

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 11, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Melissa Doebelin, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Sherry Diel, Kansas Real Estate Appraisal Board
Luke Bell, Kansas Association of Realtors
Bruce Fitzsimons, Kansas Real Estate Appraisal Board
Richard E. Livingston, Livingston Appraisals, Inc.,
Larry Magill, Kansas Association of Insurance Agents
Vicky Johnson, Kansas Department of Transportation
Kathleen Taylor Olsen, Kansas Bankers Association

Others attending:

See attached list.

The Supreme Court of Kansas unanimously ruled that the so-called judicial trigger provision in the 2007 Funeral Privacy Act invalidated the entire act under the separation of powers doctrine, but divided 6-1 on whether the provision could be severed from the rest of the legislation. The Court filed today's decision as soon as it was ready, to allow more time for legislators to address the issue again if they choose to do so. (Attachment 1) The opinion No. 98,691, in its entirety, is located in the Kansas Legislative Research Department.

Bill Introduction:

Sandy Jacquot, League of Kansas Municipalities, requested a bill introduction allowing Cities; fee authorized for credit card use. (Attachment 2)

Senator Barnett moved that this request should be introduced as a committee bill. Senator Gilstrap seconded the motion. The motion carried.

HB 2746 - Amendments to real estate brokers' and salespersons' license act; advertising

Chairman Brungardt opened the hearing on **HB 2746**.

Staff provided an overview of the bill, which included the Real Estate Commission fee fund.

Sherry Diel, Executive Director, Kansas Real Estate Commission, appeared in favor of the bill. (Attachment 3) The bill would clarify legislation passed in 2007 regarding licensure of real estate salespersons and brokers and to address matters that have come to the attention of the Commission; an Attorney General Opinion concerning the Commission's ability to deny a renewal application of a licensee convicted of a felony is also addressed, and includes items compiled by the Commission's disciplinary committee which monitors disciplinary cases. A technical amendment on advertising regulation was included.

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, (KAR) spoke in favor of the bill. (Attachment 4) The bill would make several technical and substantive changes to the real estate license act. KAR supports the Commission's:

- proposed technical changes to clarify certain aspects of **2007 HB 2295**
- proposed technical change to ensure that the Commission has the authority to deny the renewal of a license in certain situations

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 11, 2008 in Room 526-S of the Capitol.

- proposal to increase fines for basic violations of the Real Estate License Law and the Brokerage Relationships in Real Estate Transactions Act (BRRETA)
- proposal to levy a \$5,000 maximum fine for certain extremely serious violations of the Real Estate License Law and BRRETA
- proposal to allow deduction of the actual costs of investigating the violation from the fine amount submitted to the State General Fund
- proposal to add new violations for unprofessional conduct to the Real Estate License Law
- proposal to enact new requirement on advertising by Real Estate Salespersons and Salesperson Team
- Proposal to provide funding for various consumer and licensee educational program from the Real Estate Recovery Fund

Chairman Brungardt closed the hearing on **HB 2746**.

HB 2772 - Real estate appraisers, full licensure

Chairman Brungardt opened the hearing on **HB 2772**.

Staff provided an overview of the bill.

Bruce Fitzsimons, Kansas Real Estate Appraisal Board,(KREAB) spoke in favor of the bill. (Attachment 5) The bill is directed at curbing and preventing mortgage fraud and addresses current weaknesses in appraiser regulations, addressing these concerns by prohibiting the use of appraisals performed by non-licensed appraisers for use in real estate related financial transactions.

Richard E. Livingston, Livingston Appraisals, Inc., appeared in support of the bill. (Attachment 6) The bill would level the field where the State Appraisal Board has jurisdiction over all appraisals and the power to regulate the profession in the state.

Tony Scott, The Kansas Society of Certified Public Accountants, spoke in favor of the bill and appeared neutral to preserve the exemption that was attached and passed in the House. (Attachment 7)

Sally Pritchett, Executive Director, Kansas Real Estate Appraisal Board, provided written testimony in favor of the bill. (Attachment 8)

Jack H. Shelton, Jr., Shelton and Associates, provided written testimony in favor of the bill. (Attachment 9)

Larry Magill, Kansas Association of Insurance Agents, appeared in opposition to the bill with an amendment. (Attachment 10) The concern with the bill is that insurance agents may inadvertently be included in the appraiser licensing requirement when they are performing normal duties, involved in helping an insured determine the replacement cost of their home for insurance purposes. Under the provisions of the bill it could be argued that insuring a home is a "real estate related financial transaction" A balloon was provided that adds new language to page 4, new section (i).

Vicky Johnson, Chief Counsel, Kansas Department of Transportation,(KDOT) appeared neutral on the bill with an amendment. (Attachment 11) The bill if passed in its current form, would require that appraisals done for eminent domain actions and the purchase of right of way be performed by a state certified appraiser or under the direct supervision of a state certified consultant. KDOT requests an amendment which would exempt employees of a governmental entity who are performing appraisals for the purchase or disposition of real estate by a governmental entity from the requirement that an appraiser be state certified or licensed. The majority of (85%) KDOT appraisals total less than \$25,000; most are for farm/agricultural land purchased for the purpose of constructing/maintaining the state's transportation system and the majority of tracts are purchased without the need for any eminent domain action. A balloon was provided that adds new language to page 4, new section (i).

Kathleen Taylor Olsen, Kansas Bankers Association, (KBA) appeared neutral on the bill. (Attachment 12) The KBA requested an exemption in subsection (e)(1) 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.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on March 11, 2008 in Room 526-S of the Capitol.

The KBA is not objecting to the language found in subsection (e) (2; 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. Should this occur in the future, there are means by which state-chartered banks can seek parity and we would reserve the right to do so at that time. Attached to the testimony is "Evaluation" rules for State banks and Interagency Appraisal and Evaluation Guidelines for Federal banks.

Chairman Brungardt closed the hearing on **HB 2772**.

The meeting was adjourned at 11:50 am. The next scheduled meeting is March 12, 2008.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 3-11-08

NAME	REPRESENTING
Bruce Fitzsimons	KS Real Estate Appraisal Board
Sandy Jaquet	LKM
Wesley Johnson	KDOT
Sean Miller	CAPITOL STRATEGIES
Kathy Olsen	KBA
LARRY O'NEILL	KAIA
Tony A. Scott	KSCPA
DONALD J. GASSMAN	KS REAL ESTATE APPRAISERS ASSOCIATION
Richard Livingston	KS APPRAISER
Sherry CDiet	KS Real Estate Comm
Luke Bell	KS Assoc. of REALTORS
Shelly Crane	Realtor
Dana Miller	DK Leadership
Beryl Billingsley	DK Youth Leadership
Sarah Demadura	DK Youth Leadership
Dale Fritchett	KREAB
Joe Humerickhouse	Representative
Mike Reacht	Charles Braden



State of Kansas
Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507
March 11, 2008

(785) 296-2256

To: Statehouse Media
FROM: Ron Keefover
RE: Docket No. 98,691: *State of Kansas ex rel. Paul J. Morrison, Attorney General, v. Hon. Kathleen Sebelius, Governor*

The Supreme Court today unanimously ruled that the so-called judicial trigger provision in the 2007 Funeral Privacy Act invalidated the entire act under the separation of powers doctrine, but divided 6-1 on whether the provision could be severed from the rest of the legislation.

The Court filed today's decision as soon as it was ready, instead of waiting until the next scheduled decision filing date of March 28th to allow more time for legislators to address the issue again if they choose to do so.

The provision directed that the 2007 Act, which repealed earlier legislation setting time and place restrictions on protests at funerals, would become effective only after a state or federal court found the law constitutional. The legislation directed the attorney general to file suit to determine its constitutionality.

The Court said that the judicial trigger provision violated the separation of powers doctrine in two ways. "First, a lawsuit filed pursuant to the provision would not present an actual case or controversy. It would seek an advisory opinion, and a court would not have the judicial power to grant the remedy," Justice Marla J. Luckert wrote for the Court.

"Second, the provision purports to make the Kansas Supreme Court an advisor to the legislature on whether inoperative funeral protest provisions are facially constitutional and should be allowed to become operative. A court issuing such an opinion would usurp the

Sen Fed & State

Attachment 1
3-11-08

legislature's duty to make a preliminary judgment on the constitutionality of inoperative legislative provisions," Justice Luckert wrote.

Regarding whether naming the governor as a defendant in the suit because that office has the ultimate authority to enforce the funeral picketing restrictions created a valid legal controversy, the Court determined that there would be "only a possibility of an enforcement duty arising at some unspecified future time."

"Currently and during a judicial trigger lawsuit, the question of her duty has and would have no more reality than a law school exam question," Justice Luckert wrote. "Even in the broadest reading of our mandamus cases, courts do not have jurisdiction over purely hypothetical questions associated with nonexistent duties."

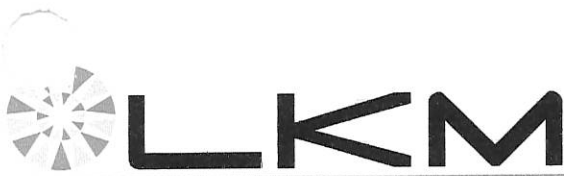
The majority held that to sever the provision from the rest of the Act would constitute an improper delegation of legislative duties to the judiciary. "Even though we have determined the judicial trigger provision is unconstitutional, we cannot ignore its clear statement of legislative direction that the provisions would become operative if and when this court or a federal court determined the provisions were constitutional.

"Activation [of the 2007 legislation] under other circumstances would violate the express statement of the legislature, broaden the scope of the Act in a manner not authorized by the legislature, and violate the separation of powers doctrine," Justice Luckert wrote.

"Under either circumstance, this court cannot make the funeral protest provisions operative. If the power to decide when a statute is to become operative cannot be delegated, the issue must return to the legislature," the majority concluded.

However, Justice Lee A. Johnson, in a separate concurring and dissenting opinion, said he believes the judicial trigger provision could be stricken from the law without invalidating its remaining provisions.

Justice Johnson said he agrees that the judicial trigger in the legislation is unconstitutional, but he would sever it from the rest of the act. Given the stand-alone character of the remaining provisions of the Act, the expressed legislative intent is for the invalidated subsection to be severed, rather than for the entire Act to be invalidated. I would take the legislature at its word and sever the judicial trigger provision," he wrote.



League of Kansas Municipalities

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Bill Request

Background: K.S.A. 16a-2-403 prohibits the imposition of a surcharge when an individual uses a credit card for payment. However, the State of Kansas has authorized the State government and county governments to pass on a surcharge when someone wants to use a credit card for purposes of paying taxes and other fees to the State or counties in K.S.A. 79-2973. In addition, state agencies, community colleges and other entities are authorized to collect a credit card surcharge pursuant to K.S.A. 75-30,100 and local boards of education can do so pursuant to K.S.A. 72-8245.

Cities are requesting the same consideration so that they may collect taxes, utility fees, and other exactions via a credit card payment. Allowing the city to pass on the surcharge means that the other taxpayers that choose not to use a credit or debit card will not have to absorb the cost of this service.

For these reasons, the League of Kansas Municipalities respectfully requests the introduction of a bill as follows:

Proposed Language: Notwithstanding the provisions of K.S.A. 16a-2-403, cities may accept credit cards in payment of taxes, utility fees, or other exactions. The type of credit cards accepted shall be at the discretion of the city. The city may set a fee to be added to each credit card transaction equal to the charge paid by the city for the use of the credit card by the taxpayer.

HOUSE BILL No. 2803

By Committee on Elections and Governmental Organization

2-11

9 AN ACT concerning cities; relating to the use of credit cards by persons
10 to pay certain taxes, fees and exactions.

11

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

13 Section 1. Notwithstanding the provisions of K.S.A. 16a-2-403, and
14 amendments thereto, any city may accept credit cards for the payment
15 of taxes, utility fees or other exactions. Any city may establish the type of
16 credit card the city will accept and may set a fee to be added to each
17 credit card transaction equal to the charge paid by the city for the use of
18 the credit card by the person.

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

KANSAS

KANSAS REAL ESTATE COMMISSION
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Chairperson Brungardt and Members of the Senate Federal & State Affairs Committee
From: Sherry C. Diel, Executive Director, Kansas Real Estate Commission
RE: HB 2746—Real estate licensure and regulation
Date: March 11, 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 address matters that have come to the attention of the Commission during the past year. The legislation addresses an issue that was raised in a formal Attorney General Opinion concerning the Commission's ability to deny a renewal application of a licensee convicted of a felony. The legislation also includes items compiled by the Commission's disciplinary committee which, as part of its duties, monitors disciplinary cases during the year to determine whether the current statutes are adequate to authorize the Commission to address issues that come before it. A couple of the proposed amendments were taken from HB 2344 and HB 2345 that did not move out of the House 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.

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 23-27**—Amends K.S.A. 58-3035 to add definitions for “exchange” and “interest.”
- **p. 3, lines 25-39**—Amends K.S.A. 58-3043 to specify factors for granting or renewing a license that the Commission considers “unprofessional conduct”. The introduced version of HB 2746 listed unprofessional conduct as a “prohibited act” which would be defined by rule and regulation. The House Committee requested that the Commission specify each item by statute rather than defining the conduct by rules and regulations. The amendments are in Section 2 (K.S.A. 58-3043) dealing with applicants and in Section 5 (K.S.A. 58-3062) dealing with “prohibited acts” for licensees.
- **p. 4, line 4 through p. 5, line 22**—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. An Attorney General's Opinion issued January 11, 2008 created questions whether the Commission could deny a renewal application of a licensee convicted of a felony after 2007 HB 2295 became effective. The Attorney

General Opinion is attached. For purposes of this discussion, the relevant portion is on pp. 5-6.

- **p. 6, lines 21-23, and p. 7, line 28 through p. 8, line 14**—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 20-24, p. 9, lines 12-40, and p. 10, lines 36-43**—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 license. 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. 12, lines 33-36, p. 15, lines 2-8, and p. 16, line 33 through p. 17, line 10**—Amends K.S.A. 58-3062 to add the items in statute that the Commission originally proposed be generally prohibited as “unprofessional conduct” as an amendment to K.S.A. 58-3062(a)(1) and be specifically defined by rules and regulations. The House Committee requested that the Commission’s proposed regulation be included in the statute. The Commission’s request to add a prohibited act for attempted mortgage fraud (subsection (a)(15)) was deleted by the House Committee at the request of the trade association until more specific language could be crafted. The prohibited acts that would be added to address “unprofessional conduct” include:
 - p. 12 (subsection (a)(20))**—would require licensees to timely provide information or documentation requested by the Commission.

p. 15 (subsection (b)(6))—would require salespersons and associate brokers to turn in documents to the supervising broker within 10 days that are required to be maintained in the supervising broker’s transaction file.

p. 16-17 (amends subsection (e))—prohibits licensees from physically abusing or harassing clients, customers, or other licensees; from threatening to file a residential lien on a property; from conducting real estate business with impaired judgment or objectivity as a result of mental illness or addiction to alcohol or drugs; from being found to have violated a federal or state law regulating the real estate or a closely related industry whose licensees or members are regularly involved in a real estate transaction; from being found to have violated federal or state discrimination laws; or from intentionally misappropriating or misusing personal or residential property of a client or customer.

- **p. 17, line 20 through p. 18, line 40**—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 regulation that the Commission has drafted to define “prominently and conspicuously displaying” the supervising broker’s business name or trade name.
- **p. 18, line 41 through p. 19, line 2, p. 19, lines 22-29 and lines 32-34, and p. 20, lines 36-43**—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. The amendment also add a subsection that was inadvertently omitted from the bill to ensure that forgery (K.S.A. 58-3062(a)(25)) 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. 21, lines 9-21**—Amends K.S.A. 74-4202 to clarify that the Real Estate Brokers’ and Salespersons’ License Act is “the act” that is referenced 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 amendments to K.S.A. 58-3062 adding prohibited acts for the different types of “unprofessional conduct” 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.

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

RECEIVED

JAN 14 2008

KS REAL ESTATE COMMISSION



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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January 11, 2007

The Honorable Steven R. Brunk
State Representative, 85th District
4430 Janesville
Bel Aire, Kansas 67220

Re: Personal and Real Property--Real Estate Brokers and Salespersons--Granting or
Renewal of License; Felony Convictions.

Dear Representative Brunk:

As State Representative for the 85th District you ask a number of questions pertaining to the effect of L. 2007, ch. 88¹ (the 2007 Act) that amended a number of statutes in the Real Estate Brokers and Salespersons Act, K.S.A. 58-3035 *et seq.*

One of the primary purposes of the 2007 Act was to mandatorily preclude² persons with certain criminal convictions from licensure as a real estate broker or salesperson for established periods of time.³ Thus, persons convicted of crimes requiring registration in the Kansas offender registration act, or comparable crimes in another jurisdiction, are not eligible for licensure consideration until 15 years after discharge from post-release supervision;⁴ and persons convicted of any other type of felony are not eligible for licensure consideration until 5 years after discharge from post-release supervision.⁵

We will address your questions in the order you presented them.

"1. Does the [2007] Act in any way affect, change, or limit the provisions of K.S.A. 58-3041, dealing with restricted licenses?"

¹Formerly 2007 Senate substitute for House Bill No. 2295.

²Prior to enactment of the 2007 Act, the Commission had discretionary authority whether to grant a license even if an applicant had been convicted of certain crimes. K.S.A. 58-3043 ("In determining whether to grant or renew a license the commission shall *consider* . . .").

³K.S.A. 58-3043, as amended by L. 2007, Ch. 88, § 2.

⁴K.S.A. 58-3043, as amended by L. 2007, Ch. 88, § 2, (d)(1)(A) and (2)(A).

⁵K.S.A. 58-3043, as amended by L. 2007, Ch. 88, § 2, (d)(1)(B) and (2)(B).

The applicable portion of that statute provides:

"The commission *may* at any time issue a restricted license to a person: . . . who is applying for an original license under this act and has met the examination and experience requirements but has been found by the commission after a hearing, held in accordance with the provisions of the Kansas administrative procedure act, to have failed to make a satisfactory showing that such person meets all other applicable *requirements*; . . ." ⁶

Absence of a conviction specified in the 2007 Act is not a licensure *requirement*, but rather any such conviction results in a mandatory *disqualification* even though other licensure requirements may have been met by an applicant. Evaluating the effect of the 2007 Act on the restricted license statute⁷ is rather like comparing apples (*i.e.*, mandatory disqualifiers) to oranges (*i.e.*, eligibility requirements,). Thus, in our opinion, the 2007 Act does not affect, change or limit K.S.A. 58-3041(a)(2) because the 2007 Act specifies mandatory licensure disqualifiers, while K.S.A. 58-3041(a)(2) addresses eligibility requirements. A restricted license remains an available option to the Commission if an applicant does not have a disqualifying conviction.

Additionally, the restricted license option is permission ("commission may"), while the Act is mandatory ("commission shall refuse") if an applicant has been convicted of a specified disqualifying crime.

"2. Does K.S.A. 58-3041 continue to have validity and provide the Kansas Real Estate Commission the authority to issue a restricted license to a person who would not otherwise qualify for a license, including under amended K.S.A. 58-3043(d)?"

K.S.A. 58-3041 continues to have validity and allows the Commission to issue a restricted license to a person who meets the eligibility requirements of examination and experience but does not meet other eligibility requirements. However, based on the above analysis, K.S.A. 58-3043(d) does not establish eligibility requirements, but rather establishes disqualification criteria even when eligibility requirements are met. Thus, the Commission may not issue a restricted license to an applicant who has been convicted of the specified crimes prior to passage of the applicable time frame established by the Act for licensure consideration.

"3. Under the portion of the [2007] Act enacted as new K.S.A. 58-3043, does the Kansas Real Estate Commission have authority under [subsection] (e)(1) to grant a license to an applicant who presents satisfactory proof to the Commission that the applicant now has

⁶K.S.A. 58-3041(a)(2) (emphasis added).

⁷K.S.A. 58-3041(a)(2).

a good reputation for honesty, trustworthiness, integrity, and confidence to transact the business of real estate, in such a manner as to safeguard the interest of the public?"

Subsection (e)(1) of K.S.A. 58-3043 provides:

"The commission may grant a license to an applicant who has entered a plea of guilty or nolo contendere to, or has been convicted of any crime listed in paragraph (1) of subsection (d) if the applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such a manner as to safeguard the interest of the public. . . ."

If subsection (e)(1) were standing alone, the answer to your question would be "yes." However, subsection (e)(1) is an integral part of the new provisions of K.S.A. 58-3043, and is clearly triggered only in relation to new subsection (d)(2):

"The commission may issue a license *pursuant to subsection (e)* if the applicant's application is received at least:

"(A) Fifteen years after the date of the applicant's discharge from post-release supervision resulting from any conviction of any offense specified in clause (A) of paragraph (1);⁸ or

"(B) five years after the date of the applicant's discharge from post-release supervision resulting from any conviction of any offense specified in clause (B) of paragraph (1),⁹ whichever is applicable."¹⁰

Thus in response to your question, the commission's discretionary authority to issue a license under subsection (e)(1) becomes applicable only after the time limits specified in subsection (d)(2) have elapsed following conviction of specified crimes.

"4. Under the portion of the Act enacted as new K.S.A. 58-3043, is the authority of the Kansas Real Estate Commission under [subsection] (e)(1)¹¹ and listing of factors to be

⁸Kansas offender registration eligible or comparable convictions.

⁹Other felonies.

¹⁰K.S.A. 58-3043, as amended by L. 2007, ch. 88, § 2(d)(2).

¹¹*i.e.*, good reputation for honesty, trustworthiness, integrity and competence to transact the business of real estate in such as manner as to safeguard the interests of the public.

considered under [subsection] (e)(2),¹² as well as the factors in [subsection] (a),¹³ limited to only those situations as may arise under new K.S.A. 58-3043(d)(2)?

The answer to your question is "no." The Commission is authorized to consider subsection (e)(1)'s reputation criteria and subsection (e)(2)'s additional factors once the applicable time limits specified in subsection (d)(2) have elapsed following conviction of specified crimes. However, in determining whether to grant a license to an applicant who had *not* been convicted of the crimes specified in subsection (d), the Commission is still required to consider the factors specified in subsection (a) of K.S.A. 58-3043,¹⁴ *i.e.*, "any conduct of the applicant which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate."

"5. Does the language of the [2007] Act apply to felonies to which an applicant pled to, or was convicted of, *prior to* July 1, 2007, thus restricting applicants who were convicted of a felony prior to July 1, 2007?"¹⁵

The 2007 Act became effective upon publication in the statute book, *i.e.*, July 1, 2007, and thus applies to persons who made or will make application for a real estate broker or salesperson license on or after July 1, 2007. Such applicant would fall within the license preclusion provisions of the 2007 Act if such applicant had been convicted of a specified criminal conviction prior to July 1, 2007.

"6. Does the language of the 2007 Act apply only to felonies to which an applicant pled to, or was convicted of, *on or after* July 1, 2007, thus only restricting applicants who were convicted of a felony on or after July 1, 2007?"

Again, the 2007 Act became effective upon publication in the statute book, *i.e.*, July 1, 2007, and thus applies to persons who made or will make application for a real estate broker or salesperson license on or after July 1, 2007. Such applicant would fall within the license preclusion provisions of the 2007 Act if such applicant had been convicted of a specified criminal conviction on or after July 1, 2007.

"7. Given the staggered renewal schedule used by the Kansas Real Estate Commission (see [. . .], K.A.R. 86-1-3), and the effective date of the [2007] Act, can any licensee who renews a license in accordance with the renewal schedule after July 1, 2007, who

¹²*i.e.*, extent and nature of past criminal activity; age at time of commission of crime; time elapsed since last criminal activity; conduct and work activity prior to and following criminal activity; rehabilitation; and other evidence of present fitness.

¹³*i.e.*, any revocation or suspension of prior real estate license; violation of real estate act or regulations; conviction of any misdemeanor which reflects on honesty, trustworthiness, integrity or competence to transact real estate business.

¹⁴As amended by L. 2007, Ch. 88, § 2.

¹⁵Emphasis added.

discloses in the license application a felony charge or conviction occurring *before* July 1, 2007, qualify under the 2007 Act for continuation of the license?"¹⁶

Based on the Attorney General's policy regarding the issuance of opinions, we are not responding to this question because this issue has been raised in an administrative matter that is either currently pending before the Commission and/or the time for appeal of this issue has not expired.

"8. Given the staggered renewal schedule used by the Kansas Real Estate Commission (see [. . .], K.A.R. 86-1-3), and the effective date of the 2007 Act, can any licensee who renews a license in accordance with the renewal schedule after July 1, 2007, who discloses in the license application¹⁷ a felony charge or conviction occurring *after* July 1, 2007, qualify under the 2007 Act for continuation of the license?"¹⁸

The response to this question requires us to evaluate two statutes that address renewal of a license. The first, K.S.A. 58-3043(a), states:

"In determining whether to grant *or renew* a license, the commission shall consider: . . ."

That statute goes on to list five bases by which the commission may exercise its discretion in deciding whether or not to renew a license, none of which implicate subsection (d) of K.S.A. 58-3043, the specified crimes previously discussed.¹⁹

The second is K.S.A. 58-3050, as amended by L. 2007, ch. 88, § 3. Subsection (a) of that statute states:

"Except as provided by subsection (b) and (c), the commission *may* refuse to grant *or renew* a license. . . ."²⁰

Subsection (a) of that statute then lists six bases by which the commission may exercise its discretion in deciding whether or not to renew a license, also none of which implicate

¹⁶Emphasis added.

¹⁷We assume from the context of the question that you are referring to a license *renewal* application, as opposed to an initial license application.

¹⁸Emphasis added.

¹⁹In determining whether to renew a license, K.S.A. 58-3043(a), as amended by L. 2007, Ch. 88, § 2(a), however, does allow the Commission to consider conviction of "any misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate."

²⁰Emphasis added.

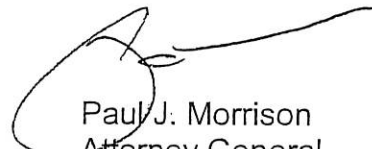
subsection (d) of K.S.A. 58-3043, the specified crimes previously discussed.²¹ However, subsection (b) then states:

"Except as provided in subsection (c), the commission *shall* suspend or revoke the license of any licensee who has entered a plea of guilty or nolo contendere to, or has been convicted of any felony."

Thus, while the Commission is not authorized to refuse to renew a license due to conviction of a felony, somewhat confusingly the Commission is required to suspend or revoke such person's license. The Commission may do so immediately using emergency adjudicative proceedings.²² This somewhat convoluted result appears necessitated due to a legislative oversight in not granting authority to refuse to renew a license in subsection (b) when authority to suspend or revoke a license was granted.

However, if a renewal applicant who had been convicted of any felony and had disclosed such felony conviction in "such person's application for any license or renewal thereof on or before July 1, 2007, prior to the commission's action on such application,"²³ the renewal would be granted and an emergency action to revoke or suspend the license would not be available to the Commission.

Sincerely,



Paul J. Morrison
Attorney General

PJM:CN:jm

cc: Sherry Diel, Executive Director, Kansas Real Estate Commission
Lucas Bell, Director, Governmental Relations, Kansas Association of Realtors

²¹K.S.A. 58-3050(a), as amended by L. 2007, Ch. 88, § 3(a) also authorizes the Commission to refuse to renew a license if a renewal applicant has been convicted of "any misdemeanor which reflects on the applicant's honesty, trustworthiness, integrity or competence to transact the business of real estate."

²²K.S.A. 58-3050(j), as amended by L. 2007, Ch. 88, § 3(j).

²³K.S.A. 58-3050, as amended by L. 2007, Ch. 88, § 3(b).

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 _____.)



To: Senate Federal and State Affairs Committee

From: Luke Bell, KAR Director of Governmental Relations

Date: March 11, 2008

Subject: **HB 2746** – Enacting Numerous Technical and Substantive Changes to the Kansas Real Estate Brokers' and Salespersons' License Act

Chairman Brungardt and members of the Senate Federal and State Affairs 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 (hereinafter "the 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 and open process, we believe that **HB 2746** would be a major step forward in protecting consumers and ensuring the professional responsibility of real estate licensees.

KAR Supports the Commission's Proposed Technical Changes to Clarify Certain Aspects of 2007 HB 2295 Overwhelmingly Passed by the Kansas Legislature During the Last Session

In the 2007 Legislative Session, the Kansas Legislature overwhelmingly passed legislation (2007 HB 2295) to require criminal background checks for all new real estate license applicants and place limitations on the licensure of individuals with a history of felony convictions. As with any major piece of legislation, the implementation of this legislation has identified several technical changes that need to be made to the statute in order to ensure that the new language is enforceable and consistent with existing laws and practices.

In Section 2, subsections (b) through (f) on pages 4 and 5 of this legislation, the Commission has proposed various technical changes to the statute that would tighten and clarify the new language enacted in 2007 HB 2295. These technical changes will ensure that the Commission does not have any difficulty in enforcing the new requirements enacted by the Kansas Legislature in 2007 HB 2295.

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Sen Fed & State

Attachment 4
3-11-08

KAR Supports the Commission's Proposed Technical Change to Ensure That the Commission Has the Authority to Deny the Renewal of a License in Certain Situations

In addition, a recent Attorney General's Opinion examining various questions related to **2007 HB 2295** concluded that the Commission did not have the authority to deny the renewal of a license if the real estate licensee had been convicted of a felony while licensed under the act. Even though we wholeheartedly disagree with this interpretation, we believe that clarifying language should be placed in the statute to ensure that the Commission has this authority.

In Section 2, subsection (f)(1) on Page 5 of this legislation, the Commission has proposed inserting the term "renew" into the statute to provide them with the authority under that subsection to either deny or approve the renewal of a license in situations where a real estate licensee has been convicted of a felony while licensed under the act. This will help ensure that the Commission has all the necessary authority to adequately enforce the provisions of **2007 HB 2295**.

KAR Supports the Commission's Proposal to Increase Fines for Basic Violations of the Real Estate License Law and the Brokerage Relationships in Real Estate Transactions Act (BRRETA)

Over the last few years, the Commission has seen a substantial increase in the number of alleged violations where the current maximum fine amount does not serve as an effective deterrent to wrongful and harmful conduct by real estate licensees. As professionals who seek to provide consumers with the highest level of service and professionalism, we are concerned that the Commission does not currently have all the necessary authority to deter this type of conduct.

In Section 4, subsection (d)(1) on Page 9 of this legislation, the Commission has proposed to increase the maximum fine amount for basic real estate license law and the Brokerage Relationships in Real Estate Transactions Act (hereinafter "BRRETA") violations from the current maximum fine amount of \$500 to \$1,000 per violation. This maximum fine amount has not been increased since the late 1980s and, as a result, is substantially lower than the fine authority of similarly-sized regulatory bodies in this state and real estate regulatory bodies in other states.

KAR Supports the Commission's Proposal to Levy a \$5,000 Maximum Fine for Certain Extremely Serious Violations of the Real Estate License Law and BRRETA

While KAR strongly believes the proposed maximum fine amount of \$1,000 represents an adequate punishment and deterrence for most basic violations of the real estate license law and BRRETA, there are certain extremely serious violations that deserve more serious consequences. As a professional trade association, we rely on the expertise and dedication of the Commission to help us eliminate unqualified and negligent individuals from our profession.

When these unqualified and negligent individuals commit acts that have the potential to permanently and irreparably harm consumers, it has the effect of reducing the professionalism and public trust of the entire real estate profession. In order to provide the Commission with more authority to discipline individuals in these rare cases, we support the Commission's proposal to levy a \$5,000 maximum fine for certain extremely serious real estate license law and BRRETA violations.

In Section 4, subsection (d)(2) on Page 9 of this legislation, the Commission has proposed to increase the maximum fine amount to \$5,000 for five extremely serious violations. While there are many minor violations that may occur as part of the real estate professional, these violations are different in that they have the potential to cause a great deal of financial harm to consumers. These violations include:

- (1) The misappropriation of funds belonging to another person;
- (2) Engaging in fraud or making any substantial misrepresentations;
- (3) Making false representations to a lender, guaranteeing agency or other interested party to artificially inflate the sales price of the property or materially alter the terms of the agreement;
- (4) Committing forgery; and
- (5) Intentionally failing to disclose all adverse material defects to a customer or client.

In addition to committing one of the five specific violations listed in subsection (d)(2), the Commission must prove that certain aggravating circumstances exist under subsection (e) before a real estate licensee can be disciplined under this new fine authority. In order to be subject to discipline under this language, the real estate licensee must have committed one of the acts specified in subsection (d)(2) and:

- (1) The licensee's conduct must have 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.

Therefore, real estate licensees will only be subject to liability under this new fine authority if the Commission can prove that they have committed one of the five serious violations specified in subsection (d)(2), that their conduct involved fraud or deceit under subsection (e)(1) and that the circumstances of their conduct was aggravating under subsections (e)(2) through (e)(4).

KAR believes that this provides real estate licensees with a great deal of procedural fairness and provides the Commission with much-needed authority to discipline unqualified and negligent individuals who severely harm consumers in the real estate transaction process.

KAR Supports the Commission's Proposal to Allow Deduction of the Actual Costs of Investigating the Violation from the Fine Amount Submitted to the State General Fund

Under current law, the entire amount of fines collected by the Commission under K.S.A. 58-3050 is submitted to the State General Fund. In cases where the Commission may be forced to conduct a great deal of investigative work and hire outside legal counsel and expert witnesses to adequately prosecute an alleged violation, it can be an extremely expensive undertaking to investigate violations.

As with many other regulatory bodies in the state, the Commission would like to have the ability to deduct the actual costs of their investigation from the fine amount collected under this statute before the remainder is submitted to the State General Fund. In Section 4, subsection (m) on Page 10 of this legislation, the Commission would be granted the authority to deduct these expenses.

Under the present system, the Commission pays for the cost of investigating expenses out of the general real estate fee fund. As a result, responsible and innocent real estate licensees are forced to pay for the costs of investigating and prosecuting the violations of unqualified and negligent individuals. Under this proposal, the culpable individuals themselves would instead be paying for the investigation and prosecution of violations.

KAR Supports the Commission's Proposal to Add New Violations for Unprofessional Conduct to the Real Estate License Law

Over the course of the past few years, the Commission has encountered numerous situations where the existing statutory language does not provide them with adequate authority to discipline real estate licensees for various forms of unprofessional conduct. As real estate professionals who seek to provide consumers with the highest level of service and professionalism, KAR strongly supports providing the Commission with this new statutory authority to regulate unprofessional conduct.

In Section 5, subsection (e) on Pages 16 and 17 of this legislation, the Commission has proposed to add seven new violations to the prohibited acts statute of the real estate license law. Unfortunately, we are appalled and embarrassed to say that the Commission has actually encountered evidence that real estate licensees have committed each of these proposed violations. In order to ensure that the Commission has the authority to punish future incidents of this nature, we strongly support the proposed language.

KAR Supports the Commission's Proposal to Enact New Requirements on Advertising by Real Estate Salespersons and Salesperson Teams

In recent years, the Commission has become increasingly concerned about the content of certain advertising by real estate salespersons and salesperson teams. Specifically, the Commission is concerned that the advertising of numerous real estate salespersons and salesperson teams does not clearly identify the name of the supervising broker responsible for the salesperson or team.

However, the Commission believes it currently does not have the statutory authority to discipline real estate salespersons that do not include the name of their supervising broker in their advertising. Even though the Commission has determined that it is technically misleading and inaccurate for real estate salesperson advertising to not contain the name of the supervising brokerage, it has determined that the current statutory language does not give it adequate authority to enforce the violations.

KAR agrees that all advertising conducted by real estate salespersons and salesperson teams should clearly identify the name of the supervising brokerage to ensure that consumers know who to contact if problems arise in the transaction. We strongly support the proposed language as a much-needed enhancement to the Commission's authority.

KAR Supports the Commission's Proposal to Provide Funding for Various Consumer and Licensee Educational Programs from the Real Estate Recovery Fund

Finally, in Section 7, subsection (d) on Page 20 of this legislation, the Commission has proposed to use excess funds from the real estate recovery fund to fund various consumer education programs. KAR supports the Commission's proposal to use these excess funds for projects that will enhance consumer's knowledge of money management and the homebuying process.

By setting a floor of \$250,000 in the legislation on when the Commission can use the real estate recovery fund for these projects, it will ensure that real estate licensees will not be charged any assessments to replenish the fund and there will be more than enough money in the fund to pay any future claims.

March 11, 2008

Testimony Presented by
Bruce A. Fitzsimons

Before the
Committee on Federal and State Affairs
Kansas Senate

Chairman Brungardt and members of the Committee on Federal and State Affairs, 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;

- 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.

LIVINGSTON APPRAISALS, INC.

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

March 10, 2008

To: State and Federal Affairs 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

Sen Fed & State

Attachment 6

3-11-08



Kansas Society of Certified Public Accountants

1080 S.W. Wanamaker, Suite 200 • P.O. Box 4291 • Topeka, Kansas 66604-0291 • 785-272-4366 • Fax 785-272-4468

TESTIMONY

Tony A. Scott, JD, CPA
Executive Director

To: The Honorable Pete Brungardt, Chair
Members, Senate Committee on Federal and State Affairs

From: Tony A. Scott

Date: March 11, 2008

Re: 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 as a neutral party relating to HB 2772.**

In performing their work, Certified Public Accountants continually employ the highest professional standards of independence, integrity and objectivity. 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 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 are, therefore, provided an appropriate exemption from the real estate appraiser licensure requirements offered in HB 2772. While we are neutral with respect to HB 2772 as a whole, **we respectfully request the Committee preserve the exemption for CPAs which is now part of 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

Sen Fed & State

Attachment 7
3-11-08

March 10, 2008

The Honorable Senator Brungardt and Committee Members
Federal and State Affairs 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

Shelton and Associates

Real Estate Appraisal Services
P.O. Box 7511
Shawnee Mission, KS 66207
Phone 913-649-8705/Fax 913-685-4159
email : jackshelt@aol.com

March 9, 2008

Senator Pete Brungardt
Chairman
Federal and State Affairs Committee
Kansas Senate

Dear Senator Brungardt:

First of all I would like to thank you and the Committee for providing me the opportunity to communicate my support for House Bill 2772.

I do not believe it is possible to read a newspaper at the present time and not find a story concerning the "Subprime Crisis" and its role in bringing the United States to the brink of a recession. Thus far, two Bear Stearns hedge funds have failed, one British bank required a government bailout, one French hedge fund terminated withdrawals, and the largest banks in the United States, including CitiBank experienced losses in the billions in the 4th Quarter of 2007. And according to a statement for the European Central Bank last week, we are only beginning to see the financial damage. He estimated foreseeable losses due to the Subprime Crisis will be in the neighborhood of \$400 billion over the next two years. It is very possible that the total damaged to the U.S. economy will exceed that of the S&L Crisis of the 1980's.

Governments as well as businesses have been impacted. Because the municipal bond insurers dabbled in subprime loans which are now experiencing higher than estimated losses, three of the largest bond insurers are facing the loss of the AAA rating due to undercapitalization. If they lose their ratings, cities and counties could face paying higher interest in the future.

Worst of all, foreclosures have reached record numbers. According to "Default Servicing News", for example, one out of every 154 homes in Wyandotte County, Kansas is in some stage of foreclosure.

Why? In my opinion because of three principal reasons, unregulated mortgage brokers, poorly underwritten loans, and inflated real estate appraisals. HB 2772 does not of course, address the first two points, but it does provide significant consumer protection to prevent the third problem.

To find an example of the problem you don't have to travel further away than Kansas City, the home of Novastar Financial. Novastar allowed unlicensed appraisers to perform appraisals, thus

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3-11-08

insuring that every appraisal met or exceeded the amount needed for the loans they wanted to close. Novastar has now become insolvent after generating thousands of defective loans, including the defective appraisals completed by appraisers without the qualifications or experience to complete them.

Requiring licensed appraisers for financial transactions involved with the sale or refinance of property insures that:

- 1) The appraiser has completed an appropriate course of training.
- 2) The appraiser has accumulated experience under the supervision of a licensed appraiser.
- 3) The appraiser is subject to sanctions if his or her performance does not meet professional standards.

I would submit that the citizens of Kansas deserve at least that-an objective, honest appraisal performed by a licensed appraiser, at the time they make what is for most people, the largest single investment of their lives.

Thank you for your consideration.

Sincerely,



Jack H. Shelton Jr.
Residential Appraiser
9424 W. 123rd St.
Overland Park, Ks
66213

Kansas Association of Insurance Agents



Testimony on House Bill 2772
Before the Senate Federal & State Committee
By Larry Magill
March 10, 2007

Thank you mister chairman and members of the committee for the opportunity to appear today as an opponent with an amendment to HB 2772 that amends the real estate appraisal license statutes. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 433 member agencies across the state and another 110 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

Our only concern with the proposed legislation is that insurance agents may inadvertently be included in the appraiser licensing requirement when they are performing their normal duties as an agent, either for their client or for their insurance company. Most agents are involved in helping an insured determine the replacement cost of their home for insurance purposes. This may involve actually taking outside measurements of the home and running a replacement cost estimator calculation using a system provided by the insurer and details on the features of the home. The agent may be asked to provide a picture of the front and back of the property.

The agent is compensated for this service as part of writing the homeowners insurance through the commission paid.

Attached to my testimony is a "balloon" of a simple amendment that will take care of our concerns. We have successfully amended HB 2315 dealing with home inspector licensing to address the same concern. When we saw the number of "carve-outs" put in HB 2772 in the House that increased our concern that we might be swept in under the changes being proposed to the Appraisers license. You could argue that insuring a home is a "real estate related financial transaction" under the provisions of the bill.

We urge the committee to adopt the balloon if you work the bill. We would be happy to provide additional information or answer questions.

1 institution shall be required to obtain an appraisal by a state licensed or
2 certified appraiser as required by paragraph (1) of subsection (a). The
3 employee of the financial institution that conducted the prior appraisal
4 shall not be considered to be an appraiser under the law unless such
5 person is a state certified or licensed appraiser.

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

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

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

30 **Sec. 3. K.S.A. 58-4117 is hereby amended to read as follows:**
31 **58-4117. (a) As a prerequisite to renewal of a certificate or license,**
32 **the appraiser shall present evidence satisfactory to the board of**
33 **having met the continuing education requirements.**

34 (b) The basic continuing education requirement for renewal of
35 a certificate or license shall be the completion by the applicant,
36 during the immediately preceding term of certification or licen-
37 sure, of the number of hours of classroom instruction which have
38 been established pursuant to K.S.A. 58-4109 and amendments
39 thereto and which have received the approval of the board.

40 (c) No amendment or repeal of a rule and regulation adopted
41 by the board shall operate to deprive an applicant of credit toward
42 renewal of a certificate or license for any course of instruction
43 completed by the applicant prior to the amendment or repeal of

(i) The provision of paragraph (1) of subsection
(a) shall not preclude an individual licensed as an insurance
agent pursuant to K.S.A. 40-4901 et seq., and amendments
thereto, or for an individual retained by an insurance company
while acting within the scope of the Kansas insurance code
from performing and providing services as an insurance agent
or an individual retained by an insurance company as otherwise
allowed by law. In no event shall any report by an insurance
agent or individual retained by an insurance company be
referred to as an appraisal or such insurance agent or
individual retained by an insurance company represent
such individual's self as a state certified or licensed
appraiser unless such insurance agent or individual
retained by an insurance company is a state certified
or licensed appraiser.

**TESTIMONY BEFORE
SENATE FEDERAL AND STATE AFFAIRS COMMITTEE**

**REGARDING HOUSE BILL (HB) 2772
Real Estate Appraisers Full Licensure**

March 11, 2008

Mr. Chairman and Committee Members:

I am Vicky Johnson, Chief Counsel for the Kansas Department of Transportation (KDOT) and am here to provide testimony on HB 2772 concerning state certified appraisers being required to conduct all real estate appraisals involving financial transactions.

Currently, KDOT employs eight appraisers who complete appraisals for the acquisition and purchase of KDOT property and right-of-way. Only one KDOT appraiser is state certified, three are licensed, and one of our appraisers has a provisional license. This bill, if passed in its current form, would require that appraisals done for eminent domain actions and the purchase of right of way be performed by a state certified appraiser or under the direct supervision of a state certified appraiser. KDOT would have to hire additional certified appraisers or send appraisal work to outside state certified consultants. This, of course, would increase the cost of right of way acquisition and could delay existing projects currently underway.

KDOT would like to request an amendment to this bill which would exempt employees of a governmental entity who are performing appraisals for the purchase or disposition of real estate by a governmental entity from the requirement that an appraiser be state certified or licensed.

KDOT provides the following points in support of this amendment:

- The majority (85%) of KDOT appraisals total less than \$25,000; most are for farm/agricultural land purchased for the purpose of constructing/maintaining the state's transportation system. In addition, the majority of tracts are purchased without the need for any eminent domain action. This is strong evidence that KDOT appraisals accurately reflect fair market value.
- Employing a staff of state certified appraisers, who would command higher salaries in the market place, will create some salary challenges as there are limited classifications for appraisers, none of which compete with market salaries for certified appraisers
- Relying on outside certified appraisers would be necessary until staff could be trained/certified, increasing project costs. In addition, projects in the midst of right-of-way acquisition could be delayed
- This exemption would not undermine or affect the Kansas Real Estate Appraisal Board's purposes in proposing this legislation

Thank you for your time, I will gladly stand for questions.

OFFICE OF THE SECRETARY OF TRANSPORTATION
Dwight D. Eisenhower State Office Building

700 S.W. Harrison Street; Topeka, KS 66603-3745 • (785) 296-3461 • Fax: (785) 296-1095

TTY (Hearing Impaired): (785) 296-3585 • e-mail: publicinfo@ksdot.org • Public Access at North Entrance of Building

Sen Fed & State

Attachment 11

3-11-08

As Amended by House Committee

Session of 2008

HOUSE BILL No. 2772

By Committee on Commerce and Labor

2-6

10 AN ACT concerning real estate appraisers; relating to licensure, penal-
 11 ties and exceptions; amending K.S.A. ~~58-4103~~ **58-4102**, **58-4103**, **58-**
 12 **4117** and **58-4118** and repealing the existing ~~section~~ **sections**.

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

15 Section 1. **K.S.A. 58-4102 is hereby amended to read as follows:**
 16 **58-4102. As used in this act:**

17 (a) **“Appraisal” or “real estate appraisal” means an analysis,**
 18 **opinion or conclusion prepared by a real estate appraiser relating**
 19 **to the nature, quality, value or utility of specified interests in, or**
 20 **aspects of, identified real estate. An appraisal may be classified by**
 21 **subject matter into either a valuation or an analysis. A valuation is**
 22 **an estimate of the value of real estate or real property. An analysis**
 23 **is a study of real estate or real property other than estimating**
 24 **value.**

25 (b) **“Appraisal assignment” means an engagement for which an**
 26 **appraiser is employed or retained to act, or would be perceived**
 27 **by third parties or the public as acting, as a disinterested party in**
 28 **rendering an unbiased analysis, opinion or conclusion relating to**
 29 **the nature, quality, value or utility of specified interests in, or as-**
 30 **pects of, identified real estate.**

31 (c) *“Brokers price opinion” and “comparative market analysis”*
 32 *means an analysis, opinion or conclusion prepared by an individual li-*
 33 *censed as a real estate broker or salesperson pursuant to K.S.A. 58-3034*
 34 *et seq., and amendments thereto, relating to the price of specified interests*
 35 *in or aspects of identified real estate property that is provided to a poten-*
 36 *tial customer, client or third party in the ordinary course of business.*

37 (d) **“Board” means the real estate appraisal board established**
 38 **pursuant to the provisions of this act.**

39 ~~(d)~~ (e) **“Federal law” means title XI of the financial institutions**
 40 **reform, recovery and enforcement act of 1989 (12 U.S.C. 3331 et**
 41 **seq.) and any other federal law, and any regulations adopted pur-**
 42 **suant thereto.**

43 ~~(e)~~ (f) **“Federally related transaction” means any real estate-**

1 related financial transaction which: (1) A federal financial institu-
2 tions regulatory agency or the resolution trust corporation en-
3 gages in, contracts for or regulates; and (2) requires the services
4 of an appraiser.

5 ~~(f)~~ (g) “Real estate” means an identified parcel or tract of land,
6 including improvements, if any.

7 ~~(g)~~ (h) “Real estate appraisal organization” means any nation-
8 ally recognized organization of professional appraisers.

9 ~~(h)~~ (i) “Real estate-related financial transaction” means any
10 transaction involving: (1) The sale, lease, purchase, investment in
11 or exchange of real property, including interests in property or the
12 financing thereof; (2) the refinancing of real property or interests
13 in real property; and (3) the use of real property or interests in
14 property as security for a loan or investment, including mortgage-
15 backed securities; or ~~(4)~~ a federally related transaction.

16 ~~(i)~~ (j) “Real property” means one or more defined interests,
17 benefits and rights inherent in the ownership of real estate.

18 ~~(j)~~ (k) “Specialized services” means those appraisal services
19 which do not fall within the definition of appraisal assignment.
20 Specified services may include valuation work and analysis work.
21 Regardless of the intention of the client or employer, if the ap-
22 praiser would be perceived by third parties or the public as acting
23 as a disinterested party in rendering an unbiased analysis, opinion
24 or conclusion, the work is classified as an appraisal assignment and
25 not specialized services.

26 ~~(k)~~ (l) A “state certified appraiser” means a person who devel-
27 ops and communicates real estate appraisals and who holds a cur-
28 rent, valid certificate issued to such person under the provisions
29 of this act.

30 ~~(l)~~ (m) A “state licensed appraiser” means a person who devel-
31 ops and communicates real estate appraisals and holds a current,
32 valid license issued to such person under the provisions of this act.

33 ~~(m)~~ (n) “Written appraisal” means a written statement used in
34 connection with a federally related real estate-related financial trans-
35 action that is independently and impartially prepared by a licensed
36 or certified appraiser setting forth an opinion of defined value of
37 an adequately described property as of a specific date, supported
38 by presentation and analysis of relevant market information.

39 (o) “Appraiser” means a person who develops and communicates real
40 estate appraisals for real estate-related financial transactions and holds a
41 current valid certification or license issued to such person under the pro-
42 visions of K.S.A. 58-4101 et seq., and amendments thereto.

43 **Sec. 2.** K.S.A. 58-4103 is hereby amended to read as follows: 58-4103.

1 (a) Except as provided in subsection (b), no person, other than a state
2 certified or licensed appraiser, shall:

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

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

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

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

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

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

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

18 (c) Violation of subsection (a) is a ~~class B misdemeanor severity level~~
19 ~~10, nonperson felony~~ **class A nonperson misdemeanor.**

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

26 ~~(e)~~ An individual who is not a state certified or licensed appraiser may
27 assist in the preparation of an appraisal if: (1) The assistant is under the
28 direct supervision of an individual who is a state licensed or certified
29 appraiser; and (2) the final appraisal document is approved and signed by
30 an individual who is a state certified or licensed appraiser.

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

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

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

42 (2) *If the financial institution disposes of the loan granted under par-*
43 *agraph (1)(B) of this subsection in the secondary market, such financial*

1 institution shall be required to obtain an appraisal by a state licensed or
 2 certified appraiser as required by paragraph (1) of subsection (a). The
 3 employee of the financial institution that conducted the prior appraisal
 4 shall not be considered to be an appraiser under the law unless such
 5 person is a state certified or licensed appraiser.

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

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

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

30 **Sec. 3. K.S.A. 58-4117 is hereby amended to read as follows:**
 31 **58-4117. (a) As a prerequisite to renewal of a certificate or license,**
 32 **the appraiser shall present evidence satisfactory to the board of**
 33 **having met the continuing education requirements.**

34 **(b) The basic continuing education requirement for renewal of**
 35 **a certificate or license shall be the completion by the applicant,**
 36 **during the immediately preceding term of certification or licen-**
 37 **sure, of the number of hours of classroom instruction which have**
 38 **been established pursuant to K.S.A. 58-4109 and amendments**
 39 **thereto and which have received the approval of the board.**

40 **(c) No amendment or repeal of a rule and regulation adopted**
 41 **by the board shall operate to deprive an applicant of credit toward**
 42 **renewal of a certificate or license for any course of instruction**
 43 **completed by the applicant prior to the amendment or repeal of**

(i) The provisions of paragraph (1) of subsection (a) shall not be applicable to employees of a governmental entity performing appraisals for such governmental entity for the purpose of real property acquisition or disposal of real property by such governmental entity. In no event shall such employee performing such appraisal represent such individual's self as a state certified or licensed appraiser unless such employee is a state certified or licensed appraiser.

1 the rule and regulation which would have qualified for continuing
2 education credit under the rule and regulation as it existed prior
3 to the repeal or amendment.

4 (d) A certificate or license that has been revoked as a result of
5 disciplinary action by the board shall not be reinstated unless the
6 applicant presents evidence of completion of the continuing edu-
7 cation required pursuant to this act. This requirement of evidence of
8 continuing education shall not be imposed upon an applicant for rein-
9 statement who has been required to successfully complete an examination
10 as a condition of reinstatement.

11 Sec. 4. K.S.A. 58-4118 is hereby amended to read as follows:
12 58-4118. (a) The board may investigate the actions of a state cer-
13 tified or licensed appraiser and may revoke, condition, limit or
14 suspend the certificate or license of the appraiser, or censure the
15 appraiser, for any of the following acts or omissions:

16 (1) Procuring or attempting to procure a certificate or license
17 pursuant to this act by knowingly making a false statement, sub-
18 mitting false information, refusing to provide complete informa-
19 tion in response to a question in an application for certification or
20 licensure or any form of fraud or misrepresentation;

21 (2) failing to meet the minimum qualifications established by
22 this act;

23 (3) paying money, other than provided for by this act, to any
24 member or employee of the board to procure a certificate or li-
25 cense under this act;

26 (4) a plea of guilty or nolo contendere to, or conviction of: (A)
27 Forgery, embezzlement, obtaining money under false pretenses,
28 larceny, extortion, conspiracy to defraud or any other similar of-
29 fense; (B) a crime involving moral turpitude; or (C) any felony
30 charge;

31 (5) an act or omission involving dishonesty, fraud or misrep-
32 resentation, with the intent to substantially benefit the appraiser
33 or another person or with the intent to substantially injure another
34 person;

35 (6) violation of any of the standards for the development or
36 communication of real estate appraisals as provided in this act;

37 (7) failure or refusal without good cause to exercise reasonable
38 diligence in developing an appraisal, preparing an appraisal report
39 or communicating an appraisal;

40 (8) negligence or incompetence in developing an appraisal,
41 preparing an appraisal report or communicating an appraisal;

42 (9) willfully disregarding or violating any provision of this act
43 or rules and regulations of the board for the administration and

- 1 enforcement of the provisions of this act;
- 2 (10) accepting an appraisal assignment, described in K.S.A. 58-
3 4122, and amendments thereto, when the employment itself is con-
4 tingent upon the appraiser reporting a predetermined estimate,
5 analysis or opinion, or when the fee to be paid is contingent upon
6 the opinion, conclusion or valuation reached, or upon the conse-
7 quences resulting from the appraisal assignment;
- 8 (11) violating the confidential nature of governmental records
9 to which the appraiser gained access through employment or en-
10 gagement as an appraiser by a governmental agency;
- 11 (12) entry of a final civil judgment against the person on
12 grounds of fraud, misrepresentation or deceit in the making of any
13 appraisal of real property;
- 14 (13) disciplinary action in relation to appraisal work, including,
15 but not limited to, denial, revocation or suspension of a license or
16 certificate by another state, district or territory of the United
17 States or another country; or
- 18 (14) receipt of an order of prohibition in relation to appraisal
19 work, by consent or otherwise, issued by an agency of the federal
20 government.
- 21 (b) In addition to or in lieu of any other administrative, civil or
22 criminal remedy provided by law, the board upon a finding that a
23 state certified or licensed appraiser has violated any provision of
24 this act or of any rules and regulations adopted hereunder or upon
25 a finding that a person who is not a state certified or licensed appraiser
26 has violated any provision of subsection (a) of K.S.A. 58-4103, and amend-
27 ments thereto, may impose upon such appraiser or such person a civil
28 fine not exceeding \$1,000 for each violation. All moneys collected
29 by the board from such fines shall be remitted to the state trea-
30 surer in accordance with the provisions of K.S.A. 75-4215, and
31 amendments thereto. Upon receipt of each such remittance, the
32 state treasurer shall deposit the entire amount in the state treasury
33 to the credit of the state general fund.
- 34 (c) In a disciplinary proceeding based upon a civil judgment,
35 the appraiser shall be afforded an opportunity to present matters
36 in mitigation and extenuation but may not collaterally attack the
37 civil judgment.
- 38 (d) If the board determines that a person has violated any provision
39 of subsection (a) of K.S.A. 58-4103, and amendments thereto, in addition
40 to any other penalties imposed by law, the board may issue a cease and
41 desist order against such person.
- 42 (e) All administrative proceedings pursuant to this section shall
43 be conducted in accordance with the Kansas administrative pro-

1 **cedure act.**

2 Sec. ~~2~~ **5.** K.S.A. ~~58-4103~~ is **58-4102, 58-4103, 58-4117 and 58-**
3 **4118 are** hereby repealed.

4 Sec. ~~3~~ **6.** This act shall take effect and be in force from and after its
5 publication in the statute book.



March 11, 2008

To: Senate Committee on Federal and State Affairs

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2772: Appraiser Requirements

Mr. Chairman 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.

HB 2772
Page Two

Should that ever occur in the future, there are means by which state-chartered banks can seek parity and we would reserve the right to do so at that time.

Thank you for your careful consideration of our testimony regarding **HB 2772**.

"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.

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.

**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 1992.¹ 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.² 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 regulations³ issued pursuant to Section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) also require each regulated institution to adopt

¹ 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.

² 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.

³ 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.

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,⁴ 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;

⁴ 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.

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.⁵ 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.⁶

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.

⁵ 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.

⁶ 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.

An institution may engage an appraiser to perform either a Complete or Limited Appraisal.⁷ 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.

⁷ 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.

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.

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.