

Testimony on HB 2598
House Commerce, Labor and Economic Development
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Kansas Real Estate Commission
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Chairperson Tarwater and members of the committee. On behalf of the Kansas Real Estate Commission (KREC), thank you for the opportunity to present proponent testimony on HB 2598.

The mission of KREC is to protect the public interest in the selling, buying, and leasing of real estate. The bill proposed by the Kansas Association of Realtors makes several important changes to law to protect consumers.

Section 1 of the bill prohibits an individual from offering an equitable interest in a contract for the purchase of residential real estate they don't own and makes this activity a violation a deceptive practice under the Kansas consumer protection act. The practice of assigning an equitable interest, also known as "wholesaling", occurs when an individual enters in to a contract to purchase real estate from a seller and immediately attempts to option that interest to a buyer for compensation prior to taking ownership. The wholesaler often has no intention of purchasing (taking title to) the property and will back out of the contract prior to closing if they cannot find another buyer to option the contract to. Often none of this is made known to the seller and the wholesaler will structure the contract so they owe minimal if any earnest money to the seller if they cancel the purchase contract before closing. Nothing in this bill prohibits an individual from selling property they own.

Section 2 of the bill would grant KREC reasonable powers to stop activities requiring a Kansas real estate license performed by an unlicensed individual by granting the authority to issue cease and desist orders. Many other Kansas agencies, boards and commissions have similar authority. The only action KREC can take when a complaint is received and a determination is made that the action taken requires a Kansas license is to send the unlicensed individual a letter saying they may be in violation of Kansas law and if we receive another complaint, we will forward it to the local district attorney's office.

Complaints where KREC has been unable to act against an unlicensed entity include:

- A company entered into agreements with property owners where they offer an upfront loan of \$500-\$1000 if the homeowner used the company's separate brokerage to list the property if they choose to sell in the next 40 years. If the property owner opts to use another brokerage, they would owe the company a 3% fee based on the property's value as determined by the company. The agreements were filed with local register of deeds offices as liens. This is a prohibited act for a Kansas real estate licensee.
- A wholesaler signed a contract to purchase an equitable interest in a property and advertised the property for sale on Facebook without the knowledge of the owner. Misleading advertising and promoting property you don't own without a Kansas real estate license are prohibited acts.
- An individual auctioning property without disclosing a premium fee deducted from the seller's proceeds. Failure to include all terms and conditions in a written agency agreement is a prohibited act for a Kansas real estate licensee.

Thank you for the opportunity to provide comments on HB 2598 and on behalf of KREC we request the members of the Committee support these changes to protect consumers. I will stand for questions at the appropriate time.