

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on
Agriculture and
Insurance
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr_AC-Ed_RCP_pt01a
- > 05hr_AC-Ed_RCP_pt01b
- > 05hr_AC-Ed_RCP_pt02

Published Documents

> Committee Hearings ... CH (Public Hearing Announcements)

> **

> Committee Reports ... CR

> **

> Executive Sessions ... ES

> **

> Record of Comm. Proceedings ... RCP

> **

*Information Collected For Or
Against Proposal*

> Appointments ... Appt

> **

> Clearinghouse Rules ... CRule

**

> Hearing Records ... HR (bills and resolutions)

> **05hr_ab0127_SC-AI_pt01**

> Miscellaneous ... Misc

> **

Vote Record
Committee on Agriculture and Insurance

Date: 3-6-66

Moved by: Kedzie

Seconded by: U/zen

AB 127 SB _____ Clearinghouse Rule _____

AJR _____ SJR _____ Appointment _____

AR _____ SR _____ Other _____

A/S Amdt _____

A/S Amdt _____ to A/S Amdt _____

A/S Sub Amdt _____

A/S Amdt _____ to A/S Sub Amdt _____

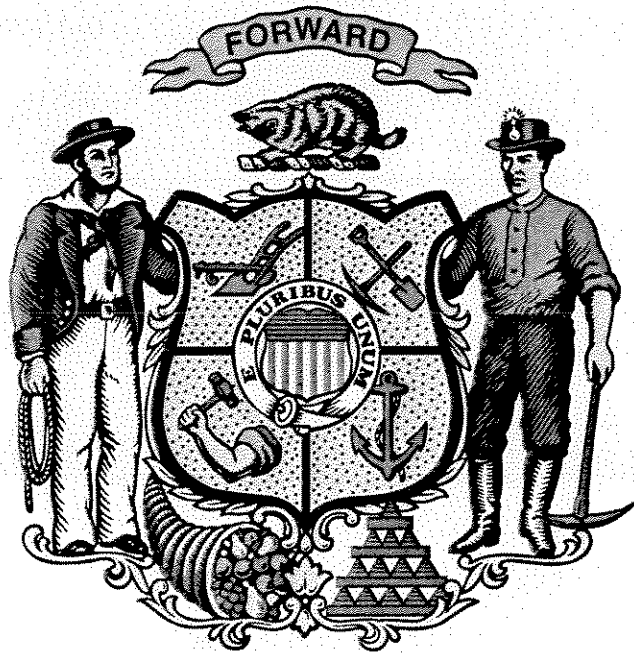
A/S Amdt _____ to A/S Amdt _____ to A/S Sub Amdt _____

Be recommended for:

- Passage Adoption Confirmation Concurrence Indefinite Postponement
 Introduction Rejection Tabling Nonconcurrence

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Dan Kapanke, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Neal Kedzie	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Ronald Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Luther Olsen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Jon Erpenbach	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator David Hansen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mark Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>7</u>	<u>1</u>	_____	_____

Motion Carried Motion Failed





JOHN TOWNSEND

STATE REPRESENTATIVE • 52ND DISTRICT

March 1, 2006

Senator Dan Kapanke
Chair, Committee on Agriculture and Insurance
Room 104 South
State Capitol

Dear Senator Kapanke:

Thank you for the opportunity to testify before the agriculture and insurance committee today on Assembly Bill 127, which would make it illegal to falsify any written evidence regarding the state of title to real estate.

As I stated in my testimony, I believe it is important to update Wisconsin law reflect the changing practices in the growing real estate industry and close any loopholes that would allow fraudulent behavior to go unpunished. Because Assembly Bill 127 is so important, I would appreciate it if your committee would hold an executive session on this bill so that the Senate will be able to vote on it before the end of this session. An earlier version of Assembly Bill 127, 2003 Assembly Bill 545, had also passed the Assembly but failed to receive a vote in the Senate, and this issue really is too significant to put off for yet another year.

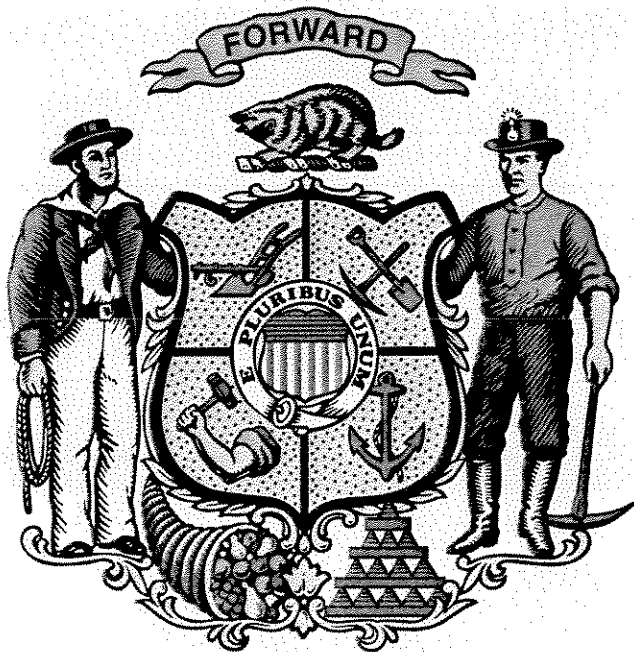
Once again, thank you for holding the public hearing on Assembly Bill 127 today, and please hold an executive session on the bill. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'John F. Townsend'.

John F. Townsend
Wisconsin State Assembly
52nd Assembly District

JFT:mdp



**COMMITTEE ON AGRICULTURE AND INSURANCE
PUBLIC HEARING ON AB 127
MARCH 1, 2006**

**Testimony of Rep. John F. Townsend
52nd Assembly District**

Thank you, Mr. Chairman, for the opportunity to explain Assembly Bill 127 to the Committee on Agriculture and Insurance. This bill received unanimous support for the Assembly Committee on Insurance and passed the Assembly on a voice vote in September.

According to a study of the Wisconsin Taxpayers Alliance, real estate accounted for 26% of Wisconsin's personal wealth in 1995. Today, real estate – mainly homes – accounts for about 69% of a middle class family's net worth. Because of real estate's importance, society places a great importance on the accuracy of land records and real estate transactions.

For the year 2003, the Wisconsin Department of Revenue reported an equalized value of all property in Wisconsin of over \$360 billion. Based on reported sales of existing homes, it is estimated that there were approximately 116,000 real estate transactions in Wisconsin in 2003. The sheer number of transactions and their total value highlight the need for accurate records.

In April 2005, the *Milwaukee Journal Sentinel* reported that the value of mortgage originations in the year 2000 totaled almost one *trillion* dollars nationwide. By 2004, that number had almost tripled to \$2.7 trillion.

Volume of this magnitude provides tantalizing incentives for various types of fraud, and real estate transaction fraud is increasing. AB 127 would provide another tool to help to stem this rising tide.

When a real estate transaction occurs, a title company is hired to ascertain who owns the property and identify liens and other encumbrances which affect the property's value or which must be removed so that the seller can deliver a clear title to the buyer and the buyer's lender will have first claim against the property in the event of the buyer's default on his or her mortgage.

Historically, a document referred to as an "abstract of title" contained the legal description of the property and all factors affecting title to the property. Such documents were prepared by title companies and updated whenever the property changed ownership. An updated abstracts would be reviewed by a lawyer who rendered opinions concerning the current ownership and determined what steps would be necessary for the owner to transfer title free and clear.

Under section 943.38(3)(f), it is a crime to "falsely make[] or alter[] a certified abstract of title to real estate" with the intent to defraud another. This is a Class A misdemeanor, punishable by a fine of up to \$10,000, nine months in jail, or both.

In recent years, however, the use of abstracts of title has greatly diminished in favor of title insurance. Title companies continue to perform public record searches, but they do so as agents of title insurers rather than as preparers of abstracts. Instead of abstracts, they generate a formal promise by a title insurer to produce an insurance policy guaranteeing clear title once the liens and encumbrances are removed.

This change in practice benefits buyers as well as sellers. Title insurers are licensed by the state and are required to maintain policy reserves to pay claims. It is no longer necessary to hire lawyers to review abstracts and render opinions. However, this change also means that the current statute referring to abstracts needs to be extended to cover title insurance commitments.

AB 127 would extend section 943.38(3)(f) to prohibit the intentional and fraudulent falsification or alteration of title insurance commitments, title insurance policies, “or any other written evidence regarding the state of title to real estate.”

As technology and business practices continue to change, the Legislature has a duty to make sure that Wisconsin law changes accordingly to protect buyers and sellers alike, and AB 127 would do just that in the area of real estate transactions.

Milwaukee Journal Sentinel

Business

MONDAY, APRIL 11, 2005

FINAL EDITION 2

Mortgage fraud takes heavy toll

Boom in property values makes huge market an attractive target

By MICHELE DERUS
mderus@journal sentinel.com

America's booming mortgage industry has proven ripe for criminal pickings.

Cases of mortgage fraud are mounting.

The financial toll is reaching "tens of millions of dollars each year," though the actual damage is "unknown and probably unknowable," said William Matthews, vice president of Mortgage Asset Research Institute Inc., in an interview from his Reston, Va.,

headquarters.

Losses hit consumers, lenders, investors and neighborhoods in any combination, depending on the scam, said one industry expert.

As of September 2004, 533 FBI mortgage fraud investigations were under way, up from 202 in 2001, according to a Mortgage Bankers Association analysis released in January. The same report stated that, by last September, banks had reported 12,100 cases of suspicious financial activity

to date in 2004, compared with 4,220 in all of 2001.

"We're seeing more incidents reported every year, and it's getting more egregious, in terms of losses," Matthews said.

Matthews, who is co-author of an annual mortgage fraud report to the Mortgage Bankers Association of America, sees the crime spree as tied to the market's heady growth — now nearly triple its \$1 trillion size in 2000.

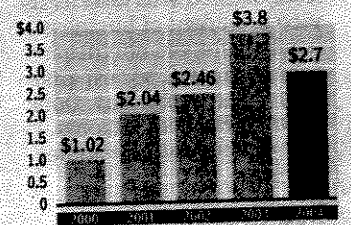
His reports don't calculate dollar losses, which he said victims are loathe to disclose, and complaint volume is kept confidential. Despite the pri-

Please see **FRAUD, 5D**

FRAUD HOME IS WHERE THE MONEY IS

Mortgage originations nearly quadrupled from 2000 to 2003, providing a hard-to-miss target for fraud

MORTGAGE ORIGINATIONS IN TRILLIONS



Source: Mortgage Bankers Association

BOB VEIERSTAHLER
rveierstahler@journal sentinel.com

FRAUD, From 1D

vate nature of his work, Matthews agreed to share his insights.

Insiders are the main culprits, he said.

"There's fraud for commission, where a professional such as the mortgage broker, banker, realty agent or appraiser changes documents in order to get a commission. This results in a loss to lenders. Then there's fraud for profit, where the con artists are people in the know — mortgage bankers, brokers, real estate agents, appraisers — ripping off the system. Some of their schemes are just outrageous," he said.

Borrowers rarely fleece the system. "Oh, maybe they get their employer to fudge some numbers for them, or get a relative to report a second job that they don't really have. But what they do usually doesn't result in losses. After all, if you cheat to get your home, you'll probably give up a lot to keep it," Matthews said.

It's a shameful sign of our times, said David Callahan, research director at the public policy group Demos in New York City, and Tim Doyle, director in government affairs for the Mortgage Bankers Association.

"This is just another area in American life where a boom, with all its money to be made, brought out the worst in us," said Callahan. "The carrots for cheating are getting bigger, and even though the sticks are hitting harder, our watchdogs are asleep, so it's easy to get away with things."

The carrots sure are getting bigger.

The mortgage-loan origination market shot up from \$1 trillion in 2000, the start of a refinancing tidal wave created by super-low interest rates, peaking at \$3.8 trillion in 2003 before subsiding last year to \$2.7 trillion.

"The housing market's been very active. Property values have risen very quickly, so there's a sense that there's a lot of money out there to be had," Doyle said. "I'm shocked by how many reports there are every day around the country about fraud convictions or indictments."

Too bad the mortgage industry has no single federal agency monitoring its affairs, said industry experts. Government regulation is splintered, and in some cases — notably mortgage brokers — almost non-existent, they said.

"You can be driving a truck or selling cars today and, tomorrow, be a mortgage broker dealing with large sums of money," Matthews said.

Consider events of recent weeks:

Federal housing regulators disclosed investigations into alleged scams across the nation involving illegal kickbacks from title insurers to lenders, realty agents, builders and developers sending them customers. The U.S. Department of Housing and Urban Development settled cases in Texas and Oklahoma for nearly \$7 million. Meanwhile, Colorado and California are pursuing state charges against title insurers and their cronies operating there. Several Wisconsin title insurance representatives and lawyers say they've talked to HUD investigators about referral practices here, too.

Fannie Mae, the nation's largest mortgage financier, forfeited \$7.5 million to federal regulators for not speaking up while crooks sold what it knew were bad loans to a competitor. The Office of Federal Housing Enterprise Oversight now wants to impose a four-day reporting mandate on Fannie

Mae and its fellow government-sponsored enterprise, Freddie Mac, regarding any known or suspected fraudulent activity.

Warning that millions of dollars are being siphoned from the mortgage market via money-laundering schemes and fraud for profit, the Mortgage Bankers Association launched an online anti-fraud center. The site, www.mortgagebankers.org/MBAFightsFraud/ will carry public information on mortgage crimes and punishments plus password-protected security alerts to its members.

Demos issued a report warning that conflicts of interest pervade the home loan trade, where inflated property values have delivered handsome benefits to lenders and realty agents, leaving homeowners to discover their dearth of equity. Written by Callahan, the report suggests that some of the \$450 billion in home equity that homeowners cashed out during the 2001-04 mortgage refinancing boom was based on exaggerated home values that came from the practice of muscling appraisers into pricing a property to "make that deal."

Some trade groups — notably appraisers and mortgage brokers — are asking regulators for stronger governance to roust their wrong-doers.

First you've got to find the wrongdoers, Matthews said. He advocates a national registry of loan originators to prevent scammers from leap-frogging states ahead of the law.

"It all comes down to accountability," he said. "I'd say we need more accountability after the fact, too. If someone costs us \$2.5 million in losses and never spends a day in jail, I have trouble with that."

Callahan recommends a legal firewall between property appraisers and other parties in a real estate transaction — ideally, prohibiting other parties from initiating any communication with the appraiser. His other advice: "Make sure all the actors in the process are accountable to some regulator."

Alan Hummel, government relations chairman of Appraisal Institute, a nationwide professional group based in Chicago, backs more sweeping change, as proposed March 15 in what's called The Responsible Lending Act. The legislative proposal, sponsored by U.S. Reps. Bob Ney (R-Ohio) and Paul Kanjorski (D-Pa.) establishes a mortgage broker registry and addresses improper pressures on appraisers, Hummel said. His trade group has endorsed the act, which critics claim set lower standards than many states.

Some remedy is needed soon, Callahan emphasized.

"Housing is a more important part of our economy than it's ever been, and people's fortunes are tied to mortgaged properties," he said.

Much of the law-breaking is well known but is not openly discussed.

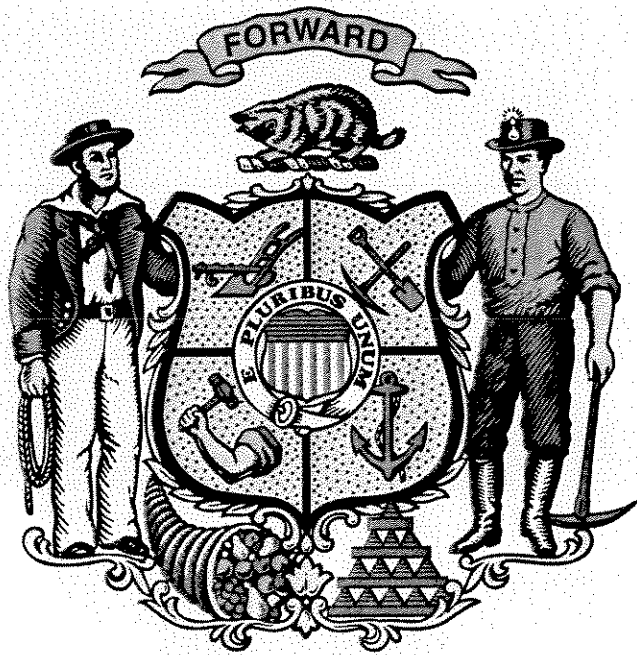
"Fraud is America's little mortgage secret, and it's scary," Hummel said. "It touches those who know it's occurring and those who don't even suspect it."

THE SCALE OF THE PROBLEM

\$3.8 billion in restitution orders and \$35.6 million in fines to parties in financial institutional fraud cases during fiscal year 2003, thanks to FBI investigations.

215 real estate fraud investigations initiated by IRS Criminal Investigation in fiscal 2003 — double the 107 investigations begun in fiscal 2001.

Source: IRS



Memorandum



March 1, 2006

To: Members of the Senate Committee on Agriculture and Insurance
From: Peter C. Christianson, for the Wisconsin Land Title Association
Re: Assembly Bill 127 merits support

The members of the Wisconsin Land Title Association strongly support Assembly Bill 127. The bill passed the Assembly on a voice vote after being recommended for passage 14-0 by the Assembly Committee on Insurance. Assembly Bill 127 is identical to 2003 Assembly Bill 545, which passed the Assembly unanimously last session but arrived in the Senate too late to be considered.

Here are the reasons why Assembly Bill 127 is good public policy:

1. Current law makes it a crime for a person to "falsely [make] or [alter] a certified abstract of title to real estate with the intent to defraud another." This prohibition is contained in Wis. Stats. s. 943.38 (3) (f).

2. The penalty for violating the current law is a fine of up to \$10,000 and imprisonment in the county jail for up to nine months, or both. This means that a violation of the current law constitutes a Class A misdemeanor, under Wis. Stats. s. 939.51(3)(a).

3. Assembly Bill 127 would expand the prohibition contained in Wis. Stats. s. 943.38 (3) (f) to include falsifying or altering "a title insurance commitment, a title insurance policy, or any other written evidence regarding the state of title to real estate."

4. When a real estate transaction occurs, a title company is hired to ascertain who owns it and what liens (i.e. debts of the owner) and other encumbrances (i.e. rights of way owned by third parties, etc.) affect the value of the property or which must be removed so that the seller can deliver clear title to the buyer and to insure that the buyer's lender will have the first claim against the property should the buyer default on the loan which is made to finance the transaction.

5. Historically, the title company produced a document commonly referred to as an "Abstract" or an "Abstract of Title." Such a document would provide an enumeration of the public records available which would establish or affect the current ownership of the property. The Abstract would then be reviewed by a lawyer who would render an opinion concerning the current ownership and what steps would have to be taken so that the owner could transfer title free and clear of liens and encumbrances.

6. That's how land transactions took place from the time that Wisconsin became a state until the last 30-40 years. In fact, many of the title companies which operate in Wisconsin are among the oldest continuously-operated businesses in their communities.

7. In more recent years, the use of Abstracts of Title has greatly diminished in favor of title insurance. The same title companies are doing the same public record searches, but they do so as agents of title insurers rather than as preparers of Abstracts of Title, and what they produce is the formal promise by a title insurer to produce an insurance policy which guarantees clear title once the liens and encumbrances are removed.

8. This change has been beneficial for buyers as well as for sellers. Title insurers are licensed by the state and are required to maintain policy reserves to pay claims. It is no longer necessary for a lawyer to be hired to review the Abstract and render an opinion as to what actions need to be taken to deliver clear title to the buyer.

9. But the change also means that the current statute which makes it a crime to falsely make or alter an abstract no longer fits the crime. The purpose of AB 127 is to make the law relevant to the type of criminal activity which could occur today.

10. A review of today's new technologies make it clear why it is necessary to update the law. In the old days, a title company would obtain printed letterhead from a local printer and a long-time employee would prepare an abstract in long hand. The local lawyers would be familiar with the style and practice of the title company and would recognize the handwriting of the person who prepared and signed the abstract. Later, title documents were prepared using manual typewriters and would be signed by an employee of the title company authorized to sign on its behalf. This is when the current law would likely have been enacted, because the switch from long hand meant that it would no longer be possible to rely upon recognition of handwriting to establish the authenticity of a document.

11. The same recognition problems exist today. With the internet and modern copy machines, it is now possible to "cut and paste" and forge a wide variety of documents. This is why the federal government decided to change the \$20 bill, for example.

12. An informal survey of Wisconsin title insurers in southeast Wisconsin produces examples of current claims against title insurers which involve forgery of title insurance documents. There is a case pending in Dodge County, for example, in which an elderly individual was induced to loan money with the promise of obtaining a second mortgage as security. A falsified title insurance commitment was provided to him by the party borrowing the money, who did not own the property in question. It would also be relatively easy, for example, to alter a title insurance commitment to remove a particular lien, which would mean that the lien might not be removed at closing.