



February 11, 2013

To: House Committee on Judiciary

From: Kathleen A. Taylor, Kansas Bankers Association

Re: HB 2204: Clarification of Redemption Period Provisions

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee today in favor of **HB 2204**, which amends K.S.A. 2012 Supp. 60-2414, to clarify two provisions that affect the redemption period after a real estate foreclosure.

The first proposed amendment appears in subsection (a), and deals specifically with commercial property. Kansas law provides that regardless of the purpose of the property involved in a foreclosure, there is generally a twelve month redemption period for borrowers. The last sentence of subsection (a), provides an exception for this twelve month period, allowing the mortgagor (borrower) to agree to a shorter period of redemption or to waive the period of redemption, "Except for mortgages covering agricultural lands or single or two-family dwellings owned by or held in trust for natural persons..."

It has long been the understanding and practice that this exception applied to commercial purpose loans – those loans covering property other than a personal residence. However, one judge recently looked at the existing language, and provided an alternative reading of it. The judge held that an individual housing developer (being a natural person), who had a mortgage for several single family dwellings (an entire development), could not agree to shorten or waive the redemption period. In this case, the mortgage was clearly not for a personal residence, but was a business purpose loan to finance a development, and the bank had to wait the entire twelve months before taking possession. As you can imagine, the property sat useless, and deteriorated during that period of time.

The proposed amendment is the KBA's attempt to clarify the intent of the original language, that this exception is available for all mortgages except those covering agricultural property, and those covering a dwelling used as a principal residence and owned by a natural person.

The second proposed amendment appears in subsection (c), and is again, in response to a recent court ruling. The court in this case allowed a creditor who had a prior judgment lien against the property owner, to petition to redeem property in a subsequent foreclosure case. In other words, Bank A was foreclosing on Property A, and the court allowed Bank B who had a claim from a previous case against the same borrower, to petition to redeem Property A.

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We believe that this is not the intent of the existing language, and the proposed amendment is an attempt to clarify that the only creditors who may petition to redeem property in a foreclosure case, are those who have a claim on the property that is the subject of the foreclosure action.

In conclusion, these proposed amendments are both attempts to clarify what those in the industry have long understood the intent to be, and to reflect the long-standing practice under the law.

Thank you for your time, and the KBA would ask that when you consider taking action on **HB 2204**, you consider it favorably for passage.