

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

[LB23 LB24 LB25 LB26 LB315 LB347]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 25, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB23, LB24, LB315, LB347, LB25, and LB26. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mike Gloor; Chris Langemeier; Dave Pankonin; Pete Pirsch; and Dennis Utter. Senators absent: Mark Christensen. []

SENATOR PAHLS: Good afternoon. I want to welcome you to the Banking, Commerce and Insurance Committee. My name is Rich Pahls. I represent District 31 in Omaha, and I serve as the Chair of this committee. The committee will take up the bills in the numbers of 23, 24, 315, 347, 25, and 26, and to make this thing work well, I'm going to ask you to take a look at the smaller board over there, shows you some of the rules of the game, and I'll just go through one or two of them. Of course, you know about the cell phones. What I'm asking you, when you are going to be testifying, that you move to the reserve seats, so I have some feel how the bill is moving. I would appreciate that. Of course, we do the regular process of the introducer, proponents, opponents, neutral, and then the closing. We're going to ask for those of you who happen to be new...the old-timers understand this, but please fill this out and give it to Jan. Another thing I'm going to ask you to do even if you've been here a number of times is to spell your name for the records and also, again, if you are testifying as a proponent or opponent, I hope you keep your points to the point and not repeat a lot. We do need ten copies. If you do have copies to hand out to the committee, please wave your hand if you need copies, because then we'll run them ahead of time. Good. I see that we're a very efficient group out there, and I appreciate that. I want to introduce Bill Marienau. He's a very, very important piece of the puzzle, and Jan is another very important...Jan Foster is another important piece of the puzzle. And to continue with the puzzle, we'll start with Senator Utter. []

SENATOR UTTER: I'm Dennis Utter from District 33. []

SENATOR PANKONIN: Dave Pankonin, District 2, Louisville. []

SENATOR LANGEMEIER: Chris Langemeier, District 23, Schuyler. []

SENATOR PIRSCH: Pete Pirsch, District 4 in Douglas County, Omaha. []

SENATOR McCOY: Beau McCoy, District 39, Omaha. []

SENATOR GLOOR: Mike Gloor, District 35, Grand Island. []

SENATOR PAHLS: And I think Senator Christensen may not be with us today. Okay.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

We do have two of our pages. Wave your hand. Tom Kelly from Sutherland, all right, and Matt McNally from Norfolk, and you see they're big guys, so if you cause any problems, I'll just point to them and they'll take care of you. Okay. I think we're ready for LB23. Senator Langemeier. [LB23]

SENATOR LANGEMEIER: I'm scared already. My name is Chris Langemeier, C-h-r-i-s. Langemeier is L-a-n-g-e-m-e-i-e-r. And it's a pleasure for me to introduce LB23 on behalf of the Nebraska Real Estate Commission. This bill does a number of things that is kind of clerical work for the Real Estate Commission. The first thing it does is it changes the licensing cycle from being an annual cycle to allow the Real Estate Commission to go to a two-year cycle. Continuing education which you'll hear about in the next bill, is required for realtors on a two-year basis, and so they're looking to take the licensing to a two-year basis. Also, as realtors, and I am for full disclosure. I am a licensed broker in Nebraska. We have pocket cards that if on, for some occasion, I'm out showing you a house, and for some reason, it just dawns on you that, by God, are you sure you're an agent? And you want to see my pocket card, I'm supposed to be able to provide that for you. Most of them collect...they used to be a requirement that we carried them on us. Now we don't. We can put them in a nice file in our offices and utilize more paper. So this would allow that ability to get rid of those pocket cards. The third thing it does is allows the Real Estate Commission to charge an application fee. We have a licensing fee, but an application fee for those that live outside of Nebraska that are duly licensed in those states, have the opportunity through our reciprocity procedures in Nebraska, would allow those individuals to come to Nebraska and just get a license if you can prove you're on good standing with one of the states that reciprocates with us. This would allow the Real Estate Commission to charge an application fee to process those requests. And so with that, Director Lemon is here, and I will let him give you more of the philosophy behind these changes and the day to day application of the changes. [LB23]

SENATOR PAHLS: See no questions, thank you. [LB23]

SENATOR LANGEMEIER: Thank you. [LB23]

GREG LEMON: Senator Pahls...Chairman Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Greg Lemon, G-r-e-g L-e-m-o-n. I am the director of the Nebraska Real Estate Commission, and I am appearing today in support of LB23 which was specifically voted on and endorsed by resolution of the Nebraska Real Estate Commission. Senator Langemeier did a very good job of explaining what the bill does. I will go into just a very little bit more detail and then entertain any questions that the committee may have. I look at the bill as streamlining procedures, both for the Nebraska Real Estate Commission and for the Nebraska real estate licensees, and I believe the Nebraska realtors supports this bill as well, and they will be up to testify after me. But the first thing it does as he mentioned, is it goes to a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

two-year license cycle. Currently, we have a continuing education requirement, and that is due every two years. We would make the licensing renewals due every two years as well...less work for them, less work for us...streamlining thing, not a huge savings, but we're less tied up during that renewal time, and we can provide better service. Second thing it does, does away with the requirement for the pocket cards. At one time, as Senator Langemeier said, there was a requirement that licensees carry that on their persons at all time. That requirement was eliminated a few years ago. We still have to process them back and forth when people...like when a salesperson transfers to a different broker or goes on inactive status, things like that. With the advent of the Internet and being able to verify licensure on-line, and given the fact that we have changed it, so you don't have to carry those on your person. It seems antiquated. The paper we don't need, we want to get rid of them. The third thing it does, and this doesn't affect a whole lot, but when people apply for a license in-state, there's an application fee we charge. If they're licensed out of state, and their application is based on that, we don't charge that fee. We were just looking at treating the out-of-state people not worse, but just the same as we treat the in-state people on that, so that, in a nutshell, is what the bill does. I would be glad to entertain any questions the committee might have. [LB23]

SENATOR PAHLS: Senator Pirsch. [LB23]

SENATOR PIRSCH: Yeah, with respect to the requirement about the pocket card, you said that...well, has it...in your experience, has anybody ever asked for inspection of those pocket cards? Is that ever used, ever? [LB23]

GREG LEMON: Well, I don't think it's used very often. People who are real estate licensees can verify that, but since they're not required to carry it on their person anymore, even if you asked for it, you wouldn't be required to have it. I mean, you could go find it, I guess, and that's part of the problem since they don't carry it around. Sometimes they get lost or gather dust. [LB23]

SENATOR PIRSCH: But what you're asking here in this change then is such that it still has to be on file at the real estate office then or? [LB23]

GREG LEMON: No, just the elimination that the concept of the pocket card would be eliminated. The pocket card is sent to the licensees when they renew their license or when they initially get their license. [LB23]

SENATOR PIRSCH: Eliminate it altogether, right? [LB23]

GREG LEMON: Yeah, we'd eliminate it altogether. [LB23]

SENATOR PIRSCH: Is that information available? If somebody indicated they're an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

agent and wanted to show me a house, and I wanted to verify that they had the proper licensure, would that be available on-line right now? [LB23]

GREG LEMON: They can verify it on-line. They can call our office, yeah. Yes. [LB23]

SENATOR PIRSCH: Okay, okay. Thank you. [LB23]

SENATOR PAHLS: Seeing no more questions, thank you. [LB23]

GREG LEMON: Thank you. [LB23]

SENATOR PAHLS: Any more proponents? [LB23]

JUSTIN BRADY: Senator Pahls and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association in support of this bill. And not to take up any more of your time, we just would echo those comments made by Greg Lemon. Try to answer any questions if you had any. [LB23]

SENATOR PAHLS: Any questions? Thank you, Mr. Brady. [LB23]

JUSTIN BRADY: Thank you. [LB23]

SENATOR PAHLS: Any more proponents? Opponents? Those in the neutral? Closing. [LB23]

SENATOR LANGEMEIER: Since I have the next bill up, I'll do a closing. One thing I want to talk about is, as far as the question, whether someone is an agent, to go out and show it. As I'm a broker, and I cooperate with another agent that shows a property, and he happens to sell it for me, before I can make payment, I can only make payment to the broker that holds their license. So there's no advantage for someone out of the blue to come and show a house, because they aren't going to get paid. So, and the other thing is, is we do have a wall license that hangs within an office where you're supposed to be working out of. That still shows your license, so that's it. [LB23]

SENATOR PAHLS: Thank you. I think we are ready now for...that closes the hearing on LB23. We are now ready for LB24. [LB23]

SENATOR LANGEMEIER: Chairman Pahls, members of the committee, my name is Chris C-h-r-i-s, Langemeier L-a-n-g-e-m-e-i-e-r, and I bring before you LB24. I'm kind of in a unique position here is, is I'm not necessarily in support of LB24. Currently, as a real estate agent in Nebraska, we are required to get 12 hours of continuing ed with three hours in a restricted kind of an ethics type course that is required every two years.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

LB24, and I'm looking to hear the sales pitch behind me as you guys are too, would require six additional hours over that two-year period with the ability...and I'll let Greg Lemon...yeah, he's there...will give us more information on this...with three hours of those in the same manner as you get your 12. But the other three hours, they've kind of come up with a creative plan to allow brokers to offer classes. And there's some argument out there that this will help us get a more diverse number of classes offered. I would argue that that probably can be done without more hours needed. So with that, I look forward to the discussion...and, that's going to come behind. I think continuing ed is an issue that we need to continue to strive to be more professional like in our nature, and I think quality of classes might be a bigger issue over number of classes. [LB24]

SENATOR PAHLS: Senator Gloor. [LB24]

SENATOR GLOOR: Thank you, Chairman Pahls. Senator Langemeier, who would approve those classes for the brokers? [LB24]

SENATOR LANGEMEIER: Director Lemon and the Nebraska Real Estate Commission. [LB24]

SENATOR GLOOR: Thank you. [LB24]

SENATOR PAHLS: Seeing no more, thank you. Proponents? [LB24]

GREG LEMON: Thank you, Chairman Pahls. Once again, for the record, my name is Greg Lemon, L-e-m-o-n. I am the director of the Nebraska Real Estate Commission, and I am appearing today in support of LB24. As explained and as discussed prior, currently, Nebraska real estate licensees are required to submit 12 hours...12...that's actually clock hours, classroom hours of continuing education every two years. There has been discussion and as sort of a goal, both from the Nebraska Real Estate Commission and from the Nebraska Realtors Association to raise professional standards to do something to augment continuing education. We've looked at what other states have done, and we're lagging a little behind maybe in the bottom fourth, in the bottom third, in our continuing education requirements. So what this proposal does is it does a couple of things. It adds six hours to that 12-hour requirement every two years, but those six hours are a little different, because one of the other concerns that we've heard is that the commission is too restrictive on the types of courses that can be required for continuing education. Those courses generally have to relate to the real estate license law, to consumer protection, to their service as a licensee. The broker-approved education would not be given as close of scrutiny, and would certainly have to relate to real estate law, but the classes wouldn't be given as close of scrutiny by the Real Estate Commission. There would be more leeway for the brokers to provide a wider array of courses. There would be a higher requirement for the 18 hours of continuing education every two years. It has the endorsement of both the Nebraska

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

Realtors, I believe, and I know the Nebraska realtors Real Estate Commission...the bill itself is very simple. It just adds the six hours of broker-approved training. The details of it would be worked out through rule and regulation, but that is the goal. I know that there may be, you know, individuals that feel differently about the need to increase the education requirements. But, you know, we do see examples when we see disciplinary hearings, things like that, of what looks like instances where more training and more education would help. So with that, as I said, the Real Estate Commission endorses the bill, and I would be glad to entertain any questions that the commission may have. [LB24]

SENATOR PAHLS: Senator Pankonin. [LB24]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Lemon, appreciate your being here today. Just curious a little more about the type of courses...how available...how easily they are available whether it's on-line or in different parts of the state, and what some of the topics they may cover. I mean, is there four different courses or forty? Just to give me a little more background on what these courses are like. [LB24]

GREG LEMON: For the current continuing ed or for the broker-approved education? [LB24]

SENATOR PANKONIN: The continuing ed. [LB24]

GREG LEMON: For the continuing ed, I don't know the exact numbers. I'm sure it's much closer to forty than four. There are both in-classroom type of classes and also on-line classes. I know the on-line classes, I think, are becoming more and more popular, and those on-line classes, they have various safeguards, you know, to make sure you have to be...clicking the mouse and things like that, so you're sure they're there, and you're sure they're paying attention and going through things. And, actually, in some ways, I'm told that the safeguards for the on-line classes are even better than for the in-classroom classes. But, yeah, they're available, and there is a very wide variety of subject matter in the classes and a number of schools that offer those classes to the licensees. And they're not...I mean, the licensees may differ, but as I understand, they're not overly expensive either. [LB24]

SENATOR PANKONIN: And they're available all throughout the state then. [LB24]

GREG LEMON: They're available all throughout the state, yes. [LB24]

SENATOR PANKONIN: Okay. Thank you. [LB24]

GREG LEMON: Yeah, I mean, obviously, there's more... [LB24]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

SENATOR PANKONIN: ..on-line, right. Yeah. [LB24]

GREG LEMON: ...in Lincoln, Omaha, and the eastern part of the state where there's more people, but they are available throughout the state. [LB24]

SENATOR PANKONIN: Okay. [LB24]

SENATOR PAHLS: Senator Pirsch. [LB24]

SENATOR PIRSCH: Right now, with the existing 12 hours, three of those must be ethics courses (inaudible)? [LB24]

GREG LEMON: Three of them must be what's called an R course which is kind of a core course in a variety of different subjects, but no, it doesn't necessarily have to be ethics. [LB24]

SENATOR PIRSCH: Oh, so there's no separate ethics requirement like there is in the bar, so. And those are all...of the 12 hours, those are clock hours or? [LB24]

GREG LEMON: Yes. [LB24]

SENATOR PIRSCH: Okay. And those are developed with you or ran through your...? [LB24]

GREG LEMON: They are developed by outside providers, and they are specifically reviewed and approved by the Nebraska Real Estate Commission. [LB24]

SENATOR PIRSCH: What sort of criteria do you look...I mean, based on just in terms of...what values do you look for in them? [LB24]

GREG LEMON: Well, they're given a very thorough review. Looking at things that will educate the licensee to benefit the consumer when we look at those classes that are offered now. The training would be a little broader. I mean, it would...the training would encompass, allowing things that are probably more clearly focused on just marketing and not consumer issues. [LB24]

SENATOR PIRSCH: Okay. That's all the questions I have. [LB24]

SENATOR PAHLS: Senator Gloor. [LB24]

SENATOR GLOOR: Thank you, Chairman Pahls. Mr. Lemon, have there been some sort of...or is there some sort of national metric that our numbers have been built around in terms of the hours, continuing hours? I mean, is there a national association that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

recommends a certain number, and we measure up against that when we try and decide what we should be doing? [LB24]

GREG LEMON: There is a national, actually, International Association of Real Estate Regulators. They do an annual survey, keep statistics. That's where we get the numbers that we're lagging a little behind, and I think this would put us in the middle or maybe the top third on the requirements, kind of the bottom of the top third on that continuing education. That national organization doesn't have specific recommendations on how many hours you offer. We're partly just looking at what other states do, but they don't have a specific recommendation on how many hours. And all the states...it's kind of apples to oranges. All the states do it a little different, have different requirements, so it's kind of hard to compare and say, you know, we're just like them, because there's so many different aspects of it that it's kind of hard to compare flat hours to hours. [LB24]

SENATOR GLOOR: How about the specific ethical requirement that doesn't seem to be appropriate for the realtors that I know, but, obviously, it comes up (laugh). There's got to be a reason that those hours and that topic has been selected. Is there a rationale there? [LB24]

GREG LEMON: Well, as I mentioned, there's what we call R courses which are core courses in the specific areas. There is not a specific ethics course requirement as it stands now. There are ethics courses offered... [LB24]

SENATOR GLOOR: Okay. [LB24]

GREG LEMON: ...but they're not a requirement that somebody take those to fulfill their requirement. [LB24]

SENATOR GLOOR: I see. I misunderstood. Thank you. [LB24]

SENATOR PAHLS: Senator Utter. [LB24]

SENATOR UTTER: Thank you, Chairman Pahls. Mr. Lemon, a 50 percent increase in education hours. [LB24]

GREG LEMON: Yes. [LB24]

SENATOR UTTER: Was there any consideration given by the commission to do a compromise of fewer hours to lessen this educational burden or is this...how did you arrive at six hours? [LB24]

GREG LEMON: Well, I believe it started out...I forget if it started out at 12 or 9, and actually, the 6 is the compromise or is the lower...lower than where we started out.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

[LB24]

SENATOR UTTER: Thank you. [LB24]

SENATOR PAHLS: Seeing no more questions, thank you. [LB24]

GREG LEMON: Thank you. [LB24]

SENATOR PAHLS: Any more proponents? [LB24]

JUSTIN BRADY: Chairman Pahls and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association in support of LB24. I won't echo what Greg said, but I want to add that it's my understanding from the National Relators Association, there is a requirement that they have to have ethics. So it doesn't come out of the Nebraska Real Estate Commission, but out of the National Realtors Association it does require they have ethics. They support this one, as Greg said, to bring us up to what other states are doing, too, to allow the opportunity to have a broader expansion of classes. It's my understanding that there's been some discussion with the Real Estate Commission, when they look at rules and regs to even allow some of these to be done in-house which go to address some of your questions, Senator, on are they available if they're able to do them in-house? Then, yes, they would be more available. With that, I'll try to answer any questions. [LB24]

SENATOR PAHLS: Seeing no questions, thank you. [LB24]

JUSTIN BRADY: Thank you. [LB24]

SENATOR PAHLS: Opponents? Neutral? Closing? [LB24]

SENATOR LANGEMEIER: I do want to be brief. One of the biggest concerns that I have with continuing ed in the real estate world is the ever-changing dynamics within the state of Nebraska. As you and I sit here on a daily basis, and let me use one, for an example, is water. As we wrangle over water in Nebraska, and that fully-appropriated designation has gone in the Republican River Basin, that has dramatically affected acreage sales and farmland sales. As we have now entered into a preliminary designation at the eastern end of Nebraska, that has come off, and we are currently asking all certified acres to be accounted for. I would argue that most realtors in Nebraska have not been made aware of this. So if you're going to sell an acreage that has any kind of certified acres, there's a lot of value in that. And so I'm very supportive of opening the broader definitions of classes out there, but we are going to have more and more complaints filed, because I bought an acreage and thought I could irrigate my two-acre garden that wasn't certified, that you're not going to irrigate. And so, as this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

starts out in the west and, unfortunately, when the Real Estate Commission creates classes, you offer a class on water in the west, and you get three people to show up, and no provider wants to do that, because you can't offer it for \$35 for a three-hour class. It's going to have to be \$250. But my fear is, is that is now to the eastern end of the state, I have a number of people coming, particularly out of Omaha that want to get involved in farmland that don't have a clue what they're getting involved in. They're selling people dryland ground, telling them that they'll irrigate it. Not anymore. We are limited to 25 acres per NRD. There will be no more expansion of irrigation in the state of Nebraska other than the 25 acres per NRD. Major, major misrepresentations. And so, that's just one example of things we do in this body that aren't getting communicated out, and that's what makes me fearful of all this. And I think we need to expand what we offer in subject matter. I think at this end of the state, it's becoming very, very prudent that we don't allow our agents to get themselves in trouble. With that, I'll conclude. Thank you. And I'd like to thank everybody that testified. I appreciate it. [LB24]

SENATOR PAHLS: I see no questions. Thank you. That closes the hearing on LB24. We will now open on LB315. Senator McCoy. [LB24]

SENATOR McCOY: Thank you, Senator Pahls. [LB315]

SENATOR PAHLS: Senator McCoy, my name is Rich Pahls. Rich R-i-c-h, Pahls P-a-h-l-s. I represent District 31. I bring before you LB315, is a bill involving real estate licensees. It comes to us from the Omaha Realtors Association. This bill would specify that when an individual applies for a broker's or salesperson's license, the applicant can designate whether he or she intends to conduct business as a corporation, a partnership, or a limited liability company. Now, I do know that there are some individuals who support this proposal, and I understand there are others who have some reservations about whether the bill is the best approach to addressing questions and concerns which have come up in this part of the law. What I'm going to ask you to do is listen to what I call the story that each side has to tell, so that we can decide which direction we would go on this bill. Thank you. [LB315]

SENATOR McCOY: Are there questions for Senator Pahls? Seeing none, thank you. Proponents for LB315. Good afternoon. [LB315]

DOUG ROTTHAUS: Good afternoon, Senator McCoy and members of the committee. My name is Doug Rotthaus. Doug D-o-u-g, Rotthaus R-o-t-t-h-a-u-s, chief executive officer of the Omaha Area Board of Realtors. I'm here today to speak on a proponent of LB315. Really, this is a bill about how agents are allowed to receive commissions. License law mandates that payments of commissions by brokers can only be paid to licensed individuals. That would include PCs and professional LLCs. Agents, especially those working in teams would like the ability to direct the payment of the commission to a corporate operating account, just as their broker is allowed to do currently. This bill

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

affects agents across the state, not just in Omaha, but we feel it is especially important to top-producing agents and those agents that are working as part of a team concept. The team concept is becoming more popular, not just in Nebraska, but across the country. And as agents operate as a team, they would prefer the corporate ownership in order to take advantage of some tax savings and to also compensate team members and simplify their operation as a team. This will not in any way limit the authority that the Nebraska Real Estate Commission has over individual licensees. Like I said, we believe it does provide tax advantages, specifically employment tax benefits that are not currently available without the uncertainty of filing for a...to be taxed as a Subchapter S with the IRS. We think this enables individual licensees to follow the advice of their tax professionals, and while maintaining their full responsibility under license law to the Real Estate Commission. I believe that's all I have. If you have any questions or. [LB315]

SENATOR McCOY: Questions for Mr. Rotthaus? Senator Utter. [LB315]

SENATOR UTTER: Mr. Rotthaus, is there restrictions in the real estate law as to who can receive commissions? Do they have to be licensed, say, oh, people that can receive commissions? [LB315]

DOUG ROTTHAUS: Currently, when a transaction closes, the commission is paid from the closing to a broker, and all transactions are done in the name of the broker. And, as you heard on the testimony on one of the earlier bills, the broker can only pay another broker in a cooperating sale. But what we're talking about is after the broker receives the commission into their operating account which is often a corporate account, but there's a limitation right now that they pay that only to individual licensees. We would like the licensee to be able to direct where that payment goes to a corporate account. [LB315]

SENATOR UTTER: Can the members of the corporate entity, limited liability company, Sub S Corp, whatever it is, be somebody other than a licensed broker or a licensed salesperson? [LB315]

DOUG ROTTHAUS: I'm not certain I follow your question, but...and I apologize. [LB315]

SENATOR UTTER: I'm just thinking. How far...if we take this to the extremes, that if I as an unlicensed person, was a member of a limited liability company... [LB315]

DOUG ROTTHAUS: Right. Okay, sure. Right. [LB315]

SENATOR UTTER: ...that was going to receive these proceeds, would we be in violation of any real estate law of paying an unlicensed person? [LB315]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

DOUG ROTTHAUS: I believe right now, the license law indicates that a broker can only pay that to a licensed individual which would include PCs and professional limited liability corporations. What we're asking for is that the agent would have the same option as the broker has, but to receive those funds in a corporate account. Had another point I was going to make. Well, but anyway, so literally, they would operate the same as their broker is able to, and the broker's corporate account often has owners that are not licensed individuals as well. And individuals are often paid...that check would be deposited in a joint account, possibly, with an individual that's not licensed. So we're not trying to do anything that would relieve the licensee of their duties and certainly all real estate acts would still need to be performed by a licensee. It would just be that the licensee could direct the payment of their commission to their corporate account. [LB315]

SENATOR UTTER: Thank you. [LB315]

SENATOR McCOY: Any other questions for Mr. Rotthaus? Thank you. [LB315]

DOUG ROTTHAUS: Okay. Thank you. [LB315]

SENATOR McCOY: Further proponents. [LB315]

VINCE LEISEY: Proponent. Vince Leisey, V-i-n-c-e L-e-i-s-e-y, here on behalf of...as president of the Omaha Area Board of Realtors, also a broker at Prudential Ambassador in Omaha. Basically, you know, Doug kind of summed up what we're looking at doing. This is really for tax ramifications. It's not a vehicle in any sense or for any means to get the agent out of any liability or responsibilities that they would have in answering to the Real Estate Commission. That's not the purpose of this whatsoever. It is purely for them to have the ability based on what their tax advisers and the attorneys are telling them to do from a business standpoint to make sure that as building teams and other things, that they're making the businesses and from a tax point that allows them to gain all the benefits that they possibly could. I think the question was, you know, can an individual agent here collect a commission check and put it in a Sub S or an LLC and have other owners of that be nonlicensed? You know, one thing is we want to work in conjunction with Secretary of State Gale and make sure that we're not creating any other issues with other bills here that would create things. So if this needs to be tweaked in some way, we're more than happy to do whatever we can. The function of that would be no. It's to pay the licensed person only. Now, the truth of the matter is, as we're building teams, you have teams which are becoming more prominent across the nation that do have unlicensed people that they're paying. Okay. And this becomes more of a tax thing, that are doing unlicensed work...assistants and other people in that process. Agents are building businesses within our businesses...brokers, to be honest with you. And so that's where this is becoming more of an important issue is to give them the ability to run their business as a business, but not to eliminate their liability to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

the Real Estate Commission and not to have us be sidetracking them in paying unlicensed people. We, under no circumstances, are attempting to not...to pay someone other than a licensed person. Only the person that would perform that would have to be licensed, and that person would be paid, so I don't know if that answers that question or not. But, you know, if we need to tweak this because there's other laws that would affect this in some way, we're open to do that. We just, I guess, want to lay out the issue here, and the issue is that there's been a number of people that have been advised to set up Sub S's, to set up LLCs that already have those in place, and so they're kind of stuck here in a position of saying, you know, what do we need to do moving forward, and so we felt, let's bring this issue forward and figure out how do we resolve this versus having people act currently in a manner that's going to put them sidewise with the Real Estate Commission or somebody else. [LB315]

SENATOR McCOY: Any questions for Mr. Leisey? I have one. Would you mind...you had said that you see this team concept, kind of a new wave...or I don't know if it's a new wave, but maybe it's a reoccurrence across the country. Why is that? [LB315]

VINCE LEISEY: I think the wave started, I'd say 10 to 15 years ago. This is my opinion, but you've had a number of top agents that want to become mega producers, okay? And over the last 10 to 15 years, we've had all of these coaches. We have life coaches; we have all of these other coaches. Well, we have a bunch of real estate coaches across the nations popping up, and they're saying, if you want to grow your business from here to here, the only way you can do that is to engage other people in that process to help you become more productive. The majority of people that I see building teams are what I will call rainmakers. They're the people that are very good at going out there and being producers and generating revenues and so forth. But the truth is, there's a lot of things that go on in a real estate transaction that are nonproductive and time consuming that's got to be done to make sure that we're getting things done right. So they're attempting to hire those people, so they can be more efficient in what they're doing to grow their business to the next level. And two is, top producers are...some of them are getting to a point where they have an overflow of business, and so they don't want to lose that business. So they'll hire what I'll call buyer's agents, so if an overflow because of...of Internet leads are coming in or calls off of their listings, off of signs, off their advertisers, off of anything, it's coming...and they don't have the physical ability to handle that anymore. They now have the ability to hand that off to somebody else on their team that they can be part of that and still manage that without losing that lead. So it gives them the ability to better service their client and to better manage their business. [LB315]

SENATOR McCOY: So what happened in the past...I assume those top producers just reached a certain level that there were only so many hours in the day and...? [LB315]

VINCE LEISEY: Correct. [LB315]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

SENATOR McCOY: ...that business went elsewhere, I would assume? [LB315]

VINCE LEISEY: Yeah, like I said, it's the last 10 to 15 years that it's happened, and technology has, quite honestly, even made it more important, because you can have so many more conversations with so many more people, because of cell phones and e-mails, and the advances in technology that's gave somebody that's a really good producer, quite honestly, the ability to generate more business and have more things to handle. And the truth of the matter is, there are only so many hours in the day, and we don't want everybody burning out, out there, and if they get to that point, quite honestly, the service probably goes down to the consumer. That's not what we want. We want to make sure that they have enough people and staff in place to properly serve their clients. [LB315]

SENATOR McCOY: Thank you, Mr. Leisey. Any further questions? Thank you. [LB315]

VINCE LEISEY: Thank you. [LB315]

SENATOR McCOY: Further proponents, LB315? Welcome. [LB315]

ANDY ALLOWAY: Hi. My name is Andy Alloway, A-n-d-y A-l-l-o-w-a-y. I am the owner and designated broker of DEEB Realty in Omaha, Nebraska. We currently have approximately 300 realtors with our company, one of the largest companies in the state of Nebraska. And I just basically wanted to echo the sentiments of the first two proponents, just here to say that this does have a dramatic effect on how we can pay our realtors. The majority of companies out there--ours being one of them--realtors are all independent contractors, and so anybody that goes out and starts a business has a choice of how they want to establish that business. This would give our independent contractors the ability to receive those same tax benefits by us being able to pay them in a myriad of ways. So I don't have a lot other to offer other than, I think, this would be a big benefit for them. [LB315]

SENATOR McCOY: Any questions for Mr. Alloway? Seeing none, thank you. Additional testifiers as proponents? Any opponents? [LB315]

WALTER RADCLIFFE: Mr. Chairman and members of the committee, my name is Walter Radcliffe. I'm appearing before you today as a registered lobbyist on behalf of the Nebraska Realtors Association in opposition to LB315 as it is before you today. Just a little background. The realtors have their...I won't tell you a long story, but they have their legislative committee meeting tomorrow and their board of directors meeting follows. Saturday we met and went through bills preliminarily, and the recommendation was to be neutral on LB315. Subsequent to that, their executive committee, if I'm using the right term, directed me to come and to testify against it today with a few caveats

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

which I am about to present to you. I was asked to do this shortly before noon, so I haven't had a great deal of time to prepare, but since it's a short bill, I'll be short. And very honestly, what I'm saying reflects my understanding more so than a policy position. I want to make...because if somebody...when I leave and somebody says, well, that was wrong, Walt. Well, then it's me that was wrong. It's not the association. But from what I can tell, there's a conflict here between trying to square tax policy and licensure policy. I mean, that's where the balancing act is trying to come. And simply put, and Senator Utter, you touched on one of the key parts of it in your question. And that is that a member of a corporation does not have to be a licensee, and therefore, the Real Estate Commission only has jurisdiction over licensees. And so consequently, someone could be paid as the result of a real estate transaction participating "in real estate business" and not be a licensee. The statements that were made that this is not in any way relieving the licensee of any duties is absolutely correct. I mean, this doesn't lessen the duty of any licensee, but what it does is it does let nonlicensees receive payment that they cannot do today under the licensure law. Now, having said that, it's my understanding that realtors firmly believe there's a way to accommodate that the tax interest that have been raised, and that there should be a way to do this, and that's...and I said, well, so why do I have to go up and testify in opposition? And they said, because we are opposed to it the way it is, but make it very clear that we're not opposed to trying to get some kind of an agreement and some kind of compromise. Why, you ask, have we not done that before? I don't know. I have not been privy to the dialogue that has or hasn't occurred. But we will try to work...we definitely are committed to getting something worked out. From what I can tell, I'm going to be surprised if, in fact, we can't be resolved. Hopefully, you won't have any questions that I can't answer (laughter). [LB315]

SENATOR McCOY: Questions for Mr. Radcliffe? Senator Langemeier. [LB315]

SENATOR LANGEMEIER: Walt, I appreciate you coming up. I thought I was going to be the most awkward one sitting in that seat today, and maybe you are now (laughter) so... [LB315]

WALTER RADCLIFFE: No, I'm not awkward, but. (Laughter) [LB315]

SENATOR LANGEMEIER: So that makes me feel good. Speaking as a member of this committee for the last seven years, we've had a number of people come and talk about this team concept. And as you look at the real estate signs, the team keeps getting bigger and bigger, and the real estate company that they work for gets smaller and smaller and smaller and smaller and smaller, and, a matter of fact, I saw one the other day, so I had to stop and measure it, and it was a Home Real Estate team that the Home on there was 1.5 inches tall by 2.5 inches on the whole sign. And we've been told that we've had people come testify that that's confusing. I'm a little fearful that maybe the more we add to that team concept, we continue to confuse people. And I'm saying

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

that kind of as a statement and... [LB315]

WALTER RADCLIFFE: I'm glad that's a statement and not a question, because I don't know (laughter). [LB315]

SENATOR LANGEMEIER: It's not a question. But I think that has to be discussed in the concept of teams going forward into the future. I haven't had any. Personally, I... [LB315]

WALTER RADCLIFFE: I can promise you, I will relay that, and it will be discussed (laughter). [LB315]

SENATOR LANGEMEIER: I know you will. That's why I brought it up. Thank you. [LB315]

SENATOR McCOY: Any other questions for Mr. Radcliffe? [LB315]

WALTER RADCLIFFE: I'll just add one thing, and it's fair to ask, how long do you think this will take? And I'll promise you, we'll get on it. People are in town, and this is not an attempt to delay and subvert the bill. [LB315]

SENATOR McCOY: Thank you. [LB315]

WALTER RADCLIFFE: Okay. Thank you very much. [LB315]

SENATOR McCOY: Additional opponents? Seeing none, any neutral testifiers? Welcome. [LB315]

JOHN GALE: Thank you. Mr. Vice Chairman, members of the committee, I'm John Gale, J-o-h-n G-a-l-e, Secretary of State for the state of Nebraska. I'm also chairman of the Nebraska Real Estate Commission, but I'm not appearing in that capacity in any way, but appearing as Secretary of State. This issue really came to my attention at a Real Estate Commission meeting when we changed our policy, clarified it a couple of months ago to make it very, very clear that licensed professionals, licensed realtors can only assume a business entity that is a professional corporation or is a professional LLC. This is required by law. We've had the Professional Corporation Act since 1969, and it's very, very clear as to its purpose. The state is sovereign. Only the state has absolute immunity. The state can waive it. We have waived it in several instances to allow lawsuits against the state, to allow lawsuits against political subdivisions in limited instances, but it's sovereign, and we have absolute immunity. We also can delegate absolute immunity or partial immunity to business entities and beginning with corporations centuries ago, and coming on down the line to other types of entities, the state has seen fit to grant certain forms of limited liability to protect the assets of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

owners in the event of any kind of lawsuit or insolvency or bankruptcy of those entities. The purpose of the Professional Corporation Act was to say that any licensed professional in the state of Nebraska--doctors, lawyers, realties, dozens and dozens of different licensed professionals can only be a professional corporation, or more recently, they can become an LLC if they elect to file the annual certificates with the Secretary of State's Office. Now, it puts me in the position as Secretary of State to enforce those laws. And every other profession that I have any knowledge of, has elected as doctors, as lawyers, as other health care professionals to become a professional corporation if they want a business entity in which to do business. What's the difference? Well, your law, your Professional Corporation Act says, there is no limitation of liability on the professional engaged in that business. They have the transparency. They have the perpetuity. They have the tax structure of a business entity, but there is no limitation on the liability of the professional acting in their capacity as an owner of that entity. Why is that? Because your law says that a professional licensee who has received a license, that with your permission to perform and engage in certain actions for the public, are held to very, very high standards, and they are required to carry E&O...errors and omissions insurance for their complaints for their errors. The typical regular corporation has absolute immunity from liability for the owners, so if I incorporate as a regular corporation, my personal assets are 100 percent protected from liability, and that encourages people to form corporations and create business entities. But if you're a licensed professional, and you select to engage in that profession, you have to allow yourself to have the corporate veil penetrated so you are personally liable for any and all acts and misdeeds as a professional. And the same is true with the LLC amendments. So we clarified that policy two months ago with the Real Estate Commission, and suddenly this issue just arose out of nowhere, and we find in my office that we have accepted the filing of many, many dozens, maybe hundreds of real estate salespeople primarily, who have filed as regular corporations. If we don't know the nature of their purpose, there's no way we can refuse to file the documents. And the corporate law says, all you have to say is any and all lawful purposes. So you don't have to identify yourself as a dentist or a doctor or a chiropractor. If we knew that when those papers came in, we would refuse to record them, because of the law that says they have to be a professional corporation. So apparently, there have been tax advisers who have been telling real estate salespeople to become a regular corporation and then they can elect to be a Sub S, and that avoids some employment taxes, some FICA taxes, and allows them some tax benefits. Without their ever knowing that our law, our sovereign laws that say they cannot be so protected, they go ahead and make that election. Now, we're going to try to figure out, in my office, how we can avoid the filing of documents if we can learn that they are a licensed professional. This is your law that you've asked me to enforce. The mere fact that they have recorded the document as articles of incorporation for a regular corporation when the Professional Corporation(s) Act says you shall not do so, then they are acting outside the law. They're in noncompliance with the laws of this state. What's the answer to that? The only answer that I can give you immediately is, they have to change the nature of the entity. They

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

have to amend, as an independent corporation, and become a professional corporation as your laws require, or to become a professional LLC. Now, whether they can get the same tax advantages or not, I don't know, but these laws are not driven by tax policy. The Professional Corporation(s) Act and the LLC act are driven by the immunity issue and the limitation of immunity for professional licensees. So, we're caught in the middle as a state administrator to carry out the laws that you're asking us to carry out to ensure that licensed professionals are, indeed, liable and carry the liability insurance they carry. Whether there's some areas of compromise, we're certainly willing to search and investigate and cooperate with the realtors organization, the Omaha realtors, and others, but it's going to take some really strong legal talent to help figure out what is an answer, because the law that you have before you simply addresses the real estate issue, trying to overcome the policy that was adopted by the Real Estate Commission two months ago, clarifying that you cannot be a licensed realtor and be anything other than a professional corporation or professional LLC. So you deal with that, which means that the Real Estate Commission is allowing it, but you as a state aren't allowing it, because you still have the Professional Corporation(s) Act and the Limited Liability (Company) Act that says that cannot be done. So you're going to have to look at this as a much broader issue than just simply saying, oh well, realtors can be independent corporations. Now, you have two issues in addition to that. One is, anybody who files from this point forward, now that we've kind of pulled the covers back and seen some of the conflicts and difficulties of existing laws, and you have the issue of maybe the hundreds of entities that are already out there that were wrongfully incorporated, and need to probably change the nature of their entity. How are you going to deal with those versus how do you deal with the law you have before you that only deals with realtors into the future? How will the doctors and the lawyers and the chiropractors and the dentists feel about exempting the realtors from the laws of limited liability that you impose on them, and that excuse them from that limitation when the whole purpose of limited liability is to ensure the public has a right of remedy if the professional licensee engages in malpractice or bad advice? So that's the nature of my testimony, and I simply would say, this may be the bill that is the bill that can carry the answer. But I don't think what you have is probably the answer, but we'll be happy to work with committee counsel and the committee members and anyone else to try to find some answers. [LB315]

SENATOR McCOY: Thank you, Secretary Gale. I see we have some questions. I think first we have Senator Pankonin. [LB315]

SENATOR PANKONIN: Secretary Gale, I really appreciate you coming today, because I think this is the old story of unintended consequences and the fact that this is a much more complicated issue potentially as you've opened up, broadened it to the whole entire state policy in this area. I guess my specific question is, these people that are in this, I call limbo, they filed as a C Corp to maybe go to an S, but they're still practicing real estate. I mean, what's the consequences for the public if there's issues here or are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

there any? It's just that they've done this thing for tax purposes, but yet they're violating the law on the real estate side. What are the consequences? [LB315]

JOHN GALE: That's one of the hard questions to know. They're required, of course, as realtors to have E&O insurance, and I truly don't know to what the minimum level is of that E&O coverage, or what would be the customary election. I know, as attorneys we never elected the minimums. We always elected as maximum as we could carry to ensure that we were protected against any possible complaint that might come against us. In this instance, those realtors who are within that C Corporation are required to carry E&O, so they have E&O insurance within the shelter of the corporation. If somebody brought a major complaint or lawsuit against them for error and omission, technically, they could claim the limit of liability of that C Corporation from any personal exposure. Now, it's possible to speculate that a court may hold that their E&O coverage is intended to cover their acts even if they're within the shelter of a C Corporation, and to that limited extent, they have personal exposure. That's not the intention of the Professional Corporation Act. The Professional Corporation Act says any and all assets of that entity and any and all assets of that individual are also subject to payment of a significant claim. So you can carry E&O, and that may just be a partial payment on your ultimate liability if you've carried low E&O. I don't know the question to that, because it's so uniquely hard to figure out and how a court would penetrate that and say, well, there's no personal liability except to the extent of E&O. Other than that, there's no other liability of that individual, because they're in a C Corporation. That is a hard legal question that I don't have the answer to, but I think it's part of the reason why this Legislature, over the years, has adopted these types of policies is to ensure that there is unlimited liability for the professional. I had to live with it as an attorney. Doctors have to live with it. We all, as professionals...licensees have to live with that potential of exposure of every asset you own, and it holds you to a very high standard of conduct. [LB315]

SENATOR PANKONIN: Thank you. [LB315]

JOHN GALE: Thank you, Senator. [LB315]

SENATOR McCOY: Senator Langemeier. [LB315]

SENATOR LANGEMEIER: I think I want to form a team and not be a broker now (laughter). I think you stirred up a hornet's nest with an interesting concept of all brokers that have companies out there, because we all do that are S Corporations as brokers that now need to be different. So I was a little leery about this bill to start with, but it might be a vehicle to try and fix some real problem. So I thank you for that, but I think we've got a very, very confusing situation ahead of us so. [LB315]

JOHN GALE: One of the peculiarities of the real estate law is it's allowed brokers to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

C Corporations, because they receive payment from the closing agent, and closing agents aren't regulated by the real estate commission. So we cannot regulate the payment from the closing agent to the broker which comes in the form of a payment to a C Corporation. But we do have authority and have exercised authority over the next level which is the payment of the broker to the salesperson. So I think my focus here today is probably on the vast majority of those that have formed improperly are probably salespersons, and they may be a husband or a wife; they may be a husband and wife team. Maybe there are three or four of them. They may be fully compliant with the Professional Corporation Act. They just didn't file that way. They can easily change, but I agree with you, it's a headier issue of the brokers who are C Corporations, and how we address that. So I think we have to distinguish between the various categories of people, the ones that can easily just convert and give them a honeymoon period of time to convert without my having to report them to the Attorney General's Office, give them a honeymoon of a year or so and make their conversion. And then you get into those that are a combination of both licensed professionals and maybe team members who aren't, but who are owners, and they may be small brokerages. And maybe they can more easily become an LLC. If you get into the very large brokers who are C Corporations and have hundreds of independent contractors, salespeople, and dozens of employees, I frankly don't know all the answers to that. I do know that the Professional Corporation Act did grandfather any licensed realtors or brokers who were C Corporations as of 1969, but I suspect there aren't many of them left. They probably have closed for one reason or another or merged, so if you were lucky enough to be a C Corporation in '69 and were grandfathered, then it's not a problem. But I think the broker issue is probably the meatiest issue that we would need to address, and I'm not saying there aren't answers. I'm just saying, I'm in the middle of this, because I have laws I'm supposed to enforce, and I'd become an enabler if I continued to allow people to file articles incorporation for C Corporations when I know they're a licensed professional. [LB315]

SENATOR LANGEMEIER: So to follow up on that, would that honeymoon period...that would have to be stated in this bill if... [LB315]

JOHN GALE: I would think... [LB315]

SENATOR LANGEMEIER: ...if something went forward, we would have to include the honeymoon because you as the Secretary of State can't deem that we're going to have one year honeymoon. We would have to have something that...I mean, you enforce what we create, so... [LB315]

JOHN GALE: That's correct. [LB315]

SENATOR LANGEMEIER: Is that not true? We would have to... [LB315]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

JOHN GALE: I have some levels of discretion, but in this area you would have to grant that...you would have to grant me that discretion. [LB315]

SENATOR LANGEMEIER: Okay. Thank you. [LB315]

JOHN GALE: Thank you, Senator. [LB315]

SENATOR McCOY: Senator Utter. [LB315]

SENATOR UTTER: Senator Pankonin and Senator Langemeier pretty well covered the questions I had. Thank you for coming. [LB315]

JOHN GALE: Thank you, Senator. [LB315]

SENATOR McCOY: I do have one question, Secretary Gale. Maybe it's just a point of clarification. Now, when you mention that the Real Estate Commission changed some of these rules a couple of months ago, I think it was mentioned. Now do you suspect that these unknown, maybe hundreds of filings have been since then or that's been going on for quite some time? [LB315]

JOHN GALE: I think it's been going on for quite some time, and I don't think there is any evil intention. I think it's just some bad advice or incomplete advice that was leading people to do things that they did. They saw the tax benefit without realizing this whole issue of licensed professional and their liability under other laws. And so they were taking probably the straightest and cleanest line for them which was a C Corporation and so that selection. It's my understanding you can have the same Sub S election as a professional corporation. So they could have done it right, and probably still had their tax benefit, but I'm not going to address that, because I'm not a CPA. [LB315]

SENATOR McCOY: Then how would you even go about in your office to even try and figure out how...who did it correctly and who didn't? I think you had mentioned you were going to try an endeavor to do that in your office. That would seem to be an almost impossible task, would it not? [LB315]

JOHN GALE: Well, yes, Senator. If it'd been easy, we would have caught it years ago, but once the corporation...Business Corporation Act was changed, so that you no longer have to state your primary purpose for doing business, then all you need to say now is any and all lawful purposes, that's what they all say. So these documents come in, and unless there's something in the name that catches our attention that it's a medical group or a real estate group that raises the question, we have no discretion. We file those documents, but on the biennial occupation tax reports, there is more information provided. Now, we don't get those until two years later, because they're filed every two years, but there is information we have found on those that may lead us to write a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

bunch of letters to entities that we know didn't file correctly, and we simply would need to communicate with them and say, you're out of compliance with the current law, and you should change. And, hopefully, they would go change. What would be helpful to know is, can they get the same tax election under PC as they could under a C Corp, because then it's just a matter of updating their documents. So that's why it goes beyond the simple real estate issue or a simple tax issue. You have a whole array of statutory issues. [LB315]

SENATOR McCOY: Thank you. Senator Langemeier. [LB315]

SENATOR LANGEMEIER: One more question, maybe a comment. Secretary Gale, as chairman of the Real Estate Commission, I think you just came up with a three-hour class (laughter) for continuing ed. [LB315]

JOHN GALE: (Laugh) That would be...it would be an excellent class, and I'll recommend it. [LB315]

SENATOR LANGEMEIER: Thank you. [LB315]

SENATOR McCOY: Thank you, Secretary Gale. Any other neutral testifiers? Welcome back, Mr. Lemon. [LB315]

GREG LEMON: Thank you, Senator McCoy. Greg Lemon, L-e-m-o-n, director of the Nebraska Real Estate Commission, appearing in a neutral capacity on behalf of the Nebraska Real Estate Commission. Just want to say a couple of things very quickly. One, that the tax aspect has been discussed, and I'm not a tax expert. I've talked to some tax experts. The people that I've talked to have said that you can be treated the same as a PC. You can elect Subchapter S or C Corporation status as you can as a regular corporation. I mean, that doesn't necessarily solve the problem for those that formed as a regular corporation and, apparently, there has been other advice given, too. So I don't know if that's the last word, but that's how it's been explained to me. The commission looked at this bill and decided to be neutral on it, I think similar to what some of the other testifiers have said, both opposed and neutral. We would be glad to work with those affected parties with the Nebraska Realtors Association, and with the Omaha Realtors, and with the Secretary of State's Office on coming up with a solution, and working quickly on that, so that we can deal with this problem. The last thing I wanted to talk about briefly is teams. I think that's kind of a peripheral issue to this bill, but since there were a number of questions about that, yeah, I think it's a coming thing. It's a little bit of a different thing. Our laws recognize individual brokerage firms and individual licensees. We don't really recognize teams in any way. To this point, it hasn't really been a problem. I mean, when we've had disciplinary proceedings, when we've had our licensing paperwork, you know, we can do things with that. I've been there a year and a half. I haven't seen a complaint involving a team, or if it has involved a team,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

the fact that there's a team involved hasn't been an issue. It doesn't mean it won't be in the future, something we can look at, you know, we may need to tweak some of our rules to acknowledge and accommodate that. But this time it hasn't been a problem, but we're aware of it, and we will look at that issue and deal with it over time. I think that's kind of a separate...I mean, yeah, there's some aspects of that, that kind of roll into this bill, but it's kind of a separate deal. With that, be glad to answer any questions. [LB315]

SENATOR McCOY: Questions for Mr. Lemon? Seeing none, thank you. Additional neutral testifiers? [LB315]

PAUL VOJCHEHOSKE JR.: Hi. My name is Paul Vojchehoske. First name P-a-u-l, last name spelled V-o-j-c-h-e-h-o-s-k-e, Jr. Since Pandora's jar has been opened, one thing that I'd like to point out if we're going to put this bill together, and something is going to come out that's comprehensive. The one thing that everybody has missed is the property management aspect, and that's an area that I know a considerable amount about. One of the reasons, if you're a property manager, you are governed by the licensing law. To manage third party, you've got to be a licensed broker and then you're under the licensing act. Why you want to be an LLC and not particularly a PLLC or a PC is there's so many other aspects of liability that you assume just on the normal buyer/seller situation. For example, environmental issues is probably number one. I need that liability protection, and I conversed with an environmental attorney last night from Boston, and it's nearly impossible to get any kind of general liability against environmental issues. Lead-based paint is primarily the biggest issue we deal with in homes built prior to '78, so, again, I'm throwing this out here for the committee that anything that goes forward, I think to not include some of the aspects of property management and the unique, distinct things that they may need as tools versus the general sales force, I think needs to be addressed or otherwise we are going to miss a huge amount of the industry that's there. Some other things that we deal with the property management that a lot of times isn't covered by E&O insurance is leasing and tort cases. And, I mean, right now one of the largest things we see against...largest lawsuits against property managers is defamation of character. So those are some of the concerns, I think, maybe as well needs to be addressed. So, any questions? [LB315]

SENATOR McCOY: Questions? Seeing none, thank you. [LB315]

PAUL VOJCHEHOSKE JR.: Thank you. [LB315]

SENATOR McCOY: Any additional neutral testimony? Senator Pahls. [LB315]

SENATOR PAHLS: You know, as Paul Harvey used to say, the rest of the story is. You can see, apparently, we do need to do some work, looks like the water has been spilled. Now we got to do a little bit of wiping up, because some people are taking advantage of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

something, and they thought they were doing it legally, I'm assuming. So it looks like...I've heard the word that there's a honeymoon period. I've heard several people who...the commission, who maybe have a little bit distaste for this bill. Well, at least they're willing to sit down and take a look at what has gone on and...but right now, I'm assuming from this day forth, there should not be any unknown about it if you're going to go apply for something if you don't qualify. I think we sort of made that pretty clear. Thank you. [LB315]

SENATOR McCOY: Thank you, Senator Pahls. Any questions? Seeing none, that closes the hearing on LB315. [LB315]

SENATOR PAHLS: LB347 by Senator McCoy. [LB347]

SENATOR McCOY: (Exhibit 1) Thank you, Chairman Pahls. I'm Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District of the Legislature. I'm here to introduce LB347 to you which authorizes interest-bearing trust accounts under the Nebraska Real Estate License Act. Currently, brokers are required by statute to place trust account money in a non-interest-bearing account. LB347 would give the brokers the option to have their accounts in interest-bearing accounts so long as the interest goes to a nonprofit organization. The interest will not go to the broker. LB347 also makes this voluntary for the banks as well. The Nebraska Realtors Association has received a grant, aid to low-income individuals in home-buying, and one of the requirements of the grant is to have and establish sustainability. The Nebraska Realtors Association envisions the interest helping with that sustainability. I have included AM75 which you should have, I believe, that sunsets this proposed law in three years. The realtors agree with the sunset provision to address concerns raised by the bankers about the process. With the sunset provision in place, both sides will come back with legislation to demonstrate how this program is working. And a member of the Nebraska Realtors will testify. I believe there may be several testifiers behind me, and they'll have more information on the specific grant and the program they envision to fund with this money. And with that, I will close if there are no questions. [LB347]

SENATOR PAHLS: Seeing no questions, thank you. Proponents? Good afternoon. [LB347]

RITA GRIESS: (Exhibit 2) Good afternoon, Senator Pahls and members of the committee. My name is Rita Griess, R-i-t-a G-r-i-e-s-s. I am a member of the Nebraska Realtors Association, and speaking on their behalf. The realtor organization has long been a supporter of affordable housing, and a couple of years ago, the National Association of Realtors gave all the states the challenge of coming up with a program that would be sustainable and supportive of affordable housing. We had a task force that worked for a year and a half on this project and came up with this plan that you see before you which the intended beneficiary will be those people applying for affordable

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

housing. In order to do that, we need to have a change in the law which restricts interest-bearing trust accounts by real estate brokers. So the way the program would work, the monies raised in these interest-bearing accounts would go to support the Nebraska Housing Developers REACH program which is the educational process these homebuyers go through before they buy the home. And I think that is a very important part of this. The education they receive is to prepare them for home ownership, all the way from what a credit score is to applying for the loan to the process to maintaining a home clear down to how you are a good neighbor. So it's something that is an important part of home ownership, we believe. The things that I want you to recognize is that it is totally voluntary by all the participants--the banks that would be involved, the brokers that would be involved. And we did agree to the three-year trial period. We don't know how sustainable it will be, but we believe it will be based on the research that was done before this was proposed. So that, in a nutshell...I also might add that the way the fund is going to operate is similar to the Nebraska Bar Association's IOLTA program. They have a similar program that benefits nonprofits within their organization. We have received a \$50,000 grant for seed money to begin the process. We're excited to get started on it, and look forward to. We believe it will also benefit the housing industry, in general, as it provides for more affordable housing to begin. So if you have any questions, I'd be happy to answer. [LB347]

SENATOR PAHLS: Senator Pirsch. [LB347]

SENATOR PIRSCH: Follow-up on your question with respect to your statement that this is up to the individual banks who are involved to participate in or not participate in? How would that participation be expressed? [LB347]

RITA GRIESS: Well, we have...and I don't think you received this, but they would decide whether they were a participant or not in the fund, and I have a copy of the Nebraska Lawyers Trust Account Foundation, participating financial institutions where it goes all across the state, and, you know, they elect to participate or not. So a broker that would want to participate, of course, would be utilizing one of those institutions. [LB347]

SENATOR PIRSCH: Saying similar to IOLTA, is that what you're saying? [LB347]

RITA GRIESS: Um-hum. [LB347]

SENATOR PIRSCH: And...okay, thank you for explaining that. [LB347]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB347]

RITA GRIESS: Thank you. [LB347]

SENATOR PAHLS: Proponents? [LB347]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

GREG LEMON: Thank you, Chairman Pahls. For the record, I'm still Greg Lemon, L-e-m-o-n, still director of the Real Estate Commission. I would just echo what Rita Griess said on behalf of the Nebraska Realtors Association. The Nebraska Real Estate Commission supports it as well. We monitor, audit those trust accounts. We'll have to alter our rules a little bit, but it seems like a bill that would do some good things, and the commission supports it. I would be glad to answer any questions you might have. [LB347]

SENATOR PAHLS: Seeing none, thank you for your testimony. Any more proponents? Opponents? Neutral? [LB347]

ROBERT HALLSTROM: Senator Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB347. Both Senator McCoy and the realtors have worked with the bankers association in reviewing some alternative options to address their interest in providing funding pursuant to the grant that they've referenced for education for housing projects. We have surveyed our bankers after those initial conversations, and while some thought it was a novel idea for the banks to pay the interest, so the realtors could take credit for setting up this program, we have had subsequent discussions where some participation in the REACH program and things of this nature could possibly be available for banker participation. And I think, more importantly, we've had some discussions, although we have not had our board of directors meeting to make final decisions that we have had at least some meaningful discussions on the sunset prospect that Senator McCoy has introduced in the form of the amendment, and have tentatively indicated at least our interest in moving forward on that basis subject to my ability to meet and discuss with the board of directors. I think some of the issues that the committee should be aware of, obviously, these trust accounts. The reason that they are not interest-bearing, in general, is because the broker owns the account but does not own the funds therein. They come from the buyers with regard to real estate transactions. There are a number of states that have programs similar to what we're potentially looking at here and paying these funds over to the nonprofit entity, and that allows for those funds to be interest-bearing as long as they're going to that third-party outlet. But one of the things that occurs in making the account interest-bearing is that we currently have unlimited FDIC insurance coverage for only non-interest-bearing transaction accounts, so that is one of the things that should be taken into consideration by the realtors, I believe, in making decisions with regard to whether they will have interest-bearing or non-interest-bearing accounts. But, again, subject to my further discussions with the MBA, Government Relations Committee, and board of directors, I am hopeful that the middle ground that we've discussed here today in terms of having a sunset on the interest-bearing account authority will be a workable solution. The realtors have assured us that they look at this as a type of seed money that they intend to talk to their membership to solicit funding on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

an ongoing basis, and I think that's a workable project in the long run, so be happy to address any questions. [LB347]

SENATOR PAHLS: Senator Utter. [LB347]

SENATOR UTTER: Thanks, Chairman Pahls. Bob, the mechanics of setting up an account require a tax ID number and...among other things. And I guess I'm just wondering, is there any complications from setting up a trust account that would normally have the tax ID number of the Real Estate Commission on it? And, I assume, either having to use a tax ID number of the nonprofit that's going to receive the interest, but isn't the owner of the account normally the owner of the funds in it? What are the complications? [LB347]

ROBERT HALLSTROM: Senator, I don't know. Those are all issues that will have to be grappled with, I assume, by the Real Estate Commission in setting up the rules and regulations, but I rather imagine they'll use the framework or the prototype of the IOLTA program which has a separate identifying tax ID number, under which these interest payments in the lawyer trust account fund are be distributed or deposited by the banks, and there's separate fee authority which I assume will be part of the rules and regulations and how those are treated that, presumably, will be set up much in line with what the IOLTA program has. [LB347]

SENATOR UTTER: Thank you. [LB347]

SENATOR PAHLS: Senator Pirsch. [LB347]

SENATOR PIRSCH: And I'm sorry, I didn't quite catch it. You said, there's a guarantee that would not be in effect then for monies that lie in interest-bearing accounts? [LB347]

ROBERT HALLSTROM: Yeah. The FDIC has a general \$250,000 per account, but in the most recent changes, they have identified what was originally a transaction account guarantee program that provided unlimited insurance coverage for what they defined as non-interest-bearing transaction accounts. Those, initially, did allow for IOLTA accounts to be covered. They were stripped out, and then Congress came back in and now has provided within the FDIC...just passed the rules to allow for unlimited coverage for IOLTA accounts. But for these, unless they are truly non-interest-bearing zero interest payment, they will have \$250,000 coverage per identifiable depositor. The buyers, in this case, but not the unlimited coverage that they would otherwise have. [LB347]

SENATOR PIRSCH: I see. So there's certain risks then that (inaudible)... [LB347]

ROBERT HALLSTROM: Yeah. I think those are things that the individual realtor will probably take into effect in determining whether or not they want it to be an interest or a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

non-interest-bearing account. [LB347]

SENATOR PAHLS: Seeing no more questions, thank you. [LB347]

ROBERT HALLSTROM: Thank you. [LB347]

SENATOR PAHLS: Any more...any neutral? Any more? Senator. Senator McCoy waives. That closes the hearing on LB347. Now we are ready for Senator Langemeier on LB25. [LB347]

SENATOR LANGEMEIER: Good afternoon, Chairman Pahls and members of the committee. My name is Chris Langemeier, C-h-r-i-s, Langemeier is L-a-n-g-e-m-e-i-e-r. I bring you LB25 on behalf of the Nebraska Real Estate Commission. LB25 would define what an asset management company is, and proposes excluding them from the license law in a very, very narrow exclusion for licensees dealing with these kind of companies that deal with asset management. As we've talked about today, I'm the first one to say that everybody should be licensed. However, we do see a growing trend of large companies dealing with Fannie Mae, HUD, and some others that might have a narrow window to be excluded. This would deal with that, and Director Lemon is here, and I will let him further discuss the issues relating to LB25. [LB25]

SENATOR PAHLS: Seeing no questions. Proponents. [LB25]

GREG LEMON: Thank you, Senator Langemeier, and once again, Greg Lemon, L-e-m-o-n, director of Nebraska Real Estate Commission appearing in support of LB25. This is probably the most technical and arcane of the bills we have today, but I won't talk, you know, I don't know if it falls clear over into the UCC category. But it's a little more technical and arcane than some of the stuff we've talked about today. There are what are referred to as asset management companies. They dispose of properties for large institutional noteholders at large banks--Fannie Mae, HUD, etcetera. They typically use a real estate licensee to get that property on the MLS. The MLS is still a good way to market property, so they use a real estate licensee. They operate on a large multistate basis. They have their own way of doing things. They like to do it efficiently, so they can do it the same in all states. We have requirements in our law, a couple of them that run afoul of how they do things. One, is the listing agreement has to have certain statutory duties in it and, two, the offers are supposed to be presented by the licensee to the parties. Lots of times they have on-line offer submissions. Since those laws are intended to protect the consumer and, in this case, we're dealing with a large institutional type of person, and also since, I think if I picked a fight with them, we'd probably lose or we might lose, so I don't want to do that. We've just said, let's exempt the licensee so they don't get in trouble, and they can work with these asset managers, and we'll see more of this as the houses cycle through the foreclosure and the mortgage crisis that we've had, we'll see more asset management properties on the market. You

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

know, I said I didn't get a lot of calls about teams. I get lots of calls about dealing with the asset managers, because the way they do things don't jibe with our license law. This would make it jibe with our license law. That's all I've got. If you have any questions, be glad to try to answer them. [LB25]

SENATOR PAHLS: Senator Pirsch. [LB25]

SENATOR PIRSCH: You indicated asset management companies typically operate on the larger scale, the commercial scale, correct? [LB25]

GREG LEMON: Yes. [LB25]

SENATOR PIRSCH: Do they have the capacity to operate on smaller scales as they're defined should they so choose? [LB25]

GREG LEMON: I suppose they could. I don't know what, you know, I don't know who would use them or if that would be likely to occur. We haven't seen it occur, but I suppose it's possible. [LB25]

SENATOR PIRSCH: I guess the idea or concept here is that...there are certain rules and regulations designed to protect the average or not very savvy consumer in the smaller end of the scales, but that at some threshold level, you are large enough that you have that institutional knowledge, correct? [LB25]

GREG LEMON: Right. [LB25]

SENATOR PIRSCH: And so, this would be a limited exemption, assuming that these consumers are savvy. [LB25]

GREG LEMON: Correct. [LB25]

SENATOR PIRSCH: Okay. [LB25]

GREG LEMON: Correct. [LB25]

SENATOR PIRSCH: And can you...not having the background that you do, can you speak to the number of asset management companies in the state and the role they play, just in general? [LB25]

GREG LEMON: I do not know the number. I can think of two or three at least. There may be more, as I said. And we do define...we really sort of define them by...partly by who they're going to work for which would be banks, savings and loan associations, financial institutions, created and regulated pursuant to state or federal law,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

mortgage-holding entities chartered by Congress. That would be like HUD, Fannie Mae, Freddie Mac. There are a number of them, because they're not really licensed to regulate it. I don't know how many, but there are a number of them, and there are quite a few properties out there that are being handled by these, and I think we're going to see an increase in it, because like I said, as I understand it, even though, you know, the economy seems to be picking up, the whole mortgage foreclosure thing takes some time, so those who people got behind, those houses that were repossessed and are being sold are going to be coming on the market in increasing numbers. [LB25]

SENATOR PIRSCH: What type of requirements are going to be exempted then as a result of if you do qualify as one of these asset management...? [LB25]

GREG LEMON: There are two requirements which would be exempted...two specific requirements of our license law. One is a listing agreement has to have certain statutorily defined duties to...that the licensee is going to provide to the client. The other that would be exempted is the requirement that the licensee present...personally present all offers that are made on the property. [LB25]

SENATOR PIRSCH: Say it again. The licensee personally... [LB25]

GREG LEMON: Has to present all offers. [LB25]

SENATOR PIRSCH: Present. Okay. Thank you. [LB25]

GREG LEMON: Yes. [LB25]

SENATOR PIRSCH: Thank you. [LB25]

SENATOR PAHLS: Senator Pankonin. [LB25]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Lemon, just curious on the...obviously, reasons for the bill, but who kind of brought the...this to your attention? Did this come out of your shop or did...? [LB25]

GREG LEMON: It really came out of our shop. It was brought to our attention by the licensees, who said we're dealing with this asset management company, and, you know, if I follow their rules, I'm going to be breaking your rules. [LB25]

SENATOR PANKONIN: Okay. So did you talk to the asset management companies as well on some input on this or...? [LB25]

GREG LEMON: I have talked to asset management companies. I have talked to some of the license regulating boards in other states, dealing with the issue as well. [LB25]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

SENATOR PANKONIN: To get what their...what they've done? [LB25]

GREG LEMON: Yeah, yeah. [LB25]

SENATOR PANKONIN: And you modeled that off of some other states or? [LB25]

GREG LEMON: No, actually, we're probably on the...kind of on the cutting edge on this, and in some cases, they weren't as aware of it as we were. In some cases, it's becoming a bigger issue nationwide. Just, you know, the last year, last months. [LB25]

SENATOR PANKONIN: Okay. Thank you. [LB25]

GREG LEMON: You're welcome. [LB25]

SENATOR PAHLS: Seeing no more questions, thank you. [LB25]

GREG LEMON: Thank you. [LB25]

JUSTIN BRADY: Chairman Pahls and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist of the Nebraska Realtors Association in support of LB25. For the reasons Mr. Lemon said, but I also want to talk just briefly about that how they see it is, this is a protection back for the licensees. When they're dealing with these asset management companies like Fannie Mae, and they're saying, you'll do it this way, then they're presented with the choice of either (a) saying, no, we aren't going to do any of that large business, or have to go work with the Real Estate Commission and say okay they want us to do these forms this way or present these offers that's not in compliance with what you want. In working with the commission, we've come up with an agreement that will allow them to continue to do that, and not be in violation of Nebraska law. So with that, I'll try to answer any questions. [LB25]

SENATOR PAHLS: Seeing none, thank you. [LB25]

JUSTIN BRADY: Thank you. [LB25]

SENATOR PAHLS: Opponents? Neutral? Closing. [LB25]

SENATOR LANGEMEIER: I do want to close mainly because I have the next bill, too. But to give you an example of this, we'll get a call, and I'm speaking as a broker, is we'll get a call to list a foreclosure property. We'll say great, and we'll fill out our standard listing form in Nebraska. We'll fax it in to per se Bobby Joe at some company, and we'll get 22 pages of their contract legalese back as a listing, and so you got that in your

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

hand. You know, like now what the heck do I do with this, because they're going to come audit me, and that doesn't meet what I'm supposed to have in my file. And so I call back in, and by the way, Bobby isn't there anymore. Now I'm talking to Steve. And so, we're trying to alleviate some of that issue. We would argue that that individual at that end even though they seem to change pretty fast, they know what they're doing. And so they don't need the same tenderness that a citizen of Nebraska that wants to list a property with an agent needs. So we'd ask for the adoption of LB25. [LB25]

SENATOR PAHLS: Okay. Thank you. That closes LB25, and now we are ready for LB26. [LB25]

SENATOR LANGEMEIER: Chairman Pahls and members of the committee, my name is Chris Langemeier, C-h-r-i-s, last name is L-a-n-g-e-m-e-i-e-r, Langemeier. And I bring you LB26. (LB)26 is brought to you, not because we're seeing this in Nebraska, but it's a trend we're seeing outside of Nebraska. It's been brought to me by the realtors of the title association, and a number of others. There is a concern out there that a private individual or firm has gone through the process of creating some language that they've received a patent on, that with...put into a contract, allows for perpetual fees to be collected on a property every time it transfers. So what we're trying to do is prohibit that language to be used in the state of Nebraska to prevent this. So what has happened is, is they offered to do some sort of a transaction. They're putting their trademark language in, and so then if that property transfers, I buy the property and I sell it, they would have the right to send me a bill for a percent fee, because the property transferred. We're seeing this in Texas and in a number of other states. We would ask that Nebraska get ahead of the curve. I don't think it is the Nebraska way to do business, and we would ask that you support LB26 to put a ban on these type of fees for perpetuity on a property. And with that, there's many to testify behind me, and I would ask for your adoption of LB26. [LB26]

SENATOR PAHLS: Seeing no questions, thank you. Proponents? [LB26]

JOE GEHRKI: Good afternoon, Chairman Pahls and members of the committee. My name is Joe Gehrki. It's J-o-e G-e-h-r-k-i, and I come to you as the president-elect of the Nebraska Realtors Association, appearing in support of LB26 to ban private transfer fees in Nebraska. The Nebraska Realtors Association, along with the American Land Title Association, are opposed to private transfer fees--legal private transfer fees for a number of reasons. Private transfer fees or PFTs constitute an unreasonable restraint on the transferability of a property. Simply put, with no ownership interest, they would provide a cloud on the title in subsequent transfers. PFTs are private investment vehicles without valid development purposes that are designed to benefit only the developer who imposed them to the detriment of unsuspecting homebuyers and the public. PFTs could decrease property tax revenues for local government purposes by lowering the value of real estate, and probably most startling, promoters of PFTs are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

working to develop private transfer fees into securitized financial instruments and bundling thousands of PFT obligations into pools, and potentially selling them on Wall Street much in the same way that mortgage pools were created and sold in the past. And for these reasons and more, the Nebraska Realtors Association are in support of LB26, the ban on private transfer fees, and I will entertain any questions that you may have. [LB26]

SENATOR PAHLS: Senator Pankonin. [LB26]

SENATOR PANKONIN: Chairman Pahls, thank you. Mr. Gehrki, thanks for being here today and explaining this to a greater degree. As I understand it, this may have started in Texas and has spread somewhat, and we may have some here in Nebraska already. But as far as this legislation or legislation like this, do you know of other states that have enacted these protections? [LB26]

JOE GEHRKI: Yeah. Currently speaking, there are 45 states with PFTs in practice, but currently speaking, 26 states are either in the works with legislation or have passed legislation outlawing future PFTs. [LB26]

SENATOR PANKONIN: Thank you. So it's a nationwide effort then to try to control this. [LB26]

JOE GEHRKI: Yes. And as Senator Langemeier explained, we do not know of any in the state of Nebraska that are operating. We are, as an association, trying to get out in front of this. [LB26]

SENATOR PANKONIN: Thank you. [LB26]

SENATOR PAHLS: Senator Pirsch. [LB26]

SENATOR PIRSCH: And I think down in Texas, some of the rationale that they have been...the proponents of these PFTs have been putting forward is that it would...somehow if you have a continuing stream of payments, that the up-front costs of the real estate is somehow lessened. Has that been an experience that...is there anything to suggest that that actually rings true, that that is a lesser...takes less money to get into the real estate to begin with, or is that just...? [LB26]

JOE GEHRKI: It's my understanding based on research that that is kind of how it's sold. However, many of the original purchasers are having these covenants placed on their homes unwittingly. In other words, they don't really see the detriment down the road. [LB26]

SENATOR PIRSCH: They don't see...they don't recognize their purchase as an

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

untraditional type of (inaudible). [LB26]

JOE GEHRKI: Correct, correct. [LB26]

SENATOR PIRSCH: Okay. [LB26]

JOE GEHRKI: And for that reason, it does impede the value down the road. [LB26]

SENATOR PIRSCH: Well, I think you're right, in my opinion it does affect and put transparency (inaudible) and assumptions (inaudible). No other questions. [LB26]

SENATOR PAHLS: Senator Gloor. [LB26]

SENATOR GLOOR: Thank you, Chairman Pahls. Mr. Gehrki, is this a percentage, and if so, a percentage of what? Is it by a dollar amount? Can it be a combination of the above? [LB26]

JOE GEHRKI: The majority of what we're seeing is a 1 percent of the sale price fee for every subsequent transfer of the property. And most of the models show for 99 years, so if the property sells for \$300,000 five years down the road, there's a \$3,000 fee that somebody gets to pay--the buyer or the seller. Another ten years down the road, it sells for \$450,000, there's \$4,500 down the road. And one of the biggest problems comes in where the American Land Title Association shows that these covenants aren't easily recoverable. In other words, they pop up in the middle of a transaction, and they can really be to the detriment of that transaction. [LB26]

SENATOR PAHLS: Senator Pirsch. [LB26]

SENATOR PIRSCH: This is just a thought. Has a market developed in these securities? I mean, it...in those limited jurisdictions that have them--Texas or whatever. Is there a developed market now that follows? [LB26]

JOE GEHRKI: You know, I don't know the answer to that. I really don't. [LB26]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB26]

JOE GEHRKI: Thank you. [LB26]

JAMES LAMPHERE: Good afternoon, Senator Pahls. My name is James C. Lamphere. That's J-a-m-e-s L-a-m-p-h-e-r-e, and I am one of the cochairs for the Nebraskaland Title Association legislative committee. We're here today to oppose or in favor of LB26 for many of the same reasons as Mr. Gehrki. We are the industry that discovers these. We have not yet found any in Nebraska, and we're hoping that we don't. A private

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

transfer fee covenant, the most common one, was developed in Texas. It is a 1 percent transfer fee, payable to the developer and all future transactions for up to 99 years. There are several problems that are created by that covenant. It complicates an already complicated transaction. Many people buy real estate once or twice or three times in their lifetime. They're not familiar with the common procedures, and they're not often aware that this is something extraordinary in the transaction, and so it's one more complicated factor in a transaction that is already a pretty intimidating transaction. There's a real lack of transparency in these. It's really hard to tell. There is a discount up-front. It is a modest discount. It's not even necessarily the full 1 percent on some of these prices. It's not clear what that does to future values, and it's pretty clear from studies done by the American Land Title Association that those values are diminished, and they are diminished successively with each owner by driving the price down. It's payable whether or not there's a profit on the...or a gain on the purchase of the property. Even if you lose money on the sale from that first...if the value of the property inherently declines, you still have to pay the 1 percent fee. And so, it's essentially a tax, a private tax with no public benefit, and by doing so, it steals equity from homeowners. It creates risks for both lenders and title companies in the transaction. Sometimes these are fairly explicit covenants. Sometimes they're buried in individual deeds and are easily missed in a review of a chain of title, and that risk gets greater the older these become. And so our industry is very strongly in favor of this bill. This is a bad idea, and we don't want it here in the state of Nebraska. With that, I'll take any questions. [LB26]

SENATOR PAHLS: Seeing none, thank you for your testimony. [LB26]

JAMES LAMPHERE: Thank you. [LB26]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB26. In conducting research on this particular issue, I've determined that this is truly the gift that keeps on giving, but only for the recipient of the payments. It has significant adverse consequences for subsequent owners of the property. There's indications from, at least what I've read, that there are insufficient disclosures made. Parties are surprised down the road that these exist. There are potential unknown liens and title defects that arise that affect adversely the marketability of the property. The only other thing I'd add in my testimony, I have referenced that recently, the Department of Housing and Urban Development has issued a letter indicating that private transfer fees violate HUD regulations, and that the agency would not insure mortgages that contain these covenants, and, in addition, the Federal Housing Finance Agency, on August 16, 2010, issued a guidance that would restrict Fannie Mae and Freddie Mac from investing in mortgages with private transfer fee covenants. So there's a recognition that these are not acceptable, particularly in the secondary market for those that participate, and we would encourage the committee to advance the bill to the floor for further consideration.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011

[LB26]

SENATOR PAHLS: Senator Pankonin. [LB26]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Hallstrom, I think that's appropriate that you brought that up, because not only are we talking about, you know, someone could have a cash transaction. But most of these transactions are financed, and so not only is it a problem from the initial purchase and things that could go wrong, but it can cloud the financing ability of that property which really makes a difference in what the property is worth. [LB26]

ROBERT HALLSTROM: That's correct. [LB26]

SENATOR PANKONIN: Thank you. [LB26]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB26]

GREG LEMON: Chairman Pahls and members of the Banking, Commerce and Insurance Committee, Greg Lemon, L-e-m-o-n, appearing on behalf of the Nebraska Real Estate Commission in support of LB26. The Real Estate Commission, of course, is concerned with the protection of the consumers that buy and sell houses. Imagine a consumer unaware of this, and they're closing on the real estate transaction has already been stated. You know, 20 years down the road, nobody has any idea. It's discovered the day of or day before closing. Everybody has got the cash figured out. They may not have extra cash, messes up the deal. Piling on here, it's a bad idea to allow it. The bill should be advanced. [LB26]

SENATOR PAHLS: Seeing no...thank you for your testimony. Any opponents? Anybody in the neutral? Senator? [LB26]

SENATOR LANGEMEIER: I want to add one comment that I didn't bring up in my earlier testimony. It didn't come up, and the testifiers...first of all, I want to thank them for testifying. But the other thing is, they don't have to be of record. And so, the appraisers aren't here, but if an appraiser is doing an appraisal, and then you go to foreclose. If you're the banker, and you go to foreclose on this property, and you get a bill for 1 percent, that would be a shock to your system. And then they call the appraiser, and say, did you account for this in your appraisal? No, didn't know about it because it wasn't of record, and plus, I only have to look back three years in an appraisal. It just compounds and compounds, and just a scary, scary thought. I would ask that the committee advance LB26. [LB26]

SENATOR PAHLS: Thank you. Seeing no questions, that closes the hearing on LB26. I would like to go in exec session. [LB26]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
January 25, 2011
