



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Kent Thompson
 And Members of the House Committee on Local Government

FROM: Joseph Molina
 On Behalf of the Kansas Bar Association

RE: House Bill 2600 – Contract for Deed

DATE: February 19, 2020

Chairman Thompson and Members of the House Committee on Local Government:

The KBA appreciates the opportunity to present this testimony in **OPPOSITION** of HB 2600, all contracts for deed must be filed with the country register of deed by the seller within 10 days after execution of such contract.

HB 2600 is overbroad, and it interferes with the right to contract. HB 2600 will do more harm to the parties it is intended to protect while created a vast array of serious unintended consequences.

Contracts for deed is a long-standing process used to transfer property/land between buyer and seller. This process is attractive to individuals unable to acquire financing or secure a large down payment. Sellers find contract for deeds useful because they are protected by maintaining ownership of the property during the term of the contract. Contracts for deed are flexible by nature which allows either party to negotiated specific terms that best suit their individual situation. The price is just one of the many items that the parties can negotiated in a contract for deed sale. Contracts for deed are a popular product in Kansas, unfortunately HB 2600 will make it less attractive and useful.

As drafted, HB 2600 applies to all real estate sales in Kansas. These would include residential, commercial and agricultural property. While we assume the intent is to deal strictly with residential contracts for deed, the proposed bill will affect all sales of real estate. Thus, making the bill overbroad in application that results in serious ramification to the business and agricultural sector.

HB 2600 will create confusion and added expense for both parties. First off, most closings on real property take place 30-60 days **AFTER** the contract is signed. Since HB 2600 requires an affidavit of interest to be filed with the register of deeds a mere 10 days after signing the possibility of a failed closing confusing the marketable title to the property exist.

Second, HB 2600 mandates that “any contract for deed for which an affidavit of interest has not been filed shall be deemed void and unenforceable”. This strong language creates serious consequences for both parties. A contract that is void has no legal effect. It is an absolute nullity and the law treats the contract as if it had never existed. However, acts taken on behalf of the contact for deed will not be void. For example, if a buyer enters a contract for deed and uses an advance on their credit card to pay off a portion of the

contract that credit card advance is still valid and must be repaid. The buyer is without the property but saddled with its debt.

Second, if the affidavit is not filed or file late there is no provision for redemption. Down payments would be affected, physical possession of the property would be at risk and the chain of title is confused.

Finally, HB 2600 places the burden on the seller of the property. If the proposals intent was to protect buyers, why not have the buyer responsible for filing or make the filing a mutual obligation of both parties.

Kansans use contracts for deed. It is a beneficial product that provides flexibility for those in less than ideal fiscal situations. HB 2600 hampers this process with overbroad, generalized rules that fail to address the root cause of potential abuses. There is a better way to deal with bad actors and the KBA suggest broader protections under the Kansas Consumer Protection Act. The KBA is willing to work with the bill's sponsor on more targeted language that serves the intended population of this bill while at the same time maintain the contract for deed process.

For these reasons the Kansas Bar Association OPPOSES HB 2600 and urges the committee to reject this proposal.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 7,200 members include lawyers, judges, law students, and paralegals. www.ksbar.org