

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on March 9, 2004 in Room 519-S of the Capitol.

All members were present except:  
Representative Sue Storm- excused

Committee staff present:  
Martha Dorsey, Legislative Research Department  
Mike Heim Legislative Research Department  
Theresa Kiernan, Office of the Revisor of Statutes  
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:  
Ed Jaskinia, The Associated Landlords of Kansas  
Bill Yanek, Kansas Association of Realtors  
Dan Sight, Kansas Association of Realtors  
Sandy Jacquot, League of Kansas Municipalities  
Gary Hanson, Kansas Rural Water Association

Others attending:  
See Attached List.

The Chairman opened the meeting on:

**SB 328      cities and counties; limitation on lien for unpaid sewer charges**

Ed Jaskinia, The Associated Landlords of Kansas, testified in support of the bill (Attachment 1). He said current law allows local government to place a lien on property that has unpaid sewer service charges and to discontinue water service if either the water bill or sewer service charges are not paid. He explained that some local governments have decided that if a tenant contracts for service and does not pay, then the penalties for nonpayment are to be absorbed by the property and its owner, even though the owner is not a party to the contract between the tenant and utility provider. **SB 328** seeks to correct the language in the existing laws to prevent that from happening.

Bill Yanek, Kansas Association of Realtors (KAR), testified in support of the bill (Attachment 2). He said KAR supports amending the bill to create commercial lien rights for Kansas commercial brokers and agents. He cited the following key aspects of the proposed amendment:

- The transaction must deal in commercial real estate only.
- There must exist a written instrument entitling the real estate licensee to a fee or commission.
- Prior valid recorded liens, mortgages, and other encumbrances shall have priority over a real estate licensee's lien.
- A licensee may bring suit to enforce a lien in the district court in the county where the property is located.
- The cost of proceedings brought under this act including reasonable attorney fees, costs, and prejudgment interest due to the prevailing party shall be borne by the non prevailing party to parties.

Dan Sight, Kansas Association of Realtors, testified in support of the bill (Attachment 3). He said that there are currently 20 states that have a commercial lien act. He explained that they are asking for protection for commercial brokers and agents in Kansas to be paid the commissions on sales and leases to which they are entitled.

Sandy Jacquot, League of Kansas Municipalities, testified in opposition to the bill (Attachment 4). She

## CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on March 9, 2004 in Room 519-S of the Capitol.

said the bill would have a negative impact on all cities that operate water and sewer systems. She explained that there are three key reasons for current policy:

- Water and Sewer Service Run With the Land - While a part of each month's bill is based on the specific usage by each individual customer, most water and sewer bills contain a "minimum monthly payment" which is required as a result of the property's connection to the water or sewer system itself. This is a strong indication that it is the connection to the system which is of greatest value to the property. This expense should ultimately be borne by the landlords of the property who are free to pay it themselves as owners or to pass it on to their tenants in their lease payments.
- Equity - If cities are unable to collect delinquent water and sewer bills from landlords who have rented to tenants who refuse to pay their bills, then the remaining citizens of the city will bear the cost in higher water and sewer rates.
- Landlords Have Alternatives - Allowing a tenant to individually contract for his or her own water and sewer service is really up to the landlords. Many landlords simply include water and sewer service as part of their rent charges, thereby avoiding the situation where a tenant "skips out" on the payment of those charges.

Gary Hanson, Kansas Rural Water Association (KRWA), testified in opposition to the bill (Attachment 5). He said the effect of the bill is to shift the risk of loss for nonpayment of sewer service to the city and off of the landlord. KRWA believes that the landlord is in a better position to manage this risk, such as through a deposit, than is the sewer utility.

Written neutral testimony was submitted by:

- Sherry Diel, Kansas Real Estate Commission (Attachment 6)

The Chairman closed the hearing on: **SB 328**

### **Minutes**

Rep. Gilbert made a motion to approve the minutes of the February 5, 2004 and March 4, 2004 meetings. Rep. Thull seconded the motion. The motion carried.

### **Interim Study Request**

Copies of a draft letter to the Legislative Coordinating Council on behalf of the Committee were distributed to the members for their review (Attachment 7). The letter requests an in-depth study of city annexation laws during the 2004 Interim.

The meeting was adjourned at 4:30 p.m.

The next scheduled meeting is March 11, 2004.

**HOUSE LOCAL GOVERNMENT**

**DATE** 3-9-04

NAME	REPRESENTING
Charlie Keller	Hein Law Firm
Sandy Jacquet	LKM
BILL YANEK	KS Assn of REALTORS
DEREK RAMSAY	KANSAS CITY REGIONAL ASSN OF REALTORS
DAN SIGHT	KS ASSN of REALTORS
ED JASKINIA	THE ASSOCIATED LANDLORDS OF KS (TALK)
GARY HANSON	KANSAS Rural Water Assoc.

**Ed Jaskinia**  
President  
(913) 299-8383

## The Associated Landlords of Kansas

**Dr. Alex Scott**  
Vice President (Zone 2)  
(785) 238-3760

**James Dunn**  
Vice President (Zone 1)  
(785) 843-5272



**Gary Hefley**  
Vice President (Zone 3)  
(316) 722-7107

P.O. Box 4221 • Topeka, Kansas 66604-0221

The Associated Landlords of Kansas (TALK) was created in 1981 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create The Residential Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization consists of members in 19 chapters across the state, and new chapters are in the process of being formed.

In this 2004 legislative session, we continue to work for fair and decent housing for all.

### TESTIMONY S.B. 328

Existing law allows local government to place a lien on property that has unpaid sewer service charges, and to discontinue water service if either the water bill or sewer service charges are not paid.

Some local governments have decided that if a tenant contracts for the service and does not pay, then the penalties for non payment are to be absorbed by the property and its owner, even though the owner is not a party to the contract between the tenant and utility provider.

This bill seeks to correct the language in the existing laws to prevent that from happening.

If we can be of help to you in this or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia, President

House Local Government  
Date: 3-9-04  
Attachment # 1

ZONE 1  
Landlords of Lawrence Inc.  
Landlords of Johnson County, KS Inc.  
K.C.KS. Landlords Inc., serving Wyandotte Co.  
Eastern Kansas Landlords Assc., serving Miami Co.  
Franklin Co. Landlords Assc.

ZONE 2  
Landlords of Manhattan Inc.  
Geary County Landlords Inc.  
Jackson County Landlords Assc.  
Shawnee County Landlords Assc.  
Salina Rental Property Providers Inc.  
South Central Kansas Landlord Assc.  
Serving Sumner County

ZONE 3  
Central Kansas Landlords Assc.  
Bourbon County Landlords Assc.  
Cherokee County Landlords Assc.  
Crawford County Landlords Assc.  
Montgomery County Landlords Assc.  
Allen County Landlords Assc.  
Rental Owner Inc., serving Sedgwick County  
Labette County Landlords Assc.

**Office of Revisor of Statutes**  
300 S.W. 10th Avenue  
Suite 322, Statehouse  
Topeka, Kansas 66612-1592  
Telephone 785-296-2321 FAX 785-296-6668

**MEMORANDUM**

**To:** Senator Schmidt

**From:** Kenneth M. Wilke, Assistant Revisor of Statutes *KMW*

**Date:** March 9, 2004

**Subject:** Senate Bill 328

You have asked whether any provision of this bill affects rural water districts. Sections 1 and 2 applies to cities with respect to public improvements and utilities. Section 3 applies to cities of the second class. Section 4 applies to improvement districts. Section 5 applies specifically to Finney County, Kansas.

Statutes affecting rural water districts are found in K.S.A. 82a-601 et seq. and K.S.A. 82a-612 et seq. Statutes affecting water distribution and supply districts are found in Article 35 of Chapter 19 of Kansas Statutes Annotated. None of the amendments SB 328 change the current interrelationship between the statutes listed in this paragraph, if any, and the statutes amended by SB 328.

Thanks.

1-2  
2



TO: HOUSE COMMITTEE ON LOCAL GOVERNMENT  
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS  
DATE: March 9, 2004  
SUBJECT: Senate Bill 328

The Kansas Association of REALTORS® supports Senate Bill 328.

Under current law, if a tenant contracts for sewer and/or water service and subsequently fail to pay for the service or services, the unpaid charges become liens against the landlord or the owner of the property affected. SB 328 remedies this issue by prohibiting such liens when the services are contracted for by the tenant and not by the landlord or owner of the property affected.

The Kansas Association of REALTORS® supports amending SB 328 to create commercial lien rights for Kansas commercial brokers and agents.

Nearly every other professional related to commercial transactions (e.g. builders, architects) have lien rights in the transaction. Our bill will provide those rights to our commercial members.

Key aspects of the proposed amendment include:

1. The transaction must deal in commercial real estate only.
2. There must exist a written instrument entitling the real estate licensee to a fee or commission.
3. Prior valid recorded liens, mortgages and other encumbrances shall have priority over a real estate licensee's lien.
4. A licensee may bring suit to enforce a lien in the district court in the county where the property is located.
5. The cost of proceedings brought under this act including reasonable attorney fees, costs and prejudgment interest due to the prevailing party shall be borne by the non-prevailing party or parties.

***The Kansas Association of REALTORS® urges that you pass SB 328 amended by the creation of commercial real estate transaction lien rights.***

House Local Government  
Date: 3-9-04  
Attachment # 2



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SENATE BILL No. 328

By Committee on Elections and Local Government

1-21

AN ACT concerning municipalities relating to liens for water and sewer service amending K.S.A. 12-631k, 12-860, 14-569, 19-2765b and 19-27.170 and repealing the existing sections.

real property: relating to liens

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

Section 1. K.S.A. 12-631k is hereby amended to read as follows: 12-631k. a Except as provided in subsection (b), in the event any person, firm, corporation, political unit except the United States and the state of Kansas or organization living or operating on premises connected to a sanitary sewer, shall neglect, fail or refuse neglects, fails or refuses to pay the service charges fixed by the governing body of said the city or of such township sewer district for the operation of the sewage disposal system, such charges shall constitute a lien upon the real estate served by the connection to the sewer, and shall be certified by the clerk of the city or of the township sewer district to the county clerk of the county in which said the city or township sewer district is located, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible, and such the governing body is hereby authorized to refuse the delivery of water through the pipes and mains of a publicly owned waterworks until such time as such charges are fully paid.

(b) The lien established by subsection (a) shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or owner of the property affected.

Sec. 2. K.S.A. 12-860 is hereby amended to read as follows: 12-860. (a) The governing body of the city shall establish such rates and charges for water and for the use of the sewage disposal system as shall be reasonable and sufficient to pay the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof and new construction and the payment of any bonds and the interest thereon as may be issued for such water and sewage system: Provided, No revenue shall be used for the payment of bonds payable primarily by assessments against property in sewer districts: Provided further, That Such revenue may be used to pay revenue bonds or general obligation bonds payable by the city at large issued for either the water-

1 works system or sewage disposal system before the systems were com-  
2 bined or for the water and sewage system after they have been combined.  
3 The city is authorized to discontinue water service for any failure to pay  
4 the rates or charges fixed for either water service or the use of the sewage  
5 disposal system or both when due, and, *except as provided in subsection*  
6 *b*, if there is sewage disposal system use without water service the charge  
7 may be certified as a lien against the property served and assessed as a  
8 tax by the county clerk or county assessor.

9 *b* The lien established by subsection *a* shall not apply whenever  
10 the water service or the use of the sewage disposal system has been con-  
11 tracted for by a tenant and not by the landlord or the owner of the prop-  
12 erty affected.

13 Sec. 3. K.S.A. 14-569 is hereby amended to read as follows: 14-569.

14 *a* Except as provided in subsection *b*, in the event any person, firm or  
15 corporation using said sewage disposal system neglects, fails or refuses to  
16 pay the charges fixed by said governing body, such person, firm or cor-  
17 poration shall not be disconnected from said sewage disposal system or  
18 refused the use thereof, but said charges due therefor shall be by the city  
19 clerk certified to the county clerk of the county in which said city is  
20 located, to be placed on the tax roll for collection, subject to the same  
21 penalties and collected in like manner as other taxes are by law collectible,  
22 and shall become a lien upon the real property so served.

23 *b* The lien established by subsection *a* shall not apply whenever  
24 the use of the sewage disposal system has been contracted for by a tenant  
25 and not by a landlord or owner of the property affected.

26 Sec. 4. K.S.A. 19-2765b is hereby amended to read as follows: 19-  
27 2765b. *a* Except as provided in subsection *b*, in the event any person,  
28 firm or corporation using said sewage disposal system neglects, fails or  
29 refuses to pay the charges so fixed by the board of directors of said district,  
30 such person, firm or corporation shall not be disconnected from said  
31 sewage disposal system or refused the use thereof, but said charges due  
32 therefor shall be certified by the board of directors of said district to the  
33 county clerk of the county in which said improvement district is located  
34 to be placed on the tax roll for collection subject to the same penalties  
35 and collected in like manner as other taxes are by law collectible, and  
36 shall become a lien upon the real property so served.

37 *b* The lien established by subsection *a* shall not apply whenever  
38 the use of the sewage disposal system has been contracted for by a tenant  
39 and not by the landlord or owner of the property affected.

40 Sec. 5. K.S.A. 19-27.170 is hereby amended to read as follows: 19-  
41 27.170. *a* As used in this section and in K.S.A. 19-27.171 and 19-27.172,  
42 and amendments thereto, county means Finney county.

43 *b* As a complete alternative to all other methods provided by law,



1 the board of county commissioners of a county which has created or has  
 2 received a petition seeking to create main sewer districts, lateral sewer  
 3 districts, or joint sewer districts pursuant to the provisions of article 27  
 4 of chapter 19 of the Kansas Statutes Annotated, may by resolution de-  
 5 termine that all or a portion of the cost of acquiring, constructing, recon-  
 6 structing, enlarging or extending the storm or sewage systems and related  
 7 disposal works, pumping stations, pumps or other apparatus for handling  
 8 and disposing of sewage be borne by the county-at-large and paid out of  
 9 the general revenue fund or by the issuance of general obligation im-  
 10 provement bonds of the county as the board of county commissioners  
 11 may determine, in the manner provided by law. The proportionate share  
 12 of the costs of such sewer improvements not borne by the county-at-large  
 13 shall be assessed against the property within the sewer district in accord-  
 14 ance with the provisions of article 27 of chapter 19 of the Kansas Statutes  
 15 Annotated. Where the county shall issue bonds to pay the costs of sewer  
 16 improvements in accordance with this act, and all or a portion of such  
 17 costs shall be borne by the county-at-large, such bonds shall be general  
 18 obligations of the county, shall be issued in accordance with the general  
 19 bond law, and shall be in addition to and may exceed the limits of bonded  
 20 indebtedness of such county.

21 (c) The board of county commissioners shall have the power to es-  
 22 tablish a schedule of charges for the use of such sewer improvements  
 23 financed in accordance with this act. Such charges may be based on the  
 24 use required and shall include consideration of, but not limited to the  
 25 quantity, quality and rate of sewage or waste water contributed to the  
 26 system. *Except as provided in subsection (d), any such service charge shall*  
 27 *become a lien on the property against which the service charge is made*  
 28 *from the date such charge becomes due. Funds generated by such service*  
 29 *charges shall be used for the purpose of paying all or any portions of the*  
 30 *costs of constructing or reconstructing the sewer improvements, for the*  
 31 *costs of operation and maintenance thereof, or for the payment of prin-*  
 32 *cipal and interest on general obligation bonds issued in accordance with*  
 33 *this act.*

34 (d) *The lien established by subsection (c) shall not apply whenever*  
 35 *the use of the sewage disposal system has been contracted for by a tenant*  
 36 *and not by the landlord or owner of the property affected.*

37 Sec. 6. K.S.A. 12-631k, 12-860, 14-569, 19-2765b and 19-27.170 are  
 38 hereby repealed.

39 Sec. 7. This act shall take effect and be in force from and after its  
 40 publication in the statute book.

41  
 42  
 43

Insert Attached

Renumber sections

2-4

New Sec. 6. Sections 6 through 10, and amendments thereto, shall be known and may be cited as the commercial real estate broker lien act.

New Sec. 7. As used in sections 6 through 10, and amendments thereto:

(a) "Commercial real estate" means any real estate for which the present use is other than (1) four or fewer residential units or (2) for agricultural purposes.

(b) "Commission" means any and all compensation which may be due a broker for services provided as a licensee.

(c) "Licensed services" means services provided to a buyer or tenant as a licensee.

(d) "Real estate" and "licensee" have the meanings ascribed thereto in K.S.A. 58-3035, and amendments thereto.

New Sec. 8. (a) Any licensee shall have a lien, upon commercial real estate or any interest in that commercial real estate which is the subject of a purchase, lease or other conveyance to a buyer or tenant of an interest in the commercial real estate, in the amount that the licensee is due for licensed services which shall include without limitation, brokerage fees, consulting fees and management fees:

- (1) Under a written instrument signed either by the owner of an interest in the commercial real estate or by the owner's duly authorized agent; or
- (2) under a written instrument signed by a prospective buyer or prospective tenant or their respective duly authorized agent.

The lien shall be available to the licensee named in the instrument signed by the owner, buyer or tenant or such person's authorized agents, and not to an employee or independent contractor of the licensee.

(b) This lien shall attach to the commercial real estate or any interest in the commercial real estate upon:

- (1) The licensee being otherwise entitled to a fee or commission under a written instrument signed by the owner, buyer, tenant or such person's authorized agent; and
- (2) except as provided in subsection (c), (d), (e) or (f), the licensee recording a notice of lien in the register of deeds office of the county in which the real property or any interest in the real property is located, prior to the actual conveyance or transfer of the commercial real estate against which the licensee is claiming a lien. The lien shall attach as of the date of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(c) Except as provided in subsections (d), (e) or (f), when payment to a licensee is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be

recorded at any time which is subsequent to the transfer or conveyance of the commercial real estate and which time is within 90 days of the date on which the payment is due. However, such notice of lien shall only be effective as a lien against the transferor's interest in the commercial real estate to the extent moneys are still owed to the transferor by the transferee; but the lien shall be effective as a lien against the transferee's interest without limitations described above in this section. A single claim for lien recorded prior to transfer or conveyance of the commercial real estate claiming all moneys due under an installment payment agreement shall be valid and enforceable as it pertains to payments due after the transfer or conveyance; provided however, that as payments or partial payments of commission are received, the licensee shall provide partial releases therefor, thereby reducing the amount due the licensee under its notice of lien.

(d) In the case of a lease which shall also include a sublease or assignment of lease, the notice of lien must be recorded not later than 90 days after the tenant takes possession of the leased premises. If the transferor personally serves written notice of the intended execution of the lease on the broker entitled to claim a lien at least 10 days prior to the date of the intended execution of the lease, the notice of lien must be recorded before the date indicated in such notice for the execution of the lease. The lien shall attach as of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(e) If a licensee may be due additional commission either as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises, to renew or extend a lease, or to purchase the property, or otherwise, pursuant to a written instrument signed by the then owner or tenant, the licensee may record its notice of lien at any time after execution of the lease or other written instrument which contains such option but not later than 90 days after the event or occurrence on which the additional commission is claimed occurs. Notwithstanding subsection (i), an action to foreclose a lien to collect additional commissions must be commenced within two years of the occurrence or transaction on which the additional commission is claimed.

(f) In the event that the property is sold or otherwise conveyed prior to the date on which an additional commission is due, if the broker has filed a valid notice of lien prior to the sale or other conveyance of the property, then the purchaser or transferee shall be deemed to have notice of and shall take title to the property subject to the notice of lien. If a broker claiming an additional commission fails to record its notice of lien for additional commission prior to the recording of a deed conveying legal title to the property to the purchaser or transferee, then such licensee may not claim a lien on the property. The foregoing provisions of this subsection shall not limit or otherwise affect claims or defenses a licensee or owner or any other party may have on any other basis, in law or in

equity.

(g) If a licensee has a written agreement with a prospective buyer or tenant as described in subsection (a) (2), then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the broker in the register of deeds office of the county in which the real property, or any interest in the real property is located, within 90 days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(h) The licensee shall, within 10 days of recording its notice of lien, either mail a copy of the notice of lien to the owner of record on the commercial real estate by registered mail, or the agent of the owner of record at the address of the owner stated in the written instrument on which the claim for lien is based, or if no such address is given, then to the address of the property on which the claim of lien is based. If the notice of lien is recorded within 10 days prior to closing, the broker is not required to mail or personally serve a copy of the notice of lien. Mailing of the copy of the notice of lien is effective when deposited in the United States mail box with postage prepaid. The broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the matter required by this section.

(i) (1) A licensee may bring suit to enforce a lien in the district court in the county where the property is located by filing a complaint and sworn affidavit that the notice of lien has been recorded.

(2) The licensee claiming a lien, within two years after recording the notice of lien, shall commence proceedings, by filing a complaint. Failure to commence proceedings as required herein within two years after recording the notice of lien shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

(3) A licensee claiming a lien based upon an option or other right to purchase or lease, within two years after the transfer or conveyance of the commercial real state under the exercise of the option to purchase or lease, shall commence proceedings by filing a complaint. Failure to commence proceedings within this time shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

(4) A complaint under this section shall contain a brief statement of the contract or instrument on which the lien is founded the date when the contract or instrument was made, a description of the services performed, the amount due and unpaid, a description of the property that is subject to the lien, and other facts necessary for a full understanding of the rights of the parties. The plaintiff shall make all interested parties,

of whose interest the plaintiff is notified or has knowledge. defendants to the actions. and shall issue summons and provide service as in other civil actions. When any defendant resides or has gone out of the state. or on inquiry cannot be found. or is concealed within the state so that process cannot be served on that defendant. the plaintiff shall cause a notice to be given to that defendant. or cause a copy of the complaint to be served upon that defendant in the manner and upon the same conditions as in other civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for judgment against the plaintiff and in favor of the defendant who is not properly served with summons or notice with prejudice. All liens claimed under this act shall be foreclosed as provided for in article 24 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(j) The notice of lien shall state the name of the claimant. the name of the owner. a description of the property upon which the lien is being claimed. the amount for which the lien is claimed. and the licensee's license number. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signator. The notice of lien shall be signed by the licensee or the authorized agent of the licensee and shall be verified.

(k) Whenever a notice of lien has been filed with the register of deeds and a condition occurs that would preclude the licensee from receiving compensation under the terms of the written agreement on which the lien is based. the licensee shall provide to the owner of record. within 10 days following written demand by the owner of record. a written release or satisfaction of the lien.

(l) Upon written demand of the owner, licensee or other authorized agent of the owner or licensee. which demand shall be served on the licensee claiming the lien requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit. a suit shall be commenced or answer filed within 30 days thereafter. or the lien shall be extinguished. Service of such written demand may be made by registered mail, return receipt requested. or by personal service.

(m) Whenever a notice of lien has been filed with the register of deeds and such claimed commission has been paid to the licensee claiming the lien. or where there is failure to institute a suit to enforce the lien within the time provided by this act. the licensee shall acknowledge satisfaction or release of the notice of lien in writing. on written demand of the owner within five days after payment or within five days of expiration of the time in which the notice of lien was to be filed.

(n) If the licensee and the party or parties from whom the commission is claimed agree to alternative dispute resolution. the claim shall be heard and resolved in the forum on which these parties have agreed. The court before which the lien foreclosure proceeding is brought shall retain jurisdiction to enter judgment on the award or other result made or

reached by alternative dispute resolution on all parties to the foreclosure. The licensee's notice of lien shall remain of record and the foreclosure and the proceeding shall be stayed during the pendency of the alternative dispute resolution process.

(o) The cost of proceedings brought under this act including reasonable attorney fees, costs and prejudgment interest due to the prevailing party shall be borne by the non-prevailing party or parties. When more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court or mediator among those responsible parties.

(p) Except for a waiver or release of lien provided in consideration of payment of the fee claimed by the licensee, or pursuant to subsections (k) and (m), any waiver of a broker's right to lien commercial property under this statute, any other waiver or release of lien shall be void.

New Sec. 9. Prior valid recorded liens, mortgages and other encumbrances shall have priority over a licensee's lien. Such prior recorded liens, mortgages and encumbrances shall include, without limitation: (a) A valid mechanic's lien claim that is recorded subsequent to the licensee's notice of lien but which relates back to a date prior to the recording date of the licensee's notice of lien; and (b) prior recorded liens securing revolving credit and future advances of construction loans.

New Sec. 10. Except as otherwise provided in this section, whenever a claim for lien has been filed with the register of deeds, and an escrow account is established either from the proceeds from the transaction conveyance or any other source of funds in an amount computed as 125% of the amount of the claim for lien then the lien against the real estate shall be extinguished and becomes a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided for in this section, shall not be cause for any party to refuse to close the transaction.



March 8, 2004

Representative Jene Vickrey  
Chair, House Local Government Committee

RE: SENATE BILL 328

Dear Representative Vickrey;

On behalf of the Kansas Association of REALTORS®, thank you for your consideration of our amendment of commercial broker lien rights into SB 328. I write this letter to you as the current President of the Kansas Association of REALTORS® as well as a practicing commercial real estate broker of 20 years.

Currently 20 states have a commercial lien act. This is also a priority of our National Association of REALTORS®. What we are asking for is protection for our commercial brokers and agents in Kansas to be paid the commissions on sales and leases that they are due and entitled to.

Unlike other professionals that add value to real estate transactions such as architects, surveyors, builders, electricians, bricklayers, and suppliers of materials, real estate brokers have no statutory right to a lien on real property. It makes sense to have a means by which a broker can place a lien on the property, since the value of the property has been increased by the broker's efforts. According to CB Richard Ellis, a large national company, the Missouri lien law has actually reduced broker commission litigation. The bill we are proposing is a model bill drafted by our National Association of REALTORS® for use by other States around the country.

I own a small shopping center in Lenexa, Ks. I am getting ready to put a new roof on the property. If I don't pay the roofer upon completion, he will file a lien on the property, RIGHTFULLY so. If another broker in Kansas does a lease with me for a space in the property and I don't pay him, he SHOULD be able to file a lien on the property, RIGHTFULLY so.

I encourage you to pass SB 328 amended by the KAR supported commercial lien amendment.

Sincerely,

Daniel E. Sight  
President, Sight Commercial Realty, Inc.

House Local Government

Date: 3-9-04

Attachment # 3



785.267.3610  
VOICE

800.366.0069  
TOLL FREE

785.267.1867  
FAX

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Topeka, Kansas 66611  
www.kansasrealtor.com



### Lien Law Helps Broker Recover Commission

A Connecticut court has considered property owner's defenses to a Connecticut broker's attempt to foreclose a lien filed by the broker against the owner's property in the amount of the broker's unpaid commission.

Geenty Inc., d/b/a The Geenty Group, REALTORS® ("Broker"), is a licensed real estate broker in Connecticut. The Broker signed a brokerage contract with Henry G. Smernoff ("Owner") pursuant to which the Broker agreed to locate a tenant for the Owner's property. In 1995, the Broker procured a tenant who signed a lease running from 1995-2000.

When the lease expired, the Broker negotiated an extension with the Tenant. The brokerage contract contained a provision addressing renewals, which stated that the Owner would owe the Broker a commission based on the rates set forth in the brokerage contract. When the Owner refused to pay the entire lease renewal commission, the Broker first placed a broker's lien on the property and then filed a lawsuit seeking to enforce the lien.

Broker lien laws currently exist in twenty-one states, and these laws have few common elements- click [here](#) to view a chart setting forth the states that currently have these laws as well as a brief description of the various laws. While most states only allow these types of liens on commercial property, the Connecticut lien law allows liens on all types of property but requires that the notice of lien rights must appear in the commission agreement.

The Owner claimed that he was only obligated to pay a commission as he received monthly rental payments from the tenant. The trial court considered whether the brokerage contract allowed the Owner to pay the commission in this manner.

The Superior Court of Connecticut rejected the Owner's "novel position" and awarded the Broker the entire commission amount as well as attorney's fees. The court first considered the Owner's argument that he could pay the commission in monthly installments. The Owner based his argument on the fact that the parties had agreed that the original commission could be paid in two installments, not one lump sum. The court found no support for the Owner's argument in the brokerage contract, and so rejected the Owner's argument that it could pay the commission in monthly installments. The court also rejected the Owner's argument that the brokerage contract was ambiguous, finding that the provisions relating to lease renewals were clear. Thus, the court ruled that the Owner had improperly refused to pay the Broker the entire commission, and so the court awarded the Broker the entire commission. Additionally, the brokerage contract permitted the recovery of attorney's fees and costs, and so the court awarded the Broker those amounts as well.

**Geenty, Inc. v. Smernoff**, No. CV010447870S, 2002 WL 31256155 (Conn. Super. Ct. Sept. 6, 2002). [Note: This opinion was not published in an official reporter and therefore should not be cited as authority. Please consult counsel before relying on this opinion].

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The National Association of REALTORS®, 430 N. Michigan Ave., Chicago, IL 60611 Telephone: 1-800-874-6500

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**Status of Broker Lien Laws in the U.S.**

The goal of this research project is to identify and briefly summarize all broker lien laws that currently exist. There are twenty-one states that allow a commercial broker to place a lien on some form of property for an unpaid commission. The research revealed that the broker lien laws have few common elements, as the laws vary from state-to-state to some degree. The chart sets four basic categories of information common to all of the states.

**AS A NOTE OF CAUTION, IT MUST BE UNDERSTOOD THAT THIS REPORT DOES NOT CONSTITUTE LEGAL ADVICE. THIS REPORT IS INTENDED TO PROVIDE GENERAL INFORMATION, AND SHOULD NOT BE RELIED UPON AS LEGAL GUIDANCE. BEFORE ACTING, BOTH THE LAWS OF THE STATE AND LEGAL COUNSEL SHOULD BE CONSULTED. INFORMATION SHOULD NOT BE CONSTRUED AS SPECIFIC LEGAL ADVICE OR AN OPINION ON INDIVIDUAL CASES OR SITUATIONS. THIS RESEARCH WAS PERFORMED IN EARLY 2002. REMEMBER, THAT LAWS ARE IN FLUX, AND THIS RESEARCH MAY OR MAY NOT BE VALID AT THE TIME IT IS CONSULTED.**

**BROKER LIEN CHART**

State	Citation	Written brokerage agreement required?	Type of transactions for which broker can claim lien.	Type of property which can be liened.
Alabama	§35-11-450, 35-11-451	Yes	Sale, lease	Commercial
Arizona	§33-1071 to 1076	Yes - and disclosure of lien rights in the agreement is mandatory	Lease	Commercial
Connecticut	§20-325a	Yes - and notice of lien rights must appear in the commission agreement	Sale, lease	All real property
Florida	FRS 475.42 (1) (j) (consensual only)	Yes - and owner must consent to lien rights in the commission agreement	Sale, lease	All real property
Georgia	§44-1-600 to 613	Yes	Sale, lease	Commercial
Illinois	770 ILCS 15/1 et seq.	Yes	Sale, lease	Commercial

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<b>Kentucky</b>	§376.075	Yes	Sale, lease	All real property
<b>Louisiana</b>	Title 9, Ch. 3, Sec 2781	Yes	Sale, lease	Commercial
<b>Maine</b>	10 MRSA §3251	No	Sale, lease	All real property
<b>Maryland</b>	§14-301 to 313	Yes	Lease	Commercial
<b>Missouri</b>	§429.600 to 630	Yes	Sale, lease	Commercial
<b>Nevada</b>	NRS 645.8701 et seq.	Yes	Sale; lease	Personal: owner's net proceeds from the transaction
<b>New Hampshire</b>	§447-A et seq.	Yes	Sale, lease	Commercial
<b>New York</b>	Real Property, Sec. 294-b; Lien, Sec. 2.4	Yes	Lease (for a term of more than 3 years); Sale (non-lien)	Commercial (for lease transactions)
<b>Ohio</b>	§1311.85-93	Yes	Sale, lease	Commercial
<b>Pennsylvania</b>	Title 68, Ch. 24, Sec. 1051-1063	Yes	Sale, lease	Commercial
<b>Tennessee</b>	62-13-501 et seq.	Yes	Lease (future commissions only, i.e. expansions, renewals, options )	Commercial
<b>Texas</b>	Property Code Title 5, Ch. 62.001-141	Yes - notice of lien rights must appear in the written commission agreement	Sale, lease	Commercial
<b>Virginia</b>	§55-527	Yes	Lease	Tenant's rent payments up to 1st 20 years of rent payments
<b>Washington</b>	RCW Chapter 60.42.005 - 60.42.900	Yes	Sale, lease	Personal - only sale or lease proceeds
<b>Wisconsin</b>	§779.32	Yes	Sale, lease	Commercial

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3-4



League of Kansas Municipalities

300 SW 8th Avenue  
Topeka, Kansas 66603-3912  
Phone: (785) 354-9565  
Fax: (785) 354-4186

**To:** House Local Government Committee  
**From:** Sandy Jacquot, General Counsel  
**Re:** Opposition to SB 328  
**Date:** March 9, 2004

Thank you for the opportunity to appear before you today on behalf of the 555 member cities of the League of Kansas Municipalities (LKM). LKM and our member cities stand in opposition to SB 328. Because SB 328 would prohibit the collection of fees due and owing to the city from landlords, SB 328 would have a negative impact on all cities that operate water and sewer systems.

Under state law, and most city ordinances, cities are allowed to collect water and sewer charges from landlords if a particular tenant refuses to pay their bill. There are three key reasons for this policy.

- **Water and Sewer Service Run With the Land.** While a part of each month's bill is based on the specific usage by each individual customer, most water and sewer bills contain a "minimum monthly payment" which is required as a result of the property's connection to the water or sewer system itself. This is a strong indication that it is the connection to the system which is of greatest value to the property and this expense should ultimately be borne by the landlords of the property who are free to pay it themselves as owners or to pass it on to their tenants in their lease payments.
- **Equity.** The real crux of this issue is equity. If cities are unable to collect delinquent water and sewer bills from landlords who have rented to tenants who refuse to pay their bills, then the remaining citizens of the city will bear the cost in higher water and sewer rates. Citizens of the community who pay their bills in a timely fashion should not be penalized for those tenants who refuse to pay their bills. The landlords, who own the property, and are using the property as a money-making enterprise should be obligated to make sure that the city services which are delivered to that property are ultimately paid for.
- **Landlords Have Alternatives.** Allowing a tenant to individually contract for his or her own water and sewer service is really up to the landlords. Many landlords simply include water and sewer service as part of their rent charges, thereby avoiding the situation where a tenant "skips out" on the payment of those charges.

The lien which is provided for in statute and in most city ordinances is the mechanism by which cities and their citizens can be assured that each property pays its fair share for the use of city services. SB 328 would amount to a subsidy of landlords by property owners who pay their bills appropriately. For these reasons, we respectfully request that you do not report SB 328 favorably for passage. Thank you for the opportunity to share our concerns on this issue.

House Local Government  
Date: 3-9-04  
Attachment # 4



KANSAS  
RURAL  
WATER  
*association*  
Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 785/336-3760  
FAX 785/336-2751 • <http://www.krwa.net>

March 9, 2004

House Committee on Local Government  
Room 519 South  
Capitol Building  
Topeka, KS 66611

**Re: SB 328**

Dear Chairperson Vickrey and Members of the Committee:

On behalf of the Kansas Rural Water Association's 450 member cities and 300 member rural water districts, the Association opposes SB 328.

Nonpayment for sewer service can be a problem. Unlike other utilities, the community as a whole benefits as much from the use of an efficient sanitary sewer system as do the occupants of the property. Additionally, there is no reliable way to insure that the sewer system provider is notified when there is a change in occupancy of property. Sewer service is not turned on and off, so a new occupant does not need to notify the city when sewer service is needed, making collection of a deposit very difficult.

Termination of water service can be an effective tool to collect unpaid sewer bills. However, this is not always possible, such as in cities like Auburn and Basehor where the city owns and operates a sanitary sewer system, but not the water system. In those situations the general view is that the rural water district that provides water service has no authority to terminate water service because a customer failed to pay the city sewer bill. A lien for nonpayment of that sewer service may be the only effective way to ever collect for those services. Many cities, like Auburn, have modernized their sewer systems funded by revenue bonds, the payment of which is dependent on collection of a monthly fee from each user.

The effect of SB 328 is to shift the risk of loss for nonpayment of sewer service to the city and off of the landlord, who can be made to pay under current law through the lien authority. KRWA believes that the landlord is in a better position to manage this risk (such as through a deposit) than is the sewer utility, and therefore urges the Committee to decline to approve this bill.

Thank you very much for your consideration.

Respectfully submitted,

GARY H. HANSON

GHH:de

House Local Government  
Date: 3-09-04  
Attachment # 5



# KANSAS

KANSAS REAL ESTATE COMMISSION  
SHERRY C. DIEL, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

Memo To: Members of the House Local Government Committee  
From: Sherry C. Diel, Executive Director  
RE: Kansas Association of Realtors' Proposed Amendment to SB 328  
Date: March 9, 2004

The Kansas Real Estate Commission licenses and regulates real estate salespersons and brokers. The Commission understands that the trade association, the Kansas Association of Realtors, is requesting that the content of SB 516 be amended into SB 328. SB 516 would permit a commercial real estate broker to place a lien on real property for the amount of the commission due. The Kansas Real Estate Commission is neither a proponent nor opponent of the proposed amendment.

The Commission anticipates that the addition of the commercial lien provisions will have a minimal fiscal impact on the agency. The Commission's authority is not directly affected by the proposed amendment. The commercial lien is pursued through the judicial system; however, the Commission may see an increase in complaints alleging misrepresentation if a party to the transaction or another broker disputes either the appropriateness of the lien or the lien amount.

A summary of the proposed amendment is as follows:

The amendment would provide timelines and procedures for a real estate broker to perfect a lien for the amount of the compensation due as commission for the broker's performance of licensed services involving a sale, purchase, or lease of commercial property. The proposed legislation defines commercial real estate as any real estate, except:

- (1) Real estate containing one to four residential units; or
- (2) real estate on which no buildings or structures are located and which is zoned for single-family residential units such as condominiums, townhouses or homes in a subdivision when sold, leased or otherwise conveyed on a unit by unit basis, even though these units may be a part of a larger building or parcel or real estate containing more than four residential units.

House Local Government

Date: 3-9-04

Attachment # 6

THREE TOWNSITE PLAZA STE 200, 120 SE 6TH AVE., TOPEKA, KS 66603-3511

Voice 785-296-3411

Fax 785-296-1771

<http://www.accessKansas.org/krec>

Members of House Local Government Committee  
March 9, 2004  
Page 2

The lien is available only to the broker named in the written agreement with the seller, buyer, lessor, or lessee. The lien is not available to an employee or independent contractor of the broker.

Thank you for the opportunity to address the Committee. Should you have any questions, please contact me at (785) 296-6951 or [sherry.diel@krec.state.ks.us](mailto:sherry.diel@krec.state.ks.us).

March 9, 2004

Representative Doug Mays, Speaker  
Chairman, Legislative Coordinating Council  
380-W, Statehouse  
Topeka, KS 66612

Dear Representative Mays:

On behalf of the House Local Government Committee, I am requesting an in-depth study be conducted of city annexation laws during the 2004 interim.

There appears to be considerable interest in this topic among members of the Kansas House and our local government committee. A thorough study of city annexation laws and practices has not been conducted by an interim committee topic since 1986.

The following are some of the areas that should be explored:

- The need for cities to have unilateral annexation powers.
- The need for residents in an area proposed to be annexed to have more of a voice in the unilateral annexation process.
- The efficacy of the annexation procedure before the board of county commissioners and its frequency of use.
- The feasibility of local boundary commissions to decide annexation issues.
- A review of city plans for extension of services to newly annexed areas and their effectiveness.

Thank you for your consideration of this request.

Sincerely,

Representative Jene Vickrey, Chair  
House Local Government Committee

39832(3/9/4{2:57PM})

House Local Government  
Date: 3-9-04  
Attachment # 7