

JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURES

Senator Richard Rock, Chairman  
March 18, 1992

**HB 2838** - UCC, consumer leases, delinquency charges.

**PROPOSERS**

Mel Battin, Assistant Commissioner of Consumer Credit

**OPPOSERS**

none appeared

SUBCOMMITTEE RECOMMENDATIONS: to suggest HB 2838 and HB 2746 be withdrawn from the Senate Judiciary Committee and reassigned to the Senate Committee on Financial Institutions and Insurance as a more appropriate Committee to consider the topics.

**HB 2940** - criminal and civil penalties for equity skimming.

**PROPOSERS**

Representative Thomas Bishop (ATTACHMENT 1)

Representative Bob Vancrum (ATTACHMENT 2)

Gene Yockers, Kansas Real Estate Commission (ATTACHMENT 3)

Gerald Goodell, Kansas-Nebraska League of Savings Institutions (ATTACHMENT 4)

Karen France, Kansas Association of Realtors (ATTACHMENT 5)

**OPPOSERS**

none appeared

SUBCOMMITTEE RECOMMENDATIONS: no action for a recommendation be taken by the Subcommittee, but submit the question to the full Committee without recommendation.

**HB 2098** - shortening redemption period under certain situations.

**PROPOSERS**

Randy Hearrell, Kansas Judicial Council (ATTACHMENT 6)

Frank Ojile, City of Wichita City Council (ATTACHMENT 7)

Gerald Goodell, Kansas-Nebraska League of Savings Institutions (ATTACHMENT 8)

**OPPOSERS**

none appeared

SUBCOMMITTEE RECOMMENDATIONS: report to the full Committee without recommendation.

**HB 2855** - contempt in child support enforcement proceedings, court may restrict driving privileges.

**PROPOSERS**

Kay Farley, Office of Judicial Administration Child Support Coordinator (ATTACHMENT 9)

Don Boggs, Topeka

**OPPOSERS**

Ken Clark, Kansas Department of Revenue, Division of Vehicles (ATTACHMENT 10)

SUBCOMMITTEE RECOMMENDATIONS: to recommend the bill be reported adversely.

THOMAS A. BISHOP  
 "TOM"  
 REPRESENTATIVE, 91ST DISTRICT  
 SEDGWICK COUNTY  
 1500 W 32ND N.  
 WICHITA, KANSAS 67204



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 MEMBER: ECONOMIC DEVELOPMENT  
 GOVERNMENTAL ORGANIZATION  
 PUBLIC HEALTH AND WELFARE  
 ADVISORY COUNCIL ON AGING

TO: Senator Wint Winter  
 Members of the Senate Judiciary Committee

FROM: Rep. Tom Bishop

RE: Testimony in support of HB 2940

DATE: March 18, 1992

It is my understanding that the committee has an understanding of the practice of equity skimming and the effect such a practice has on homeowners, tenants and mortgage holders. Therefore, I will not describe these effects in detail, rather briefly outline the problem HB 2940 addresses and how this bill was developed.

A. Problems created by practice of equity skimming.

1. Misrepresentation to property owners who still remain liable for property debt.
2. Tenants are displaced with little or no notice after often being told they could purchase property.
3. Mortgage holders lose equity, suffer property damage and are forced to evict tenants from their foreclosed property.

B. What is the source of HB 2940?

It is lifted directly from the federal law prohibiting the practicing of equity skimming for properties for which the federal government is mortgage holder, ie, properties with VA, FmHA, FHA, or HUD financing.

The federal law provides for fines of up to \$250,000 and prison terms of up to five years. Obviously they take this practice quite seriously.

C. What does HB 2940 do?

1. It defines the practice of equity skimming.
2. It creates civil penalties that may be imposed by the court.

*Civil Procedure Subcommittee*

*March 18, 1992*

*Attachment 1*

3. It protects the homeowners redemption rights and does not change current foreclosure or redemption procedures.

D. Why is law needed?

The practice of equity skimming is widespread and creates personal and economic hardships for homeowners, tenants, and mortgage holders. Federal law recognizes the problem. Kansas law should as well.



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: APPROPRIATIONS  
JUDICIARY  
TAXATION

BOB VANCNUM  
REPRESENTATIVE, TWENTY-NINTH DISTRICT  
9004 W. 104TH STREET  
OVERLAND PARK, KANSAS 66212  
(913) 341-2609  
STATE CAPITOL, ROOM 156-E  
TOPEKA, KANSAS 66612  
(913) 296-7698

March 18, 1992

## TESTIMONY ON HB 2940

BY

REPRESENTATIVE ROBERT J. VANCNUM

Chairman Winter and Honorable Members of the Committee:

Thank you for agreeing to hear testimony on this bill relating to "rent skimming". This is just my latest effort to restrict the practice of equiteering or rent skimming.

The members of this committee will remember that equiteers are people who acquire equities of redemption from those unfortunates whose homes have been foreclosed. The equity of redemption is what allows a debtor to remain in possession of his home for six months or in some cases one year after it has been foreclosed before he can be evicted. The historical purpose of having such a redemption period was to allow the debtor some time to try to come up with the money to purchase the property back from the person who purchased the property at the foreclosure sale (usually the holder of the first mortgage).

The equiteer typically promises to help the debtor regain possession of his home by helping him find financing, etc. In its worst permutation, the equiteer persuades the debtor to leave and allow him to rent the home out to third parties. He then moves in another desperate family that are willing to pay him short term, sometimes very high rents, all the time continuing to promise the debtor that he will help him or her repurchase the property at the end of the term. However, when the period of redemption runs out, the equiteer will either redeem the property from the mortgage holder if he thinks it's worth more than the mortgage holder bid or will simply walk away from the property and let the mortgage holder clean up the mess. In the process, the mortgage holder has received nothing for the occupancy of

*Civil Procedure Subcommittee  
March 18, 1992  
Attachment 2 1/2*

his property during the redemption period, the debtor receives nothing for having given away his right to live in the property for some time (in fact he may be faced with a larger deficiency because the equiteer or his tenant has removed value from the property) and only the equiteer has gained.

The federal government for several years has prohibited rent skimming on HUD and VA financed property. That federal statute was the basis for HB 2940 of this year. Several states, including Colorado and California have also recognized that "rent skimming" is a crime that should be prohibited. There is no justifiable reason why an equiteer should be able to rent out the property to third parties during the period of redemption and pocket the rent. If the equiteer is truly trying to help the debtor get back in possession, all rents should be paid to the holder of the mortgage in reduction of the mortgage debts and that's what is permitted by this bill.

The provisions of HB 2940 merely expand what the feds call a crime carrying a five year or \$250,000 penalty to a state offense in all conventional mortgage cases, carrying a misdemeanor of \$50,000 civil penalty. It may need some further amendments, however. First, the reference in line 20 to payments due under the mortgage or deed of trust must be changed to applying rents in satisfaction of the loan in default since the note and mortgage may be "merged" at this point. Second, you may want to pick up the provisions of HB 2848 allowing a private right of action to collect the civil penalty. You may be sure there are powerful people who will tell you this bill is anti-consumer --they are the equiters who have been preying on consumers for years. Let's let them know we agree with the feds - this practice must stop in Kansas!

Judiciary Subcommittee on Civil Procedure  
March 18, 1992  
House Bill 2940

Mr. Chairman and members of the committee:

My name is Gene Yockers, and I am the Director of the Kansas Real Estate Commission. For several years now, we have had concerns about the practice of equiteering and feel that HB-2940 is a first step toward stopping such practice.

We know that the practice is widespread in the state of Kansas. We also know that equiteering is taking place in Sedgwick, Butler, Barton, Seward, Finney, Johnson, Miami, Franklin, Anderson, Wyandotte, Douglas, Leavenworth, Shawnee, Geary, Jefferson, Saline and Riley Counties.

We have been working with the Inspector General's Office of HUD, and I have a letter from the Inspector General's Office encouraging the passage of legislation which, in this case, would be HB-2940.

I encourage the passage of HB-2940.

*Civil Procedure Subcommittee*  
*March 18, 1992*  
*Attachment 3*      *1/19*

March 3, 1992

Wendy Fuller  
1331 E 152nd Terr  
Olathe, KS 660 -  
(913) 780-6433

Dear Mr. Yockers:

Corresponds with H.B. 2940

It was encouraging to speak with you about our mutual interest in Senate Bill #718. I'm sending you information that I've been collecting on my personal case with Butch Lawrence. I hope that you will find it helpful.

I would also like to express my desire to testify as a proponent in the hearing of Senate Bill #718.

In closing, if you could keep me informed of the date(s) of the hearing, I would truly appreciate it.

Thank you.

Wendy Fuller  
913/780-6433

RECEIVED

MAR 05 1992

KANSAS REAL ESTATE COMM.

3-2/19



U.S. Department of Housing and Urban Development  
OFFICE OF INSPECTOR GENERAL  
Kansas City Regional Office, Region VII  
Gateway Tower II  
400 State Avenue  
Kansas City, Kansas 66101-2406

February 27, 1992

Mr. Gene Yockers, Director  
Kansas Real Estate Commission  
900 Jackson, Room 501  
Topeka, Kansas 66612-1220

RECEIVED

MAR 02 1992

KANSAS REAL ESTATE COMM.

Dear Mr. Yockers:

Subject: Butch Lawrence  
Our File: GM 00-49

Enclosed please find a copy of the January 12, 1992 letter by Wendy Fuller which we discussed by telephone this date.

We sincerely hope that the bills presently being considered by the Kansas Senate and House are enacted so that people such as Butch Lawrence will not be able to continue doing business as usual.

Please give me a call at (913) 236-2866 if we can be of any assistance or provide any helpful information.

Sincerely,

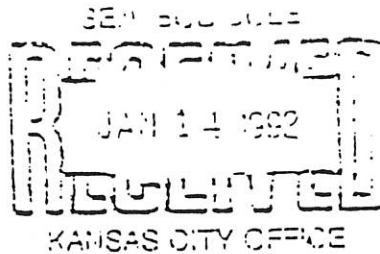
A. L. Bahr, Regional Inspector  
General for Investigation

Enclosure

3-3/19  
/



January 12, 1992



1331 E. ... TERR  
Olathe, KS 66062  
(913) 780-6433

To Whom It May Concern:

This letter is being written in an effort to bring a disturbing practice to the attention of responsible leaders. It will describe a situation which occurred beginning December 12, 1991.

In response to an ad placed by Butch Lawrence, my family of five began to pursue renting a house in Olathe, Kansas. Butch Lawrence was the landlord. His secretary did most of the phone work. Mr. Lawrence only met people at his homes after they had already seen it (as he leaves them open) and had made the final decision to rent from him on a month-to-month basis. At the beginning of the week of December 9-13, we began trying to reach Mr. Lawrence to ask some questions about the property at 1437 Apache in Olathe. Finally, on Wednesday, the 11th, my husband, John Fuller, was able to reach him.

The main reason my husband chose to talk to Butch prior to meeting him to rent the property is that the property needed some attention; and my husband wanted to know Butch's intention. Butch informed my husband that the maintenance of the property would be solely the responsibility of the tenant and that that was the reason for the below-market rental rate. Although the tenants are responsible for maintenance, Butch insisted that repair costs would be deductible from the monthly rent.

Based on this reassuring conversation, my husband and Butch decided to meet at the house on Thursday, December 12 to complete the rental agreement and pay the \$1,033.00 deposit (which included a \$35.00 application fee.) I was not able to meet them due to a prior commitment. My husband and Butch went over the first page of the attached contract in great length. Then Butch asked John to sign the document. John told him that there were still two pages left to read. To this, Butch assured John that they had discussed the important information already. Therefore, John signed the agreement. Butch asked him to sign my name as well. John refused and told Butch that I would have to read the entire contract before I would sign. John paid the deposit, \$900.00 in cash and \$133.00 by check, and they departed.

A few hours after their meeting, I perused the contract and discovered on page three an important item that Butch had not verbalized to my husband. Item 16 says: "NOTICE: Resident(s) understand(s) the property may have been purchased while in foreclosure and the term of tenancy is on a monthly basis." I refused to sign the contract based on this new twist on things. We have a family to be concerned about, and this new information was critical to our well-being.

John called Butch as soon as I found this and told him that he needed clarification of this article. Butch admitted that he assumes houses with the full intent of never paying

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for them . He knows full well that the home will foreclose and that he will pocket money for possibly 18 months before the residents will be kicked out of their family home. Based on this admission by Butch, John told him that we did not wish to rent this property. We refused to abet this man in his scheme against the mortgage holder.

At this point, we asked for our money. Butch refused because of paragraph 4 on the first page. My husband was very insistent that he get all of our money because we had been misled by Butch. Mr. Lawrence said that he would give us \$499.00 only after he re-rented the place. John told him that we would not make any deals and that he should bring our money to his work the following morning of December 13.

Friday came and went, and Butch still had not given us the deposit. Saturday morning, December 14, I called Butch. I told him that I was calling to offer a better perspective of what was happening. I explained that our children's Christmas would not be the same now. I told him how John works very hard for his pay. He is not an office potato; he labors for his money in a wood mill 80 hours a week. Then I asked Butch, if in the spirit of the holidays he would reconsider and give us our money. To this he replied, "No!" And today, we do not have it.

We know that if we had paid Butch all of the \$1,033.00 by check that we'd have all of our deposit back already since we would have stopped payment on it just as we did on the \$133.00. If you could help us get our remaining \$900.00 back, we would appreciate it. Butch Lawrence's business address is:

3500 W 75 St, #300  
Prairie Village, KS 66208.

His business phone is 381-5222.

I have spent countless hours trying to reach the offices of those to whom I write this letter. Most of you seem sad about this situation, but so far no one has agreed that this behavior on the part of Butch Lawrence is illegal. I don't claim to know that it is. I know that we've been cheated, and that others are sure to be as well. This practice is wrong--assuming a property and never meaning to be financially responsible for it. We all lose in this!

I did a little research on this property. I know that on December 12, the same day John signed the contract, Butch Lawrence's warranty deed was recorded. I also was told that the mortgage was last assigned to GNMA. GNMA will ultimately suffer the most from this fiasco. For those who don't recognize these initials, they mean Government National Mortgage Association--a government entity. When GNMA suffers financially, we all suffer. The taxpayer will pay for this scandalous practice.

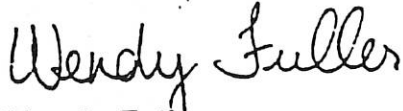
Butch and I had a few moments of discussion on the rights and wrongs of his practice on the Saturday morning that I phoned him. Needless to say, we disagree. In fact, Butch informs me that there are numerous people who would disagree with me. One nationwide company he mentioned is Caretakers of America.

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I don't know what can be done about this immediately, but I strongly believe legislation must be passed to stop this practice.

Thank you for your attention to this matter.

Sincerely,



Wendy Fuller

cc: Robert T. Stephan, Attorney General  
Nancy L. Kassebaum, Senator  
Robert Dole, Senator  
Joan Finney, Governor  
Jack Kemp, Director of Department of Housing and Urban Development  
Jacob F. Ruf, Mayor of Olathe, Kansas  
Johnson County District Attorney  
Stan Cramer, Call for Action  
Better Business Bureau  
Butch Lawrence

3-6/19

RENTAL CONTRACT AND TRUST INSTRUMENT  
Standard Form 1300 Class A Revised October 1991

In consideration of this agreement by and between Butch Lawrence, Trustee for the Property Management Trust and not personally,

JOHN & Wendy Ficker

Resident(s), the Trustee hereby rent(s) to the Resident(s) on a monthly basis the property commonly known as:

1437 APRACIE  
(Street)

Olathe  
(City)

KS  
(State)

66061  
(Zip)

The Trustee of the property is Butch Lawrence, Trustee for the Trust and not personally, known as 1437 APRACIE Trust, with a mailing address of 3500 W 75th St, Ste 300, Prairie Village, KS 66208 whose phone number is 413-381-5222. The Trustee may be contacted from 10 to 11:30 a.m. & 1 to 4 p.m. weekdays, except holidays, or by mail.

For and in consideration of the mutual obligations of the parties hereto, the Trustee hereby agrees to allow Resident(s) to occupy and the Resident(s) agree(s) to rent from Trustee, upon the following terms and conditions hereto and hereinafter set forth:

1. RENT: TO PAY RENT IN THE AMOUNT OF \$ 599.00 PER MONTH IN ADVANCE BY CASHIER'S CHECK ONLY. NO PERSONAL CHECKS OR MONEY ORDERS WILL BE ACCEPTED. The next rent shall be due on or before JANUARY 16, 1992 and thereafter on the same date each month. RENT IS DUE PRIOR TO 5 PM, time being of the essence. If Resident(s) is/are late any two (2) months, rent will automatically increase \$50.00 per month without affecting any other terms of this agreement. Any money order, personal check or Cashier's Check tendered by Resident(s) to Trustee after the rent due date will be returned to Resident(s), the rent remaining unpaid for that month until a CASHIER'S CHECK for that month's rent, plus the forfeited discount and any other applicable additional charges is tendered to Trustee.

2. ADDITIONAL RENT, RENTAL CONTRACT TERMINATION, AND LEGAL ACTION: Resident(s) affirm(s) that the consideration for the rental rate specified above and for the discount specified below, Resident(s) agree(s) to pay rent on time, when rent is due.

If the Resident(s) has/have not paid rent by 5 PM on the rent due date, then Trustee will cause a statutory 3 DAY NOTICE demanding that rent, including any other applicable additional charges to be paid within 3 DAYS by 5 PM. If Resident(s) fail(s) to pay all sums due and owing Trustee by the 3rd day, then pursuant to state law Trustee will terminate Resident(s) Rental Contract and a Forcible Detainer lawsuit will be filed in District Court by Trustee against Resident(s). Once Trustee has terminated the Rental Contract, pursuant to state law, Resident(s) at Trustee's option, may have the rental contract reinstated by paying all unpaid rent, forfeited discount, a rental contract reinstatement fee, legal fees, and costs incurred by Trustee as a result of Resident(s) nonpayment.

3. DISCOUNT, REPAIRS AND MAINTENANCE: AS AN INCENTIVE TO PAY RENT ON OR BEFORE THE DEADLINE AND FOR ASSUMING RESPONSIBILITY FOR ALL MAINTENANCE AND REPAIRS OF THE PROPERTY AS SPECIFIED BELOW A DISCOUNT IS OFFERED TO THE RESIDENT(S) IN THE AMOUNT OF \$ 100.00 each month. Total monthly cost(s) of repair shall be limited to the amount of the discount. Any cost(s) of LABOR IS NOT TO BE DEDUCTED. Any maintenance and/or repair(s) that you expect the Trustee to pay, must be approved by the Trustee in writing, prior to repair(s) being done so the proper Contractor Agreement and Lien Release can be approved by Trustee. Resident(s) further agree(s) that oral repair and maintenance requests will not be effective, nor constitute proper notice to Trustee. Any repair(s) likely to exceed \$75.00 in costs require the Resident(s) to obtain at least two (2) estimates before writing the Trustee for approval. Once the repair(s) has/have been approved, Resident(s) shall pay for said repair(s) and obtain receipt(s). The amount of the repair(s) shall be deducted from the next month's rent. The receipt(s) shall be submitted with the balance of rent to Trustee on the rent due date. SUCH DISCOUNT WILL BE FORFEITED IF REPAIR(S) AREN'T MADE AS NEEDED AND/OR RENT AREN'T PAID PRIOR TO THE DEADLINE OF 5 PM ON THE RENT DUE DATE!!!

The Resident(s) is/are advised the Trustee is frequently out of the area and the Trustee will be UNABLE TO OFFER THE RATIO OF SUPPORT NORMALLY PROVIDED TO RESIDENT(S) BY OTHER OWNERS/MANAGERS. This is one of the reasons for the rent discount which is given to compensate the Resident(s) for taking the initiative required as stated above, without involving the Trustee. Anytime Trustee is contacted, will result in the loss of the discount for that month. Resident(s) may contact Trustee in writing by mail.

4. NOTICE OF INTENT TO VACATE: A thirty (30) day notice is required by either party to terminate tenancy. If Resident(s) withdraw(s) or cancel(s) the Application for Occupancy or Rental Contract for any reason other than a proper thirty (30) day notice, a penalty equal to one month's rent will be retained by Trustee. If Resident(s) fail(s) to give Trustee a proper thirty (30) day notice as required by State law one month's rent will be retained by Trustee. If Resident(s) fail(s) to return the keys immediately after vacating the property, the Resident(s) hereby agree(s) to a \$100.00 late/penalty charge.

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Trustee shall be entitled to any accrued rent, costs, or other agreed sums; the cost of all repairs, replacement, cleaning, and maintenance caused by Resident(s), Resident(s) family, pets, additional occupants, or guests; or any other damages which Trustee has suffered as a result of Resident(s) non-compliance with this contract.

If Resident(s) wish(es) to vacate the property, Resident(s) must give Trustee written notice of intent to vacate not less than thirty (30) days prior to Resident(s) intended move-out date and prior to the next rent due date. If the written vacate notice has been properly given, Resident(s) is/are only responsible for payment of rent through the end of this thirty (30) day period. If Resident(s) leave(s) or abandon(s) the property without giving Trustee the required written thirty (30) day notice, Resident(s) shall be responsible for ads and rent for this thirty (30) day period, or until the property has been re-rented and re-occupied, whichever comes first. If Resident(s) leave(s) without giving Trustee the required written thirty (30) day notice, then the thirty (30) days will run from the point in time when Trustee discovers Resident(s) has/have left and abandoned the property.

5. **RESIDENT(S) OBLIGATIONS AND RESPONSIBILITIES:** Resident(s) agree(s) to the following obligations, but not limited to: Compliance with all building, housing, occupational, zoning, health codes or laws; maintenance of the dwelling in a clean and sanitary manner; removal of garbage and trash before it accumulates.

Resident(s) accept(s) responsibility for all plumbing repair(s) including faucets, leaks, stopped up pipes, frozen pipes, water damage, bathroom caulking; for all glass, screen and storm door repair(s). Resident(s) agree(s) to conduct himself/herself, family, friends, guests, visitors and pets in a manner which won't disturb others or give rise to their complaints.

Resident(s) agree(s), upon reasonable advance notice for routine visits, to allow the Trustee access to the property for the purpose(s) of inspecting, repairing, showing the property for sale or for rent; and to specifically authorize un-announced access anytime rent is late or the contract terminated, for purposes of serving legal notices, pest control, or repair estimates.

Resident(s) agree(s) to pay rent promptly, plus any corrected discounts, extra occupant charges, cleaning or damage charges, rental contract reinstatement fees, legal fees, and costs incurred by Trustee as a result of nonpayment, immediately upon request.

Resident(s) is/are responsible for payment of all utilities, included but not limited to, electric, water, sewer, gas, telephone charges, cable, garbage, home association dues, if any, incurred during their tenancy and shall make arrangements with all utility companies for such services to be connected and made available, or available upon occupancy of the property. Resident(s) hereby specifically authorize(s) the Trustee to charge all unpaid amounts to them.

6. **TRUSTEE LIABILITY:** No rights of storage are given by this agreement. The Trustee shall not be liable for any loss or damage of Resident(s) person(s) or personal property in or about the property, and shall indemnify and hold harmless Trustee from any such potential losses. Resident(s) shall be responsible for renters insurance.

Resident(s) agree(s) to accept said property and all of the furnishings and appliances therein as being in good and satisfactory condition unless a written statement of any objection(s) is/are delivered to the Trustee within three (3) days after the Resident(s) take(s) possession. Resident(s) agree(s) that failure to file such statement shall be proof that there are no defects of note to the property and Resident(s) hereby waive(s) all rights to rent abatement. Any appliance(s) in the property are loaned, not rented/leased to Resident(s). Maintenance of any such appliance(s) is the responsibility of the Resident(s) who shall keep them in good repair.

7. **ASSIGNMENT AND SUBLetting:** Resident(s) may not assign this contract, or sublet this property.

8. **COMPLIANCE WITH LAW:** If any violation of this Rental Contract occurs, including but not limited to, non-payment of rent and/or rents not paid prior to the deadline of 5 PM. Resident(s) agree(s) to reimburse Trustee the actual or reasonable cost(s) of collection, in or out of the court system. Resident(s) agree(s) to reimburse Trustee these costs immediately upon demand without protest. Resident(s) agree(s) to be the contact person for the property. The property must only be used as a private residence to live in and for no other purpose. Resident(s) may not use the property for any unlawful activity.

Resident(s) agree(s) that the improvement(s) and the property on which the improvement(s) is/are located will not be used by the Resident(s) or others to manufacture, sell, give away, barter, deliver, exchange, or distribute a controlled substance in violation of any local, state, or federal law(s).

9. **USE OF PROPERTY:** Resident(s) shall not use the property for the purpose of conducting any business, profession, or trade.

10. **TERMINATION OF CONTRACT FOR ILLEGAL DRUGS:** If controlled substance manufactured, distributed, or acquired in violation of State or local laws is seized in the improvement(s) or on the property on which the improvement(s) is/are

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incident to a lawful search or arrest, and if Resident(s) shall have no defense under State Statutes, Resident(s) shall have no further right(s) to possession of the property, and the Trustee may bring an action for possession against the Resident(s).

11. ACCEPTANCE OF PROPERTY: Resident(s) agree(s) to accept the property in its current state of cleanliness, to return it in "clean" condition, and to pay a special cleaning charge of \$100.00 upon vacating the property.

12. ENFORCEABILITY. In the event any portion of this Rental Contract shall be found to be unenforceable or unlawful under state law, the remaining provisions, or portions thereof, shall continue to be valid with full force and effect and shall be subject to enforcement in the courts without exception.

13. READ THIS CAREFULLY!!! This is not an average Rental Contract. It requires a higher level of Resident(s) responsibility than is required in other Rental Contracts. A discount from market rents is given to Resident(s) to compensate Resident(s) for extra effort Resident(s) will be expending to meet the extra obligations this Rental Contract imposes upon Resident(s).

14. RESIDENT(S) UNDERSTAND(S) AND AGREE(S): By signing this Rental Contract Resident(s) warrant(s) that Resident(s) understand(s) and agree(s) to all the terms and conditions under which the Trustee has agreed to rent the property to Resident(s) and Resident(s) are prepared to perform the normal duties of the Trustee himself, or to have them done by someone else at Resident(s) own expense.

The individual(s) signing this Rental Contract as Resident(s) warrants that all questions have been answered, that all provisions are thoroughly understood as to the obligations of all parties, that Resident(s) agree(s) to fulfill Resident(s) obligations in every respect or suffer the full financial and legal consequences of their action required hereunder. Resident(s) has/have the legal right to bind all others and to sign for them in committing Resident(s) to this Rental Contract.

15. ADDITIONAL OCCUPANCY CHARGE: Occupancy is for 2 adult(s) and 3 child/children. A charge of \$100.00 shall be paid for each additional occupant in excess of number stated herein.

~~16. NOTICE: Resident(s) understand(s) the property may have been purchased while in foreclosure and the term of tenancy is on a monthly basis.~~

17. APPROVAL OF TRUSTEE: This Rental Contract is subject to approval by the Trustee of the Application for Occupancy.

18. AMENDMENT, JOINT LIABILITY AND ACKNOWLEDGMENT: This contract contains the entire understanding and all representations of the Trustee and Resident(s), and may not be altered or amended, except in writing and signed by all parties. Resident(s) shall be jointly and severally liable for all rental payments and for the performance of all other obligations of Resident(s) contained in this contract. Resident(s) acknowledge(s) that Resident(s) has/have read this contract in its entirety, more particularly the portions in bold, understand(s) and acknowledge(s) this contract, and has/have received a signed copy.

DATED THIS 12<sup>th</sup> DAY OF December, 1991, BY: Burt C. [Signature] TRUSTEE FOR THE TRUST AND NOT PERSONALLY, known as: 1437 APACHE, Trust, MAILING ADDRESS: 3500 W 75th St, Ste 300, Prairie Village, KS 66208 913-432-6900

RESIDENT(S): [Signature] HmPhne 780-6433 WkPhne 942-435

RESIDENT(S): \_\_\_\_\_ HmPhne \_\_\_\_\_ WkPhne \_\_\_\_\_

RESIDENT(S): \_\_\_\_\_ HmPhne \_\_\_\_\_ WkPhne \_\_\_\_\_

Name, Address, Phone of Tenant/Resident: MIKE ENGLISH 780-1316

3-9/19

KANSAS ASSOCIATION OF REDEMPTION  
SPECIALISTS, INC.  
NEWSLETTER

**WHAT IS A REDEMPTION SPECIALIST?**

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**WHAT YOU NEED TO KNOW**

Foreclosure laws in some states protect the rights of the homeowner better than other states. Kansas has a fair law. The time frame in Kansas from the time you are first served papers to the time you actually have to give up the property is approximately ten months. During that time, you can sell the house, rent the house or live in it. Some lenders threaten people and scare them into moving out of the house before they have to. After the Sheriff's Sale you have redemption rights. You no longer own the real estate so you can not give a listing of the property to a real estate company as you do not have real estate to sell. You do however own the right of possession, right to rents and right to profit. Should you have any questions please call a Redemption Specialist in your area.

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**PROTECT YOUR RIGHTS**

It is people who can keep and advance their rights in consumer law. We need to establish the twelve month redemption period for all states. Let your congressman know.

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**WHAT TO DO IF YOU HAVE MOVED**

You may have equity in your home and may be missing money owed you. You should have your rights of redemption sold to a Redemption Specialist, and receive money immediately. Never give up.

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**WHERE TO FIND A REDEMPTION SPECIALIST**

KANSAS REDEMPTION SPECIALISTS

Sedgwick, Butler, Barton, Steward and  
Finney Counties

Redemption Managers of Kansas, Inc.  
7804 Funston, Suite 214  
Wichita, KS 67207 (316) 681-3903

Johnson, Miami, Franklin & Anderson Counties

Redemption Managers of Kansas Corporation  
35 Corporate Woods  
9101 West 110 Street  
Suite 200  
Overland Park, KS 66210  
(913) 451-9088

Wyandotte, Douglas & Leavenworth Counties

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11184 Antioch  
Suite 405  
Shawnee-Mission, KS 66210  
(913) 451-9088

Shawnee, Geary & Jefferson Counties

Redemption Managers of Kansas Incorporated  
2828 Arrowhead  
Suite 114  
Topeka, KS 66614

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Call the Kansas Information Line:

(913) 451-9088

-or-

(316) 681-3903

§§§§

October 11, 1990

**RECEIVED**

**OCT 15 1990**

Mr. David Pier  
Kansas Real Estate Commission  
Suite 501  
900 Jackson St.  
Topeka, KS 66612

**KANSAS REAL ESTATE COMM:**

Dear Mr. Pier:

Enclosed are copies of material we discussed  
by phone October 2, 1990.

I hope something can be done to eliminate  
such scams.

Copies are being sent to Rep. Robert Vancrum.

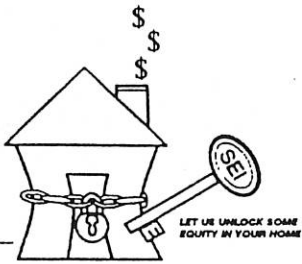
Sincerely,

*Stanley Ayers*

Stanley Ayers  
3109 E. Kinkaid  
Wichita, KS 67211

3-1/19





# SECURITY EQUITIES, INC.

7804 E. Funston, Suite 212

Wichita, Ks. 67207

Bus: (316) 652-7341

Fax: (316) 681-3773

SERVING THE COUNTIES OF:

Barton  
Butler  
Cowley  
Finney  
Ford  
Harvey  
McPherson  
Reno  
Saline  
Sedgwick  
Seward  
Sumner

September 19th, 1990

Jay Dee and Elaine Ayers  
2404 West Lydia Avenue  
Wichita, Ks. 67213

Dear Jay,

A property which you own is presently in foreclosure. Kansas foreclosure laws make it possible to receive **MONEY** from the property even if there is no equity. Security Equities, Inc. and its redemption specialists have been helping people like yourself receive **MONEY** from their your foreclosure for over seven years. If you have moved or thinking of moving, we can give you **CASH** today. Even if you have no equity, you are still entitled to get money from your foreclosure.

We will give you **\$200.00** to manage the property through foreclosure.

If you could use the additional **CASH** then just sign the highlighted areas of the enclosed papers before a Notary Public. A local Bank or car lot offer Notary services for as little as \$2.00. Don't delay sign them today. Just return them in the envelope provided. Time is running out on your foreclosure. If you have any questions please call me collect so we can discuss the papers I sent you.

Best Regards,

Tom Tuttle  
Redemption Specialist  
Security Equities, Inc.  
7804 E. Funston, Suite #218  
(316) 652-7341

3-12/19

RENTAL CONTRACT

In consideration of this agreement by and between the owner and \_\_\_\_\_, the residents, the owner hereby rents to them the property known as: \_\_\_\_\_ in: \_\_\_\_\_ on a month to month basis.

The Manager of the property is \_\_\_\_\_ whose phone number is \_\_\_\_\_. The manager may be contacted from 9 a.m. until 5 p.m. weekdays when the office is open or by mail.

In consideration of the Owner's permitting them to occupy the above property the Resident(s) agree to the following terms and conditions:

To pay rent, IN CASH, CASHIERS CHECK, OR MONEY ORDER, (NO PERSONAL CHECKS ACCEPTED) in the amount of \$\_\_\_\_\_ per month in advance of and beginning \_\_\_\_\_, 19\_\_\_\_ and monthly thereafter. Such rental amount due PRIOR to 5 P.M. Resident(s) further agree(s) to pay a late charge of \$3.00 for each day rent is not received by the Manager regardless of the cause including slow mail or dishonored checks, time being of the essence. An additional Service Charge of \$20.00 shall be paid to Manager for rent paid by personal or business check. If resident is late any two (2) months, rent will automatically increase \$25.00 per month without affecting any other terms of this agreement.

A DISCOUNT IS OFFERED TO THE RESIDENT(S) IN THE AMOUNT OF \$\_\_\_\_\_ each month, as an incentive to pay rent as specified above and for assuming full responsibility for all maintenance and repairs of the premises as specified below. Total monthly cost of repair shall be limited to the amount of the discount. Any cost of LABOR is NOT TO BE DEDUCTED. Any maintenance and repair that would exceed the discount amount must be approved by the Manager prior to work being done so the proper Contractor Agreement and Lien Release form can be approved by Manager. Once the repair has been approved, resident shall pay for said repair and obtain a receipt. The amount of the repair shall be deducted from the next month's rent and the balance submitted with the receipt. SUCH DISCOUNT WILL NOT APPLY IF REPAIRS AREN'T COMPLETED WHEN NEEDED AND/OR RENTS ARE NOT PAID PRIOR TO THE 5 P.M. DEADLINE OF THE \_\_\_\_\_ OF THE MONTH.

The Resident(s) are advised that the Manager is frequently out of the area and that he will be UNABLE TO OFFER THE NORMAL RANGE OF SUPPORT NORMALLY PROVIDED TO RESIDENT(S) BY OWNERS. This is one of the reasons for the rental discount which is given to compensate the Resident(s) for taking the initiative required as stated without involving the Manager.

A MONTHS RENT OF \$\_\_\_\_\_ shall be held at application to be used upon thirty-day notice to terminate tenancy by either party.

Resident(s) agree(s) to the following obligations, but not limited to: Compliance with all building, housing, occupational, zoning, health codes and laws. Maintenance of the dwelling in a clean and sanitary manner, removal of garbage and trash before they accumulate. Responsibility for all plumbing repairs including faucets, leaks, stopped up pipes, frozen pipes, wa

3-13/19

damage, and bathroom caulking. Responsibility for all glass, screen and storm door repairs. Conducting him/herself, family, friends, guests, visitors in a manner which won't disturb others or give rise to their complaints. Upon reasonable advance notice for routine visits, to allow the Manager/Owner access to the premises for the purpose of inspecting, repairing or showing the property; and to specifically authorize un-announced access anytime rent is late or the contract terminated for purposes of serving legal notices, pest control, or maintenance estimates. Paying the rent promptly as required plus any late charges, extra visitor or pet charges, cleaning or damage charges when requested.

Resident(s) are responsible for payment of all utilities, garbage, water, sewer, gas, telephone charges incurred during their tenancy and shall make arrangements with utility companies for all such services to be connected and made available, on or before occupying the premises. They hereby specifically authorize the Manager to charge all unpaid amounts to them.

No rights of storage are given by this agreement. The Manager/Owner shall not be liable for any loss or damage of Resident(s) person(s) or property in or about the premises and shall indemnify and hold harmless Manager/Owner from any such potential losses.

Resident(s) agrees to accept said dwelling and all of the furnishings and appliances therein as being in good and satisfactory condition unless a written statement of any objections is delivered to the Manager within three (3) days after the resident takes possession. Resident(s) agrees that failure to file such statement shall be conclusive proof that there were no defects of note in the property. Any appliances in the dwelling are loaned, not leased to resident. Maintenance of any such appliances is the responsibility of the Resident(s) who shall keep them in good repair.

Resident(s) may not sublet this property.

Occupancy is for \_\_\_\_\_ adults and \_\_\_\_\_ children. A charge of \$100.00 shall be paid for each additional occupant in excess of number stated herein.

The resident understands that the property may have been purchased while in foreclosure and that term of tenancy is month to month.

This rental agreement is subject to approval by the property manager of the application for occupancy.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_\_\_\_.

FOR THE OWNER \_\_\_\_\_

THE RESIDENT(S) \_\_\_\_\_ H# \_\_\_\_\_ W# \_\_\_\_\_

\_\_\_\_\_ H# \_\_\_\_\_ W# \_\_\_\_\_

3-14/19

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3-16/19

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3-17/19

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3-18/19

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FOR THE OWNER \_\_\_\_\_

THE RESIDENT(S) \_\_\_\_\_ H# \_\_\_\_\_ W# \_\_\_\_\_  
\_\_\_\_\_ H# \_\_\_\_\_ W# \_\_\_\_\_

3-19/19





James R. Turner, President

Suite 512  
700 Kansas Avenue  
Topeka, Kansas 66603  
(913) 232-8215

March 18, 1992

TO: SENATE JUDICIARY SUBCOMMITTEE  
FROM: GERALD L. GOODELL  
RE: H.B. 2940; EQUITY SKIMMING

Mr. Chairman. Members of the Committee. The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the Senate Subcommittee on Civil Procedures in support of H.B. 2940 which would impose criminal penalties for engaging in what is commonly called "equiteering".

The bill is modeled after a 1987 federal law that prohibits equity skimming on loans in default where the property is secured by a mortgage and insured by the the Secretary of HUD or the Veterans Administration. H.B. 2940 would essentially expand and adopt into Kansas Law the 1987 Federal statute prohibiting equity skimming.

For years Kansas financial institutions have had difficulties reclaiming single family real property after foreclosure when an equiteer has acquired the redemption rights from the homeowner. Under existing law, there is no legal right to bar or restrict equiteering. The only remedy now available is the right to seek a court appointed receiver as part of the foreclosure case under K.S.A. 60-2414 (p). To secure a receiver, the lender must prove it is necessary "...to prevent any waste or destruction of the premises..." Where the property is occupied by a renter from the equiteer, the Court would probably refuse to appoint a receiver.

Real estate lenders face substantial problems when recovering property that has been rented by an equiteer. Many times the property is in such poor condition that substantial improvements must be made before trying to resell it. This occurs, we feel, because many equiteers have no real vested interest in seeing that the property is maintained once it is rented. We also would like to point out that during the redemption period the equiteer pays no property taxes. Lenders are essentially forced into paying the property taxes in order to avoid a state imposed tax lien on the property.

*Civil Procedure Subcommittee*  
*March 18, 1992*  
*Attachment 4 1/2*

Page 2  
Senate Judiciary Committee  
H.B. 2940

As amended in the House the bill would also allow mortgage holders, judgment creditors or tenants to bring a civil action against anyone who violate section 1 of the bill. In the case of the mortgage holder, recovery is limited to the amount of the rent collected on the property. The House Committee also added a section that requires the purchaser of a dwelling that is subject to a loan in default to provide written notice of the purchase to the mortgage holder and tenant.

In closing we would add that we recognize the right of a homeowner to redeem his/her property has been a fundamental part of Kansas Law for over 100 years. We do not support taking away that right even though very few individuals (less than 2%) ever redeem their homes. However, we do support limiting or stopping those individuals who profit from the misfortunes of others and at the expense of Kansas financial institutions. Accordingly we would request that the Senate Subcommittee recommend H.B. 2940 as amended favorably.

Gerald Goodell  
KNLSI Legal Counsel



## KANSAS ASSOCIATION OF REALTORS

Executive Offices:  
3644 S. W. Burlingame Road  
Topeka, Kansas 66611  
Telephone 913/267-3610

TO: THE SENATE JUDICIARY COMMITTEE  
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS  
DATE: MARCH 18, 1992  
SUBJECT: HB 2940, EQUITEERING

Thank you for this opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear to support HB 2940.

We have been dealing with a growing number of complaints over the years concerning the practice of "equiteers". We strongly support the ability of property owners to have and exercise their rights of redemption. We are concerned that if the practices which we have heard about continue, there will be a movement to shorten or diminish the redemption rights. We support this bill because we believe it handles the problems which equiteering can cause, without diminishing redemption rights.

The information we have received indicates that the debtor homeowners lose, the mortgage holders lose and the renters lose. The only winners are the equiteers who walk away with money in their pockets.

Under current practice the debtor homeowners are given a sum of money by the equiteer in return for signing over their redemption rights. They believe this transaction will absolve them from any further obligations on the property. The equiteer then rents the property during the balance of the redemption period and pockets the rent.

*Civil Procedure Subcommittee  
March 18, 1992  
Attachment 5*

The property, typically is not maintained during the redemption period. Thus, the value depreciates and when it comes to the end of the redemption period, the mortgage holder often must take deficiency judgment against the original debtor who was under the misconception that they were free and clear of any further obligations. To top it off, the renters are removed by the mortgage holder without having any forewarning in their lease agreement that this property was in foreclosure.

House Bill 2940 strikes a reasonable balance between all interested parties. The debtor homeowner can still retain or sell their redemption rights. The lender receives the rental payments which will reduce the amount of the outstanding mortgage and the renter would be put on notice of the redemption situation at the beginning of the lease.

This practice is already illegal for FHA and HUD insured properties, with much stiffer penalties than those given here. Also an amendment similar to this concept was put in SB 514 during Senate debate and will be heard by the House Federal and State Affairs Committee this afternoon. That amendment provides that this type of activity would be cause for a person to lose their license under the Real Estate Salesperson and Brokers Act. We believe these bills complement each other.

We do have an amendment to offer. We ask that the phrase "with intent to defraud" on line 15 be removed from the bill. This language is in the federal law referred to earlier and conversations with HUD personnel indicate that proving the intent to defraud is difficult. We believe that the prohibitions outlined in the bill sufficiently describe the offense and activity of that type should, on its face, constitute the wrongdoing. If a felony conviction were involved a showing of intent may have been warranted. However, the bill only

calls for a class A misdemeanor and thus intent would not be needed. We think that requiring proof of intent to defraud may reduce the effectiveness of the bill, due to its difficult enforcement.

To summarize, we support HB 2940 because we believe it handles the problems which have arisen, without diminishing redemption rights. We ask for your support of our proposed amendment and of the bill as a whole.

JUDICIAL COUNCIL TESTIMONY ON HB 2098  
SENATE JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE  
MARCH 18, 1992

1991 House Bill No. 2098 contains the recommendations of the Judicial Council Civil Code Advisory Committee for amendments to K.S.A. 60-2414.

K.S.A. 60-2414 sets forth rights and procedures for statutory redemption of real property from execution sale.

During the 1990 session, the House Judiciary Committee had before it two bills (1990 HB 2642 and 2972) which contained proposed amendments to the redemption statute. At the request of the House Judiciary Committee, these bills were assigned for study by the Judicial Council.

1990 HB 2642 contained extensive revisions to K.S.A. 60-2414. Lewis "Pete" Heaven, Jr. was primarily responsible for the drafting of HB 2642. As a member of the Executive Committee of the Real Estate, Probate and Trust Section of the Kansas Bar Association, Pete was requested to develop recommended changes to K.S.A. 60-2414. The eventual result of Pete's recommendations, and the responses to them, was HB 2642.

1990 HB 2972 was requested by officials of the City of Wichita and was aimed at situations in which property, subject to a mortgage, has been abandoned. The property is often run down and being used for drug-related or other criminal activity. The City is interested in seeing the property removed or repaired. However, the City is hesitant to take action on property which serves as collateral. Mortgage holders are not interested in taking action on the property until the expiration of the redemption period. Consequently, HB 2972 was designed to shorten the redemption period in cases of abandonment to promote quicker action in regard to such property.

In developing HB 2098, the Civil Code Committee considered both HB 2642 and 2972 and met with their proponents.

The House Judiciary Committee held a hearing on HB 2098 in 1991, however, no action was taken on the bill. Since that time, the Judicial Council received correspondence from Representative Don Smith and Byron Springer, an attorney in Lawrence, suggesting amendments to HB 2098. Based on this correspondence, the Judicial Council approved a limited number of technical and clarifying amendments to HB 2098.

Historically, Kansas has had legislation on the right of redemption since 1861. With some amendments, the basic features of K.S.A. 60-2414 have been in effect since 1893.

*Civil Procedure Subcommittee  
March 18, 1992  
Attachment 6 1/5*

The basic elements of K.S.A. 60-2414 state: (1) Who can redeem (the defendant owner, such owner's assignee or transferee, lien creditors), (2) The amount that must be paid to redeem (the basic factor being the sale price), (3) The time periods for redemption (which vary for different classes of persons) and (4) The effects of redemption.

One purpose of the redemption statute is to give the mortgagor or other person entitled to exercise the right of redemption additional time to refinance and save the property. However, it appears to the Civil Code Committee that the primary purpose of the statute is to apply the property as fully as possible to satisfy claims against the defendant owner and to avoid, as much as possible, deficiency judgments against the defendant owner. It is the goal of the statute to put pressure on foreclosing creditors to bid the value of the property at sale, at least up to the amount of the underlying debt.

The first change made by HB 2098 appears on page 1 in lines 22 and 23 and concerns the rate of interest to be paid on the amount necessary for redemption. The amendment provides for interest at the judgment rate specified in K.S.A. 16-204(e)(1). Presently, the statute does not specify a particular rate of interest. Appellate cases indicate the appropriate interest rate is that of the lien foreclosed. The Civil Code Committee adopted Mr. Heaven's reasoning that the successful bidder at sale may have had to borrow money to purchase the property and it makes more sense to use a definite rate of interest which bears some relationship to current economic conditions rather than that of a note which could be many years old.

On lines 25 through 30 of page 1, language is inserted to allow the court, after hearing, to find the property has been abandoned or is not occupied in good faith and to shorten or extinguish the redemption period. Presently in such cases, the court can shorten the redemption period to six months. This new provision would appear to satisfy in large measure the concerns raised by the City of Wichita.

Amendments on page 1 in lines 32 through 43, and continuing on page 2, reword the existing provisions on waiver of redemption rights. The new language is intended to retain the ability of corporations and partnerships to waive redemption rights and to protect individuals from such waiver in regard to agricultural land or single or two-family dwellings. The new language should allow other entities such as joint ventures or syndicates which are purchasing real property for investment purposes, to waive redemption rights.

The amendments to subsection (b) on page 2 are intended to clarify the redemption period for a redeeming creditor where there has been a waiver of redemption rights by the defendant owner or a shortening or extinguishing of such owner's redemption rights. As amended, the subsection also implements the concept

that there should be only one redemption by a creditor. Redemption among creditors seldom occurs and the provisions on creditor-to-creditor redemption are generally perceived as confusing. The Advisory Committee saw some value in retaining the potential of redemption by one creditor in that the possibility of such redemption should promote the foreclosing lienholder bidding the amount of his or her judgment at the sale. The Advisory Committee also believes that allowing only one creditor to redeem will promote creditors bidding at the sale if they believe there is any further value to be realized from the property.

The elimination of creditor-to-creditor redemption allows the deletion of considerable language in subsection (d) and the entirety of current subsections (e), (f), and (g).

In subsection (d) on page 3 in line 21, the advisory committee adopted Mr. Heaven's suggestion that the holder of the certificate of purchase be able to recover money spent to prevent waste during the redemption period in that such a provision will promote preservation of the property.

Subsections (e) and (f) relate to redemption by a creditor and its impact on what the defendant owner must pay to redeem from the creditor and the consequences of a subsequent redemption or failure to redeem by the owner. For the most part, the amendments represent an elaboration or adjustment of the existing law on these issues. Essentially, the redeeming creditor must make a determination whether the value of the land satisfies the creditor's claim. If the creditor deems the land sufficient, the creditor only files a statement of the amount unpaid due on the claim of that creditor. If the defendant owner wishes to redeem, the defendant owner must add the unpaid amount of the creditor's claim to the redemption amount to redeem the property and the claim of the creditor is satisfied. If the defendant owner does not redeem, the property is deemed to have satisfied the claim of the creditor and such claim is extinguished. If the redeeming creditor does not believe the land is sufficient to satisfy the creditor's claim, the creditor may file a statement of a lesser amount the creditor is willing to credit on the claim of the defendant owner in the event of redemption. The defendant owner must then only pay that additional amount in order to redeem from the creditor, the creditor's lien is extinguished but the creditor has a deficiency for the difference between the unpaid amount of the creditor's claim and the lesser amount as stated in the creditor's affidavit. If the defendant owner does not redeem, the creditor's claim is reduced by the lesser amount included in the creditor's statement. It would appear unfair to require the defendant owner to pay the full amount of the creditor's claim in order to redeem and, in the failure of such redemption by the defendant owner, let the creditor realize some satisfaction of the creditor's claim from the property and retain a deficiency judgment for the full amount of the creditor's unpaid claim.



In regard to subsection (j) on pages 5 and 6, Mr. Heaven pointed out the ambiguity as to who may be held responsible for injury or waste against the property. The amendment is intended to clarify that any person committing or permitting injury or waste is liable.

The Advisory Committee also adopted Mr. Heaven's recommendation in regard to subsection (m) on pages 6 and 7. Mr. Heaven characterized the intent of the subsection as allowing the court to reduce the redemption period in situations where the land owner has an insignificant amount of equity in the property. He observed that confusion has resulted with regard to what "indebtedness" is to be used to determine whether one-third of the indebtedness has been paid, or what "indebtedness" should be measured against the market value of the property. The last sentence of the subsection reflects that events justifying a shorter redemption period under subsection (a) may have occurred.

#### House Amendments to HB 2098

As mentioned previously, Byron Springer provided the Judicial Council with suggested amendments to HB 2098. Due to the proposed deletions in lines 28 through 32 of page 3, Mr. Springer suggested adding a reference to a redeeming creditor to avoid any interpretation that such a creditor cannot make and recover the expenditures as are set out in subsection (d). It was the opinion of the Civil Code Committee that the phrase "holder of the certificate of purchase" would include a redeeming creditor, however, to avoid any possible misinterpretation the committee approved Mr. Springer's suggestion. The committee also agreed with Mr. Springer that the last sentence of subsection (b) may arguably miss certain expenditures allowed under (d) such as insurance premiums, sums necessary to prevent waste and interest or sums due upon any prior lien or encumbrance. The committee adopted a parallel amendment in lines 20 and 21 of page 1. In subsection (g) on page 5 relating to redemption of property sold in parcels, the committee adopted Mr. Springer's suggestion to clarify that a redeeming creditor's claim is added pro rata to the parcels "sold" and not just to those "redeemed".

Based on discussions with interested persons, Representative Don Smith provided the Council with certain suggested amendments. The technical amendments provided by Representative Smith were included in the amendments recommended to the House by the Council. However, a more substantive change relating to use of the property by an assignee or transferee of statutory redemption rights was not included. The proposal forwarded by Representative Smith would have deleted "or by agent or tenant" in line 34 of page 5. This proposal appeared to be aimed at abuses by "equiteers," persons who purchase redemption rights and rent out the property during the redemption period. It is the position of the Civil Code Committee that the rights of a defendant owner during the redemption period as they exist under the present law should be continued in new legislation in this area. During the redemption period, the defendant owner

currently has the right to (1) stay in the property, (2) rent the property or (3) transfer the owner's redemption rights. The Civil Code Committee viewed the new language on lines 33 through 36 of page 5 as a recognition of these currently existing rights and did not support changing such rights. The House Committee deleted the entirety of the proposed new language in lines 33 through 36. It is our opinion the deletion leaves intact the currently existing rights of the defendant owner.

The House Committee also amended line 26 on page 1 to provide for 21 days' notice of a hearing to shorten or extinguish redemption rights due to abandonment.

TESTIMONY OF FRANK M. OJILE, VICE MAYOR OF  
THE CITY OF WICHITA, REGARDING HOUSE BILL 2098

MARCH 18, 1992

Mr. Chairman and Members of the Senate Judiciary Subcommittee on Civil Procedure, my name is Frank Ojile. I am the Vice Mayor of the City of Wichita and I am a practicing attorney here in the State of Kansas, specializing in Real Estate Law. As a member of the Wichita City Council, I see several times a month, properties come before the City Council for condemnation. Yesterday we set a hearing date for April 28, 1992 to review fifteen (15) properties. These properties come before us because they are run down, have been abandoned, are eyesores to the neighborhood and pose a severe safety problem to our city. By safety problem, I mean that they are usually open to curious children in the neighborhood and are great places for gang members and drug dealers to meet to plan their next course of illegal activity. The City is reluctant to demolish a house which is currently in foreclosure due to the fact that we would be reducing the value of the lender's security. On the other hand, the lender is uneasy in putting money into an abandoned house in fear of future vandalism. By reducing the period of redemption from the current mandatory six-month period, it would allow lenders who have no rights during the redemption period to regain the property and to put it once again on the housing market. This is a win/win situation for the following reasons:

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- 1) It will cut out City expenses in the continued monitoring of the property.
- 2) Remove blight from the neighborhoods.
- 3) Lenders will be able to get the property back on the market at a faster rate and hope to help solve the affordable housing shortage.
- 4) It will help improve neighborhood safety.
- 5) Reduce the number of "crack houses" and gang "hangouts."

I would like to briefly walk through with you an actual case of property that is currently on the condemnation list and is currently in foreclosure:

- 1) The Housing Code case was filed on July 6, 1990 - notice was sent and no response received.
- 2) Loan payment due July 1, 1991 was not made by the owner.
- 3) City sent a condemnation letter to the owner on July 31, 1991 - letter was returned unclaimed.
- 4) On October 7, 1991, condemnation was initiated on the structure due

to the open condition and vandal damage that have been done to the interior. In addition, there were two dilapidated metal sheds and a considerable amount of debris on the premises.

- 5) November 4, 1991, the property was presented to the Board of Code Standards and Appeals, who recommendation was 10 days to start and 10 days to complete removal of the structure.
- 6) On November 21, 1991 our firm filed our petition to foreclose on the subject property.
- 7) December 10, 1991, the mortgage lender has the property boarded and premises cleared. The Wichita City Counsel granted 90 day continuance to the lender.
- 8) January 8, 1992, the Journal Entry was filed in the foreclosure case.
- 9) Sheriffs sale was held on February 18, 1992, and the redemption period expires on August 18, 1882, five months from today.

As you can see, this is a terrible waste of time, money and resources. In conclusion, I would like to point out to the committee that this is not just a Wichita problem but a problem throughout the State of Kansas. I am holding in my hand, current foreclosures that I am presently personally handling where the property is vacant and which will sit vacant for six months until the end of redemption. All this time, possibly standing open, subject to vandalism and having its value reduced

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even more as the six month redemption period expires. As you can see, this is a serious problem which needs to be corrected as soon as possible.

I thank you for your time and attention and I will now answer any questions at this time.

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James R. Turner, President

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March 18, 1992

TO: SENATE JUDICIARY SUBCOMMITTEE  
FROM: GERALD GOODELL, GENERAL COUNSEL, KNLSI  
RE: H.B. 2098 - MORTGAGE FORECLOSURE REDEMPTION LAW CHANGES

The Kansas-Nebraska League of Savings Institutions appreciates the opportunity to appear before the Senate Subcommittee on Civil Procedures in support of H.B. 2098. The measure makes important revisions to the present Kansas redemption law. Many of the changes are technical in nature, however one provision would provide for reduced or extinguished redemption periods for the mortgagor. The right of redemption would remain intact for the legitimate homeowner who may be experiencing financial difficulty. The major changes would allow a creditor to request the Court to reduce or extinguish the redemption period where the property has been abandoned by the defendant owner.

The bill amends K.S.A. 60-2414 to make several changes in the mortgage foreclosure redemption law. The changes include:

1. Where the property before or after the sale is abandoned or not occupied in good faith, the court may shorten or extinguish the owner's right of redemption. Current law only allows a six month shortened period.
2. Technical changes are made in the law for only one redemption by a lien creditor after the owner's exclusive redemption period has expired.
3. Holders of the certificate of purchase are allowed to add sums spent to prevent waste to the amount the owner must pay to redeem.
4. Technical changes are made in the procedure to seek a deficiency and how property is to be redeemed.

Gerald L. Goodell  
General Counsel  
*Civil Procedure Subcommittee*  
*March 18, 1992*  
*Attachment 8*

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HOUSE BILL No. 2855  
Senate Judiciary Civil Subcommittee  
March 18, 1992

Testimony of Kay Farley  
Child Support Coordinator  
Office of Judicial Administration

Senator Rock and members of the subcommittee:

I am pleased to be here today to discuss 1992 House Bill 2855 with you.

This bill amends statutes relating to contempt of court and adds a sentencing alternative in child support enforcement proceedings.

The Office of Judicial Administration and the District Court Trustees strongly support this bill. As a rule, contempt is only used as an enforcement tool in child support enforcement cases for obligors who are unemployed or self-employed. Realistically, once the obligor is found in contempt, the judge has few sentencing alternatives. Most often, the obligor is admonished to pay the support and/or actively seek employment. The case is then set for a review to monitor the obligor's compliance with the court's order. In situations where the obligor is repeatedly brought before the court on contempt proceedings, judges will sometimes order the obligor time in the county jail. However, because of limited space in county jails and a federal appellate decision that limits this as a sentencing alternative, this alternative can not be extensively used.

It has been our experience that obligors see these contempt hearings as inconvenient and a hassle, but for many obligors they do not have the desired effect of bringing the obligor into compliance with the order of the court to pay support. We believe that restricting an obligor's driving privileges will get the attention of nonsupporting parents.

We believe that the restriction of driving privileges will provide a strong incentive for obligors to pay their child support. This bill will give the judges an effective sentencing alternative.

We recommend passage of this bill.

Thank you for the opportunity to discuss HB 2855 with you.

*Civil Procedure Subcommittee*

*March 18, 1992*

*Attachment 9*

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STATE OF KANSAS



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Department of Revenue  
*Division of Vehicles*

To: House Judiciary Committee  
From: Betty McBride, Director of the Division of Vehicles  
Kansas Department of Revenue  
Date: March 18, 1992  
Subject: **House Bill 2855**

Mr. Chairman, members of the Committee,

My name is Betty McBride. I am the Director of the Kansas Division of Vehicles, and I am appearing before you on behalf of the Kansas Department of Revenue regarding House Bill 2855.

While the Department of Revenue supports the efforts of the Department of Social and Rehabilitation Services to collect delinquent child support. Implement this bill would require additional administrative staff, and additional funding.

If the estimates of the number of enforcement cases that reach contempt proceedings are correct-2,500 to 3,000-it will cost the division \$2,678 in FY '92, and \$19,484 in FY '93. The costs for FY '92 are based on the cost to establish a work area for the Office Assistant II, which would process the restrictions handed down by the court. We are asking for a full-time position because for every restriction placed on a license for non-compliance, we will be asked at some point to remove the restriction once the conditions of the court have been met. This alone will be a full-time job. The division already has a full-time person in our Titles and Registration Bureau hired to process liens on vehicles owned by delinquent parents.

If this committee passes favorably on this bill, I ask that you also recommend granting our request for the necessary funding to implement this legislation.

I stand for your questions.

*Civil Procedure Subcommittee  
March 18, 1992  
Attachment 10*