

## MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on February 23, 1994 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Julian Efird, Legislative Research Department  
Fred Carman, Revisor of Statutes  
Jackie Breymeyer, Committee Secretary

Conferees appearing before the committee: Senator Langworthy  
Joe Speyer, Speyer Realty Co., K.C.  
Jean Duncan, Director, KS Real Estate Commission  
Mike Haynes, Appraisal Board  
Jack Shelton, Coalition of Kansas Appraisers  
Jeff Sonnich, KS-NE League of Savings Institutions  
Karen France, KS Association of Realtors  
Bill Waters, Chief Attorney, Div. of Property Valuation  
Bill Shephard, President, Homeowners Marketing Service,  
Kansas/Missouri/Oklahoma

Others attending: See attached list

Chairman Ramirez called the meeting to order and called. The first order of business was **SB 680**--real estate brokers and salespersons. He called on Senator Langworthy to begin testimony. Senator Langworthy was present to introduce a constituent who had called to her attention a situation concerning educational requirements. Missouri, for example, does exempt people over the age of 80 from having to attend additional courses and it seems like a logical suggestion. She stated Mr. Speyer was present today to testify.

Joseph Speyer, owner and operator of Speyer Realty Company in Kansas City, stated that he had driven to the meeting today because he thinks it is very important for Kansas to be abreast of the other states in this area. Mr. Speyer has had a license in Kansas for 45 years; 5 years as a salesman and 40 years as a broker. Mr. Speyer had information from the current Missouri Real Estate Commission Statutes & Regulations book dated December, 1993. (Attachment 1) Mr. Speyer stated this ruling has been in effect for 10 years or more. Item #E states waiver may be granted to a licensee who is at least 80 years of age or more. Mr. Speyer stated that continuing education is a good thing as it protects the realtors and the public. He challenges the opponents to point to any course that brings something new to the licensee and protects the public. With being 80 years old and with 45 years experience, how long does one have to go to school. In Missouri this is waived and he stated that Kansas should be abreast of the other states.

The Chairman thanked Mr. Speyer and stated as he reads it, it states, "the commission may waive . . ." Mr. Speyer agreed that it is discretionary.

Jean Duncan, Director, Kansas Real Estate Commission, spoke as an opponent to **SB 680**. Ms. Duncan distributed her testimony (Attachment 2) Mandatory education requirements are based on the concept that they are in the best interest of the general public whom licensees serve. She stated the continuing education requirement and stated that regardless of someone's age or experience the Commission believes they need continuing education. It is good to see someone who has reached the age of 80 active in the real estate business, but wonder why he/she should be exempt from education requirements. The person may have wisdom, but he/she needs current knowledge for the protection of the consumer in real estate transactions. Ms. Duncan ended her testimony by asking that the bill be killed. However, if it is recommended for passage, to amend the language to clarify that the 10 years of licensure be continuous. Ms. Duncan had brought with her a copy of the schools registered by the Kansas Real Estate Commission for continuing education requirements. (Attachment 2a) and answered questions concerning the courses offered. She also noted there is no way to determine how many licensed 80 year olds there are in the business. It was clarified that the Missouri law says 'may', but that is not in this bill. The courses are changed as often as courses are submitted

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, Room 531-N Statehouse, at 1:30 p.m. on February 23, 1994.

by the providers. The people taking the courses can choose whatever course they want to take. Unfortunately, many persons wait until the last minute and take any course which is available instead of going through the list of courses and taking what is best for them. The Chairman stated the hearing on **SB 680** was closed and proceeded to **SB 731**-real estate appraisers.

The Chairman called on Mike Haynes, Director, Appraisal Board, to address the bill. Mr. Haynes stated that as a result of the task force comprised of bankers, savings and loan representatives, appraisers and realtors, there has been a recommendation for the Kansas State Appraisal Board that a state provisional licensed real property appraiser classification be adopted. Many new appraisal board applicants are reporting that they are having difficulty completing the experience requirements within the two year period. The new provisional classification with a five-year period for experienced accumulations will eliminate some of the pressure for those who are just entering the appraisal division. The purpose of the provisional classification is to provide a means for individuals to obtain experience in order that they may eventually obtain a state license or certification.

The Chairman commented that this is the bill the committee had last year. The Chairman had asked all interested parties to get together and work out their differences on the proposal. On page 1, line 18, it reads, "(4) state provisional licensed real property appraiser classification." Also on page 2, line 23, the time limit is extended to five years instead of two years. Everyone involved in the bill is supportive of this.

Karen France, Kansas Association of Realtors, distributed her testimony. (Attachment 3) The Realtors support the recommendation of the committee and they have no problem with the bill.

Jeff Sonnich, KS-NE League of Savings Institutions, distributed his testimony. (Attachment 4) His organization was part of the task force that met three or four times during the summer to work out an entry level into the appraisal industry. The Appraisal Board was going to adopt this classification by rule and regulation, however the Attorney General's office ruled that the Board did not have the authority to adopt a provisional license category; it needed a statutory change.

Mr. Sonnich was asked how long the (1) state licensed real property appraiser classification,;(2), certified general real property appraiser classification; and (3) certified residential real property appraiser classification of the bill have been in the statutes. Mr. Sonnich replied (1) and (2) since 1991 and the certified residential (3), a year later.

Mr. Sonnich was asked if there had been a problem for a long time or was it a sudden problem. His response was that as persons started to get licensed and certified, and as they went through the course work, they found that the experience requirement was very difficult. Many of the existing appraisers had years of experience and were grandfathered in once they took the education and the test. As new appraisers came in, they found it very difficult to get the experience. Mr. Sonnich responded to the question, is internship and experience important by stating it is to the appraisal industry.

Jack Shelton, speaking as the Chairman of the Coalition of Kansas Appraisers, testified next on the bill. (Attachment 5) Mr. Shelton stated that the Coalition supported the bill for basically the same reasons as stated previously. It is in the public's interest and provides a good access to those people who may have found difficulty in the past accumulating experience credits. Mr. Shelton stated a dislike for excessive legislation, but feels that creating this new category is in everyone's best interest.

Bill Waters, Chief Attorney, Division of Property Valuation, was the last conferee on the bill. He distributed his testimony. (Attachment 6) Mr. Waters stated the Director has no problem with the concept behind the bill. However, in 1992 the Kansas Legislature amended K.S.A. 19-430 which governs the appointment of county appraisers to require that effective July 1, 1993, county appraisers be licensed or certified by the Kansas Real Estate Commission. If the bill is passed in its present form, the new provisional appraiser would be eligible to be appointed county appraiser whenever a vacancy would occur. This would defeat the purpose of the 1992 amendment to 19-430. The problem can be easily fixed by amending the bill. Mr. Waters' testimony contained the amendment which reads:

"No person shall be appointed to the office of county or district appraiser or to fill a vacancy therein unless such person is currently a licensed state real property appraiser, a certified general real property appraiser, or a certified residential real property appraiser pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated."

Senator Bogina moved the amendment. Senator Feleciano gave a second to the motion.

The Chairman stated the motion was to exclude the provisional licensee from being able to serve as a county or district appraiser.

## CONTINUATION SHEET

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Statehouse, at 1:30 p.m. on February 23, 1994.

The motion carried.

Testimony from The Kansas Bankers Association was distributed and labeled (Attachment 7)  
The hearing was closed on **SB 731**.

**SB 780**--amending real estate brokers' and salespersons' license act.

Bill Shephard, President, Homeowners Marketing Services of Kansas/Missouri/Oklahoma, was first to address the bill. He distributed a folder that contained testimony, (Attachment 8) a pamphlet entitled, "Introducing The New Risk Management System", (Attachment 9), A matrix containing states, Prohibited Acts Code & Language on Inducements, (Attachment 10), HMS "Consumer Reach" Information Sheet (Attachment 11), a letter to the Kansas Real Estate Commissioners from Frank Stucky (Attachment 12), Camelot Realty, Inc. (Attachment 13) and HMS The Power of Membership (Attachment 14)

Mr. Shephard stated the basic question the Committee should consider if it is going to support this bill. "Does the real estate industry of Kansas need a broad prohibitive law which unlike gift law in other states does not allow for any exemption." Mr. Shephard referred to the summary of law which currently exists in 50 states. Basically in 36 states, including California, New York and Illinois, legislatures have enacted no such law. Mr. Shephard gave the history of what had happened in 1986, 1993 and 1994. He stated that the Kansas Real Estate Commission, the Kansas Association of Realtors and HMS all agree to some extent that some sort of change is needed. Mr. Shephard stated the bill is a starting point, offering a de minimus exception and read the two important functions. The testimony also stated there is also agreement among the Kansas Real Estate Commission, the Kansas Association of Realtors and HMS that consumer protection and professional integrity in the licensee's practices are paramount goals.

Mr. Shephard provided background on HMS and ended by urging passage of the bill.

Karen France, Kansas Association of Realtors appeared in opposition to the bill as it stands. (Attachment 15) The Association has discussed the legislation and finds problems inherent in the statute the way it is now. The proposed change leaves even more questions. This is very vague and they would not begin to know how to tell their members to carry out the law.

Jean Duncan, Director, Kansas Real Estate Commission, appeared in opposition to **SB 780** and distributed her testimony to the committee. (Attachment 16) She read from her testimony that under current law, licensees may not offer or give prizes, gifts, or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate. The amendment would allow a licensee to give a one-time gift to the seller or buyer in a real estate transaction which costs the licensee \$25 or less. Ms. Duncan referred to the Attorney General Opinion No. 94-17 attached as part of the testimony. This opinion was issued after reviewing a program offered by Homeowners Marketing Services through its affiliate Homeowners Association of America. The Attorney General recently issued the position that participation in the program by licensees would violate 58-3062(a)(17). The Opinion also reviewed the legislative history of the provision. Ms. Duncan's testimony stated that the proposed amendment in **SB 780** would allow licensees to participate in the HAA program. Ms. Duncan ended her testimony by respectfully urging the committee to kill the bill.

The Chairman thanked Ms. Duncan and stated the hearing on **SB 780** was concluded. He directed the committee's attention to **SB 680**--real estate brokers and salespersons.

Senator Bogina moved to amend **SB 680** conceptually to allow the Board to determine if they want to exempt someone who is over 80 years of age and has 10 years of experience. Senator Gooch seconded the motion. The motion carried.

Senator Bogina moved to recommend **SB 680** favorable for passage as amended. Senator Reynolds gave a second to the motion. The motion carried.

The committee turned to **SB 731**--real estate appraisers. The Chairman stated that this is the bill in which all interested parties worked out an agreement. The bill was already amended on the provisional part that interns cannot be county or district appraisers.

Senator Feleciano moved to recommend **SB 731** favorable for passage as amended. Senator Papay gave a second to the motion. The motion carried.

The meeting was adjourned. The next meeting is scheduled for February 24, 1994.

## GUEST LIST

COMMITTEE : SENATE GOVERNMENTAL ORGANIZATION

DATE: Feb. 23, 1994

[illegible]



METROPOLITAN KANSAS CITY BOARD OF REALTORS®  
6900 NORTH EXECUTIVE DRIVE  
SUITE 200  
KANSAS CITY, MO 64120-2111  
PHONE 816/242-4200  
FAX 816/242-4212

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February 10, 1994

Joseph Speyer  
Speyer Realty Co.  
4050 Broadway  
Kansas City, MO 64111

Dear Mr. Speyer:

Attached is a copy of a page from the current Missouri Real Estate Commission Statutes & Regulations book dated December, 1993.

This shows that under certain conditions the commission may waive all or part of the Continuing Education requirements. Item #E states waiver may be granted to a licensee who is at least 80 years of age. To the best of my recollection this ruling has been in effect for 10 years or more. I called the Missouri Real Estate Commission offices in Jefferson City and they could not give me an exact date but advised me that it had been in effect for a long time.

I hope this gives you the information you need.

Please call if I can be of further assistance to you.

Sincerely,

Reta M. Sullivan  
Education Administrator

*Senate Gov. Org  
Attachment 1  
2/23/94*





(4) This rule shall not be deemed to limit the commission's authority to file a complaint with the Administrative Hearing Commission charging a licensee with any actionable conduct or violation, whether any complaint exceeds the scope of the acts charged in a preliminary complaint filed with the commission and whether any complaint has been filed with the commission.

(5) The commission interprets this rule, which is required by law, to exist for the benefit of those members of the public who submit complaints to the commission. This rule is not deemed to protect, or inure to the benefit of, those licensees, or other persons against whom the commission has instituted or may institute administrative or judicial proceedings concerning possible violations of the provisions of chapter 339, RSMo.

#### 250-9.020 Investigation

(1) Upon receipt of a complaint in proper form, the commission shall investigate the actions of the licensee against whom the complaint is made. In conducting an investigation, the commission, in its discretion, may request the licensee under investigation to answer the charges made against him/her in writing and to produce relevant documentary evidence and may request him/her to appear before it. A copy of any written answer of the licensee shall be furnished to the complainant.

#### 250-9.030 Dismissal of Complaint

(1) If the investigation reveals that the complaint does not involve the violation of the license law or these rules of the commission, the complaint will be dismissed by the commission and the parties involved will be so advised.

(2) Withdrawal of a valid, legitimate complaint against a licensee as the result of restitution of money or property to the complainant, or other corrective action by the licensee, shall not be grounds for dismissal of the complaint by the commission except at its discretion.

#### 250-9.040 Violations

(1) If the investigation discloses a probability that the acts of the licensee may be those to justify disciplinary action against him/her, the matter will be presented to the Administrative Hearing Commission for determination.

#### 250-9.050 Action by the Commission

(1) Upon final ruling by the Administrative Hearing Commission that the acts of a licensee constitute a violation of the license law or these rules, the commission shall proceed to revoke or suspend the license of the offending licensee or take other authorized action as it shall deem appropriate.

(2) The commission may require a person who formerly held a license but had the license placed on probation, suspended or revoked, to meet and perform certain conditions before reinstating or reissuing a license to this person. These conditions may include, but shall not be limited to satisfactory completion of certain educational requirements, passage of a written examination of the type given to applicants for licensure, personal appearances before and periodic reports to the commission and restitution of money or property.

### Chapter 10 — Continuing Education

#### 250-10.010 Requirements

(1) Each real estate licensee who holds an active license shall complete during the two (2)-year license period prior to renewal, as a condition precedent to license renewal, a minimum of twelve (12) hours of real estate instruction approved for continuing education credit by the Missouri Real Estate Commission. An active license is any license issued by the commission except those which have been placed on inactive status by a broker or salesperson, pursuant to 4 CSR 250-4.040(4) and 4 CSR 250-4.060(5). Failure to provide

the commission evidence of course completion as set forth shall constitute grounds for not renewing a license. For purposes of 4 CSR 250-10, an hour is defined as sixty (60) minutes, at least fifty (50) minutes of which shall be devoted to actual classroom instruction and no more than ten (10) minutes of which shall be devoted to a recess. No credit will be allowed for fractional hours.

(2) At least three (3) hours of the twelve (12) hours of approved instruction shall consist of one (1) of the following core curriculum courses, each of which shall include thirty (30) minutes of instruction on current laws and regulations:

- (A) Missouri laws governing the transfer of real property;
- (B) Broker supervision and escrow account management;
- (C) Fair housing;
- (D) Property management; or
- (E) Commercial brokerage.

(3) The balance of the twelve (12) hours of instruction shall consist of courses which have been approved for continuing education credit by the Missouri Real Estate Commission. The commission will approve those courses which are determined by it to be those through which real estate licensees can remain qualified and can become more competent to provide a higher level of public service and protection.

(4) Individual licensees may receive continuing education credit for courses taken in Missouri or another state which have not been previously submitted by the sponsor for approval, provided course content, instructor qualifications and course administration are acceptable to the commission. Applications for nonpreapproved course credit must be on a form prescribed by the commission, accompanied by a nonrefundable evaluation fee of ten dollars (\$10).

(5) The commission may waive all or part of the continuing education requirements upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for the following causes:

- (A) Serious physical injury or illness;
- (B) Active duty in the armed services for an extended period of time;
- (C) Residence outside the United States;
- (D) Membership in the Missouri Bar;
- (E) Licensee is at least eighty (80) years of age;

(F) Licensee has been licensed consecutively since 1942;

(G) Member of the Missouri Senate or House of Representatives at any time during the renewal period to which the waiver applies; and

(H) Member of the Missouri Real Estate Commission during any portion of the renewal period to which the waiver applies.

(6) The following offerings will not be considered by the commission to meet Missouri continuing education requirements even though these offerings may be approved by states with which Missouri enters into continuing education reciprocity:

- (A) Training or education not directly related to real estate or real estate practice;
- (B) Training or education in office and business skills, such as typing, speedreading, memory improvement, report writing, personal motivation, salesmanship, sales psychology and time management;
- (C) Sales promotions or other meetings held in conjunction with general real estate brokerage activity;

(D) Meetings which are a normal part of in-house training;

(E) That portion of any offering devoted to meals or refreshments;

(F) Sales or brokerage precursory education; provided, however, the education will satisfy the continuing education requirement for the license period during which the license was issued to either a new, delinquent or reactivating licensee. Broker applicants who

Senate Governmental Organization Committee  
February 23, 1994  
Senate Bill 680

Mr. Chair and members of the committee:

My name is Jean Duncan, and I am the Director of the Kansas Real Estate Commission.

The amendment would exempt from the continuing education requirement those licensees who are 80 years of age, or older, and who have been licensed for ten years. The commission reviewed the bill at their meeting last week and are opposed to the amendment.

Mandatory education requirements are based on the concept that they are in the best interest of the general public whom licensees serve.

The C.E. requirement is 12 hours taken during each two-year renewal period. A recent change requires at least 3 of the hours to be on agency relationships and obligations. If a license is on active status, the 12 hours are required to renew the license. I should also mention that licensees do not necessarily have to go to a classroom. There are a number of approved correspondence courses.

Regardless of someone's age or experience, we believe they need continuing education. It is great to see a licensee who has reached the age of 80 and is able to be active in the real estate business. But we wonder why he should be exempt from education requirements. He probably has more wisdom at that age, but he also needs current knowledge to protect consumers in real estate transactions.

The concern may be that it is difficult for someone of that age to complete the education. However, if he remains active in the business, how can it be determined that he isn't able to take education?

We respectfully ask that you kill the bill. However, if you do recommend it for passage, please amend the language to clarify that the ten years of licensure must be continuous.

Thank you for your consideration.

*Senate Gov. Org.  
Attachment 2  
2/23/94*

SCHOOLS REGISTERED BY THE KANSAS REAL ESTATE COMMISSION  
FOR CONTINUING EDUCATION REQUIREMENTS

FEBRUARY 1, 1994

Listed below are the ONLY courses approved for continuing education credit. The list is alphabetized by school name in the format below:

SPONSOR #/NAME & CONTACT INFORMATION;  
COURSE #/COURSE NAME; CREDITS; TYPE (CE=Continuing Education)  
Courses available for Home Study indicated by HS to the right of "TYPE".

Watch for course code numbers preceded by an "M" or an "E".

The 12 continuing education hours required for each license renewal after 1/1/96 shall consist of at least 3 hours designated as MANDATORY core hours and no more than 9 hours designated as ELECTIVE hours. Course code numbers preceded by an "M" are Mandatory courses (example M94001), and those preceded by an "E" are Elective courses (example E94001). Listed below is the order in which licensees must meet the new mandatory requirement:

<u>Last Name</u> <u>Begins With</u>	<u>Period during which Mandatory</u> <u>course must be completed</u>
N, O or P	2/1/94 - 1/31/96
Q or R	4/1/94 - 3/31/96
S	6/1/94 - 5/31/96
T, U or V	8/1/94 - 7/31/96
W, X, Y, Z or A	10/1/94 - 9/30/96
B	12/1/94 - 11/30/96
C	2/1/95 - 1/31/97
D or E	4/1/95 - 3/31/97
F or G	6/1/95 - 5/31/97
H	8/1/95 - 7/31/97
I, J, K or L	10/1/95 - 9/30/97
M	12/1/95 - 11/30/97

Watch for course codes preceded by a "-" (dash). Real estate appraisal courses are identified by a dash preceding the course code (example -94001) and are considered elective hours. During any renewal period, a licensee may receive no more than three hours credit for real estate appraisal courses. This means that if a licensee attends more than one such course during any renewal period, credit will be given for only one course.

The 30-hour Salesperson's Post License Course required for a new Salesperson's first renewal has also been approved for credit for licensees who are not required to attend the course subject to the following limitations: 12 continuing education hours for license renewal prior to 1/31/96; or 9 ELECTIVE hours for license renewal on or after 1/31/96. A separate list of providers for this course is available upon request from the Commission office.

Submission of Certificate of Completion

Licensees are required to submit certificate/student opinion forms to the Commission office within 30 days of course completion or by the licensee's renewal date, whichever is sooner. If the course provider reports your credit to the Commission by roster, you still need to return the certificate/student opinion form. Please be sure the license number you supply to the course provider is correct so that we can record your credit.

KANSAS REAL ESTATE COMMISSION  
THREE TOWNSITE PLAZA, STE 200  
120 SE 6TH AVE  
TOPEKA, KS 66603-3511

If you have any questions, please call (913) 296-3411.

*Sen Gov Dr g*  
*Attachment 27*  
*2/23/94*



## 100 BARTON COUNTY COMMUNITY COLLEGE

RR 3

Great Bend, KS 67530

Elaine Simmons

(316) 792-2701

-94153	Report Writing of URAR	3 CE
E94154	How to Screen Any Property for Apparent Environmental Hazards	12 CE/9 ELECTIVE
-94219	Uniform Standards	3 CE

## 102 CAREER EDUCATION SYSTEMS, INC.

8600 Ward Parkway-Suite 1130

Kansas City, MO 64114

Mark Barker

(816) 444-7277 (316) 263-3167 Wichita

Outside Kansas City - 800 748-7715

E94077	FHA/VA Financing in the 90's	3 CE
E94078	Educating the Public About Real Estate Services	3 CE
E94079	Home Styles and Construction Process	3 CE
E94080	Intro. to Buyer Brokerage	3 CE
E94081	Intro. to Office Property	3 CE
E94082	Prescriptions for Reducing Risk	3 CE
E94083	Selling New Home Construction	3 CE
E94084	Organizational Skills for the Fiduciary	3 CE
E94085	Examining the Offer	3 CE
E94086	Clarifying the Contracting Process	3 CE
E94087	Demonstrating Property	3 CE
E94088	Pricing with Power	3 CE
E94089	Making Contracts Understandable	3 CE
E94090	Conventional Financing in 90's	3 CE
-94091	Intro. to Residential Appraisal	3 CE
E94092	Tax Law and Its Impact on R/E	3 CE
E94093	Major Law Changes Affecting You	3 CE
E94094	The Practice of Buyer Brokerage	3 CE
E94095	More Prescriptions for Reducing Risk	3 CE
E94096	Educating the Seller as to Marketing the Property	3 CE
E94097	Agency--Why It Really Matters	12 CE/9 ELECTIVE-HS
E94098	Monopoly-It's Not Just a Game Anymore	3 CE
E94099	Negotiating With Power	3 CE
E94100	Fair Housing-The Issue Isn't Black & White	3 CE

512 EUGENE D. BROWN REALTORS  
7219 Metcalf  
Shawnee Mission, KS 66204

Corky Hyatt  
(913) 362-4501

E94121	From Contract to Closing	4 CE
M94122	Buyer Agency Update: Let's Get It Right the First Time!	4 CE
E94123	Servicing the Listing	4 CE
E94124	New Construction	4 CE

106 FORT HAYS STATE UNIVERSITY  
600 Park Street  
Hays, KS 67601-4099

Patricia Baconrind  
(913) 628-5878

E94108	Conveying and Protecting Title	4 CE
E94109	Kansas License Law	4 CE
E94110	Loan App./Analysis/Closing	4 CE
M94111	Who's My Boss	4 CE
-94112	Appr. Res. Prop./Sales Comparison	3 CE
-94113	Appr. Resid. Prop./Cost Approach	3 CE
E94114	Financial Analysis	8 CE
-94115	Principles Resid. R/E Appraisal	3 CE
E94116	Who's the Planning Commission	4 CE
E94117	Real Estate Law and You	4 CE
E94118	World of Conventional Financing	8 CE
E94119	Real Estate Management--I	4 CE
E94120	Property Management II	4 CE
E94210	Red Flags in Real Estate	4 CE

110 JOHNSON COUNTY BOARD OF REALTORS  
6910 W. 83rd Street  
Overland Park, KS 66204-3997

Joanne Arnold  
(913) 381-1881

E94125	Lease With Option to Buy	4 CE
E94126	Contract for Deed (Installment Land Contract)	4 CE
E94127	Taking a Professional Listing	4 CE
E94128	Sign the Contract, Please!	4 CE
E94129	Foreclosure	4 CE
E94130	FHA/VA Financing	4 CE
E94131	Finance II	8 CE
E94132	Qualifying/Conventional Financing	4 CE
E94133	Servicing the Listing	4 CE
E94134	From Contract Through Closing	4 CE

## JOHNSON COUNTY BOARD OF REALTORS (CONT'D)

E94135	New Home Construction	4 CE
E94136	Land Development	4 CE
E94137	Contract/Fair Housing	6 CE
E94138	Winning with Inspections	4 CE
E94139	Contracts and Other Legal Instruments	4 CE
M94140	Agency Relationships in R/E	4 CE
M94141	Buyer Brokerage	4 CE
M94142	Risk Reduction	6 CE
E94143	Selling R/E Using the Best Asset You Have--Income Taxes	4 CE
M94144	Who's My Boss	4 CE
M94145	Who's My Boss - Part II	6 CE
M94146	Buyer/Dual Agency	4 CE
E94147	Alternative Financing	8 CE
E94148	Agents="Take Care Out There"	4 CE
E94149	Real Estate Mediation	12 CE/9 ELECTIVE
E94150	Smooth Sailing to Closing	4 CE
M94151	Advanced Agency Seminar	4 CE
E94152	Expand Your Market-International R/E	4 CE
M94191	Agency: Seller, Buyer or Both?	3 CE
E94192	This Old House/Normal and Abnormal Concerns	4 CE

135 JOHNSON COUNTY COMMUNITY COLLEGE  
 12345 College Boulevard  
 Overland Park, KS 66210-1299

Lin Knudson  
 (913) 469-8500

E94155	VA/FHA/Conventional Financing	8 CE
E94156	R/E Contracts for Today's Professional	8 CE
E94157	Foreclosure	4 CE
E94158	Closing and Settlement	4 CE
E94159	Professional R/E Management	12 CE/9 ELECTIVE
E94160	Making Money Through Income Property Investment	6 CE
E94161	Using Electronic Financial Calculators in Cash Flow Analysis	6 CE
E94162	Alternative Finance	8 CE
M94163	Agency	6 CE

111 KANSAS ASSOCIATION OF REALTORS  
 3644 SW Burlingame Road  
 Topeka, KS 66611-9990

James Mayer  
 (913) 267-3610

800-366-0069

-94004	Residential Appraisal: Confronting Environmental Issues	3	CE
-94005	Single-Unit Condominium Appraisal	3	CE
-94006	Uniform Residential Appraisal Report	3	CE
-94023	Appraisal Report Writing, I	3	CE
-94024	Appraisal Report Writing, II	3	CE
-94025	The Basics of Appraisal	3	CE
-94026	Real Estate Analysis	3	CE
-94027	The Sales Comparison Approach	3	CE
-94028	The Cost and Income Approach/Valuation of Partial Invest.	3	CE
-94029	Appraisal Standards and Ethics	3	CE
E94030	Residential/Landlord Tenant Act	4	CE
E94031	Closing Document Workshop	8	CE
E94032	License Law: A Second Look	4	CE
E94033	Negotiations in Real Estate	4	CE
E94034	Risky Business #1	4	CE
E94035	Risky Business #2	4	CE
E94036	Representing the Buyer	8	CE
E94037	Professional Liability Reduction Techniques	4	CE
E94038	Persuasive Pricing	4	CE
E94039	Obtaining a Salable Listing	8	CE
E94040	Developing Professionalism	4	CE
E94041	Effective Advertising	4	CE
E94042	Handling Small Investors R/E Transactions	4	CE
E94043	Practical Alternatives in R/E Financing	4	CE
E94044	Understanding New Home Construction	4	CE
E94045	Understanding FHA/VA/Conventional Repossession Transactions	4	CE
E94046	Financing R/E in Today's Market	8	CE
E94047	Brokers/Salespersons Update #2	4	CE
E94048	Brokers/Salespersons Update #3	4	CE
E94049	Value and Pricing Principles	8	CE
E94050	Risk Reduction: Misrepresentation	4	CE
E94051	Trust Account Record Keeping	4	CE
E94052	Risk Reduction: Fair Housing	4	CE
E94053	Antitrust & Authorized Practice of Law	4	CE
E94054	Advanced Real Estate Contracts	12	CE/9 ELECTIVE-HS
E94055	Risk Reduction for the 90's	8	CE - HS
E94056	GRI-II Marketing Course	12	CE/9 ELECTIVE
E94057	Inspecting Residential Real Estate	4	CE - HS
E94058	Understanding Environmental Hazards	6	CE - HS
E94059	Mastering the Real Estate Applications of Financial Calculators - Course I	12	CE/9 ELECTIVE-HS
E94060	Mastering the Real Estate Applications of Financial Calculators - Course II	12	CE/9 ELECTIVE-HS

22-5

## KANSAS ASSOCIATION OF REALTORS (CONT'D)

E94061	Mastering the Real Estate Applications of Financial Calculators - Course III, Time Value of Money	12 CE/9 ELECTIVE-HS
E94062	FHA 203-K Rehabilitation Loan Program	4 CE - HS
E94063	Antitrust and Real Estate	4 CE - HS
E94064	Managing Environmental Risk in Commercial Transactions	4 CE
E94065	Introduction to Real Estate Auction	4 CE
E94066	Prove It!	4 CE
E94067	Understanding HUD Repossessions	4 CE - HS
E94068	Understanding FHA/VA Repossessions	4 CE - HS
E94069	MLS Code of Ethics: Agency	4 CE
M94070	Risk Reduction: Agency	4 CE
M94071	Alternative Agency Practices	4 CE - HS
M94072	Disclosure Dual Agency	4 CE
M94164	Contracts, Closings and Pitfalls	8 CE
M94165	Anatomy of a R/E Transaction	8 CE
M94166	Brokers/Salespersons Update #1	4 CE
E94211	Residential Sales Course 205 - Financial Skills for the Residential Specialist	12 CE/9 ELECTIVE
M94217	Alternative Agency Workshop	8 CE
M94218	Alternative Agency Practices	4 CE

112 KANSAS CITY KANSAS COMMUNITY COLLEGE  
 7250 State Avenue  
 Kansas City, KS 66112

Jean Walker  
 (913) 596-9660

E94103	FHA/VA/Conventional Financing Facts	4 CE
E94104	Real Estate: Offers and Contract	3 CE
E94105	Land Title Problems and Solutions	3 CE

533 KANSAS DEPARTMENT OF COMMERCE  
 AND HOUSING  
 700 S.W. Harrison, Suite 1300  
 Topeka, KS 66603-3712

Russell Rudy  
 (913) 296-4990

E94182	Home Energy Rating Systems and Energy Efficient Mortgages	12 CE/9 ELECTIVE
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137 **KANSAS SCHOOL OF REAL ESTATE**  
 949 South Glendale  
 Wichita, KS 67218

Ruth Mercer  
 (316) 683-2638

E94207	Understanding the License Law	8 CE
E94208	Modern Residential Financing	12 CE/9 ELECTIVE-HS
E94209	Agency Relationships	12 CE/9 ELECTIVE-HS

139 **KANSAS STATE UNIVERSITY**  
 Extension Agricultural Economics  
 KSU Waters Hall  
 Manhattan, KS 66506-4023

John R. Schlender  
 (913) 532-5823

-94021	Managers and Appraisers Winter Meeting	3 CE
-94022	Managers and Appraisers Summer Meeting	3 CE

515 **LINCOLN GRADUATE CENTER**  
 PO Box 12528  
 San Antonio, TX 78212

Deborah J. Deane  
 (512) 225-2897

800-531-5333

-94010	Standards of Professional Appraisal Practice	3 CE
-94011	Principles of R/E Appraisal	3 CE
-94012	Practice of R/E Appraisal	3 CE
-94013	Writing the Narrative Appraisal Report	3 CE
-94014	Farm and Land Appraisal	3 CE
-94015	Commercial Invest. Appraisal	3 CE
-94016	Advanced Commercial Appraisal	3 CE
-94017	Effective Court Testimony	3 CE
-94018	Advanced Commercial Asset Management	3 CE
-94019	Principles of Business Appraisal	3 CE
-94020	Manufactured Housing Appraisal	3 CE
-94107	Principles of Appraisal Review	3 CE

508 **LONGVIEW COMMUNITY COLLEGE**  
 500 Southwest Longview Road  
 Lee's Summit, MO 64081

Allen L. Earle  
 (816) 672-2300

E94001	Basic Home Construction	3 CE
E94002	Housing Design	3 CE
-94003	Real Estate Appraising	3 CE

142 **METROPOLITAN KANSAS CITY BOARD OF REALTORS**  
 6900 North Executive Drive, Suite 200  
 Kansas City, MO 64120-2111

Reta M. Sullivan  
 (816) 242-4200

E94167	How to Finance Commercial/Investment R/E	3 CE
E94168	How To's of Financial Planning via R/E	6 CE
E94169	Intro. to Commercial/Investment R/E	6 CE
E94170	Sale/Leaseback	6 CE
E94171	How to Take a Professional Listing	3 CE
E94172	Sign the Contract Please	3 CE
E94173	Real Estate Exchanging: How & Why?	6 CE
E94174	What is Your Liability in Real Estate Transactions	3 CE
E94175	How to Use the Tax Laws to Sell R/E	3 CE
E94176	Residential Real Estate Finance I	3 CE
E94177	Residential Real Estate Finance II	3 CE
E94178	Advanced Agency	3 CE
E94179	Contracts and Contingencies	3 CE
E94180	Winning with Inspections, Part I	3 CE
E94181	Winning with Inspections, Part II	3 CE

115 **NEOSHO COUNTY COMMUNITY COLLEGE**  
 1000 South Allen  
 Chanute, KS 66720

David W. Fewins  
 (316) 431-2820, Ext. 228

E94106	Residential Finance	12 CE/9 ELECTIVE
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534 **OKLAHOMA STATE UNIVERSITY**  
 Independent and Correspondence Study  
 001 Classroom Building  
 Stillwater, OK 74078-0404

Celeste Campbell  
 (405) 744-9483

22-8

## OKLAHOMA STATE UNIVERSITY (CONT'D)

E94212	Abstracting and Title Insurance	3 CE - HS
E94213	Contract for Deed	3 CE - HS
E94214	Market Analysis in Real Estate	3 CE - HS
E94215	Overview of Agency Law	3 CE - HS
E94216	Undisclosed Dual Agency	3 CE - HS

118 PERKI INSTITUTE  
3300 SW 29th Street  
Topeka, KS 66614

Trudy Perkins  
(913) 272-8401

E94193	Creative Finance #1	4 CE
E94194	Creative Finance #2	4 CE
E94195	Laws Affecting Real Estate	4 CE
-94196	Advanced Narrative Report Writing	3 CE
-94197	Residential Real Estate Appraising	3 CE
-94198	Market Data Analysis	3 CE
-94199	Professional Appraisal Standards of Practice	3 CE
-94200	Basic Farm Appraisal	3 CE
-94201	Valuation of Income-Producing Properties #1	3 CE
E94202	Recordkeeping	4 CE
-94203	URAR Appraisal Seminar	3 CE
E94204	Real Estate Contracts	4 CE
E94205	Listing Agreements and Contingencies	4 CE
E94206	Basic Environmental Inspections for Real Estate Transactions	12 CE/9 ELECTIVE

124 REAL ESTATE SCHOOL OF LAWRENCE  
PO Box 3271  
Lawrence, KS 66046

Charlene Garzillo  
(913) 843-1309

E94101	Experienced Basics	4 CE
E94102	Essentials of Real Estate	8 CE

125 REALTY SCHOOL OF KANSAS  
3241 E. Douglas  
Wichita, KS 67218

Larry Rickard  
(316) 685-3652

(Any A-J Segment of a Course is Approved for 4 Hours of  
Continuing Education)

22-9

E94183	Real Estate Finance, A-J	4 CE - HS
E94184	Real Estate Law, A-H	4 CE - HS
E94185	Real Estate Investments, A & B	4 CE
E94186	Taxes and Investments	4 CE
E94187	Commercial Buildings, A-I	4 CE
E94188	Land I, II, III	4 CE
-94189	Residential Appraisal, A-I	3 CE
E94190	Recordkeeping Course	4 CE

131 WICHITA PUBLIC SCHOOLS  
Dunbar Adult Center  
923 Cleveland  
Wichita, KS 67214

Charles P. Scott  
(316) 833-3150

E94007	R/E Property Management Seminar	12 CE/9 ELECTIVE
E94008	Real Estate Broker Seminar	12 CE/9 ELECTIVE
E94009	Real Estate Finance Seminar	12 CE/9 ELECTIVE

132 WICHITA STATE UNIVERSITY  
Campus Box 88  
Wichita, KS 67208

Mark Dotzour  
(316) 689-3219

E94073	Real Estate Finance	12 CE/9 ELECTIVE
-94074	Real Estate Appraisal	3 CE
E94075	Real Estate Investment Analysis	12 CE/9 ELECTIVE
E94076	Urban Land Development	12 CE/9 ELECTIVE

23-10

**ADDENDUM TO "SCHOOLS REGISTERED BY THE KANSAS REAL ESTATE COMMISSION  
FOR CONTINUING EDUCATION - FEBRUARY 1, 1994"**

**506 KANSAS STATE UNIVERSITY**

C/O KANSAS CHAPTER - AMERICAN SOCIETY  
OF FARM MANAGERS AND RURAL APPRAISERS  
1600 North Lorraine, Suite 125  
Hutchinson, KS 67501

Gerald Warmann  
(316) 663-5491

-94220 Smith Farm Case Study

3 CE

**127 MIDWESTERN REAL ESTATE INSTITUTE**

4501 Commercial Place  
Leavenworth, KS 66048

John D. Sheldon  
(913) 727-1528, Ext. 127

M94221	Professional Update - Agency	4 CE
E94222	Professional Update - Fair Housing	4 CE
E94223	Professional Update - Finance	4 CE
E94224	Professional Update - Contracts	4 CE

**125 REALTY SCHOOL OF KANSAS (CONT'D from Pages 8-9)**

M94225	Agency	4 CE
M94226	Agency	4 CE - HS





Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611-2098  
Telephone 913/267-3610  
Fax 913/267-1867

TO: SENATE GOVERNMENTAL ORGANIZATION COMMITTEE  
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: FEBRUARY 23, 1994  
SUBJECT: SB 731, REAL ESTATE APPRAISERS

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support SB 731.

We participated in the study committee this summer which developed a method for facilitating entry into the appraiser profession. We agreed with the recommendation of that study committee. We feel that the two changes which are proposed in this bill will permit the Appraisal Board the statutory authority to provide for a provisional license category by their rule and regulation process.

We ask for your support of the bill as presented to you.

*Senate Gov Org.  
Attachment 3  
7/24/94*



Jeffrey D. Sonnich, Vice-President

Suite 512  
700 Kansas Avenue  
Topeka, Kansas 66603  
(913) 232-8215

February 23, 1994

TO: SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
FR: JEFFREY SONNICH - KS-NE LEAGUE OF SAVINGS INSTITUTIONS  
RE: S.B.731; PROVISIONAL LICENSED REAL PROPERTY APPRAISER

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Governmental Organization in support of S.B. 731.

We were included in a task force during the summer that looked at ways to increase the opportunities for entry into the Real Estate Appraisal industry. The task force was comprised of representatives from the KNLSI, KBA, KAR, fee appraisers, and Appraisal Board members. The outcome of that task force was a recommendation to the state Appraisal Board that a provisional licensed category be put in place. The Appraisal Board was unanimous in adopting the recommendation.

The Appraisal Board attempted by rule and regulation to adopt the provisional licensed category, however the Attorney General's office ruled that the Board did not have statutory authority. This bill would simply allow the Appraisal Board to have the authority to adopt a provisional licensed category. The specific qualifications will be adopted by rule and regulation.

We feel this bill is a good compromise between allowing an easier entrance into the appraisal industry and the Appraisal Board's responsibility to provide adequate oversight. We respectfully request the Senate Committee on Governmental Organization recommend favorable passage of S.B. 731.

Jeffrey Sonnich  
KNLSI

*Senate Gov. Org.  
Attachment 4  
2/23/94*

February 23, 1994

Testimony Relating to Senate Bill No. 731, An Act relating to real estate appraisers; licenses; amending K.S.A. 1993 Supp. 58-4109 and repealing the existing section.

I would first of all like to thank the Committee members for the opportunity to speak on behalf of this bill.

My name is Jack Shelton, and I am speaking as the Chairman of the Coalition of Kansas Appraisers, a nonprofit organization that consists of the Kansas chapters of the Appraisal Institute, the Independent Fee Appraisers Association, the American Society of Appraisers, and the American Farm Managers and Appraisers Association. The Coalition presently has approximately 500 members, and therefore represents approximately 75% of all real estate appraisers in the State of Kansas. Our goal is to work with the Kansas Appraisal Board and the legislature to develop policies related to real estate appraising that are in the best interest of the public, and the appraisal profession.

Today I would like to testify in support of Senate Bill 731, which would create the additional classification "state provisional licensed real property appraiser." We support this classification for two reasons. First, it will encourage some people who are already performing appraisals not involving federally related transactions, and who are not presently licensed or certified, to apply for provisional licensing status. To qualify for provisional licensing, they will have had to complete either 75 or 165 hours of coursework, and pass the licensing exam. These requirements will clearly benefit the public because they will be assured that the provisionally licensed appraiser has taken the necessary basic appraisal courses, and that their appraisals will fall under the Uniform Standards of Professional Practice (USPAP).

Second, provisional licensing status will also help persons who want to become fully licensed or certified appraisers, but who find it difficult to meet the experience requirements. Some persons who want to work as appraisers, perhaps who live in remote areas, have difficulty finding a licensed or certified appraiser to apprentice with, who will supervise their work. These persons may have completed the coursework and passed the exam, and do have the basic understanding of how to complete appraisals. Provisionally licensed appraisers will have the opportunity of submitting appraisals they have completed to the Executive Director of the Appraisal Board for review, and will receive feedback if they are not following USPAP guidelines. They can then correct any

*Sen. Gov. Org.  
Attachment 5  
2/23/94*

inappropriate procedures, and ultimately submit acceptable work for full experience credit in the future.

For these reasons we support Senate Bill No. 731, and ask that you vote in its favor.

Thank you for your time and consideration.

Jack Shelton  
Chairman, Coalition of  
Kansas Appraisers

STATE OF KANSAS

David C. Cunningham, Director  
Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66612-1585



(913) 296-2365  
FAX (913) 296-2320

Department of Revenue  
*Division of Property Valuation*

**MEMORANDUM**

**TO:** Senator Al Ramirez, Chairman  
Senate Committee on Government Organization

**FROM:** David C. Cunningham, Director of Property Valuation  
(Presented by: Bill Waters, Chief Attorney, Division  
of Property Valuation)

**DATE:** February 23, 1994

**SUBJECT:** Senate Bill 731

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The Director of Property Valuation opposes S.B. 731 in its present form.

K.S.A. 1993 Supp. 19-430 governs the appointment of county and district appraisers. K.S.A. 19-430 was amended in 1992, effective July 1, 1993, to require county and district appraisers to be licensed or certified pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated as a prerequisite to being appointed to the office of county or district appraiser on or after July 1, 1993. The purpose of the 1992 amendment to K.S.A. 19-430 was to assure that county and district appraisers had the requisite experience and qualifications to assume the office of county or district appraiser.

The Director's understanding of the "provisional" license is that it would, in effect, create an "apprenticeship program" of appraisers. In many cases these apprentices would not have appreciable appraisal experience and many would lack the qualifications necessary to be county or district appraiser.

The foregoing objection to S.B. 731 can be solved by amending an amendment to K.S.A. 1993 Supp. 19-430 into S.B. 731. The following language from K.S.A. 1993 Supp. 19-430:

No person shall be appointed to the office of

*Senate Gov. Org.*  
*Attachment 6*  
*2/23/94*



Senator Al Ramirez, Chairman  
Committee on Government Organization  
Memorandum on S.B. 731  
February 23, 1994  
Page 2

county appraiser or to fill a vacancy therein unless such person is currently certified or licensed pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated.

could be amended to read as follows:

No person shall be appointed to the office of county **or district** appraiser or to fill a vacancy therein unless such person is currently **a licensed state real property appraiser, a certified general real property appraiser, or a certified residential real property appraiser** ~~certified or licensed~~ pursuant to article 41 of chapter 58 of the Kansas Statutes Annotated.

Thank you for your consideration of this proposed amendment to S.B. 731.



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

February 23, 1994


TO: Senate Committee on Government Organization  
RE: SB 731 - Licensing of real estate appraisers

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present comments in support of SB 731. This bill would give the Real Estate Appraisal Board authority to establish an additional class of appraisers to be known as "state provisional licensed" appraisers. This will give individuals working toward the classification of "licensed", "certified general", or "certified residential" appraiser an opportunity to engage in appraisal activities and gain the needed experience hours.

While the supply of qualified appraisers appears to be adequate in the more populated counties, there are still areas of the state which are underserved causing significant time delays in completing real estate transactions. We believe the addition of this class of appraisers will help alleviate some of the delay problems and provide for a more competitive environment in those areas where there are now a very limited number of qualified appraisers.

We would request that the committee recommend SB 731 favorably.

  
James S. Maag  
Senior Vice President

*Senate Gov. Org.  
Attachment 7  
2/23/94*



Testimony and supporting documents to the Senate Governmental Affairs Committee by Bill Shepherd, President, **HOMEOWNERS MARKETING SERVICES** of Kansas/Missouri/Oklahoma, a proponent of Senate Bill 780, which offers a minimus exception to K.S.A. 58-3062 (a)(17). (HMS phone 1-800-879-2828.)

May I thank this Committee for this opportunity and Senators Audrey Langworthy and Al Ramirez for their co-operative efforts in bringing this modifying Bill, which establishes a much needed **de minimus exception** to Kansas real estate law.

The basic question members of this Committee should consider in order to support this Bill is: Does the real estate industry of Kansas need a broad prohibitive law, which unlike gift law in other states does **not allow for any exception**? (See the attached summary of "inducement" regulations in all 50 states and D.C.)

As in 36 states, California, New York and Illinois legislatures have enacted no such law. Are real estate agents in Kansas City and Wichita so much more competitive or unethical than agents in L.A., New York City or Chicago that Kansas needs a law which **without exception** states 58-3062 (a) "no licensee shall": (17) "offer or give prizes, gifts or gratuities which are contingent upon an agency agreement for the sale, purchase or lease of real estate"?

In 1986, the Kansas Real Estate Commission (KREC) said "No" to this question and attempted to delete and repeal the above provision. In '93, the current KREC Director, stated on several occasions that this law should be repealed or at least changed.

In December '93, the Governmental Affairs Committee of the Kansas Association of Realtors (KAR) said "No" we don't need this law when the Committee voted overwhelmingly to recommend to the KREC that K.S.A 50-363 (o) (17) be repealed. Then in January '94. the KAR Governmental Affairs Committee passed a motion to work with the KREC to modify this provision.

I bring out this history to convey that the KREC, KAR and HMS all agree to some extent that some soft of change is needed.

The bill is a starting point, offering a de minimus exception which accomplishes two important functions:

1. It brings this state law into conformity with the Federal I.R.S. code by continuing the prohibition against large contingent gifts but allows the licensee to make a "one time" gift to a seller or buyer in harmony with I.R.S. S274 (6) which restricts deductible gifts to \$25.00. (E.G. similar in concept to the Kansas \$40.00 de minimus exception on gifts from special interests to elected officials).
2. While undesirable practices (of which very few have occurred) would be avoided, this supplemental language would remove any gray area and legitimize the giving of small, one-time gifts which is already customary in the industry among hundreds of licensees and expected by many sellers and buyers.

*Senate Gov. Org.*  
*Attachment 80*  
*2/23/94*

Out of professional respect, and as a practical matter, we want to work closely with the KREC and the KAR to affect this minor change. We don't wish to create any administrative challenge for the KREC or offer change that is too narrow for KAR, but again we can all agree change is needed now. We hope to act as a friendly catalyst for this change.

There is also agreement among the KREC, the KAR and HMS that consumer protection and professional integrity in the licensee's practices are paramount goals.

HMS has provided errors and omissions insurance and a risk management system (both of which are exclusively endorsed by KAR) to licensees in Kansas since 1983. Also, HMS has the largest continuous book of real estate E & O in the nation (see brochure). HMS serves over 330 member-broker offices and 5,000 licensees in Kansas.

As the National Association of Realtors Senior Counsel, Mary Stark Hood, stated, "One of the most important and valuable services the agent can perform for the seller is to avoid post sale litigation."

However, a tremendous gap has always existed in a real estate licensee's and real estate seller's risk management. This gap is a lack of substantive financial backing behind the indemnity or hold harmless sellers provide the licensee in listing agreements and disclosures concerning representations about the condition of the property by the seller. Consequently, the buyer is not protected.

However, since 1985, E & O lawsuits have increased over 250% a year but only the licensee can buy E & O insurance.

**THE PROBLEM IS THAT SELLERS HAVE HAD NO SOURCE FOR E & O INSURANCE TO PROTECT THEMSELVES AND ULTIMATELY THE BUYER FROM HONEST MISTAKES.** So the licensee actually bears all the risk for not only his or her honest mistakes, but the seller's as well.

**NOW FOR THE FIRST TIME IN THE HISTORY OF REAL ESTATE AND INSURANCE, A NEW E & O INSURANCE PROGRAM, "A TYPE OF NO FAULT INSURANCE", IS AVAILABLE TO SELLERS TO PROTECT THE CONSUMER FROM HONEST MISTAKES.** This consumer protection is available to sellers through licensees in 48 states and D.C. but **not in Kansas.** (See attached information on Consumer Reach.)

This program has already provided consumer protection on about 45,000 transactions in '93 and is expected to protect consumers by providing this coverage on over 500,000 transactions in '94.

As the attached representative letters from Kansas real estate brokers indicate, hundreds of Kansas licensees desire to provide this service to sellers but cannot because of the broadness of this law. In fact, this program has been presented to hundreds of Kansas licensees who want to use it now.

Finally, testimony from dozens of innocent but harmed and even bankrupted sellers and buyers could have been presented to this committee today. Consumers could be receiving needed protection now as they are in all other 48 states in which HMS operates.

Let's not allow concern over administrative governmental challenges to stop good and needed change, but instead let's work it out together to protect the consumer. We urge you to pass this Bill, which establishes a needed de minimus exception in this law.

If minor changes are needed to clarify this de minimus exception, we will work to assist in making changes to clarify any perceived ambiguity. Let's work together for Kansas consumers now and give them this "no fault" protection.



For more information, call your local HMS representative.

#### DIRECTORY

Alabama & N.W. Florida	(904) 837-9287
Arkansas	(501) 758-2252
Northern California	(415) 578-1344
Southern California	(714) 978-0505
North & South Carolina & Kentucky	(803) 548-1523
Colorado	(303) 671-0259
Florida	(305) 983-0350
Georgia	(404) 536-3120
Illinois	(708) 382-8500
Indiana	(317) 455-0328
Kansas, Missouri & Oklahoma	(918) 492-2828
Louisiana	(504) 769-9739
Michigan & Ohio	(419) 626-8202
Mid-Atlantic States (DC, DE, MD, VA, WV)	(703) 876-0100
Midlands (IA, NE, ND, SD)	(402) 392-2154
Minnesota & Wisconsin	(612) 935-9306
Mississippi	(601) 856-5531
Nevada	(702) 456-6001
New England (MA, ME, NH, VT)	(617) 932-1159
Northeast (NY, NJ, CT, RI)	(908) 842-6460
Pacific Northwest (ID, OR, WA)	(503) 382-9330
Pennsylvania	(800) 522-1600
Southwest (AZ, NM)	(602) 829-0497
Tennessee	(615) 377-0645
Texas	(713) 622-3605
Utah, Montana, & Wyoming	(801) 277-3226



## Introducing The New HMS Risk Management System™



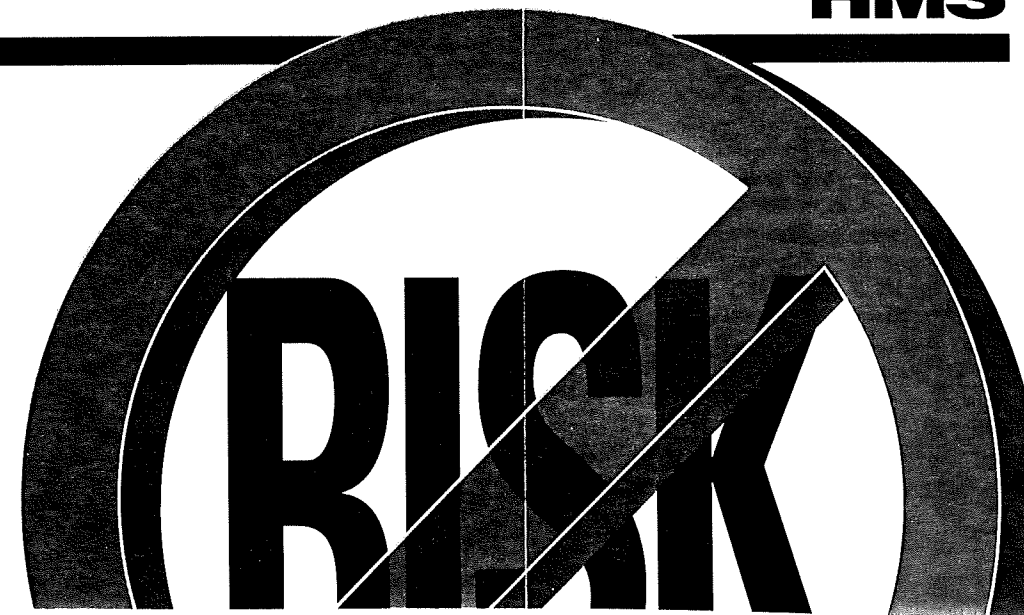
## It Pays To Belong

Welcome to Homeowners Marketing Services. When you become a member, you wield the power, experience and expertise of America's largest real estate services company.

Since 1980, HMS has provided Realtors® and brokers with a unique competitive edge: a single, convenient source for products and

services that generate revenue, conserve cash flow and enhance your relationships with buyers and sellers.

HMS stays in touch with your evolving business needs, through our network of more than 20,000 independent real estate firms and franchise operations. Join us, and watch your business grow with the confidence of a proven winner.



Senate Gov. Organization  
Feb. 23, 1994  
Attachment # 9

## Introducing the New HMS Risk Management System™



Industry trends show that real estate consumers have become much more aware of the various legal options available to them. Along with this increased awareness comes greater risk to real estate brokers resulting in more frequent litigation, higher claims and rising insurance rates. There is no doubt that real estate professionals need a system to help them avoid the aggravation and expense of potential litigation. Insurance alone is no longer enough.

HMS offers a comprehensive Risk Management System providing benefits never before offered to the real estate industry. Designed to protect you by substantially minimizing your risk, our 4-point Risk Management System also helps save you money. And that means peace of mind for you.

## Flexible Errors and Omissions Coverage



The first part of the 4-point Risk Management System provides members with flexible E & O Insurance, transactionally funded for greater affordability. Member offices pay only for the type of coverage they desire rather than subscribe to a "one rate fits all" program.

Benefits include a selection of coverage limits, a choice of deductibles and up to five years prior acts coverage. Also, the insurance is

underwritten by a member company of American International Group, Inc. (AIG), one of the world's largest and most financially secure insurance providers. AIG holds a rating of A+XV, the highest insurance rating available from A.M. Best Company.

## Home Protection Plans



The second part of the Risk Management System provides you with an HMS/HAA Home Protection Plan. It can protect you against potentially unhappy buyers, after the sales transaction has closed.

According to a recent Gallup poll, eight out of 10 prospective buyers prefer a protected home. Business Week recognized this value when it reported that protected homes often command higher prices than homes without this coverage. Also, there is no limit to the number of claims your customers can report on covered items (less specified deductibles, of course).

With the sale of an HMS/HAA Home Protection Plan, you will receive numerous benefits that will not only save you money, but will also give you peace of mind.

For example, if a lawsuit pertaining to a warranty issue should occur and all conditions specified in the warranty plan guide have been adhered to, HMS will indemnify a Member-Broker from any costs incurred up to \$10,000 or the deductible on your E&O policy (whichever is less).

## Risk Management Evaluation



The Risk Management Evaluation, the third part of the 4-point plan, enables you to avoid setbacks and minimize potential risks.

This service is provided by an expert in the field of real estate risk management and is implemented on an individual basis to member offices. A comprehensive report is ultimately generated, identifying areas of potential risk in the broker's operations - areas such as business procedures, documents and compliances, applicable laws, rules and regulations. A fee is charged for this comprehensive evaluation.

## Educational Programs



The fourth part of the Risk Management System allows you to earn credits toward your membership fee while learning how to save money and reduce your business risks. The credit is available upon completion of both of the following programs.

*A sample of programs presently available:*

### N.A.R. Legal Liability Series

This self-contained risk management program for agency owners, designated brokers and office managers provides you with blueprints for office risk reduction practices. The broker, manager and owner of your office simply supply proof of completion of this course in order to earn the membership credit.

### The HMS "Prove It" Program

This program for brokers, office owners and agents, is designed to help you not only be right, but to prove it should a lawsuit occur. All licensed agents must participate in the program, and take the mail-in exam. 75% of the participants must pass the test in order to receive the credit toward the membership fee.

## System Highlights

- ✓ You will benefit from E & O Insurance coverage that is underwritten by a member company of America's leading property and casualty insurance company.
- ✓ With the sale of a Homeowners warranty, you can receive an indemnification up to \$10,000.
- ✓ By participating in the Risk Management Evaluation, you can learn how to minimize legal risks.
- ✓ By participating in the Risk Management Educational Programs, you can lower your membership fee while you and your agents learn how to reduce potential litigation and prove you are right if an actual lawsuit should occur.
- ✓ This is the only system in the real estate industry that provides specific risk reduction measures in addition to excellent professional liability protection.
- ✓ This product is backed by HMS, America's largest real estate services company.



DEC 20 1993

State	Prohibited Acts Code §	Language on Inducements
Alabama	A.C. 34-27-36(a) (24)	Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.
Alaska	A.S. 08.88.071, 08.88.401	None.
Arizona	A.R.S. 32-2153	Solicited, sold or offered for sale real property or cemetery property or membership camping contracts by offering "free lots" or any other inducement of a speculative nature involving a game of chance or risk or conducting lotteries or contests.
Arkansas	A.C.A. 17-35-311	None.
California	Cal. Bus. & Prof. Code 10177	None.
Colorado	C.R.S. 12-61-113	None.
Connecticut	G.S.A. 20-320	None.
Delaware	D.C.A. 24 §2912	None.
District of Columbia	Code of D.C. 45-1936	None
Florida	F.S.A. 475.25	None.
Georgia	O.C.G.A. 43-40-25	None.
Hawaii	H.R.S. 467-14	None.
Idaho	I.C. 54-2040	None.
Illinois	225 ILCS 455/36.18	None.
Indiana	I.S.A. 25-34.1-6-1.1	None.
Iowa	I.C.A. 543B.29	None.

Senate Gov. Organization

Feb. 23, 1994

Attachment # 10

Kansas	K.S.A. 58-3062(a)(17)	Offer or give prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property.
Kentucky	K.R.S. 324.160	Or soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery, contest, or deceptive practice, or offering prizes for the purpose of influencing a purchaser or prospective purchase of real estate, or acting in the dual capacity of broker and undisclosed principal in the transaction.
Louisiana	LSA-R.S. 37:1455	None.
Maine	M.R.S.A. 32 §13067	None.
Maryland	A.C.M., BOP 16-322(a)(9)	Solicits, sells, or offers to sell real property, so as to influence or attempt to influence a prospective party to the sale of real property, by: <ul style="list-style-type: none"> <li>(i) offering a prize or a free lot;</li> <li>(ii) conducting a lottery or contest; or</li> <li>(iii) advertising "free appraisals", unless the advertiser is prepared to appraise the real estate free of charge for any person, regardless of the purpose for which the person requests the appraisal.</li> </ul>
Massachusetts	M.G.L.A. c.112 §87AAA	None.
Michigan	M.S.A. 18.425 (2512)	None.
Minnesota	M.S.A. 82.27	None.
Mississippi	M.C.A. 73-35-21	None.
Missouri	V.A.M.S. 339.100(12)	Using prizes, money, gifts or other valuable consideration as inducement to secure customers to purchase, lease, sell or list property when the awarding of such prizes, money, gifts or other valuable consideration is conditioned upon the purchase, lease, sale or listing; or soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property.

Montana	M.C.A. 37-51-321(13)	Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property.
Nebraska	N.R.S. 81-885.24(17)	Soliciting, selling, or offering for sale real estate by offering free lots or conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real estate
Nevada	N.R.S. 645.630-635	None.
New Hampshire	R.S.A. 331-A:6-b XIX	Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries or contests or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property, or
New Jersey	NJSA 45:15-17g	Using any plan, scheme or method for the sale or promotion of the sale of real estate which involves a lottery, a contest, a game, a prize, a drawing, or the offering of a lot or parcel or lots or parcels for advertising purposes; or
New Mexico	NMSA 61-29-12	None.
New York	RPL 441-c	None.
North Carolina	G.S.N.C. 93A-6	None.
North Dakota	N.D.C.C.A. 43-23-11.1	None
Ohio	O.R.C.A. 4735.18(A)(14)	Having offered anything of value other than the consideration recited in the sales contract as an inducement to a person to enter into a contract for the purchase or sale of real estate or having offered real estate or other improvements on real estate as a prize in a lottery or scheme of change.
Oklahoma	O.S.A. 59 §858-312(12)	Soliciting, selling, or offering for sale real estate by offering "free lots", conducting lotteries or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchase of real estate.
Oregon	O.R.S. 696.301	None.

Pennsylvania	63 P.S. 455.604(18)	Soliciting, selling or offering for sale real property by offering free lots, or conducting lotteries or contests or offering prizes for the purpose of influencing by deceptive conduct any purchaser or prospective purchaser of real property. The commission shall promulgate necessary rules and regulations to provide standards for nondeception conduct under this paragraph.
Rhode Island	G.L.R.I. 5-20.5-14(a) (18)	Soliciting, selling, or offering for sale real property by offering free lots, or conducting lotteries or contests or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property, or
South Carolina	Code of S.C. 40-60-140	None.
South Dakota	S.D.C.L. 36-21A-68	None.
Tennessee	T.C.A. 62-13-312	None.
Texas	V.A.C.S. art. 6573a §15(a)(6)(I)	Soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice.
Utah	U.C.A. 61-2-11	None.
Vermont	V.S.A. T.26 §2296	None.
Virginia	Code of Va. 54.1-2100	None.
Washington	R.C.W.A. 18.85.230	None.
West Virginia	W.V.C. 47-12-11	None.
Wisconsin	W.S.A. 452.14	None.
Wyoming	W.S.A. 33-28-111	None.



## HMS "CONSUMER REACH" INFORMATION SHEET

An initial test marketing of the HMS Consumer Reach Program was conducted in four (4) states (Florida, California, Texas and Massachusetts). Consumer Reach Seller Track Kits were distributed to 9,000 sellers in 1992 by first class mail. Scientific telephone surveys were conducted among a random representative sample of recipients in order to determine perceived value.

The Consumer Reach Seller Track Kit, provided through membership in HOMEOWNERS Association of America (HAA), currently consists of \* Moving On Guide by author and NAR speaker, Danielle Kennedy, (20 pages), a For the Buyer's Eye video by Tony Randall (10 minutes) and seller E & O insurance. Following are the overall conclusions from those surveys:

- \* 72% said they looked through the "Moving On" Guide
- \* 77% said they watched the "For the Buyer's Eye" video
- \* 89% did recall seeing the seller E & O brochure
- \* 82% said they read the seller E & O brochure
- \* 80% of sellers stated they were aware of their liability

The Consumer Reach Program is currently being successfully marketed in all states that HMS operates in (49), except Kansas. HMS expects to reach over 500,000 sellers with Consumer Reach in 1994.

/jr386

Revised 2/21/94 - Commission

*Governmental  
Senate Organization  
Feb. 23, 1994  
Attachment # 11*



## HMS MEMBER PARTICIPANT ROLE IN CONSUMER REACH

An initial nation-wide rollout of the Consumer Reach Program is being conducted to reach 500,000 sellers in 1994. HMS will make the Consumer Reach Seller Track Program available on a qualified basis in all its U.S. markets (49 states and D.C.). Sellers receive the Seller Track Kit as a benefit of membership in HOME-OWNERS Association of America (HAA).

In order to qualify for participation in this initial Consumer Reach rollout phase, the member-broker must agree to comply with the following policies and procedures:

- \* To distribute the sealed Seller Track Kit directly to qualified home sellers at the time of listing. (There may be some cases when a kit should not be given to the seller.)
- \* To designate a program administrator to maintain inventory control and information process flow on a timely basis as well as provide direct contact with HMS.
- \* To submit seller, buyer and closing information forms to HMS on a complete and timely basis (within 3 days) for each kit that is distributed.
- \* To agree to allow HMS to contact sellers via telemarketing for the purpose of Seller E & O information or upgrade as well as to provide access to seller information by designated sponsorship participants when appropriate.
- \* To sign an agreement to use HMS warranty on an exclusive basis and provide a signed waiver for those sellers/buyers who do not accept the warranty.
- \* To allow HMS to provide formal training and orientation to all participating agents, managers and administrative personnel prior to program implementation, which is mandatory.
- \* Pay per kit and enrollment fee.
- \* Pay for shipping and handling of kits - C.O.D. basis
- \* To sign a formal agreement that outlines terms, conditions and mutual obligations prior to program implementation.





## CONSUMER REACH QUALITY CONTROL MEASURES

1. A Consumer Reach Marketing Agreement, signed by the designated realtor and/or broker-owner, which contains the following language (among other language):

Since the Consumer Reach program includes an insurance product, any inquiries you or your agents may receive from customers concerning that product should be handled by advising the customer to contact Nancy Duckworth, directly at Homeowners Marketing Services, Inc., 6365 Taft Street, Hollywood, Florida 33024, or call 1-800-327-9787. You or your agents **should not** attempt to provide information on, or answer questions about, the Seller E & O product.

2. Mandatory, on site, face to face agent training provided by a local HMS representative. All three HMS representatives are certified continuing education instructors approved for CE by the MREC.
3. A suggested agent presentation script (**attached**) is provided to the agent(s) and broker(s) to assist them in an appropriate presentation to the seller.
4. An office coordinator, which is required, is assigned by the broker to monitor quality control of the program and trained by the local HMS representative.
5. An 800 toll-free number is staffed to answer agent and/or consumer questions on Consumer Reach both at the regional level (Tulsa, OK 1-800-879-2828) and the national level (Hollywood, FL 1-800-327-9787).
6. The Consumer Reach Seller Track Kits are sealed and there is no actual insurance policy or form included in the kit.
7. If a broker does not abide by the terms of the Consumer Reach program, the program may be modified or discontinued for that broker.

**NOTE:** Just as the HMS Risk Management System advises member-broker/agents not to practice law without a license, HMS will not encourage members to sell insurance without a license. Also, the HMS E & O insurance policy does not cover insurance activity.



SUGGESTED AGENT CONSUMER REACH SCRIPT - SELLER TRACK

Mr. & Mrs. Seller

In an effort to provide you with the best service possible our company has become a member of HMS, Homeowners Marketing Services. Our association with HMS allows us to provide you with a number of benefits. First, when you list your home with us HMS provides you a membership in HAA, Homeowners Association of America. This membership entitles you to receive a kit (show sample) which includes a video tape done by Tony Randall entitled Preparing for the Buyers Eye. This tape is designed to help you in preparing your home for the most effective showing. This will assist us in reaching your goal of selling your home for the highest possible price. In addition, a booklet is included called, Moving On, which will provide valuable information on the relocation process, advise you on selling strategies, open houses, and preparing your family for the move. These are just a few of the topics covered in this guide. There is also information on how the HMS Home Warranty program can be used as a valuable marketing tool to help sell your home and, at the same time, protect you during the listing period.

And finally, an important feature of membership is an insurance policy which may protect you in the event the buyer should sue you after the sale. In recent years, lawsuits involving sellers have increased dramatically. Many courts have held that sellers are responsible for disclosing any defect or circumstance that might affect the buyer's decision to purchase. We at \_\_\_\_\_ Realty want our sellers to be protected and that's why this coverage is provided. There is a brochure in this kit that fully explains the coverage and a toll free number you can call if you have any specific questions.

11-4



STUCKY-WALKER,  
REALTORS®

614 N. MAIN, P.O. BOX 605  
NEWTON, KS 67114  
BUS. (316) 283-1330  
BUS. (800) 286-1335  
FAX (316) 283-6828

November 8, 1993

Kansas Real Estate Commissioners:

I think the time has come to take a long hard look at the anti-inducement statute in Kansas. I believe the statute seems to stifle competition and does not respond to the needs of consumers in the real estate arena.

In visiting with brokers wishing to provide sellers E&O insurance via the HMS Seller Track, the law provides a roadblock. This important new program should be marketed in Kansas as it is in 48 other states. HMS Seller Track can be an important risk management tool for brokers & agents. Providing the HMS Seller Track Consumer kits is a service and should not be perceived as a gift.

I hope that the commission can take a serious look at the anti-inducement statute and either rewrite or repeal this outmoded law and take the commission out of the impossible position of determining what constitutes a gift under this law.

Thanks for your consideration of this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Frank Stucky", written over a horizontal line.

Frank Stucky

FS:dc

Senate Gov. Org.  
2-23-94  
Attachment #12



November 4, 1993

RECEIVED NOV 4 8 1993

Kansas Real Estate Commissioners:

Recently, it has come to my attention that the debate has renewed concerning the wisdom of our anti-inducement statute in Kansas. I just want to go on the record as saying that the statute is ill-advised, it discourages competition in the market place and cannot be fairly applied in our transactions.

Every time a licensee meets with a seller to obtain a listing, he or she must be concerned with this outdated law. Whenever a broker offers new advertising incentives, participates in offering a bonus through the MLS, etc., he or she faces possible license censure or revocation. The use of the term "gift" in the statute has become an undisciplined exercise in the making of meaningless distinctions.

Point in case, my firm desires to provide the HMS Seller Track Consumer Reach Kit to our sellers as a listing service. We feel this program is not a gift but a necessary, standard service to sellers and buyers. We feel this important new program should be marketed in Kansas as it is in 48 other states. HMS Seller Track is an important risk management tool for all, which we would be negligent not to offer.

The anti-inducement statute should be repealed and forgotten. Fundamentally, it makes no sense. If it is not repealed, then, it should be re-written so that the market forces are allowed to operate freely without interference by the Commission based on arbitrary decisions about what might, or might not, constitute a "gift" under the statute. If we have to live with an anti-inducement statute, at least require that for there to be a violation, the licensee must have done something wrong, i.e. something deceptive or fraudulent.

If any of you would like to explore these issues with me a little further, I would be delighted to meet with you.

Sincerely,

*Bill Powell*

Bill Powell CRB  
BROKER

Senate Gov. Org.  
2-23-94  
attachment # 13

# The Greatest Invention Since...

Introducing  
The Most  
Innovative  
Listing Program  
Ever Invented:  
HMS SellerTrack®.  
And It's Available *Only*  
To HMS Members!\*

*Sellers enjoy the benefits of  
this program only when they  
list with you!*

#### **MEMBERSHIP**

In Homeowners Association  
of America<sup>SM</sup> (HAA<sup>SM</sup>).

#### **VIDEO**

"Preparing For The Buyer's Eye"  
narrated by Tony Randall.

#### **GUIDE**

"Moving On" answers all selling  
and buying questions.

#### **PROTECTION**

Seller's Errors And Omissions  
Insurance.

#### **HMS Seller Track®**

Consumer Reach Program

Call now for more information.  
The power of membership means  
more profit for you!

\*Not available in all states.

**HMS**<sup>®</sup>  
**THE POWER OF  
MEMBERSHIP**

For More Information Call:

Kansas City - Dan Nuttle  
Wichita - Galen Blume

913-383-1555  
316-261-9088

Regional Office

800-879-2828

©Copyright HOMEOWNERS MARKETING SERVICES®, INC.

Senate Gov. Dig.  
2-23-94  
Attachment # 14





Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611-2098  
Telephone 913/267-3610  
Fax 913/267-1867

TO: SENATE GOVERNMENTAL ORGANIZATION COMMITTEE  
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: FEBRUARY 23, 1994  
SUBJECT: SB 780, PRIZES, GIFTS GRATUITIES PROVISION OF THE KRESBA

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear to oppose SB 780.

At the request of Homeowners Marketing Service, our Governmental Affairs Committee discussed the problems which the current provision relating to the provision of our license law prohibiting the offering of prizes, gifts, and gratuities has in relationship to the HMS proposed program. After lengthy discussions, the Committee's position was to recommend to the Kansas Real Estate Commission to repeal the statute, given its vagueness.

After meeting with the KREC and discovering that they did not wish to recommend repeal of the statute, the Governmental Affairs Committee reviewed the proposed changes which are presented in this bill. The Committee did not feel comfortable endorsing this language and took the position that KAR work with the KREC to come up with a solution that was acceptable to both the KREC and the industry. Our Board of Directors agreed with that position.

Given that position, we cannot support this legislation. We share the concerns of the KREC concerning the vagueness of the bill and are unclear how a licensee could read the bill and understand exactly what they could or could not give to a customer or client or determine under what circumstances a gift may be given. While we certainly appreciate the frustration of HMS and the way the law impacts the product they seek to offer, we cannot recommend legislation to you which we cannot fully understand and cannot explain to our membership.

Thank you for the opportunity to testify.

*Senate Gov. Org.  
Attachment 150  
2/23/94*

Senate Governmental Organization Committee  
February 23, 1994  
Senate Bill 780

Mr. Chair and members of the committee:

My name is Jean Duncan, and I am the Director of the Kansas Real Estate Commission. The commission strongly opposes the amendment contained in SB-780.

Under current law, licensees may not "offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate." The amendment would allow a licensee to give a one-time gift to the seller or buyer in a real estate transaction which costs the licensee \$25 or less.

After reviewing a program offered by Homeowners Marketing Services (HMS) through its affiliate, Homeowners Association of America (HAA), the Attorney General recently issued an Opinion that participation in the program by licensees would violate 58-3062(a)(17).

The Opinion also reviews the legislative history of the provision. A copy of the Opinion (94-17) is attached to my testimony. The history begins at the bottom of page 2. Please also note the discussion of the value of the gift on page 5 (paragraphs 2 and 3).

The proposed amendment in SB-780 would allow licensees to participate in the HAA program.

We see the amendment as a substantial policy change. Addressing a nominal amount of \$25 may have the effect of making it seem minor. However, if this change--written to cover one particular program--is adopted, we believe the door is wide open for other pleas for amendment in the future.

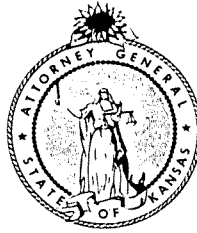
We also have serious concerns about enforcement. The burden of proof would be on the commission to determine that a gift cost a licensee more than \$25.

There are other questions. Using the HAA program as an example, suppose the broker of a company pays for the program. Then could another licensee in the company also give a \$25 gift to the seller and a different licensee in the company give a \$25 gift to the buyer?

Further, if the commission would take the position that the language "seller or buyer" means that only one of the principals may receive a gift from any one licensee, someone will interpret it that a licensee may give a \$25 gift to both the seller and buyer.

We respectfully urge you to kill the bill. Thank you for your consideration.

*Sen. Gov. Org.  
Attachment 16  
2/23/94*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 10, 1994

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 94- 17

Jean Duncan  
Administrative Officer  
Kansas Real Estate Commission  
Three Townsite Plaza, Suite 200  
120 SE 6th Avenue  
Topeka, Kansas 66603-3511

Re: Personal and Real Property--Real Estate Brokers and  
Salespersons--Prohibited Acts; Offering or Giving  
Prizes, Gifts or Gratuities

Synopsis: A real estate broker is prohibited from offering or giving any type of gift or gratuity which is contingent upon an agency agreement or the sale, purchase or lease of real estate. The terms "gift" and "gratuity" refer to anything of value, whether an object or a service, other than a real estate broker's service as a broker. In order for a particular service to be considered a real estate broker service, a reasonable nexus must exist between the particular service and one or more of the primary real estate broker activities specified in K.S.A. 1993 Supp. 58-3035(f). Cited herein: K.S.A. 46-236; K.S.A. 1993 Supp. 58-3035; 58-3062.

\*

\*

\*

Dear Ms Duncan:

As administrative officer for the Kansas real estate commission you ask whether participation in the below described program by a licensee under the Kansas real estate

16-2



brokers and salespersons act would violate the prohibition against offering or giving prizes, gifts or gratuities contingent upon an agency agreement.

We understand from information provided that the program in question is one developed by Homeowners Marketing Services (HMS), a company which sells errors and omissions insurance coverage to real estate brokers. One of HMS's "affiliates" is Homeowners Association of America (HAA), a "consumer protection membership organization." Brokers who are insured through HMS would market what HMS refers to as the "seller track consumer reach program." Under this program, at the time of listing with an HMS insured broker, the broker would provide a seller-client with the opportunity to "enroll" as a member of HAA.

If the client agrees to become a "member," the broker would then pay the client's \$10.00 "enrollment fee for membership" to HAA. As a "member" of HAA the client would receive the following: (1) a video tape and booklet valued at \$7.50 "explaining how to make their property more marketable and avoid some of the legal pitfalls faced by consumers in today's market", and (2) group errors and omissions insurance coverage in the amount of \$25,000 with a \$5,000 deductible for "after-sale claims arising out the transaction." The average cost of the insurance premium for this coverage is \$2.50. For an additional \$200, the "enrolled member" could then purchase through HAA expanded coverage in the amount of \$100,000 with a \$1,000 deductible.

In addressing the instant question, we believe it would be helpful to review the legislative history of K.S.A. 1993 Supp. 58-3062(a)(17), the statutory provision which prohibits persons licensed by the Kansas real estate commission from offering or giving prizes, gifts or gratuities as inducements to attract or maintain clients.

In 1947 when Kansas first enacted a real estate brokers' license act, the law, while not prohibiting gifts or gratuities, did prohibit real estate brokers from:

"soliciting, selling, or offering for sale, real property by offering 'free lots,' or conducting lotteries, or contests, or offering prizes for the purpose of influencing a purchaser or prospective purchaser of real property;"  
L. 1947, ch. 411, §21(a)(15).

The 1947 provision remained in effect until 1980 when the entire act was repealed and recodified as the Kansas real estate brokers and salespersons act. L. 1980, ch. 164. The proposed recodification, 1980 senate bill no. 519, was the result of a two year effort by the Kansas association of realtors and an interim study by the special committee on federal and state affairs. Minutes, House Committee on Federal and State Affairs, March 31, 1980; 1980 Kansas Report on Legislative Interim Studies, Re: Proposal No. 17 - Real Estate License Law.

While the 1947 act prohibited nineteen specific types of conduct by real estate brokers, 1980 senate bill no. 519 expanded the number of prohibitions to thirty-seven, including a prohibition against a real estate broker or salesperson offering or giving:

". . . prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property." 1980 S.B. 519, §29(a)(12).

After its introduction, the chair of the senate committee on federal and state affairs appointed a subcommittee to review the bill in relation to a number of specific provisions, including section 29(a)(12). Minutes, Senate Committee on Federal and State Affairs, February 5, 1980. The subcommittee's review resulted in two recommended language changes within section 29; however neither pertained to subsection (a)(12). Minutes, Senate Committee on Federal and State Affairs, March 7, 1980 and March 10, 1980. Senate bill no. 519 was enacted into law with section 29(a)(12) intact as proposed, thus expanding the earlier prohibition against the use of lotteries, contests or prizes as inducements, to any type of prize, gift or gratuity. L. 1980, ch. 164, §29(a)(12).

In 1986 at the request of the Kansas real estate commission, the senate committee on federal and state affairs introduced senate bill no. 539 which, among other proposals, deleted the provision prohibiting real estate brokers and salespersons from offering or giving prizes, gifts or gratuities as client inducements. 1980 S.B. 539, §14(a)(12) as recommended by the senate committee on federal and state affairs. However, the provision was reinstated in the house and ultimately S.B. 539 passed with only a minor change in language in section 14(a)(12):

16-4

"No licensee shall offer or give prizes, gifts or gratuities which are contingent upon a client's listing, purchasing or leasing property real estate." L. 1986, ch. 209, §14(a)(12).

In 1991 a final modification was enacted to extend the applicability of the prohibition to sales of real estate (as well as purchases and leases) and to broker or salesperson agreements with a buyer or lessee (as well as a seller or lessor). L. 1991, ch. 163, §5(a)(17). The current form of the prohibition now found at K.S.A. 1993 Supp. 58-3062 reads:

"(a) No licensee shall:

. . .

"(17) Offer or give prizes, gifts or gratuities which are contingent upon an agency agreement or the sale, purchase or lease of real estate."

(Since real estate brokers, associate brokers and salespersons are each authorized to engage in "broker" activities specified in K.S.A. 1993 Supp. 58-3035(f), for the sake of simplicity in the remainder of this opinion we will refer only to "real estate brokers.")

This review of the history of K.S.A. 1993 Supp. 58-3062(a)(17) demonstrates a legislative expansion of the inducement prohibition in 1980, a legislative reinstatement of the prohibition following an attempt to remove it in 1986 and a further legislative expansion of the prohibition in 1991. It thus appears clear to us that the public policy of this state as expressed by the Kansas legislature remains committed to outlawing any form of prize, gift or gratuity by a real estate broker as an inducement to attract clients, whether buyers, sellers, lessees or lessors. We thus reiterate the conclusion reached in Attorney General Opinion No. 81-163, with some modification due to intervening statutory changes: In our judgment, the legislature intended, by the use of the terms 'gift' and 'gratuity' in K.S.A. 1993 Supp. 58-3062(a)(17) to prohibit a real estate broker from offering or giving anything of value, other than the broker's services as a broker, which is contingent upon an agency agreement with a client or the sale, purchase or lease of real estate.

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Having reached this conclusion, we now turn to its application and re-phrase the question at hand: By participating in the "seller track consumer reach program" as described above, would a real estate broker be offering or giving anything of value, other than the broker's services, which is contingent upon an agency agreement with a seller-client?

By the terms of the program the broker would offer, and upon the client's acceptance, would give the client "membership" in HAA by paying the client's \$10.00 "enrollment fee." Membership in HAA would then entitle the client to an informational video tape, a \$25,000 group errors and omissions insurance policy and the option (apparently not available absent membership in HAA) to purchase greater insurance coverage through HAA. The video tape is valued at \$7.50 by HAA. More importantly the insurance coverage, has value. Although the cost to the real estate broker for the insurance benefit component would be only \$2.50, the benefit to the client would be \$25,000 in protection against certain types of after-sale claims. The client would also be provided with the additional HAA membership option to obtain greater insurance coverage. In our opinion "membership" in HAA would have value to the client which is, we assume, the reason a broker would want to make such membership available to the client. Under this program the broker would be offering and, upon the client's acceptance, giving something of value to the client.

HMS presents the position that the only thing which arguably might be considered given by a broker under the program is the sum of \$2.50 attributable to the insurance component, and that such amount is too trivial and insubstantial to invoke the gift prohibition of K.S.A. 1993 Supp. 58-3062(a)(17). We have faith, however, that if nominal gifts were intended to be excluded the legislature possesses the wherewithal to do so. E.g. "No state officer or employee or candidate for state office shall accept, or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service having an aggregate value of \$40 or more in any calendar year from any one person known to have a special interest, . . ." K.S.A. 46-237. In the absence of such legislative exclusion, we decline to attempt the creation of a de minimus exception to the statutory prohibition. In any event, as discussed above, we do not agree that the \$2.50 premium payment is the only thing of value given in this situation.

The second consideration is whether the "thing" of value ("membership" in HAA) is something other than a broker's

services as a broker. Clearly HAA membership benefits such as the informational video tape, group insurance coverage and the option to purchase greater insurance coverage may be classified more as services than as objects. The issue is whether the services available through HAA membership may legitimately be considered broker services. To answer the question, the nature of real estate brokerage and its attendant activities must be evaluated.

"As generally defined, a broker is an agent who for a commission or brokerage fee, carries on negotiations in behalf of his principal as an intermediary between the latter and third persons in transacting business relative to the sale or purchase of contractual rights or any form of property." Henderson v. Hasser, 225 Kan. 678, 683 (1979).

That general case law definition parallels the more detailed meaning of the term "broker" as found in the Kansas real estate brokers and salespersons act at K.S.A. 1993 Supp. 58-3035(f):

"'Broker' means an individual, other than a salesperson, who advertises or represents that such individual engages in the business of buying, selling, exchanging or leasing real estate or who, for compensation, engages in any of the following activities as an employee of, or on behalf of, the owner, purchaser, lessor or lessee or real estate:

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

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

"(3) negotiates or offers, attempts or agrees to negotiate the sale, exchange, purchase or leasing of real estate.

"(4) Lists or offers, attempts or agrees to list real estate for sale, lease or exchange.

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"(5) Auctions or offers, attempts or agrees to auction real estate or assists an auctioneer by procuring bids at a real estate auction.

"(6) Buys, sells, offers to buy or sell or otherwise deals in options on real estate.

"(7) Assists or directs in the procuring of prospects calculated to result in the sale, exchange or lease of real estate.

"(8) Assists in or directs the negotiation of any transaction calculated or intended to result in the sale, exchange or lease of real estate.

"(9) Engages in the business of charging an advance listing fee.

"(10) Provides lists of real estate as being available for sale or lease, other than lists provided for the sole purpose of promoting the sale or lease of real estate wherein inquiries are directed to the owner of the real estate or to real estate brokers and not to unlicensed persons who publish the list."

This statutory definition of "broker" within a real estate context establishes the parameters of real estate broker services while leaving open the specific manner, style and techniques of providing such services. The latter are circumscribed by the list of prohibited acts found at K.S.A. 1993 Supp. 58-3062. Additionally, in our opinion in order for a particular service to be considered a broker service, a reasonable nexus must exist between the particular service and one or more of the primary broker activities specified in K.S.A. 1993 Supp. 58-3035(f). In our opinion providing a seller-client with membership in HAA with accompanying benefits is not a service which is reasonably related to any of the statutorily established broker activities. As discussed, a gift of membership in HAA may have value to the client (as well as to the broker as a marketing tool), but then so would a gift of membership in a health club. While HAA membership is designed to provide the seller of real estate after-sale insurance protection, we cannot say that the gift of either kind of membership would further the

accomplishment of the broker's primary responsibility to the client, whether that be to sell real estate on behalf of the client or any of the other broker activities enumerated in K.S.A. 1993 Supp. 58-3036(f). We therefore do not consider the gift of HAA membership by a real estate broker to be a broker service.

The third consideration is whether the offered or given "thing" of value is "contingent upon an agency agreement or the sale, purchase or lease of real estate." K.S.A. 1993 Supp. 58-3062(a)(17). From the information provided, such is clearly the case. The program anticipates that an HMS insured broker will offer HAA membership "at the time of listing." While not statutorily defined, "listing" is a real estate industry term of art which implies an agency relationship between the seller and the broker. State v. Rentex, Inc., 365 N.E.2d 1274 (Ohio 1977). Under Kansas law the "time of listing" refers to the time of entering an agency agreement, i.e. "a written agreement between the principal and the licensee setting forth the terms and conditions of the relationship." K.S.A. 1993 Supp. 58-3035(b). Accordingly the gift of HAA membership is contingent upon an agency agreement.

In conclusion, a real estate broker is prohibited from offering or giving any type of gift or gratuity which is contingent upon an agency agreement or the sale, purchase or lease of real estate. The terms "gift" and "gratuity" refer to anything of value, whether an object or a service, other than the broker's services as a broker. In order for a particular service to be considered a broker service, a reasonable nexus must exist between the particular service and one or more of the primary broker activities specified in K.S.A. 1993 Supp. 58-3035(f).

Very truly yours,



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