

MINUTES OF THE HOUSE INSURANCE COMMITTEE

The meeting was called to order by Chairman Clark Shultz at 3:35 p.m. on February 3, 2009, in Room 784 of the Docking State Office Building.

All members were present.

Committee staff present:

Bruce Kinzie, Office of the Revisor of Statutes
Melissa Calderwood, Kansas Legislative Research Department
Cindy Lash, Kansas Legislative Research Department
Sue Fowler, Committee Assistant

Conferees appearing before the committee:

Representative Hawk, District 67
Lauren Palmer, Manhattan Assistant City Manager
Pam Spaulding, Manhattan Resident
Aaron Madison, Manhattan Resident
Matt Goddard, Heartland Community Bankers Association
Kathleen Olsen, Kansas Bankers Association
Doug Wareham, Kansas Bankers Association

Others attending:

See attached list.

Hearing on:

HB 2159 **Insurance settlement payments, mortgage holder and mortgagor.**

Melissa Calderwood, Kansas Legislative Research Department, gave brief overview for **HB 2159**.

The Chairman opened the hearing on **HB 2159**.

Proponents:

Representative Hawk, District 67, (Attachment 1), appeared before the committee in support of **HB 2159**.
Lauren Palmer, Manhattan Assistant City Manager, (Attachment 2), gave testimony before the committee in support of **HB 2159**.
Pam Spaulding, Manhattan Resident, (Attachment 3), presented testimony before the committee in support of **HB 2159**.
Aaron Madison, Manhattan Resident, (Attachment 4), presented testimony before the committee in support of **HB 2159**.

Neutral:

Matt Goddard, Heartland Community Bankers Association, (Attachment 5), appeared before the committee with neutral testimony on **HB 2159**.
Kathleen Olsen, Kansas Bankers Association, (Attachment 6), gave neutral testimony before the committee on **HB 2159**.

Hearing closed on **HB 2159**.

CONTINUATION SHEET

Minutes of the House Insurance Committee at 3:35 p.m. on February 3, 2009, in Room 784 of the Docking State Office Building

Hearing on:

HB 2160 **Insurance, payment of insurance claims without dual endorsement.**

Melissa Calderwood, Kansas Legislative Research Department, gave brief overview for **HB 2160**.

The Chairman opened the hearing on **HB 2160**.

Proponents:

Representative Hawk, District 67, (Attachment 7), appeared before the committee in support of **HB 2160**. Lauren Palmer, Manhattan Assistant City Manager, (Attachment 8), gave testimony before the committee in support of **HB 2160**.

Pam Spaulding, Manhattan Resident, (Attachment 9), presented testimony before the committee in support of **HB 2160**.

Aaron Madison, Manhattan Resident, (Attachment 10), presented testimony before the committee in support of **HB 2160**.

Opponents:

Matt Goddard, Heartland Community Bankers Association, (Attachment 11), appeared before the committee in opposition to **HB 2160**.

Doug Wareham, Kansas Bankers Association (Attachment 12), appeared before the committee in opposition to **HB 2160**.

Hearing closed on **HB 2160**.

The staff review of current health mandates will be rescheduled for a later date.

The next meeting is scheduled for February 5, 2009.

The meeting was adjourned at 6:00 p.m.

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HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
FEDERAL AND STATE AFFAIRS
ENERGY AND UTILITIES
SOCIAL SERVICE BUDGET

Testimony
HB2159 and HB2160

February 3, 2009

Chairman Shultz, Vice-Chair Peck, Ranking Minority Dillmore, and Members of the House Insurance Committee:

This past June, a serious tornado destroyed property in Chapman and Manhattan. Much credit is due to the communities and individual citizens that rallied to help the neighbors affected by this disaster.

Specific damage in Manhattan has been reported in the following categories:

Destroyed: 45 Single Family Homes
2 Mobile Homes
3 Businesses

Major Damage: 67 Single Family Homes
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Minor Damage: 75 Single Family Homes
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Affected Properties: 637 Single Family Homes
93 Multi-Family Homes
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Kansas State University: \$20M in Damage

Of key concern to the homeowners who lost their entire homes or had significant damage, was the desire to clean up the debris and start the re-building process as soon as possible.

House Insurance
Date: 2-3-09
Attachment # 1

However, that is where a structural problem in the distribution of insurance funds soon became apparent. I started to receive phone calls from constituents who had received timely payments from their insurance companies, but because there was a dual endorsement requirement on some of the mortgage contracts, the checks had to be forwarded to the out of state mortgage company. Those companies seemed to either lose the paperwork sent to them by the homeowners, or were unable or unwilling to release payments so that the repair work could be started or continued.

In visiting with City of Manhattan officials, I learned that Florida and Louisiana had experienced similar situations after their major disasters with Hurricanes Rita and Katrina and had model legislation to deal with this problem. One of these bills, HB 2160, is modified from one in Florida. The Florida bill had a dollar amount that did not pass. The other bill, HB2159, is modeled after Louisiana legislation and, while having some good ideas to make timely payments to the homeowners, is reported to have not passed through their legislature.

Today some affected homeowners will share their experiences with their own efforts to rebuild and the problems they experienced in getting timely reimbursement from their insurance payments that were directed to their mortgage holders. It is my hope that we can find some legislation that will encourage the timely payment of money due so that repairs can proceed as quickly as possible and people can get back into their homes and regain their stability and productively to stay in our local communities after a major disaster.

Kansas has been no stranger to disasters. The Greensburg tornado left over 900 properties in ruin and our own June 11 tornado also affected over 60 properties in Chapman as well as their school facilities and other community structures. I know we will have future disasters of this type in other Kansas towns and hope we can find some solutions that will aid those future victims and homeowners.

House Committee on Insurance
Hearing on House Bills ²¹⁵⁹~~2169~~ and 2160

Tuesday, February 3, 2009

Testimony of Lauren Palmer

Assistant City Manager, City of Manhattan, Kansas

Good afternoon Chairperson Shultz and Honorable Members of the House Insurance Committee. My name is Lauren Palmer, and I am an Assistant City Manager for the City of Manhattan. I want to thank you for this time to address the Committee regarding an issue that recently impacted our community.

On Wednesday, June 11, 2008, the City of Manhattan was struck by an EF4 tornado that produced winds in excess of 150 miles per hour and caused severe damage to public and private property. Approximately 45 homes were completely destroyed, 67 sustained major damage, and nearly 700 others had minor damage or were otherwise affected by storm debris. In addition, the K-State campus suffered major damage. The same storm also impacted the nearby City of Chapman and destroyed approximately 60 homes and buildings in that community.

In Manhattan, we felt very fortunate. The storm hit hardest on the western edge of town and impacted primarily newer subdivisions with homes equipped with basements. Residents heeded the advanced warning given, so although the damage was severe, no lives were lost and no one sustained major injuries. City officials were further relieved to learn that nearly all of the property owners impacted carried adequate insurance to meet their repair and rebuilding needs.

Unfortunately, as the community started the rebuilding process, we began to hear reports through our Building Codes Office and from private citizens of trouble receiving insurance proceeds. Although insurance companies appeared quick to process claims and issue payments, some property owners encountered problems with mortgage holders who were listed as joint payees on payments. In some cases, mortgage holders would only release a small portion of the proceeds up front (10% or less), and would withhold the remaining proceeds until all repairs were completed. The portion released was sometimes insufficient to pay a deposit to secure a contractor. This situation left property owners in the impossible position of having to complete the repairs before receiving their money, but needing the money in order to complete the repairs. Unless owners had adequate savings to front the cost of repairs, they would have to secure a loan, with the added expense of financing costs for the owner. The City is aware of one contractor who actually completed the repairs at his own expense, on trust, for a property owner who encountered this problem with a mortgage holder.

The City of Manhattan supports both HB 21~~69~~⁵⁹ and HB 2160. Each bill offers a different approach to relief for affected property owners, but both are consistent with the City's 2009 Legislative Program position which states, in part, that the City, "supports legislation to require mortgage holders to endorse jointly payable insurance proceeds checks for residential property and to immediately release funds in excess of the unpaid portion of the secured indebtedness. If the damaged property can be repaired, the mortgage holder should fully cooperate to release the necessary funds in a timely manner to complete the repairs."

Two residents from Manhattan are here today to share their personal experiences with this issue. Their stories focus on the experiences in one community, but the problem is not unique to our area. In the last five years, Kansas has received thirteen Federal Emergency Management Agency (FEMA) Major Disaster Declarations for weather events impacting every region of the state. Other states are also dealing with this issue, and several Gulf Coast states considered or adopted similar legislation following Hurricane Katrina. We hope that this legislation will help those communities impacted by natural disasters in the future.

Thank you for your consideration today, and I would be happy to answer any questions.

House Committee on Insurance

Testimony on HB 2169 and HB 2160

Tuesday, February 3, 2009

Pamela M. Spaulding

3707 Bradford Terrace

Manhattan, Kansas 66503

Affiliation: Private Citizen

Recently, I received a call from my insurance agent. This call came seven months after the tornado touched down in Manhattan, and was not in regard to our claim but of someone else (identity unknown). The problem was that the insurance agent didn't know what to do because his client's house was hit by the tornado, the insurance had already paid the client with a check to be endorsed by the client and the mortgagor, his client couldn't get the mortgagor to release the funds and they did not have the money to fix their house. They were not able to get a loan therefore they were at a standstill in getting started on the repairs of their house. This call is an example of how big of a problem we are talking about. When a huge insurance company calls, me (someone that can't do ANYTHING) asking about how their clients can get their money released.....there is a problem.

Our house was hit by the tornado of June 11, 2008. Our house was considered "major damage" by insurance standards. We were able to live in our home while repairs were being made. Although a plus, certainly not ideal when our house had a big hole in the roof and had allowed it to rain inside. The carpets were completely soaked and mold was rapidly growing. Windows were blown out shattering glass everywhere, electrical problems throughout the house and overall, a general disarray. That being said, we were impressed with how fast and accurate our insurance adjuster and company had helped us.

The insurance agent was at our house the next day. They quickly assessed the damage, sent itemized reports and issued checks. The checks that were issued by the insurance company had to be endorsed both by us and the mortgage company. The insurance company instructed us to "not endorse your check when you send it to the mortgage company or you will never get your money." So that is exactly what we did. We did what we were told by people we pay to know. The bank was Chase Bank (which is not the original bank in acquiring the loan because the original bank sold the loan) and that is where the problem began.

I called Chase before I sent the check to get instructions and addresses. A recording gave information on where to send the check but no other information. I sent the check as instructed and after waiting several weeks with no response, I called Chase and I was told the bank had a policy that the money could not be released in its entirety until ninety percent of the repairs were finished and you do have to endorse the check over to them. In order to get the process started, one must get online using a password the bank provides, download forms, get them notarized and send many documents along with the endorsed check. None of this was told upfront and only after being given the run around

in finding the right people and asking many questions could we get the process started. Let me remind you, this is already several weeks after the disaster. When I asked the bank, in the beginning and after they told me about the downloads etc, how was I supposed to know all of this, their reply was "We know people will call us when they don't get their money." I also asked what people were supposed to do if they didn't have the money upfront to fix their houses. I was told, "Mam, it is your money and you will be reimbursed."

Chase and other banks involved with other tornado victims in the area would only release the money in thirds and only after one of the bank assigned inspectors came to the house and inspected the work that was finished. The inspection was by appointment and there are fees for having the inspection done. If the inspector has to come out more than once, then there is a fee for each time. Let me remind you that this is after the insurance company has already inspected, evaluated and paid for the claim. The bank then would deposit the check and issue a bank draft (by doing this, it removes the insurance company and if you need their help, it's too late.) Offering paid receipts doesn't help. As you can see, there are many roadblocks to get the money.

There is no evaluation process with the bank. It didn't matter if I owned 90%, 50% or 10%, had perfect credit or never made a payment on my house. The bank stated everyone was the same and they wouldn't even look at my history. The check was made out to us, and the bank, which appeared to be a fifty/fifty agreement, but only the banks policies mattered.

If we would have used a general contractor, several more steps would have been added. Construction companies are aware of these types of problems. When the repairs

begin, some contractors want their money upfront. Some ask for half to get started and the other half the day they finish. In many instances, the work finished, even on one item, may be tens of thousands of dollars.

After seeing what was involved in this process, it was frightening to think about people that did not have personal resources to repair or rebuild. I contacted everyone I could think of to help. I requested help from the Attorney General, the Insurance Commissioner, the Bank Commissioner, the Commission on Currency, Senator Sam Brownback, local Representatives (which led me to Representative Tom Hawk) and the media. I tried to enlist many friends and families to write a letter to their Congressmen and women.

Some people had to borrow money to get started, paying a minimum of \$300 in loan origination fees and high interest rates; all because they couldn't touch their insurance money that they were entitled to by paying their premiums and having coverage for such a disaster.

When Chase Home Finance sent their inspector we were at least ninety percent finished. He arrived an hour late (let me remind you that we had to rearrange our schedules to allow all of the people into our home) and determined our house was eighty five percent finished. This is after he took all of five minutes to "glance" at the repairs. My husband continued to show him and convinced him we were ninety percent finished only to have him fill the bank forms out incorrectly, indicating we were using a general contractor. By doing this, it slowed things down further.

The people we had to deal with on our mortgage were in Georgia and had no interest in the happenings of Kansas. Due to fact that Chase Home Finance is not in Kansas, the Bank Commissioner and the Attorney General indicated they could not help.

Every time we had to send something to the bank we would overnight it, which didn't speed up the process at all. We would pay to have them overnight it back to us. We had hundreds of dollars just in mailing fees. In the end, they overnighed it back to us but used their own service, and did not reimburse us for our fees that we used.

The houses remaining in our neighborhood that have not been started on, at this time, still have blue tarps over the roof and boarded windows only adding to the deterioration of the property. This system does not work on so many levels and I seriously doubt the mortgagor is going to want their properties to continue to have rain and mold problems.

In conclusion, the action of many banks, after this disaster, was predatory and I recommend that the state take action to protect the citizens of Kansas. As a citizen, I have personally experienced that this is our only hope. I am pleading that a bill be passed that allows the homeowner to be able to have adequate money upfront to get started on repairs, the money to be disbursed in a timely manner without adding chaos to chaos and to have a "reasonable" evaluation process (ie: credit rating equivalent). It is incredibly difficult to deal with matters that are delaying the whole process while you are in shock and trying to repair or rebuild a house that has major damage and in some cases.....no money.

HB 21~~69~~⁵⁹ presented today would not help as many people, as HB 2160, if presented with the same situation since it requires the dollar amount in damages to be greater than what is owed on the property. HB 2160, if passed as is, would at least help with the issue

of having money to start the repairs but then it doesn't address the mentioned issues and the remainder of funds would remain unavailable by current bank policies.

House Committee on Insurance
Hearing on House Bills ~~2169~~ and 2160
Tuesday, February 3, 2009

Aaron W. & Jacqueline A. Madison
2927 Brian Pl
Manhattan, KS 66503

Our home was totally destroyed by the tornado that came through Manhattan on the night of June 11, 2008. Although we lost most of our material possessions, we have been able to view this experience as a blessing. A blessing in that none of us were hurt and from the outpouring of assistance and support that we received from the people of Manhattan. From the hours spent by friends helping clean-up, to the strangers that spent an entire day helping to remove tree limbs, and the city and county that removed all of the debris. We are truly fortunate to be able to live in a town like Manhattan and a State such as Kansas.

With that said, we have experienced a great deal of frustration, poor customer service, and downright unethical behavior from U.S. Bank concerning reimbursement of our insurance proceeds. Although we understand the need of U.S. Bank to ensure that the house used as collateral on the loan needs to be reconstructed at a value equal or greater than before the tornado, the procedures employed by U.S. Bank to handle the insurance proceeds hindered this reconstruction process.

In order for us to receive our insurance proceeds back from U.S. Bank, we have invested several hours of phone calls, an appearance on a Topeka television news program, and a letter of complaint filed on our behalf from the Kansas Banking Commissioner to the U.S. Comptroller of the Currency. There are too many phone calls to list, but the following is what it took to get the first two installments:

June 18, 2008: I called U.S. Bank to inform of loss of house. The mortgage representative stated that we did not have to do anything.

July 8, 2008: I called U.S. Bank and spoke with the insurance claims department. I was told that a letter with the procedures and request claim forms would be mailed. I was informed of the process and that I would not receive interest on the account.

July 16, 2008: The letter not being received, I called again and spoke with Heather. She faxed me a copy of the letter. I was told again that the account was noninterest bearing.

July 18, 2008: We submitted the required documentation and endorsed check. This package was sent via federal express.

July 25, 2008: I called and was told that all documents were in order and that the first installment would be mailed that day.

July 26, 2008: I called and was told that everything was in order and the check would be mailed on the 28th.

July 28, 2008: I called and was told that everything was in order and the check would be mailed on the 31st.

July 31, 2008: I called and was told that U.S. Bank needed a floor plan. I faxed the floor plan and was told that the check would be mailed in several days.

**House Committee on Insurance
Hearing on House Bills 2169 and 2160
Tuesday, February 3, 2009**

**Aaron W. & Jacqueline A. Madison
2927 Brian Pl
Manhattan, KS 66503**

August 7, 2008: I called and spoke with Rachel Lewis, she informed me that the check was stopped and that U.S. Bank needed an additional insurance report. I faxed in the insurance report and was told that it would take several days before a check would be issued since U.S. Bank could compare the floor plan to the appraisal conducted at the time of the loan. I contacted the Vice President of Mortgage Loans directly and I received the first third of the funds via overnight on Saturday, August 9th.

August 22, 2008: I called U.S. Bank and spoke with Rachel Lewis to schedule the inspection for 50% complete. I was informed that it would take 3 business days for the inspection.

August 27, 2008: I called U.S. Bank to check on the status of the inspection as was told that the inspection company had not been contacted and that they would contact me in 5 to 7 business days.

August 29, 2008: I called to see if the inspection company had been contacted. They had not been contacted. I was given the name of the supervisor for the inspection company. I contacted the company directly and was able to get an inspector at the house that day.

September 1, 2008: I called and was told that the inspection report was received and that the next installment would be released in three days. I confirmed that the check would be sent to my work address.

September 4, 2008: I called and was informed that the installment would be mailed that day. I reconfirmed the mailing address.

September 10, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 11, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 12, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 13, 2008: We received the check. It had been mailed to the house that was destroyed by the tornado.

As you can see, we were told no less than 5 times that everything was in order, only to be told later that they were not. We have provided all the required information in a timely manner, only to have additional burden and red tape included on top of what was already requested from us. I believe that if we had not called the Vice President directly it would have taken several more weeks before the first installment would have been released.

Even if the process of releasing one-third initially, one-third after 50% complete and the remainder after completion was followed, we would still be faced with the situation where the builder is owed funds at 80 or 90% complete. The home owner is forced not to pay the

**House Committee on Insurance
Hearing on House Bills 2169 and 2160
Tuesday, February 3, 2009**

**Aaron W. & Jacqueline A. Madison
2927 Brian Pl
Manhattan, KS 66503**

contractor or use other funds such as savings to satisfy the debt. A properly insured victim of a natural disaster should not be forced to lose money on such an event.

U.S. Bank received in excess of \$40,000 above the loan amount. This money represents the down payment and eight (8) years of timely mortgage payments. We believe that this money should be returned to the home owner immediately after receipt of such funds by the bank. Additionally the home owner should receive interest on all funds held by the mortgage holder. We continue to pay the mortgage payments in a timely manner for the use of the funds. The process should be such that the contractor can be paid in a timely manner and the bank does not profit from a natural disaster at the expense of its customers

Thank you for listening to our experience, and thanks to Rep. Tom Hawk for sponsoring this bill. It is our hope that future victims of natural disasters in this state will benefit from passing this legislation.



Matthew S. Goddard, Vice President

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To: House Committee on Insurance
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 3, 2009
Re: House Bill 2159

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Insurance to share our thoughts regarding House Bill 2159.

House Bill 2159 prohibits a mortgage holder from retaining more of an insurance claims payment than is necessary to satisfy the unpaid portion of a mortgage if the payment is jointly payable to the mortgage holder and the homeowner. While HCBA does not believe the mortgage holder should be entitled to any funds in excess of the normal loan payoff amount, we have a number of questions and concerns regarding HB 2159 and the mechanisms it creates.

First and foremost, the mortgage holder would not retain any funds in the scenario presented in the bill. In fact, a claims payment made by check would be mailed directly to the homeowner. However, because of the security interest in the house held by the mortgagee, the lender is legally entitled to take steps to ensure that the insurance claims payment is spent on repairs to the subject property. Accordingly, the claims check will be payable to both the homeowner and the mortgage holder. The lender would not keep any of the insurance money for itself but the homeowner would be obligated to spend it on repairs to the mortgaged property.

The bill also requires that any claims payment in excess of the unpaid balance of the mortgage must be returned to the homeowner or deposited into an interest-bearing account within 15 days after receipt of the claims payment. The claims payment, however, is originally sent to the homeowner. So, HCBA is unaware of the need for the mortgage holder to provide notice by certified mail that the excess claims payment has been deposited into an interest-bearing account when the homeowner already sent the money to the mortgage holder for that express purpose.

Using certified mail seems to be totally inconvenient and unnecessary to all parties in situations where the customer just walks the insurance check into their local mortgage lender and both sides then endorse the check and deposit it in a new account. It would seem that HB 2159 complicates matters if we suddenly force lenders and borrowers who conduct business face-to-face to rely on certified mail. In the same vein, we are uncertain of the need for a homeowner to make a written demand via certified mail, return receipt requested, to the mortgage holder for payment of the insurance claims funds.

Until the mortgage is paid off by the borrower, the mortgage holder maintains its security interest in the house. House Bill 2159 would seem to needlessly complicate the smooth conduct of business between the homeowner and the mortgage holder following an insurance claims payment. Thank you for your kind consideration of HCBA's concerns regarding HB 2159.

House Insurance
Date: 2-3-09



February 3, 2009

To: House Committee on Insurance

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: HB 2159: Insurance Settlement Payments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony regarding the provisions of HB 2159, which deals with the timely remittance of insurance settlements and creates notice requirements and penalties associated with those payments.

We are appearing today neither as a proponent of the bill nor as an opponent. Our purpose today is to raise some questions we have with regard to the banking industry's ability to comply with its provisions.

New Section 1(a) would require that for insurance settlement payments subject to dual endorsement by the mortgage holder (the bank) and the mortgagor, the bank shall not retain more of the insurance settlement payment than is necessary to satisfy the unpaid portion of the loan. Any excess must be returned to the mortgagor or be deposited in an interest-bearing account within 15 days of receipt of the insurance payment. If the excess is deposited into an account, the bank must send notice to the mortgagor by certified mail, return receipt requested. An accounting of how the amount of the excess was calculated must be sent to the mortgagor.

We would respectfully request that the time period for figuring the amount of the excess, once the insurance payment is received, be increased to 30 days. In the case of a natural disaster, there may be many checks flowing into a bank at once and processing of these payments and creating an accounting for the mortgagor could be delayed. Many times, the bank itself falls victim to the disaster and its systems for processing these payments may be affected. We believe 30 days is reasonable in light of the possibility of such circumstances existing.

The next two sections of the bill deal with the receipt of timely notice from the bank to the mortgagor. We are unclear as to what the bank is notifying the mortgagor about. The first paragraph applies these new provisions only to payments subject to dual endorsement by both the bank and the mortgagor, so it is clear that the mortgagor has knowledge that a payment has been made, as he or she has endorsed the check.

If the timely notice requirements found in subsection (b) and (c) refer to notice of the excess calculated, that is already required in subsection (a) and must occur within 15 days of the bank receiving the payment.

HB 2159
February 3, 2009
Page Two

We believe that these sections are not necessary as subsection (a) appears to accomplish the goal of a more timely accounting and payment of any excess insurance proceeds to the mortgagor.

Subsection (d) contains penalties for noncompliance. We believe there should be a provision for waiving the penalties in the case where the delay is caused by a natural disaster or act of God which renders the bank unable to comply with the time periods in the bill.

In conclusion, we agree that a mortgage holder should not retain funds in excess of the amount of their outstanding debt. A mortgage holder which does so could currently be prosecuted under law for conversion or fraud. We have raised some questions about the procedures contained in this bill and have concerns that Kansas banks could comply with the requirements as presented.

We would respectfully request that the Committee consider incorporating the issues we have presented which we believe still accomplish the purpose of the bill and make clearer for all parties, their duties and responsibilities. Thank you.

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Testimony
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February 3, 2009

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This past June, a serious tornado destroyed property in Chapman and Manhattan. Much credit is due to the communities and individual citizens that rallied to help the neighbors affected by this disaster.

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Of key concern to the homeowners who lost their entire homes or had significant damage, was the desire to clean up the debris and start the re-building process as soon as possible.

House Insurance
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However, that is where a structural problem in the distribution of insurance funds soon became apparent. I started to receive phone calls from constituents who had received timely payments from their insurance companies, but because there was a dual endorsement requirement on some of the mortgage contracts, the checks had to be forwarded to the out of state mortgage company. Those companies seemed to either lose the paperwork sent to them by the homeowners, or were unable or unwilling to release payments so that the repair work could be started or continued.

In visiting with City of Manhattan officials, I learned that Florida and Louisiana had experienced similar situations after their major disasters with Hurricanes Rita and Katrina and had model legislation to deal with this problem. One of these bills, HB 2160, is modified from one in Florida. The Florida bill had a dollar amount that did not pass. The other bill, HB2159, is modeled after Louisiana legislation and, while having some good ideas to make timely payments to the homeowners, is reported to have not passed through their legislature.

Today some affected homeowners will share their experiences with their own efforts to rebuild and the problems they experienced in getting timely reimbursement from their insurance payments that were directed to their mortgage holders. It is my hope that we can find some legislation that will encourage the timely payment of money due so that repairs can proceed as quickly as possible and people can get back into their homes and regain their stability and productively to stay in our local communities after a major disaster.

Kansas has been no stranger to disasters. The Greensburg tornado left over 900 properties in ruin and our own June 11 tornado also affected over 60 properties in Chapman as well as their school facilities and other community structures. I know we will have future disasters of this type in other Kansas towns and hope we can find some solutions that will aid those future victims and homeowners.

House Committee on Insurance
Hearing on House Bills 216⁵⁹ and 2160

Tuesday, February 3, 2009

Testimony of Lauren Palmer

Assistant City Manager, City of Manhattan, Kansas

Good afternoon Chairperson Shultz and Honorable Members of the House Insurance Committee. My name is Lauren Palmer, and I am an Assistant City Manager for the City of Manhattan. I want to thank you for this time to address the Committee regarding an issue that recently impacted our community.

On Wednesday, June 11, 2008, the City of Manhattan was struck by an EF4 tornado that produced winds in excess of 150 miles per hour and caused severe damage to public and private property. Approximately 45 homes were completely destroyed, 67 sustained major damage, and nearly 700 others had minor damage or were otherwise affected by storm debris. In addition, the K-State campus suffered major damage. The same storm also impacted the nearby City of Chapman and destroyed approximately 60 homes and buildings in that community.

In Manhattan, we felt very fortunate. The storm hit hardest on the western edge of town and impacted primarily newer subdivisions with homes equipped with basements. Residents heeded the advanced warning given, so although the damage was severe, no lives were lost and no one sustained major injuries. City officials were further relieved to learn that nearly all of the property owners impacted carried adequate insurance to meet their repair and rebuilding needs.

Unfortunately, as the community started the rebuilding process, we began to hear reports through our Building Codes Office and from private citizens of trouble receiving insurance proceeds. Although insurance companies appeared quick to process claims and issue payments, some property owners encountered problems with mortgage holders who were listed as joint payees on payments. In some cases, mortgage holders would only release a small portion of the proceeds up front (10% or less), and would withhold the remaining proceeds until all repairs were completed. The portion released was sometimes insufficient to pay a deposit to secure a contractor. This situation left property owners in the impossible position of having to complete the repairs before receiving their money, but needing the money in order to complete the repairs. Unless owners had adequate savings to front the cost of repairs, they would have to secure a loan, with the added expense of financing costs for the owner. The City is aware of one contractor who actually completed the repairs at his own expense, on trust, for a property owner who encountered this problem with a mortgage holder.

The City of Manhattan supports both HB 216^{5A}~~9~~ and HB 2160. Each bill offers a different approach to relief for affected property owners, but both are consistent with the City's 2009 Legislative Program position which states, in part, that the City, "supports legislation to require mortgage holders to endorse jointly payable insurance proceeds checks for residential property and to immediately release funds in excess of the unpaid portion of the secured indebtedness. If the damaged property can be repaired, the mortgage holder should fully cooperate to release the necessary funds in a timely manner to complete the repairs."

Two residents from Manhattan are here today to share their personal experiences with this issue. Their stories focus on the experiences in one community, but the problem is not unique to our area. In the last five years, Kansas has received thirteen Federal Emergency Management Agency (FEMA) Major Disaster Declarations for weather events impacting every region of the state. Other states are also dealing with this issue, and several Gulf Coast states considered or adopted similar legislation following Hurricane Katrina. We hope that this legislation will help those communities impacted by natural disasters in the future.

Thank you for your consideration today, and I would be happy to answer any questions.

House Committee on Insurance

Testimony on HB 2169 and HB 2160

Tuesday, February 3, 2009

Pamela M. Spaulding

3707 Bradford Terrace

Manhattan, Kansas 66503

Affiliation: Private Citizen

Recently, I received a call from my insurance agent. This call came seven months after the tornado touched down in Manhattan, and was not in regard to our claim but of someone else (identity unknown). The problem was that the insurance agent didn't know what to do because his client's house was hit by the tornado, the insurance had already paid the client with a check to be endorsed by the client and the mortgagor, his client couldn't get the mortgagor to release the funds and they did not have the money to fix their house. They were not able to get a loan therefore they were at a standstill in getting started on the repairs of their house. This call is an example of how big of a problem we are talking about. When a huge insurance company calls, me (someone that can't do ANYTHING) asking about how their clients can get their money released.....there is a problem.

Our house was hit by the tornado of June 11, 2008. Our house was considered "major damage" by insurance standards. We were able to live in our home while repairs were being made. Although a plus, certainly not ideal when our house had a big hole in the roof and had allowed it to rain inside. The carpets were completely soaked and mold was rapidly growing. Windows were blown out shattering glass everywhere, electrical problems throughout the house and overall, a general disarray. That being said, we were impressed with how fast and accurate our insurance adjuster and company had helped us.

The insurance agent was at our house the next day. They quickly accessed the damage, sent itemized reports and issued checks. The checks that were issued by the insurance company had to be endorsed both by us and the mortgage company. The insurance company instructed us to "not endorse your check when you send it to the mortgage company or you will never get your money." So that is exactly what we did. We did what we were told by people we pay to know. The bank was Chase Bank (which is not the original bank in acquiring the loan because the original bank sold the loan) and that is where the problem began.

I called Chase before I sent the check to get instructions and addresses. A recording gave information on where to send the check but no other information. I sent the check as instructed and after waiting several weeks with no response, I called Chase and I was told the bank had a policy that the money could not be released in its entirety until ninety percent of the repairs were finished and you do have to endorse the check over to them. In order to get the process started, one must get online using a password the bank provides, download forms, get them notarized and send many documents along with the endorsed check. None of this was told upfront and only after being given the run around

in finding the right people and asking many questions could we get the process started. Let me remind you, this is already several weeks after the disaster. When I asked the bank, in the beginning and after they told me about the downloads etc, how was I supposed to know all of this, their reply was "We know people will call us when they don't get their money." I also asked what people were supposed to do if they didn't have the money upfront to fix their houses. I was told, "Mam, it is your money and you will be reimbursed."

Chase and other banks involved with other tornado victims in the area would only release the money in thirds and only after one of the bank assigned inspectors came to the house and inspected the work that was finished. The inspection was by appointment and there are fees for having the inspection done. If the inspector has to come out more than once, then there is a fee for each time. Let me remind you that this is after the insurance company has already inspected, evaluated and paid for the claim. The bank then would deposit the check and issue a bank draft (by doing this, it removes the insurance company and if you need their help, it's too late.) Offering paid receipts doesn't help. As you can see, there are many roadblocks to get the money.

There is no evaluation process with the bank. It didn't matter if I owned 90%, 50% or 10%, had perfect credit or never made a payment on my house. The bank stated everyone was the same and they wouldn't even look at my history. The check was made out to us, and the bank, which appeared to be a fifty/fifty agreement, but only the banks policies mattered.

If we would have used a general contractor, several more steps would have been added. Construction companies are aware of these types of problems. When the repairs

begin, some contractors want their money upfront. Some ask for half to get started and the other half the day they finish. In many instances, the work finished, even on one item, may be tens of thousands of dollars.

After seeing what was involved in this process, it was frightening to think about people that did not have personal resources to repair or rebuild. I contacted everyone I could think of to help. I requested help from the Attorney General, the Insurance Commissioner, the Bank Commissioner, the Commission on Currency, Senator Sam Brownback, local Representatives (which led me to Representative Tom Hawk) and the media. I tried to enlist many friends and families to write a letter to their Congressmen and women.

Some people had to borrow money to get started, paying a minimum of \$300 in loan origination fees and high interest rates; all because they couldn't touch their insurance money that they were entitled to by paying their premiums and having coverage for such a disaster.

When Chase Home Finance sent their inspector we were at least ninety percent finished. He arrived an hour late (let me remind you that we had to rearrange our schedules to allow all of the people into our home) and determined our house was eighty five percent finished. This is after he took all of five minutes to "glance" at the repairs. My husband continued to show him and convinced him we were ninety percent finished only to have him fill the bank forms out incorrectly, indicating we were using a general contractor. By doing this, it slowed things down further.

The people we had to deal with on our mortgage were in Georgia and had no interest in the happenings of Kansas. Due to fact that Chase Home Finance is not in Kansas, the Bank Commissioner and the Attorney General indicated they could not help.

Every time we had to send something to the bank we would overnight it, which didn't speed up the process at all. We would pay to have them overnight it back to us. We had hundreds of dollars just in mailing fees. In the end, they overnighed it back to us but used their own service, and did not reimburse us for our fees that we used.

The houses remaining in our neighborhood that have not been started on, at this time, still have blue tarps over the roof and boarded windows only adding to the deterioration of the property. This system does not work on so many levels and I seriously doubt the mortgagor is going to want their properties to continue to have rain and mold problems.

In conclusion, the action of many banks, after this disaster, was predatory and I recommend that the state take action to protect the citizens of Kansas. As a citizen, I have personally experienced that this is our only hope. I am pleading that a bill be passed that allows the homeowner to be able to have adequate money upfront to get started on repairs, the money to be disbursed in a timely manner without adding chaos to chaos and to have a "reasonable" evaluation process (ie: credit rating equivalent). It is incredibly difficult to deal with matters that are delaying the whole process while you are in shock and trying to repair or rebuild a house that has major damage and in some cases.....no money.

HB 2169 presented today would not help as many people, as HB 2160, if presented with the same situation since it requires the dollar amount in damages to be greater than what is owed on the property. HB 2160, if passed as is, would at least help with the issue

of having money to start the repairs but then it doesn't address the mentioned issues and the remainder of funds would remain unavailable by current bank policies.

House Committee on Insurance
Hearing on House Bills ^{AV 50} 2169 and 2160
Tuesday, February 3, 2009

Aaron W. & Jacqueline A. Madison
2927 Brian PI
Manhattan, KS 66503

Our home was totally destroyed by the tornado that came through Manhattan on the night of June 11, 2008. Although we lost most of our material possessions, we have been able to view this experience as a blessing. A blessing in that none of us were hurt and from the outpouring of assistance and support that we received from the people of Manhattan. From the hours spent by friends helping clean-up, to the strangers that spent an entire day helping to remove tree limbs, and the city and county that removed all of the debris. We are truly fortunate to be able to live in a town like Manhattan and a State such as Kansas.

With that said, we have experienced a great deal of frustration, poor customer service, and downright unethical behavior from U.S. Bank concerning reimbursement of our insurance proceeds. Although we understand the need of U.S. Bank to ensure that the house used as collateral on the loan needs to be reconstructed at a value equal or greater than before the tornado, the procedures employed by U.S. Bank to handle the insurance proceeds hindered this reconstruction process.

In order for us to receive our insurance proceeds back from U.S. Bank, we have invested several hours of phone calls, an appearance on a Topeka television news program, and a letter of complaint filed on our behalf from the Kansas Banking Commissioner to the U.S. Comptroller of the Currency. There are too many phone calls to list, but the following is what it took to get the first two installments:

- June 18, 2008: I called U.S. Bank to inform of loss of house. The mortgage representative stated that we did not have to do anything.
- July 8, 2008: I called U.S. Bank and spoke with the insurance claims department. I was told that a letter with the procedures and request claim forms would be mailed. I was informed of the process and that I would not receive interest on the account.
- July 16, 2008: The letter not being received, I called again and spoke with Heather. She faxed me a copy of the letter. I was told again that the account was noninterest bearing.
- July 18, 2008: We submitted the required documentation and endorsed check. This package was sent via federal express.
- July 25, 2008: I called and was told that all documents were in order and that the first installment would be mailed that day.
- July 26, 2008: I called and was told that everything was in order and the check would be mailed on the 28th.
- July 28, 2008: I called and was told that everything was in order and the check would be mailed on the 31st.
- July 31, 2008: I called and was told that U.S. Bank needed a floor plan. I faxed the floor plan and was told that the check would be mailed in several days.

**House Committee on Insurance
Hearing on House Bills 2169 and 2160
Tuesday, February 3, 2009**

**Aaron W. & Jacqueline A. Madison
2927 Brian Pl
Manhattan, KS 66503**

August 7, 2008: I called and spoke with Rachel Lewis, she informed me that the check was stopped and that U.S. Bank needed an additional insurance report. I faxed in the insurance report and was told that it would take several days before a check would be issued since U.S. Bank could compare the floor plan to the appraisal conducted at the time of the loan. I contacted the Vice President of Mortgage Loans directly and I received the first third of the funds via overnight on Saturday, August 9th.

August 22, 2008: I called U.S. Bank and spoke with Rachel Lewis to schedule the inspection for 50% complete. I was informed that it would take 3 business days for the inspection.

August 27, 2008: I called U.S. Bank to check on the status of the inspection as was told that the inspection company had not been contacted and that they would contact me in 5 to 7 business days.

August 29, 2008: I called to see if the inspection company had been contacted. They had not been contacted. I was given the name of the supervisor for the inspection company. I contacted the company directly and was able to get an inspector at the house that day.

September 1, 2008: I called and was told that the inspection report was received and that the next installment would be released in three days. I confirmed that the check would be sent to my work address.

September 4, 2008: I called and was informed that the installment would be mailed that day. I reconfirmed the mailing address.

September 10, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 11, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 12, 2008: I called, since the check had not arrived. I was told that it was mailed and to wait.

September 13, 2008: We received the check. It had been mailed to the house that was destroyed by the tornado.

As you can see, we were told no less than 5 times that everything was in order, only to be told later that they were not. We have provided all the required information in a timely manner, only to have additional burden and red tape included on top of what was already requested from us. I believe that if we had not called the Vice President directly it would have taken several more weeks before the first installment would have been released.

Even if the process of releasing one-third initially, one-third after 50% complete and the remainder after completion was followed, we would still be faced with the situation where the builder is owed funds at 80 or 90% complete. The home owner is forced not to pay the

**House Committee on Insurance
Hearing on House Bills 2169 and 2160
Tuesday, February 3, 2009**

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contractor or use other funds such as savings to satisfy the debt. A properly insured victim of a natural disaster should not be forced to lose money on such an event.

U.S. Bank received in excess of \$40,000 above the loan amount. This money represents the down payment and eight (8) years of timely mortgage payments. We believe that this money should be returned to the home owner immediately after receipt of such funds by the bank. Additionally the home owner should receive interest on all funds held by the mortgage holder. We continue to pay the mortgage payments in a timely manner for the use of the funds. The process should be such that the contractor can be paid in a timely manner and the bank does not profit from a natural disaster at the expense of its customers

Thank you for listening to our experience, and thanks to Rep. Tom Hawk for sponsoring this bill. It is our hope that future victims of natural disasters in this state will benefit from passing this legislation.



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To: House Committee on Insurance
From: Matthew Goddard
Heartland Community Bankers Association
Date: February 3, 2009
Re: House Bill 2160

The Heartland Community Bankers Association appreciates the opportunity to appear before the House Committee on Insurance to express our opposition to House Bill 2160.

House Bill 2160 mandates that homeowners' insurance policies issued or renewed after July 1, 2009 require a property insurer to pay the first 20 percent of a claims payment, up to \$20,000, directly to the primary policyholder without regard for a mortgage holder's dual endorsement. Should this become law, it will have a negative impact on Kansas mortgage lenders and has the potential to drive up the cost of borrowing for all Kansas homebuyers.

In almost all mortgage loans, the house that is purchased with the mortgage proceeds also serves as the collateral for the loan. The reason an appraisal is performed on the property is that the lender wants to make sure the house, i.e. the collateral, has enough value to payoff the loan amount should the borrower default. This is also why the lender makes sure property taxes are paid and no tax liens are placed on the property.

The need to protect the house's value due to its role as collateral is also why dual endorsements are required for insurance claims payments. A "dual endorsement" is the requirement that both the homeowner and the mortgage lender must endorse a check before it can be cashed or deposited. If a house suffers \$20,000 in damage, the house – and the lender's collateral - would theoretically lose \$20,000 in value. In addition, that damage, if not addressed, could lead to other problems that diminishes the value of the house. The lender has a very vested interest in making sure that the insurance settlement goes to restoring the house to its previous and full value. This is why it is a standard requirement in all mortgage transactions that the borrower must carry adequate homeowners' insurance and list the mortgage lender as a loss payee.

HCBA understands the inconvenience that can go into securing a dual endorsement, especially for a homeowner whose loan is serviced out of state. However, the dual endorsement is the best mechanism available to lenders to make sure the claims payment is used for its intended purpose. There is nothing in HB 2160 that prevents the insurance claim payment from being spent on household expenses, credit card payments or a vacation. No matter how justifiable the expenditure may be, the money is obligated to be spent on repairs to the house. If it is spent on something else, the mortgage lender faces a loss in the value of its collateral securing the loan and they will be forced to increase the cost they charge other borrowers to make up for that potential loss.

Thank you for your kind consideration of HCBA's opposition to HB 2160.

House Insurance
Date: 2-3-09
Attachment # 11



February 3, 2009

To: House Committee on Insurance

From: Doug Wareham, Kansas Bankers Association

Re: HB 2160: Insurance Claims Payments

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in opposition of HB 2160, which would require a property insurer to make payments directly to the primary policyholder, regardless of the provisions of the insurance policy. Specifically, the bill references those instances where the insurance policy would require that insurance claims checks be made both to the insured and to the lien or mortgage holder. This disregard for the provisions of the insurance policy would apply to the first 20% up to \$20,000 of property subject to a security interest, and any personal property not subject to a security interest for insurance policies issued or renewed on or after July 1, 2009.

Our interest lies with those properties that have been given as collateral for a loan and so which are subject to a security interest. This would include homes that were purchased with the proceeds of a loan and for which the home was given as collateral, as well as loans to businesses where the buildings and/or land were given as collateral.

Banks require insurance on these properties to protect the investment they have made in the form of a loan to the owner. Before these loans are made, an appraisal is conducted to ensure an accurate valuation of the property for loan purposes, and also to ensure that an adequate amount of insurance is placed in the case of a loss on the property.

Should a property be damaged by fire or storm, the value of the property is also damaged and it is in both the owner's and the lender's best interest to see that the value is restored. Requiring a dual endorsement of an insurance claim check is the only tool that the lender has to ensure that the proceeds will, in fact, go to restore the value of the property. Without that tool, a lender may not even receive notice that the property was damaged, and so could not monitor whether the proceeds were used for improvements to the damaged property.

We are aware that many insurance companies do have a "de minimis" amount of proceeds which can be paid to an insured without a dual endorsement. These vary in range, but do not typically exceed \$5,000. This bill would effectively increase that de minimis amount to 20% of the value of the property up to \$20,000. This increase would greatly affect the ability of lenders to continue to ensure that their investment is fully covered.

HB 2160
February 3, 2009
Page Two

In conclusion, while we are sympathetic to the fact that many lenders are out of state, and requiring a dual endorsement may slow down the receipt of funds to those who have just suffered a terrible loss, we are also concerned that this bill would affect Kansas banks' ability to protect the investment they have made with the borrower's consent.

We would urge the committee to not act favorably on **HB 2160**, and to instead, look for other means to address the concerns addressed here. Thank you for your time and attention.