

as defined by a term called "controlled business". Controlled business is pseudonym for locking together several different portions of a real estate action. Historically real estate in the state has been handled by those that had exhibited competence in real estate transactions by getting a law degree. Usually in Nebraska lawyers have been an instrument for real estate transactions because they knew how to research a title to make sure it was clear and they knew how to convey property. But over the ages real estate transactions have been professionalized and they have developed different component parts. Seldom do lawyers involve themselves in real estate transactions, and if they do, it really doesn't amount to that much in frequency. Instead real estate is largely handled by the real estate brokers, and for those that clear title, it is in the hands of title insurance agents as a profession and also in the hands of abstractors. LB 215 addresses a recent problem and it has largely come into effect because of the problems of the recession that we have been facing the last three or four years. Title insurance is a new phenomenon for Nebraska but it has become a common mode of operation for the entire state, at least over the last two years, although I would say in Omaha and Lincoln it has been there for the last ten years. But I think most of you can understand what takes place. When you purchase a piece of real estate from a real estate broker who handles the paperwork of the transaction, to make sure that your title is clear to that property usually you go to an abstractor to research that title, and if you really want to insure the clearance of that title, you would probably contact a title insurance agent who would not only see that the title was properly researched and clear but would insure that it was to that effect. Now there have been some problems historically in this nation with this process. Congress in 1974 passed the Real Estate Settlement Practices Act which stopped kickbacks between the real estate brokers or whoever was selling or conducting the transaction in real estate, whether it was a real estate broker or a bank or a savings and loan. It had been a practice nationally and maybe to some extent in Nebraska where when one referred, as a broker referred business to a certain title agent or an abstractor that a portion of the fee would be kicked back to the broker. The 1974 Real Estate Settlement Practices Act prohibited that but there was a loophole and the loophole allowed banks, savings and loans, real estate companies to buy into a title insurance company as a stockholder, and not only for the purposes and perhaps not even mainly for the purpose of a kickback but to tie business together, to control the business sort of from cradle to grave. In