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To: Senate Ethics, Elections and Local Government  
From: Patrick Vogelsberg  
Date: March 13<sup>th</sup>, 2018  
Subject: Proponent on HB 2506 – Abandoned Property (*In person testimony*).

Honorable Chairwoman Bowers and members of the Senate Ethics, Elections and Local Government, thank you for the opportunity to appear in front of you today on behalf of the Kansas Association of REALTORS® (KAR) in support to the provisions of HB 2506.

KAR represents over 9,500 members involved in both residential and commercial real estate and advocating on behalf of the state's property owners for over 95 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 and providing affordable housing opportunities while protecting the rights of private property owners.

### **Current Law**

Under K.S.A. 12-1750(c), "abandoned property" means "any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days" or "commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties."

Under this statute, "commercial real estate" means "any real estate for which the present use is other than one to four residential units or for agricultural purposes." Although the statute does not provide for an explicit definition of the term "residential real estate" for the purposes of the abandoned housing provisions, the implication through a reading of the "commercial real estate" definition would be that "residential real estate" is any real estate consisting of one to four residential units.

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered "abandoned property" under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

Most importantly, both of these factors must be satisfied before the district court will approve a petition by an organization to take temporary possession of the property. In our opinion, the intent behind the two-factor test is to ensure that legitimate and responsible property owners are not unduly or unreasonably deprived of ownership and possession of their property.

## **Previous Legislation**

Previous proposals in the Kansas Legislature on this issue would have amended the statute to eliminate the two-factor test and allow cities to seize a property as “abandoned” if the property had two years of delinquent ad valorem taxes or if the property was continuously unoccupied for 90 days. Under the worst case scenario, a property owner that had regularly maintained the property and was in full compliance with local building codes could have their property seized by the city as “abandoned” simply because they went on a long-term vacation, work assignment, or deployed for more than 90 days.

The reason the current statute requires the two-factor test is to protect property owners from an unreasonable determination that they have permanently “abandoned” their property from non-use. Under the common law rules relating to the abandonment of property, a finding of “abandonment” basically means that the property owner has expressed an intent to permanently renounce ownership or possession of the property, either expressly or implicitly through his or her actions. However, under the common law, non-use in itself is not sufficient to show that the property is abandoned.

Under the current language found in the statute, the organization bears the burden to prove that the property owner has demonstrated an intent to renounce possession of the property by showing that the property owner has failed to pay property taxes on the property for at least two years and has failed to maintain a residence in the home for at least 90 continuous days. Absent one factor from the two-factor test, we do not believe that the actions of the property owner in doing one of these things demonstrates that he or she has “abandoned” the property.

## **HB 2506**

As drafted, HB 2506 would modify the existing definition of “abandoned property” under the Kansas Abandoned Housing Act to allow the governing body of a city or a qualified non-profit organization to take possession of residential real property as “abandoned property” when the property has two years of delinquent taxes, has been unoccupied continuously by persons legally in possession for the preceding 15 months **and** has a blighting influence on surrounding properties. Again, under current law (which was previously amended during the 2010 Legislative Session), the property must have two years of delinquent property taxes and the property must have been unoccupied for the preceding 90 days.

This new definition of “abandoned property” would replace the existing definition found in the statute. It should be noted that this definition maintains the policy of not classifying a property as “abandoned property” solely on the basis of whether the property is currently unoccupied. This new definition of abandoned property for residential real estate is a stronger protection against seizing property because it requires three elements to be met before being classified as abandoned: (1) two years of delinquent taxes; (2) unoccupied for 15 months; and (3) blighting influence.

The definition is very similar to the common law test and demonstrates that the property owner intends to “abandon” the property implicitly through his or her actions in failing to pay property taxes and failing to maintain the property in a manner that does not lead to a “blighting influence.” Again, the property cannot be “abandoned” through non-occupancy alone.

Additionally, this legislation contains an express protection for property owners by allowing a property owner to express in writing to the governing body a desire to retain ownership and bring the property into code compliance within 90 days.

It is important to note that it is the district court that would need to be satisfied that the property has been abandoned and ultimately approve a petition for temporary possession - not the local government itself. KAR is satisfied that our Kansas district courts can oversee these petitions in a neutral and deliberative way. If a respondent feels the district court has abused its discretion, the appellate courts are available for redress.

### **Conclusion**

In closing, we would respectfully request that the members of the House Local Government Committee support HB 2506, which will be a tool to revitalize residential neighborhoods in distressed areas while protecting the property rights of private property owners. As long as no changes are made to broaden the definition of "blighting influence" found in the legislation, Kansas REALTORS® are in full support of the legislation. Thank you for the opportunity to provide written comments on this very important issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Vogelsberg". The signature is written in a cursive, flowing style.

Patrick Vogelsberg

Vice President of Governmental Affairs

Kansas Association of REALTORS®