



Luke Bell
General Counsel/VP of Governmental Affairs
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: Senate Commerce Committee

Date: February 2, 2016

Subject: **SB 338** – Supporting Proposed Changes to the Definition of “Abandoned Housing” to Rehabilitate Abandoned Properties and Revitalize Residential Neighborhoods in Distressed Areas

Chairperson Lynn and members of the Senate Commerce Committee, thank you for the opportunity to provide written testimony today on behalf of the Kansas Association of REALTORS® in support of **SB 338**, 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 8,500 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 338** 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 365 days and has a blighting influence on surrounding properties. Under current law (which was previously amended during the 2010 Legislative Session), the property must have two years of delinquent 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 the property to a tax sale unless the property owner has more than three years of delinquent 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 338**

Regarding the current language found in **SB 338**, we would first like to commend Representative Frownfelter and Whitney Damron from the City of Topeka 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 338** to specify additional criteria that must exist (in addition to simply an unoccupied property) before a property would be classified as “abandoned property.”

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 365 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.”

Prior to the 2015 Legislative Session, we had some serious concerns with the definition of “blighting influence” found in K.S.A. 12-1750(d) and we suggested some modifications to ensure that property owners would only be 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 previous definition of “blighting influence” expanded 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.

During the debate on **2015 SB 38**, this committee adopted our balloon amendment and significantly tightened the meaning of the term “blighting influence.” As long as this committee retains this language and does not expand the definition of the term “blighting influence” in **SB 338**, we support the underlying intent behind this legislation, which is to rehabilitate abandoned residential properties and revitalize residential neighborhoods.

Conclusion

In closing, we would respectfully request that the members of the Senate Commerce Committee support **SB 338**, which will revitalize residential neighborhoods in distressed areas while protecting the property rights of private property owners. As long as no changes are made to broaden the definition of “blighting influence” found in the legislation, Kansas REALTORS® are in full support of the legislation. Thank you for the opportunity to provide written comments on this very important issue.