

Testimony in Support of HB 2101

House Committee on Financial Institutions and Pensions

January 29, 2024

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In 2020, I served on a Judicial Council study committee that explored the issues of contracts for deeds. Like other Judicial Council study groups, this one had people from all sides of the issue. (Membership set out at the end) The committee recognized both advantageous and unscrupulous uses for this method of conveying ownership of homes from one person to another. The committee also explored how other states had regulated the use of this method of home ownership transfer.

Most importantly, the committee considered the fact that Kansas law has not attempted to either recognize or regulate this method of residential home sale. Currently, the law is silent on this topic. These types of sales are outside the foreclosure process under Kansas law, meaning that buyers are not given any opportunity to catch up on payments or protect their interest in property they have been purchasing and on which they may have made significant improvements at their own expense. Some courts have weighed in to provide an equitable interest when a significant portion of the contract has been paid, but those cases are rare and it is unclear when that interest exists or should be protected.

The committee's recommendations included providing education and opportunities for buyers to record the contract for deed, as one would a deed of sale. This provides public notice of the buyer's claim of equitable interest in the property.

It also recommended that sellers actually have title to property they sell on a contract for deed. This provides a remedy for a buyer who signs and pays on a contract for deed, but receives nothing because the seller didn't actually own the property. Because these sales occur without some of the safeguards of more traditional sales methods, including title insurance, this is the best safeguard against this unscrupulous practice that can be created.

Finally, the committee recommended some type of right to catch up on missed payments before the family loses their home. Without legislation, this right doesn't exist. A staggered length of time recognized that a buyer who has paid for more than 50% of the purchase price should have a longer period (90 days) to catch up and save their home. There are still less protections than would be provided under a mortgage foreclosure process.

HB 2101 is the recommendation of the 2020 Judicial Council study committee, as approved by the Judicial Council in December, 2020.

I believe it should be passed as presented to this committee.<sup>1</sup>

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<sup>i</sup> A complete copy of the Judicial Council Report can be found at <https://www.kansasjudicialcouncil.org/Documents/Studies%20and%20Reports/2020%20Reports/HB%202600%20CFD%20Report.pdf>

### **COMMITTEE MEMBERSHIP**

The members of the Advisory Committee on H.B. 2600 – Contracts for Deed (Committee) are:

**Prof. Andrea Boyack**, Chair, Professor of Law at Washburn University School of Law; Lawrence

**Kellee' Dunn-Walters**, Commercial Underwriting Counsel/Manager, Security 1<sup>st</sup> Title; Overland Park

**John Goodyear**, Staff Attorney, League of Kansas Municipalities; Topeka

**Marilyn Harp**, Executive Director, Kansas Legal Services; Topeka

**Ed Jaskinia**, President, Associated Landlords of Kansas; Kansas City

**Joseph Jeter**, practicing attorney and Judicial Council member; Hays

**Joseph Molina**, Director of Legislative Services, Kansas Bar Association; Topeka

**Rep. Jason Probst**, State Representative from the 102nd District; Hutchinson

**Kathleen Taylor**, Senior Vice President and General Counsel, Kansas Bankers Association; Topeka

**Mark Tomb**, Vice President of Governmental Affairs, Kansas Association of Realtors; Topeka