

HOUSE BILL No. 2204

By Committee on Judiciary

2-1

1 AN ACT concerning civil procedure; relating to redemption of real
2 property; amending K.S.A. 2012 Supp. 60-2414 and repealing the
3 existing section.

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

6 Section 1. K.S.A. 2012 Supp. 60-2414 is hereby amended to read as
7 follows: 60-2414. (a) *Right of redemption by defendant owner.* Except as
8 stated in subsection (m) and as otherwise provided by law, the defendant
9 owner may redeem any real property sold under execution, special
10 execution or order of sale, at any time within 12 months from the day of
11 sale, for the amount paid by the current holder of the certificate of
12 purchase, including expenses incurred by the holder of the certificate of
13 purchase in accordance with subsection (d), together with interest at the
14 rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments
15 thereto, costs and taxes to the date of redemption. The defendant owner in
16 the meantime shall be entitled to the possession of the property. If the court
17 finds after hearing, either before or after sale, upon not less than 21 days'
18 notice to all parties, that the property has been abandoned, or is not
19 occupied in good faith, the period of redemption for the defendant owner
20 may be shortened or extinguished by the court. The right of redemption
21 shall not apply to oil and gas leaseholds. Except for mortgages covering
22 agricultural lands or *for mortgages covering* single or two-family
23 dwellings owned by or held in trust for natural persons *owning or holding*
24 *such dwelling as-a principal* **their** residence, the mortgagor may agree in
25 the mortgage instrument to a shorter period of redemption than 12 months
26 or may wholly waive the period of redemption.

27 (b) *Redemption by lien creditor.* Except as provided in subsection
28 (m), for the first three months of the redemption period, if any, the right of
29 the defendant owner or successors and assigns to redeem is exclusive. If
30 no redemption is made by the defendant owner during the time in which
31 the defendant owner has the exclusive right to redeem, any creditor
32 referred to in subsection (c) may redeem the property during the balance of
33 the redemption period remaining. If the defendant owner has waived the
34 right of redemption, a creditor shall have a right to redeem the property for

1 a period of three months from the date of the judicial sale. If the defendant
2 owner has agreed to a period of redemption of three months or less, a
3 creditor shall have a right to redeem for a period of three months from the
4 date of expiration of the defendant owner's redemption period. If the court
5 shortens or extinguishes the period of redemption because of abandonment
6 or lack of good faith occupation as provided in subsection (a), the court
7 shall specify in the order a time not to exceed three months during which a
8 creditor may redeem. The first creditor redeeming must pay only the
9 amount of the successful sale bid, the expenses incurred by the holder of
10 the certificate in accordance with subsection (d), together with interest at
11 the rate provided for in subsection (e)(1) of K.S.A. 16-204, and
12 amendments thereto, costs and taxes to the date of redemption. After
13 redemption by a creditor, no further redemption shall be allowed except by
14 the defendant owner or such owner's successors and assigns. If a creditor
15 redeems during the period of redemption for the defendant owner, the
16 defendant owner shall have the balance of such period, but in no event less
17 than 14 days from the filing of the affidavit required in subsection (f), to
18 redeem from the creditor. When the defendant owner or such owner's
19 successors and assigns redeem subsequent to redemption by a creditor, the
20 defendant owner or such owner's successors and assigns shall pay an
21 amount equal to the redemption amount paid by such creditor, plus the
22 amount required by subsection (f), and expenses incurred by the creditor in
23 accordance with subsection (d), together with interest at the rate provided
24 for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs
25 and taxes to the date of redemption.

26 (c) *Creditors who may redeem.* Any creditor ~~whose who has a claim~~
27 ~~on the property that is the subject of the action pursuant to this section~~
28 ~~and such~~ whose claim is or becomes a lien prior to the expiration of the
29 time allowed by law for the redemption by creditors may redeem. A
30 mortgagee may redeem upon the terms prescribed by this section before or
31 after the debt secured by the mortgage falls due.

32 (d) *Terms of redemption; rights of parties.* During the period allowed
33 for redemption, the holder of the certificate of purchase or the creditor who
34 has redeemed may pay the taxes on the lands sold, insurance premiums on
35 the improvements thereon, other sums necessary to prevent waste, and
36 interest or sums due, upon any prior lien or encumbrance on the real
37 property. Upon the redemption of the property, the holder of the certificate
38 or the creditor who has redeemed shall be entitled to repayment of all sums
39 thus paid, together with interest at the rate provided for in subsection (e)(1)
40 of K.S.A. 16-204, and amendments thereto. All expenses incurred by the
41 holder of the certificate or the creditor who has redeemed shall be as
42 shown by receipts or vouchers filed in the office of the clerk of the district
43 court.

1 (e) *Effect of failure of debtor to redeem; deficiency.* If the defendant
2 owner or such owner's successors or assigns fail to redeem as provided in
3 this section, the holder of the certificate of purchase or the creditor who
4 has redeemed prior to the expiration of the redemption period will hold the
5 property absolutely. If it is held by a redeeming creditor, the lien and the
6 claim out of which it arose will be held to be extinguished, unless the
7 redeeming creditor is unwilling to hold the property and credit the
8 defendant owner with the full amount of the redeeming creditor's lien and,
9 at the time of redemption, files with the clerk of the district court a
10 statement of the amount that the redeeming creditor is willing to credit on
11 the claim. If the redeeming creditor files such a statement and the
12 defendant owner or such owner's successors and assigns fail to redeem, the
13 creditor's claim shall be extinguished by the amount in the statement. The
14 sheriff, at the end of the redemption period, shall execute a deed to the
15 current owner of the certificate of purchase or the creditor who has
16 redeemed prior to the expiration of the redemption period.

17 (f) *Mode of redemption.* The party redeeming shall pay the money
18 into the office of the clerk of the district court for the use of the persons
19 entitled to it. The clerk shall give a receipt for the money, stating the
20 purpose for which it is paid. The clerk shall also enter the transaction on
21 the appearance docket of the case, showing the amount paid. A redeeming
22 creditor, or agent of the creditor, shall also file an affidavit stating as nearly
23 as practicable the amount still unpaid due on the claim of that creditor and
24 any lesser amount the creditor is willing to credit on the claim in
25 accordance with subsection (e). The creditor's claim, or such lesser amount
26 as the creditor is willing to credit on the claim in accordance with
27 subsection (e), shall be added to the redemption amount to be paid by the
28 defendant owner or such owner's successors and assigns.

29 (g) *Redemption of property sold in parcels, or undivided portions.*
30 Whenever the property has been sold in parcels, any distinct portion of that
31 property may be redeemed by itself. If a creditor has redeemed, the
32 amount of the creditor's claim or such lesser amount as the creditor is
33 willing to credit on the claim as stated in the affidavit under subsection (f)
34 shall be added to each parcel sold pro rata in proportion to the amount for
35 which it was originally sold. When the interests of several tenants in
36 common have been sold on execution the undivided portion of any or
37 either of them may be redeemed separately.

38 (h) *Transfer of right of redemption.* The rights of the defendant owner
39 in relation to redemption may be assigned or transferred, and the assignee
40 or transferee shall have the same right of redemption as the defendant
41 owner. The assigned or transferred right of redemption shall not be subject
42 to levy or sale on execution.

43 (i) *Holder of legal title.* The holder of the legal title at the time of

1 issuance of execution or order of sale shall have the same right of
2 redemption upon the same terms and conditions as the defendant in
3 execution and shall be entitled to the possession of the property the same
4 as the defendant in execution.

5 (j) *Injury or waste after sale.* After the sheriff makes the deed to the
6 purchaser or party entitled to a deed under sale as provided in this section,
7 the purchaser or party may assert a claim for damages against any person
8 committing or permitting any injury or waste upon the property purchased
9 after the sale and before possession is delivered under the conveyance.

10 (k) *Second sale not permitted.* Real estate once sold upon order of
11 sale, special execution or general execution shall not again be liable for
12 sale for any balance due upon the judgment or decree under which it is
13 sold, or any judgment or lien inferior thereto, including unadjudicated
14 junior liens filed after the petition is filed in the district court to foreclose
15 the senior lien against the real estate.

16 (l) *Injunction or receiver to protect property.* The holder of the
17 certificate of purchase shall be entitled to prevent any waste or destruction
18 of the premises purchased. For that purpose the court, on proper showing,
19 may issue an injunction or, when required to protect the premises against
20 waste, appoint a receiver who shall hold the premises until the purchaser is
21 entitled to a deed. The receiver may rent, control and manage the premises
22 but the income during that time, except the fees and expenses of the
23 receiver and the amount that is necessary to keep up repairs, prevent waste
24 and pay real estate taxes and insurance premiums, shall go to the person
25 who otherwise would be entitled to possession during the period of
26 redemption.

27 (m) *Owners reduced redemption period.* In the event a default occurs
28 in the conditions of the mortgage or instrument of the most senior lien
29 foreclosed before $\frac{1}{3}$ of the original indebtedness secured by the mortgage
30 or lien has been paid, the court shall order a redemption period of three
31 months. If, after proper showing, the court finds that the total outstanding
32 amount of all mortgages or liens is less than $\frac{1}{3}$ of the market value of the
33 property, the court shall order a redemption period of 12 months. If the
34 court finds after a hearing with not less than 21 days' notice to all parties,
35 that the defendant owner has involuntarily lost such owner's primary
36 source of income after the date of the foreclosure sale and prior to
37 expiration of a three-month period of redemption, the court may extend the
38 three-month period of redemption an additional three months. If the court
39 orders a redemption period of six months or less, the right of the defendant
40 owner or successors and assigns to redeem is exclusive for the first two
41 months of the redemption period. This subsection shall not apply in the
42 event redemption rights have been shortened, waived or terminated
43 pursuant to subsection (a).

1 Sec. 2. K.S.A. 2012 Supp. 60-2414 is hereby repealed.

2 Sec. 3. This act shall take effect and be in force from and after its
3 publication in the statute book.