



Luke Bell
Vice President of Governmental Affairs
3644 SW Burlingame Rd.
Topeka, KS 66611
785-267-3610 Ext. 2133 (Office)
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: Senate Judiciary Committee

Date: March 6, 2012

Subject: **HB 2106** -- Codifying the Common Law Rules Regarding the Premises Liability of Property Owners to Trespassers and Protecting Property Owners from Frivolous Tort Claims

Chairman Owens and members of the Senate Judiciary Committee, thank you for the opportunity to provide written testimony on behalf of the Kansas Association of REALTORS® in support of **HB 2106**. Through the comments expressed herein, it is our hope to provide additional legal and policy context to the discussion on this very important issue.

KAR is the state's largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 homeowners for over 90 years. REALTORS® serve an important role in the state's economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life, sustainable communities and providing affordable housing opportunities, while protecting the rights of private property owners.

Thankfully, Kansas courts have up to this time maintained fair and unambiguous legal rules regarding the premises liability of property owners to trespassers. Under the common law, a trespasser "is one who enters on the premises of another without any right, lawful authority, or an express or implied invitation or license." *Jones v. Hansen*, 254 Kan. 499, 503 (1994).

In *Jones v. Hansen*, the Kansas Supreme Court concluded that a property owner "owes a trespasser the duty to refrain from willfully, wantonly or recklessly injuring him." *Id.* In our opinion, the Kansas common law appropriately protects a property owner from being subject to various frivolous personal injury and other tort claims from individuals who have no right, lawful authority or express or implied invitation to occupy a property.

Unfortunately, a new provision of the *Restatement Third of Torts: Liability for Physical and Emotional Harm* has been proposed by the American Law Institute (ALI) that would dramatically expand trespassers' legal rights to sue property owners and impose costly burdens on property owners, which will ultimately lead to increased litigation against property owners and drastically higher homeowners' insurance premiums. In particular, we believe that the premises liability rules as proposed by ALI would be specifically burdensome and harmful for residential property owners.

Accordingly, REALTORS® strongly believe that the Kansas Legislature should proactively codify our current Kansas common law rules regarding the premises liability of property owners towards trespassers to ensure that Kansas courts do not unwisely adopt the harmful and burdensome provisions proposed in the *Restatement Third of Torts: Liability for Physical and Emotional Harm*. In doing so, the Kansas Legislature will protect property owners from additional frivolous tort claims and drastically higher homeowners' insurance premiums.