

HOUSE BILL No. 2322

By Representative Probst

2-10

1 AN ACT concerning real estate transactions; regulating contract for deed
2 transactions; making certain deceptive actions violations of the
3 consumer protection act.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) Sections 1 through 4, and amendments thereto, shall be
7 known and may be cited as the Kansas contract for deed act.

8 (b) As used in sections 1 through 4, and amendments thereto:

9 (1) "Buyer" means a person who purchases property subject to a
10 contract for deed or any legal successor in interest to the buyer.

11 (2) "Contract for deed" means an executory agreement in which the
12 seller agrees to convey title to real property to the buyer and the buyer
13 agrees to pay the purchase price in five or more subsequent payments
14 exclusive of the down payment, if any, while the seller retains title to the
15 property as security for the buyer's obligation. Option contracts for the
16 purchase of real property are not contracts for deed.

17 (3) "Property" means real property located in this state upon which
18 there is located or will be located a structure designed principally for
19 occupancy of one to four families that is or will be occupied by the buyer
20 as the buyer's principal place of residence.

21 (4) "Seller" means any person who makes a sale of property by means
22 of a contract for deed or any legal successor in interest to the seller.

23 Sec. 2. Any contract for deed or affidavit of equitable interest may be
24 recorded in the office of the county register of deeds where the property is
25 located by any interested person.

26 Sec. 3. (a) A seller shall not execute a contract for deed with a buyer
27 if the seller does not hold title to the property. Except as provided further, a
28 seller shall maintain fee simple title to the property free from any
29 mortgage, lien or other encumbrance for the duration of the contract for
30 deed. This subsection shall not apply to a mortgage, lien or encumbrance
31 placed on the property:

32 (1) Due to the conduct of the buyer;

33 (2) with the agreement of the buyer as a condition of a loan obtained
34 to make improvements on the property; or

35 (3) by the seller prior to the execution of the contract for deed if:

36 (A) The seller disclosed the mortgage, lien or encumbrance to the

1 buyer; or

2 (B) the seller continues to make timely payments on the outstanding
3 mortgage, lien or other encumbrance.

4 (b) Any violation of this section is a deceptive act or practice under
5 the provisions of the Kansas consumer protection act and shall be subject
6 to any and all of the enforcement provisions of the Kansas consumer
7 protection act.

8 Sec. 4. (a) A buyer's rights under a contract for deed shall not be
9 forfeited or canceled except as provided in this section, notwithstanding
10 any provision in the contract providing for forfeiture of buyer's rights.
11 Nothing in this section shall be construed to limit the power of the district
12 court to require proceedings in equitable foreclosure.

13 (b) The buyer's rights under a contract for deed shall not be forfeited
14 until the buyer has been notified of the intent to forfeit as provided in
15 subsection (c) and has been given a right to cure the default, and such
16 buyer has failed to do so within the time period allowed. A timely tender of
17 cure shall reinstate the contract for deed.

18 (c) A notice of default and intent to forfeit shall:

19 (1) Reasonably identify the contract and describe the property
20 covered by it;

21 (2) specify the terms and conditions of the contract with which the
22 buyer has not complied; and

23 (3) notify the buyer that the contract will be forfeited unless the buyer
24 performs the terms and conditions within the following periods of time:

25 (A) If the buyer has paid less than 50% of the purchase price, 30 days
26 from completed service of notice; or

27 (B) if the buyer has paid 50% or more of the purchase price, 90 days
28 from completed service of notice.

29 (d) A notice of default and intent to forfeit shall be served on the
30 buyer in person, or by leaving a copy at the buyer's usual place of
31 residence with someone of suitable age and discretion who resides at such
32 place of residence, or by certified mail or priority mail, return receipt
33 requested, addressed to the buyer at the buyer's usual place of residence.

34 (e) Nothing in this section shall be construed to preclude the buyer or
35 the seller from pursuing any other remedy at law or equity.

36 Sec. 5. This act shall take effect and be in force from and after its
37 publication in the statute book.