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To: Senate Commerce Committee

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Subject: **SB 84** – Neutral Testimony on Proposed Changes to the Definition of “Abandoned Housing” to Enhance the Protection of Private Property Rights and Avoid Unintended Consequences

Chairperson Lynn and members of the Senate Commerce Committee, thank you for the opportunity to provide neutral testimony today on behalf of the Kansas Association of REALTORS® on **SB 84**, which would modify the definition of “abandoned property” under the Kansas Abandoned Housing Act. Through the comments provided in our testimony, we hope to provide some additional legal and public policy context on this issue.

KAR is the state’s largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state’s 700,000 property owners for over 95 years. REALTORS® serve an important role in the state’s economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

As drafted, **SB 84** would add an alternative definition of “abandoned property” under the Kansas Abandoned Housing Act to allow a local government or a qualified non-profit organization to take possession of residential real property as “abandoned property” when the property has been unoccupied continuously by persons legally in possession for the preceding 180 days and has a blighting influence on surrounding properties. Under current law (which was previously amended during the 2010 Legislative Session), the property must be two years delinquent on property taxes and the property must have been unoccupied for the preceding 90 days.

What is the Process for Seizing a Property as “Abandoned Property” under Kansas State Law?

Generally, the provisions of K.S.A. 12-1750 through 12-1756g provide cities with very broad authority to repair or demolish “unsafe or dangerous” structures or to seize an “abandoned property” and turn it over to a qualified organization that intends to rehabilitate the property. Having said that, there are some restrictions contained in the statute over what types of property can be classified as “abandoned property.”

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered “abandoned property” under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

If both conditions have been met, the city may initiate a legal process to seize the property by first sending a notice to the property owner and holding a hearing in front of the city’s governing body to provide the property owner with the opportunity to demonstrate why the property is not “abandoned.” If the city’s governing body finds that the property is “abandoned” for the purposes of the statute, any qualified organization may file a petition with the district court for temporary possession of the property. K.S.A. 12-1752 and 12-1753.

Once the petition is filed, the property owner can request a 90-day compliance period to make repairs to the property to bring it into compliance with applicable building codes and pay all delinquent ad valorem property taxes. If the property owner satisfies these conditions within the compliance period, the district court is required to dismiss the petition and terminate the organization’s action for possession of the property. K.S.A. 12-1756a.

If the property owner fails to submit a plan to repair the property or the district court fails to approve the plan submitted by the property owner, then the district court has the authority to receive a rehabilitation plan for the property from the organization and grant temporary occupancy of the property to the organization. Following the order, the organization will take temporary occupancy of the property and is required to file annual reports with the court providing an update on the rehabilitation and use of the property. K.S.A. 12-1756a and 12-1756b.

At any time after the original order of temporary possession is granted to the organization, the property owner can file a petition with the court to regain the possession of the property and agree to compensate the organization for the funds that have been spent to rehabilitate and maintain the property. If the property owner fails to file an action to regain possession prior to the organization's completion of the rehabilitation of the property, then the organization may file a petition with the district court for a judicial deed to the property. K.S.A. 12-1756c and 12-1756e.

If the court grants this petition, then full legal title to the property will be transferred to the organization. Any person who purchases the property from the organization that has rehabilitated it must occupy the home for at least two years following the date of taking title to the property. K.S.A. 12-1756g.

What is the Current Statutory Definition of "Abandoned Housing?"

Under K.S.A. 12-1750(c), "abandoned property" means "any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days" or "commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties."

Under this statute, "commercial real estate" means "any real estate for which the present use is other than one to four residential units or for agricultural purposes." Although the statute does not provide for an explicit definition of the term "residential real estate" for the purposes of the abandoned housing provisions, the implication through a reading of the "commercial real estate" definition would be that "residential real estate" is any real estate consisting of one to four residential units.

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered "abandoned property" under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

Most importantly, both of these factors must be satisfied before the district court will approve a petition by an organization to take temporary possession of the property. In our opinion, the intent behind the two-factor test is to ensure that legitimate and responsible property owners are not unduly or unreasonably deprived of ownership and possession of their property.

Concerns with Past Suggested Amendments that Significantly Infringed on Private Property Rights

Unfortunately, previous proposals in the Kansas Legislature on this issue (2012 HB 2544) would have amended the statute to eliminate the two-factor test and allow cities to seize a property as "abandoned" if the property had two years of delinquent ad valorem taxes or if the property was continuously unoccupied for 90 days. Under the worst case scenario, a property owner that had regularly maintained the property and was in full compliance with local building codes could have their property seized by the city as "abandoned" simply because they went on a long-term vacation or work assignment for more than 90 days.

Similarly, a property owner that had regularly maintained the property, was in full compliance with local building codes and resided in the property could have the property seized by the city as "abandoned" if they had two years of delinquent ad valorem taxes. However, the Kansas Legislature has stated that the city cannot subject to the property to a tax sale unless the property owner is more than three years delinquent on ad valorem taxes.

The reason the current statute requires that the city meet the two-factor test is to protect property owners from an unreasonable determination that they have permanently “abandoned” their property. Under the common law rules relating to the abandonment of property, a finding of “abandonment” basically means that the property owner has expressed an intent to permanently renounce ownership or possession of the property, either expressly or implicitly through his or her actions.

Under the current language found in the statute, the city bears the burden to prove that the property owner has demonstrated an intent to renounce possession of the property by showing that the property owner has failed to pay property taxes on the property for at least two years and has failed to maintain a residence in the home for at least 90 continuous days. Absent one factor from the two-factor test, we do not believe that the actions of the property owner in doing one of these things demonstrates that he or she has “abandoned” the property.

Comments on the Current Proposal to Change the Definition of “Abandoned Housing” in **SB 84**

Regarding the current language found in **SB 84**, we would first like to commend Representative Frownfelter for taking the time to meet with us and listen to our concerns about the previous versions of this legislation. As a result of these very productive conversations, Representative Frownfelter has agreed to modify the language found in **SB 84** to specify additional criteria that must exist (in addition to simply an unoccupied property) before a property would be classified as “abandoned property” under the act.

Under Section 1(c)(2), the new language would amend the existing statute to add an alternative definition of “abandoned property” to allow a local government or organization to file an action for temporary possession of a residential property when the property has been unoccupied continuously for the preceding 180 days and when the property has a “blighting influence” on surrounding properties. This new alternative definition of “abandoned property” would not modify or replace the existing definition found in the statute.

Most importantly, this alternative definition does not classify a property as “abandoned property” solely on the basis of whether the property is currently unoccupied. The proposed definition is very similar to the common law test and demonstrates that the property owner intends to “abandon” the property implicitly through his or her actions in failing to maintain the property in a manner that does not lead to a “blighting influence.”

Having said that, we do have serious concerns with the definition of “blighting influence” currently found in K.S.A. 12-1750(d) and would suggest some modifications in the attached balloon amendment to ensure that property owners are only subject to this statute when the property has a direct detrimental effect on the health, safety and welfare of the occupants of surrounding properties. In contrast, some of the language found in this definition of “blighting influence” expands the definition of this term to include property conditions that do not, in our opinion, sufficiently relate to the health, safety and welfare of the occupants of surrounding properties.

First, the current definition of “blighting influence” in line 25 on page one of the legislation would classify a property condition as a “blighting influence” if it was dangerous or injurious to the “morals” of the occupants of surrounding properties. In our opinion, the judgment of whether a property condition is harmful to the “morals” of surrounding property occupants is not a proper consideration in determining whether the property condition truly has a “blighting influence” on surrounding properties.

We would propose that you strike the term “morals” in line 25 and instead adopt the new language proposed in this legislation to add the term “welfare” to this section of the statute. The term “welfare” more aptly describes a legitimate interest of the occupants of surrounding properties that should be protected from any property conditions that might be harmful or dangerous in the subject property.

Second, we would like to ask the committee to correct a previous drafting error in K.S.A. 12-1750(d) on line 30 of the legislation. The current language includes the phrase “light or sanitary facilities.” However, in looking through other statutory sections in Kansas and other states where the term “blighting influence” is defined, this language should read “lack of ventilation or sanitary facilities.” In our opinion, the corrected language is properly included in the definition of “blighting influence” as it pertains to health, safety and welfare.

Third, we are very concerned about the proposal in line 26 to add the phrase “including, but not limited to, economic welfare” to this section of the definition of “blighting influence.” In our opinion, the statute is intended to protect the safety, health and welfare of the occupants of surrounding properties, but this protection should not be unreasonably extended to include conditions that might affect the “economic” interests of the occupants of surrounding properties, which are more subjective and less related to health, safety and welfare.

Fourth, we also disagree with the existing language found in the definition of “blighting influence” that the property condition of “uncleanliness” would constitute a condition that would have a “blighting influence” on surrounding properties. Although in general uncleanliness is a property condition that is not highly desirable, we are concerned that the inclusion of this language in this definition is overbroad and could lead to situations where the statute is enforced against undeserving properties.

Fifth, we would disagree that “walls, sidings or exteriors of a quality and appearance not commensurate with the character of properties in the neighborhood” in lines 33 through 35 is a property condition that has a negative effect on surrounding properties. Instead, we believe this is more likely an aesthetic and subjective value that, while it might lead to some properties not being as visually attractive, does not constitute blight.

Finally, we would ask the committee to delete the words “economic development” from the legislation in lines 19 through 20 and line 35 on page two of the legislation. As drafted, the legislation would allow organizations to file an action to seize the property as “abandoned property” and rehabilitate the property for economic development purposes. In our opinion, this could lead to abuses as this could encourage local governments to file actions to seize residential real property and turn the property over to for-profit developers for commercial uses.

During the 2013 Legislative Session, the House Local Government Committee adopted an identical balloon amendment to 2013 HB 2075 after we expressed concerns with the very broad definition of “blighting influence” found in the statute. If the balloon amendment is adopted by this committee, we will have no major objections to the amended bill and the revised definition of “blighting influence” will be narrowly tailored to address only the property conditions that affect the health, safety and welfare of the occupants of surrounding properties.

Conclusion

In closing, we would respectfully request that the members of the Senate Commerce Committee consider the adoption of our proposed balloon amendment on the back of this testimony that would tighten the definition of “abandoned housing” found in K.S.A. 12-1750(d) and eliminate the ability of municipalities to seize property under this act and transfer control of the property to another entity for economic development purposes. Thank you for the opportunity to provide comments on this issue.

SENATE BILL No. 84

By Committee on Commerce

1-27

AN ACT concerning cities; relating to the qualifications and rehabilitation of abandoned property; amending K.S.A. 2014 Supp. 12-1750 and 12-1756a and repealing the existing sections.

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

Section 1. K.S.A. 2014 Supp. 12-1750 is hereby amended to read as follows: 12-1750. As used in this act:

(a) "Structure" means any building, wall or other structure.

(b) "Enforcing officer" means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.

(c) "Abandoned property" means:

(1) Any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days; or

(2) *any residential real estate which has been unoccupied continuously by persons legally in possession for the preceding 180 days and which has a blighting influence on surrounding properties; or*

~~(2)~~ (3) commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties. "Commercial real estate" means any real estate for which the present *approved* use is other than one to four residential units or for agricultural purposes.

(d) "Blighting influence" means conditions in such structure which are dangerous or injurious to the health, safety ~~or, morals or welfare, including, but not limited to, economic welfare,~~ of the occupants of such buildings or other residents of the municipality or which have an adverse impact on properties in the area. Such conditions may include, but are not limited to, the following: Defects increasing the hazards of fire, accident, or other calamities; air pollution; ~~light~~ or sanitary facilities; dilapidation; disrepair; structural defects; ~~uncleanliness~~; dead and dying trees, limbs or other unsightly natural growth ~~or unsightly appearances~~ that constitute a blight to adjoining property, the neighborhood or the city; ~~walls, sidings or exteriors of a quality and appearance not commensurate with the character of the properties in the neighborhood;~~ unsightly stored or parked material, equipment, supplies, machinery, trucks or automobiles or parts thereof;

Kansas Association of REALTORS® Proposed Balloon Amendment

- (1) Tighten definition of "blighting influence"
- (2) Eliminate the ability of municipalities to seize property and transfer control for economic development purposes

lack of ventilation

1 vermin infestation; ~~inadequate drainage~~; or any violation of health, fire,
2 building or zoning regulations.

3 (e) "Organization" means any nonprofit corporation organized under
4 the laws of this state and which has among its purposes the improvement
5 of housing.

6 (f) "Rehabilitation" means the process of improving the property into
7 compliance with applicable fire, housing and building codes.

8 (g) "Parties in interest" means any owner or owners of record,
9 judgment creditor, tax purchaser or other party having any legal or
10 equitable title or interest in the property.

11 (h) "Last known address" includes the address where the property is
12 located, or the address as listed in the tax records.

13 Sec. 2. K.S.A. 2014 Supp. 12-1756a is hereby amended to read as
14 follows: 12-1756a. (a) *(1)* An organization may file a petition with the
15 district court for an order for temporary possession of property if:

16 ~~(1) (A)~~ The property meets the definition of abandoned as set forth in
17 K.S.A. 12-1750, and amendments thereto;

18 ~~(2) (B)~~ the organization intends to rehabilitate the property and use
19 the property as housing *or for community development* ~~or economic~~
20 ~~development purposes~~; and

21 ~~(3) (C)~~ the organization has sent notice to the enforcing officer and
22 the parties in interest of the property, by certified or registered mail,
23 mailed to their last known address and posted on the property at least 20
24 days but not more than 60 days before the date the petition is filed, of the
25 organization's intent to file a petition for possession under K.S.A. 12-1750
26 through 12-1756e, and amendments thereto.

27 *(2) The governing body of any city may file a petition with the district*
28 *court for an order for temporary possession of property if:*

29 *(A) The property meets the definition of abandoned as set forth in*
30 *K.S.A. 12-1750, and amendments thereto;*

31 *(B) the governing body of the city filing a petition under this section*
32 *has designated an organization to rehabilitate the property;*

33 *(C) the organization designated under subsection (a)(2)(B) intends to*
34 *rehabilitate the property and use the property as housing or for community*
35 *development* ~~or economic development~~ *purposes; and*

36 *(D) the governing body of the city filing the petition under this*
37 *section has sent notice to the enforcing officer and the parties in interest of*
38 *the property, by certified or registered mail, mailed to their last known*
39 *address and posted on the property at least 20 days but not more than 60*
40 *days before the date the petition is filed, of the governing body's intent to*
41 *file a petition for possession under K.S.A. 12-1750 through 12-1756e, and*
42 *amendments thereto.*

43 (b) The proceeding shall be commenced by filing a verified petition