

Approved: 3/6/08

Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:17 A.M. on February 19, 2008 in Room 784 of the DSOB.

All members were present except:

Brenda Landwehr- excused

Kasha Kelley- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department

Dennis Hodgins, Kansas Legislative Research Department

Jill Wolters, Office of Revisor of Statutes

Renae Jefferies, Office of Revisor of Statutes

Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Bruce Fitzsimons, VP of Consumer and Mortgage Lending and Chief Appraiser of First National Bank of Olathe

Richard Livingston, Livingston Appraisals, Inc.

Sally Pritchett, Executive Director, Kansas Real Estate Appraisal Board

Whitney Damron, Kansas Bar Association

Kathleen Olson, Kansas Bankers Association

Tony Scott, Kansas Society of Certified Public Accountants

Sherry Diel, Executive Director, Real Estate Commission

Luke Bell, Kansas Association of Realtors

Others attending: See attached list.

The Chairman asked for questions or comments on the minutes for January 17, 24, 30 and 31 and February 6 and 7. Representative Tietze made a motion that they be approved. Representative Ruiz seconded the motion and it was approved by voice vote.

The Chairman opened the hearing on **HB 2772 - Real estate appraisers, full licensure.**

**Bruce Fitzsimons appeared as a proponent of HB 2772.** He pointed out that the appraiser is a vital independent service provider in mortgage transactions. They are a crucial safeguard to lenders and consumers. Unfortunately, mortgage fraud exists. Therefore we believe that any legislation addressing abusive mortgage lending practices must include reforms for appraiser licensing. The licensing provision of **HB 2772** will authorize and empower the KREAB to issue regulations similar to our bordering states and address the current weaknesses in appraiser regulations (**Attachment 1**).

**Renae Jefferies, Assistant Revisor gave an explanation of what HB 2772 does. (Attachment 2).**

Representative Goico asked several questions. "Who issues the license and what test to they have to take?" Bruce Fitzsimons replied that the Kansas Real Estate Appraisal Board is the only board that has Federal oversight. The education and testing is established by Federal guidelines. The Board meets on a monthly basis and reviews their experience and sends it out to state approved reviewers to verify the data and then the state either grants the license or requires further training. "Who appoints people to this board?" The governor appoints them. "How many members are there?" There are seven members. Will the Appraiser Board have some language in this bill addressing the real estate contract in order to protect all parties?" Bruce referred to USPAP, the Federal Universal Standards of Professional Appraisal Practice which outlines in detail the approved practices. Representative Goico commented that these practices are not preventing the problem we presently have in the mortgage market. Bruce said that they have an investigative committee to examine any complaints received about appraisals.

Representative Kiegerl asked for a definition of artificial inflation of an appraisal. Bruce said that this could happen when you use comparable sales and make adjustments that are inflated. The adjustments can be for square footage or by going to a location that has a higher average value. "How effective will this bill be in

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:17 A.M. on February 19, 2008 in Room 784 of the DSOB.

preventing this problem?" Bruce said that right now we have no jurisdiction over individuals unless they are certified. This bill will give us jurisdiction by requiring them to justify their appraisals. We just want people who do appraisals to be licensed so that something can be done if they are producing fraudulent appraisals.

Representative Pauls asked if the bill would require a large number of people to be licensed. Bruce said that it would not be a large number because most are already certified. This will require those from other states to be licensed in Kansas.

**Richard Livingston presented his testimony in favor of the bill. (Attachment 3).** He stressed all the professions that currently require licensing. Some examples are Real estate agents, Mortgage loan officers or used car salesmen. He asked that the board be empowered to regulate this profession.

**Written only testimony was provided by Sally Pritchett on behalf of the Kansas Real Estate Appraisal Board (Attachment 4).** She stressed that Kansas was one of only 13 states that do not have mandatory licensing. This legislation is a proactive step taken by the Board to protect the public.

**Whitney Damron, Kansas Bar Association presented his testimony with a balloon amendment as a proponent (Attachment 5).** His concern was that attorneys be exempted from the provisions of the bill because they are often called upon by their clients to render valuation or appraisal-related services for a variety of reasons. They do support the intention of the sponsors of the bill.

**Kathleen Olsen, Kansas Bankers Association testified in favor of the bill (Attachment 6).** She thanked the Real Estate Appraisal Board for addressing their concerns and maintaining the need for an alternative to a full-blown certified appraisal in limited circumstances where an employee of a financial institution conducts an "evaluation" in accordance with state and federal banking regulations. Her testimony included the rules for state banks on "evaluations" of real estate loans below \$250,000.

**Tony Scott testified as neutral on the bill (Attachment 7).** He included a balloon amendment the effect of which was to except persons licensed as a certified public accountants from the provisions of the bill.

There was no one testifying in opposition to the bill. The Chairman closed the hearing on HB 2746.

The Chairman opened the hearing on HB 2746 Amendments to real estate brokers' and salespersons' license act; advertising.

**Rena Jefferies, Assistant Revisor presented an explanation of the bill (Attachment 8).**

**Sherry Diel, Executive Director, Kansas Real Estate Commission testified as a proponent of HB 2772 (Attachment 9).** She indicated that the Kansas Real Estate Commission requested this bill to clarify legislation passed in 2007 regarding licensure of real estate salespersons and brokers and to amend laws regulating real estate licensees. Definitions and additions were made to existing law regarding prohibited acts and regulating advertising conducted by licensees. Additionally, the Commission would be authorized to use funds in the real estate recovery revolving fund that exceeded \$250,000 for specified purposes that benefit licensees and consumers. No additional staffing or expenditures to implement the legislation was anticipated. **Sherry attached a proposed balloon amendment to add a subsection about forgery (Attachment 10).**

**Luke Bell, Kansas Association of Realtors presented a brief testimony in support of HB 2746 (Attachment 11).** KAR believes this bill is a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees. KAR does have a concern with one remaining provision in the legislation and requested that the Commission and KAR continue to discuss this issue and bring it back during the 2009 Legislative Session.

The Chairman closed the hearing on HB 2746 and adjourned the meeting at 10:34 A.M. The next meeting is scheduled for February 20, 2008.

COMMERCE & LABOR COMMITTEE

DATE: 2-19-08

| NAME               | REPRESENTING                   |
|--------------------|--------------------------------|
| Shery O'Neil       | KS Real Estate Comm            |
| Luke Bell          | Ks Assoc. of REALTORS          |
| Richard Livingston | Coalition of Kansas Appraisers |
| Bruce Fitzsimons   | KS Real Estate Appraisal Board |
| Jacy Putcero       | KREAR                          |
| Camille Nohr       | Atty Gen'l                     |
| Tony A. Scott      | KSCPA                          |
| Kathy Olsen        | KS Bankers Assn                |
| Markus Lee Smith   | KS Mfg Housing Assn.           |
| Whitney Gamm       | KS Bus Assn.                   |
| Kara Werth         | KSAJ                           |
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February 19, 2008

Testimony Presented by  
Bruce A. Fitzsimons

Before the  
Committee on Commerce and Labor  
Kansas House of Representatives

Chairman Brunk and members of the Committee on Commerce and Labor, I am Bruce Fitzsimons, Vice President of Consumer and Mortgage Lending and Chief Appraiser of First National Bank of Olathe, Vice President of the Association of Appraiser Regulatory Officials, Washington D.C., Director and Government Relations Chairman of the Kansas City Chapter of the Appraisal Institute, a state certified appraiser, and 25 year resident of Kansas. I am pleased to be here today on behalf of the Kansas Real Estate Appraisal Board (KREAB).

Thank you for the opportunity to testify before this committee hearing on legislative solutions to abusive mortgage lending practices created by unlicensed real estate appraisers.

The appraiser is a vital independent service provider in mortgage transactions. Accordingly, through this independence, competent and qualified real estate appraisers are a crucial safeguard to lenders and consumers. A professional appraiser's objectivity, experience and ethics are fundamental in ensuring that participants in residential and commercial real estate mortgage transactions know the value of real estate involved and understand the risks inherent in collateral lending. It is of paramount importance that an appraiser be licensed to ensure they are properly qualified, adequately trained and have sufficient experience in the type of property under consideration.

Unfortunately, mortgage fraud exists, and in many of our communities it is rampant. When mortgage fraud occurs, financial institutions often recover only a portion of a fraudulent loan and can be saddled with additional costs, such as brokers' commissions and attorneys' fee. Loan fraud also threatens our state's communities, leaving individuals with overvalued properties and burdensome loans. Artificially inflated sales can cause property taxes to rise while true property values decrease due to foreclosures, abandoned houses and uncared-for properties.

We are not happy to report that mortgage fraud can be perpetrated because of faulty appraisals, either because they were performed incompetently or, worse, fraudulently. For these reasons, we believe that any legislation addressing abusive mortgage lending practices must include reforms for appraiser licensing. Specifically, we believe appraiser-related mortgage fraud continues largely because of the following reasons:

- Unscrupulous third parties are allowed to use non-licensed appraisers to meet predetermined values;

House Commerce & Labor  
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Attachment # 1

- Appraiser regulations have no oversight over non-licensed real estate appraisers.

Proposals addressing these issues are included in H.B. 2772. I am happy to provide further explanation of our position below.

### **Use of Non-Licensed Appraisers**

As an important impartial third party in a residential transaction, real estate appraisers play a critical role in helping both lenders and consumers make sound investment decisions when purchasing homes and mortgages. An unbiased appraisal is important to the lender because it helps determine the loan-to-value (LTV) ratio, and is typically a part of a lender's risk management program. As with any investment, consumers typically should not pay (or borrow) more than the investment is worth, and the appraisal helps them determine the market value of this investment. It is in their best interest not to take out a mortgage that will cost more than a home is worth, as this is typically the largest investment they will ever make. Such a situation would place them "upside down" on their mortgage, meaning they owe more than the market value of the property, leaving them in a precarious situation.

Because artificially inflated appraisals may be used as comparable sales in future transactions, they have the potential to hurt not only the parties in the transaction but eventually the entire community. Despite this, it is common for mortgage brokers, lenders, realty agents and others with a vested interest to seek out inflated appraisal to facilitate transactions because it pays them to do so. Federally regulated lenders typically do not loan 100 percent of the market value of a home but more often at a certain percentage (80 percent, for example). The LTV ratio determines how much a lender is willing to lend on a particular property, and the "value" component of the LTV is determined by the appraisal. It is common for negotiated contract prices to be greater than the market value of a property, particularly in an appreciating market, as we have seen in many areas of the state recently. It is also common for the LTV ratio to be higher than the lender's limit, meaning that the homebuyer and seller might have to renegotiate a contract price or face that contract being null and void. If the contract is voided, the broker and loan officer and others whose compensation is dependent upon the closing of the loan do not get paid.

Should the appraiser artificially increase the value of a home, the result may decrease the LTV to the point of allowing a lender to (artificially) feel more comfortable about making a loan and all compensation to be paid to the vested parties. It is at this point where many brokers, lenders and others turn to non-licensed appraisers. Brokers might ask a non-licensed appraiser to use certain comparable sales in their appraisal report, or a loan officer might ask the appraiser to apply an improper adjustment. While there are legitimate questions to ask of appraisers, a line is crossed when a predetermined value is required of an appraiser or when future work for the appraiser is contingent upon this value being met, and coercion, threats and intimidation are used as a means to an end.

The licensing provision of H.B. 2772 will authorize and empower the KREAB to issue regulations similar to our bordering states, prohibiting the use of appraisal valuations for

real estate related loan transactions by non-licensed appraisers. The entire real estate industry can be a part of the solution to this problem as well, and should be encouraged to develop and articulate a best practices statement relative to the engagement of *licensed* appraisers. We stand committed to work with Kansas Legislators and other state regulatory boards to achieve this goal.

**Conclusion**

The KREAB has long held that current law relative to appraiser licensing and certification is in need of modification and revision, and that Kansas should consider and enact legislation designed to uphold integrity in the real estate valuation process while protecting lenders financial interests and consumers.

Any legislation directed at curbing and preventing mortgage fraud must address current weaknesses in appraiser regulations. H.B. 2772 addresses these concerns by prohibiting the use of appraisals performed by non-licensed appraisers for use in real estate related financial transactions. We stand prepared to work with Kansas Legislators, consumer groups, and lending institutions to help secure its passage.

Office of Revisor of Statutes  
300 S.W. 10<sup>th</sup> Avenue  
Suite 010-E, Statehouse  
Topeka, Kansas 66612-1592  
Telephone (785) 296 -2321 FAX (785) 296-6668

MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 19, 2008  
Subject: House Bill No. 2746

HB 2746 amends statutes in the real estate brokers' and salespersons' license act pertaining to licensure, prohibited acts and definitions and creates a new section dealing with advertising by real estate brokers and salespersons.

Section 1 amends K.S.A. 58-3035, the definitions section, to include definitions for "exchange" and "interest" on page 2 of the bill.

Section 2 amends K.S.A. 58-3043, a licensure provision, to require the Kansas real estate commission (commission) when considering a prior revocation, conduct or plea of guilty or nolo contendere to or a conviction of a misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate, to consider the time elapsed since such revocation, conduct or plea of guilty or nolo contendere to or conviction of such misdemeanor. In addition, subsection (e) (2) was amended to allow the commission to grant an original license pursuant to subsection (f) if the applicant's application is received 15 years after the date of the applicant's "completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense" which would require the applicant to register in the Kansas offender registration act or if the application is received 5 years after the applicant's completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any felony other than a felony that would require the applicant to register in the Kansas offender registration act.

Subsection (f) allows the commission to renew or grant an original license where the applicant presents sufficient proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate.

“Nonprison sanction” means probation, community corrections, conservation camp, house arrest or any other community based disposition.

Section 3 amends K.S.A. 58-3047, a licensing provision dealing with cancellation and reinstatement of licenses, on page 7 of the bill, to include new subsections (k) and (l). Subsection (k) sets out the duties of the supervising broker, salesperson and associate broker upon closure of a primary office regarding cancellation and reinstatement of the supervising broker’s, salespersons’ and associate broker’s licenses or placement on inactive status. Subsection (l) sets out the duties of the branch broker, salesperson or associate broker upon closure of a branch office regarding cancellation and reinstatement of the branch broker’s, salesperson’s and associate broker’s license or placement on inactive status.

Section 4 amends K.S.A. 58-3050 on page 8, line 39, in subsection (d) to increase the civil fine imposed to not exceed \$1,000. It also provides for a civil fine, not to exceed \$5,000 if the commission makes specific findings that aggravating circumstances exist in the commission of certain prohibited acts by a licensee.

“aggravating circumstances” means the licensee’s conduct involved fraud or deceit; *and* the licensee’s conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client; the licensee’s conduct resulted in substantial financial gain to the licensee; *or* the licensee has a history of prior disciplinary actions involving violations of such prohibited conduct. See subsection (d) (2) on pages 8 and 9 of the bill.

Additionally, in subsection (g) the term “disabled” was replaced with the term “incompetent.”

Lastly, new subsection (m) was created which allows the commission to recover, from a civil fine imposed, its actual costs and attorney fees incurred to investigate and prosecute a disciplinary case. Such costs and attorney fees will be credited to the real estate commission fee fund. Any remaining balance will be credited to the state general fund.

Section 5 amends K.S.A. 58-3062 to prohibit a licensee from committing any act that is deemed unprofessional conduct as defined by the commission by rules and regulations and from attempting to represent to any lender, guaranteeing agency or any other interested party, either



verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

New section 6 sets out the prohibitions and guidelines for advertising by a licensee.

Sections 7 and 8 were amended to include an exception that any time the balance in the real estate recovering fund is greater than \$250,000, any amount over the \$250,000 may be used by the commission to pay for production and distribution of an agency newsletter; monitoring education courses; expansion of materials available for consumers; and education grants to high schools and universities for course materials on money management and home ownership.

Section 9 amended K.S.A. 74-4202 in subsection (b) to clarify that the act the commission receives applications for and issues licenses under is the real estate brokers' and salespersons' license act.

The act shall take effect upon publication in the statute book.

**LIVINGSTON APPRAISALS, INC.**

P.O. BOX 852  
OLATHE, KS 66062  
(913) 829-0606

February 19, 2008

To: Commerce and Labor Committee

Reference: House Bill 2772

Mr. Chairman,  
Ladies and Gentleman of the committee,

During 20 years in the appraisal field I have watched markets ride fantastic waves and I have also watched them linger in a dry creek bed. The banks in the State of Kansas have done a great job of keeping a solid financial footing under them. The state has always monitored these banks and their practices.

The state mandates licensing for a Real Estate agent before they can sell one piece of property. This agent is required by the state to have education and be professional in their practice.

Mortgage loan officers are now registered in the state before they can work in the loan industry.

Title companies are a form of insurance and are monitored by the state.

A used car salesman is required to be licensed by the state to sell a car.

All of the monitoring and licensing was placed there for the protection of the consumer, so they might have confidence in the system and support from the state when things go wrong. The appraisers in the state support this bill and look forward to a level field where the State Appraisal Board has jurisdiction over all appraisals in the state. We ask for your support and assistance in making this field a profession.

We ask that you give the board the power to regulate the profession.

No amount of legislation will eliminate fraud in any industry but, this should not prevent us from supporting those who perform the task with quality work.

Sincerely,

Richard E. Livingston IFA

House Commerce & Labor  
Date: 2-19-08  
Attachment # 3

# KANSAS

BOARD MEMBERS  
MICHAEL F. MCKENNA, CHAIRMAN  
TIM KELLER, VICE CHAIR  
PHILIP L. BOWMAN, MEMBER  
BRUCE A. FITZSIMONS, MEMBER  
DOUGLAS L. HAVERKAMP, MEMBER  
GREG LESH, MEMBER  
ROBERT S. MAXWELL, MEMBER

SALLY PRITCHETT, EXECUTIVE DIRECTOR  
CHERYL MAGATHAN, PUBLIC SERVICE EXEC.

## REAL ESTATE APPRAISAL BOARD

February 18, 2008

KATHLEEN SEBELIUS, GOVERNOR

The Honorable Representative Brunk and Committee Members  
Commerce and Labor Committee

Re: HB - 2772

The Kansas Real Estate Appraisal Board currently requires a person be licensed or certified for Federally Related transactions only. Kansas is one of only 13 states that do not have mandatory licensing. We are also the only state licensing Board that does not require everyone performing work in the profession to be licensed without exemptions made for specific groups or types of work.

The Appraisal Qualifications Board, responsible for setting out licensing certification requirements to all states, made major changes to both education and experience which became effective on January 1, 2008. These changes were made due to the belief on a national level that the industry demonstrate more professionalism.

The legislation being considered is a proactive step being taken by the Board to protect the public. Currently, lenders (if permitted by their applicable regulations) aren't required to use a state licensed or certified appraiser if the deminimus is under 250,000. Since these individuals are not licensed by the Board it is not known how many of these types of appraisals are being completed by unlicensed individuals. The Board receives complaints on individuals that are not licensed, however, in these cases the person with the complaint is told the individual is not licensed by the Board and therefore the Board has no regulatory authority to investigate the complaint or discipline the individual.

With the rising problems due to real estate and lending issues, the Board has an obligation to further tighten licensing laws and better protect the public, users of appraisal services, consumers and the financial institutions.

Sally Pritchett, Executive Director  
On behalf of the Kansas Real Estate Appraisal Board

1100 S.W. Wanamaker Rd., Ste. 104, Topeka, KS 66604 (785) 271-3373 (phone) (785) 271-3  
Sally Pritchett: sally.pritchett@kreab.ks.gov Cheryl Magathan: cheryl.mag

House Commerce & Labor  
Date: 2-19-08  
Attachment # 4



**TESTIMONY**

TO: The Honorable Steve Brunk, Chair  
And members of the  
House Commerce and Labor Committee

FROM: Whitney Damron  
On behalf of the  
Kansas Bar Association

RE: HB 2772 – An Act concerning real estate appraisers

DATE: February 18, 2008

Good morning Chairman Brunk and Members of the House Commerce and Labor Committee. I am Whitney Damron and I appear before you today to offer an amendment to HB 2772 to clarify that this bill does not alter the ability of attorneys to practice law and serve their clients as they currently are allowed to do.

I have attached a balloon amendment for your consideration which we have modeled after language drafted by the Kansas Society of CPA's. Also attached to my balloon is a copy of K.S.A. 7-103, which is the licensure statute referenced in our proposed amendment. It is simply included for your reference.

In their normal course of practice, attorneys may be called upon by their clients to render valuation or appraisal-related services for a variety of reasons. Language making violation of this act a felony led us to seek an exemption from its application.

We support what we believe to be the intention of the sponsors of this bill, and that that only licensed appraisers can represent themselves as a state certified or licensed appraiser.

We also understand there will likely be additional amendments made to HB 2772. If that occurs, we would be happy to review our amendment and reconsider our language if necessary based upon any revisions made by the Committee.

On behalf of the Kansas Bar Association, I thank you for your consideration of our proposed amendment and would be pleased to stand for questions.

WBD

# HOUSE BILL No. 2772

By Committee on Commerce and Labor

2-6

9 AN ACT concerning real estate appraisers; relating to licensure, penal-  
10 ties and exceptions; amending K.S.A. 58-4103 and repealing the exist-  
11 ing section.

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

14 Section 1. K.S.A. 58-4103 is hereby amended to read as follows: 58-  
15 4103. (a) Except as provided in subsection (b), no person, other than a  
16 state certified or licensed appraiser, shall:

17 (1) Engage in any written appraisal in connection with a federally  
18 ~~related real estate-related financial transaction for which certification or~~  
19 ~~licensure is required pursuant to federal law; or;~~

20 (2) assume or use the title of state certified or licensed appraiser or  
21 any title, designation or abbreviation likely to create the impression of  
22 certification or licensure as a real estate appraiser by this state; or

23 (3) advertise or otherwise represent in any manner that such person  
24 is a state certified or licensed appraiser.

25 (b) The board shall recognize on a temporary basis the certification  
26 or license of an appraiser issued by another state ~~in accordance with~~  
27 ~~federal law~~ if:

28 (1) The property to be appraised is part of a ~~federally related real~~  
29 ~~estate-related financial transaction pursuant to federal law;~~

30 (2) the appraiser's business in this state is of a temporary nature; and

31 (3) the appraiser registers with the board, as prescribed by the board.

32 (c) Violation of subsection (a) is a ~~class B misdemeanor~~ *severity level*  
33 *10, nonperson felony.*

34 (d) ~~The provisions of this act requiring certification or licensure or~~  
35 ~~the issuance of a certificate or license authorizing the practice of real~~  
36 ~~estate appraisal shall not be construed to prevent a person who is not a~~  
37 ~~state certified or licensed real estate appraiser from appraising real estate~~  
38 ~~for compensation if state certification or licensure is not required pur-~~  
39 ~~suant to federal law.~~

40 ~~(e)~~ An individual who is not a state certified or licensed appraiser may  
41 assist in the preparation of an appraisal if: (1) The assistant is under the  
42 direct supervision of an individual who is a state licensed or certified  
43 appraiser; and (2) the final appraisal document is approved and signed by

5-2

5-2

1 an individual who is a state certified or licensed appraiser.  
 2 (e) (1) *The provisions of paragraph (1) of subsection (a) shall not be*  
 3 *applicable to financial institutions engaging in real estate-related financial*  
 4 *transactions and otherwise subject to K.S.A. 58-4101 et seq., and amend-*  
 5 *ments thereto, when the following conditions are met:*  
 6 (A) *An employee of the financial institution conducts an appraisal as*  
 7 *defined in subsection (a) of K.S.A. 58-4102, and amendments thereto, or*  
 8 *conducts an evaluation in accordance with state and federal banking reg-*  
 9 *ulations; and*  
 10 (B) *when the loan that is the subject of such appraisal is not intended*  
 11 *to be sold in the secondary market and is intended to be held by the*  
 12 *financial institution for the life of the loan.*  
 13 (2) *If the financial institution disposes of the loan granted under par-*  
 14 *agraph (1)(B) of this subsection in the secondary market, such financial*  
 15 *institution shall be required to obtain an appraisal by a state licensed or*  
 16 *certified appraiser as required by paragraph (1) of subsection (a). The*  
 17 *employee of the financial institution that conducted the prior appraisal*  
 18 *shall not be considered to be an appraiser under the law unless such*  
 19 *person is a state certified or licensed appraiser.*  
 20 (f) *The provisions of paragraph (1) of subsection (a) shall not preclude*  
 21 *an individual licensed as a real estate broker or salesperson pursuant to*  
 22 *K.S.A. 58-3034 et seq., and amendments thereto, from performing and*  
 23 *providing a comparative market analysis or broker's price opinion to a*  
 24 *customer, client or third party for compensation in the ordinary course*  
 25 *of business. In no event shall such comparative market analysis or broker's*  
 26 *price opinion be referred to as an appraisal nor shall such individual*  
 27 *represent such individual's self as a certified or licensed appraiser under*  
 28 *this act unless such person is a state certified or licensed appraiser.*  
 29 Sec. 2. K.S.A. 58-4103 is hereby repealed.  
 30 Sec. 3. This act shall take effect and be in force from and after its  
 31 publication in the statute book.

**Proposed Amendment to HB 2772**

**Kansas Bar Association**

(g) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as an attorney pursuant to K.S.A. 7-103 et. seq., and amendments thereto, from performing and providing services as an attorney or as otherwise allowed by law. In no event shall any report by an attorney be referred to as an appraisal or such attorney represent such individual's self as a state certified or licensed appraiser unless such attorney is a state certified or licensed appraiser.

Whitney Damron  
 On behalf of the Kansas Bar Association  
 919 South Kansas Avenue  
 Topeka, Kansas 66612-1210  
 (785) 354-1354

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**7-103**

**Chapter 7.--ATTORNEYS AT LAW**

**Article 1.--GENERAL PROVISIONS**

**7-103. Rules for admission, discipline and disbarment.** (a) The supreme court of this state may make such rules as it may deem necessary for the examination of applicants for admission to the bar of this state and for the discipline and disbarment of attorneys.

(b) The supreme court of this state may allow persons who have been granted and hold a juris doctorate degree or bachelor of laws degree from the president's law school to apply seeking admission to the bar of this state. Such applicants shall satisfy all other qualifications and examinations as established by supreme court rule.

**History:** G.S. 1868, ch. 11, § 3; L. 1903, ch. 64, § 2; L. 1905, ch. 67, § 2; R.S. 1923, § 7-103; L. 1968, ch. 303, § 1; L. 2005, ch. 197, § 2; July 1.

5-4

5-4



February 19, 2008

To: House Committee on Commerce and Labor

From: Kathleen Taylor Olsen, Kansas Bankers Association

**Re: HB 2772: Appraiser Requirements**

Madam Chair and Members of the Committee:

Thank you for the opportunity to appear before you today with regard to **HB 2772**, a bill which would require the services of a licensed or certified appraiser in most real estate-related transactions.

The Kansas Bankers Association (KBA) would like to thank the Real Estate Appraisal Board for listening to our concerns and for addressing them in subsection (e)(1) of the bill. As you will note, that subsection provides for an exemption from requiring a state certified or licensed appraiser in limited circumstances where an employee of a financial institution conducts an "evaluation" in accordance with state and federal banking regulations.

The KBA asked for this language to be inserted because federal and state banking regulators have recognized that there can be a less expensive alternative to a state certified or licensed appraisal on real estate loans of \$250,000 or less. I have attached to my testimony a summary of the procedures that make up an "evaluation", to illustrate that while this procedure may be less costly to the consumer, it is still a very detailed evaluation of the property securing a loan. Bank examiners – both state and federal – do monitor the application of these evaluations and will downgrade a bank's loan portfolio if these procedures are not being followed – at the very least – and will turn evidence over to a prosecutor if they believe any fraud has been involved.

I also wanted to note that while we are not objecting to the language found in subsection (e)(2), because loans that are sold in the secondary market today do require a licensed or certified appraisal, we did want the Committee to know that should the secondary market change its standards, this language would bind only those banks in the state that are chartered by the State Bank Commissioner. In other words, nationally-chartered banks would most likely be allowed to follow the rules established by the secondary market and would be pre-empted from these state restrictions.



## "EVALUATION" RULES FOR STATE BANKS

*On August 24, 1993, the State Bank Commissioner issued a memorandum setting forth the real estate "evaluation" requirements for state-chartered banks. That memo is reprinted below. It has been slightly revised by the KBA Legal Department to incorporate terms used by the federal regulatory agencies ("evaluation" instead of "appraisal"). The revision also eliminates reference to the State Banking Department's \$15,000 floor to avoid confusion.*

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RE: "Evaluations" on Real Estate Loans below \$250,000

Our office has received several requests from bankers seeking a more definitive summary of the items necessary to fulfill the evaluation requirements for real estate loans below \$250,000.

The following comments pertain to real estate evaluations on loans which are below the \$250,000 FIRREA threshold. This memorandum provides clarification on well established prudent evaluation criteria, and does not represent any change in the Department's interpretative policies on this topic as contained in All Bank Mailing (ABM) 8-1-88 and 8-1-91.

Qualified individual to perform the evaluation - K.A.R. 17-11-21 simply states the evaluations should be performed by either two officers or directors of the bank, or by an appraiser who is independent of the bank. Ideally, bank personnel performing evaluations should be separate and apart from the loan function. Consideration will, however, be given to the bank's size and circumstances when reviewing this area. Individuals who conduct evaluations should have some real estate related training or experience relevant to the type of property, but are not required to be State licensed or certified appraisers.

Contents of the evaluation - Although the nature of the property, to a large extent, determines the complexity of the evaluation, the following basic information should be documented:

- 1) A legal description of the property, including street address (if applicable), and it's present use;
- 2) The owner(s) of the property;
- 3) The type and general condition of improvements, including their approximate age, size, and construction;
- 4) The basis for the appraised value - i.e. comparable sales of similar property, cost of replacement, or income derived from the property. Generally, a brief explanation which demonstrates the value was determined in a logical manner is sufficient. Again, information on comparable sales is preferable, but consideration will be given to the market area and level of real estate sales activity. Use of comparable sales data from a multiple listing service or current tax assessment valuation may be appropriate in certain situations (if the community is too small to get the information in any other way); and
- 5) The date of the appraisal and the signature and address of the appraiser(s).

Evaluations which include the information described above will generally be considered adequate. These criteria are consistent with FDIC evaluation standards for loans less than \$250,000. Situations involving loans with greater risk factors (past due, poor capacity or weak margins, improper structuring, etc.) will receive a more critical review of evaluation quality by examiners. With this in mind, the bank should use discretion in determining what, if any, additional information beyond the five areas discussed above may be warranted.

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**Office of the Comptroller of the Currency  
Federal Deposit Insurance Corporation  
Federal Reserve Board  
Office of Thrift Supervision**

**Interagency Appraisal and Evaluation Guidelines**

October 27, 1994

**Purpose**

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (the agencies) are jointly issuing these guidelines, which supersede each of the agencies' appraisal and evaluation guidelines issued in 1992.<sup>1</sup> These guidelines address supervisory matters relating to real estate appraisals and evaluations used to support real estate-related financial transactions and provide guidance to examining personnel and federally regulated institutions about prudent appraisal and evaluation policies, procedures, practices, and standards.

**Background**

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires the agencies to adopt regulations on the preparation and use of appraisals by federally regulated financial institutions.<sup>2</sup> Such real estate appraisals are to be in writing and performed in accordance with uniform standards by an individual whose competency has been demonstrated and whose professional conduct is subject to effective State supervision.

Common agency regulations<sup>3</sup> issued pursuant to Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) also require each regulated institution to adopt

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<sup>1</sup> FRB: "Guidelines for Real Estate Appraisal and Evaluation Programs," September 28, 1992; OCC: BC-225, "Real Estate Appraisal and Evaluation Guidelines," September 28, 1992; FDIC: FIL-69-92, "Guidelines for Real Estate Appraisal and Evaluation Programs," September 30, 1992; OTS: Thrift Bulletin 55, "Real Estate Appraisal and Evaluation Guidelines," October 13, 1992.

<sup>2</sup> OCC: 12 CFR Part 34, subpart C; FRB: 12 CFR 208.18 and 12 CFR 225, subpart G; FDIC: 12 CFR 323; and OTS: 12 CFR Part 564.

<sup>3</sup> OCC: 12 CFR 34, subpart D; FRB: 12 CFR Part 208, subpart C; FDIC: 12 CFR Part 365; and OTS: 12 CFR Parts 545 and 563.

6-3

and maintain written real estate lending policies that are consistent with safe and sound banking practices and that reflect consideration of the real estate lending guidelines attached to the regulation. The real estate lending guidelines state that a real estate lending program should include an appropriate real estate appraisal and evaluation program.

## **Supervisory Policy**

An institution's real estate appraisal and evaluation policies and procedures will be reviewed as part of the examination of the institution's overall real estate-related activities. An institution's policies and procedures should be incorporated into an effective appraisal and evaluation program. Examiners will consider the institution's size and the nature of its real estate-related activities when assessing the appropriateness of its program.

When analyzing individual transactions, examiners will review an appraisal or evaluation to determine whether the methods, assumptions, and findings are reasonable and in compliance with the agencies' appraisal regulations, policies,<sup>4</sup> supervisory guidelines, and the institution's policies. Examiners also will review the steps taken by an institution to ensure that the individuals who perform its appraisals and evaluations are qualified and are not subject to conflicts of interest. Institutions that fail to maintain a sound appraisal or evaluation program or to comply with the agencies' appraisal regulations, policies, or these supervisory guidelines will be cited in examination reports and may be criticized for unsafe and unsound banking practices. Deficiencies will require corrective action.

## **Appraisal and Evaluation Program**

An institution's board of directors is responsible for reviewing and adopting policies and procedures that establish an effective real estate appraisal and evaluation program. The program should:

- Establish selection criteria and procedures to evaluate and monitor the ongoing performance of individuals who perform appraisals or evaluations;
- Provide for the independence of the person performing appraisals or evaluations;
- Identify the appropriate appraisal for various lending transactions;
- Establish criteria for contents of an evaluation;
- Provide for the receipt of the appraisal or evaluation report in a timely manner to facilitate the underwriting decision;
- Assess the validity of existing appraisals or evaluations to support subsequent transactions;

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<sup>4</sup> The appraisal guidance contained in the "Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans," November 7, 1991, generally applies to all transactions.

- Establish criteria for obtaining appraisals or evaluations for transactions that are otherwise exempt from the agencies' appraisal regulations; and
- Establish internal controls that promote compliance with these program standards.

## **Selection of Individuals Who May Perform Appraisals and Evaluations**

An institution's program should establish criteria to select, evaluate, and monitor the performance of the individual(s) who performs a real estate appraisal or evaluation. The criteria should ensure that:

- The institution's selection process is non-preferential and unbiased;
- The individual selected possesses the requisite education, expertise and competence to complete the assignment;
- The individual selected is capable of rendering an unbiased opinion; and
- The individual selected is independent and has no direct or indirect interest, financial or otherwise, in the property or the transaction.

Under the agencies' appraisal regulations, the appraiser must be selected and engaged directly by the institution or its agent. The appraiser's client is the institution, not the borrower. An institution may use an appraisal that was prepared by an appraiser engaged directly by another financial services institution, as long as the institution determines that the appraisal conforms to the agencies' appraisal regulations and is otherwise acceptable.

## **Independence of the Appraisal And Evaluation Function**

Because the appraisal and evaluation process is an integral component of the credit underwriting process, it should be isolated from influence by the institution's loan production process. An appraiser and an individual providing evaluation services should be independent of the loan and collection functions of the institution and have no interest, financial or otherwise, in the property or the transaction. If absolute lines of independence cannot be achieved, an institution must be able to clearly demonstrate that it has prudent safeguards to isolate its collateral evaluation process from influence or interference from the loan production process.

The agencies recognize, however, that it is not always possible or practical to separate the loan and collection functions from the appraisal or evaluation process. In some cases, such as in a small or rural institution or branch, the only individual qualified to analyze the real estate collateral may also be a loan officer, other officer, or director of the institution. To ensure their independence, such lending officials, officers, or directors should abstain from any vote or approval involving loans on which they performed an appraisal or evaluation.

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## Transactions That Require Appraisals

Although the agencies' appraisal regulations exempt certain categories of real estate-related financial transactions from the appraisal requirements, most real estate transactions over \$250,000 are considered federally related transactions and thus require appraisals.<sup>5</sup> A "federally related transaction" means any real estate-related financial transaction in which the agencies engage, contract for, or regulate, and that requires the services of an appraiser. An agency also may impose more stringent appraisal requirements than the appraisal regulations require, such as when an institution's troubled condition is attributable to real estate loan underwriting problems.<sup>6</sup>

## Minimum Appraisal Standards

The agencies' appraisal regulations include five minimum standards for the preparation of an appraisal. The appraisal must:

- Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board (ASB) of the Appraisal Foundation unless principles of safe and sound banking require compliance with stricter standards;

Although allowed by USPAP, the agencies' appraisal regulations do not permit an appraiser to appraise any property in which the appraiser has an interest, direct or indirect, financial or otherwise.

- Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

As discussed below, appraisers have available various appraisal development and report options; however, not all options may be appropriate for all transactions. A report option is acceptable under the agencies' appraisal regulations only if the appraisal report contains sufficient information and analysis to support an institution's decision to engage in the transaction.

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<sup>5</sup> In order to facilitate recovery in designated major disaster areas, subject to safety and soundness considerations, Section 2 of the Depository Institutions Disaster Relief Act of 1992 authorized the agencies to waive certain appraisal requirements for up to three years after a Presidential declaration of a natural disaster.

<sup>6</sup> As a matter of policy, OTS requires problem associations and associations in troubled condition to obtain appraisals for all real estate-related transactions over \$100,000 (unless the transaction is otherwise exempt).

- Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

This standard is designed to avoid having appraisals prepared using unrealistic assumptions and inappropriate methods. For federally related transactions, an appraisal is to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal. For properties where improvements are to be constructed or rehabilitated, the regulated institution may also request a prospective market value based on stabilized occupancy or a value based on the sum of retail sales. However, the sum of retail sales for a proposed development is not the market value of the development for the purpose of the agencies' appraisal regulations. For proposed developments that involve the sale of individual houses, units, or lots, the appraiser must analyze and report appropriate deductions and discounts for holding costs, marketing costs and entrepreneurial profit. For proposed and rehabilitated rental developments, the appraiser must make appropriate deductions and discounts for items such as leasing commission, rent losses, and tenant improvements from an estimate based on stabilized occupancy.

- Be based upon the definition of market value set forth in the regulation; and

Each appraisal must contain an estimate of market value, as defined by the agencies' appraisal regulations.

- Be performed by State-licensed or certified appraisers in accordance with requirements set forth in the regulation.

## Appraisal Options

An appraiser typically uses three market value approaches to analyze the value of a property -- cost, income, and comparable sales -- and reconciles the results of each to estimate market value. An appraisal will discuss the property's recent sales history and contain an opinion as to the highest and best use of the property. An appraiser must certify that he/she has complied with USPAP and is independent. Also, the appraiser must disclose whether the subject property was inspected and whether anyone provided significant assistance to the person signing the appraisal report.

6-7

An institution may engage an appraiser to perform either a Complete or Limited Appraisal.<sup>7</sup> When performing a Complete Appraisal assignment, an appraiser must comply with all USPAP standards without departing from any binding requirements and specific guidelines when estimating market value. When performing a Limited Appraisal, the appraiser elects to invoke the Departure Provision which allows the appraiser to depart, under limited conditions, from standards identified as specific guidelines. For example, in a Limited Appraisal, the appraiser might not utilize all three approaches to value. Departure from standards designated as binding requirements is not permitted.

An institution and appraiser must concur that use of the Departure Provision is appropriate for the transaction before the appraiser commences the appraisal assignment. The appraiser must ensure that the resulting appraisal report will not mislead the institution or other intended users of the appraisal report. The agencies do not prohibit the use of a Limited Appraisal for a federally related transaction, but the agencies believe that institutions should be cautious in their use of a Limited Appraisal because it will be less thorough than a Complete Appraisal.

Complete and Limited Appraisal assignments may be reported in three different report formats: a Self-Contained Report, a Summary Report, or a Restricted Report. The major difference among these three reports relates to the degree of detail presented in the report by the appraiser. The Self-Contained Appraisal Report provides the most detail, while the Summary Appraisal Report presents the information in a condensed manner. The Restricted Report provides a capsulized report with the supporting details maintained in the appraiser's files.

The agencies believe that the Restricted Report format will not be appropriate to underwrite a significant number of federally related transactions due to the lack of sufficient supporting information and analysis in the appraisal report. However, it might be appropriate to use this type of appraisal report for ongoing collateral monitoring of an institution's real estate transactions and under other circumstances when an institution's program requires an evaluation.

Moreover, since the institution is responsible for selecting the appropriate appraisal report to support its underwriting decisions, its program should identify the type of appraisal report that will be appropriate for various lending transactions. The institution's program should consider the risk, size, and complexity of the individual loan and the supporting collateral when determining the level of appraisal development and the type of report format that will be ordered. When ordering an appraisal report, institutions may want to consider the benefits of a written engagement letter that outlines the institution's expectations and delineates each party's responsibilities, especially for large, complex, or out-of-area properties.

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<sup>7</sup> USPAP Statement on Appraisal Standards No. 7 (SMT-7) -- *Permitted Departure from Specific Guidelines for Real Property Appraisal*, issued March 30, 1994, effective July 1, 1994.

## Transactions That Require Evaluations

A formal opinion of market value prepared by a State licensed or certified appraiser is not always necessary. Instead, less formal evaluations of the real estate may suffice for transactions that are exempt from the agencies' appraisal requirements. The agencies' appraisal regulations allow an institution to use an appropriate evaluation of the real estate rather than an appraisal when the transaction:

- Has a value of \$250,000 or less;
- Is a business loan of \$1,000,000 or less, and the transaction is not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment; or
- Involves an existing extension of credit at the lending institution, provided that: (i) there has been no obvious and material change in the market conditions or physical aspects of the property that threaten the adequacy of the institution's real estate collateral protection after the transaction, even with the advancement of new monies; or (ii) there is no advancement of new monies other than funds necessary to cover reasonable closing costs.

Institutions should also establish criteria for obtaining appraisals or evaluations for safety and soundness reasons for transactions that are otherwise exempt from the agencies' appraisal regulations.

## Evaluation Content

An institution should establish prudent standards for the preparation of evaluations. At a minimum, an evaluation should:

- Be written;
- Include the preparer's name, address, and signature, and the effective date of the evaluation;
- Describe the real estate collateral, its condition, its current and projected use;
- Describe the source(s) of information used in the analysis;
- Describe the analysis and supporting information, and;
- Provide an estimate of the real estate's market value, with any limiting conditions.

An evaluation report should include calculations, supporting assumptions, and, if utilized, a discussion of comparable sales. Documentation should be sufficient to allow an institution to understand the analysis, assumptions, and conclusions. An institution's own real estate loan portfolio experience and value estimates prepared for recent loans on comparable properties might provide a basis for evaluations.

6-9



An evaluation should provide an estimate of value to assist the institution in assessing the soundness of the transaction. Prudent practices also require that as an institution engages in more complex real estate-related financial transactions, or as its overall exposure increases, a more detailed evaluation should be performed. For example, an evaluation for a home equity loan might be based primarily on information derived from a sales data services organization or current tax assessment information, while an evaluation for an income-producing real estate property should fully describe the current and expected use of the property and include an analysis of the property's rental income and expenses.

## **Qualifications of Individuals Who Perform Evaluations**

Individuals who prepare evaluations should have real estate-related training or experience and knowledge of the market relevant to the subject property. Based upon their experience and training, professionals from several fields may be qualified to prepare evaluations of certain types of real estate collateral. Examples include individuals with appraisal experience, real estate lenders, consultants or sales persons, agricultural extension agents, or foresters. Institutions should document the qualifications and experience level of individuals whom the institution deems acceptable to perform evaluations. An institution might also augment its in-house expertise and hire an outside party familiar with a certain market or a particular type of property. Although not required, an institution may use State licensed or certified appraisers to prepare evaluations. As such, Limited Appraisals reported in a Summary or Restricted format may be appropriate for evaluations of real estate-related financial transactions exempt from the agencies' appraisal requirements.

## **Valid Appraisals and Evaluations**

The agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction, if the institution documents that the existing estimate of value remains valid. Therefore, a prudent appraisal and evaluation program should include criteria to determine whether an existing appraisal or evaluation remains valid to support a subsequent transaction. Criteria for determining whether an existing appraisal or evaluation remains valid will vary depending upon the condition of the property and the marketplace, and the nature of any subsequent transaction. Factors that could cause changes to originally reported values include: the passage of time; the volatility of the local market; the availability of financing; the inventory of competing properties; improvements to, or lack of maintenance of, the subject property or competing surrounding properties; changes in zoning; or environmental contamination. The institution must document the information sources and analyses used to conclude that an existing appraisal or evaluation remains valid for subsequent transactions.

## **Renewals, Refinancings, and Other Subsequent Transactions**

While the agencies' appraisal regulations generally allow appropriate evaluations of real estate collateral in lieu of an appraisal for loan renewals and refinancings, in certain situations an appraisal is required. If new funds are advanced over reasonable closing costs, an institution would be expected to obtain a new appraisal for the renewal of an existing transaction when there is a material change in market conditions or the physical aspects of the property that threatens the institution's real estate collateral protection.

The decision to reappraise or reevaluate the real estate collateral should be guided by the exemption for renewals, refinancings, and other subsequent transactions. Loan workouts, debt restructurings, loan assumptions, and similar transactions involving the addition or substitution of borrowers may qualify for the exemption for renewals, refinancings, and other subsequent transactions. Use of this exemption depends on the condition and quality of the loan, the soundness of the underlying collateral and the validity of the existing appraisal or evaluation.

A reappraisal would not be required when an institution advances funds to protect its interest in a property, such as to repair damaged property, because these funds should be used to restore the damaged property to its original condition. If a loan workout involves modification of the terms and conditions of an existing credit, including acceptance of new or additional real estate collateral, which facilitates the orderly collection of the credit or reduces the institution's risk of loss, a reappraisal or reevaluation may be prudent, even if it is obtained after the modification occurs.

An institution may engage in a subsequent transaction based on documented equity from a valid appraisal or evaluation, if the planned future use of the property is consistent with the use identified in the appraisal or evaluation. If a property, however, has reportedly appreciated because of a planned change in use of the property, such as rezoning, an appraisal would be required for a federally related transaction, unless another exemption applied.

## **Program Compliance**

An institution's appraisal and evaluation program should establish effective internal controls that promote compliance with the program's standards. An individual familiar with the appropriate agency's appraisal regulation should ensure that the institution's appraisals and evaluations comply with the agencies' appraisal regulations, these guidelines, and the institution's program. Loan administration files should document this compliance review, although a detailed analysis or comprehensive analytical procedures are not required for every appraisal or evaluation. For some loans, the compliance review may be part of the loan officer's overall credit analysis and may take the form of either a narrative or a checklist. Corrective action should be undertaken for noted deficiencies by the individual who prepared the appraisal or evaluation.

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An institution's appraisal and evaluation program should also have comprehensive analytical procedures that focus on certain types of loans, such as large-dollar credits, loans secured by complex or specialized properties, non-residential real estate construction loans, or out-of-area real estate. These comprehensive analytical procedures should be designed to verify that the methods, assumptions, and conclusions are reasonable and appropriate for the transaction and the property. These procedures should provide for a more detailed review of selected appraisals and evaluations prior to the final credit decision. The individual(s) performing these reviews should have the appropriate training or experience, and be independent of the transaction.

Appraisers and persons performing evaluations should be responsible for any deficiencies in their reports. Deficient reports should be returned to them for correction. Unreliable appraisals or evaluations should be replaced prior to the final credit decision. Changes to an appraisal's estimate of value are permitted only as a result of a review conducted by an appropriately qualified State licensed or certified appraiser in accordance with Standard III of USPAP.

### **Portfolio Monitoring**

The institution should also develop criteria for obtaining reappraisals or reevaluations as part of a program of prudent portfolio review and monitoring techniques -- even when additional financing is not being contemplated. Examples of such types of situations include large credit exposures and out-of-area loans.

### **Referrals**

Financial institutions are encouraged to make referrals directly to state appraiser regulatory authorities when a State licensed or certified appraiser violates USPAP, applicable state law, or engages in other unethical or unprofessional conduct. Examiners finding evidence of unethical or unprofessional conduct by appraisers will forward their findings and recommendations to their supervisory office for appropriate disposition and referral to the state, as necessary.



# Kansas Society of Certified Public Accountants

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## TESTIMONY

Tony A. Scott, JD, CPA  
Executive Director

To: The Honorable Steven Brunk, Chair  
Members, House Committee on Commerce and Labor

From: Tony A. Scott, Executive Director, Kansas Society of Certified Public Accountants

Date: February 19, 2008

Re: Offered Balloon Amendment as Neutral Party on HB 2772

Ladies and Gentlemen of the Committee:

The Kansas Society of Certified Public Accountants represents approximately 2,600 CPAs throughout the state. We are *dedicated to implementing strategies that enhance the well-being of our members, the accounting profession and the general public.* My name is Tony A. Scott and I am Executive Director of the KSCPA. **Today I appear to offer a balloon amendment to HB 2772 otherwise my testimony is as a neutral party.**

To become a Certified Public Accountant in Kansas a person must have extensive education with concentrated studies in accounting, pass a rigorous uniform examination and meet applicable experience requirements. Kansas CPAs in public practice must undergo a “peer review” to determine the degree of their firm’s compliance with generally accepted accounting principles, generally accepted auditing standards and other recognized authoritative technical standards. To maintain a CPA certificate requires at least 80 hours of germane continuing professional education every two years.

CPAs are heavily regulated but continually employ the highest professional standards of independence, integrity and objectivity. In performing their work, whether in the area of attestation or other assurance services, tax, management advisory, consulting, litigation support, financial planning, etc., CPAs may from time-to-time be required to make a professionally appropriate determination of value for real and/or personal property. CPAs performing and providing services as CPAs or as otherwise allowed by law should, therefore, be expressly exempt from the proposed additional real estate licensure requirements offer in HB 2772. **We therefore respectfully request members of the Committee adopt our offered balloon amendment to HB 2772.**

It is my honor and privilege to appear before you today. I will be pleased to stand for questions.

Respectfully Submitted,

Tony A. Scott

TAS/mmi

House Commerce & Labor  
Date: 2-19-08  
Attachment # 7

**HOUSE BILL No. 2772**

By Committee on Commerce and Labor

2-6

Tony Scott  
Kansas Society of CPA's  
Amendments  
February 13, 2008

8-2

9 AN ACT concerning real estate appraisers; relating to licensure, penal-  
10 ties and exceptions; amending K.S.A. 58-4103 and repealing the exist-  
11 ing section.

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

13 Section 1. K.S.A. 58-4103 is hereby amended to read as follows: 58-  
14 4103. (a) Except as provided in subsection (b), no person, other than a  
15 state certified or licensed appraiser, shall:

16 (1) Engage in any written appraisal in connection with a ~~federally~~  
17 ~~related real estate-related financial transaction for which certification or~~  
18 ~~licensure is required pursuant to federal law; or;~~

19 (2) assume or use the title of state certified or licensed appraiser or  
20 any title, designation or abbreviation likely to create the impression of  
21 certification ~~or licensure~~ as a real estate appraiser by this state; ~~or~~

22 (3) *advertise or otherwise represent in any manner that such person*  
23 *is a state certified or licensed appraiser.*

24 (b) The board shall recognize on a temporary basis the certification  
25 or license of an appraiser issued by another state ~~in accordance with~~  
26 ~~federal law~~ if:

27 (1) The property to be appraised is part of a ~~federally related real~~  
28 ~~estate-related financial transaction pursuant to federal law;~~

29 (2) the appraiser's business in this state is of a temporary nature; and

30 (3) the appraiser registers with the board, as prescribed by the board.

31 (c) Violation of subsection (a) is a ~~class B misdemeanor~~ *severity level*  
32 *10, nonperson felony.*

33 (d) ~~The provisions of this act requiring certification or licensure or~~  
34 ~~the issuance of a certificate or license authorizing the practice of real~~  
35 ~~estate appraisal shall not be construed to prevent a person who is not a~~  
36 ~~state certified or licensed real estate appraiser from appraising real estate~~  
37 ~~for compensation if state certification or licensure is not required pur-~~  
38 ~~suant to federal law.~~

39 ~~(e)~~ An individual who is not a state certified or licensed appraiser may  
40 assist in the preparation of an appraisal if: (1) The assistant is under the  
41 direct supervision of an individual who is a state licensed or certified  
42 appraiser; and (2) the final appraisal document is approved and signed by  
43

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1 an individual who is a state certified or licensed appraiser.

2 (e) (1) *The provisions of paragraph (1) of subsection (a) shall not be*  
 3 *applicable to financial institutions engaging in real estate-related financial*  
 4 *transactions and otherwise subject to K.S.A. 58-4101 et seq., and amend-*  
 5 *ments thereto, when the following conditions are met:*

6 (A) *An employee of the financial institution conducts an appraisal as*  
 7 *defined in subsection (a) of K.S.A. 58-4102, and amendments thereto, or*  
 8 *conducts an evaluation in accordance with state and federal banking reg-*  
 9 *ulations; and*

10 (B) *when the loan that is the subject of such appraisal is not intended*  
 11 *to be sold in the secondary market and is intended to be held by the*  
 12 *financial institution for the life of the loan.*

13 (2) *If the financial institution disposes of the loan granted under par-*  
 14 *agraph (1)(B) of this subsection in the secondary market, such financial*  
 15 *institution shall be required to obtain an appraisal by a state licensed or*  
 16 *certified appraiser as required by paragraph (1) of subsection (a). The*  
 17 *employee of the financial institution that conducted the prior appraisal*  
 18 *shall not be considered to be an appraiser under the law unless such*  
 19 *person is a state certified or licensed appraiser.*

20 (f) *The provisions of paragraph (1) of subsection (a) shall not preclude*  
 21 *an individual licensed as a real estate broker or salesperson pursuant to*  
 22 *K.S.A. 58-3034 et seq., and amendments thereto, from performing and*  
 23 *providing a comparative market analysis or broker's price opinion to a*  
 24 *customer, client or third party for compensation in the ordinary course*  
 25 *of business. In no event shall such comparative market analysis or broker's*  
 26 *price opinion be referred to as an appraisal nor shall such individual*  
 27 *represent such individual's self as a certified or licensed appraiser under*  
 28 *this act unless such person is a state certified or licensed appraiser.*

29 Sec. 2. K.S.A. 58-4103 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its  
 31 publication in the statute book.

(g) The provisions of paragraph (1) of subsection (a) shall not preclude an individual licensed as a certified public accountant pursuant to K.S.A. 1-301 et seq., and amendments thereto, from performing and providing services as a certified public accountant or as otherwise allowed by law. In no event shall any report by a certified public accountant be referred to as an appraisal or such certified public accountant represent such individual's self as a state certified or licensed appraiser unless such certified public accountant is a state certified or licensed appraiser.

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MEMORANDUM

To: House Committee on Commerce and Labor  
From: Renae Jefferies, Assistant Revisor  
Date: February 19, 2008  
Subject: House Bill No. 2746

HB 2746 amends statutes in the real estate brokers' and salespersons' license act pertaining to licensure, prohibited acts and definitions and creates a new section dealing with advertising by real estate brokers and salespersons.

Section 1 amends K.S.A. 58-3035, the definitions section, to include definitions for "exchange" and "interest" on page 2 of the bill.

Section 2 amends K.S.A. 58-3043, a licensure provision, to require the Kansas real estate commission (commission) when considering a prior revocation, conduct or plea of guilty or nolo contendere to or a conviction of a misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate, to consider the time elapsed since such revocation, conduct or plea of guilty or nolo contendere to or conviction of such misdemeanor. In addition, subsection (e) (2) was amended to allow the commission to grant an original license pursuant to subsection (f) if the applicant's application is received 15 years after the date of the applicant's "completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any offense" which would require the applicant to register in the Kansas offender registration act or if the application is received 5 years after the applicant's completion of any nonprison sanction or suspension of the imposition of the sentence resulting from any plea of guilty or nolo contendere to or conviction of any felony other than a felony that would require the applicant to register in the Kansas offender registration act.

Subsection (f) allows the commission to renew or grant an original license where the applicant presents sufficient proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate.

“Nonprison sanction” means probation, community corrections, conservation camp, house arrest or any other community based disposition.

Section 3 amends K.S.A. 58-3047, a licensing provision dealing with cancellation and reinstatement of licenses, on page 7 of the bill, to include new subsections (k) and (l). Subsection (k) sets out the duties of the supervising broker, salesperson and associate broker upon closure of a primary office regarding cancellation and reinstatement of the supervising broker’s, salespersons’ and associate broker’s licenses or placement on inactive status. Subsection (l) sets out the duties of the branch broker, salesperson or associate broker upon closure of a branch office regarding cancellation and reinstatement of the branch broker’s, salesperson’s and associate broker’s license or placement on inactive status.

Section 4 amends K.S.A. 58-3050 on page 8, line 39, in subsection (d) to increase the civil fine imposed to not exceed \$1,000. It also provides for a civil fine, not to exceed \$5,000 if the commission makes specific findings that aggravating circumstances exist in the commission of certain prohibited acts by a licensee.

“aggravating circumstances” means the licensee’s conduct involved fraud or deceit; *and* the licensee’s conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client; the licensee’s conduct resulted in substantial financial gain to the licensee; *or* the licensee has a history of prior disciplinary actions involving violations of such prohibited conduct. See subsection (d) (2) on pages 8 and 9 of the bill.

Additionally, in subsection (g) the term “disabled” was replaced with the term “incompetent.”

Lastly, new subsection (m) was created which allows the commission to recover, from a civil fine imposed, its actual costs and attorney fees incurred to investigate and prosecute a disciplinary case. Such costs and attorney fees will be credited to the real estate commission fee fund. Any remaining balance will be credited to the state general fund.

Section 5 amends K.S.A. 58-3062 to prohibit a licensee from committing any act that is deemed unprofessional conduct as defined by the commission by rules and regulations and from attempting to represent to any lender, guaranteeing agency or any other interested party, either



verbally or through the preparation of false documents, an amount in excess of the true and actual sale price of the real estate or terms differing from those actually agreed upon.

New section 6 sets out the prohibitions and guidelines for advertising by a licensee.

Sections 7 and 8 were amended to include an exception that any time the balance in the real estate recovering fund is greater than \$250,000, any amount over the \$250,000 may be used by the commission to pay for production and distribution of an agency newsletter; monitoring education courses; expansion of materials available for consumers; and education grants to high schools and universities for course materials on money management and home ownership.

Section 9 amended K.S.A. 74-4202 in subsection (b) to clarify that the act the commission receives applications for and issues licenses under is the real estate brokers' and salespersons' license act.

The act shall take effect upon publication in the statute book.



# KANSAS

KANSAS REAL ESTATE COMMISSION  
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Brunk and Members of the House Commerce and Labor Committee  
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission  
RE: HB 2746—Real estate licensure and regulation  
Date: February 19, 2008

The Kansas Real Estate Commission requested this bill to clarify legislation passed in 2007 regarding licensure of real estate salespersons and brokers and to amend laws regulating real estate licensees. A couple of the proposed amendments were taken from HB 2344 and HB 2345 that did not move out of committee during the 2007 Session because the Commission and the trade association, the Kansas Association of Realtors, ran out of time before the turnaround deadline attempting to work out language that would improve the bills. The Commission also monitors disciplinary cases and other matters during the year to determine whether the current statutes are adequate to authorize the Commission to respond as necessary to an issue.

HB 2746 proposes the following amendments and additions to the Kansas Real Estate Brokers' and Salespersons' License Act, K.S.A. 58-3034 et seq. and the Commission's Enabling Statute, K.S.A. 74-4201 et seq.:

- p. 2, lines 20-24—Amends K.S.A. 58-3035 to add definitions for “exchange” and “interest.”
- p. 3, lines 30-40, p. 4, line 19 through p. 5, line 5—Amends K.S.A. 58-3043 to clarify the factors the Commission considers for granting an original license and renewing an existing license if an applicant or licensee has a criminal history and clarifies that the mandatory waiting period for persons applying for original licensure applies to persons convicted of a felony who were not sentenced to incarceration.
- p. 6, lines 4-6, and p. 7, lines 11-40—Amends K.S.A. 58-3047 to require a supervising or branch broker to notify the Commission and send in the licenses of any affiliated licensees to be transferred to another broker or placed on inactive status within 10 days of closure of a primary or branch office.
- p. 8, lines 3-7, p. 8, line 38 through p. 9, line 23, and p. 10, lines 19-26—Amends K.S.A. 58-3050 to clarify that transaction brokers are covered by the statute and increases the fine authority from \$500 to \$1,000 per violation for the majority of cases brought by the Commission against a licensee. The legislation authorizes fine authority up to \$5,000 per violation if the Commission makes a specific finding that “aggravating circumstances” exist and the licensee committed one of the following:
  - (1) Misappropriated funds belonging to another person;
  - (2) engaged in fraud or made any substantial misrepresentation;
  - (3) committed mortgage fraud;

(4) committed forgery or signed or initialed a contractual agreement on behalf of another person in a real estate transaction without an executed power of attorney; and

(5) intentionally failed to disclose to a client or customer all adverse material facts actually known by the licensee regarding the property or the inability of the client or customer to perform under the terms of the agreement.

“Aggravating circumstances” is defined as:

- (1) The licensee’s conduct involved fraud or deceit; and
- (2) The licensee’s conduct directly resulted in substantial loss or created a significant risk of substantial loss to a customer or client;
- (3) The licensee’s conduct resulted in substantial financial gain to the licensee; or
- (4) The licensee has a history of prior disciplinary actions involving similar violations as (1)–(5) above.

The Commission would be authorized to retain for deposit in the fee fund from the fine collected the attorney fees and costs incurred for investigation and prosecution of disciplinary cases.

- p. 10, lines 30-36 and p. 11, line 30—Amends K.S.A. 58-3062 to add as prohibited acts unprofessional conduct and attempted mortgage fraud. Unprofessional conduct would take the place of the prohibited act for advertising, which would be addressed in a new statute. I have attached a proposed regulation that the Commission has drafted to assist in implementation of the unprofessional conduct subsection.

It is my understanding that the trade association, Kansas Association of Realtors, has some concern over the wording of the amendment to address attempted mortgage fraud. The trade association is concerned that supervising broker who legitimately stops an affiliated licensee from committing mortgage fraud would be held accountable for attempted mortgage fraud. The Commission wants supervising brokers to perform this supervisory function and certainly would not be interested in pursuing a supervising broker for doing the right thing. The Commission is willing to work with the trade association on alternative language that addresses the trade association’s concern.

- p. 16, line 12 through p. 17, line 31—Adds a new statute that more clearly regulates advertising conducted by licensees. Currently, the Commission only has K.S.A. 58-3062(a)(1) and K.A.R. 86-3-7 in place to regulate advertising conducted by real estate licensees. The Commission receives complaints from members of the public and other licensees that advertising conducted by salespersons and associate brokers and advertising conducted by licensees operating in a “team” are confusing because it is difficult if not impossible to tell what brokerage the licensee is affiliated with. Sometimes the affiliated salesperson or associate broker has established a professional corporation or LLC that uses terms like “Real Estate” or “Realty” in the corporate name. The Commission gets complaints against ABC Realty, determines there is no ABC Realty, and after investigation learns that it’s a salesperson’s LLC name used in advertising and the supervising broker’s business name or trade name that is on record with the Commission is not included in the advertisement. The proposed new statute combines existing law and regulations into statutory format plus addresses the common complaints that the Commission receives regarding licensee advertising. I have attached a proposed balloon to address some technical amendments. I have also attached a

proposed regulation that the Commission has drafted to define “prominently and conspicuously displaying” the supervising broker’s business name or trade name.

- p. 17, lines 33-36 and p. 18, line 14, p. 19, lines 26-33—Amends K.S.A. 58-3067 and 58-3068 to authorize the Commission to use funds in the real estate recovery revolving fund that exceed \$250,000 for specified purposes that benefit licensees and consumers. I have attached a proposed balloon to add a subsection that was inadvertently omitted from the bill to ensure that forgery (K.S.A. 58-3062(a)(26)) is a violation committed by a licensee that would be covered by the real estate recovery revolving fund if a consumer is harmed and could not collect a judgment from the licensee.
- p. 19, line 42 through p. 20, line 1—Amends K.S.A. 74-4202 to clarify that the Real Estate Brokers’ and Salespersons’ License Act is the act that is addressed in the statute.

No additional staffing should be required to implement the proposed legislation.

The Commission does not anticipate additional expenditures to implement the legislation; however, additional attorney fees and other costs could be incurred to prosecute disciplinary cases because of the amendment to K.S.A. 58-3062 adding prohibited acts for unprofessional conduct and attempted mortgage fraud and the establishment of a new statute to more clearly regulate licensee advertising. If a fine is collected from a licensee arising from a disciplinary case, the Commission would be authorized to retain from the fine collected the amount of any attorney fees, court costs and investigation costs incurred to prosecute the case for deposit in the Commission’s fee fund. The remainder of any fine collected would be transferred to the State General Fund. The Commission does not have violation information to estimate the fiscal impact of the amendments to K.S.A. 58-3062 and the new advertising statute on the Commission’s fee fund or State General Fund.

The amendment to K.S.A. 58-3050 to increase the Commission’s fine authority will have a positive fiscal impact on the State General Fund. It is difficult to estimate the fiscal impact on the State General Fund because the Commission cannot anticipate how many disciplinary cases will arise during any given year and what the nature of those cases will be. The Commission does not anticipate more than one or two cases per year falling within the fine range for aggravating circumstances. Based upon the above, the Commission estimates that the annual increase to the State General Fund would average in the \$10,000-\$25,000 range, with the possibility that a portion of the fine collected may be retained by the Commission as a reimbursement of attorney fees and costs to prosecute the disciplinary case.

A copy of the proposed balloon containing the Commission’s technical amendments is attached.

I would be happy to address the Committee’s questions.

## UNPROFESSIONAL CONDUCT PROPOSED REGULATION

**86-3-29. Unprofessional conduct.** Any of the following acts by an applicant for licensure or by a licensee shall constitute unprofessional conduct:

(a) Threaten to engage in or engage in physical abuse towards a client, customer, or a licensee.

(b) Threaten to file a lien on residential property;

(c) Engage in harassment towards a client, customer or a licensee.

(d) Conduct real estate business with impaired judgment or objectivity as the result of mental illness or addiction to alcohol or controlled substances.

(e) Found by a federal or state agency to have violated a federal or state law regulating the real estate industry or regulating a closely related industry whose licensees or members are commonly involved in real estate matters.

(f) Found by a state or federal agency to have violated a federal or state law prohibiting discrimination against any client or customer on the basis of color, race, gender, religion, national origin, age, disability, or familial status;

(g) Fail to cooperate in a timely manner with any request from the commission for documents or information that concerns directly or indirectly any real estate transaction or the licensee's real estate business;

(h) Any intentional misappropriation or misuse of any personal property or real property of a client or customer;

(i) Failure of a salesperson or associate broker to submit to the supervising broker or branch broker, within 10 business days, any document that must be

maintained in the supervising broker's or branch broker's transaction file pursuant to K.A.R. 86-3-10. The 10-day period shall commence when the document is executed by the client or customer or, if a signature is not required or is not obtained, upon presentation of a document to the client or customer. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-3062, as amended by \_\_\_\_\_, effective \_\_\_\_\_.)

**DRAFT ADVERTISING REGULATION**

**86-3-30. Advertising.** For purposes of determining whether the supervising broker's business name or trade name is prominently and conspicuously displayed or announced in a readable and identifiable manner regardless of the type of media used, the Commission shall consider the terms being used including the style, size, contrast and color of the type or font used and the location or audibility of the supervising broker's trade name or business name as it is appears or is represented in the advertisement. (Authorized by K.S.A. 74-4202(b); implementing K.S.A. 58-\_\_\_\_\_, effective \_\_\_\_\_.)

**HOUSE BILL No. 2746**

By Committee on Commerce and Labor

2-4

9 AN ACT concerning real estate brokers and salespersons; relating to li-  
10 censure, prohibited acts, advertising and definitions; amending K.S.A.  
11 58-3067, 58-3068 and 74-4202 and K.S.A. 2007 Supp. 58-3035, 58-  
12 3043, 58-3047, 58-3050 and 58-3062 and repealing the existing  
13 sections.  
14

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

16 Section 1. K.S.A. 2007 Supp. 58-3035 is hereby amended to read as  
17 follows: 58-3035. As used in this act, unless the context otherwise  
18 requires:

19 (a) "Act" means the real estate brokers' and salespersons' license act.

20 (b) "Advance listing fee" means any fee charged for services related  
21 to promoting the sale or lease of real estate and paid in advance of the  
22 rendering of such services, including any fees charged for listing, adver-  
23 tising or offering for sale or lease any real estate, but excluding any fees  
24 paid solely for advertisement or for listing in a publication issued for the  
25 sole purpose of promoting the sale or lease of real estate wherein inquiries  
26 are directed to the owner of the real estate or to real estate brokers and  
27 not to unlicensed persons who publish the listing.

28 (c) "Associate broker" means an individual who has a broker's license  
29 and who is employed by another broker or is associated with another  
30 broker as an independent contractor and participates in any activity de-  
31 scribed in subsection (f).

32 (d) "Branch broker" means an individual who has a broker's license  
33 and who has been designated to supervise a branch office and the activ-  
34 ities of salespersons and associate brokers assigned to the branch office.

35 (e) "Branch office" means a place of business other than the principal  
36 place of business of a broker.

37 (f) "Broker" means an individual, other than a salesperson, who ad-  
38 vertises or represents that such individual engages in the business of buy-  
39 ing, selling, exchanging or leasing real estate or who, for compensation,  
40 engages in any of the following activities as an employee of, or on behalf  
41 of, the owner, purchaser, lessor or lessee of real estate:

42 (1) Sells, exchanges, purchases or leases real estate.

43 (2) Offers to sell, exchange, purchase or lease real estate.



1 kers do not apply to earnest money deposited with the escrow agent  
2 named in the purchase agreement.

3 (e) A branch broker shall not be employed by or associated with more  
4 than one supervising broker at any one time unless each supervising bro-  
5 ker who employs or associates with the branch broker consents to such  
6 multiple employment or association. Such consent shall be on a form  
7 provided by the commission and shall not be effective until a signed copy  
8 of the completed form has been filed with the commission.

9 (f) Nothing in this section shall be construed to grant any person a  
10 private right of action for damages or to eliminate any right of action  
11 pursuant to other statutes or common law.

12 New Sec. 6. (a) No licensee, ~~whether acting as an agent, transaction~~  
13 ~~broker or a principal,~~ shall use any promotion or advertisement in any  
14 type of media that:

15 (1) Is misleading or inaccurate as to any material fact or that in any  
16 way misrepresents any property, terms, values, policies or services of the  
17 business conducted;

18 (2) includes the trade name, trademark, collective membership mark,  
19 service mark or logo of any organization owning such name, mark or logo  
20 without being authorized to do so;

21 (3) includes a location where real estate activity is conducted that is  
22 not registered as a primary office or branch office with the commission;  
23 or

24 (4) promotes the licensee's business in a manner that could confuse  
25 or mislead the public by using terms or a trade name or a business name  
26 that could be construed as the trade name or business name of a super-  
27 vising broker.

28 (b) Except as specified by subsection (c), all advertising conducted  
29 by a licensee shall:

30 (A) Be conducted under the direct supervision of the supervising bro-  
31 ker or branch broker;

32 (B) include the name of the supervising broker's trade name or busi-  
33 ness name by prominently and conspicuously displaying or announcing  
34 the supervising broker's trade name or business name in a readable and  
35 identifiable manner; and

36 (C) include any other information that the supervising broker or  
37 branch broker considers necessary.

38 (c) The advertising of property for sale, lease or exchange shall not  
39 be required to include the supervising broker's trade name or business  
40 name if the property is not listed with a broker and if either of the fol-  
41 lowing conditions is met:

42 (1) The property is personally owned by a licensee; or

43 (2) a licensee has an interest in the property.

10-3

1 (d) If authorized by the supervising broker or the branch broker, an  
2 employed or associated salesperson or associate broker may include in  
3 the advertisement:

4 (1) The contact information for the employed or associated salesper-  
5 son or associate broker;

6 (2) a name or team name which cannot be construed as a supervising  
7 broker's trade name or business name;

8 (3) a slogan which does not include terms that are confusing to the  
9 public or which can not be construed as a supervising broker's trade name  
10 or business name; and

11 (4) a domain name or website which does not include terms that are  
12 confusing to the public or which can be construed as a supervising bro-  
13 ker's trade name or business name.

not

14 (e) Unless property personally owned by a licensee or in which a  
15 licensee has an interest is listed with a supervising broker or branch bro-  
16 ker, all advertising caused by the licensee regarding the property shall be  
17 done in a manner that clearly informs the public that a real estate broker,

licensee

18 ~~associate broker or salesperson~~ is the owner of or has an interest in the  
19 property advertised.

purchase

20 (f) If a licensee does not have a buyer's agency agreement and is  
21 soliciting property for ~~purchasing~~ for the benefit of the licensee or an  
22 entity in which the licensee has an interest, all advertising by the licensee  
23 that contains a solicitation to purchase property from potential sellers shall  
24 clearly inform the public that a real estate ~~broker, associate broker or~~  
25 ~~salesperson~~ is involved in the solicitation of potential sellers of property.

licensee

26 (g) Each supervising broker who enters into an agreement that au-  
27 thORIZES the supervising broker to utilize the name or trade name of any  
28 person or entity in the conduct of the supervising broker's real estate  
29 business shall file a copy of the agreement with the commission.

30 (h) This section shall be part of and supplemental to the real estate  
31 brokers' and salespersons' license act.

32 Sec. 7. K.S.A. 58-3067 is hereby amended to read as follows: 58-  
33 3067. *Payments Except as provided in subsection (d) of K.S.A. 58-3068,*  
34 *and amendments thereto, payments* from the real estate recovery revol-  
35 ving fund under the provisions of this act shall be subject to the following  
36 conditions and limitations:

37 (a) Payments shall be made only pursuant to an order of a court of  
38 competent jurisdiction, as provided in K.S.A. 58-3071 and amendments  
39 thereto, and in the manner prescribed by this act.

40 (b) Payments for claims arising out of the same transaction shall be  
41 limited in the aggregate to \$15,000, irrespective of the number of claim-  
42 ants or parcels of real estate involved in the transaction.

43 (c) Payments for claims based upon judgments against any one li-

10-4

1 censed broker or salesperson shall not exceed in the aggregate \$30,000  
2 within any calendar year, but in no event shall payments for claims based  
3 upon judgments against any one licensed broker or salesperson exceed in  
4 the aggregate \$50,000.

5 (d) If, at any time, the moneys in the real estate recovery revolving  
6 fund are insufficient to satisfy any valid claim, or portion thereof, the  
7 director of the commission shall satisfy such unpaid claim or portion  
8 thereof, as soon as a sufficient amount of money has been credited to the  
9 fund as provided in subsection (b) of K.S.A. 58-3066 and amendments  
10 thereto. If there is more than one such claim outstanding, such claims  
11 shall be paid in the order that they were made. Any such unsatisfied claim,  
12 or portion thereof, shall accrue interest at the rate of 4% per annum.

13 Sec. 8. K.S.A. 58-3068 is hereby amended to read as follows: 58-  
14 3068. (a) ~~Moneys Except as provided in subsection (d),~~ moneys in the real  
15 estate recovery revolving fund shall be used in the manner provided by  
16 this act to reimburse persons who suffer monetary damages by reason of  
17 any of the following acts committed in connection with any transaction  
18 involving the sale of real estate in this state by any broker or salesperson  
19 who was licensed under the laws of this state at the time the act was  
20 committed or by any unlicensed employee of such broker or salesperson:

21 (1) Violation of any of the following provisions of this act:

22 (A) K.S.A. 58-3061 and amendments thereto; or

or (26)

23 (B) subsection (a)(2), (3), (14), (19), ~~or~~ (20), or subsection (b)(2) of  
24 K.S.A. 58-3062 and amendments thereto; or

25 (2) violation of any provision of the brokerage relationships in real  
26 estate transactions act; or

27 (3) obtaining money or property by any act which would constitute  
28 any crime defined by K.S.A. 21-3701, 21-3704, 21-3705, ~~21-3706~~, 21-  
29 3707, 21-3710, 21-3711 or 21-3712, and amendments thereto.

30 (b) Any person may seek recovery from the real estate recovery re-  
31 volving fund under the following conditions:

32 (1) Such person has received final judgment in a court of competent  
33 jurisdiction of this state in any action wherein the cause of action was  
34 based on any of the acts described in subsection (a);

35 (2) the claim is made within two years after the date that final judg-  
36 ment is entered;

37 (3) such person has caused to be issued a writ of execution upon such  
38 judgment, and the officer executing the same has made a return showing  
39 that no personal or real property of the judgment debtor liable to be  
40 levied upon in satisfaction of the judgment could be found, or that the  
41 amount realized on the sale of the judgment debtor's property pursuant  
42 to such execution was insufficient to satisfy the judgment;

43 (4) such person has made all reasonable searches and inquiries to

1 ascertain whether the judgment debtor is possessed of real or personal  
2 property or other assets, subject to being sold or applied in satisfaction  
3 of the judgment, and by such search such person has discovered no such  
4 property or assets, or that such person has discovered such property and  
5 assets and that such person has taken all necessary action and proceedings  
6 for the application thereof to the judgment and that the amount thereby  
7 realized was insufficient to satisfy the judgment;

8 (5) any amounts recovered by such person from the judgment debtor,  
9 or from any other source, has been applied to the damages awarded by  
10 the court; and

11 (6) such person is not a person who is precluded by subsection (c)  
12 from making a claim for recovery.

13 (c) A person shall not be qualified to make a claim for recovery from  
14 the real estate recovery revolving fund, if:

15 (1) The person is the spouse of the judgment debtor or a personal  
16 representative of such spouse;

17 (2) the person acted as principal or agent in the real estate transaction  
18 which is the subject of the claim and is a licensed broker or salesperson  
19 or is a partnership, association, limited liability company or corporation  
20 whose partners, members, officers and employees are licensed as pro-  
21 vided by subsection (b) of K.S.A. 58-3042 and amendments thereto; or

22 (3) such person's claim is based upon a real estate transaction in  
23 which the licensed broker or salesperson was acting on the broker's or  
24 salesperson's own behalf with respect to property owned or controlled by  
25 such broker or salesperson.

26 (d) *At any time that the balance remaining in the real estate recovery*  
27 *revolving fund is greater than \$250,000, any amount over \$250,000 may*  
28 *be used by the commission for the following purposes:*

29 (1) *Production and distribution of an agency newsletter;*

30 (2) *monitoring education courses;*

31 (3) *expansion of materials available for consumers; and*

32 (4) *education grants to high schools and universities for course ma-*  
33 *terials on money management and home ownership.*

34 Sec. 9. K.S.A. 74-4202 is hereby amended to read as follows: 74-  
35 4202. (a) Within 30 days after the appointment of the members to be  
36 regularly appointed within any year, the commission shall meet in the city  
37 of Topeka for the purpose of organizing by selecting from its membership  
38 a chairperson and such other officers as the commission may deem nec-  
39 essary and appropriate. A majority of the members of the commission  
40 shall constitute a quorum for the exercise of the powers or authority  
41 conferred upon it.

42 (b) The commission shall receive applications for, and issue licenses  
43 to, brokers and salespersons, as provided in ~~this~~ *the real estate brokers'*



To: House Commerce and Labor Committee

From: Luke Bell, KAR Director of Governmental Relations

Date: February 19, 2008

Subject: **HB 2746** – Enacting Numerous Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License 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 2746**. KAR has faithfully represented the interests of the 10,000 real estate professionals and over 670,000 homeowners in the State of Kansas for over 85 years.

**HB 2746** would make several technical and substantive changes to the real estate license act. KAR would like to thank the Kansas Real Estate Commission for the opportunity to work with the Commission over the course of the last year on this legislation. As a direct result of this collaborative process, we believe that **HB 2746** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

However, we do have concerns with one remaining provision in the legislation. In Line 30 on Page 11 of the legislation, the Commission has proposed to add the words "attempt to represent" into the existing statute. This provision would subject real estate licensees for liability for "attempting" to engage in acts that could constitute mortgage fraud.

While we definitely support the intent of punishing those individuals responsible for acts of mortgage fraud, we have major concerns about the potential broad application of these new terms in the statute. The Commission's intent in adding this language into the statute was to punish real estate licensees who knowingly participated in the drafting of false documents or a scheme of mortgage fraud.

However, we feel that simply adding the terms "attempt to represent" into the statute could subject real estate licensees whose conduct was not culpable to discipline. We would respectfully request that the committee delete this language from the legislation to allow the Commission and our association to continue to discuss this issue and bring back consensus language during the 2009 Legislative Session.

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House Commerce & Labor  
Date: 2-19-08  
Attachment # 11