

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2101

By Committee on Financial Institutions and Pensions

1-19

Proposed Amendment to HB 2101 AAHC
For Senate Committee on Financial Institutions and Insurance
Office of Revisor of Statutes
March 20, 2024

relating to brokers, salespersons and real estate transactions; authorizing the Kansas real estate commission to issue cease and desist orders;

; amending K.S.A. 58-3065 and repealing the existing section.

1 AN ACT concerning real estate transactions; regulating contract for deed
2 transactions; making certain deceptive actions violations of the
3 consumer protection act.
4

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

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

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

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

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

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

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

23 Sec. 2. Any contract for deed or affidavit of equitable interest may be
24 recorded in the office of the county register of deeds where the property is
25 located by any interested person.

26 Sec. 3. (a) A seller shall not execute a contract for deed with a buyer
27 if the seller does not hold title to the property. Except as provided further, a
28 seller shall maintain fee simple title to the property free from any
29 mortgage, lien or other encumbrance for the duration of the contract for
30 deed. This subsection shall not apply to a mortgage, lien or encumbrance
31 placed on the property:

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

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

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

36 (A) The seller disclosed the mortgage, lien or encumbrance to the

1 buyer;~~or~~

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

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

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

10 (b) Any violation of this section is a deceptive act or practice under
11 the provisions of the Kansas consumer protection act and shall be subject
12 to any and all of the enforcement provisions of the Kansas consumer
13 protection act.

14 Sec. 4. (a) A buyer's rights under a contract for deed shall not be
15 forfeited or canceled except as provided in this section, notwithstanding
16 any provision in the contract providing for forfeiture of buyer's rights.
17 Nothing in this section shall be construed to limit the power of the district
18 court to require proceedings in equitable foreclosure.

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

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

25 (1) Reasonably identify the contract and describe the property
26 covered by it;

27 (2) specify the terms and conditions of the contract with which the
28 buyer has not complied; and

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

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

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

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

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

42 Sec. 5. This act shall take effect and be in force from and after its
43 publication in the statute book.

Insert additional language from attachment here.

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

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

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

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

Sec. 7