

CHAPTER 127
HOUSE BILL No. 2037

AN ACT relating to certain leases or easements; concerning the recording thereof;
amending K.S.A. 58-2221 and repealing the existing section.

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

Section 1. K.S.A. 58-2221 is hereby amended to read as follows: 58-2221. Every instrument in writing that conveys:

(a) Real estate;
(b) any estate or interest created by an oil and gas lease, ~~or~~;
(c) *any estate or interest created by any lease or easement involving wind resources and technologies to produce and generate electricity; or*
(d) whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated. ~~Provided~~. It shall be the duty of the register of deeds to file the same for record immediately, and in those counties where a numerical index is maintained in ~~his or her~~ *the register of deeds'* office, the register of deeds shall compare such instrument, before copying the same in the record, with the last record of transfer in ~~his or her~~ *the register of deeds'* office of the property described ~~and~~. If the register of deeds finds such instrument contains apparent errors, ~~he or she~~ *the register of deeds* shall not record the ~~same until he or she shall have notified the grantee where instrument until the grantee has been notified, if such notice is reasonably possible.~~

The grantor, lessor, grantee or lessee or any other person conveying or receiving real property or other interest in real property upon recording the instrument in the office of register of deeds shall furnish the register of deeds the full name and last known post-office address of the person to whom the property is conveyed or ~~his or her~~ *such person's* designee. The register of deeds shall forward such information to the county clerk of the county who shall make any necessary changes in address records for mailing tax statements.

New Sec. 2. Every instrument that conveys any estate or interest created by any lease or easement involving wind resources and technologies to produce and generate electricity shall include:

(a) A description of the real property subject to the easement and a description of the real property benefitting from the wind lease or easement;
(b) a description of the vertical and horizontal angles, expressed in degrees, and distances from the site of the wind power system in which an obstruction to the wind is prohibited or limited;
(c) all terms or conditions under which the lease or easement is granted or may be terminated, except that if the instrument is recorded under K.S.A. 58-2221, and amendments thereto, any compensation received by the owner of the real property may be excluded; and
(d) any other provisions necessary or desirable to execute the instrument.

New Sec. 3. (a) When a recorded deed or conveyance covering mineral or royalty rights purports to cover mineral or royalty rights not owned by the grantor, or such deed or conveyance includes a general conveyance provision, including, but not limited to, a "mother hubbard" clause or other cover-all clause, for other property conveyed by grantor and such general conveyance provision should not have been included in such deed or conveyance, then any party with an interest in the real estate covered by such deed or conveyance may make written demand upon the grantee or grantor, as applicable, by certified mail, return receipt requested, to rescind or reform the general conveyance provision.

(b) (1) Any grantee or grantor who refuses or neglects to correct or reform such legal description in the office of the register of deeds within 30 days after written demand has been made as provided in subsection (a), unless a longer period has been agreed to in writing by the parties, shall be liable in damages to the party for whom the demand was made in the sum equal to the greater of: (A) An amount up to \$10,000 per title affected, or (B) an amount equal to the fair market value of the mineral or royalty interests actually conveyed by such general conveyance clause and not specifically described in the instrument, and reasonable attorney's

fee for preparing and prosecuting the action before any court of competent jurisdiction. The plaintiff in such action may recover any additional damages that the evidence in the case warrants.

(2) If such legal description has not been corrected or reformed within the time period allowed under paragraph (1), the court shall expedite an action brought by any party pursuant to K.S.A. 60-1002, and amendments thereto, to quiet title. Such court ruling shall not relieve the grantee or grantor, as applicable, from any damages allowed under paragraph (1) nor relieve the grantee or grantor from any responsibilities under the provisions of this section.

(c) The remedies provided under this section shall not affect other remedies or damages provided by statute or law.

(d) A suit must be filed under this section within two years after the date the party making demand has actual knowledge of the improper legal description or conveyance.

(e) As used in this section:

(1) "Mother Hubbard clause" means a provision in a deed or other instrument in writing which is intended to convey an interest in real estate and which describes the property to be conveyed as all of the grantor's property in a certain county;

(2) "general conveyance provision" means a provision in a deed or other instrument describing an interest in real estate which, in addition to referring to the real estate specifically described in such deed or other instrument, describes unspecified other mineral or royalty rights or interests of the grantor in an entire township, county or state; and

(3) "deed or conveyance covering mineral or royalty rights" means any deed or conveyance covering the grantor's mineral rights or the grantor's royalty rights.

Sec. 4. K.S.A. 58-2221 is hereby repealed.

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

Approved May 13, 2004.
