

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:09 a.m. on March 15, 1995 in Room 529-S of the Capitol.

Members present were: Senator Clark, Senator Corbin, Senator Emert, Senator Lee, Senator Petty, Senator Praeger, Senator Steffes

Committee staff present: Dr. William Wolff, Legislative Research Department  
Fred Carman, Revisor of Statutes  
June Kossover, Committee Secretary

Conferees appearing before the committee: Jeffrey Sonnich, KS-NE-OK League of Savings Institutions  
David Hanson, GE Mortgage Insurance Corporation  
Chuck Stones, Kansas Bankers Association  
Bill Mitchell, Kansas Land Title Company  
George Barbee, Barbee Associates  
Kathy Taylor, Kansas Bankers Association

Others attending: See attached list

Senator Emert moved to approve the minutes of the meeting of March 14 as submitted. Senator Corbin seconded the motion; the motion carried.

The chairman opened the hearing on **HB 2125**, relating to mortgage guarantee insurance. Jeffrey Sonnich, KNOLSI, explained that this legislation would allow the lender to initially examine and approve an applicant's qualifications for mortgage guarantee insurance rather than sending the application and appraisal, paperwork to the insurer before a commitment to insure is given. (Attachment #1) Senator Bond questioned whether this would make the lender an agent and, if so, what the licensing requirements would be. Senator Praeger asked why Kansas is the last state to allow this and Mr. Sonnich replied that he had questioned this with the Kansas Insurance Department and was informed that there was no known reason, it simply had not been requested previously.

David Hanson, GE Mortgage Insurance Corporation, also testified as a proponent of **HB 2125**, stating that the bill will be beneficial to both borrowers and lenders as it will expedite the loan approval process. (Attachment #2) In response to Senator Bond's earlier question, Mr. Hanson advised that the lender is the insured and, therefore, cannot be the agent. Mr. Hanson also explained the difference between credit life insurance and mortgage guarantee insurance.

There were no further questions or conferees; the hearing was closed. Senator Steffes made a motion to pass HB 2125 favorably; Senator Corbin seconded the motion. The motion carried. Senator Steffes will carry this bill on the Senate floor.

The hearing was opened on **HB 2126**, which would amend KSA 58-2309a to prescribe the manner in which a lender can proceed to release a mortgage. Jeffrey Sonnich, KNOLSI, also appeared as a proponent of this bill, stating that it would provide lenders with a way to deal with intolerable delays experienced in mortgage releases by some out-of-state mortgage servicers. (Attachment #3)

Bill Mitchell, Kansas Land Title Association, offered an amendment to include mechanic's liens and notices of mechanic's liens. (Attachment #4) In response to Senator Emert's question, Mr. Mitchell stated that it is not necessary to include UCC instruments since UCC titles are exempt from title opinions.

George Barbee, Barbee and Associates, requested an amendment to line 28 to allow the signature to be a facsimile, or rubber stamp, signature. (Attachment #5)

Kathy Taylor, Kansas Bankers Association, added the support of KBA to the bill and amendments. (Attachment #6)

Senator Steffes made a motion, seconded by Senator Clark, to adopt both amendments as requested. The motion carried.

Senator Emert made a motion to strike "sale" and insert "financing or.." on page 3, lines 3, 11 and 17. Senator Corbin seconded the motion. The motion carried.

Senator Steffes moved to pass the bill favorably as amended. Senator Corbin seconded the motion; the motion carried. Senator Corbin will carry this bill on the Senate floor.

The committee adjourned at 10:01 a.m. The next meeting will be March 16.





Jeffrey D. Sonnich, Vice-President

700 S. Kansas Ave., Suite 512  
Topeka, Kansas 66603  
(913) 232-8215

March 15, 1995

TO: Senate Committee on Financial Institutions and Insurance  
FROM: Jeffrey Sonnich, Vice President, KNOLSI  
RE: HB 2125; Mortgage Guaranty Insurance

The Kansas-Nebraska-Oklahoma League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of House Bill 2125 which would allow Kansas lending institutions delegated underwriting authority for mortgage guaranty insurance.

Mortgage guaranty insurance is written to reduce the lender's exposure on high-loan-to-value mortgages. Since most mortgage loans are originated to meet the underwriting guidelines of the secondary market, guaranty insurance is routinely required on loans with a loan-to-value (LTV) of 85% or higher. Coverages range from 35% to 6% of the total indebtedness depending on the LTV ratio.

K.S.A. 40-3510 requires that before any policy of mortgage guaranty insurance is written the loan documentation must be sent to the guaranty insurance company for review. HB 2125 would remove this requirement by allowing the lender, in accordance with the underwriting standards of the guaranty insurance company, to review the documentation. The lender would be subject to periodic audits by the guaranty insurance company to ensure compliance with underwriting standards. In other words the bill would allow the mortgage guaranty company to accept the credit data already collected. Subsequent review of the documentation would be on an audit basis, rather than for every loan. This is similar to what is already allowed for Kansas lenders who originate FHA or VA loans.

The current system for placing guaranty insurance in Kansas is out of step with the rest of the nation. Our research indicates that Kansas is the only state in the nation that does not allow lenders delegated underwriting authority.

The problem we see is that Kansas lenders are being put in a competitive disadvantage to out-of-state mortgage banking companies. These companies, by virtue of having their underwriting facilities located outside of Kansas, are able to directly underwrite guaranty insurance for their borrowers. The ability to underwrite the guaranty insurance results in reduced costs, and quicker loan approval...a decided advantage when lenders are competing in a slow housing market. HB 2125 would provide for a level playing field.

We foresee few associated risks with the additional authority, since the lender will be following the same underwriting guidelines developed by the guaranty insurance company. In fact, very few loans now sent to the guaranty insurance company for approval are denied insurance. This would seem to indicate that the process of credit analysis and underwriting are similar for both lenders and guaranty insurance companies.

In conclusion, HB 2125 will put Kansas in line with the national standard, streamline the mortgage underwriting process, and allow in-state lenders to compete more effectively with their out-of-state counterparts. We respectfully request your favorable support.

Jeffrey D. Sonnich  
Vice President

Senate 7141  
3/15/95  
Attachment #1

**TESTIMONY IN SUPPORT  
OF HB 2125**

TO: Senator Dick Bond, Chairman  
Senate Financial Institutions and Insurance Committee  
Capitol Building  
Topeka, Kansas

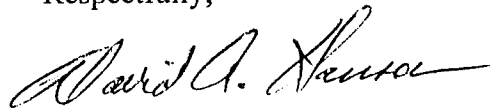
RE: House Bill No. 2125

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to appear before the Committee. I am David Hanson and am appearing on behalf of General Electric Mortgage Insurance Corporation to support House Bill 2125.

The proposed amendment will help simplify and expedite mortgage guaranty insurance coverage in Kansas by allowing approved lenders to qualify and obtain mortgage guaranty insurance coverage immediately, rather than the current statutory requirement of having to send the credit application and property appraisal to the mortgage guaranty insurance company for its second review and approval before the policy can be written. The proposed change will allow delegated underwriting of mortgage guaranty insurance by approved lenders as is allowed in all other states. We believe this amendment will be beneficial to both borrowers and lenders in Kansas and therefore encourage your favorable consideration of House Bill No. 2125.

Respectfully,



DAVID A. HANSON

Senate F141  
3/15/95  
Attachment #2





Jeffrey D. Sonnich, Vice-President

700 S. Kansas Ave., Suite 512  
Topeka, Kansas 66603  
(913) 232-8215

March 15, 1995

TO: Senate Committee on Financial Institutions and Insurance  
FROM: Jeffrey Sonnich, Vice President  
RE: HB 2126; Mortgage Release

The Kansas-Nebraska-Oklahoma League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of HB 2126 which would allow Kansas lending institutions the ability to effectuate the release of a mortgage when a mortgagee refuses or neglects to enter satisfaction.

As drafted, this bill would amend K.S.A. 1994 Supp. 58-2309 (a) and K.S.A. 58-2306 to allow the lender or closing agent, who is paying off the indebtedness, to cause entry of satisfaction, by signing a mortgage release document, should the mortgagee fails to do so within 20 days of written demand. If the lender or closing agent falsely releases the mortgage they would be liable for the full amount of the indebtedness together with interest, attorneys fees, and any other damages that the mortgagee or mortgagee's assignee has incurred.

This bill would provide lenders with a way to deal with the intolerable delays we are seeing in mortgage releases by some out-of-state mortgage servicers. We have seen cases where obtaining a mortgage release can take up to a year and delays from four to nine months are not uncommon. Current law will allow for damages of up to \$500 dollars together with reasonable attorney's fees for failure to release the mortgage, however the cost of obtaining out-of-state counsel and other costs associated with civil actions make this provision virtually useless. In addition, the lack of a formal regulatory body to oversee these companies only compounds the problem.

From a lender standpoint, there are three major problems associated with extended delays in obtaining releases.

1. A lender seeking the release cannot obtain a final title insurance policy on the property until the previous mortgage has been released. The title insurance company will issue a commitment for title insurance that is contingent on receiving the mortgage release.
2. Salability of a loan without clear title also becomes questionable. FANNIE MAE or FREDDIE MAC may require the lender to repurchase the loan if a final title insurance policy is not received.
3. Without a release, subsequent mortgages filed of record will be subordinate to those already recorded. In other words, the lender would not be "perfected" in their lien because the prior mortgage is still recorded.

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Attachment #3



Page 2  
HB 2126  
March 15, 1995

While lenders are clearly effected by these delays the problem may be even worse for the borrower. Without clear title the borrower is effectively prevented from selling or refinancing their home. Imagine the following scenario: In August, a family refinances their home with an Kansas lending institution. The next month the "bread winner" of the family gets transferred to Alaska, so the family must move. One spouse stays behind to put the house up for sale, the other heads north to look for a new house. In November a buyer makes an offer on the Kansas house at the same time the family makes an offer on a house in Alaska, which is contingent on the sale their other house. In December the buyer of the Kansas house is turned down for the loan because there are two mortgages recorded on the property and no final title insurance policy is in place. **Apparently, no mortgage release had been received from the original lender after the refinance in August.** The sale of the house in Alaska falls through. Four months later the family is no closer to moving or being able to purchase a new home than they were in September.

In conclusion, it has become clear over the last several years that mortgage lenders in this state need an alternative system for obtaining mortgage releases when extended delays occur. The problems associated with these delays can extend beyond the lender and effect the average homeowner in a potential harmful way. We respectfully request your favorable support of HB 2126.

Jeffrey D. Sonnich  
Vice President

HOUSE BILL No. 2126

By Committee on Financial Institutions and Insurance

1-20

10 AN ACT concerning mortgages on real property, relating to the entry of  
11 satisfaction thereof; amending K.S.A. 58-2306 and 58-2309a and re-  
12 pealing the existing sections.

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

15 [Section ] K.S.A. 58-2306 is hereby amended to read as follows: 58-  
16 2306. (a) Except as otherwise provided by this section, any mortgage of  
17 real property that has been or may hereafter be recorded shall be assigned  
18 or discharged by an instrument acknowledging the assignment or satis-  
19 faction of such mortgage, signed by the mortgagee or his or her such  
20 mortgagee's duly authorized attorney in fact, assignee of record, or per-  
21 sonal representative or by the mortgagee or the lender or a designated  
22 closing agent acting as a closing agent in a sale or refinance of the  
23 real estate subject to such mortgage who has caused the indebtedness  
24 to be paid in full upon compliance with K.S.A. 58-2309a, and amendments  
25 thereto, and duly acknowledged and certified as other instruments af-  
26 fecting real estate. Such instrument shall contain the name of the mort-  
27 gagee and mortgagee, a legal description of the property and the volume  
28 and page in which the mortgage is recorded.

29 (b) Where the mortgagee or assignee of record is deceased, and  
30 where the estate of such deceased mortgagee or assignee of record is in  
31 process of administration, in this or any other state, an assignment or a  
32 full release of such mortgage may be made by the executor or adminis-  
33 trator without any showing as to the provisions of the will of the deceased,  
34 but there must accompany such assignment or release, as a part thereof,  
35 a certificate from a court of competent jurisdiction appointing such ex-  
36 ecutor or administrator, under the hand of its proper officer, and attested  
37 by its seal, certifying as to such appointment, and that such executor or  
38 administrator is, at the date of such assignment or release, still so acting  
39 under the authority of such court. Such certificate shall not be required  
40 when the executor or administrator is acting under appointment of the  
41 district court of the county where the real estate mortgaged is located.  
42 Where the estate of such deceased has not been administered upon, or  
43 where the estate of such deceased has been administered and settled and

New Section 1. As used in this act, "mortgage" means any security instrument securing loans involving real estate, including mortgages, mechanics liens and notices relating thereto.

Sec. 2

Senate 4/11/95  
3/15/95 #  
Attachment #4

Bill Mitchell

the executor or administrator discharged, such assignment or release may be made by the heirs at law or legatee of such deceased mortgagee or assignee, and competent evidence must be furnished by them of the fact.

(c) Where the mortgagee or assignee of record is a firm or partnership, such mortgage shall be assigned or discharged by an instrument acknowledging the assignment or satisfaction of such mortgage as hereinbefore provided. Such instrument shall be signed either by each member of the firm or partnership, or by the firm or partnership, or by the firm or partnership by one of the members thereof.

(d) Any mortgage which, prior to July 1, 1977, has been released by a notation on the original mortgage instrument and signed by the mortgagee or the mortgagee's duly authorized attorney in fact, assignee of record or personal representative may be recorded in the office of the register of deeds of the county where the mortgaged property is located. When recorded, such release shall have the same force and effect as mortgages discharged in accordance with subsection (a).

Sec. 2 K.S.A. 58-2309a is hereby amended to read as follows: 58-2309a. (a) When the indebtedness secured by a recorded mortgage is paid and there is no agreement for the making of future advances to be secured by the mortgage, the mortgagee or the mortgagee's assignee shall enter satisfaction or cause satisfaction of such mortgage to be entered of record forthwith, paying the required fee. ~~In the event the mortgagee or the mortgagee's assignee fails to enter satisfaction or cause satisfaction of such mortgage to be entered within 20 days after written demand by certified or registered mail, the mortgagor or the lender who has caused the indebtedness to be paid in full may cause satisfaction of the mortgage to be entered as set forth hereinafter. Satisfaction of the mortgage by the mortgagor or the lender who has caused the indebtedness to be paid in full shall require proof of payment in full of the remaining indebtedness due the mortgagee or assignee. The mortgagor or the lender who has caused the indebtedness to be paid in full shall attach to the mortgage release filed pursuant to K.S.A. 58-2306, and amendments thereto, a pay-off statement from the mortgagee or the mortgagee's assignee dated within 45 days of the date the indebtedness has been paid in full, a canceled check or proof of electronic funds transfer showing payment in full of the amount shown on the pay-off statement and a certificate or affidavit showing written demand directed to the mortgagor or the mortgagee's assignee by certified or registered mail showing the failure to release the mortgage. Upon recording of such satisfaction by the mortgagor or the lender who has caused the indebtedness to be paid in full and proof of payment, such mortgage shall be deemed fully released as if discharged by the mortgagee or mortgagee's assignee. In the event the mortgagee or the mortgagee's assignee fails to enter satisfaction or cause satisfaction of~~

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4-2



such mortgage to be entered within 20 days after written demand by certified or registered mail, the lender or a designated closing agent acting as a closing agent in a sale or refinance of the real estate subject to such mortgage, who upon reliance of written payoff information provided by the mortgagee, and which payoff information shall be deemed as the correct and full amount due and owing under such mortgage, has caused the indebtedness to be paid in full may cause satisfaction of the mortgage to be entered. If in fact the mortgagee or mortgagee's assignee was not paid in accordance with the aforesaid payoff information when the mortgage was released the lender or the closing agent in a sale or refinance of the real estate subject to such mortgage who signed the false release shall be liable in damages to the mortgagee or mortgagee's assignee for the entire indebtedness together with interest thereon, attorney fees, and any additional damages that the mortgagee or mortgagee's assignee has incurred. Upon recording of such satisfaction by the lender or closing agent in a sale or refinance of the real estate subject to such mortgage, who has caused the indebtedness to be paid in full, such mortgage shall be deemed fully released as if discharged by the mortgagee or mortgagee's assignee.

(b) When a mortgage is recorded covering real estate in which the mortgagor has no interest, the mortgagee or the mortgagee's assignee shall enter satisfaction or cause satisfaction of such mortgage to be entered of record, paying the required fee without charge to the mortgagor or the mortgagor's assigns.

(c) A mortgagor, a mortgagor's heirs or assigns or anyone acting for such mortgagor, heirs or assigns, or the owner of real estate upon which a mortgage has been recorded by someone having no interest in the real estate, may make demand upon a mortgagee or assignee of a mortgagee for the entering of satisfaction of the mortgage, as provided for in subsections (a) and (b).

(d) Any mortgagee or assignee of a mortgagee who refuses or neglects to enter satisfaction of such mortgage within 20 days after demand has been made as provided in subsection (c) shall be liable in damages to the person for whom the demand was made in the sum of \$500, together with a reasonable attorney's fee for preparing and prosecuting the action. The plaintiff in such action may recover any additional damages that the evidence in the case warrants. Civil actions may be brought under this act before any court of competent jurisdiction, and attachments may be had as in other cases.

(e) The mortgagee or assignee of a mortgagee entering satisfaction or causing to be entered satisfaction of a mortgage under the provisions

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of subsection (a) shall furnish to the office of the register of deeds the full name and last known post office address of the mortgagor or the mortgagor's assignee. The register of deeds shall forward such information to the county clerk who shall make any necessary changes in address records for mailing tax statements.

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4  
5  
6 Sec. ~~3~~ K.S.A. 58-2306 and 58-2309a are hereby repealed. 4

7 Sec. ~~4~~ This act shall take effect and be in force from and after its  
8 publication in the statute book. 5

4-7

HOUSE BILL No. 2126

By Committee on Financial Institutions and Insurance

1-20

10 AN ACT concerning mortgages on real property; relating to the entry of  
11 satisfaction thereof; amending K.S.A. 58-2306 and 58-2309a and re-  
12 pealing the existing sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 58-2306 is hereby amended to read as follows: 58-  
16 2306. (a) Except as otherwise provided by this section, any mortgage of  
17 real property that has been or may hereafter be recorded shall be assigned  
18 or discharged by an instrument acknowledging the assignment or satis-  
19 faction of such mortgage, signed by the mortgagee or ~~his or her~~ *such*  
20 *mortgagee's* duly authorized attorney in fact, assignee of record, or per-  
21 sonal representative *or by the mortgagor or the lender or a designated*  
22 **closing agent acting as a closing agent in a sale or refinance of the**  
23 **real estate subject to such mortgage who has caused the indebtedness**  
24 **to be paid in full upon compliance with K.S.A. 58-2309a, and amendments**  
25 **thereto**, and duly acknowledged and certified as other instruments af-  
26 fecting real estate. Such instrument shall contain the name of the mort-  
27 gator and mortgagee, a legal description of the property and the volume  
28 and page in which the mortgage is recorded.

29 (b) Where the mortgagee or assignee of record is deceased, and  
30 where the estate of such deceased mortgagee or assignee of record is in  
31 process of administration, in this or any other state, an assignment or a  
32 full release of such mortgage may be made by the executor or adminis-  
33 trator without any showing as to the provisions of the will of the deceased,  
34 but there must accompany such assignment or release, as a part thereof,  
35 a certificate from a court of competent jurisdiction appointing such ex-  
36 ecutor or administrator, under the hand of its proper officer, and attested  
37 by its seal, certifying as to such appointment, and that such executor or  
38 administrator is, at the date of such assignment or release, still so acting  
39 under the authority of such court. Such certificate shall not be required  
40 when the executor or administrator is acting under appointment of the  
41 district court of the county where the real estate mortgaged is located.  
42 Where the estate of such deceased has not been administered upon, or  
43 where the estate of such deceased has been administered and settled and

The signature of a person on a release under this section may be a facsimile. The facsimile is equivalent to and constitutes the written signature of the person for all requirements regarding releases.

Senate File  
3/15/95  
Attachment #5



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen A. Taylor, Kansas Bankers Association

DATE: March 15, 1995

RE: **HB 2126**: Mortgage Release

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today in support of **HB 2126**. This bill amends KSA 58-2309a, the provisions for release of a mortgage upon satisfaction of the underlying debt.

The proposed amendments would resolve a problem that appears to be occurring with more frequency as the shape of the banking industry changes. We believe that these amendments will be beneficial both to the customer and to the bank. Many times, the completion of a loan may be held up because of the failure of the prior lender to release the mortgage. Typically, it is not because the mortgage has not been properly retired, but because the prior lender is not aware of Kansas law on the matter or does not prioritize the release of the mortgage.

Allowing the mortgagee or the lender to cause release of the mortgage upon the production of the documentation listed, will subsequently allow the loan transaction to be completed in a timely manner. We hope that this will facilitate loan production to all institutions in our state.

Thank you for your consideration and I respectfully urge your favorable action.

Senate F141  
3/15/95  
Attachment #6

