

HOUSE BILL No. 2101

By Committee on Financial Institutions and Pensions

1-19

1 AN ACT concerning real estate transactions; *relating to brokers,*
2 *salespersons and real estate transactions; authorizing the Kansas*
3 *real estate commission to issue cease and desist orders;* regulating
4 contract for deed transactions; *providing for certain penalties related*
5 *thereto;* making certain deceptive actions violations of the consumer
6 protection act; *amending K.S.A. 58-3065 and repealing the existing*
7 *section.*

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 *New* Section 1. (a) Sections 1 through 4, and amendments thereto,
11 shall be known and may be cited as the Kansas contract for deed act.

12 (b) As used in sections 1 through 4, and amendments thereto:

13 (1) "Buyer" means a person who purchases property subject to a
14 contract for deed or any legal successor in interest to the buyer.

15 (2) "Contract for deed" means an executory agreement in which the
16 seller agrees to convey title to real property to the buyer and the buyer
17 agrees to pay the purchase price in five or more subsequent payments
18 exclusive of the down payment, if any, while the seller retains title to the
19 property as security for the buyer's obligation. Option contracts for the
20 purchase of real property are not contracts for deed.

21 (3) "Property" means real property located in this state upon which
22 there is located or will be located a structure designed principally for
23 occupancy of one to four families that is or will be occupied by the buyer
24 as the buyer's principal place of residence.

25 (4) "Seller" means any person who makes a sale of property by means
26 of a contract for deed or any legal successor in interest to the seller.

27 *New* Sec. 2. (a) Any contract for deed or affidavit of equitable
28 interest may be recorded in the office of the county register of deeds where
29 the property is located by any interested person.

30 (b) *Following the notice and opportunity to cure provided for in*
31 *section 4(c), and amendments thereto, the buyer shall have 15 days to:*

32 (1) *Record a record of release of affidavit of equitable interest or*
33 *contract for deed, if such affidavit or contract were recorded; and*

34 (2) *vacate the premises, if applicable.*

1 *(c) If the buyer fails to satisfy the conditions under subsection (b),*
 2 *then such buyer shall be responsible for the seller's reasonable attorney*
 3 *fees, costs and expenses for the removal of the affidavit of equitable*
 4 *interest or contract of deed from the title and eviction of the buyer from*
 5 *the premises, if applicable.*

6 **New Sec. 3.** (a) A seller shall not execute a contract for deed with a
 7 buyer if the seller does not hold title to the property. Except as provided
 8 further, a seller shall maintain fee simple title to the property free from any
 9 mortgage, lien or other encumbrance for the duration of the contract for
 10 deed. This subsection shall not apply to a mortgage, lien or encumbrance
 11 placed on the property:

12 (1) Due to the conduct of the buyer;

13 (2) with the agreement of the buyer as a condition of a loan obtained
 14 to make improvements on the property; or

15 (3) by the seller prior to the execution of the contract for deed if:

16 (A) The seller disclosed the mortgage, lien or encumbrance to the
 17 buyer; ~~or~~

18 (B) the seller continues to make timely payments on the outstanding
 19 mortgage, lien or other encumbrance;

20 **(C) the seller disclosed the contract for deed to the mortgagee,**
 21 **lienholder or other party of interest; and**

22 **(D) the seller satisfies and obtains a release of the mortgage, lien**
 23 **or other encumbrance not later than the date the buyer makes final**
 24 **payment on the contract for deed unless the buyer assumes the**
 25 **mortgage, lien or other encumbrance as part of the contract for deed.**

26 (b) Any violation of this section is a deceptive act or practice under
 27 the provisions of the Kansas consumer protection act and shall be subject
 28 to any and all of the enforcement provisions of the Kansas consumer
 29 protection act.

30 **New Sec. 4.** (a) A buyer's rights under a contract for deed shall not be
 31 forfeited or canceled except as provided in this section, notwithstanding
 32 any provision in the contract providing for forfeiture of buyer's rights.
 33 Nothing in this section shall be construed to limit the power of the district
 34 court to require proceedings in equitable foreclosure.

35 (b) The buyer's rights under a contract for deed shall not be forfeited
 36 until the buyer has been notified of the intent to forfeit as provided in
 37 subsection (c) and has been given a right to cure the default, and such
 38 buyer has failed to do so within the time period allowed. A timely tender of
 39 cure shall reinstate the contract for deed.

40 (c) A notice of default and intent to forfeit shall:

41 (1) Reasonably identify the contract and describe the property
 42 covered by it;

43 (2) specify the terms and conditions of the contract with which the

1 buyer has not complied; and

2 (3) notify the buyer that the contract will be forfeited unless the buyer
3 performs the terms and conditions within the following periods of time:

4 (A) If the buyer has paid less than 50% of the purchase price, 30 days
5 from completed service of notice; or

6 (B) if the buyer has paid 50% or more of the purchase price, 90 days
7 from completed service of notice.

8 (d) A notice of default and intent to forfeit shall be served on the
9 buyer in person, or by leaving a copy at the buyer's usual place of
10 residence with someone of suitable age and discretion who resides at such
11 place of residence, or by certified mail or priority mail, return receipt
12 requested, addressed to the buyer at the buyer's usual place of residence.

13 (e) Nothing in this section shall be construed to preclude the buyer or
14 the seller from pursuing any other remedy at law or equity.

15 ***Sec. 5. K.S.A. 58-3065 is hereby amended to read as follows: 58-***
16 ***3065. (a) Willful violation of any provision of this act or the brokerage***
17 ***relationships in real estate transactions act is a misdemeanor punishable***
18 ***by imprisonment for not more than 12 months or a fine of not less than***
19 ***\$100 or more than \$1,000, or both, for the first offense and***
20 ***imprisonment for not more than 12 months or a fine of not less than***
21 ***\$1,000 or more than \$10,000, or both, for a second or subsequent***
22 ***offense.***

23 ***(b) Nothing in this act or the brokerage relationships in real estate***
24 ***transactions act shall be construed as requiring the commission or the***
25 ***director to report minor violations of the acts for criminal prosecution***
26 ***whenever the commission or the director believes that the public interest***
27 ***will be adequately served by other administrative action.***

28 ***(c) If the commission determines that a person or associated***
29 ***association, corporation, limited liability company, limited liability***
30 ***partnership, partnership, professional corporation or trust has practiced***
31 ***without a valid broker's or salesperson's license issued by the commission,***
32 ***in addition to any other penalties imposed by law, the commission, in***
33 ***accordance with the Kansas administrative procedure act, may issue a***
34 ***cease and desist order against the unlicensed person.***

35 ***Sec. 6. K.S.A. 58-3065 is hereby repealed.***

36 ~~Sec. 7.~~ 7. This act shall take effect and be in force from and after its
37 publication in the statute book.