

Testimony on SB 219
Senate Commerce Committee
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Chairman Olson and members of the committee. On behalf of the Kansas Real Estate Commission (KREC), thank you for the opportunity to present proponent testimony on SB 219.

The mission of KREC is to protect the public interest in the selling, buying, and leasing of real estate. KREC does this by licensing salespersons and brokers who transact real estate in Kansas. KREC is requesting the introduction of legislation this year to close a loophole in Kansas real estate licensing law that allows unlicensed individuals who don't own the real estate they are marketing or attempting to sell, to perform services that resemble or are even identical to services provided by Kansas real estate licenses.

The bill prohibits a pattern of business where an individual attempts to sell an equitable interest in a contract for the purchase of real estate two or more times in a 12-month period without holding an active Kansas real estate license. A real estate transaction is a significant financial undertaking, and there must be accountability and oversight put in place. Some states have banned the practice of assigning equitable interest also known as "wholesaling". Instead of prohibiting the practice, the bill requires someone who wants to do these types of transactions to obtain a Kansas license.

What is assigning an equitable interest?

- The practice of assigning an equitable interest, also known as "wholesaling", occurs when an individual enters into a contract to purchase real estate and immediately attempts to resell their interest in that real estate contract to another buyer prior to closing or taking ownership of the property.
- The wholesaler often has no intention of actually purchasing the property and never takes title to the property.
- If the wholesaler cannot find another buyer to sell the contract to, the wholesaler will typically back out of the contract prior to closing. Often the wholesaler will structure the contract so that they owe minimal if any earnest money to the seller.
- Wholesalers will advertise the property as if they actually own the property (not an activity requiring a license) when they only have a contract to purchase the property.
- This practice is often indistinguishable from the activities a Kansas real estate licensee engages in when marketing a property for a seller.
- This is a consumer protection issue because these unlicensed individuals essentially act as real estate licensees but have no requirement to abide by the statutes of minimum duties and obligations set in law to protect the sellers they are working with.
- This would not impact the exemption in Kansas law for individuals who sell property they personally own. Examples would be "For Sale By Owner" (FSBO) and people who "flip" houses.

Why is this bill necessary?

- Provides protection to consumers and accountability for buyers and sellers in real estate transactions for the largest financial transaction individuals will make while not hampering market innovation.
- Requires individuals engaged in wholesale activity to pass required real estate prelicense education and examinations along with a background check. Promotes education, best practices, and conformity with Kansas laws and regulations.
- Provides oversight by KREC to investigate consumer complaints. Provides an avenue for the public to resolve disputes and claims that otherwise could only be addressed by litigation which is costly to the public and difficult to resolve.
- Creates minimal duties/responsibilities through brokerage relationships that cannot be waived in a transaction, as well as mandatory disclosures re: exactly what duties and responsibilities they will not be performing to increase transparency and accountability with the consumer including fees and commission charged.
- Provides for broker supervision and an added layer of accountability in all real estate transactions

KREC is also requesting reasonable powers to fully investigate these actions using subpoena powers and when necessary to stop activities performed by unlicensed persons by issuing a cease and desist order and administrative fines. Many other Kansas agencies, boards and commissions have similar authority to handle investigatory and disciplinary matters.

KREC has worked with the Kansas Association of Realtors on the proposed changes and they are in full support.

The Commission thanks you for the opportunity to provide comments on SB 219 and request the members of the Committee support these changes to protect consumers. I will stand for questions at the appropriate time.