

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2101**

As Amended by Senate Committee on Financial  
Institutions and Insurance

**Brief\***

HB 2101, as amended, would enact the Kansas Contract for Deed Act. Under the Act, a seller would be prohibited from executing a contract for deed with a buyer if the seller does not hold title to the property. The bill would require the seller to maintain fee simple title to the property free from certain encumbrances, and it would establish that any violation of provisions pertaining to the execution of a contract for deed would be deemed a deceptive act or practice under the Kansas Consumer Protection Act.

The bill would require a buyer who fails to cure a default within a specified time frame to record a release of a recorded affidavit of equitable interest or contract for deed and vacate the premises. The bill would also provide the seller with remedies should the buyer fail to satisfy such requirements.

Further, the bill would authorize the Kansas Real Estate Commission (Commission) to issue cease-and-desist orders on a person the Commission has determined is practicing without a valid broker's or salesperson's license.

***Definitions***

The bill would define terms applicable to the Act, including:

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- “Contract for deed,” to mean an executory agreement in which the seller agrees to convey title to real property to the buyer and the buyer agrees to pay the purchase price in five or more subsequent payments, exclusive of a down payment, while the seller retains title to the property as security for the buyer’s obligation. The term would specifically exclude option contracts for the purchase of real property; and
- “Property,” to mean real property located in Kansas upon which there is located or will be located a structure designed principally for occupancy of one to four families that is or will be occupied by the buyer as the buyer’s principal place of residence.

The bill would also define the terms “buyer” and “seller” for this purpose.

#### ***Recording of Contract for Deed***

The bill would provide that any contract for deed or affidavit of equitable interest may be recorded by any interested person in the office of the county register of deeds where the property is located.

#### ***Clearing Title Upon Buyer Default; Seller’s Remedies***

The bill would provide that, following the notice of the intent to forfeit and the opportunity to cure the default as outlined in the bill, the buyer would have 15 calendar days to:

- Record a release of affidavit of equitable interest or contract for deed, if such affidavit or contract were recorded; and
- Vacate the premises under contract, if applicable.

If the buyer fails to satisfy the above conditions, the bill would provide that such buyer would be responsible for the seller's reasonable attorney fees, costs, and expenses for the removal of the affidavit of equitable interest or contract for deed from the title and eviction of the buyer from the premises, if applicable.

### ***Seller to Hold Title to the Property; Exceptions***

The bill would prohibit a seller from executing a contract for deed if the seller does not hold fee simple title to the property, free from any mortgage, lien, or other encumbrances (liability), subject to certain exceptions specified in the bill:

- Due to the conduct of the buyer;
- With the agreement of the buyer as a condition of a loan obtained to make improvements to the property; or
- By the seller prior to the execution of the contract for deed if:
  - The seller disclosed the liability to the buyer;
  - The seller continues to make timely payments on the outstanding liability;
  - The seller disclosed the contract for deed to a party of interest to the liability; and
  - The seller satisfies and obtains a release of the liability not later than the date of the final contract for deed payment by the buyer, unless the buyer assumes the liability as part of such contract.

Violations of the specified title liability prohibitions would be considered a deceptive act and be subject to enforcement under the Kansas Consumer Protection Act.

### ***Contract for Deed: Buyer's Rights***

The bill would provide that a buyer's rights under a contract for deed would not be forfeited or canceled except as specified in the bill. However, under the bill, a contract could provide for forfeiture of buyer's rights. Additionally, the bill would contain a statement that the provisions on a buyer's rights could not be construed to limit the power of a district court to require equitable foreclosure proceedings.

A buyer's rights would not be forfeited until the buyer has been notified of the intent to forfeit and has been given a right to cure the default and has not done so within the time period allowed. A notice of default and intent to forfeit would be required to:

- Reasonably identify the contract and describe the property covered by it;
- Specify the terms and conditions of the contract with which the buyer has not complied; and
- Notify the buyer that the contract will be forfeited unless the buyer performs the terms and conditions within the following time periods:
  - 30 days from completed service of notice if the buyer has paid less than 50 percent of the purchase price; or
  - 90 days from completed service of notice if the buyer has paid 50 percent or more of the purchase price.

The bill would require such notice be served on the buyer in person, delivered directly to the buyer's residence, or delivered by certified or priority mail to the buyer's residence with return receipt requested.

### ***Cease-And-Desist Orders***

If the Commission determines a person has practiced without a valid broker's or salesperson's license issued by the Commission, the Commission may issue a cease-and-desist order in accordance with the Kansas Administrative Procedure Act against such unlicensed person or associated association, corporation, limited liability company, limited liability partnership, partnership, professional corporation, or trust.

### **Background**

The bill was introduced by the House Committee on Financial Institutions and Pensions at the request of Representative Hoheisel.

### ***House Committee on Financial Institutions and Pensions***

In the House Committee hearing on January 29, 2024, **proponent** testimony was provided by Representative Probst, an attorney, a citizen lobbyist, and three private citizens. The proponents stated that the bill would add protections to a currently unregulated aspect of the residential housing market. The citizen lobbyist, formerly a member of the Judicial Council Advisory Committee, testified that the bill is the result and recommendation of that committee's 2020 study. The attorney and the private citizens he represented in a case of convicted fraud described the misrepresentations made in a rent-to-own contract and protections the bill would afford to assist other buyers in similar situations.

Written-only neutral testimony was provided by the Kansas Judicial Council, which included the report of the Judicial Council Advisory Committee on 2020 HB 2600 and noted a discrepancy between the committee recommendation and HB 2101.

No other testimony was provided.

The House Committee amended the bill to insert additional criteria by which a seller could qualify for an exemption from the liability prohibition, which would require that the seller disclose the contract for deed to the liability interest holder and require that the seller obtain a release of any outstanding liabilities on the property prior to the buyer's final payment.

***Senate Committee on Financial Institutions and Insurance***

In the Senate Committee hearing, **proponent** testimony was provided by Representative Probst and a representative of the Kansas Association of Realtors. The proponents stated the bill would provide reasonable protections from predatory practices in residential contract for deed transactions in what is currently an unregulated aspect of the residential housing market.

Written-only neutral testimony was provided by the Kansas Judicial Council, which included the report of the Judicial Council Advisory Committee on 2020 HB 2600.

No other testimony was provided.

The Senate Committee amended the bill to:

- Require a buyer, after failing to cure a default within the allotted time, to record a release of a recorded affidavit of equitable interest or contract for deed and vacate the premises within 15 calendar days;
- Provide remedies for the seller when a buyer defaults and subsequently fails to record a release and vacate the premises; and

- Insert provisions contained in Sub. for HB 2598 that would authorize the Commission to issue cease-and-desist orders on a person practicing without a valid broker's or salesperson's license. [Note: See the supplemental note on Sub. for HB 2598 for additional information.]

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Judicial Branch states that enactment of the bill could increase the number of cases filed in district courts due to the violations of the Kansas Consumer Protection Act. This would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. The bill could also result in the collection of docket fees that would be deposited into the State General Fund. However, a precise fiscal effect cannot be estimated.

The Office of the Attorney General states that any additional cases generated from the bill would be absorbed within existing resources. The Abstracters' Board of Examiners states that the bill would not have a fiscal effect.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The Kansas Association of Counties indicates that enactment of the bill could have an impact on counties if current resources are not adequate to handle prosecutions and court needs. Therefore, a fiscal effect cannot be determined. The League of Kansas Municipalities states that the bill would not have a fiscal effect.

Consumer protection; Kansas Contract for Deed Act; contract-for-deed contracts; property; affidavit of equitable interest; fee simple title; real estate; Real Estate Commission; cease and desist; Kansas Consumer Protection Act