examiners

Mission. The mission of the Hearing Instruments Board of Examiners is to establish and enforce standards that ensure the people of Kansas receive competent and ethical hearing instrument care.

Operations. The Hearing Instruments Board of Examiners regulates the fitting and dispensing of hearing instruments to ensure proper practices. The Board is active in three areas. The Board licenses qualified applicants by examination and re-licenses practicing dispensers annually. As a condition for licensure, licensees are required to document the professional calibration of their audiometric equipment. The Board also maintains the professional standards of licensees by requiring and approving continuing education for annual renewal. Finally, the Board investigates and resolves complaints brought before the agency.

The Board is composed of five members, three of whom are licensed dispensers of hearing instruments with at least five years experience and two of whom are representatives of the general public. Members of the Board are appointed by the Governor to three-year staggered terms. The Board designates an executive officer to administer the activities of the agency.

The Hearing Instruments Board of Examiners is a fee-funded agency. The majority of the agency's fees are derived from the re-licensing of practicing dispensers,

with the remainder originating from the issuance of new and temporary licenses.

Goals and Objectives. The primary goal of the Board is to ensure that the people of Kansas receive competent and ethical hearing instrument care. This goal is accomplished through the following objectives:

Determine efficiently and thoroughly the competence of new hearing instrument dispensing applicants.

Review license renewals to ensure that all office locations are reported, calibration sheets are current, and continuing education credits are received from an approved program.

Provide unbiased and timely review of all complaints submitted to the Board.

Renew all licenses in a timely and efficient manner.

Statutory History. The Hearing Aid Board of Examiners was established by the 1968 Legislature. The sections of the law which govern the agency can be found in KSA 74-5801 et seq. With the enactment of HB 2285, the 2006 Legislature changed the name of the agency to the Hearing Instruments Board of Examiners.

Hearing Instruments Board of Examiners

| | FY 2007 Actual | FY 2008 Gov. Estimate | FY 2009 Base Budget | FY 2009 Enhanc. Pkg. | FY 2009 Gov. Rec. |
|---|-------------------|--------------------------|------------------------|-------------------------|----------------------|
| Expenditures by Object | | | | | |
| Salaries and Wages | 16,118 | 19,683 | 18,799 | -- | 18,840 |
| Contractual Services | 8,170 | 9,123 | 9,259 | -- | 9,259 |
| Commodities | 1,603 | 770 | 785 | -- | 785 |
| Capital Outlay | -- | -- | -- | -- | -- |
| Debt Service | -- | -- | -- | -- | -- |
| Subtotal: State Operations | \$25,891 | \$29,576 | \$28,843 | \$ -- | \$28,884 |
| Aid to Local Governments | -- | -- | -- | -- | -- |
| Other Assistance | -- | -- | -- | -- | -- |
| Subtotal: Operating Expenditures | \$25,891 | \$29,576 | \$28,843 | \$ -- | \$28,884 |
| Capital Improvements | -- | -- | -- | -- | -- |
| Total Reportable Expenditures | \$25,891 | \$29,576 | \$28,843 | \$ -- | \$28,884 |
| Non-expense Items | -- | -- | -- | -- | -- |
| Total Expenditures by Object | \$25,891 | \$29,576 | \$28,843 | \$ -- | \$28,884 |
| Expenditures by Fund | | | | | |
| State General Fund | -- | -- | -- | -- | -- |
| Water Plan Fund | -- | -- | -- | -- | -- |
| EDIF | -- | -- | -- | -- | -- |
| Children's Initiatives Fund | -- | -- | -- | -- | -- |
| Building Funds | -- | -- | -- | -- | -- |
| Other Funds | 25,891 | 29,576 | 28,843 | -- | 28,884 |
| Total Expenditures by Fund | \$25,891 | \$29,576 | \$28,843 | \$ -- | \$28,884 |
| FTE Positions | 0.40 | 0.40 | 0.40 | -- | 0.40 |
| Non-FTE Unclassified Permanent | -- | -- | -- | -- | -- |
| Total Positions | 0.40 | 0.40 | 0.40 | -- | 0.40 |

| Performance Measures | FY 2007 Actual | FY 2008 Estimate | FY 2009 Estimate |
|-----------------------------|-------------------|---------------------|---------------------|
| Number of licenses issued | 235 | 235 | 235 |

Abstracters Board of Examiners

Mission. The mission of the Abstracters Board of Examiners is to regulate in a fair and equitable manner the individuals and firms that compile and sell abstracts of Kansas real estate. In addition, the Board strives to protect the citizens of the state against fraudulent and improper land title transfers.

Operations. The Abstracters Board of Examiners is a three-member board appointed by the Governor for overlapping three-year terms. An executive secretary is appointed by the Board to administer its activities. The Board licenses all individuals or firms selling abstracts of title to Kansas real estate. In order to obtain a license, a person, firm, or corporation must pass an examination conducted by the Board and file a bond and a policy of insurance with the Board. In the case of a firm or corporation, the examination needs to be taken by an active manager of the firm.

Professional abstracters search county and court records for transactions that affect land title, such as mortgages, easements, or judgments against any party

having an interest in the property. A record of the transactions is condensed into a form acceptable to the buyer's attorney, who writes an opinion on the title. A licensee must be bonded for a minimum of \$25,000 to protect against the loss or destruction of public records and must have at least \$25,000 in errors and omissions insurance.

Goals and Objectives. The goal of the Abstracters Board of Examiners is to ensure that all license holders meet the minimum standards prescribed by law. An objective associated with this goal is to:

Continue to test new applicants for licensure and to provide training to existing licensees.

Statutory History. The Abstracters Board of Examiners is authorized by KSA 74-3901 et seq. to administer the Kansas Abstracters Act (KSA 58-2801 et seq.), which provides for the regulation of both individuals and firms who compile and sell abstracts of Kansas real estate.



Abstracters Board of Examiners

| | FY 2007 Actual | FY 2008 Gov. Estimate | FY 2009 Base Budget | FY 2009 Enhanc. Pkg. | FY 2009 Gov. Rec. |
|---|-------------------|--------------------------|------------------------|-------------------------|----------------------|
| Expenditures by Object | | | | | |
| Salaries and Wages | 16,928 | 16,757 | 16,777 | -- | 16,777 |
| Contractual Services | 2,725 | 4,587 | 4,637 | -- | 4,637 |
| Commodities | 528 | 453 | 400 | -- | 400 |
| Capital Outlay | -- | -- | -- | -- | -- |
| Debt Service | -- | -- | -- | -- | -- |
| Subtotal: State Operations | \$20,181 | \$21,797 | \$21,814 | \$-- | \$21,814 |
| Aid to Local Governments | -- | -- | -- | -- | -- |
| Other Assistance | -- | -- | -- | -- | -- |
| Subtotal: Operating Expenditures | \$20,181 | \$21,797 | \$21,814 | \$-- | \$21,814 |
| Capital Improvements | -- | -- | -- | -- | -- |
| Total Reportable Expenditures | \$20,181 | \$21,797 | \$21,814 | \$-- | \$21,814 |
| Non-expense Items | -- | -- | -- | -- | -- |
| Total Expenditures by Object | \$20,181 | \$21,797 | \$21,814 | \$-- | \$21,814 |
| Expenditures by Fund | | | | | |
| State General Fund | -- | -- | -- | -- | -- |
| Water Plan Fund | -- | -- | -- | -- | -- |
| EDIF | -- | -- | -- | -- | -- |
| Children's Initiatives Fund | -- | -- | -- | -- | -- |
| Building Funds | -- | -- | -- | -- | -- |
| Other Funds | 20,181 | 21,797 | 21,814 | -- | 21,814 |
| Total Expenditures by Fund | \$20,181 | \$21,797 | \$21,814 | \$-- | \$21,814 |
| FTE Positions | -- | -- | -- | -- | -- |
| Non-FTE Unclassified Permanent | -- | -- | -- | -- | -- |
| Total Positions | -- | -- | -- | -- | -- |

| Performance Measures | FY 2007 Actual | FY 2008 Estimate | FY 2009 Estimate |
|------------------------------------|-------------------|---------------------|---------------------|
| Number of business licenses issued | 186 | 185 | 185 |
| Number of employee licenses issued | 243 | 241 | 241 |
| Number of examinations conducted | 15 | 15 | 15 |

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MEMORANDUM

To: House Committee on Commerce and Labor
From: Renae Jefferies, Assistant Revisor
Date: February 6, 2008
Subject: House Bill No. 2315

This bill brief contains amendments to HB 2315 adopted by this committee on February 20, 2007.

Section 1 sets out the definitions for terms used in the act. In particular, subsection (a) defines the term "home inspection" to mean a non-invasive limited visual examination of a residential dwelling of not more than four attached units, or any portion thereof designed to identify material defects at the time of the inspection of three or more to the following readily accessible systems or components:

- (1) Heating systems;
- (2) cooling systems;
- (3) electrical systems;
- (4) plumbing systems;
- (5) structural components;
- (6) foundations;
- (7) roof coverings;
- (8) exterior and interior components; and
- (9) any other components and systems that are part of the residential dwelling and

included in the standards of practice followed by the home inspector.

It also includes any consultation regarding the property that is represented to be a home inspection or that is described in a similar term. However, the term does not include:

- (1) A compliance inspection for any code or governmental regulation;
- (2) an examination for the conditions and operation of kitchen-type appliances, on-site water supplies or wells, private waste systems, the determination of the presence of wood-destroying organisms or pests, or the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or conditions of air quality; nor
- (3) an examination and evaluation of only two or less of the components listed under the meaning of home inspection.

Section 2 sets out whom the act applies to (persons conducting home inspections for compensation) and whom the act does not apply to. If you turn to page 3 of the balloon I handed out, you will see that the committee expanded the list of persons not covered to include:

- “(h) an individual licensed as a manufactured home manufacturer while acting within the scope of that license;
- (i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;
- (j) a modular home manufacturer or modular home manufacturer’s representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;” and
- “(m) an individual licensed by the state as an insurance agent while acting within the scope of that license.”

Section 3 establishes the five member Kansas Home Inspectors Registration Board for the purpose of administering and enforcing the provisions of this act. The subsection sets out the terms of its members, duties of the officers of the board, provisions for the appointment of an executive secretary and for the hiring of employees to carry out the provisions of the act. Each board member shall be paid compensation, subsistence allowances, mileage and other expenses as provided by K.S.A. 75-3223.

Applications for original registration and renewal of registration shall be made in writing or by electronic filing on forms approved by the board accompanied by the appropriate fees prescribed by the board within the limits established in section 7 of the bill.

Section 4 establishes the home inspectors fee fund and requires the secretary of the board to remit moneys received to the state treasurer to be credited to the fund.

Section 5 sets out the duties and powers of the board.

Section 6 sets out the conduct upon which the board may deny, suspend or revoke a registration or impose probationary conditions upon a registrant or applicant.

Section 8 provides that the attorney general act as the attorney for the board in all actions by or against the board and allows for the hiring of independent counsel when the board deems it appropriate.

Section 9 sets out acts that a home inspector shall be prohibited from performing. If you turn to page 6 of the balloon, you will see changes that the committee made to this section.

Section 10 sets out the requirements and conditions a registrant must meet to become registered as a home inspector. If you look at page 7 of the balloon, you will see language that has been stricken from this section and language added by the committee regarding the submission of “proof of membership in good standing in one or more nationally recognized society, association or organization that provides for membership of individuals engaged in home inspection.”

Section 11 sets out standards for home inspections and provides that a home inspector cannot be held liable for any errors of omissions which may arise during a home inspection in an aggregate amount not to exceed \$10,000 for each home inspection. Page 8 of the balloon shows where the committee changed the amount of liability from \$1,000 to \$10,000. Additionally, an action to recover damages for an act or omission of a home inspector relating to a home inspection or home inspection report must be brought within 12 months from the date the home inspection was performed. Such action may only be brought by a party to the real estate

transaction for which the home inspection was performed.

Section 12 deals with advertising by persons registered under the act and by those not registered under the act.

Section 13 provides that the performance of or the assisting in the performance of home inspections outside the guidelines of this act shall constitute a class A misdemeanor.

Section 14 provides that the act may be cited as the Kansas home inspectors professional competence and financial responsibility act.

HOUSE BILL No. 2315

By Committee on Commerce and Labor

1-31

House
Commerce and Labor
Balloon Amendments
Adopted February 20, 2007

2-4

9 AN ACT concerning real property; relating to home inspections; requir-
10 ing home inspector registration and certificates.

11

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

13 Section 1. As used in this section:

14 (a) (1) "Home inspection" means a non-invasive limited visual ex-
15 amination of a residential dwelling of not more than four attached units,
16 or any portion thereof designed to identify material defects at the time
17 of the inspection of three or more of the following readily accessible
18 systems and components:

19 (A) Heating systems;

20 (B) cooling systems;

21 (C) electrical systems;

22 (D) plumbing systems;

23 (E) structural components;

24 (F) foundations;

25 (G) roof coverings;

26 (H) exterior and interior components; and

27 (I) any other components and systems that are part of the residential
28 dwelling and included in the standards of practice followed by the home
29 inspector.

30 (2) The term "home inspection" also includes any consultation re-
31 garding the property that is represented to be a home inspection or that
32 is described by any similar term.

33 (3) The term "home inspection" does not include:

34 (A) A compliance inspection for any code or governmental regulation;

35 (B) an examination for the conditions and operation of kitchen-type
36 appliances, on-site water supplies or wells, private waste systems, the
37 determination of the presence of wood-destroying organisms or pests, or
38 the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or
39 conditions of air quality; and

40 (C) an examination and evaluation of only two or less of the compo-
41 nents listed in section (a)(1).

42 (b) "Home inspector" means an individual who performs a home in-
43 spection as defined by this act.

2-1

Prepared by the Revisor of Statutes Office: RJ
Saved as: H:1Drafts/Balloons/z2315g1.pdf

1 (c) "Home inspection report" means a written report on the results
2 of a home inspection which is issued for a home inspection. The report
3 shall include the following:

4 (1) A clear identification and description of those systems, structures
5 or components which were inspected;

6 (2) a clear identification and description of those systems, structures
7 or components designated to be inspected under the standards of practice
8 approved by the board and which were not inspected, and the reason why
9 they were not inspected;

10 (3) a clear identification and description of any material defects found
11 to be in need of repair, including any recommendations for further eval-
12 uation; and

13 (4) a completed pre-inspection agreement.

14 (d) "Pre-inspection notice" means a document which shall be pro-
15 vided to a customer prior to the start of the home inspection. The pre-
16 inspection notice shall contain, at a minimum, the following information:

17 (1) A clear description of the scope of the home inspection;

18 (2) a clear description of any limitations on the liability of the home
19 inspector for any errors and omissions which may arise during the home
20 inspection; and

21 (3) an identification of the national home inspection organizations
22 approved by the board which the home inspector is a member of at the
23 time of the home inspection; and

24 (4) an identification of the standards of practice approved by the
25 board which the home inspector will be following during the home
26 inspection.

27 (e) "Readily accessible" means available for visual inspection without
28 requiring the moving of personal property, dismantling, destructive meas-
29 ures or actions that would likely involve risk to persons or property.

30 (f) "Dismantling" means to take apart or remove any component,
31 device or piece of equipment that is bolted, screwed or fastened by any
32 other means and that would not be taken apart or removed by a hom-
33 eowner in the course of normal and routine household maintenance.

34 (g) "Material defect" means any condition that significantly affects
35 the value, habitability or safety of the dwelling. Style, cosmetic defects or
36 aesthetics shall not be considered in determining whether a system, struc-
37 ture or component is materially defective.

38 (h) "Board" means the Kansas home inspectors registration board.

39 (i) "Registrant" means any person registered as a home inspector un-
40 der this act.

41 (j) "Applicant" means any person who is applying for registration or
42 renewal of registration under this act.

43 Sec. 2. This act shall apply to all individuals who conduct home in-

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1 inspections for compensation, but shall not apply to the following individ-
2 uals who are specifically exempted from registration under this act:

3 (a) A tradesman or contractor performing a single component or sys-
4 tem evaluation or a combination of any two systems or components listed
5 in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;

6 (b) an individual employed by the state or a political subdivision of
7 the state who, within the scope of such employment and in the discharge
8 of such public duties, inspects property or buildings for compliance with
9 requirements safeguarding life, health or property;

10 (c) an individual licensed by the state as an architect while acting
11 within the scope of that license;

12 (d) an individual licensed by the state as a professional engineer while
13 acting within the scope of that license ~~as long as the individual is not~~
14 ~~providing services which would constitute a home inspection as defined~~
15 ~~by this act.~~

16 (e) an individual licensed by the state as a real estate appraiser while
17 acting within the scope of that license;

18 (f) an individual licensed by the state as a real estate broker or sales-
19 person while acting within the scope of that license;

20 (g) an individual employed as an insurance adjuster while acting
21 within the scope of that occupation;

22 (h) an individual licensed as a manufactured home dealer while acting
23 within the scope of that license;

24 ~~(i)~~ an individual employed as a manufactured home installer while
25 acting within the scope of that occupation;

26 ~~(j)~~ a homebuilder or homebuilder's representative reviewing a resi-
27 dential dwelling built by the homebuilder for the purposes of evaluating
28 the residential dwelling ~~prior to the dwelling's first transfer of ownership,~~
29 and

30 ~~(k)~~ an individual employed as a pest exterminator or chemical appli-
31 cator while acting within the scope of that occupation and not providing
32 services which would constitute a home inspection under this act.

33 Sec. 3. (a) There is hereby established the Kansas home inspectors
34 registration board. The purpose of the board is to administer and enforce
35 the provisions of this act, promote consumer protection, ensure profes-
36 sional competency and ensure the presence of a viable home inspection
37 industry in this state.

38 (b) The board shall consist of five members to be appointed by the
39 governor as follows:

40 (1) Three members shall be home inspectors who have actively been
41 engaged in the practice of home inspections for at least five years im-
42 mediately preceding their appointment and have completed at least 1,000
43 fee-paid home inspections;

an individual licensed as a manufactured home manufacturer while acting within the scope of that license;
(i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;
(j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;
(k)

(m) an individual licensed by the state as an insurance agent while acting within the scope of that license;
(n)

(l)

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1 (2) one member shall be a licensed real estate salesperson or broker;
2 and

3 (3) one member shall be an at-large member who is neither a home
4 inspector nor a licensed real estate salesperson or broker.

5 (c) Prior to September 1, 2007, the governor shall appoint the initial
6 board members as specified in subsection (b). The board shall hold its
7 first meeting prior to January 1, 2008. Following the first meeting of the
8 board, the newly elected chairperson shall serve for a term of three years,
9 the vice-chairperson shall serve for a term of three years, the secretary
10 shall serve for a term of two years and the remaining board members
11 shall serve for a term of one year. After these initial terms have been
12 completed, the board members shall serve terms as specified in subsec-
13 tion (d).

14 (d) Board members shall serve three-year terms, with no board mem-
15 ber serving more than two consecutive terms of office. Upon the expi-
16 ration of the term of office of any member, the governor shall appoint a
17 successor meeting the qualifications under this act. Each board member
18 shall serve until a successor is appointed and qualified. There shall be at
19 all times at least one board member from each congressional district in
20 the state of Kansas.

21 (e) In the event of a vacancy in the membership of the board for any
22 reason other than expiration of a board member's term of office, the
23 governor shall appoint a successor meeting the qualifications of this act
24 to fill the unexpired term.

25 (f) At the first board meeting each year, the board shall elect from
26 its membership the following officers: Chairperson, vice-chairperson and
27 secretary. The officers shall serve 12-month terms. A person may serve a
28 maximum of two consecutive terms as an officer in each respective po-
29 sition. The officers shall have the following duties:

30 (1) The chairperson shall preside over all meetings.

31 (2) The vice-chairperson shall preside over meetings in the absence
32 of the chairperson.

33 (3) The secretary shall be responsible for:

34 (A) Preparation, publication and maintenance of the minutes of the
35 board meetings;

36 (B) preparation of correspondence and conduct of administrative
37 support as the chairperson may direct or as may be prescribed in the rules
38 and regulations of the board;

39 (C) maintaining the permanent records of the board. The secretary
40 of state shall be the custodian of all permanent records of the board.

41 (g) Upon determining that adequate resources are available, the
42 board may appoint an executive secretary who shall be in the unclassified
43 service of the Kansas civil service act. The executive secretary shall receive

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1 an annual salary which shall be fixed by the board and approved by the
2 state finance council.

3 (h) The board may employ such other employees as may be neces-
4 sary, fix salaries of all its employees and make such other expenditures as
5 are necessary to properly carry out the provisions of this act.

6 (i) Each board member shall be paid compensation, subsistence al-
7 lowances, mileage and other expenses as provided in K.S.A. 75-3223, and
8 amendments thereto.

9 (j) The board shall hold meetings in such places as it shall determine
10 and at such times as it may designate or on request of two or more of its
11 members. A majority of the members of the board shall constitute a
12 quorum.

13 (k) Applications for original registration and renewal of registration
14 shall be made in writing or by electronic filing to the board on forms
15 approved by the board and shall be accompanied by the appropriate fees
16 prescribed by the board.

17 Sec. 4. (a) The secretary shall remit all moneys received by or for the
18 board from fees, charges or penalties to the state treasurer in accordance
19 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
20 receipt of each such remittance, the state treasurer shall deposit the entire
21 amount in the state treasury and the balance shall be credited to the home
22 inspectors registration fee fund, which is hereby established. All expend-
23 itures from such fund shall be approved by the board.

24 Sec. 5. The board shall have the following duties and powers:

- 25 (a) Administer and enforce the provisions of this act;
- 26 (b) approve and adopt the standards of practice of nationally-recog-
27 nized home inspection associations which meet the requirements of this
28 act;
- 29 (c) register qualified applicants as home inspectors pursuant to this
30 act;
- 31 (d) suspend, revoke or fail to renew the registration of a home in-
32 spector under this act;
- 33 (e) make all necessary investigations into the qualifications of an ap-
34 plicant and registrant;
- 35 (f) approve examinations to determine the qualifications of applicants
36 for registration; and
- 37 (g) adopt all rules and regulations which are necessary to carry out
38 the provisions of this act.

39 Sec. 6. (a) The board may deny, suspend or revoke a registration, or
40 may impose probationary conditions on a registrant or applicant if the
41 registrant or applicant has engaged in any of the following conduct:

- 42 (1) Making a materially false or fraudulent statement in an application
43 for registration or renewal;

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1 (2) been convicted of or plead guilty or nolo contendere in a court of
2 competent jurisdiction to forgery, fraud, conspiracy to defraud or any
3 similar offense or offenses;

4 (3) intentionally falsifying a home inspection report;

5 (4) failing to perform a home inspection in accordance with the stan-
6 dards of practice approved by the board and followed by the home in-
7 spector; and

8 (5) violating any provision of this act or rules and regulations prom-
9 ulgated by the board pursuant to this act.

10 (b) In addition to or in lieu of any other administrative, civil or crim-
11 inal remedy provided by law, the board, in accordance with the Kansas
12 administrative procedures act and upon a finding that a registrant has
13 violated a provision of this act or rules and regulations adopted hereunder,
14 may impose on such registrant a civil fine not to exceed \$500 for each
15 violation.

16 Sec. 7. The board shall adopt rules and regulations fixing the
17 amounts of fees provided for by this act, subject to the following: For an
18 application for an original registration, the amount may not exceed \$200,
19 and for renewal of registration the amount may not exceed \$200. Other
20 fees may be set in the amount determined by the board.

21 Sec. 8. (a) The attorney general shall provide as an attorney for the
22 board and shall represent the board in all actions and proceedings brought
23 by or against the board. The board may hire independent counsel when
24 the board deems appropriate. All fees and expenses of such independent
25 counsel arising out of the performance of duties for the board shall be
26 paid out of the home inspectors registration fee fund.

27 Sec. 9. The home inspector shall be prohibited from performing any
28 of the following acts as part of the home inspection:

29 (a) ~~Performing or offering to perform for an additional fee any re-~~
30 ~~pairs, remodeling or other type of remedial work to the dwelling for which~~
31 ~~the home inspector has prepared a home inspection report within the last~~
32 ~~12 months;~~

Inspecting

33 (b) ~~inspecting~~ for a fee any property in which the home inspector has
34 any personal interest unless the interest is disclosed in writing to the client
35 before the home inspection is performed and the client signs an acknow-
36 ledgment of receipt of the disclosure;

(b)

37 (c) ~~offering or delivering any commission, referral fee or kickback for~~
38 ~~the referral of any business to the home inspector; and~~

(c)

39 (d) ~~accepting an engagement to perform a home inspection or to~~
40 ~~prepare a home inspection report in which the employment itself or the~~
41 ~~fee payable for the inspection is contingent upon the conclusions in the~~
42 ~~home inspection report, pre-established or prescribed findings or the~~
43 ~~closing of the underlying real estate transaction.~~

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1 Sec. 10. On and after July 1, 2008, all individuals performing home
2 inspections as defined under this act in the state of Kansas shall be re-
3 quired to file a written registration with the board. All registrants must:

- 4 (a) Be at least 18 years of age;
- 5 (b) have successfully completed high school or its equivalent;
- 6 (c) submit proof of current general liability insurance coverage in an
7 amount of \$250,000 or more;
- 8 (d) submit proof of a fidelity bond to cover dishonesty in an amount
9 not less than \$10,000 providing that the fidelity bond may not be termi-
10 nated without 30 days prior written notice to the board;
- 11 (e) submit proof of financial responsibility by one of the following:
- 12 (1) A policy of errors and omissions insurance coverage;
- 13 (2) a surety bond in an amount not less than \$10,000, providing that
14 the surety bond may not be terminated without 30 days prior written
15 notice to the board;
- 16 (3) an irrevocable letter of credit not less than \$10,000 issued by a
17 bank which is insured by the federal deposit insurance corporation or its
18 successor if such letter of credit is initially issued for a term of at least
19 one year and by its terms is automatically renewed at each expiration date
20 for at least an additional one-year term unless at least 30 days prior written
21 notice of intention not to renew is provided to the board; or
- 22 (4) the maintenance of a minimum balance of \$10,000 in an escrow
23 account in a Kansas financial institution as defined in K.S.A. 16-117, and
24 amendments thereto, provided that the escrow account shall maintain the
25 minimum balance through the term of the registrant's registration as a
26 home inspector. The board shall be notified in writing by the financial
27 institution within 10 days if the amount in the escrow account falls below
28 the \$10,000 minimum balance. Upon notification, the board shall suspend
29 such registrant's registration as a home inspector until the escrow account
30 minimum balance is restored to greater than or equal to \$10,000;

31 ~~(e) submit proof of membership in good standing in either:~~
 32 ~~(1) The American society of home inspectors (ASHI);~~
 33 ~~(2) the national association of home inspectors (NAHI); or~~
 34 ~~(3) the national association of certified home inspectors (NACHI);~~

35 ~~and~~
 36 ~~(f)~~ have successfully completed and passed a written or electronic
 37 exam as approved by the board and proctored by a testing organization
 38 approved by the board;

39 ~~(g)~~ annually obtained a minimum of 16 hours of continuing education
 40 by completing courses approved by the board; and

41 ~~(h)~~ have satisfied one of the following requirements:

- 42 (1) Have successfully completed and passed a course of study con-
43 taining at least 80 hours of classroom and field training offered by an

(f) submit proof of membership in good standing in one or more nationally recognized society, association or organization that provides for membership of individuals engaged in home inspections as recognized by the board; and

(g)

(h)

(i)

2-1

1 educational provider approved by the board; or
2 (2) have been actively engaged in the practice of conducting home
3 inspections for not fewer than three years prior to the effective date of
4 this act and have completed not less than 300 fee-paid home inspections.

5 Sec. 11. (a) It is the duty of all home inspectors registered under this
6 act to conduct home inspections with the degree of care that a reasonably
7 prudent home inspector would exercise under the circumstances.

8 (b) All home inspections shall be conducted according to standards
9 of practice and a code of ethics approved by the board.

10 (c) No home inspector may include, as a term or condition in an
11 agreement to conduct a home inspection, any provision that disclaims the
12 liability for any errors and omissions which may arise during a home
13 inspection, or limit the amount of damages for liability for any errors and
14 omissions which may arise during a home inspection to less than ~~\$1,000~~
15 in the aggregate for each home inspection.

\$10,000

16 (d) An action to recover damages for any act or omission of a home
17 inspector relating to a home inspection or home inspection report must
18 be brought not more than 12 months from the date the home inspection
19 was performed and may be initiated only by a party to the real estate
20 transaction for which the home inspection was conducted.

21 (e) In any action to recover damages for any error or omission of a
22 home inspector relating to a home inspection or home inspection report,
23 a home inspector is liable for any errors and omissions which may arise
24 during a home inspection in an amount of not to exceed ~~\$1,000~~ in the
25 aggregate for each home inspection.

\$10,000

26 Sec. 12. (a) No individual shall advertise themselves as a home in-
27 spector unless the individual has complied with the provisions of this act.
28 Individuals who are exempt from registration under this act or whose
29 actions are considered to be a home inspection under this act may not
30 hold themselves out to be home inspectors or use words or titles that may
31 reasonably be confused with the title of "home inspector" or "house in-
32 spector" unless they are registered as a home inspector pursuant to this
33 act.

34 (b) All advertisements, contracts, correspondence and other docu-
35 ments prepared by an individual performing home inspections under this
36 act shall indicate the home inspector's registration number, name and
37 address as registered with the board.

38 Sec. 13. Any individual performing home inspections as defined in
39 this act or assisting any person to perform home inspections outside the
40 guidelines of this act shall constitute a class A misdemeanor and will be
41 subject to all the legal remedies and penalties thereof.

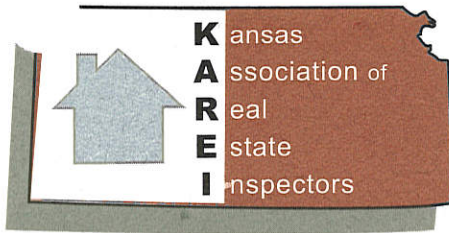
42 Sec. 14. This act shall be cited as the Kansas home inspectors pro-
43 fessional competence and financial responsibility act.

2

1 Sec. 15. This act shall take effect and be in force from and after its
2 publication in the statute book.

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KANSAS ASSOCIATION OF REAL ESTATE INSPECTORS Ltd.

12601 Jayson Lane - Wichita, Kansas 67235 www.karei.org Phone: 316-393-0735 Fax: 316-777-9209

TO: Members of the House Committee on Commerce and Labor

FROM: Jeff Barnes, President, Kansas Association of Real Estate Inspectors

RE: HB 2315 Kansas Home Inspectors Professional Competence and Financial Responsibility Act

DATE: February 6, 2008

Over the past several years the members of the Kansas Association of Real Estate Inspectors has worked hard to develop legislation which would help cultivate a stronger professional home inspection industry and provide basic protection for the home buying public. Our goal was to address four basic issues:

1. Provide consumer protection by requiring the inspectors operating in Kansas to meet minimum competency standards including training and testing.
2. Provide consumer protection by requiring the inspectors operating in Kansas to maintain competency by establishing minimum continuing education requirements.
3. Provide consumer protection by establishing a baseline limit of liability, which allowed the inspectors to maintain reasonable inspection fees while providing financial protection for the client.
4. Provide the client information which would more accurately define and explain the inspection process and discuss any limits to the inspection or the inspectors' liability.

Not only does HB 2315 accomplish these four goals, but because of the collaboration between KAREI, the real estate community, and Rep. Tom Sloan we have been able to craft language which goes much farther.

HB 2315 establishes the Home Inspection Registration Board, which will oversee a totally fee based registration act to regulate the inspection industry with no negative financial impact to the state. The act gives the Board the oversight authority to insure inspectors are obtaining and maintaining the best training in the industry, while providing financial accountability to the clients we serve. HB 2315 establishes the framework and guidance for the Board to develop the administrative procedures and rules and regulations needed to insure and maintain a viable and professional inspection industry, which can grow and evolve as the industry matures.

Your positive consideration of HB 2315 will be a step forward in providing industry reforms which will insure Kansans from all areas of the state have access to qualified inspectors at rates which are affordable for buyers at all socioeconomic levels. You will also be insuring that with this one piece of legislation you have provided significant protection for your constituents back home for which you can be proud to say you supported.

We respectfully urge your support of HB2315.

House Commerce & Labor
Date: 2-6-08
Attachment # 3

HOUSE BILL No. 2315

By Committee on Commerce and Labor

1-31

9 AN ACT concerning real property; relating to home inspections; requir-
10 ing home inspector registration and certificates.

11

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

13 Section 1. As used in this section:

14 (a) (1) "Home inspection" means a non-invasive limited visual ex-
15 amination of a residential dwelling of not more than four attached units,
16 or any portion thereof designed to identify material defects at the time
17 of the inspection of three or more of the following readily accessible
18 systems and components:

19 (A) Heating systems;

20 (B) cooling systems;

21 (C) electrical systems;

22 (D) plumbing systems;

23 (E) structural components;

24 (F) foundations;

25 (G) roof coverings;

26 (H) exterior and interior components; and

27 (I) any other components and systems that are part of the residential
28 dwelling and included in the standards of practice followed by the home
29 inspector.

30 (2) The term "home inspection" also includes any consultation re-
31 garding the property that is represented to be a home inspection or that
32 is described by any similar term.

33 (3) The term "home inspection" does not include:

34 (A) A compliance inspection for any code or governmental regulation;

35 (B) an examination for the conditions and operation of kitchen-type
36 appliances, on-site water supplies or wells, private waste systems, the
37 determination of the presence of wood-destroying organisms or pests, or
38 the presence of fungi, mold, bacteria, asbestos, lead-based paint, gases or
39 conditions of air quality; and

40 (C) an examination and evaluation of only two or less of the compo-
41 nents listed in section (a)(1).

42 (b) "Home inspector" means an individual who performs a home in-
43 spection as defined by this act.

KAREI Proposed 2008 Amendments-Where Indicated

House
Commerce and Labor
Balloon Amendments
Adopted February 20, 2007

3-2

Prepared by the Revisor of Statutes Office: RJ
Saved as: H:1Drafts/Balloons/z2315g1.pdf

Except for KAREI 2008 Proposed Amendments at Noted

3

1 (c) "Home inspection report" means a written report on the results
2 of a home inspection which is issued for a home inspection. The report
3 shall include the following:

4 (1) A clear identification and description of those systems, structures
5 or components which were inspected;

6 (2) a clear identification and description of those systems, structures
7 or components designated to be inspected under the standards of practice
8 approved by the board and which were not inspected, and the reason why
9 they were not inspected;

10 (3) a clear identification and description of any material defects found
11 to be in need of repair, including any recommendations for further eval-
12 uation; and

13 (4) a completed pre-inspection agreement.

14 (d) "Pre-inspection notice" means a document which shall be pro-
15 vided to a customer prior to the start of the home inspection. The pre-
16 inspection notice shall contain, at a minimum, the following information:

17 (1) A clear description of the scope of the home inspection;

18 (2) a clear description of any limitations on the liability of the home
19 inspector for any errors and omissions which may arise during the home
20 inspection; and

21 (3) an identification of the national home inspection organizations
22 approved by the board which the home inspector is a member of at the
23 time of the home inspection; and

24 (4) an identification of the standards of practice approved by the
25 board which the home inspector will be following during the home
26 inspection.

27 (e) "Readily accessible" means available for visual inspection without
28 requiring the moving of personal property, dismantling, destructive meas-
29 ures or actions that would likely involve risk to persons or property.

30 (f) "Dismantling" means to take apart or remove any component,
31 device or piece of equipment that is bolted, screwed or fastened by any
32 other means and that would not be taken apart or removed by a hom-
33 eowner in the course of normal and routine household maintenance.

34 (g) "Material defect" means any condition that significantly affects
35 the value, habitability or safety of the dwelling. Style, cosmetic defects or
36 aesthetics shall not be considered in determining whether a system, struc-
37 ture or component is materially defective.

38 (h) "Board" means the Kansas home inspectors registration board.

39 (i) "Registrant" means any person registered as a home inspector un-
40 der this act.

41 (j) "Applicant" means any person who is applying for registration or
42 renewal of registration under this act.

43 Sec. 2. This act shall apply to all individuals who conduct home in-

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1 inspections for compensation, but shall not apply to the following individ-
2 uals who are specifically exempted from registration under this act:

3 (a) A tradesman or contractor performing a single component or sys-
4 tem evaluation or a combination of any two systems or components listed
5 in section 1 (a)(1)(A)-(I) while acting within the scope of that occupation;

6 (b) an individual employed by the state or a political subdivision of
7 the state who, within the scope of such employment and in the discharge
8 of such public duties, inspects property or buildings for compliance with
9 requirements safeguarding life, health or property;

10 (c) an individual licensed by the state as an architect while acting
11 within the scope of that license;

12 (d) an individual licensed by the state as a professional engineer while
13 acting within the scope of that license ~~as long as the individual is not~~
14 ~~providing services which would constitute a home inspection as defined~~
15 ~~by this act~~

16 (e) an individual licensed by the state as a real estate appraiser while
17 acting within the scope of that license;

18 (f) an individual licensed by the state as a real estate broker or sales-
19 person while acting within the scope of that license;

20 (g) an individual employed as an insurance adjuster while acting
21 within the scope of that occupation;

22 (h) an individual licensed as a manufactured home dealer while acting
23 within the scope of that license;

24 (i) an individual employed as a manufactured home installer while
25 acting within the scope of that occupation;

26 (j) a homebuilder or homebuilder's representative reviewing a resi-
27 dential dwelling built by the homebuilder for the purposes of evaluating
28 the residential dwelling ~~prior to the dwelling's first transfer of ownership~~
29 and

30 (k) an individual employed as a pest exterminator or chemical appli-
31 cator while acting within the scope of that occupation and not providing
32 services which would constitute a home inspection under this act.

33 Sec. 3. (a) There is hereby established the Kansas home inspectors
34 registration board. The purpose of the board is to administer and enforce
35 the provisions of this act, promote consumer protection, ensure profes-
36 sional competency and ensure the presence of a viable home inspection
37 industry in this state.

38 (b) The board shall consist of five members to be appointed by the
39 governor as follows:

40 (1) Three members shall be home inspectors who have actively been
41 engaged in the practice of home inspections for at least five years im-
42 mediately preceding their appointment and have completed at least 1,000
43 fee-paid home inspections;

an individual licensed as a manufactured home manufacturer while acting within the scope of that license;
(i) an individual employed by a manufactured home manufacturer while acting within the scope of that occupation;
(j) a modular home manufacturer or modular home manufacturer's representative reviewing a residential dwelling built by the manufacturer for the purpose of evaluating the residential dwelling;
(k)

(m) an individual licensed by the state as an insurance agent while acting within the scope of that license;
(n)

(l)

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1 (2) one member shall be a licensed real estate salesperson or broker;
2 and

3 (3) one member shall be an at-large member who is neither a home
4 inspector nor a licensed real estate salesperson or broker.

5 (c) Prior to September 1, 2007, the governor shall appoint the initial
6 board members as specified in subsection (b). The board shall hold its
7 first meeting prior to January 1, 2006. Following the first meeting of the
8 board, the newly elected chairperson shall serve for a term of three years,
9 the vice-chairperson shall serve for a term of three years, the secretary
10 shall serve for a term of two years and the remaining board members
11 shall serve for a term of one year. After these initial terms have been
12 completed, the board members shall serve terms as specified in subsec-
13 tion (d).

14 (d) Board members shall serve three-year terms, with no board mem-
15 ber serving more than two consecutive terms of office. Upon the expi-
16 ration of the term of office of any member, the governor shall appoint a
17 successor meeting the qualifications under this act. Each board member
18 shall serve until a successor is appointed and qualified. ~~There shall be at
19 all times at least one board member from each congressional district in
20 the state of Kansas.~~

21 (e) In the event of a vacancy in the membership of the board for any
22 reason other than expiration of a board member's term of office, the
23 governor shall appoint a successor meeting the qualifications of this act
24 to fill the unexpired term.

25 (f) At the first board meeting each year, the board shall elect from
26 its membership the following officers: Chairperson, vice-chairperson and
27 secretary. The officers shall serve 12-month terms. A person may serve a
28 maximum of two consecutive terms as an officer in each respective po-
29 sition. The officers shall have the following duties:

- 30 (1) The chairperson shall preside over all meetings.
- 31 (2) The vice-chairperson shall preside over meetings in the absence
32 of the chairperson.
- 33 (3) The secretary shall be responsible for:
 - 34 (A) Preparation, publication and maintenance of the minutes of the
35 board meetings;
 - 36 (B) preparation of correspondence and conduct of administrative
37 support as the chairperson may direct or as may be prescribed in the rules
38 and regulations of the board;
 - 39 (C) maintaining the permanent records of the board. The secretary
40 of state shall be the custodian of all permanent records of the board.
- 41 (g) Upon determining that adequate resources are available, the
42 board may appoint an executive secretary who shall be in the unclassified
43 service of the Kansas civil service act. The executive secretary shall receive

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1 an annual salary which shall be fixed by the board and approved by the
2 state finance council.

3 (h) The board may employ such other employees as may be neces-
4 sary, fix salaries of all its employees and make such other expenditures as
5 are necessary to properly carry out the provisions of this act.

6 (i) Each board member shall be paid compensation, subsistence al-
7 lowances, mileage and other expenses as provided in K.S.A. 75-3223, and
8 amendments thereto.

9 (j) The board shall hold meetings in such places as it shall determine
10 and at such times as it may designate or on request of two or more of its
11 members. A majority of the members of the board shall constitute a
12 quorum.

13 (k) Applications for original registration and renewal of registration
14 shall be made in writing or by electronic filing to the board on forms
15 approved by the board and shall be accompanied by the appropriate fees
16 prescribed by the board.

17 Sec. 4. (a) The secretary shall remit all moneys received by or for the
18 board from fees, charges or penalties to the state treasurer in accordance
19 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
20 receipt of each such remittance, the state treasurer shall deposit the entire
21 amount in the state treasury and the balance shall be credited to the home
22 inspectors registration fee fund, which is hereby established. All expend-
23 itures from such fund shall be approved by the board.

24 Sec. 5. The board shall have the following duties and powers:

25 (a) Administer and enforce the provisions of this act;

26 (b) approve and adopt the standards of practice of nationally-recog-
27 nized home inspection associations which meet the requirements of this
28 act;

29 (c) register qualified applicants as home inspectors pursuant to this
30 act;

31 (d) suspend, revoke or fail to renew the registration of a home in-
32 spector under this act;

33 (e) make all necessary investigations into the qualifications of an ap-
34 plicant and registrant;

35 (f) approve examinations to determine the qualifications of applicants
36 for registration; and

37 (g) adopt all rules and regulations which are necessary to carry out
38 the provisions of this act.

39 Sec. 6. (a) The board may deny, suspend or revoke a registration, or
40 may impose probationary conditions on a registrant or applicant if the
41 registrant or applicant has engaged in any of the following conduct:

42 (1) Making a materially false or fraudulent statement in an application
43 for registration or renewal;

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1 (2) been convicted of or plead guilty or nolo contendere in a court of
2 competent jurisdiction to forgery, fraud, conspiracy to defraud or any
3 similar offense or offenses;

4 (3) intentionally falsifying a home inspection report;

5 (4) failing to perform a home inspection in accordance with the stan-
6 dards of practice approved by the board and followed by the home in-
7 spector; and

8 (5) violating any provision of this act or rules and regulations prom-
9 ulgated by the board pursuant to this act.

10 (b) In addition to or in lieu of any other administrative, civil or crim-
11 inal remedy provided by law, the board, in accordance with the Kansas
12 administrative procedures act and upon a finding that a registrant has
13 violated a provision of this act or rules and regulations adopted hereunder,
14 may impose on such registrant a civil fine not to exceed \$500 for each
15 violation.

16 Sec. 7. The board shall adopt rules and regulations fixing the
17 amounts of fees provided for by this act, subject to the following: For an
18 application for an original registration, the amount may not exceed \$200,
19 and for renewal of registration the amount may not exceed \$200. Other
20 fees may be set in the amount determined by the board.

21 Sec. 8. (a) The attorney general shall provide as an attorney for the
22 board and shall represent the board in all actions and proceedings brought
23 by or against the board. The board may hire independent counsel when
24 the board deems appropriate. All fees and expenses of such independent
25 counsel arising out of the performance of duties for the board shall be
26 paid out of the home inspectors registration fee fund.

27 Sec. 9. The home inspector shall be prohibited from performing any
28 of the following acts as part of the home inspection:

29 (a) ~~Performing or offering to perform for an additional fee any re-~~
30 ~~pairs, remodeling or other type of remedial work to the dwelling for which~~
31 ~~the home inspector has prepared a home inspection report within the last~~
32 ~~12 months;~~

Inspecting

33 (b) ~~inspecting~~ for a fee any property in which the home inspector has
34 any personal interest unless the interest is disclosed in writing to the client
35 before the home inspection is performed and the client signs an acknow-
36 ledgment of receipt of the disclosure;

(b)

37 (c) ~~offering or delivering any commission, referral fee or kickback for~~
38 ~~the referral of any business to the home inspector; and~~

(c)

39 (d) ~~accepting an engagement to perform a home inspection or to~~
40 ~~prepare a home inspection report in which the employment itself or the~~
41 ~~fee payable for the inspection is contingent upon the conclusions in the~~
42 ~~home inspection report, pre-established or prescribed findings or the~~
43 ~~closing of the underlying real estate transaction.~~

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1 Sec. 10. On and after July 1, 2008, all individuals performing home
2 inspections as defined under this act in the state of Kansas shall be re-
3 quired to file a written registration with the board. All registrants must:

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- 4 (a) Be at least 18 years of age;
- 5 (b) have successfully completed high school or its equivalent;
- 6 (c) submit proof of current general liability insurance coverage in an
7 amount of \$250,000 or more;

8 (d) submit proof of a fidelity bond to cover dishonesty in an amount
9 not less than \$10,000 providing that the fidelity bond may not be termi-
10 nated without 30 days prior written notice to the board;

11 (e) submit proof of financial responsibility by one of the following:
12 (1) A policy of errors and omissions insurance coverage;
13 (2) a surety bond in an amount not less than \$10,000, providing that
14 the surety bond may not be terminated without 30 days prior written
15 notice to the board;

16 (3) an irrevocable letter of credit not less than \$10,000 issued by a
17 bank which is insured by the federal deposit insurance corporation or its
18 successor if such letter of credit is initially issued for a term of at least
19 one year and by its terms is automatically renewed at each expiration date
20 for at least an additional one-year term unless at least 30 days prior written
21 notice of intention not to renew is provided to the board; or

22 (4) the maintenance of a minimum balance of \$10,000 in an escrow
23 account in a Kansas financial institution as defined in K.S.A. 16-117, and
24 amendments thereto, provided that the escrow account shall maintain the
25 minimum balance through the term of the registrant's registration as a
26 home inspector. The board shall be notified in writing by the financial
27 institution within 10 days if the amount in the escrow account falls below
28 the \$10,000 minimum balance. Upon notification, the board shall suspend
29 such registrant's registration as a home inspector until the escrow account
30 minimum balance is restored to greater than or equal to \$10,000;

31 ~~(e) submit proof of membership in good standing in either:~~
32 ~~(1) The American society of home inspectors (ASHI);~~
33 ~~(2) the national association of home inspectors (NAHI); or~~
34 ~~(3) the national association of certified home inspectors (NACHI);~~
35 and

(f) submit proof of membership in good standing in one or more nationally recognized society, association or organization that provides for membership of individuals engaged in home inspections as recognized by the board; and

36 ~~(f)~~ have successfully completed and passed a written or electronic
37 exam as approved by the board and proctored by a testing organization
38 approved by the board;

(g)

39 ~~(g)~~ annually obtained a minimum of 16 hours of continuing education
40 by completing courses approved by the board; and

(h)

41 ~~(h)~~ have satisfied one of the following requirements:

(i)

42 (1) Have successfully completed and passed a course of study con-
43 taining at least 80 hours of classroom and field training offered by an

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1 educational provider approved by the board; or

2 (2) have been actively engaged in the practice of conducting home
3 inspections for not fewer than three years prior to the effective date of
4 this act and have completed not less than 300 fee-paid home inspections.

5 Sec. 11. (a) It is the duty of all home inspectors registered under this
6 act to conduct home inspections with the degree of care that a reasonably
7 prudent home inspector would exercise under the circumstances.

8 (b) All home inspections shall be conducted according to standards
9 of practice and a code of ethics approved by the board.

10 (c) No home inspector may include, as a term or condition in an
11 agreement to conduct a home inspection, any provision that disclaims the
12 liability for any errors and omissions which may arise during a home
13 inspection, or limit the amount of damages for liability for any errors and
14 omissions which may arise during a home inspection to less than ~~\$1,000~~

\$10,000

15 in the aggregate for each home inspection.
16 (d) An action to recover damages for any act or omission of a home
17 inspector relating to a home inspection or home inspection report must
18 be brought not more than 12 months from the date the home inspection
19 was performed and may be initiated only by a party to the real estate
20 transaction for which the home inspection was conducted.

21 (e) In any action to recover damages for any error or omission of a
22 home inspector relating to a home inspection or home inspection report,
23 a home inspector is liable for any errors and omissions which may arise
24 during a home inspection in an amount of not to exceed ~~\$1,000~~ in the
25 aggregate for each home inspection.

\$10,000

KAREI 2008
Proposed
Amendment

26 Sec. 12. (a) No individual shall advertise themselves as a home in-
27 spector unless the individual has complied with the provisions of this act.
28 Individuals who are exempt from registration under this act or whose
29 actions are considered to be a home inspection under this act may not
30 hold themselves out to be home inspectors or use words or titles that may
31 reasonably be confused with the title of "home inspector" or "house in-
32 spector" unless they are registered as a home inspector pursuant to this
33 act.

34 (b) All advertisements, contracts, correspondence and other docu-
35 ments prepared by an individual performing home inspections under this
36 act shall indicate the home inspector's registration number, name and
37 address as registered with the board.

38 Sec. 13. Any individual performing home inspections as defined in
39 this act or assisting any person to perform home inspections outside the
40 guidelines of this act shall constitute a class A misdemeanor and will be
41 subject to all the legal remedies and penalties thereof.

42 Sec. 14. This act shall be cited as the Kansas home inspectors pro-
43 fessional competence and financial responsibility act.

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1 Sec. 15. This act shall take effect and be in force from and after its
2 publication in the statute book.

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Your rights. Our mission.

To: Representative Steve Brunk, Chairman
Members of the House Commerce and Labor Committee

From: Callie Denton Hartle

Date: February 6, 2008

Re: HB 2315 Relating to home inspections--**NEUTRAL**

The Kansas Association for Justice is a statewide nonprofit organization of attorneys who serve Kansans who are seeking justice. Our association's position on HB 2315 as amended by the House Commerce Committee is neutral, and we have two recommendations for amendments.

The House Commerce Committee's amendment to increase the cap on liability for errors and omissions from \$1,000 to \$10,000 is an improvement on both the current law and the bill as originally introduced. In addition, we suggest that language be included requiring that the cap be disclosed in the contract for inspection services. If such disclosure is not included in the contract, then liability for errors and omissions is not limited by the cap or to the value of the contract. Also, inspectors that choose to assume more liability as a marketing strategy or demonstration of quality should be permitted to do so and not be limited to the \$10,000 cap. The current language does not appear to permit this option because in Section 11 (e) liability for errors and omissions shall "not exceed \$10,000".

We also request that the committee amend the statute of limitations for filing to two years. The two year limitation is consistent with other areas of the law.

Thank you for allowing us to present our recommendations.

House Commerce & Labor
Date: 2-6-08
Attachment # 4



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Evans Brock & Kennedy, Chtd.

Ralph R. Brock
Robert I. Guenther
Ken M. Peterson
Robert D. Overman
A.J. Schwartz, Jr.
Donald E. Schrag
William B. Sorensen, Jr.
Jeffery L. Carmichael
Robert W. Coykendall
Robert K. Anderson
Susan R. Schrag
Karl R. Swartz

Roger L. Theis
Richard F. Hayse
Thomas R. Docking
Diane S. Worth
Tim J. Moore
Janet Huck Ward
Roger N. Walter
James D. Young
Kelly S. Herzik
Luke A. Sobba
Kimberly K. Bonifas
Richard A. Kear

Cameron V. Michaud
Ryan M. Peck
Shannon M. Braun
Will B. Wohlford
Edward L. Robinson
Kristen Wheeler Maloney
Emily Cassell Docking
Kathryn L. Harpstrite

Of Counsel
John W. Johnson
Derek L. Park

Lester L. Morris
1901 - 1966
Verne M. Laing
1907 - 2000
Ferd E. Evans, Jr.
1919 - 1991
Joseph W. Kennedy
1932 - 2005
Dennis M. Feeney
1953 - 2001

Sender's email: erobinson@morrislaing.com

February 5, 2008

Callie Denton Hartle
Kansas Association for Justice
719 SW Van Buren
Topeka, KS 66603

Dear Callie,

Thank you for alerting me to HB 2315 as amended by the House Commerce Committee. While the bill's increase in liability limits is an improvement both to the earlier bill and to the current system, I have two concerns to express to the Committee.

My concerns about HB2315 stem from my experience in private practice. I practice in real estate and environmental litigation, and regularly encounter home buyers who discover problems or defects after closing. For example, I met a single mother who had recently purchased her first home. She had obtained a home inspection, which showed no problems. However, after moving in she began getting shocked whenever she touched a light switch in the kitchen. She quickly learned there was a substantial electrical problem, which should have been obvious to her home inspector. She could have made a claim against the inspector, but because the inspector had limited his liability to the price of the inspection, she effectively had no legal recourse. She was left with an unsafe home for her young daughter and was unable to afford the high cost of fixing the problem her inspector should have seen, all because the inspector was allowed to limit his liability.

Another example is a young couple who had recently adopted a baby girl from China. To have space for their daughter to grow and play, they purchased a larger home. They hired a home inspector who did not notice substantial mold growth that the sellers had partially hidden, but which the inspector should have noticed. When the couple and their daughter moved in, they became very sick, and the father and daughter ended up in the hospital. They soon learned the house was filled with mold and was causing their serious health problems. They were ordered by their doctor to move out of the house until it could be repaired.

Due to a limitation of liability clause, this young couple had no recourse against the home inspector beyond the price of the inspection, and for unrelated reasons could not pursue the sellers. As a result, they had to pay more than \$50,000.00 out of their own pocket to remove the

mold and repair the house. They are now in their house, but without their life savings because the home inspector was allowed to limit his liability.

These are not the only persons I have had to turn away because of liability limits in home inspection agreements, and I am sure other practitioners in this area could tell similar stories. Therefore, I believe HB2315 is a step in the right direction. It will erect a much-needed regulatory structure and prevent inspectors from limiting liability in home inspection agreements to the price of the inspection.

While HB2315 has its definite benefits, there are two issues the Committee should reconsider. The first is the \$10,000.00 liability limit. While it may be sufficient for minor problems, a \$10,000.00 limit will not protect Kansans whose life and health are turned upside down by problems a home inspector should have discovered. It may also discourage injured home buyers from pursuing their legal rights in court, because the cost of litigating such cases can easily exceed this liability limit. The liability limit in HB2315 suffers the same inherent problems as the current system of allowing inspectors to limit liability to the price of the inspection: it will prevent home buyers from being made whole.

The second aspect of HB2315 that deserves a second look is the one-year statute of limitations. In Kansas, the statute of limitations for negligence is two years, and there is nothing in my experience that makes the negligence of a home inspector any different than the negligence of a doctor, lawyer, accountant, or any other person. In addition, because problems such as leaky foundations may not be immediately discoverable, especially during periods of drought, a defect may not be apparent until after the one-year statute of limitations has expired. Therefore, the statute of limitations for a home inspector's negligence should be two years.

Thank you for alerting me to this proposed bill. I believe HB2315 is a step in the right direction for all Kansans, and with the Committee's guidance home buyers in Kansas will finally have the protections they need and deserve.

Sincerely,



Edward L. Robinson

V

Dan Bowers
Holmes Inspection Company
1156 W 103rd Street
Kansas City, Missouri 64114

Dan:

When someone provides a particularly valuable service in a professional manner, and when that service helps an individual make an informed investment decision, I believe it's worth a few minutes to write a letter of thanks and appreciation to the provider of the service.....in this case you.

I'm speaking specifically for the service you performed for me while inspecting an older home in the Fairway area of Kansas City. As you know this is a very desirable area in town where older houses are sold almost as fast as they come into the market. Many of these homes have a lot of "curb appeal" but hidden beneath the exterior, there can be (and often are) many structural/mechanical problems that if undetected could cost a new owner a small fortune to fix.

Because the real estate broker is most often representing the seller and not the buyer, they as a group tend to downplay any problems the house may have. It's easy to understand since they receive no commissions on homes they don't sell!

One of the most often heard phrases from brokers selling older homes that have structural or mechanical upgrades needed is that "This is typical of the homes in this neighborhood. Don't worry about it. You should expect to fix a few things if you want this type of home." They typically don't have much of a problem spending your money for you.....one small fix at a time.

That was the case with my broker, [REDACTED]. Thanks to you I was able to evaluate the home from a different perspective than the one [REDACTED] was providing me. Thanks to you I was given unbiased information that kept me from making a bad investment. You gave me the facts on what was wrong and what it would probably take to really fix the problem, not just apply a Band-Aid to the problem. I sought expert advice from some specialists in various fields and was able to determine that the home was not the right one for me.

I was so pleased by your work that six months later when I bought a 50 year old home in Romanelli West, I called you for the inspection. During that inspection the owner of the

House Commerce & Labor
Date: 2-6-08
Attachment # 5

house was present and she was so impressed with your evaluation of the problems that particular house had, and the professional way you presented the options to remedy the problems, that she hired you to do the inspection on the house that she was moving into as well!

Two very satisfied customers. Two brokers that sold homes because of your inspections. Two brokers that sold homes that the owners are extremely pleased with and will probably go back to the same broker when it comes time to buy another house.

One broker that did not sell a house that needed a lot of hidden repair work.

I'd say you did a great job! Thank you very much.

Sincerely:



Ted G. [redacted]
Proud Home Owner
[redacted] W. [redacted] Street
Kansas City, Missouri 64113