

January 11, 1980

LB 306

SENATOR CHAMBERS: Then this law in effect is creating a mortgage without one even being signed, isn't it?

SENATOR BEUTLER: No, it is not creating a mortgage because in certain instances you would have a right to foreclose the mortgage. All this bill deals with is an estate situation, a situation where a person has died.

SENATOR CHAMBERS: Then, let's...

PRESIDENT: Out of time, Senator Chambers. The Chair recognizes Senator Marsh.

SENATOR MARSH: Mr. President, I would like to have a little further explanation from Senator Chambers along the line he was just pursuing. Would you please explain that to me, Senator Chambers?

SENATOR CHAMBERS: Yes. Senator Marsh, in the law there are many fictions. There are some things or entities, legal entities which exist as a matter of law and you can find them defined such as a mortgage. There are other things which operate as if they were this particular thing that does exist as a fact. So what it appears to me as being done here is the creation of a legal situation which parallels the existence of a mortgage without there actually being one but one of the bad problems here is that there is no document that you can say is a mortgage which has been signed by anybody. What you are saying is that an interest in property which currently is created by law which is a joint tenancy with right of survivorship, that is created by law which would allow the totality of property to pass to the survivor upon death. Senator Beutler and the bankers want to bring in a situation where the survivor who is to receive all that property will not even be aware that 50% of it has already been encumbered so it could be a situation where a woman has raised the babies, helped the man go to school and there has been an agreement between them that since they don't have any liquid cash they will hold the property in joint tenancy with right of survivorship and the reward for the woman for having her life encumbered by this rascal will be to get this property, but Senator Beutler and the bankers want to intrude into this type of arrangement and allow the banker to take 50% of that without the surviving spouse even knowing necessarily that the property has been encumbered.

SENATOR MARSH: Thank you for your explanation. I hope every member of the Unicameral Legislature is listening. As I understand this, what is being said is that in effect, we could have a mortgage that was not called a mortgage, a mortgage