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To: House Local Government Committee

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Subject: **HB 2075** – Neutral Testimony on Proposed Changes to the Definition of “Abandoned Housing” to Enhance the Protection of Private Property Rights and Avoid Unintended Consequences

Chairman Huebert and members of the House Local Government Committee, thank you for the opportunity to provide neutral testimony today on behalf of the Kansas Association of REALTORS® on **HB 2075**, which would modify the definition of “abandoned property” under the Kansas Abandoned Housing Act. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR is the state’s largest professional trade association, representing nearly 8,000 members involved in both residential and commercial real estate and advocating on behalf of the state’s 700,000 homeowners for over 90 years. REALTORS® serve an important role in the state’s economy and are dedicated to working with our elected officials to create better communities by supporting economic development, a high quality of life and providing affordable housing opportunities while protecting the rights of private property owners.

As currently drafted, **HB 2075** would add an alternative definition of “abandoned property” under the Kansas Abandoned Housing Act to allow a local government to take possession of residential real property as “abandoned property” when the property has been unoccupied continuously by persons legally in possession for the preceding 180 days and which has a blighting influence on surrounding properties. Under current law (which was just amended during the 2010 Legislative Session), the property must be two years delinquent on property taxes and the property must have been unoccupied and vacant for the preceding 90 days.

Previous drafts of this legislation that have been discussed in past legislative sessions have sought to remove the requirement that a property be tax delinquent in the existing definition of “abandoned property” in **K.S.A. 12-1750(c)(1)**, which would have completely obliterated the procedural protections for property owners built into the existing statute and would have technically allowed a local government to seize a property as “abandoned property” when the property has been vacant for 90 days, even though the property owner has paid all the outstanding property taxes due on the property. In an extreme example, a property owner who was current on their property tax payments could go on vacation or visit relatives for three months and come back to face a court proceeding from the local government wishing to seize the property as “abandoned property” under the amended statute.

Accordingly, Kansas REALTORS® have consistently opposed these proposed changes in order to avoid a situation where local governments are granted a green light to seize any property as “abandoned property” under the statute when the property owner has left the property for an extended period of time, even if the property taxes on the property are completely current and paid. Our primary concern with previous drafts of this legislation have been that a property should not be considered to be “abandoned” if the property is solely vacant or unoccupied for a certain amount of time and there should be additional qualifications added into the definition to ensure that property owners are not unreasonably and unduly subjected to the statute.

Regarding the current language found in **HB 2075**, we would first like to commend and provide our sincere appreciation to Representative Frownfelter for taking the time to meet with members of our association and to listen to our concerns about the previous versions of this legislation. As a result of these very productive conversations, Representative Frownfelter has agreed to modify the language found in **HB 2075** to specify additional criteria that must exist (in addition to simply a vacant or unoccupied property) before a property would be classified as “abandoned property” under the Kansas Abandoned Housing Act.

In Section 1(c)(2) of **HB 2075**, the new language would amend the existing statute to add an alternative definition of “abandoned property” to allow a local government to take possession of residential real property as “abandoned property” when the property has been unoccupied continuously by persons legally in possession for the preceding 180 days and which has a blighting influence on surrounding properties. Most importantly, this alternative definition does not classify a property as “abandoned property” solely on the basis of whether the property is currently unoccupied or vacant.

Having said that, we do have serious concerns with the definition of “blighting influence” currently found in **K.S.A. 12-1750(d)** and would suggest some modifications to ensure that property owners are only subject to this statute when the property is having a direct detrimental effect on the safety, health and welfare of the occupants of surrounding properties. In contrast, some of the language found in the amended version of **K.S.A. 12-1750(d)** expands the definition of this term to include property conditions that do not, in our opinion, sufficiently relate to the safety, health and welfare of the occupants of surrounding properties.

For example, the current definition of “blighting influence” in line 25 on page one of the legislation would classify a property condition as a “blighting influence” if it was dangerous or injurious to the “morals” of the occupants of such surrounding properties. In our opinion, the judgment of whether a property condition is harmful to the “morals” of surrounding property occupants is not a proper consideration in determining whether the property condition truly has a “blighting influence” on surrounding properties.

In contrast, we would propose that we strike the term “morals” in line 25 and instead adopt the new language proposed in this legislation to add the term “welfare” to this section of the statute. The term “welfare” more aptly describes a legitimate interest of the occupants of surrounding properties that should be protected from any property conditions that might be harmful or dangerous in the subject property.

However, we are very concerned about the proposal in line 26 to add the phrase “including, but not limited to, economic welfare” to this section of the definition of “blighting influence.” In our opinion, the statute is intended to protect the safety, health and welfare of the occupants of surrounding properties, but this protection should not be unreasonably extended to include conditions that might affect the “economic” interests of the occupants of surrounding properties, which are more subjective.

Along the same lines, we also disagree with the existing language found in the definition of “blighting influence” that the property condition of “uncleanliness” would constitute a condition that would have a “blighting influence” on surrounding properties. Although in general uncleanliness is a property condition that is not highly desirable, we are concerned that the inclusion of this language in this definition is overbroad and could lead to situations where the statute is enforced against undeserving properties.

Finally, we would disagree that “walls, sidings or exteriors of a quality and appearance not commensurate with the character” of surrounding properties in lines 33 through 35 is a property condition that has a negative effect on surrounding properties. Instead, we believe this is more likely an aesthetic and subjective value that, while it might lead to some properties not being as visually attractive, does not constitute blight.

For all the foregoing reasons, we would respectfully request that the members of the House Local Government Committee to adopt our proposed balloon amendment to tighten the definition of “blighting influence” found in **K.S.A. 12-1750(d)**. If the committee adopts the proposed balloon amendment, we would have absolutely no concerns with and no position for or against the remaining provisions of the legislation.

Session of 2013

HOUSE BILL No. 2075

By Committee on Local Government

1-23

1 AN ACT concerning cities; relating to the qualifications and rehabilitation
2 of abandoned property; amending K.S.A. 2012 Supp. 12-1750 and 12-
3 1756a and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 12-1750 is hereby amended to read as
7 follows: 12-1750. As used in this act:

8 (a) "Structure" means any building, wall or other structure.

9 (b) "Enforcing officer" means the building inspector or other officer
10 designated by ordinance and charged with the administration of the
11 provisions of this act.

12 (c) "Abandoned property" means:

13 (1) Any residential real estate for which taxes are delinquent for the
14 preceding two years and which has been unoccupied continuously by
15 persons legally in possession for the preceding 90 days; ~~or~~

16 (2) *any residential real estate which has been unoccupied*
17 *continuously by persons legally in possession for the preceding 180 days*
18 *and which has a blighting influence on surrounding properties; or*

19 ~~(2)(3)~~ commercial real estate for which the taxes are delinquent for
20 the preceding two years and which has a blighting influence on
21 surrounding properties. "Commercial real estate" means any real estate for
22 which the present *approved* use is other than one to four residential units
23 or for agricultural purposes.

24 (d) "Blighting influence" means conditions in such structure which
25 are dangerous or injurious to the health, safety ~~or, morals or welfare;~~
26 ~~including, but not limited to, economic welfare,~~ of the occupants of such
27 buildings or other residents of the municipality or which have an adverse
28 impact on properties in the area. Such conditions may include, but are not
29 limited to, the following: Defects increasing the hazards of fire, accident,
30 or other calamities; air pollution; light or sanitary facilities; dilapidation;
31 disrepair; structural defects; ~~uncleanliness;~~ dead and dying trees, limbs or
32 other unsightly natural growth or unsightly appearances that constitute a
33 blight to adjoining property, the neighborhood or the city; ~~walls, sidings or~~
34 ~~exteriors of a quality and appearance not commensurate with the character~~
35 ~~of the properties in the neighborhood;~~ unsightly stored or parked material,
36 equipment, supplies, machinery, trucks or automobiles or parts thereof;

lack of ventilation

1 vermin infestation; ~~inadequate drainage~~; or any violation of health, fire,
2 building or zoning regulations.

3 (e) "Organization" means any nonprofit corporation organized under
4 the laws of this state and which has among its purposes the improvement
5 of housing.

6 (f) "Rehabilitation" means the process of improving the property into
7 compliance with applicable fire, housing and building codes.

8 (g) "Parties in interest" means any owner or owners of record,
9 judgment creditor, tax purchaser or other party having any legal or
10 equitable title or interest in the property.

11 (h) "Last known address" includes the address where the property is
12 located, or the address as listed in the tax records.

13 Sec. 2. K.S.A. 2012 Supp. 12-1756a is hereby amended to read as
14 follows: 12-1756a. (a) (1) An organization may file a petition with the
15 district court for an order for temporary possession of property if:

16 ~~(1)(A)~~ The property meets the definition of abandoned as set forth in
17 K.S.A. 12-1750, and amendments thereto;

18 ~~(2)(B)~~ the organization intends to rehabilitate the property and use the
19 property as housing or for community development or economic
20 development purposes; and

21 ~~(3)(C)~~ the organization has sent notice to the enforcing officer and the
22 parties in interest of the property, by certified or registered mail, mailed to
23 their last known address and posted on the property at least 20 days but not
24 more than 60 days before the date the petition is filed, of the organization's
25 intent to file a petition for possession under K.S.A. 12-1750 through 12-
26 1756e, and amendments thereto.

27 (2) *The governing body of any city may file a petition with the district*
28 *court for an order for temporary possession of property if:*

29 (A) *The property meets the definition of abandoned as set forth in*
30 *K.S.A. 12-1750, and amendments thereto;*

31 (B) *the governing body of the city filing a petition under this section*
32 *has designated an organization to rehabilitate the property;*

33 (C) *the organization designated under subsection (a)(2)(B) intends to*
34 *rehabilitate the property and use the property as housing or for community*
35 *development or economic development purposes; and*

36 (D) *the governing body of the city filing the petition under this*
37 *section has sent notice to the enforcing officer and the parties in interest of*
38 *the property, by certified or registered mail, mailed to their last known*
39 *address and posted on the property at least 20 days but not more than 60*
40 *days before the date the petition is filed, of the governing body's intent to*
41 *file a petition for possession under K.S.A. 12-1750 through 12-1756e, and*
42 *amendments thereto.*

43 (b) The proceeding shall be commenced by filing a verified petition