

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2078

2001 SENATE POLITICAL SUBDIVISIONS

SB 2078

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2078

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 11, 2001

Tape Number	Side A	Side B	Meter #
1	x		4.5
1		x	26.4-52.6
1-12-01 2	x		0.0-5.0
1-19-01 1	x		0.0-24.0
Committee Clerk Signature <i>Mary Jo Wocken</i>			

Minutes: The hearing was opened on SB2078; real estate salesperson and broker errors and omissions insurance.

Dennis Schultz, North Dakota Real Estate Commission introduced SB2078. See attached testimony.

Senator Flakoll: South Dakota has 79 claims. Most claims average around \$1000. Does the state of North Dakota have any numbers put together in terms of complaints or those types of things?

Dennis Schultz: Well as far as consumers file a formal complaint against a licensee, yes we do. North Dakota has 12 formal complaints that either go to a hearing or are investigated by our agency. When the consumer calls with a legitimate complaint and find we can't help them, to collect monetary damages and they have to file a civil suit, in those cases the consumer is not going to pursue as far as the license law matter is concerned. The legal costs in SD for licensees by far exceeds the cost of claims paid out.

you want errors and omission insurance, its generally under the firm policy. They will write a policy for the firm, for the licensees in that firm, but if you are coming into the firm as an individual salesperson, broker or associate, and want to take out your own policy it is very difficult to obtain, under those circumstances, and of course the costs would be quite high. Very high. So thats one of the reasons I think a mandatory thing would enable a licensee for example to be covered by what firm they want to belong to.

Claus Lembke represents the North Dakota Association of Realtors and presented testimony in support of the bill. See attached testimony.

Jerry Engel, Oak Tree Realtors, supported the bill. See attached testimony

Tate Cymbaluk, Basin Brokers in Williston, supported this bill. See attached testimony.

Shirley Moen, Chairman of Political Affairs Committee of the ND Association of Realtors, supported this bill. See attached testimony.

Senator Mather Do you carry comprehensive insurance? Umbrella coverage that covers everyone? Shirley Moen, responded " yes she would not work for a company that didn't offer insurance for its employees". Senator Lee, in response to Shirley Moens' states that her company always has insurance, their company buys it as a group policy. Senator Mathern, " Do the firms that have the umbrella coverage for all of their employees usually pays the premium, or does the employee pay the cost"? Shirley Moen, in our case the insurance is covered by our company. Claus Lembke responded that each does it differently, they charge back to the individual for the cost of errors and omissions. Senator Mathern, " is there a maximim on each closing"? Claus Lembke continued that it is strictly between the broker and that individual. Senator Polovitz, Does this cost for the firm or realtor reflected then back to the cost to the consumer? Claus Lembke, this could be up to the company. Some companies might pick it up for the agent some

don't, they have other fees, realtor dues, some charge it back and as far as getting it back to the consumer it would be difficult to measure that, because they sit down when they list your home and negotiate the rate. How marketable is it, every company has different policies. I would say it would be flatly difficult to pass it back on to the consumer.

Shirley Moen, North Dakota Association of Realtors, spoke in favor of this bill. See attached testimony.

Moine R. Gates, North Dakota Association of Realtors, spoke in favor of this bill. See attached testimony.

Senator Cook, Mr. Gates, " If I was going to buy a piece of commercial property that had abestos in it and you listed that property and never indicated that it did, and another realtor sold the property to me and at no time was I informed that it had asbestos, which one has done the wrong? Mr. Gates, I don't know who has done the wrong part of it, could be both of us cause there might be the assumption there, that both sides should've known about that. If I as a listing agent haven't done my homework to find out that there is abestos there, I think it is very similar to a house sliding down a cliff. Both sides would be caught up in that aspect of it. Senator Cook, so if both of you had errors and omissions insurance, both would be there. Mr. Gates, I would like to know that if I've got errors and insurance that they would have the other one there too.

Roger Cymbaluk, Real Estate Commission spoke in favor of this bill.

Leon Wallberg spoke against this bill. I am not in favor of mandatory omissions insurance. See attached testimony.

Senator Lee , Mr. Walberg would you go to an attorney or physican who did not have some kind of liability insurance,because after all everything they do is going to be correct or proper and you would not worry about having any recourse? Mr. Wallberg, I guess that would be at my option at

a free enterprise system. That is always my option to decide whether I want to see a faith healer or medical doctor, I guess it is always at my option, if he has liability insurance, I guess would be secondary. Senator Lee, Do you think Mr. Wallberg that the general public visiting with an attorney or physican or a real estate agent is likely to think about whether they have E & O insurance? Mr. Wallberg, I think it is our obligation Senator to make sure or prompt them to ask questions, thats the key to not having any legal problems. Thats why I tell them that I don't have E&O insurance. Senator Lee asked Mr. Wallberg the same question as above and Mr. Wallberg responded I don't think they would think about E&O, I certainly think its the obligation of anybody in any transaction to reseach all facets whether its John Q. Citizen or an attorney. Senator Lee, Mr. Walberb what is your SD E& O cost you? Mr. Walberb, our last payment was \$82 and going up to \$90 some on the next going around.

Mr. Earl Allen, NDAR, TPU, Inc testified against SB 2078. He is concerned with error and omissions insurance driving up the costs for realtors. Senator Mathern, Mr. Allen are you a member of Realtors Association? Mr. Allen, I am. I've belonged to the National Association of Realtors longer than anybody in the state of North Dakota, anybody in this room by 10 or 20 years. I became a realtor when Claus was still in Germany. I hope you gathered by now that I hope you vote against this bill. Senator Cook, I was beginning to feel that hint from you sir. Patrick Ward, Lobbyist with the North Dakota Association of Independent Insurers, and the North Dakota Domestic Insurance Company. I urge a little bit of caution if there is some inclination to pass a bill like this. I think the Real Estate Commission may be moving in the area of regulating insurance with part of the way the bill is drafted specifically on lines 13 and 14, "with no right on part of the insurer to cancel coverage provided by the licencee". An example was shared, with Mr. Ward stating there has to be two sides to each cancellation situation. If

there is some desire to pass some kind of bill in this area it should be taken into some consideration that the Insurance Commissioner regulate the business of insurance in this state and not the Real Estate Commission number one, and number two, that there may be people who for the same reasons that some realtors don't want people to be without insurance, there may be some people some insurance companies do not want to rate, with E& O insurance, because of continuing problems or something. There might be a need for some coordination between the insurance department and the real estate commission if those types of people need to be regulated. For this statute to be written this way, not allowing cancellation, would cause a lot more litigation, than anything you've seen up to now.

Senator Lee, Mr. Ward, just to clarify for me in a case of group health insurance for example the Chamber of Commerce at home. The group health insurance policy that is offered through the Chamber of Commerce to business members who wish to participate in that group. If I understand that one correctly, and I'm not an insurance expert, I think that's part of the deal that you can't eliminate certain people, you can't cancel an individual because of claim and that's the whole concept of the group. Perhaps you could explain to me, if I misunderstand that and how that would differ from this kind of group in which the benefit is the pool in which there is a premium for everybody would go up if there is an extraordinary amount of claims for a bunch of people, but if there is a pool of very few people who are requiring claims to be paid, I'm talking about the health insurance now, then the premiums end up being less, could you clarify for me why this might be different, why, this is different or is it any different from health insurance.

Patrick Ward in response to Senator Lee's question. I believe that you're right, but in those types of cases, those actuarial statistics are taken into consideration in writing those premiums, those policies. The way this bill is written in the mandatory way with the cap on the coverage, I'm not

sure how it would work. The only thing is I am urging this to be done carefully, and be not done to quickly as there needs to be some coordination between both real estate and the insurance industry, and the legislature. I am just urging caution, just not to do it, but to look at it carefully before it is done.

Susan Anderson, legal council for the North Dakota Insurance Department. The department is not taking an official position on this bill, so therefore I am testifying neutrally, but I can perhaps answer some questions, particularly, concerning Senator Lee's question on group health insurance. Health insurance is governed by a different set of rules. It is very specific because of certain serveral mandates, or what not, specifically HIPHA, that in group coverage, certain people can't be cancelled or it will effect premium. E & O would not be governed by those rules, and I guess I like to piggy back on what Mr. Ward said. I did have some concerns over the language in this bill about insurers not being able to cancel. It does seem a bit unconsciounable to me, therefore unfair, that an insurerer cannot cancel somebody, or example for a non-payment of premium or should there be a risk change. I am not familiar with the other states that have adopted this mandatory program, perhaps they have similar language that has worked. I guess I do caution you on this language, particularly because what I think could happen is number one you could have insureres that are not going to give you any bids. If there is no write to cancel, they simply will not write this, secondly, if you have insurers who do want to bid on this and rate this, I think what you may see is that market drying up. Insureres would say if you're going to put these rules in here, we're not going to write it for a short period of time and their claims will go up and then go out of the market. Then you won't have insureres offering this coverage in the state of North Dakota. Ms. Anderson has some concerns on the language on the first page, that

the insurer has the right to cancel, but I guess this would be right to say this seems like sound public policy to put E& O in place for any professional and not only the real estate market.

Senator Watne, Do you know anything about 2148 eliminating E& O for the insurance agents and what is the purpose behind it? Susan Anderson, The purpose behind it, that is our agent producer bill and what occurred in November 1999 was the passage of the Graham Leach Biley Act which is federal legislation which now merges insurance companies allowing to get into banks, and banks get into insurance and securities all blended in there. Out of that legislation,, there was a particular provision that said that states have to provide reciprocity uniformity for the licencing for the insurance agents and brokers, and as a result states had to get all their ducks in a row. What I mean by that, is a state could not impose any greater requirements on a non resident certifiacnce brokers than that state requires, and many states do not require brokers to have E & O coverage, and so, insurance agents are not required to have E&O insurance, brokers are reequired to have E&O, that is what is coming out of the bill, and thats simply because of federal legislation requiring uniformity and reciprocity throughout the states. Senator Watne, So that statement was incorrect? Susan Anderson, yes, Senator Watne, thank you so much.

Senator Cook closed the hearing on SB 2078.

January 12, 2001 Hearing opened on SB 2078 (Tape1 Side B 26.4-52.6)

Senator Cook There is a minimum rate of \$125 a year max on the insurance, what is the deductible. Senator Lee referred to Mr. Lempke knowing the particular details concerning rate, however, Senator Lee shared statistics from her real estate firm in Fargo on the cost of insurance for her firm and their employees. See attached handout. (Meter #27.7)

Senator Watne, referred to pgl of the bill, line 17-20, the real estate commission will determine the terms and conditions of the areas industries coverage (Meter#28.5) required by this chapter,

including the minimum limits of coverage, the permissible deductible and the permissible exceptions. The higher the deductible the lower the premium will be. Deductibles have yet to be determined. Senator Cook Asked questions related to deductibles in SD, Senator Watne referred Senator Cook to the chart passed out to the committee as well as in Mandan, and does this cover agents and brokers in the firm. Senator Watne, both. Senator Mathern, stated that in her firm she has umbrella coverage in her firm to cover all of her staff. However, she does not support Mandates, the thing I have a problem with this thing is telling people they have to carry it as well as telling the insurance company they have to carry it. Cancellation issue is understandable, as it is in any business. For those reasons it does not have my support. Senator Lee, (Meter #33.3) Believes that E&O insurance is a consumer protection issue, to cover personal assests. Senator Lee, however, struggles with the mandate to carry E&O insurance, as Senator Mathern does, but in this case I didn't see it as an individual who is affected by the mandate so much, but rather the consumer as a whole within the whole idea of a mandate. Senator Lyson (Meter #37.1) is in support bill, because it is a win,win situation, for both the brokers and the public, a safety net. Senator Polovitz (Meter #39.0) When any piece of property is solicited, can any realtor have access to this property can sell it? Would they have to not be members of the association or have errors and omission insurance? Senator Lee (Meter #39.8) May I explain what the process might be. Senator Polovitz, (Meter #39.9) Before you do, I have been very pro for errors and omissions. What I am trying to do is see the protection of the consumer on this thing. When a mistake is made and the listing is with an association, who has responsibility at this point? Senator Lee (Meter #41.1) Lengthy explanation of who is responsible for a mistake on a seller/buyer/real estate transaction. Basically the real estate listing agency and the real estate agent are liable for damages to the homowner, as well as the home inspector. Senator Polovitz then asked about a

specific malfunction within a recently sold home, who is responsible? Senator Lee responded that usually the real estate agent who sold the home is the first one called. Senator Watne, added that her firm had a home warranty that covers all problems not expected in the home, for 13 months, ultimate protection for the public. Senator Flakoll(Meter#52.1) The Real Estate Commission is made up of whom, what are reflected by..., Claus Lembke The Real Estate Commission is appointed by the governor, there are 5 member of the real estate commission, 3 members that belong to the ND Real Estate, and 2 members from any discipline. Senator Flakoll, (SideA,0.2- 0.4) Did you have a conversation with respect to a cancellation on any licensee? Senator Lee...no I did not. Senator Flakoll... Do we need to know that before we can comfortably move forward? Senator Lee(Meter #0.3- ... We had testimony yesterday regarding no right on the part of the insurerer to cancel coverage provided by any agency, Senator Lee responded, (Meter # 0.8-1.8) with her conversation with Dennis Schultz, of the Real Estate Commission, about premium payments and coverage. The language in the bill, is similar to other bills in other states. Senator Cook, asked whether Senator Lee about visiting with Sue Anderson of the State Insurance Department concerning this matter. Senator Flakoll(Meter#2.1)...they can't be dropped because of claims history? You have to be just current? Senator Lee...yes.

Senator Lee (Meter #2.2- 3.2) When I think of the rate I also think its relative to the deductible,its relative to the number of claims,is it relative in any way to continuing education? Senator Watne, we have very tough continuing ed. In order to keep your license you have so many hours per year you absolutely must take. Senator Lee, so you do have continuing ed requirements for stipulation of having the license in the first place. Senator Lee, I see a lot of signs around town, "Assist to Sell", I understand it is a different rate, does this in any way affect the assist to sell from doing business. Senator Watne, no they have to be licensed to sell like

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Senate Political Subdivisions Committee

Bill/Resolution Number SB2078

Hearing Date January 11, 2001

1-12-01
signs around town, "Assist to Sell", I understand it is a different rate, does this in any way affect the assist to sell from doing business. Senator Watne, no they have to be licensed to sell like everyone else. Senator Lee (Meter#3.3-4.7) The assist to sell group offices has the seller doing some of the work themselves and as a result we do see in the sale process the same thing. Senator Lee (Meter #4.8-4.9) So it would not affect them, no unattended consequences here. I won't get a phone call here. Senator Lee, maybe we can finish this up next Thursday morning.

Adjourned until 1-18-01

1-19-01 (Tape 1 Side A; 0.0- 24.0)

Senator Cook opened hearing/discussion of the Political Subdivisions SB2078. 7 members present, 1 absent.

Open discussion was held.

Senator Lee moved Do Pass on Amendment SB 2078

Senator Flakoll- 2nd.

7 Yea, 0 No, 1 Absent

Further discussion was held.

Senator Lee moved for a Do Pass as Amended on SB2078.

Senator Watne 2nd

6 Yea 1 No 1 Absent.

Carrier: Senator Lee

FISCAL NOTE
 Requested by Legislative Council
 12/14/2000

Bill/Resolution No.: SB 2078

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Dennis D. Schulz	Agency:	Real Estate Commission
Phone Number:	328-9749	Date Prepared:	01/07/2001

PROPOSED AMENDMENT TO SENATE BILL NO. 2078

Page 1, line 14, before the period insert “, except as may be provided by rules promulgated by the commission”

Renumber accordingly

Date: January 19, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *S.B. 2078*

Senate	Political Subdivisions	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass the Amendment*

Motion Made By Senator Lee Seconded By Sen. Flakall

[illegible]

Total (Yes) 7 No 0

Absent /

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: January 19, 2001
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *S.B. 2078*

Senate	Political Subdivisions	Committee
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☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken *No Pass as Amended*

Motion Made By Sen. Lee Seconded By Sen. Watne

[illegible]

Total (Yes) 16 No 1

Absent /

Floor Assignment Senator Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 19, 2001 4:00 p.m.

Module No: SR-09-1348
Carrier: Lee
Insert LC: 18059.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2078: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2078 was placed on the Sixth order on the calendar.

Page 1, line 14, after the first "licensee" insert ", except as provided by rules adopted by the commission"

Rerunumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2078


2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2078

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 19, 2001

Tape Number	Side A	Side B	Meter #
I	X		11.2
		X	-14.2
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Dennis Schulz: ND Real Estate Com. **Written testimony sponsoring bill.**

Rep Ekstrom: What does MN do?

Schulz: They don't currently have errors and omissions coverage.

Rep Thorpe: How do west coast states handle this?

Schulz: Some states have surety bonds, but specifically I'm unsure.

Rep Thorpe: What kind of coverage is \$125/ applicant?

Schulz: \$100,000 Liability for damages and \$500-\$1000 deductible on unlimited law coverage's.

Rep N. Johnson: Can individuals carry this now?

Schulz: Some firms do carry a group policy, this is cheaper in the long run. Total ND licenses is approximately 1500 currently.

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2078

Hearing Date Feb. 19, 2001

Rep Kasper: Is this readily available now?

Schulz: For similar coverage the premiums run about \$300-500.

Vice-Chairman Keiser: If there is no current insurance, what's the problem?

Schulz: The average is a half dozen or so per year but the legal expense is extreme.

Rep N. Johnson: Why \$125?

Schulz: \$125 is basically the maximum cap.

Claus Lembke: *ND Real Estate Assoc.* **Written testimony in support.**

Rep Thorpe: Have you had any trouble with membership?

Lembke: We would like to see more but generally no.

Scott Louser: *Realtor* **Written testimony in support.**

Leon Mallberg: **Opposed** Less than 8% have responded to this bill and from what I've found is that because SD does it some think we should too. This is just more government, red tape, and cost. It's available with out a mandate and is unnecessary for rural relators.

Larry Buresch: (54.3)*Realtor* **Opposed** Problems are generally fraud and that's not covered.

Earl Allen: **Opposed** This is now difficult for the younger generations to get involved. Small towns aren't considered. Competitive free enterprise is the way to go.

Shirley Moen: *GMAC Real Estate* **Support bill with written testimony.**

Tate Cymbaluk: **Support with written testimony.**

Morne Gates: **Written testimony and samples in support of bill.**

Roger Cymbaluk: I support this bill fully.

Dennis Schulz: Explained the recovery fund.

Chairman Berg: We'll close the hearing on SB 2078.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2078(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 7, 2001

Tape Number	Side A	Side B	Meter #
3	X		38,1-60.9
Committee Clerk Signature <i>Heidi Lee</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Lemieux: I move a do pass.

Rep Koppang: I second.

Vice-Chairman Keiser: Only two US companies will write exclusive policies and only I for state that it's mandatory in.

Rep Froelich: I'd like to see a sunset clause.

Rep Kasper: This is only about lowering the cost.

Rep Thorpe: Brokers I know are carrying E & O and want this bill in effect.

Rep Severson: I believe in E&O but I don't support mandates.

10 yea, 5 nay, 0 absent Carrier Rep Ekstrom

Date: 3-7-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2078

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Lemieux Seconded By Koppang

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper		✓
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich		✓	Rep. Doug Lemieux	✓	
Rep. Glen Froseth		✓	Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby		✓
Rep. Nancy Johnson	✓		Rep. Dale C. Severson		✓
			Rep. Elwood Thorpe	✓	

Total (Yes) 10 No 5

Absent 0

Floor Assignment Rep Ekstrom

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 9, 2001 8:41 a.m.

Module No: HR-41-5159
Carrier: Ekstrom
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2070, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (10 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2078 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2078

**TESTIMONY BEFORE SENATE POLITICAL SUBDIVISION
COMMITTEE**

01-11-01

Mr. Chairman, members of the Senate Political Subdivision Committee- My name is Moine Gates. I am a REALTOR and affiliated with Crary Homes and Real Estate, Grand Forks.

I am the chairman of Political Affairs Committee of the ND Association of REALTORS® and we ask for your support for this legislation for the following reasons:

These minimum standards proposed by the Real Estate Commission are not only a benefit to the consumer, but also to the Real Estate Profession.

I find in my community that nearly half of the transactions involve some kind of cooperative arrangement which means that either I am selling a property that is listed for sale with another licensee or vice versa. By passing this law you would assure that I am dealing with a licensee and firm that is covered by a minimum standards of errors and omissions insurance policy. In practice we have found that lawsuits will be directed at deep pockets. Even if there is no fault or errors on my side of the transaction I would likely be included in a lawsuit if the other side does not carry proper Errors and Omission Insurance.

I urge you to pass this legislation.

Thank You

**TESTIMONY BEFORE SENATE POLITICAL SUBDIVISION
COMMITTEE**

01-11-01

Mr. Chairman, members of the Senate Political Subdivision Committee- My name is Tate Cymbaluk. I am a REALTOR® with Basin Brokers in Williston.

I have been part of the State Association Political Affairs Committee that studied this issue and I am fully in support of this proposal. It seems so obvious that when you are in business for yourself- virtually every REALTOR® and licensee is an independent contractor (defined by both federal and state laws)- you owe it to yourself to purchase E&O Insurance. And you owe it to your clients and customers to carry this type of protection. In case of a big error or negligence what would happen to a licensee? Not only would they lose their business and livelihood, they may even go bankrupt and worst of all, they leave their client high and dry without recourse for recovery.

Some here will tell you it's all fine and good, but don't make it mandatory! My suggestion to you is just ask them if they do business without insurance. Secondly ask them how much they pay. Our research indicates that Error and Omission Insurance purchased privately costs almost twice as much as group plans offered through Real Estate Commission endorsements. Premiums vary a great deal but with some reasonable deductible amounts you will find that a Brokerage firm with 3 or 4 sales people traditionally pay \$600 to \$1200 annually. South Dakota offers a good comparison. They've had the same program for 7 or 8 years. It's working well and the cost this year is only \$96.00.

I don't understand the opposition to this. It protects the public, it protects the licensee and it's less costly.

Please adopt this legislation.

Thank you

**TESTIMONY BEFORE SENATE POLITICAL SUBDIVISION
COMMITTEE**

01-11-01

Mr. Chairman, members of the Senate Political Subdivision Committee- My name is Jerry Engel. I am a REALTOR and affiliated with Oaktree REALTORS[®], Bismarck.

I am a REALTOR[®] member of the Bismarck/Mandan Board of REALTORS[®] and also a member of the State Political Affairs Committee that is supporting Senate Bill 2078.

My reason for supporting this legislation is the same as stated by previous testimony. We have also experienced some unfair treatment that appears to be very common among insurance carriers.

For example, we know that in one case the insurance company raised the annual premiums substantially for the stated reasons of high claims ratio, when in fact this particular company (one of the largest in our state) had no claims during that time period at all.

Another case found a broker amidst a lawsuit with the involvement and cooperation of the insurance company and even before the case was settled or concluded the brokers received a notice of non-renewal. Just imagine what might happen if you are forced to seek insurance elsewhere and on your application questionnaire you have to state that your errors and omission insurance had previously been canceled by an insurance company.

This bill, 2078, as proposed would protect the public and the licensee as well from unfair cancellation of insurance coverage. On lines 13 and 14 of page one of the bill it states that the insurer may not cancel coverage to any licensee.

Among the many discussions that eventually lead us to support this legislation, we heard of the concern that this is really a mandate that requires every licensee to carry insurance. We contacted insurance carriers and were advised that group plans are only available in those states that pass this minimum standards provision as proposed by Senate bill 2078.

I think you, as legislators, have faced similar issues before when you passed a law that requires every vehicle in North Dakota to have at least liability insurance. Its necessary to be a viable and working program and it is not unlike the proposal here that sets a minimum standard for every licensee.

Please support SB 2078.

Thank you

SENATE BILL NO. 2078

TESTIMONY BEFORE THE SENATE POLITICAL SUBDIVISION COMMITTEE THURSDAY, JANUARY 11, 2001

Mr. Chairman and members of the Senate Political Subdivision Committee, my name is Dennis Schulz and I represent the North Dakota Real Estate Commission. Our agency is responsible for the regulation of the real estate industry in North Dakota.

Senate Bill 2078 is the result of several discussions that have taken place over the past few years. In February 2000 the North Dakota Real Estate Commission met with the real estate commissions from Montana, South Dakota and Wyoming to discuss several issues common to our jurisdictions. One of the items on the agenda was mandatory E & O Insurance. Following this meeting we began discussion with the North Dakota Association of REALTORS to see if their association was interested in supporting legislation of this nature. Representatives from the North Dakota Association of REALTORS are in attendance this morning in support of this bill.

The bill establishes an effective date of January 1, 2002 requiring that all real estate brokers and salespersons, except those who hold inactive licenses, carry errors and omissions insurance.

The North Dakota Real Estate Commission would be authorized to negotiate by bid with an insurance provider for a group policy with no right on the part of the insurer to cancel coverage provided to any licensee. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

Terms and conditions of coverage would be determined by the commission regarding such things as minimum limits of coverage, the permissible deductible, and the permissible exceptions.

Each licensee would be required to be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. Licensees who elect not to participate in the group insurance program administered by the real estate commission would be required to show compliance through a certificate of coverage when renewing their license each year.

If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred twenty-five dollars, the errors and omissions insurance requirement would not apply during the year for which coverage cannot be obtained.

In 1975 legislation was passed establishing a recovery fund, which is administered by the North Dakota Real Estate Commission to protect consumers from fraud by licensees. Errors and omissions insurance on the other hand is designed to protect consumers from honest mistakes, negligence and omissions by licensees.

Many of the consumers who contact our office with a complaint are inquiring about what assistance we can provide to them in the form of monetary relief as a result of a transaction that has gone bad for whatever reason. While we can render assistance in examining the agent's conduct and if guilty can take disciplinary action in the form of a suspension or revocation of their license it does not cover any loss, which they might have suffered. This is where E & O insurance can be a protection to the public. Because there is no limit on legal expenses under these types of policies it also serves a dual purpose in protecting the licensee.

We ask that you please give favorable consideration to the passage of Senate Bill 2078.

ERRORS & OMISSIONS INSURANCE (PART 1)

	REQUIREMENT		COVERAGE		DEDUCTIBLES			Allow Equivalent Coverage?	Offer a indemnity- contracted plan?	Policy Period	Annual Premium
	Require E&O Insurance?	For whom? (Broker, SP, Firm, other)	Minimum Coverage per Claim	Minimum Aggregate Limit	Minimum Deduct for Joint- Sponsored Plan	Minimum Deductible for Excess Coverage Plan					
ALABAMA	Y	B,SP,F	100,000	300,000	1000 each wrongful act limited to \$2,000/firm		Y	Y	License period	100	
ALASKA											
ALBERTA	Y	All licensees	100,000		\$2500- 1st/\$5000-2nd		N	Y	Oct 1-Sept 30	40 renewals/50 new	
ARIZONA	N										
ARKANSAS	N							N			
BRITISH COLUMBIA	Y	B,SP,F	100,000	200,000	\$2000 per licensee		N	Self-insured	1 yr	125/licensee	
CALIFORNIA	N										
COLORADO	Y	B,SP,F	100,000	300,000	\$1000 on claims only	Unlimited	Y	Y	Calendar year	68	
DELAWARE	N										
DISTRICT OF COLUMBIA	N										
FLORIDA	N										
GEORGIA	N										
GUAM											
HAWAII	N										
IDAHO	Y	B,SP,F	100,000	300,000	1,000	Same as group policy	Y	Y	Oct-Oct	\$194+10 adm fee	
ILLINOIS	N										
INDIANA											
IOWA	Y	B,SP,F	100,000	100,000			Y	Y	Calendar year	103	
KANSAS	N										
KENTUCKY	Y	B,SP	100,000	1,000,000	2,500	2,500	Y	Y	4/1-3/31	7250	
LOUISIANA	Y	B,SP,F	100,000	300,000	2,500	2,500	Y	Y	Jan-Dec	84	
MAINE	N										
MANITOBA	N										
MARYLAND	N										
MASSACHUSETTS	Y	LLCS,LLPS	300,000	1,000,000			N	N			
MICHIGAN	N										
MISSISSIPPI	Y	B,SP	100,000	500,000	1,000	Same as group policy	Y	Y	10/1-9/30	61	
MISSOURI	N										
MONTANA	N										
NEBRASKA	Y	B,SP	100,000	300,000	1,000	1% of claim coverage	Y	Y	Calendar year	71	

ERRORS & OMISSIONS INSURANCE (PART 1)

[illegible]

ERRORS & OMISSIONS INSURANCE (PART 2)

	CARRIER			DATE OF DATA			PERIOD			CLAIMS			LOSS		
	Current Group Policy Carrier	How are premiums collected?	Date from which remaining data was collected	Date of loss report for remaining questions	Total Number of Claims Made	Total Number of Claims Closed (no loss payments / denied claims)	Total Number of Claims Closed (WITH loss payments)	Total Number of Claims Open	Total Amount of Paid Loss	Total Paid by Insured	Total Paid by Insurer (with expenses paid)				
ALABAMA	St. Paul	Williams	10/93	10/99	562			199	3,384,020		2,886,296				
ALASKA															
ALBERTA	Self-insured	License renewal	10/91	9/99	859	595	87	199	689,528	217,500	2,387,442				
ARIZONA															
ARKANSAS															
BRITISH COLUMBIA	Real estate E&O ins. corp.	License issue/renewal	11/99												
CALIFORNIA															
COLORADO	Hartford	Williams	1/98	9/99	522	328	82	194	547,461						
CONNECTICUT															
DELAWARE															
DISTRICT OF COLUMBIA															
FLORIDA															
GEORGIA															
GUAM															
HAWAII															
IDAHO	Frontier	Comm. On license renewal	10/94	6/99	44	4/21	3	22	12,960		55,961				
ILLINOIS															
INDIANA															
IOWA	Frontier	Frontier	1/94	12/99	669	78/59	516	59	841,973	16,303	2,220,230				
KANSAS															
KENTUCKY															
LOUISIANA	Hartford		1/95	9/99	576	335		241	731,445	873,684	3,051,442				
MAINE															
MANITOBA															
MARYLAND															
MASSACHUSETTS															
MICHIGAN															
MINNESOTA															
MISSISSIPPI	Frontier	Frontier	10/94	8/99	208	28/52	78	63	179,728	90,429	701,329				
MISSOURI															
MONTANA															
NEBRASKA	Trumbull/Hartford	Williams	1/93	9/99	242	140	49	52	446,195	66,437	1,021,388				

ERRORS & OMISSIONS INSURANCE (PART 2)

[illegible]



North Dakota ASSOCIATION of REALTORS®

318 WEST APOLLO AVENUE • BISMARCK, NORTH DAKOTA 58503-1412
PHONE: (701) 355-1010 or 1-800-279-2361 • FAX: 701-258-7211
e-mail: realtors@btigate.com • Website: www.NorthDakotaAssociationOfRealtors.com

2000-2001

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TESTIMONY BEFORE THE SENATE POLITICAL SUBDIVISION COMMITTEE

Sen. Dwight Cook, Chairman

01-11-01

Mr. Chairman, members of the Political Subdivision Committee, my name is Claus Lembke and I represent the ND Association of REALTORS®. We are a statewide Trade Association with approximately 1050 REALTOR® members (out of approximately 1500 licensees). There are 8 local Board of REALTORS® throughout the State.

We have looked at this type of Legislation off and on now for over 15 years and after extensive research and debate during the last 1 ½ years we have reached a decision of support for this legislation found in SB 2078. We have published a proposal detailed in SB 2078 to our membership over the last year and a half. We also made this topic a priority item for discussion at what we call Broker Roundtables at each local Board level the last 2 years. These Broker Roundtables are like focus group sessions where our state leadership (the state President and other officers and committee leaders) invite any and all local brokers, presidents and committee leaders to meet informally to discuss all items of concern to our industry. Our major objective at these Brokers roundtables is to listen to the needs and concerns of our members. On the topic of minimum standards on Errors and Omissions Insurance for every licensee, we found overwhelming support for such a proposal. It was clear that our membership wanted and needed this type of protection. The only objection that we heard occasionally was concern over the fact that this proposal would make it necessary for every licensee to carry insurance.

To be sure that we reach not only our membership we formed a taskforce that consisted of 3 members from our State Association and 3 members from the Real Estate Commission. This task force developed a survey that was sent to every real estate firm in the state. Our State Association mailed this survey to 140 firms and the Real Estate Commission mailed the same survey to 160 Firms that are not members of the ND Association of REALTORS®. Here's what we found:

113 Firms returned the survey (that's 37% out of the total 300) on the question of support or opposition, we found 60% in favor, 30% opposed and 10% unsure.



We also looked at other states that have this program (11 states). States in our region that have had this program for some time (Iowa, Nebraska, and South Dakota) have found their program working well. The Executive Director from the SD Real Estate Commission attended our Political Affairs Committee Meeting and provided valuable information, which lead to our support for this program.

During our research we were warned about some negative impacts of this type of legislation. We looked at those issues and found them unwarranted.

In example:

"This will invite more lawsuits because attorneys will know that everyone will carry E&O insurance".

Virtually every state that introduced this type of legislation did find an increased amount of lawsuits at the onset of such legislation- but they all found a return to what they considered a normal level after the initial start up.

Another Example:

"You are at the mercy of the insurance company and the rates may go sky high". Experience in existing states found this not to be true- Insurance Companies provide competitive group plans to the Real Estate Commissions at competitive rates (this year its \$96.00 a year for every licensee in SD). A safety measure we took is found right here in SB 2078 in the last paragraph on the second page. No licensee will be required to pay and carry insurance if the reasonable premium exceeds \$125.00.

We urge your support for SB 2078.

Thank you

NORTH DAKOTA STANDARDIZED ERRORS AND OMISSIONS INSURANCE

BY STATUTES:

(1) Commencing January 2, 2002, every active licensee licensed under NDCC 43-23 must have errors and omission insurance to cover all activities contemplated under these statutes. The Real Estate Commission (REC) must make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy. Any group policy obtained by the REC must be available to all licensees with no right on the part of the insurer to cancel any licensee.

(2) Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the REC. Licensees must submit evidence of compliance with this section annually. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the license renewal date of each licensee who elects not participate in the group insurance programs administered by the REC.

(3) The REC will determine by Rules and Regulations the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions.

(4) Failure to pay premiums to the group policy or submit certification of coverage to the board office prior to the renewal deadline will result in the license being placed on inactive status immediately following the renewal deadline and the licensee will be subject to all reactivation requirements.

(5) If the REC is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium as established by the board, the errors and omissions insurance requirement of this section will not apply during the year(s) for which coverage cannot be obtained.

BY RULES AND REGULATIONS:

- Coverage - \$100,000/\$300,000 or \$250,000/\$750,000 with options available for additional coverage
- Deductible limits \$1,000/\$500 (claims/defense)
- Environmental coverage - \$25,000 with additional coverage available
- Fair Housing - \$25,000 with additional coverage available
- Office Coverage – Optional coverage
- Tail Coverage – 1 year automatic, 3-5-7 year options
- Retroactive Dates – Automatic for basic policy
- Insurance company would administer the majority of the program with the REC administering those not enrolled in the group plan
- Estimated annual premium per licensee: \$90 to \$140

Standardized Errors & Omissions Insurance

On the *backside* of this survey is a tentative proposal for a standardized errors and omissions insurance that is under consideration for introduction to the next legislative session.

This issue has been discussed at many Brokers Roundtable meetings in the last 10 to 12 months and there seems to be general support for this proposal. A special task force consisting of two REC and two NDAR members was formed to research this issue with input from as many licensees as possible.

The information you provide will be kept confidential - the information will be analyzed for statistical purposes only.

[] Yes [] No

• Does your firm carry Errors and Omissions insurance?

• If not, why not? _____

• What is your deductible amount? \$ _____

[] Yes [] No

• Any claims in the last one to two years?

[] Yes [] No

• Any claims ever?

[] Yes [] No

• Would you support legislation/rules as approximated on backside of this survey?

Comments:

Please return the completed survey no later than September 1 to:

North Dakota Association of REALTORS®
318 W. Apollo Avenue
Bismarck ND 58503-1412

Telephone: 701-355-1010 or
800-279-2361

Fax: 701-258-7211 or
701-223-8746

email: realtors@btigate.com

S
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STANDARDIZED ERRORS & OMISSIONS INSURANCE SURVEY
(113 SURVEYS were returned from a total of 300- 37% returned)

Does your firm carry Errors and Omissions insurance?

57 Yes

55 No

If not, why not?

- Too expensive (12)
- We are inactive at this time (4)
- Cost is disproportionate protection offered (5)
- Insurance not required at this time and not needed (14)
- Was checking into it
- I don't know!
- I am a one man operation. But E & O is good idea.
- Would like to carry E & O. Need to find a carrier.
- Deep pockets attract vultures
- Only in SD

What is your deductible amount?

\$0	1
\$500	1
\$1,000	17
\$2,000	3
\$2,500	19
\$5,000	7

Any claims in the last two years?

11 Yes

99 No

Any claims ever?

20 Yes

89 No

Would you support legislation/rules as approximated on backside of this survey?

64 Yes

33 No

10 Unsure

Comments in Favor:

- I would support this effort.
- Would be in favor at the \$100-\$150 per year range.
- Any premium in the aforementioned range would be a must for any realtor.
- I have a small market, but the E&O is a good idea.
- If the costs were held to the premium per licensee of \$90-\$140 per year as stated
- If the premium stays under \$140 then I would support the legislation.
- Looks like we have no choice. Looks good.
- Sounds reasonable at premiums of \$90-\$140.
- I handle commercial and would like to see that the insurance covers both residential and commercial.
- I believe this is a good plan and the cost estimate is acceptable.
- Best to have each associate covered by E&O, not just the brokerage
- Can't imagine not having it.
- Move forward. Good Program.
- If we can make it mandatory and have a large group, I am willing to pay anything less than \$800 with comparable coverage.
- This would be a great benefit to our members and all licensees.
- I think this is necessary.
- Firms with no claims and not many agents should have lower rates.
- Would support if cost remain in range projected.
- With rates at \$90-\$140, I am interested.
- A range of deductibles should be available.
- I approve of this as it keeps all REALTORS® insured against a loss. Without the insurance an agent/brokerage could take the "big" risks.

Comments in Opposition:

- Buyers and sellers have recourse now. It should be up to the brokerage how it wants to handle the risk of doing business. Why do we want to encourage more government involvement and regulation in our business? (2)
- If people find out there is an insurance policy, they are more likely to sue. (6)
- I question the need for a mandated coverage. Rates quoted could be attractive enough to entice most brokers/agents to take it. Once mandated, it becomes a single company state. (19)
- To make this mandatory is not only unwise, but unconstitutional!
- This only benefits insurance companies

Leon L. Mallberg

Facsimile

To: Mary Jo Wocken
@Fax: 1-701-328-1997
From: Leon L. Mallberg
Date: Friday, January 12, 2001 @ 7:06 AM
Re: Notes on Senate Bill 2078
Pages: 2, including this

Enclosed is my one page of notes. If you should have any questions, please call me at 701-624-2072.

Leon L. Mallberg

Notes for Senate Bill 2078

I Intro.

- a. Name
- b. Sawyer, ND
- c. Population 318 - Make-up of Committee

II I am a ND Real Estate Broker

- a. RE Broker is responsible for all aspects of his office or operation
- b. That is slowly being taken back to BIG BROTHER (the state)
 - 1. Cont. Ed
 - 2. Now E & O
 - 3. What Next

III I am against SB 2078 - E & O Ins for Brokers

- a. It is available now for those who want it
- b. There is no need to MANDATE in ND

IV What is the problem or reason for the bill

- a. I called the commission - no response
- b. I called a commissioner - was told that SD does it
- c. I call 86 Brokers across the State of ND - (65 - 70% did not know about 2078)

V Committee make up

- a. Three from ND Assoc of Realtors
- b. Three from ND Real Estate Comm (also members of NDAR above)
- c. There are 30% of Lic. that are not members of NDAR (non on the committee)
- d. Most of these 30% are not aware of what is happening in Bismarck

VI Thoughts

- a. It would seem that we have a solution walking around looking for a problem
- b. We aspire to a level of sophistication that we do not need, nor can we afford

VII Items to check or consider

- a. Senate Bill 2148 - has to do with Ins. E & O (check it out)
- b. Four years ago bill for Accountant E & O turned back (would hurt rural accountants)
- c. State would benefit from Insurance Premium Tax (up to 2% of Premium)

VIII Symbols

- a. TARGET
- b. NAIL

IX Summary



60451

PURCHASE AGREEMENT

This form approved by the Blomack-Mandan Board of REALTORS® which disclaims any liability out of use or misuse of this form.

MLS Listing # _____ Page 1 of _____ Pages

RECEIVED OF _____

3. the sum of _____ Dollars (\$ _____)
4. by Check / Cash / Note as earnest money to be deposited upon acceptance of Purchase Agreement by all parties, on or before the next
(Circle One)
5. business day after acceptance, in a trust account of _____
6. LISTING or SELLING BROKER, or to be returned to Buyer if Purchase Agreement is not accepted by Seller. Said earnest money is part
(Circle One)
7. payment for the purchase of the property located at: Street Address _____ City of _____
8. County of _____ State of _____ Legally described as _____
9. _____
10. Including the following property, if any, owned by Seller and used and located on said property: garden bulbs, plants, shrubs, and trees;
11. storm windows, storm doors, screens, and awnings; window shades, blinds, traverse, curtain and drapery rods; attached lighting fixtures
12. and bulbs; plumbing fixtures, water heater, heating plants (with any burners, tanks and other equipment used in connection therewith),
13. built-in air conditioning equipment, electronic air filter, water softener Owned / Rented / None, built-in humidifier and dehumidifier,
(Circle One)
14. propane tank and controls, Owned / Rented / None, sump pump, attached television antenna, cable TV jacks and wiring; BUILT-IN:
(Circle One)
15. dishwashers, garbage disposals, trash compactors, ovens, cook top stoves, microwaves ovens, hood fans, intercoms; ATTACHED:
16. carpeting, mirrors, garage door openers and any doors, smoke detectors, fireplace screens, doors, and heat circulating inserts; and the following personal property: _____
17. _____
18. _____
19. The following property is included: _____
20. Homeowner's association fees, rents, and all charges for city water, city sewer, electricity, and natural gas shall be prorated between parties
21. as of _____. Seller agrees to remove all debris and all personal property not included herein from the
22. property by possession date. Heating fuel on hand at the time of possession shall be _____.
23. Seller has this day agreed to sell all included real estate and personal property to Buyer for the sum of (\$ _____)
24. _____ Dollars,
25. which Buyer agrees to pay in the following manner: Earnest money of \$ _____, and additional earnest money
26. \$ _____ due _____. Down payment and financing, if any, shall be paid as follows:
27. CONVENTIONAL FHA VA ASSUMPTION CONTRACT FOR DEED OTHER:
(Circle all that apply)
28. _____
29. _____
30. _____
31. If financing is not approved then earnest money shall be returned to Buyer.
32. This Purchase Agreement IS / IS NOT subject to a _____ hour contingency addendum. (If answer is IS, see attached addendum.)
(Circle One)
33. REAL ESTATE TAXES, based on the most current tax information available from the County Treasurer, shall be prorated between Seller
34. and Buyer as of _____, 20 ____.
35. SPECIAL ASSESSMENTS shall be paid as follows:
36. CERTIFIED OR ESTIMATED (Annual Installments): Buyer and Seller shall prorate as of the date of closing / Seller shall pay on
(Circle One)
37. date of closing all installments of special assessments certified or estimated for payment with the real estate taxes due and payable in
38. the year of closing.
39. UNPAID BALANCE: Buyer shall assume / Seller shall pay on the date of closing the balance of special assessments as of the date of
(Circle One)
40. closing.
41. Following closing, Buyer shall pay all real estate taxes and any unpaid special assessments payable therewith and thereafter, for which
42. the payment is not otherwise provided.
43. No representations have been made concerning the amount of subsequent real estate taxes or special assessments.
44. DEED/MARKETABLE TITLE: Upon performance by Buyer, Seller shall deliver a _____ deed
45. (Warranty Deed unless otherwise specified) joined in by spouse, if any, conveying marketable title, subject to:
46. (A) Building and zoning laws, ordinances, state and federal regulations; (B) Restrictions relating to use or improvement of the property without effective forfeiture provisions; (C) Reservation of any mineral rights by the state; (D) Utility and drainage easements which do not
47. interfere with existing improvements; (E) Rights of tenants as follows (unless specified, not subject to tenancies): _____
48. _____
49. Others (must be specified in writing): _____
50. BUYER AND SELLER INITIAL: Buyer(s) _____ Date _____ Seller(s) _____ Date _____

PURCHASE AGREEMENT

Page 2

TITLE AND EXAMINATION: Seller, at Seller's option and expense, shall furnish an abstract of title, or a registered property abstract, or Seller's title policy, certified to date to include proper searches covering bankruptcies, state and federal judgments and liens. If, after examination, Seller's title is not insurable or free of defects and cannot be made so within sixty (60) days after notice containing a written statement of defects is delivered to Seller, then said earnest money shall be refunded to Buyer. However, Buyer may waive defects and elect to purchase. BUYER AGREES TO ACCEPT AN OWNER'S TITLE POLICY IN THE FULL AMOUNT OF THE PURCHASE PRICE IN LIEU OF AN ABSTRACT OF TITLE. If Buyer is to receive such policy, Seller shall pay the entire premium for such policy if no lender's policy is obtained, and only the additional cost of obtaining a simultaneously issued owner's policy if a lender's policy is obtained. (Buyer shall pay the premium for the lender's policy.)

60. SELLER WARRANTIES:

61. SELLER WARRANTS THAT BUILDINGS ARE, OR WILL BE, CONSTRUCTED ENTIRELY WITHIN THE BOUNDARY
62. LINES OF THE PROPERTY.

63. SELLER WARRANTS THAT THERE IS A RIGHT OF ACCESS TO THE PROPERTY FROM A PUBLIC RIGHT OF WAY.

64. SELLER WARRANTS THAT PRIOR TO CLOSING, PAYMENT IN FULL WILL HAVE BEEN MADE FOR: 1.) ALL
65. CONDO AND/OR HOME ASSOCIATION FEES AND 2.) ALL LABOR, MATERIALS, MACHINERY, FIXTURES, OR
66. TOOLS FURNISHED WITHIN THE 90 DAYS IMMEDIATELY PRECEDING THE CLOSING IN CONNECTION WITH
67. CONSTRUCTION, ALTERATION, OR REPAIR OF ANY STRUCTURE ON, OR IMPROVEMENT TO, THE
68. PROPERTY.

SELLER WARRANTS THAT SELLER HAS NOT RECEIVED ANY NOTICE FROM ANY GOVERNMENTAL AUTHORITY AS TO VIOLATION OF LAW, ORDINANCE, OR REGULATION FOR A CONDITION THAT REMAINS UNCORRECTED.

71. SELLER WARRANTS THAT, IF PROPERTY IS SUBJECT TO RESTRICTIVE COVENANTS, SELLER HAS NOT RE-
72. CEIVED ANY NOTICE FROM ANY PERSON OR AUTHORITY AS TO A BREACH OF THE COVENANTS WHICH RE-
73. MAINS UNCORRECTED. ANY NOTICES RECEIVED BY SELLER WILL BE PROVIDED TO BUYER IMMEDIATELY.

74. SELLER WARRANTS THAT ALL APPLIANCES, HEATING, AIR CONDITIONING, WIRING AND PLUMBING SYSTEMS
75. USED AND LOCATED ON THE PROPERTY WILL BE IN WORKING ORDER ON THE DATE OF CLOSING, EXCEPT
76. AS NOTED IN THIS AGREEMENT.

ENVIRONMENTAL CONCERNS: To the best of the Seller's knowledge, there are not hazardous substances or underground storage tanks unless otherwise noted in Purchase Agreement.

79. **RISK OF LOSS:** If there is any loss or damage to the property between the date hereof and the date of closing for any reason, including
80. fire, vandalism, flood, earthquake, or act of God, the risk of loss shall be on the Seller. If the property is destroyed or substantially
81. damaged before the closing date, this Purchase Agreement shall become null and void, at Buyer's option, and the earnest money shall be
82. refunded to Buyer.

83. **HOME PROTECTION PLAN:** The Buyer and/or Seller, at their option, may purchase a Home Protection Plan. This is an option and each
84. plan may vary. Please contact licensee if you are interested. If no action is taken, it will be assumed that you waive this option.

TIME OF ESSENCE: Time is of the essence in this Purchase Agreement, as prescribed by state law.

86. **ENTIRE AGREEMENT:** This Purchase Agreement, any attached exhibits, and any addenda or amendments signed by the parties shall
87. constitute the entire agreement between Seller and Buyer and supercedes any other written or oral agreements between Seller and Buyer.
88. This Purchase Agreement can be modified only in writing signed by Seller and Buyer.

89. **DEFAULT:** If Seller's title is marketable or insurable and Buyer, contrary to this agreement, fails, neglects or refuses to complete the
90. purchase within ten (10) days after title is proven marketable or insurable, or by the closing date, whichever is later, then, at Seller's option,
91. either the earnest money shall be forfeited to Seller as liquidated damages (since the parties agree the calculation of damages to Seller
92. would be difficult to ascertain with certainty and since parties further agree that the amount of liquidated damages is a reasonable attempt
93. to estimate damages which will be suffered by the Seller) and this Agreement thereupon shall be of no further binding effect; or Seller may
94. demand and pursue any and all other remedies including but not limited to actual damages or specific performance of this agreement. If
95. Seller, contrary to this Agreement, fails, neglects or refuses to perform as agreed, Buyer may demand and pursue any and all remedies
96. including, but not limited to, specific performance of this Agreement. A claim of either party for specific performance, or the Seller's claim
97. to the earnest money as liquidated damages, shall be waived if legal proceedings are not commenced within six (6) months after such
98. claim arises; if proceedings to claim earnest money are not so commenced, the earnest money shall be returned to the Buyer. Retention
99. of earnest money in any Broker's trust account pending resolution of the default shall not constitute an election of remedies by either party
100. or prejudice their rights to pursue any and all other remedies including, but not limited to, specific performance.



PURCHASE AGREEMENT# _____

101. Page 3 of _____ Pages Address _____ Date _____

102. BUYER AND SELLER ACKNOWLEDGE THEY HAVE REVIEWED TERMS AND CONDITIONS SPECIFIED ON PAGE 2 OF THIS AGREEMENT. BUYER AND SELLER INITIAL: Buyer(s) _____ Seller(s) _____

103. CLOSING AND POSSESSION: The date of closing shall be on or before _____, Seller shall deliver possession of property on _____, Settlement fee to be paid by _____

106. SELLER WARRANTS THAT THE PROPERTY IS DIRECTLY CONNECTED TO:
107. City Sewer ☐ yes ☐ no City/Rural Water System ☐ yes ☐ no Well ☐ yes ☐ no
108. Rural Water Membership ☐ yes ☐ no Will it be transferred? ☐ yes ☐ no
109. Seller/Buyer agrees to provide water quality test results if required by governing authority and/or lender.
110. Seller/Buyer agrees to provide septic system certification if required by governing authority and/or lender.
111. MEOAN'S LAW DISCLOSURE: If you, the Buyer, desire to obtain information regarding persons required to register as sexual offenders under North Dakota Law, you should contact your local chief of police or your county sheriff, or the ND Attorney General's office. (Buyer's Initials) _____
112. Buyer has / has not received a Real Estate Property Condition Disclosure Statement. Buyer has been made aware of the availability of property inspections. Buyer elects / declines to have a property inspection performed at Buyer's expense.
115. BUYER HAS THE RIGHT TO A WALK-THROUGH REVIEW OF THE PROPERTY PRIOR TO CLOSING AND TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE DATE OF PURCHASE AGREEMENT.
117. Buyer has been made aware of the availability of home warranty plan. Buyer elects / declines to have a home warranty plan.
118. LEAD-BASED PAINT ADDENDUM IS ATTACHED AS REQUIRED ON PRE-1978 PROPERTIES. Purchaser acknowledges receipt of the booklet entitled *Protect Your Family From Lead in Your Home*. (Buyer's Initials) _____
120. SPECIAL CONDITIONS: _____

124. AGENCY DISCLOSURE: _____ (Agent _____ Broker) _____ Company
125. STIPULATES THAT S/H IS REPRESENTING THE BUYER/S _____ IN THIS TRANSACTION. THE LISTING AGENT OR BROKER
126. STIPULATES THAT S/H IS REPRESENTING THE SELLER IN THIS TRANSACTION.

127. DUAL AGENCY REPRESENTATION: Dual agency representation does / does not apply in this transaction. Broker represents both the Seller(s) and the Buyer(s) of the property involved in this transaction, which creates dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:
132. (1) Confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instruct Broker in writing to disclose this information. Other information will be shared;
134. (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and
135. (3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the sale.
136. With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in the transaction.

138. _____ (Seller) _____ (Date) _____ (Buyer) _____ (Date)
- _____ (Seller) _____ (Date) _____ (Buyer) _____ (Date)

140. APPOINTED AGENCY: Appointed agency does / does not apply.
141. If Broker has adopted appointed agency policy, dual agency may not apply. However, an appointed agent who singularly represents both Seller(s) and Buyer(s) in the same transaction is considered to be a disclosed dual agent owing fiduciary duties to both parties and must get permission from both parties to act.
144. This offer shall remain available for acceptance for a period of _____ days or until revoked by Buyer prior to Seller acceptance.

145. I/We the owner(s) of the property, accept this agreement and authorize the Listing Broker to discontinue marketing said property, unless instructed otherwise in writing.

I/We agree to purchase the property for the price and on the terms and conditions as set forth above.

149. X
(Seller's Signature) _____ (Date) _____
(Seller's Printed Name) _____ (Social Security Number) _____
(Seller's Signature) _____ (Date) _____
(Seller's Printed Name) _____ (Social Security Number) _____
151. _____ (Seller's Address) _____ (Seller's Phone) _____

X
(Buyer's Signature) _____ (Date) _____
(Buyer's Printed Name) _____ (Social Security Number) _____
X
(Buyer's Signature) _____ (Date) _____
(Buyer's Printed Name) _____ (Social Security Number) _____
152. _____ (Buyer's Address) _____ (Buyer's Phone) _____

153. DELIVERY OF ACCEPTANCE: The undersigned acknowledge receipt of signed contract. _____ (Buyer's Signature) _____ (Date) _____

THIS IS A LEGALLY BINDING CONTRACT BETWEEN BUYERS AND SELLERS. IF YOU DESIRE LEGAL, TAX, OR STRUCTURAL ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL ADVISOR (12/99)

TESTIMONY BEFORE SENATE POLITICAL SUBDIVISION COMMITTEE

01-11-01

Mr. Chairman, Members of the Senate Political Subdivision Committee:

I am Shirley Moen and I've been licensed with Park Co., GMAC Real Estate in Fargo for the last 9 ½ years.

I'm also the chair of the Fargo Moorhead Association of REALTORS® Governmental Affairs Committee and a member of the State Political Affairs Committee.

A major concern of these Committees has been Errors and Omissions Insurance. I assumed every company and REALTOR® carried the insurance because of the liability involved. I was in shock when I realized that many agents and companies in the state did not carry it and one of the reasons was the concern with cost.

As a State Association we have studied the issue of creating a standardized Errors and Omissions Insurance for every licensee which would be affordable (no more than \$125 per agent per year).

Insurance is great for the agents and as professional REALTORS® it's important that we consider the consumer and their rights. Think about the two children that died in St. Cloud, MN due to a faulty furnace (this information was known by the seller and REALTOR®) – imagine if there wasn't any errors and omissions insurance. The family would have been even more devastated.

Consider a consumer that has invested their life savings into their dream home and something unforeseen happens. For example, the home is sliding into a river or is structurally unsound. Shouldn't this consumer have the right to recourse? If the real estate agent does not have E & O insurance what would happen here?

By adopting SB 2078 on E & O Insurance, everyone would be dealing with a licensee with insurance coverage in the event there was an error or omission during the transaction.

I strongly feel that every licensee should have a standardized E & O Insurance policy. I feel this is fully expected by the public.

Thank you.

ERRORS AND OMISSIONS INSURANCE

Senate Bill No. 2078 relating to real estate salesperson and broker errors and omissions insurance provides for the adoption of rules pursuant to chapter 28-32 should the bill be signed into law. Some of the specific considerations that the North Dakota Real Estate Commission would consider to implement errors and omissions insurance is outlined in the following paragraphs.

MINIMUM STANDARDS

The group policy obtained by the real estate commission shall provide, at a minimum, the following terms and conditions:

- (1) Not less than \$100,000 single-limit liability coverage for each licensee per occurrence or claim made, not including costs for investigation and defense;
- (2) An annual aggregate limit of not less than \$500,000 per licensee;
- (3) A deductible amount of between \$500 - \$1000 for legal fees and \$1,000 - \$1500 for damages;
- (4) Coverage for acts in any state, United States territory, or Canada in which a covered individual, domiciled in North Dakota, holds a license.

EXCEPTIONS TO COVERAGE

Except as provided in this section, coverage may not exclude claims brought against the insured licensee arising out of an act or failure to act by the licensee when performing a professional service for which a license is required. Coverage may limit or exclude claims brought against a licensee which arise as follows:

- (1) Out of claims or suits made or brought by any insured person against any other insured person within the same firm or from compensation disputes between licensees;
- (2) From any criminal, dishonest, fraudulent or willful act or omission. This exclusion would not apply to any insured person who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it;

- (3) From unlawful discrimination committed by or for the insured person;
- (4) From fines or penalties imposed by law;
- (5) From bodily injury, personal injury, advertising injury, or property damage;
- (6) From related business activities for which a license is not required;
- (7) From any violation of the Securities Act of 1933 or any state blue sky or securities law or similar state or federal statutes
- (8) From involvement in any real estate investment contract or syndication as a partner, joint venturer, or underwriter;
- (9) From hazardous materials, nuclear materials, or pollutants.

OPTIONAL COVERAGE

An active licensee who chooses the option of obtaining errors and omissions insurance independently from a provider other than the group carrier under contract with the commission must show evidence of coverage by providing certification of coverage form prescribed by the commission.

STANDARDS FOR OPTIONAL COVERAGE

A provider issuing optional insurance coverage must be an admitted carrier in North Dakota or in the state in which the licensee being certified resides. The insurance must provide, at a minimum, not less than \$100,000 single limit liability coverage for each licensee for each occurrence or claim made, not including the cost of investigation or defense, and an annual aggregate of \$500,000 for each licensee, not including the cost of investigation and defense.

A person who resides in and is licensed in a state that has a mandated program of errors and omissions insurance in North Dakota upon providing proof that the person meets the requirements of the persons state of residence.



Frontier - Administrative Office:
P.O. Box 6709
Louisville, Kentucky 40206-0709
(502) 897-1876
(800) 637-7319

Agent:

**REAL ESTATE AGENTS AND BROKERS ERRORS AND OMISSIONS
DECLARATIONS**

THIS IS A CLAIMS-MADE POLICY. PLEASE READ THIS POLICY CAREFULLY.

NOTICE: THIS IS A CLAIMS-MADE POLICY. EXCEPT AS MAY BE OTHERWISE PROVIDED HEREIN THIS COVERAGE IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS WHICH ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY WHILE THE POLICY IS IN FORCE.

Policy Number: 00 EO 0007SD

- ITEM 1. NAMED INSURED: Each individual licensed by the South Dakota Real Estate Commission under SDCL 36-21A, and have paid the required premium except those furnishing the Commission with evidence of acceptable optional insurance under ARSD 20:69.
- ITEM 2. POLICY PERIOD: From: January 1, 2000 To: January 1, 2001
(12:01 A.M. Standard Time at the Address stated in Item 1)
- ITEM 3. LIMITS OF LIABILITY: (a) \$ 100,000 per Insured Licensee per claim.
(b) \$ 500,000 annual aggregate for each policy period.
- ITEM 4. DEDUCTIBLE(S)
DAMAGES \$ 1000 each claim
CLAIMS EXPENSES \$ 500 each claim
COMBINED \$ Not applicable each claim
- ITEM 5. PREMIUM \$ 93.00 per licensee per year at inception.
- ITEM 6. RETROACTIVE DATE As determined for each insured according to policy form.

This insurance does not apply to any claim or claims made against the Insured based upon, arising out of, or attributable to any negligent act(s), error(s), omission(s) committed or alleged to have been committed prior to the Retroactive Date listed above.

- ITEM 7. OPTIONAL EXTENDED REPORTING ADDITIONAL PREMIUM: \$ 186.00
- ITEM 8. FORM OF BUSINESS: ☐ INDIVIDUAL ☒ FIRM OR ORGANIZATION
BUSINESS DESCRIPTION: South Dakota Real Estate Commission
- ITEM 9. FORMS AND ENDORSEMENTS. Endorsements attached to this Policy.

The Declarations page and the forms listed and attached hereto, together with the completed and signed application shall constitute the contract between the Insured(s) and the Company.

Authorized Representative

Countersignature

Date

11-1-99

In this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative.

- (c) Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

15. Cancellation

- (a) This policy may be canceled by the Insured at any time by the surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice at least 90 days before the effective termination date. If an Insured cancels, all earned and unearned premium shall be considered to be fully earned and will be retained by the Company.
- (b) This policy may only be canceled by the Company during the Policy Period for nonpayment of premium by mailing to the Insured, at the address shown on the Declaration Page of this policy, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. In the event of cancellation, the Company shall notify the South Dakota Real Estate Commission of its intent to cancel coverage thirty (30) days prior to the effective date thereof.

16. Non-Renewal

- (a) The Company shall not refuse to renew this policy unless at least thirty (30) days before the end of the policy period, the Company shall mail or deliver to the Named Insured, written notice of the Company's intention not to renew the policy upon expiration of the current policy period. In the event of non-renewal, the Company shall notify the South Dakota Real Estate Commission of its intent to non-renew coverage thirty (30) days prior to the effective date thereof.
- (b) The Company will mail or deliver to the Named Insured, at least thirty (30) days before the end of the policy period, written notice of the Company's willingness to renew at the rates specified in such notice, if there would be a change in rates.

17. Notice

Notice of cancellation, non-renewal, or any other document required to be sent to an Insured shall be sent to the Insured's last known address as shown on the Declaration Page.

VI. EXCLUSIONS

1. This insurance does not apply to claims:

- (a) arising out of a dishonest, fraudulent, criminal or malicious act, error, or omission, if committed by, at the direction of, or with the knowledge of the Insured. (This Exclusion does not apply to an Insured who did not personally participate in committing such an act or omission and who, upon having knowledge of the act or omission, reported it);
- (b) arising as a result of the insolvency of the Insured parties;
- (c) brought about or contributed to by any inability or failure to pay or collect premium, escrow or tax money;
- (d) brought about by any employee or former employee arising out of the contract of employment with the Insured and alleging breach thereof;
- (e) arising out of any injury or damage which is expected or intended by the Insured or which is the foreseeable result of an act or omission intended by the Insured;
- (f) for bodily injury, sickness, disease, emotional distress, mental anguish, pain and suffering, or death of any person or physical injury to, destruction of, replacement of, or loss of use of tangible property;
- (g) for personal injury, libel, slander, defamation of character, false arrest or imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, or publications or utterances in violation of an individual's right

§ 34-27-35.1. Mandatory errors and omissions insurance coverage; commission authorized to contract for coverage; optional independent coverage; when coverage not required; commission to promulgate and implement administrative procedure.

(a) All real estate licensees, except those whose license is on inactive status with the commission shall, as a condition to holding an active license, carry errors and omissions insurance to cover activities contemplated under Chapter 27 of Title 34.

(b) The real estate commission shall make the insurance required under this section available to all licensees by contracting with an insurance provider having a current rating in A. M. Best of A or better for a group policy, after competitive bidding in accordance with applicable Alabama law, except that no bid shall be accepted by the commission of any insurance provider having a current or former member of the Alabama Real Estate Commission or spouse thereof in the employment of that provider.

(c) Any policy obtained by the commission must be available to all licensees with no right on the part of the insurance provider to cancel.

(d) All licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage so obtained complies with the minimum requirements established by the commission. Those who choose this option shall show compliance by providing a certificate of coverage and filing it with the commission office.

(e) The commission shall determine and set the terms and conditions of coverage mandated under this section, including but not limited to the minimum limits of coverage, the deductible, and exclusions from coverage, and that the total premium shall not exceed one hundred dollars (\$100) per year.

(f) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before his or her license is to be renewed. Proof of coverage shall be furnished to the commission on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail shall not be used for reactivation in this case.

(g) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the program as prescribed in subsection (e), the requirement of insurance coverage under this section shall be void during the applicable contract period.

(h) The errors and omissions insurance coverage required by this section shall become effective as a condition of license issuing or renewal on October 1, 1993. Failure by any licensee to obtain such coverage shall result in his or her license being issued or renewed on inactive status.

(i) The Alabama Real Estate Commission is hereby authorized to promulgate and implement such administrative rules and regulations in accordance with the state Administrative Procedures Act as shall be necessary, from time to time, to carry out the provisions of this section. (Acts 1992, No. 92-602, p. 1250, §§ 1, 2; Acts 1996, No. 96-791, § 1.)

HISTORY

Amendments:

The 1996 amendment, effective May 29, 1996, substituted "his or her" for "his" throughout the section; in subsection (f), inserted the sec-

ond through fifth sentences; and made nonsubstantive changes.

CROSS REFERENCES

See RULE 790-X-2.02; RULE 790-X-2.22.

COLORADO - STATUTES

- * 12-61-103.6. Errors and omissions insurance - duties of the commission - certificate of coverage, when required - group plan made available - effect.
- * (1) Commencing January 1, 1998, every licensee under this part 1, except an inactive broker or salesperson or an attorney licensee who maintains a policy of professional malpractice insurance which provides coverage for errors and omissions for their activities as a licensee under this part 1, shall maintain errors and omissions insurance to cover all activities contemplated under this article. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process in accordance with article 103 of title 24, C.R.S. any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.
- * (2) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable annual premium not to exceed one hundred dollars, the errors and omissions insurance requirement of this section shall not apply during any year for which coverage cannot be obtained.
- * (3) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual premium renewal date as determined by the commission. Each licensee shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the annual premium renewal date, as determined by the commission.
- * (4) In addition to all other powers and duties conferred upon the commission by this article, the commission shall adopt such rules as it deems necessary or proper to carry out the provisions of this section.

Colorada License Law - Real Estate Broker License and Commission Law

Title 12, Article 1, CSR, as awarded part 1

IDAHO - STATUTES

54-2029A. ERRORS AND OMISSIONS INSURANCE. A. Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

B. The commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code.

C. Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

D. Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

E. The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

F. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

G. If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed one hundred dollars (\$100) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

H. The commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission contract, which fee shall not exceed ten dollars (\$10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection G of this section applies only to premium cost and not to any administrative fee charged.

I. The errors and omissions insurance coverage required in this section shall become effective as a condition of license granting or renewing active licenses on December 31, 1993, and thereafter. If practical, the commission may offer the coverage on a voluntary basis before such date.

543B.47 Insurance requirement.

1. The real estate commission shall adopt rules requiring as a condition of licensure that all real estate licensees, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter. The rules shall provide for administration of the insurance requirements of this section within the multiyear licensing structure required by section 543B.28. However, the rules shall require licensees to submit evidence of compliance with this section at least annually and shall provide for review and determination of compliance on an annual basis.

2. The commission shall contract with an insurance provider for a group policy under which coverage is available to all licensees. The contract shall be solicited by competitive, sealed bid.

3. The group policy shall be made available to all licensees and shall not include any right on the part of the insurance provider to cancel coverage for a licensee.

4. A licensee shall have the option of obtaining insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements adopted by rule of the commission.

5. The commission shall determine the terms and conditions of coverage required by subsection 1, including but not limited to the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

6. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty days prior to the license renewal date or the anniversary of the license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the license renewal date or the anniversary of the license renewal date by each licensee who elects not to participate in the group insurance program administered by the commission.

324.395 Errors and omissions insurance mandatory for all licensees

- (1) All real estate licensees, except those whose licenses are in escrow in accordance with KRS 324.310(2), shall carry errors and omissions insurance to cover all activities contemplated under this chapter.
- (2) The commission shall make the insurance mandated under this section available to all licensees by contracting with an insurance provider for a group policy, after competitive, sealed bidding in accordance with KRS Chapter 45A.
- (3) Any policy obtained by the commission shall be available to all licensees with no right on the part of the insurance provider to cancel any licensee.
- (4) Licensees shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in the policy and the financial condition of the insurance company complies with the minimum requirements established by the commission.
- (5) The commission shall determine the terms and conditions of coverage mandated under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and permissible exemptions.
- (6) Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty (30) days prior to the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the annual license renewal date by each licensee who opts not to participate in the group insurance program administered by the commission.
- (7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group insurance program at a reasonable premium, not to exceed one hundred twenty-five dollars (\$125), the insurance requirement mandated by this section shall be void during the applicable contract year.
- (8) The errors and omissions insurance mandated by this section shall become effective April 1, 1987.

EXHIBIT A

§1466. ERRORS AND OMISSIONS INSURANCE; MANDATORY FOR ALL LICENSEES

- A. All active licensees licensed in accordance with the provisions of this Chapter are mandated to carry errors and omissions insurance to cover all activities contemplated under this Chapter.
- B. The commission shall make the insurance mandated under this Section available to all licensees by contracting with an insurance provider having a current rating in A.M. Best of A or better for a group policy after competitive, sealed bidding in accordance with Chapter 17 of Title 30 of the Louisiana Revised Statutes of 1950.
- C. Any policy obtained by the commission must be available to all licensees with no right on the part of the insurance provider to cancel any licensee.
- D. Licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage contained in such policy complies with the minimum requirements established by the commission.
- E. The commission shall determine the terms and conditions of coverage mandated under this Section, including but not limited to the minimum limits of coverage, the permissible deductible, and permissible exemptions.
- F. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty days prior to the annual renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the annual license renewal date by each active licensee who opts not to participate in the group insurance program administered by the commission.
- G. Active licensees applying for inactive status and those licensees renewing their license while in an inactive status may do so without the required coverage mandated by this Section.
- H. Should the commission be unable to obtain errors and omissions insurance coverage to insure all licensees who chose to participate in the group insurance program at a reasonable cost, not to exceed one hundred dollars for coverage, the insurance requirement mandated by this Section shall be void during the applicable contract year.

NEBRASKA - STATUTES

91-885.55. Errors and Omissions Insurance; commission; duties; certificate of coverage; required; when; group plan unavailable at a reasonable premium; effect. (1) Commencing January 1, 1993, every licensee under the Nebraska Real Estate License Act, except an inactive broker or salesperson, shall have errors and omissions insurance to cover all activities contemplated under the act. The commission shall make the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees with no right on the part of the insurer to cancel any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(2) The commission shall determine the terms and conditions of coverage required under this section, including the minimum limits of coverage, the permissible deductible, and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty days prior to the annual license renewal date. A certificate of coverage showing compliance with the required terms and conditions shall be filed with the commission by the annual license renewal date by each licensee who does not participate in the group program administered by the commission.

(3) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred dollars, the errors and omissions insurance requirement of this section shall not apply during the year for which coverage cannot be obtained.

5-20,5-25. Errors and omissions insurance required of real estate licensees. - (a) All holders of real estate brokers' and salespersons' licenses issued by the state department of business regulation shall, as a condition of retaining such license, carry and maintain errors and omissions insurance covering all business activities contemplated.

(b) The department of business regulation shall make the insurance mandated under this section available to all licensees by contracting with an insurance provider for a group policy, after competitive sealed bidding in accordance with § 37-2-18 or, the department of business regulation shall make available a self-insurance program for all licensees.

(c) Any policy obtained by the department of business regulation must be available to all licensees, with no right on the part of the insurance provider to cancel any licensee, other than as set forth by the department of business regulation.

(d) Licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage contained in such policy complies with the minimum requirements established by the department of business regulation.

(e) The department of business regulation shall determine the terms and conditions of coverage mandated under this section, including but not limited to the minimum limits of coverage, the permissible deductible, and permissible exemptions. The department of business regulation shall seek the assistance of the real estate commission as to the terms and conditions of coverage.

(f) Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty (30) days prior to the annual license renewal date. A certificate of coverage must be filed with the department of business regulation by the annual license renewal date by each licensee who opts not to participate in the group insurance program administered by the department of business regulation.

(g) Should the department of business regulation be unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group insurance program at a reasonable premium, not to exceed one hundred dollars (\$100) per year, the insurance requirement mandated by this section shall be void during the applicable contract year.

(h) The errors and omissions insurance requirement mandated by this section shall become effective April 30, 1991.

History of Section.

P.L. 1990, ch. 412, § 1; P.L. 1993, ch. 66,

§ 1.

36-21A-119. Errors and omissions insurance required of salesmen and brokers. The real estate commission shall adopt rules, pursuant to chapter 1-26, requiring as a condition of licensure that all real estate salesman and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

36-21A-120. Group insurance coverage authorized -- Independent errors and omissions coverage. The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel any licensee. Any licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

36-21A-121. Commission to determine conditions of errors and omissions coverage. The real estate commission shall determine the terms and conditions of coverage required by § 36-21A-119, including the minimum limits of coverage, the permissible deductible and the permissible exceptions.

36-21A-122. Notice of terms and conditions of errors and omissions -- Certificate of coverage. Each licensee shall be notified of the required terms and conditions of coverage at least thirty days before the biennial license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

36-21A-123. Errors and omissions coverage not required if premium limit unobtainable. If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred dollars, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

62-13-112. Errors and omissions insurance. — (a) Each licensee who is licensed under this chapter shall, as a condition to licensing, carry errors and omissions insurance to cover all activities contemplated under this chapter.

(b) Effective December 31, 1992, it is not mandatory that a person who has been issued a firm license obtain errors and omissions insurance in the name of the firm. Persons issued a firm license by the Tennessee real estate commission shall have the option of obtaining errors and omissions coverage in the name of the firm, in addition to the mandatory individual coverage for the brokers and affiliate brokers within the firm.

(c) The commission shall make the insurance required under this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with title 12, chapter 3.

(d) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee, other than as set forth by the commission and in compliance with § 56-7-1803.

(e) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(f) The commission shall determine the terms and conditions of coverage required under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and the permissible exemptions.

(g) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the licensee's renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, shall be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

(h) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, in such amount as determined by the commission, the requirement of insurance coverage under this section shall be void during the applicable contract period.

(i) The errors and omissions insurance coverage required by this section shall become effective as a condition of license granting or renewal on December 31, 1990. If practical, the commission may offer the coverage on a voluntary basis before such date. [Acts 1989, ch. 79, § 1; 1991, ch. 305, § 1.]

Scott Louser, ABR, GRI
2000 Minot REALTOR® of the Year
<http://www.louser.com>



Prudential

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TESTIMONY BEFORE HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE

02-19-01

Mr. Chairman, members of the House Industry, Business & Labor Committee- My name is Scott Louser. I am a REALTOR® and affiliated with the Preferred Prudential Properties, in Minot.

I am a REALTOR® member of the Minot Board of REALTORS® and also a member of the State Political Affairs Committee that is supporting Senate Bill 2078.

My reason for supporting this legislation is the same as stated by previous testimony. We have also experienced some unfair treatment that appears to be very common among insurance carriers.

For example, we know that in one case the insurance company raised the annual premiums substantially for the stated reasons of high claims ratio, when in fact this particular company (one of the largest in our state) had no claims during that time period at all.

Another case found a broker amidst a lawsuit with the involvement and cooperation of the insurance company and even before the case was settled or concluded the brokers received a notice of non-renewal. Just imagine what might happen if you are forced to seek insurance elsewhere and on your application questionnaire you have to state that your errors and omission insurance had previously been canceled by an insurance company.

This bill, 2078, as proposed would protect the public and the licensee as well from unfair cancellation of insurance coverage. On lines 13 and 14 of page one of the bill it states that the insurer may not cancel coverage to any licensee.

Among the many discussions that eventually lead us to support this legislation, we heard of the concern that this is really a mandate that requires every licensee to carry insurance. We contacted insurance carriers and were advised that group plans are only available in those states that pass this minimum standards provision as proposed by Senate bill 2078.

I think you, as legislators, have faced similar issues before when you passed a law that requires every vehicle in North Dakota to have at least liability insurance. Its necessary to be a viable and working program and it is not unlike the proposal here that sets a minimum standard for every licensee.

Please support SB 2078.

Thank you.

TESTIMONY BEFORE HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE

02-19-01

Mr. Chairman, members of the House Industry, Business & Labor Committee- My name is Tate Cymbaluk. I am a REALTOR® with Basin Brokers in Williston.

I have been part of the State Association Political Affairs Committee that studied this issue and I am fully in support of this proposal. It seems so obvious that when you are in business for yourself- virtually every REALTOR® and licensee is an independent contractor (defined by both federal and state laws)- you owe it to yourself to purchase E&O Insurance. And you owe it to your clients and customers to carry this type of protection. In case of a big error or negligence what would happen to a licensee? Not only would they lose their business and livelihood, they may even go bankrupt and worst of all, they leave their client high and dry without recourse for recovery.

Some here will tell you it's all fine and good, but don't make it mandatory! My suggestion to you is just ask them if they do business without insurance. Secondly ask them how much they pay. Our research indicates that Error and Omission Insurance purchased privately costs almost twice as much as group plans offered through Real Estate Commission endorsements. Premiums vary a great deal but with some reasonable deductible amounts you will find that a Brokerage firm with 3 or 4 sales people traditionally pay \$600 to \$1200 annually. South Dakota offers a good comparison. They've had the same program for 7 or 8 years. It's working well and the cost this year is only \$96.00.

I don't understand the opposition to this. It protects the public, it protects the licensee and it's less costly.

Please adopt this legislation.

Thank you.

BASIN BROKERS **INC.**

Tate A. Cymbaluk

Sales Associate

State Certified North Dakota & Montana

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AND TRUST COMPANY

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February 19, 2001

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Chairman Berg, Members of the Industry, Business & Labor Committee. My name is Rick Medalen. I'm an Assistant Vice President and Mortgage Loan Officer at American State Bank & Trust Company in Williston, ND.

**What is the cost of peace of mind?
To error is human...**

A question and a statement, which when examined by American State Bank and myself, lead us to support the passage of Senate Bill No. 2078.

Williston is not unlike other communities in North Dakota and our institution is not unlike other businesses in North Dakota. Our citizens are interested in obtaining goods and services from reputable businesses at a fair price and in knowing that what they thought they will get is what they got. We as a business are interested in keeping our customers satisfied.

We've often heard that the purchase of a property, that will become someone's home, is the single most important purchase of their life. Therefore, it is up to us to do whatever is necessary to make it a good and lasting memory. As a real estate lender, our customers include buyers, sellers, and realtors. Senate Bill No. 2078 provides a benefit or protection for each of them.

Buyers: Receive the benefit of knowing that if they deal with a real estate broker or sales person that Errors and Omissions Insurance is in force.

Seller: Receive the comfort that the property they are selling is protected by the terms included in Errors & Omissions Insurance.

Broker & Realtor: Limits their liability and provides protection for both the buyer and seller.

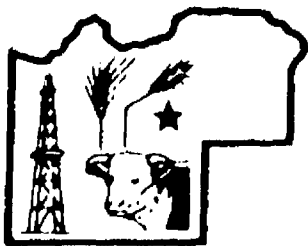
Therefore, we feel that if peace of mind can be provided at a cost of \$125 per year through the requirement of an Errors and Omissions Insurance and if the bill is supported by a majority of North Dakota Brokers and Realtors, it should be passed.

Sincerely,

AMERICAN STATE BANK & TRUST COMPANY

Rick O. Medalen
Assistant Vice President

Williston's Only Locally Owned Bank



McKenzie County Bank

P.O. BOX 1410 • WATFORD CITY, ND 58854 • 701-842-6411

February 14, 2001

Mr. Rick Berg, Chairman
Industry Business and Labor Committee
ND House of Representatives
Bismarck, ND

RE: Senate Bill 2078

Dear Chairman Berg,

This letter is to show support for Senate Bill 2078, which has been approved by the Senate and has crossed over to the House. I am not aware of the bill number, which has been assigned to it, however it deals with errors and omission insurance required of licensed Real Estate Agents and Brokers. I have been President of McKenzie County Bank in Watford City for almost 20 years and have dealt with Realtors from a small town perspective over that time period. As a banker who is required to carry blanket bond insurance, as well as other professionals such as insurance agents, attorneys, etc, I think it is only fair that real estate agents are required to do the same. We are expected and called upon by our customers to provide professional service and if they experience an error in dealing with us, we are most likely going to be held liable. Those customers should expect their agent as well as any other financial service provider to be covered by some type of liability insurance. We have seen individuals get into and out of the real estate brokerage business on a part time basis, and quite frankly, many of them are under trained and inexperienced. When you are dealing with many thousands of dollars worth of property, it is my opinion that the customer be able to have confidence in the professional integrity of the agent as well as the errors and omissions coverage in the event that a problem arises.

It is my understanding that if the errors and omissions was required of all realtors, the cost would be somewhere in the \$125 per year range. This would not be an undo burden upon most realtors within the State. I do believe as a financial service provider, that most of all our customers believe and expect that we do carry this type of insurance, and they would be quite surprised to find that very few of the realtors do carry it. We urge your support of this bill. Thank you.

Sincerely,

Scott J. Swenson, President
McKenzie County Bank

BASIN BROKERS INC.

Williston, North Dakota

Roger M. Cymbaluk**
Nancy R. Hoffelt
Tate Cymbaluk*
Tom Abell*
Burnetta Fagerland
Darlene (Suzie) Monson
Lee Halvorson

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Watford City, North Dakota

Henry Skjelvik
Debbie Hanson
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Mr. Berg

Members of the House Industrial & Labor Commission

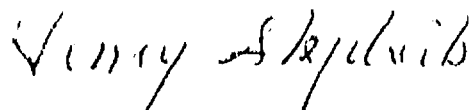
Dear Sirs:

My name is Henry Skjelvik. I am 80 years old and I have been a Real Estate broker for 44 years. I always used to carry Error and Omissions Insurance through a private firm, however the rates now are prohibitive for a real estate operation in a small town.

I owe it to myself as well as to my clients to carry this type of insurance. In case of a big error or negligence, I could lose my life savings and also leave my client without recourse of recovery.

The group plan endorsed by the Real Estate Commission would be a solution to our potential problem. Your adoption of this legislation will be appreciated.

Yours truly,



Henry Skjelvik, Broker
Basin Brokers, Inc.
Watford City, ND

Farm • Ranch • Commercial • Residential

Real Estate Sales & Appraisals • North Dakota & Montana

*Licensed in Montana

**Licensed in Montana, South Dakota, Wyoming

Williston, North Dakota
Roger M. Cymbaluk**
Nancy R. Hoffelt
Tate Cymbaluk*
Tom Abell*
Burnetta Fagerland*
Darlene (Suzie) Monson
Lee Halvorson*

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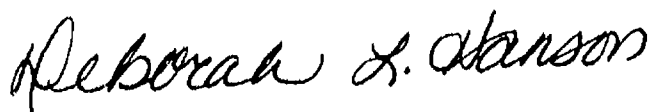
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February 14, 2001

Chairman Berg, Members of the House Industry, Business and Labor Committee -- My name is Deborah Hanson. I am a REALTOR with Basin Brokers in Watford City.

I am new to the business of realty having practiced only 1 1/2 years. I enjoy this new pursuit, but am experiencing the difficulties of selling real estate in a small town. The biggest problem becomes the economics of it. Watford City is a struggling small town dealing with the instability of the ag and oil industries. The real estate market, therefore, struggles, also. With a very limited income from commissions I'm finding it more and more difficult to pay the mandatory fees and dues and paying for an independent insurance Errors and Omissions Policy simply would make it impossible for me to continue in this business. However, the risk of operating without insurance is a risk I am not comfortable with. I have done my best to educate myself with the laws, rules, and ethics of real estate. I try to familiarize myself with the properties and clients I represent, but it only takes one honest mistake to create a potential lawsuit situation. Without an Errors and Omissions policy that would be economically feasible to even the small town realtors, I have to give serious thought to whether I can afford to continue doing what I really enjoy. The policy that is being offered for your consideration would cost realtors less than ten dollars (\$10.00) per month -- that's a number I can comfortably live with. Such a policy would provide protection for the seller, the buyer and the realtor without jeopardizing anyone financially.

I do appreciate the time you've given this issue and I ask you to please adopt this legislation. Thank you.



Deborah L. Hanson

Basin Brokers, Inc.

WILLISTON BOARD OF REALTORS

Post Office Box 983
Williston, ND 58802-0983

February 15, 2001

Mr. Rick Berg, Chairman, Industry, Business and Labor
Committee Members

RE: Senate Bill 2078

Mr. Chairman and Committee Members:

On behalf of the Williston Board of REALTORS, we would like to express our support for passage of Senate Bill 2078. This bill sets a minimum standard for Errors and Omissions Insurance coverage for every licensee, which our members feel would not only offer protection for licensees but also consumers. The cost of standardized insurance should not be prohibitive to licensees.

We believe that standardized Errors and Omissions Insurance would help us to better serve and provide an additional recourse to our clients and customers.

The Williston Board of REALTORS urges your support of this legislation.

Sincerely,



Burnetta Fagerland
President Williston Board of REALTORS

TESTIMONY BEFORE HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE

02-19-01

Mr. Chairman, members of the House Industry, Business & Labor Committee- My name is Moine Gates. I am a REALTOR® and affiliated with Crary Homes and Real Estate, Grand Forks.

I am the chairman of Political Affairs Committee of the ND Association of REALTORS® and we ask for your support for this legislation for the following reasons:

These minimum standards proposed by the Real Estate Commission are not only a benefit to the consumer, but also to the Real Estate Profession.

I find in my community that nearly half of the transactions involve some kind of cooperative arrangement which means that either I am selling a property that is listed for sale with another licensee or vice versa. By passing this law you would assure that I am dealing with a licensee and firm that is covered by a minimum standards of errors and omissions insurance policy. In practice we have found that lawsuits will be directed at deep pockets. Even if there is no fault or errors on my side of the transaction I would likely be included in a lawsuit if the other side does not carry proper Errors and Omission Insurance.

I urge you to pass this legislation.

Thank You



CRARY Homes
& Real Estate

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SHIRLEY M. MOEN, CRS, GRI, RMM
SENIOR SALES ASSOCIATE

TESTIMONY BEFORE HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE

02-19-01

Mr. Chairman, Members of the House Industry, Business & Labor Committee:

I am Shirley Moen and I've been licensed with Park Co., GMAC Real Estate in Fargo for the last 9 1/2 years.

I'm also the chair of the Fargo Moorhead Association of REALTORS® Governmental Affairs Committee and a member of the State Political Affairs Committee.

A major concern of these Committees has been Errors and Omissions Insurance. I assumed every company and REALTOR® carried the insurance because of the liability involved. I was in shock when I realized that many agents and companies in the state did not carry it and one of the reasons was the concern with cost.

As a State Association we have studied the issue of creating a standardized Errors and Omissions Insurance for every licensee which would be affordable (no more than \$125 per agent per year).

There are several good reasons for requiring Errors and Omissions Insurance, the primary one is protection of the public. In 1975, legislation was passed establishing a recovery fund to protect consumers from fraud by licensees. Errors and Omissions Insurance, on the other hand, is designed to protect consumers from honest mistakes, negligence and omissions by licensees. Many of the consumers who contact the ND Real Estate Commission with a complaint are asking for assistance in obtaining some form of monetary relief as a result of a transaction that has gone bad for whatever reason.

While the Real Estate Commission can examine the agents conduct and, if guilty, take disciplinary action such as suspension or revocation of a license, it does not cover any loss, which a consumer may have suffered.

This is where Errors and Omissions Insurance is a protection for the public. Because there is no limit on legal expenses under these types of policies it also serves a dual purpose in protecting the licensee.

In 1991, I attended a class taught by Casey Chapman and he discussed a home in California that was sliding off a cliff - the courts ruled that the Real Estate Agent should have known. I do not know if the Real Estate Agent had Errors and Omissions Insurance but if he had - it would have protected the buyers and agent.

Think about the two children that died in Minnesota due to a faulty furnace (this information was known by the seller and REALTOR®. The REALTOR® was found more than 60% liable in this case. Imagine if there wasn't any Errors and Omissions Insurance in this case. Would it have been fair to the family??

A month ago I was viewing a home on a river lot, as I was leaving the basement I noticed a crack in a corner. A basement expert said the home had shifted 3 inches and needed major basement work. What if this hadn't been inspected?

On Saturday, in doing a home inspection, a corner crack was found behind the patio blinds. If I, as a REALTOR®, hadn't noticed and recommended a home inspection this may not have been discovered. What if it had closed and was missed?

The above examples indicate and give good reason why each and every agent should carry Errors and Omissions Insurance. This is what our public deserves and expects.

As a professional REALTOR® I am encouraging each and every one of you to support SB 2078 as a benefit to the public and REALTORS® alike.

Thank you.

Claus

SB 2078

From: Dennis D. Schulz [ddschulz@pioneer.state.nd.us]
Sent: Tuesday, February 27, 2001 2:00 PM
To: claus@bligate.com
Subject: E & O Insurance

Claus,

You may recall that during our hearing last week the question regarding the number of brokers and salespersons in South Dakota who had claims paid out on their behalf. The breakdown is as follows:

33	Licenseses
23	Brokers
8	Salespersons
1	Property manager
1	Auctioneer

The total dollar amount of claims paid out since South Dakota has had E & O insurance is as follows:

\$153,000 in damages paid out to aggrieved parties

\$264,512 paid out in legal expenses

Hope this information is of some assistance.

Dennis