



Luke Bell
General Counsel/VP of Governmental Affairs
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: House Commerce Committee

Date: March 3, 2016

Subject: **HB 2665** – Supporting Legislation to Protect Kansas Property Owners and Tenants by Prohibiting Cities and Counties from Requiring Inspections of Rental Properties without the Consent of Property Owners

Chairman Hutton and members of the House Commerce Committee, thank you for the opportunity to provide testimony today on behalf of Kansas REALTORS® in support of **HB 2665**, which would protect the privacy rights of Kansas property owners and tenants by prohibiting cities and counties from requiring inspections of rental properties unless a city or county has obtained the consent of the property owner for the inspection, obtained a search warrant from a court for the inspection or the tenant has requested the inspection. Through the comments provided in our testimony, we hope to provide some additional legal and public policy content on this issue.

KAR is the state's largest professional trade association, representing nearly 8,500 members involved in both residential and commercial real estate and advocating on behalf of the state's 700,000 property owners for over 95 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.

Overzealous Rental Licensing Mandates Have the Potential to Harm Kansas Property Owners and Tenants

As a starting point for this discussion, Kansas REALTORS® have serious reservations about the ever-increasing and overzealous regulation of rental housing by some local governments through rental licensing mandates. Thousands of ordinary Kansans own and operate rental housing, which both provides both an important source of income to many Kansas families and affordable and quality housing options to many other Kansas families.

In our opinion, the only legitimate reason to regulate rental housing is to protect the health, safety and welfare of tenants. Unfortunately, many rental licensing mandates adopted by local governments are guilty of regulatory overreach and stray from the very simple priorities of protecting the health, safety and welfare of tenants.

In contrast, we strongly believe that many ordinances enacted under the guise of protecting tenants instead seek to deter property owners from renting their property on the rental housing market. As long as the property owner and tenants comply with all the applicable local ordinances regulating excessive noise, abatement of nuisances, conformance with property maintenance standards and regulation of parking requirements, then there should be no unreasonable restraints on the ability of property owners to rent their properties to tenants.

According to a considerable amount of research in the public domain on this issue, unreasonable rental licensing mandates and restrictions can produce various negative economic effects for private property owners and the Kansas economy, including the following:

- (1) Reduction in income for Kansas rental property owners due to the inability to rent their properties to tenants under overzealous restrictions on rentals;
- (2) decreased property values due to restrictions on the use of properties on the rental housing market;
- (3) increased housing costs for tenants due to rental housing restrictions, which both increase the cost of rental housing and decrease the supply of rental housing units on the rental housing market; and
- (4) increased property taxes to cover the increased governmental administrative expenses associated with adopting, enforcing and maintaining rental licensing mandates, which rarely cover the full cost of the mandates and are typically subsidized with general funds from the city or county.

As an alternative to the adoption and enforcement of burdensome and unreasonable rental licensing mandates, REALTORS® strongly believe that municipalities should instead adopt and enforce generally-accepted local ordinances controlling excessive noise, abating nuisances, ensuring that properties are maintained according to property maintenance standards and regulating parking requirements for rental properties. In doing so, there is less risk that municipalities will overreach and limit the ability of property owners to rent out their properties.

Burdensome Rental Inspection Mandates Unreasonably Infringe on the Privacy Rights of Tenants

Most importantly, rental inspection mandates are an unreasonable infringement on the privacy rights of property owners and tenants. In nearly every other area of the law, a municipality or law enforcement official cannot infringe on the privacy rights of a property owner or resident unless there is probable cause that a crime or violation has occurred or is occurring on the property. In doing so, the public official must present evidence to a court of competent jurisdiction for a search warrant, which ensures that the privacy rights of the property owner or resident are protected and the public interest is safeguarded.

The right to privacy is one of the most fundamental rights found in the United States Constitution. Under the Fourth Amendment to the United States Constitution, “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

Unfortunately, whenever a city or county adopts rental inspection mandates, cities and counties are allowed to enter a privately-owned property to inspect the interior of a rental property without the consent of the property owner or the tenant and without any probable cause that a violation of city or county ordinances has occurred or is occurring. In our opinion, similar to what is required for other public officials under the Fourth Amendment, a city or county should be required to have the consent of the property owner or the tenant or to present evidence of probable cause that a violation of city or county ordinances has occurred or is occurring to a court of competent jurisdiction before they can conduct an interior inspection of a privately-owned property.

Tenants May Request an Inspection of a Rental Property without Burdensome Rental Inspection Mandates

Under Section 1(c) of **HB 2665**, any tenant residing in privately-owned residential housing always has the right to request an inspection of the property by a city or county. The property owner is not required to provide similar consent and the tenant may request an inspection of the property by the city or county, even if the property owner does not provide consent to the inspection.

If cities and counties are really just concerned with protecting the health, safety and welfare of tenants, then there is no need to adopt and maintain burdensome and unreasonable rental inspection mandates on rental housing. If a tenant encounters a situation that has the potential to negatively affect his or her health, safety or welfare in rental housing, then **HB 2665** provides them with the right to request an inspection of the property, even if the landlord or property owner does not consent to the inspection.

In addition, under the Kansas Residential Landlord Tenant Act (KRLTA), a landlord or property owner is prohibited from retaliating against any tenant that requests an inspection of the rental property by a city or county. Therefore, tenants have the unfettered right to request an inspection of the rental property. As a result, **HB 2655** both protects the privacy rights of tenants and empowers them to make the final decision on whether cities or counties will be allowed to enter their homes to conduct a rental inspection. This represents good public policy.

Conclusion

In closing, KAR would respectfully request that you support **HB 2665**, which would protect the privacy rights of Kansas property owners and tenants by prohibiting cities and counties from requiring inspections of rental properties unless a city or county has obtained the consent of the property owner for the inspection, obtained a search warrant from a court for the inspection or the tenant has requested the inspection. In doing so, the Kansas Legislature will both protect the privacy rights of tenants and empower tenants to make the final decision on whether cities or counties will be allowed to enter their homes to conduct a rental inspection.