

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:30 p.m. on February 12, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Cindy Neighbor - excused
Representatove Rob Olson - excused.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the committee:

Bryon Schlosser, Caldwell Banker Griffith and Blair
Frank Stuckey, Stuckey Real Estate
Mitch Crouch, Realtor
Luke Bell, Kansas Association of Realtors
Trista Curzydlo, Wichita Area Association of Realtors
Ken Daniel, KSSmallBiz.com
Roy Worthington, Kansas Land Title Association
Chris St. John, Kansas Land Title Association

Others attending:

See attached list.

Hearings on:

HB 2041 **Title insurance, amending K.S.A. 40-2404.**

Melissa Calderwood, Kansas Legislative Research Department, gave an overview of **HB 2041**.

The Chairman opened the hearing on **HB 2041**.

Proponents:

Bryon Schlosser, Caldwell Banker Griffith and Blair, (Attachment 1), appeared before the committee in support of **HB 2041**.

Frank Stuckey, Stuckey Real Estate, (Attachment 2), gave testimony in support of **HB 2041**.

Mitch Crouch, Realtor, (Attachment 3), presented testimony before the committee in support of **HB 2041**.

Luke Bell, Kansas Association of Realtors, (Attachment 4), presented written testimony in support of **HB 2041**.

Trista Curzydlo, Wichita Area Association of Realtors, (Attachment 5), presented written testimony in support of **HB 2041**.

Opponents:

Roy Worthington, Kansas Land Title Association, (Attachment 6), gave testimony in opposition to **HB 2041**.

Chris St. John, Kansas Land Title Association, (Attachment 7), appeared before in opposition to **HB 2041**.

Ken Daniel, KSSmallBiz.com, (Attachment 8), presented testimony in opposition to **HB 2041**.

Doug Simmons, private citizen (no written testimony) spoke in opposition to **HB 2041**.

Hearing closed on **HB 2041**.

HB 2054 **Title insurance, annual audits.**

Melissa Calderwood, Kansas Legislative Research Department, gave an overview of **HB 2054**.

CONTINUATION SHEET

Minutes of the House Insurance Committee at 3:30 p.m. on February 12, 2009, in Room 784 of the Docking State Office Building.

The Chairman opened the hearing on **HB 2054**.

Proponent:

Chris St. John, Kansas Land Title Association, (Attachment 9), appeared before the committee in support of **HB 2054**.

Hearing closed on **HB 2054**.

Representative Grant moved with no objection to pass the February 10, 2009 committee minutes as written.

The next meeting is scheduled for Tuesday, February 17, 2009.

The meeting was adjourned at 5:10 p.m.



GRIFFITH & BLAIR
AMERICAN HOME

FAIRLAWN OFFICE
5120 SW 28TH STREET
TOPEKA, KS 66614-2399

BUS. (785) 267-2700
FAX (785) 273-2303

MACVICAR OFFICE
2222 SW 29TH STREET
TOPEKA, KS 66611-1997

BUS. (785) 267-2700
FAX (785) 267-8600

To: House Insurance Committee

From: Bryon Schlosser, CEO and General Counsel, Griffith & Blair, Inc.

Date: February 12, 2009

RE: **HB 2041—REPEALING KSA 40-2404(14)(G)**

Thank you for the opportunity to appear today on behalf of my company and other Kansas real estate brokerages similarly situated. While I am Chairman of the Kansas Association of REALTORS'® Governmental Affairs Committee this year, I am not here on behalf of the Association, except to answer any questions you may have on the written testimony of Luke Bell, the Association's Vice-President of Governmental Affairs. Rather, I am here to address what I feel is an unfair limitation on my ability to be an entrepreneur in our state (in certain counties, including my own county of Shawnee.)

In my ten years of ownership of Griffith & Blair, Inc. d/b/a/Coldwell Banker Griffith & Blair American Home in Topeka, Kansas, I have made every effort to expand our market share by providing value to our clients and customers. Our management team annually meets to brainstorm changes in the services we deliver to make us more competitive and more valuable to our clients. We have imagined creating a home repair service, a home inspection service, a property and casualty insurance company, a mortgage company and a home warranty company. Of course, all of these have to be conducted in accordance with federal law dealing with settlement service providers (RESPA) and Kansas laws governing real estate licensees and the federal and state laws governing the other service disciplines.

We market a home warranty product which we feel benefits buyers and sellers and are fairly compensated for that service. We have formed an LLC for the sale of property and casualty insurance in partnership with a local insurance agency. We have formed a Kansas licensed and FHA-approved mortgage company which we owned until its sale last November, but still maintain a landlord and marketing relationship with that company. In spite of our desire to operate within the restrictions of the Kansas statute in question, our attempts to establish a title insurance agency within the current Kansas 70% limitation on related referred business has not been successful. Our first effort started with an agreement with a title insurance company owned Cendant, the same publicly-owned company that owned our real estate brokerage franchisor, Coldwell Banker. Cendant believed that they could deliver sufficient title insurance to a joint venture between our companies to meet the 30% requirement from unrelated business. In the alternative, they believed they could avoid the Kansas restriction altogether by making a bank Cendant owned a 25% partner in our

February 12, 2009

venture. (Note: Kansas banks are exempted from the Kansas statutory restrictions by virtue of federal laws prohibiting Kansas or any other state from imposing more stringent standards on banking operations than federal law imposes. Federal rulings have also extended that exemption to entities in which banks own a 25% equity interest.) Before we reached a joint venture relationship with this title company, we terminated the relationship because the service being delivered to our clients was not at the level we required.

Our second effort was to join an existing joint venture (LLC) that was providing title insurance agency services to a number of other real estate brokerages throughout the state in counties in excess of 10,000 population. Again, this title company believed they could deliver sufficient title business from unrelated businesses to meet the 30% Kansas mandated test. We had a very good experience with this relationship. The service delivered to our company and our clients was exceptional and our agents and clients enjoyed a convenient relationship which eased the home buying and selling tensions thereby reducing closing trauma. Nevertheless, efforts to obtain business which would qualify as "unrelated" producers (most of whom were competitors with our real estate brokerage business) were unsuccessful for one obvious reason: None of our real estate brokerage competitors wanted any of their clients to have any relationship with our title service.

After a few months, it was determined that the likelihood of meeting the 30% test was remote and the venture was terminated. The title company with whom we joined in that relationship continues to lease space in our offices and provide title insurance products and closing services to our agents and clients. They have continued to provide excellent service since the termination of the joint venture and in the past few months have written title policies and closed transactions for in excess of 40% of our selling clients. Nevertheless, my company is prohibited by the statute in question from investing in an equity interest in this venture and sharing in the success (or contributing to the loss) derived from business we create.

There is no reason for prohibiting my company from participating in the ownership of this venture except to preserve the title and closing service business in my community to those few companies that have been protected from my competition by Kansas law since 1987. I know it would be expedient for this committee and the Kansas Legislature if the Kansas Association of REALTORS® and the Kansas Land Title Association were to agree to amicably resolve this conflict; however, KAR tried that by accepting the 30% outside business requirement three years ago. That hurdle has been as insurmountable as the 80% hurdle that was invented by this Legislature in 1987. I simply ask that you allow me to compete with my friends in the title insurance industry (which, by the way, would allow them to compete with me in the real estate brokerage business) with the knowledge and comfort that federal laws outlined in Luke Bell's written testimony (RESPA), more than adequately protect the consumer from any issues raised by the title insurance industry.

Thank you for your time and attention.

House Insurance Committee
Support of House Bill HB2041

Mr. Chairman, Clark Schultz, and all members of the House Insurance Committee.

My name is Frank Stucky from Newton, Kansas and I am here to testify in favor of the passing of HB2041. The basic precepts of this bill have been very ably described in written testimony by Luke Bell, Vice President of Governmental Affairs for the Kansas Associates of REALTORS and by Trista Curzydlo, Governmental Affairs Director and legal council for The Wichita Area Associates of REALTORS.

I would like to point out several reasons why it is essential for the financial well-being of many real estate brokerages in the state and their customers that the unfair requirement that only exists in certain Kansas counties be removed. The requirement placed on my company and many others was that they find at least 30% of their title Insurance business from their competitors or outside sources in order to operate in certain Kansas counties. This is an unfair restraint of trade and is damaging to consumers and the health of the real estate industry in Kansas. Let me explain. First of all, it simply doesn't work. Except for markets that border Missouri where several of these companies who write title insurance both in Kansas and in Missouri have been able to survive, the others have failed. As you are aware, in 2004 after years of working to get relief for affiliate businesses in Kansas counties of more than 10,000 populations an onerous compromise was reached. Since that time, I have worked hard to establish a business arrangement with eight other brokerages around the state to provide our customers with the best possible service and to simplify the real estate transactions for consumers. We were unable to meet the 30% outside business requirements and subsequently closed. I realize that some members of the Kansas Land Title Associations have taken the position, to preserve their monopoly on this business, that the consumers will somehow be harmed and pay higher prices for title insurance if these prohibitions on affiliated business are removed. This is far from the truth.

Title Insurance rates are filed with the state and more competition among already competitive brokerages would only insure that rates are kept in check and that consumers have additional choices which they are demanding in the current economic climate. Only 17 other states besides Kansas still have these kinds of restrictions imposed on affiliated businesses and I am not aware of a single case of any abuse or harm to the public in Kansas that has been reported since 2004. Plenty of oversight from RESPA and the state of Kansas already exist to make sure no abuse could occur. Finally, the biggest reason for passing HB2041 however lies with the consumers of Kansas. A massive study by the National Associations of Realtors in 2008 of consumers and their needs and demands shows that 96% of all consumers said that receiving all real estate services from a single provider would make purchasing a home easier. The benefits of one-stop shopping, according to the survey include making the transactions less expensive (77% cited this as the primary reason), more manageable, 73%, preventing issues from falling through the cracks, 73%, and having agents and other providers working together to ensure completion of the transactions, 73%.

This overwhelming demand by our customers, the consumer, to better suit their needs in this way shows that this issue should not be about the KLTA wanting to preserve their business model. It is about the consumer. We are a service-oriented business and we know we can better serve the consumers with one-stop shopping. Please recognize the changes that have occurred in this environment and pass HB2041.

Thank You.



Frank Stucky
Broker/Owner

House Insurance
Date: 2-12-09
Attachment # 2

To: House Insurance Committee

From: Mitch Crouch, Prudential Dining-Beard REALTOR®

Date: February 12, 2009

Subject: **HB 2041** – Repealing Percentage-Based Limitations on
Affiliated Business Arrangements

Good afternoon Chairman Schultz and members of the House Insurance Committee. My name is Mitch Crouch and I am affiliated with the Prudential Dining-Beard Real Estate Company in Wichita, Kansas.

In 1986 through 1989 my company enjoyed the benefit of providing “One-Stop Shopping” to our clients and customers. No longer was the customers forced to duplicate efforts by having to go to multiple place simply to buy a home. We provided everything under one roof. Mortgage, Title, Homeowners Insurance, etc. Title Insurers in the state of Kansas felt overly threaten by our mere existence that it convinced the legislature that real estate brokerage firms were not to be trusted with providing a service that they themselves wanted to control, even though we were using, in most cases, the same insurance underwriters with the same policies at the same cost! Never was affiliated business arrangements endangering the cost associated with the general public during these times. Cost remained the same and in some cases went down. Competition has a way of doing that you know?

The bill that was passed restricting affiliate businesses place an undo hardship on those companies because of the percentage requirement it imposed. In both 1989 and again in 2007, percentage restrictions imposed by this bad law force us to dissolve our title company and settle for a level of service which was not up to our standards. Not only were producers of business such as my company hurt, the consumer was hurt because we could not reach the 30% rule currently on the books. Rather than be in violation with this law, we choose to dismantle it again, so as to be in compliance.

This law is bad. It serves no one except the Kansas Land Title Association who is trying to protect its turf under the guise that it is keeping “unscrupulous” real estate companies from misleading the public. Never at any time during our existence were we found guilty of anything other than good service to our publics. The members of our affiliated business arrangements were highly respected members of the community and enjoyed the reputation of being honest, ethical and forthright.

We ask that you repeal this onerous percentage restriction and allow the forces of a free market economy decide.

Mitch Crouch, V.P.
Prudential Dining-Beard REALTORS®

House Insurance
Date: 2-12-09
Attachment # 3



To: House Insurance Committee
From: Luke Bell, Vice President of Governmental Affairs
Date: February 12, 2009
Subject: **HB 2041** – Repealing Percentage-Based Limitations on Affiliated Business Arrangements

Chairman Shultz and members of the House Insurance Committee, thank you for the opportunity to provide written testimony on behalf of the Kansas Association of REALTORS® (KAR) in support of **HB 2041**. KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

Summary of the Legislation

HB 2041 would repeal the provisions of K.S.A. 40-2404(14)(g) that prohibit a title insurance agency from accepting a referral of business if the agency receives 70% or more of its business from an affiliated business source. Affiliated business sources are an entity like a real estate brokerage that have an ownership interest in the title insurance agency.

This prohibition, which was first enacted by the Kansas Legislature in 1989 and modified in 2004, is intended to protect consumers and promote competition in the title insurance industry in Kansas. However, major changes in the regulatory landscape at the state and federal level over the last 20 years have negated the need for this burdensome, unnecessary and duplicative prohibition.

In order to level the playing field and promote competition in the title insurance industry, we would respectfully request that you act favorably on **HB 2041** for the following reasons:

- (1) Affiliated business arrangements are already subject to extremely strict oversight and requirements under the federal Real Estate Settlement Procedures Act (RESPA);
- (2) Affiliated business arrangements are subject to extremely strict oversight and requirements under state law by the Kansas Insurance Department;
- (3) Affiliated business arrangements do not unfairly distort or limit competition among title insurance providers;
- (4) Opponents have no evidence showing that affiliated business arrangements harm consumers through increased prices or abusive practices; and
- (5) Kansas is among a small minority of states that places percentage-based restrictions on the operation of affiliated business arrangements.

House Insurance
Date: 2-12-09
Attachment # 4

785.267.3610
VOICE

800.366.0069
TOLL FREE

785.267.1867
FAX

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

ABAs are Already Subject to Extremely Strict Requirements and Oversight Under Federal Law

Affiliated business arrangements (hereinafter "ABAs") between real estate brokerages and title insurance agencies are business relationships where a real estate brokerage has an indirect or direct ownership interest in a title insurance agency. The formation of ABAs are specifically authorized under federal law and are subject to very strict regulations and oversight by a combination of federal and state agencies.

In 1983, the United States Congress specifically debated and passed legislation authorizing the creation of affiliated business arrangements under RESPA. As a result, ABAs are specifically authorized and regulated under the federal Real Estate Settlement Procedures Act (hereinafter "RESPA") administered by the United States Department of Housing and Urban Development (hereinafter "HUD").

▪ **Under RESPA, Real Estate Brokerage Must Provide a Written Disclosure Statement to all Customers and Clients on the ABA Relationship**

Under this act, HUD has extremely broad regulatory authority over these arrangements and requires the ABA to clear numerous hurdles before business can be referred from a real estate brokerage to an affiliated title insurance agency. ABAs between real estate brokerages and title insurance agencies are only allowed to legally operate under RESPA if the following conditions are met:

- (1) The consumer wishing to purchase the title insurance receives a detailed written disclosure of the affiliated business relationship and an estimate of the title insurance charges at the time of the referral of business;
- (2) The consumer wishing to purchase the title insurance is informed that they are not required to use the affiliated title insurance agency; and
- (3) The affiliated title insurance agency does not pay any referral fees to the real estate brokerage and only provides a return on ownership interest.

▪ **Under RESPA, ABAs Must Comply with Numerous Other Requirements on How They Conduct Business to Protect Consumers and Promote Competition**

Moreover, compliance with the three conditions listed above does not necessarily ensure that HUD will determine that an ABA is a valid, legal business relationship. HUD has also published a Statements of Policy 1996-2 and 1996-4 that prohibit the formation of sham affiliated business arrangements that attempt to circumvent HUD's regulations on ABAs. In these statements of policy, HUD has listed many additional factors that will be considered to determine if an ABA is valid and legal under RESPA and HUD's regulations.

▪ **Under RESPA, Non-Compliant Real Estate Brokerages and Affiliated Title Insurance Agencies Face Extremely Large Fines and Civil Penalties**

In order to ensure that ABAs comply with all the applicable legal requirements, HUD actively utilizes numerous fines, penalties and injunctive remedies to prevent abuses in ABAs that might harm consumers. In fact, HUD has the authority to issue up to \$10,000 fines per violation for any violations of the requirements governing ABAs.

For example, in late 2008, HUD and the California Department of Insurance jointly imposed a massive \$35 million fine against several ABAs and real estate brokerages in California who failed to adhere to the legal requirements governing ABAs. We applaud this enforcement action and hold it up as an example of the severe remedies available for authorities to weed out any ABA abuses.

In recent years, HUD has nearly tripled its enforcement of RESPA violations and is on the lookout for any potential violations of the ABA restrictions. Accordingly, we feel that federal law provides consumers with many protections from the potential abuses associated with ABAs.

ABAs are Also Subject to Extremely Strict Requirements and Oversight Under State Law

In addition to the requirements imposed on ABAs under federal law, K.S.A. 40-2404(14) also imposes numerous requirements on the operation of ABAs. HB 2041 will not affect or preempt any other existing state law requirements on the operation of ABAs and all ABAs will be required to abide by all other existing state requirements.

▪ **Real Estate Brokerage Must Provide a Written Disclosure Statement to all Customers and Clients on its Relationship with an Affiliated Title Insurance Agency**

Under K.S.A. 40-2404(14)(h)(1), no affiliated title insurance agency can accept a title insurance order from an affiliated real estate brokerage unless the real estate broker has provided a detailed written disclosure (please see Attachment A) to the consumer that informs the consumer that a portion of the title insurance agency is owned by the real estate brokerage. This disclosure must also estimate the fee that the consumer will be charged for the title insurance policy in order to provide the consumer with an opportunity to shop around for a better deal.

In addition, the written disclosure statement required under K.S.A. 40-2404(14)(h)(1) must also include a statement clearly informing the consumer that they are not required to utilize the services of the affiliated title insurance agency. Along with this statement and the disclosure of the price of the title insurance policy, the disclosure statement must provide the consumer with a list of at least three other title insurance providers in the community where they can obtain a price quote on an alternative title insurance policy. This information will clearly allow the consumer to shop around for title insurance services.

▪ **Real Estate Brokerage Cannot Require or Provide Any Incentives to Customers and Clients to Use the Services of an Affiliated Title Insurance Agency**

Furthermore, K.S.A. 40-2404(14)(h)(2) prohibits a real estate brokerage from requiring or providing incentives to its customers and clients to purchase the services of an affiliated title insurance agency. As a result, a real estate brokerage and its affiliated title insurance agency cannot use any requirement or the provision of incentives (other than a cheaper title insurance premium) to unfairly compete for title insurance business with other title insurance agencies.

▪ **Real Estate Brokerage Cannot Pre-Print the Name of an Affiliated Title Insurance Agency on the Sales Contract**

Moreover, K.S.A. 40-2404(14)(h)(3) prohibits a title insurance agency from accepting any title insurance orders if the name of the title insurance agency has been pre-printed on a sales contract by an affiliated real estate brokerage. As a result, the real estate brokerage cannot pre-select the title insurance provider and must give the consumer the absolute choice to select his or her choice of title insurance provider.

▪ **Real Estate Licensees Cannot Accept Any Rebate, Reduction of any Charge, Special Favor, Advantage, Monetary Consideration or Any Other Inducement for Referring Title Insurance Business to an Affiliated Title Insurance Agency**

In addition, K.S.A. 58-3062(a)(24) allows the Kansas Real Estate Commission to fine, suspend or revoke the license of any real estate licensees that accept any rebate, special favors or any other things of value from an affiliated title insurance agency in return for the referral of title insurance business. As a result, a real estate licensee cannot accept anything of value (other than great service and a competitive price for the consumer) from the real estate brokerage or the affiliated title insurance agency that would unduly encourage them to refer business to the affiliated title insurance agency.

If a real estate licensee is found to have violated this prohibition, the Kansas Real Estate Commission can fine the real estate licensee up to \$1,000 per violation and can also suspend or revoke that individual's real estate license. The real estate licensee is also liable to the consumer for the amount of premium on the title insurance policy.

▪ **Under State Law, Non-Compliant Real Estate Brokerages and Affiliated Title Insurance Agencies Can Also Face Very Large Fines, Penalties and Injunctive Relief**

In addition to the federal penalties, real estate brokerages and affiliated title insurance agencies also face very severe punishment for failing to conform to the state law requirement on ABAs. Combined with the federal penalties discussed above, there is a huge deterrent effect on real estate brokerages and affiliated title insurance agencies to avoid prohibited conduct.

Under K.S.A. 40-2404(14)(h)(5), the Kansas Department of Insurance can impose a fine of up to five times the premium for the title insurance policy on any real estate brokerage or affiliated title insurance agency that does not conform with all the state law requirements on ABAs. If the Department identifies multiple violations, these fines can reach truly astronomic proportions and have an enormous deterrent effect on misconduct. The Department can also suspend or revoke the license of the affiliated title insurance agency in these situations.

Moreover, K.S.A. 40-2404(14)(h)(6) also gives a competitor title insurance agency the right to bring a civil action against an affiliated title insurance agency if they violate any of the state law requirements on ABAs. If they are successful in this civil action, the affiliated title insurance agency must cease these business practices and pay the attorney fees of the opposing party.

ABAs Do Not Unfairly Distort or Limit Competition Among Title Insurance Providers

In light of the numerous federal and state legal requirements on affiliated title insurance agencies and real estate brokerages, it is very clear that ABAs do not unfairly distort or limit competition among title insurance providers. In fact, ABAs actually promote competition as it provides consumers with another option in the title insurance marketplace.

▪ **Required Written Disclosure Form Clearly Informs Consumers That They Can Obtain Alternative Quotes from a Non-Affiliated Title Insurance Agency**

As discussed above, K.S.A. 40-2404(14)(h)(1) requires an affiliated real estate brokerage to provide a detailed written disclosure to all customers and clients providing numerous details about the relationship between the real estate brokerage and the affiliated title insurance agency. Once a consumer reviews this document, they will be clearly informed that they have the ability to obtain alternative quotes from a non-affiliated title insurance agency.

Not only does this written disclosure statement inform the consumer that a portion of the title insurance agency is owned by the real estate brokerage, but it also estimates the title insurance premium that will be charged and provides the consumer with a list of at least three other non-affiliated title insurance agencies where the consumer can purchase the same services. I can think of no other industry in the world that is required to provide a customer with the contact information for its own competitors.

If the consumer has any concerns about the affiliated business relationship or the premium to be charged for the title insurance policy, they can immediately contact any of the other non-affiliated title insurance agencies listed on the disclosure form. Since the written disclosure form clearly informs them that they are not obligated to use the affiliated title insurance agency, they are clearly on notice that they can shop around for a better deal.

▪ **Affiliated Title Insurance Agencies Cannot Offer Any Things of Value to Real Estate Brokerage Employees and Independent Contractors for Referrals**

Another argument against affiliated business relationships is a belief that real estate brokerages can offer incentives or other things of value to its affiliated licensees in return for referrals of business to the affiliated title insurance agency. Again, it is truly ridiculous to suggest that this practice can occur under both the federal and state laws governing ABAs.

Both under federal and state law, real estate brokerages are absolutely prohibited from providing any things of value to its real estate licensees in return for a referral of business to an affiliated title insurance agency. If there is any evidence that this practice is taking place, a real estate brokerage can face extremely serious penalties under both federal and state law.

▪ **Studies Show That Title Insurance Premiums Do Not Increase Under ABAs**

The critics of affiliated business relationships argue that vertical integration in the title insurance industry through the formation of ABAs will cause an increase in title insurance premiums as ABAs will no longer have any motivation to compete with non-affiliated title insurance agencies. However, numerous studies show that this argument is flawed and that title insurance premiums from affiliated title insurance agencies are not higher than title insurance premiums from non-affiliated title insurance agencies.

In 2006, a study of over 2,200 actual real estate transactions in nine states showed that the use of affiliated title insurance agencies did not result in an increase in premiums. In this study, there was absolutely no difference between the cost of title insurance premiums from affiliated and non-affiliated title insurance agencies.

▪ **Opponents Have No Evidence That Affiliated Business Arrangements Harm Consumers Through Increased Prices or Abusive Practices**

Following the previous easing of affiliated business percentage-based restrictions by the Kansas Legislature in 2004, numerous ABAs opened up shop and began operating in Kansas. In a good faith attempt to comply with the percentage-based restrictions in K.S.A. 40-2404(14)(g), many of these ABAs terminated operations when they discovered they could not comply with the percentage-based restrictions.

However, I am not aware of any enforcement actions or complaints that have been brought against any affiliated title insurance agency in Kansas in the last five years. Following the enactment of **2003 SB 66**, there is absolutely no evidence to show that any affiliated business arrangement has harmed consumers through increased prices or abusive practices.

Under the current K.S.A. 40-2404(14)(h), all affiliated title insurance agencies operating in Kansas will still be required to file an annual report with the Kansas Insurance Department disclosing the amount of title insurance referrals generated from any affiliated real estate brokerages. As a result, the Kansas Insurance Department will have the ability to actively monitor these affiliated title insurance agencies to ensure they are not utilizing any abusive or unfair practices to harm consumers.

Only a Minority of States Still Have Percentage-Based Restrictions on ABAs

Finally, only a minority of states have imposed percentage-based restrictions on affiliated business arrangements. As of January 1, 2009, only 18 states (including Kansas) impose a percentage-based cap on the amount of title insurance business a title insurance agency can receive from an affiliated real estate brokerage.

To be quite obvious, I highly doubt that the 32 other states that do not have these restrictions on affiliated business arrangements are facing a catastrophic loss of competition in the title insurance industry. Other states have not enacted these restrictions because they simply have not seen the need to impose additional regulatory burdens on the marketplace that prevent a real estate brokerage and title insurance agency from affiliating with each other.

Conclusion

Affiliated business arrangements are already subject to a host of regulations at the federal and state level that protect the interests of consumers. Furthermore, ABAs do not unfairly restrict or limit competition in the title insurance industry. It is patently unfair to continue the current, outdated practice of imposing percentage-based restrictions on affiliated business arrangements.

As a result, the Kansas Legislature should pass **HB 2041** to remove the percentage-based restrictions on affiliated business arrangements. ABAs promote competition in the title insurance industry, do not result in higher title insurance premiums and provide the same consumer protections to consumers as non-affiliated insurance agencies.

Kansas Controlled Business Arrangement Disclosure Form

In accordance with Kansas Law, before any commitment can be made to a title insurer or agent to perform services related to this real estate transaction in which you are involved, the following written disclosure must be made:

_____ is a _____
(Name of title insurer/agency) (LLC, Corporation, Partnership-choose one)

of which _____ has a financial interest.
(Name of producer of title business)

Because of this financial interest, a referral to _____
(Name of title insurer/agency)

to perform services related to this real estate transaction will provide _____
_____ a financial benefit.
(Name of producer of title business)

The following is a written estimate of charges by _____
(Name of title insurer/agency)

for the following services:

Owner's policy of title insurance	\$ _____
Loan policy of title insurance	\$ _____
Escrow settlement services	\$ _____
Loan closing services	\$ _____

You are not required to use the services of _____ as a condition of this real estate transaction and may select any other title company to perform any or all of the services set forth above. You are free to determine that you are receiving the best rates for services related to this real estate transaction.

Other title companies and their telephone numbers which perform the same services as the above noted title insurer/agency and which operate from a physical location in _____ County are:

- 1) _____
- 2) _____
- 3) _____

ACKNOWLEDGEMENT

(Signature of Consumer) (Date)

A signed copy of this disclosure must be submitted with the title insurance order to

(Name of title insurer/agency)



170 W. Dewey

To: House Insurance Committee

Wichita, KS

From: Trista Curzydlo, Government Affairs Director

67202

Date: February 12, 2009

Subject: **HB 2041** – Repealing Percentage-Based Limitations on Affiliated Business Arrangements

316.263.3167

316.263.2832 fax

Chairman Schultz and members of the House Insurance Committee, thank you for the opportunity to submit written testimony on behalf of the Wichita Area Association of REALTORS® in support of **HB 2041**. The Wichita Area Association of REALTORS® is a trade association representing over 2,000 real estate professionals in the Wichita area.

House Bill 2041 proposes to repeal the provisions of K.S.A. 40-2404(14)(g) that prohibit a title insurance agency from accepting a referral of business if the agency receives in excess of 70% of its business from an affiliated business source. While the intent of K.S.A. 40-2404(14)(g) is to regulate affiliated business arrangements where a real estate brokerage has an indirect or direct ownership interest in a title insurance agency, this regulation is not necessary due to the strict regulation and oversight of these arrangements by the federal government.

The Real Estate Settlement Procedures Act (RESPA) enacted in 1983 and administered by the United States Department of Housing and Urban Development (HUD) provides the framework for the operation of affiliated business arrangements throughout the nation. These regulations include numerous disclosure requirements that serve to protect the consumer wishing to purchase title insurance. HUD has also published several Statements of Policy that prohibit the creation of arrangements that attempt to circumvent the strict regulation of affiliated business arrangements.

Enforcement of RESPA is a priority for HUD as is evidenced by the rapid escalation in enforcement actions over the last several years and the issuance of ever increasing fines for violations. Several affiliated business arrangements were established in Kansas following the adoption of amendments to K.S.A. 40-2404(14)(g) in 2004. None of those affiliated business arrangements were subject to enforcement actions by HUD. It is clear that the real estate brokerages and title insurance providers who seek to create these arrangements wish to do so with a clear understanding of the numerous federal regulations they must abide by. The Kansas Legislature should pass **HB 2041** and remove burdensome percentage-based restrictions on affiliated business arrangements.

Thank you for the opportunity to provide my written testimony.



KANSAS LAND TITLE ASSOCIATION

7321 N.W. Rochester Rd., Topeka, Kansas 66617

WWW.KLTA.ORG

PRESENTATION TO HOUSE INSURANCE COMMITTEE

RE: Testimony in Opposition to House Bill 2041

DATE: February 12, 2009

THE KANSAS LAND TITLE ASSOCIATION OPPOSES HOUSE 2041 FOR THE FOLLOWING REASONS:

- a. **The current version of the law is a result of a compromise between the Kansas Land Title Association and the Kansas Association of Realtors reached during the 2004 legislative session which permits a controlled business title company to capture up to 70% of its business from direct referrals made by the realtor partners, but requires the company to compete for at least 30% of its business from the market place.** The compromise allowed a controlled business title company to increase its percentage of captured business from 20% to 70%. There are currently 18 controlled business title companies operating in Kansas and reporting to the Kansas Insurance Department as required by the current law.
- b. Issues over the controlled business law were bitterly fought in the legislature for more than 10 years. In 2004, following a year of meetings and negotiations, a compromise was reached. During the 2004 House Commerce and Labor hearings where the compromise was presented the Realtors ended their presentation as follows: **"The Kansas Association of Realtors believes that the time is now for the Kansas Land Title Association and the Kansas Association of Realtors to put this issue behind us and allow our members to engage in the affiliated business marketplace. The Kansas Association of Realtors urges that you pass SB 66 as amended with the above compromise"**.
- c. Based on the compromise legislation that was passed in 2004, the fact that some realtors are now requesting that there be no requirement for a controlled business title company to compete for any percentage of its business from the competitive market place is disingenuous at best.
- d. **The current law does not prevent realtors from entering the title business nor from referring business to a controlled business title insurance company, but only requires controlled business title insurance companies to compete for some public business on a "level playing field" with other independent title companies - in other words to compete for business other than "captured business" referred to it by realtor partners.** It is only by having title insurance companies competing with each other for business that true free enterprise and fair competition result.

e. The original law was enacted in the 1989 Legislative Session by a vote of 39-0 in the Senate and 122-2 in the House - an overwhelming majority saw the wisdom of placing certain restrictions on controlled business in the title insurance industry.

f. The Kansas Supreme Court unanimously upheld the constitutionality of the original law by a decision rendered January 18, 1991. In its decision, the Supreme Court stated: "The purpose of the Unfair Trade Practices Act is to prevent unfair methods of competition and unfair or deceptive acts or practices in the business of insurance. **The purpose of ...(this law)... is to stimulate competition by decreasing vertical integration between producers of title business and title insurers.**"

g. In 2007 the Federal Government Accountability Office Report on Title Insurance recommended to HUD that it evaluate the costs and benefits to consumers from affiliated business arrangements (ABAs). **The GAO report concludes that ABAs create potential conflicts of interest which may result in a lack of competition and thus concomitant cost increases to consumers.**

h. The KLTA believes that removing current restrictions on controlled business in the title insurance industry will allow realtors to control the business of title insurance to the detriment of the consumer and to create unfair competition in the sale of title insurance – **a controlled business title company must only compete for 30% of its business, whereas an independent title company must compete for 100% of its business.**

i. Controlled business title companies, with no requirement to compete for some percentage of business, do not increase competition because they do not compete with one another – they only service referral business with no incentive or requirement to compete in the market place.

j. A HUD requirement for an affiliated title insurance company is that it must "actively compete" in the market place for business (i.e. for business from providers other than the providers that created the affiliated title insurance company).

k. If controlled business title insurance companies only service "captured consumers" and are not competing with other title companies for business, then the consumer will be subject to non-competitive prices.

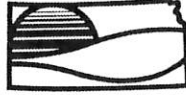
l. It is apparent from the crisis in the financial services industry that a lack of regulation can adversely affect consumers.

The Kansas Land Title Association and its members throughout the State of Kansas are very concerned that if realtors who might form a title insurance company have no incentive to enter the marketplace and compete for title business with the independent title insurance companies, that unfair competition will result, that the independent title insurance companies will not be in a position to compete for title business, and that eventually the consumer will suffer the consequences of a controlled marketplace.

The Kansas Land Title Association requests that you not support House Bill 2041.

Respectfully submitted,

Roy Worthington
Kansas Land Title Association
Legislative Committee



KANSAS LAND TITLE ASSOCIATION
7321 N.W. Rochester Rd., Topeka, Kansas 66617
WWW.KLTA.ORG

To: House Committee on Insurance

From: Chris St. John, KLTA Vice President and Legislative Chair

Date: February 12, 2009

Subject: HB 2041 – Eliminating Required Competition for Controlled Business Title Insurance Companies in Kansas

Chairman Schultz and members of the House Committee on Insurance, thank you for the opportunity to appear today on behalf of the Kansas Land Title Association (KLTA) to offer testimony in opposition to HB 2041. KLTA represents 156 title companies throughout Kansas.

My name is Chris St. John. I am the Vice President and Legislative Chair for the KLTA. We oppose HB 2041 because it is Anti-Competitive, Deregulatory, and unfair to you and the Kansas consumers you represent.

The current controlled business statute requires “producers of title business” who own title insurance companies to get at least 30% of their business from competitive sources. This means that they can funnel 70% of their controlled business directly to their controlled business title company. HB 2041 proposes to eliminate the need for controlled business title companies to compete for any title business at all. This is anti-competitive. Lack of competition in the title business is unfair to you and Kansas consumers you represent.

Today’s mortgage crisis was aided by deregulation of the mortgage loan business. Unscrupulous lenders preyed on buyers of all sorts when they were allowed to give loans without meeting regulations that existed just a few years ago. The current controlled business statute was originally created in 1989. It stood up to judicial review by the Kansas Supreme Court in 1991 and was amended in a hard fought compromise with the Kansas Association of Realtors in 2004. Many legislators still here today were involved in creating the compromise. Deregulation of the statute to eliminate the 30% in today’s market climate would be short sighted and unfair to you and the Kansas consumers you represent.

Buying a home is one of the biggest investments most Kansas consumers will make in their lifetime. Title insurance is very important to protect the value of their investment in Real Estate. Allowing a lender or realtor to control their title business and funnel 100% of it to their controlled business title company is unfair to you and the Kansas consumers you represent.

You and the Kansas consumers should have the right to choose your title company. Several title companies should be able to compete for your business on a level playing field. The KLTA is opposed to HB 2041. Thank you for allowing me to address you today.

Respectfully submitted,



Chris St. John
Kansas Land Title Association
Vice President and Legislative Chair

KSSmallBiz.com

ADVOCATES FOR KANSAS SMALL BUSINESS

P.O. BOX 1246 • TOPEKA, KS 66601-1246 • 785.232.4590. x205
www.KSSmallBiz.com

TESTIMONY ON HOUSE BILL 2041 HOUSE COMMITTEE ON INSURANCE

By **Kenneth Daniel**
February 12, 2009

Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is publisher of KsSmallBiz.com, a small business e-newsletter and website. He is C.E.O. of Midway Wholesale, a business he founded in 1970. Midway has eight locations and 120 employees.

Mr. Chairman and Members of the Committee:

I speak in defeat of House Bill 2041.

I am not in the real estate sales business nor am I in the title business. But, for more than 30 years I have bought, sold and traded properties. During that time I have done business with three Topeka title companies and two from out-of-town.

As a small business owner, I'm a great believer in open markets and free competition. This bill seeks to eliminate competition by allowing firms that are not primarily in the title insurance business to starve out companies whose main business is title insurance.

There is a big difference in title companies. I once spent months trying to get deeds and original title insurance policies that should have been sent to me shortly after the closings. In another case I could not sell a house I had lived in for seventeen years even though there was title insurance when we bought it.

In each of those cases, I moved to a different title company, and I'm very thankful that I had a place to go.

Real estate sales companies have had to defend their industries from banks and other powerful entities that would squeeze them out. It is ironic that they would seek to use the same tactics to squeeze out title companies.

Elsewhere, there have been many instances where deceptive, unfair, and predatory acts have been used in this industry, acts that are much less likely to occur with our present law.

Finally, maybe an old saw applies: If it ain't broke, don't fix it!

House Insurance
Date: 2-12-09
Attachment # 8



KANSAS LAND TITLE ASSOCIATION
7321 N.W. Rochester Rd., Topeka, Kansas 66617
WWW.KLTA.ORG

To: House Committee on Insurance
From: Chris St. John, KLTA Vice President and Legislative Chair
Date: February 12, 2009
Subject: HB 2054 – Testimony in Support of House Bill 2054

The Kansas Land Title Association supports House Bill 2054 as a means of further protecting consumers from irregularities in escrow and settlement practices of licensed title insurance agents in the State of Kansas.

Respectfully submitted,

Chris St. John
Kansas Land Title Association
Vice President and Legislative Chair