

Testimony of Martin J. Keenan, attorney-at-law before House  
Financial Institution and Pensions Committee in support of HB 2101.

January 29, 2024.

My name is Martin J. Keenan. I have been licensed to practice law in Kansas for 38 years. I am grateful for the opportunity to offer testimony in favor of HB 2101. I represented Maria Del Rosario Robledo and her husband Enrique Perez Eusebio in a lawsuit in the Sedgwick County District Court. Their son, Mateo Robledo-Perez is also in attendance.

Over three years ago, Maria Robledo came to my law office with tears in her eyes. She and her husband, Enrique, thought they had purchased a home on a one acre tract in Haysville, Kansas. Maria and Enrique speak Spanish only.

After hiring a bilingual realtor, the Robledos made a \$10,000 downpayment and began paying over \$1,000 per month in payments on a modular house in Haysville, Kansas, even though the house was uninhabitable.

The house had no running water, electricity, heating or air. The realtors, who spoke Spanish and English, told them they were buying the home and that it would appreciate in value.

During the five to six months it took for Robledos to make the house habitable, they continued to make the payments in excess of \$1,000 per month, plus they put tens of thousands of dollars into the home to make it habitable: new flooring, new walls with a fresh paint job, electrical work, an air conditioner and heater, etc. They added an outside utility meter and got the home approved by the City of Haysville for all City Code requirements. The house had been uninhabited for at least two years.

When they learned that the realtors did not even own the land or home in fee title, but that the home was owned by Penguin Properties, LLC, they were gobsmacked. When I told Mrs. Robledo she had been defrauded, they vacated the house and removed items that they had recently purchased to make the house habitable.

HB 2101 would have protected the Robledos in several respects. The bill requires that the seller on rent-to-own contracts must maintain fee simple title.

The biggest misrepresentation in the contract was that the sellers owned the property in fee. In fact, they were buying it from Penguin Properties, LLC on a Contract-for Deed basis, and had filed an “Affidavit of Equitable Interest” with the Sedgwick County Courthouse.

Needless to say, a deed from the sellers to the Robledos was not being held in escrow to be released to them when they finished the contract because the sellers didn’t own the property in fee. Instead, a deed from Penguin Properties to the sellers was waiting in escrow for when they finished buying the house.

A second way this bill would have protected the Robledos is that the bill allows buyers in such a situation to file an “Affidavit of Equitable Interest” in the Register of Deeds office. The contract the Robledos signed forbade them from filing such an affidavit.

HB 2101 rightly requires the seller to give notice of default and a right to cure the default. It gives special protection to those who have paid over one-half of the purchase price.

Some unscrupulous sellers make these contract almost impossible to fulfill, and they take the house back with no notice and no “right to cure.” Rent-to-Owns generally have little forgiveness for late payments. You could lose everything by missing one payment.

HB 2101 also clearly puts Contract-for-Deed violations inside the Kansas Consumer Protection Act. This is also a good addition.

Contract-for-deed contracts make the renter responsible for repairs and improvements even though they are, in effect, just renting, with the hope of buying the place someday. It gives the purchaser all of the burdens of home ownership with none of the benefits. The problem is simple: you do not own the home until the end of a lengthy contract. You can’t sell the house or borrow money against it until the house is completely paid for. Those who fulfill the contract don’t actually own the house for ten, 15 or even 20 years.

If you rent a home in Kansas, it is you have the benefit of the Kansas Landlord/Tenant Act, which spells out the rights for each party. The tenant pays

rent, but the landlord is responsible for repairs and improvements. A lease is limited to one year, and then rolls over to a month-to-month lease.

If you buy a house with a traditional bank loan, the mortgage is highly regulated; you have the right to sell the house, and you have homestead protections from losing your house. The purchaser is responsible for repairs and improvements, but they build equity because they are the owners. Purchasers can sell the house, or get loans against the house before your mortgage is paid off.

These largely unregulated contracts are called different things: a “Contract for Deed” or a “Rent to Own” or a “Lease with an Option to Purchase.”

A study by the Pennsylvania Attorney General’s office found that only 2% of purchasers who enter into such a contract end up owning the house. No such study has been done in Kansas, but it is safe to say that most renters who enter these contracts never gain home ownership.

If you leave the property due to default or some other unforeseen problem, the seller will profit from all your repairs and improvements. You can’t sell the house, and you don’t have legal protections such as homestead rights of redemption, etc. Sometimes people make all the payments and learn that the seller didn’t own the property at all.

There is a place for “Rent to Own” arrangements for those who cannot get credit. But if you are playing the odds, the odds are that the “Rent-to-Own” contract will end up being a losing proposition for most.

The rent-to-own is often a counterfeit version of the American Dream of home ownership. It is easy to see why immigrants or those with bad credit see some allure in these arrangements.

HB 2101 regulates Contracts-for-Deeds, in the same way that landlord-tenant arrangements are regulated, and in the same way that mortgage loans are regulated. This bill would prevent injustice and is a very good start towards ending the “Wild West” unregulated abuses in Contract-for-Deed transactions.

When I took on the Robledo’s case, I was in private practice. I now work as Director of Legal Services for GraceMed Health Clinic. I am helping pioneer a Medical-Legal Partnership at GraceMed where we help people with legal

problems that damage their health. Fortunately, Maria Robledo was a GraceMed patient, so I was able to finish the case after starting at GraceMed on in April 2023.

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