



January 18, 2012

To: Members of the Senate Committee on Financial Institutions and Insurance

From: Kathleen A. Taylor, Kansas Bankers Association *KAT*.

Re: SB 255: Mortgage Registration Fees

Madam Chair and Members of Committee:

Thank you for the opportunity to appear before you today neither supporting nor opposing **SB 255**, which adds a new Section to K.S.A. 79-3102, dealing with mortgage registration fees.

As we understand it, new subsection (f) is intended to further define the circumstances under which no further mortgage registration fee is required to be paid. We believe the statute as it stands speaks for itself and needed no further clarification. That said, we understand that there are frustrations in enforcing the existing law which these proposed amendments are directed at easing.

If the Committee supports the suggested changes in the K.S.A. 79-3102, we would ask for the attached amendments to be considered. Our concern is that by trying to narrow those circumstances in which no further mortgage registration fee is required, the proposed language has eliminated some legitimate circumstances where no further fee should be required.

The amendments we propose appear on Page Two of the bill. On Line 18, we are asking for clarification that "indebtedness" will still include a series of promissory notes that make up a commitment to lend up to a certain amount, which is represented by a future advance clause in a filed mortgage. For example, a lender may commit to loan up to \$100,000, but the borrower may draw on that commitment over a period of time – evidenced by a series of promissory notes all relating back to the mortgage which contains a future advance clause allowing for the advances over time.

The second amendment is on Line 21, to recognize that mortgages are amended without the need for additional mortgage registration fees. The language proposed did not allow an amended mortgage to be considered.

Again, we hope that if the Committee considers moving **SB 255** favorably for passage, it will consider the amending the bill as we have requested. Thank you for your consideration of our request.

SENATE BILL No. 255

By Senator Kelsey

1-9

1 AN ACT concerning mortgage registration fees; amending K.S.A. 79-3102
2 and repealing the existing section.

3

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

5 Section 1. K.S.A. 79-3102 is hereby amended to read as follows: 79-
6 3102. (a) Before any mortgage of real property, or renewal or extension of
7 such a mortgage, is received and filed for record, there shall be paid to the
8 register of deeds of the county in which such property or any part thereof
9 is situated a registration fee of .26% of the principal debt or obligation
10 which is secured by such mortgage. In the event the mortgage states that
11 an amount less than the entire principal debt or obligation will be secured
12 thereby, the registration fee shall be paid on such lesser amount.

13 (b) As used herein, "principal debt or obligation" shall not include
14 any finance charges or interest.

15 (c) In any case where interest has been precomputed, the register of
16 deeds may require the person filing the mortgage to state the amount of the
17 debt or obligation owed before computation of interest.

18 (d) No registration fee whatsoever shall be paid, collected or required
19 for or on: (1) Any mortgage or other instrument given solely for the
20 purpose of correcting or perfecting a previously recorded mortgage or
21 other instrument; (2) any mortgage or other instrument given for the
22 purpose of providing additional security for the same indebtedness, where
23 the registration fee herein provided for has been paid on the original
24 mortgage or instrument; (3) any mortgage or other instrument upon that
25 portion of the consideration stated in the mortgage tendered for filing
26 which is verified by affidavit to be principal indebtedness covered or
27 included in a previously recorded mortgage or other instrument with the
28 same lender or their assigns upon which the registration fee herein
29 provided for has been paid; (4) any lien, indenture, mortgage, bond or
30 other instrument or encumbrance nor for the note or other promise to pay
31 thereby secured, all as may be assigned, continued, transferred, reissued or
32 otherwise changed by reason of, incident to or having to do with the
33 migration to this state of any corporation, by merger or consolidation with
34 a domestic corporation as survivor, or by other means, where the original
35 secured transaction, for which the registration fee has once been paid, is
36 thereby continued or otherwise acknowledged or validated; (5) any

1 mortgage or other instrument given in the form of an affidavit of equitable
 2 interest solely for the purpose of providing notification by the purchaser of
 3 real property of the purchaser's interest therein; (6) any mortgage in which
 4 a certified development corporation certified by the United States small
 5 business administration participates pursuant to its community economic
 6 development program; (7) any mortgage or other instrument given for the
 7 sole purpose of changing the trustee; or (8) any mortgage for which the
 8 registration fee is otherwise not required by law.

9 (e) The register of deeds shall receive no additional fees or salary by
 10 reason of the receipt of fees as herein provided. After the payment of the
 11 registration fees as aforesaid the mortgage and the note thereby secured
 12 shall not otherwise be taxable.

13 (f) For the purposes of parts (2) and (3) of subsection (d), the
 14 indebtedness described therein shall mean existing indebtedness verified
 15 by affidavit or established by supporting documentation to be:

16 (1) Between the same borrowers or their assigns and the same lender
 17 or their assigns;

18 (2) involving the same promissory note or other instrument
 19 evidencing the borrowers' obligation; and

20 (3) involving the same legally described property in the original
 21 mortgage or other instrument.

22 Sec. 2. K.S.A. 79-3102 is hereby repealed.

23 Sec. 3. This act shall take effect and be in force from and after its
 24 publication in the statute book.
 25

**or series of promissory notes subject
 to a future advance clause contained
 in the mortgage.**

including amendments thereto