

HOUSE BILL No. 2598

By Committee on Commerce, Labor and Economic Development
Requested by Mark Tomb on behalf of Kansas Association of Realtors
1-25

<p>PROPOSED AMENDMENT HOUSE COMMITTEE ON COMMERCE, LABOR AND ECONOMIC DEVELOPMENT</p> <p>Adding HB 2101</p> <p>Prepared by Office of Revisor of Statutes</p>	<p>2/13/2024</p>
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1 AN ACT concerning real estate; relating to brokers and salespersons and
 2 real estate transactions; authorizing the Kansas real estate commission
 3 to issue cease and desist orders; prohibiting dealing in assignable
 4 contracts for the purchase or sale of or options on real estate or
 5 improvements thereon for certain residential housing; providing that
 6 certain violations thereof are subject to penalties and remedies under
 7 the Kansas consumer protection act; amending K.S.A. 58-3065 and
 8 K.S.A. 2023 Supp. 58-3062 and repealing the existing sections.
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Conforming changes will be made to the Title.

10 *Be it enacted by the Legislature of the State of Kansas:*
 11 Section 1. K.S.A. 2023 Supp. 58-3062 is hereby amended to read as
 12 follows: 58-3062. (a) No licensee, whether acting as an agent, transaction
 13 broker or a principal, shall:
 14 (1) Fail to account for and remit any money which comes into the
 15 licensee's possession and which belongs to others.
 16 (2) Misappropriate moneys required to be deposited in a trust account
 17 pursuant to K.S.A. 58-3061, and amendments thereto, convert such
 18 moneys to the licensee's personal use or commingle the money or other
 19 property of the licensee's principals with the licensee's own money or
 20 property, except that nothing herein shall prohibit a broker from having
 21 funds in an amount not to exceed \$100 in the broker's trust account to pay
 22 expenses for the use and maintenance of such account.
 23 (3) Accept, give or charge any rebate or undisclosed commission.
 24 (4) Pay a referral fee to a person who is properly licensed as a broker
 25 or salesperson in Kansas or another jurisdiction or who holds a corporate
 26 real estate license in another jurisdiction if the licensee knows that the
 27 payment of the referral fee will result in the payment of a rebate by the
 28 Kansas or out-of-state licensee.
 29 (5) Represent or attempt to represent a broker without the broker's
 30 express knowledge and consent.
 31 (6) Guarantee or authorize any person to guarantee future profits that
 32 may result from the resale of real property.
 33 (7) Place a sign on any property offering it for sale or lease without
 34 the written consent of the owner or the owner's authorized agent.
 35 (8) Offer real estate for sale or lease without the knowledge and

Sections 1 through 4 of HB2102, An Act concerning real estate transactions; regulating contract for deed transactions; making certain deceptive actions violations of the consumer protection act, the "Kansas contract for deed act," will be inserted here and the sections will be renumbered. The sections from HB 2101 are all new, so no other statutes will be added to the bill.

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2101

By Committee on Financial Institutions and Pensions

1-19

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

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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.