



February 19, 2020

To: House Committee on Local Government

From: Kathy Taylor, Kansas Bankers Association

**Re: HB 2600: Recording Contracts for Deeds**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on behalf of the Kansas Bankers Association (KBA) on HB 2600 which requires the recording of an affidavit of interest with regard to contracts for deeds. The KBA was organized in 1887 and our membership includes 98% of the banks and savings & loans headquartered in Kansas. Our membership also includes 19 out-of-state commercial banks operating in Kansas. The Kansas banking industry employs more than 14,700 Kansans that provide financial services across the state. Our organizational mission statement is:

***“Together we support our member banks and bankers with leadership, advocacy and education to benefit the communities and customers they serve.”***

Our industry typically interacts with the parties to a contract for deed in a couple of ways. Sometimes, the parties set up an account at a financial institution where the payments are deposited by the buyer and then disbursed to the seller. The bank is simply acting as a repository for the funds in that case. The second instance is if the buyer wants to use his or her equitable interest in the contract for deed as collateral for a loan.

When a buyer uses his or her equitable interest in the contract for deed as collateral for a loan, the bank asks the buyer to execute an assignment of that interest to the bank. The assignment typically describes the buyer’s interest in the property being transferred and also has language where the buyer agrees to assign that equitable interest in the property to the bank as collateral for the loan.

The Assignment of Equitable Interest is then filed with the Register of Deeds in the county where the property is located. This protects both the buyer and the bank by giving notice to all third parties that there is a security interest in the buyer’s equitable interest associated with the purchase of the property.

HB 2600 appears to only allow a seller to protect its rights by filing an “affidavit of interest” regarding the contract for deed. We believe there are many instances where a buyer would also

want to protect its interest by filing either the “affidavit of interest”, the actual contract for deed itself or the Assignment of Equitable Interest as described above.

We do have concerns with the time limitation between the execution of the contract and the filing of the contract. There could be instances where some of the parties to a contract for deed are not present when others execute it. There are many instances where contracts for deeds are used to transfer family farms and some of the kids buying the property may not live nearby.

We also would ask whether the Committee believes this requirement to file should apply solely to consumer transactions and should exclude commercial/business transactions. While contracts for deeds are used in business transactions as well, the law usually treats those parties as being equal in terms of negotiating ability and not in need of additional legal protections. On the other hand, we have many provisions in the law that protect consumers who may be bargaining with other parties seen as being more sophisticated with regard to the law.

In conclusion, the KBA understands the desire to provide a solution that would help deter people from committing fraud or leaving potential buyers of property through a contract for deed in the lurch. We would be happy to work with interested parties on this matter.