

**Testimony on SB 382**  
**House Commerce, Labor and Economic Development**  
**Erik Wisner, Executive Director**  
**Kansas Real Estate Commission**  
**March 8, 2022**

Chairperson Tarwater and members of the committee. On behalf of the Kansas Real Estate Commission (KREC), thank you for the opportunity to present proponent testimony on SB 382.

The mission of KREC is to protect the public interest in the selling, buying, and leasing of real estate. KREC is requesting legislation to close a loophole in Kansas real estate licensing law that allows unlicensed individuals who don't own the real estate they are marketing or attempting to sell, to perform services that resemble or identical to those provided by Kansas real estate licensees.

The bill prohibits an individual from attempting to offer an equitable interest in a contract for the purchase of real estate they don't own without holding an active Kansas real estate license. A real estate transaction is a significant financial undertaking, and there must be accountability and oversight put in place. Some states have banned the practice of assigning equitable interest also known as "wholesaling". **Instead of prohibiting the practice, the bill clarifies that someone who does these types of transactions needs to obtain a Kansas license.** Nothing in this bill changes the exemption from licensure for an individual who is selling property they own.

Other states have implemented laws similar to SB 382. Arkansas passed legislation defining this pattern of business as a licensed activity in 2017. Oklahoma passed the Predatory Real Estate Wholesaler Act in 2021. Nebraska governor signed legislation into law on Mar. 3, 2022. Arizona, Louisiana and Kentucky currently have proposed legislation pending review by their respective legislatures.

**What is assigning an equitable interest?**

- The practice of assigning an equitable interest, also known as "wholesaling", occurs when an individual enters into a contract to purchase real estate and immediately attempts to option that interest to another buyer prior to closing and taking ownership of the property.
- The wholesaler often has no intention of purchasing (taking title to) the property.
- The wholesaler will typically back out of the contract prior to closing if they cannot find another buyer to option the contract to. Often the wholesaler will structure the contract so they owe minimal if any earnest money to the seller.
- Wholesalers will advertise the property as if they own the property when they only have a contract to purchase the property. This practice is often indistinguishable from the activities a Kansas real estate licensee engages in when marketing a property for a seller.
- **This is a consumer protection issue because these unlicensed individuals essentially act as real estate licensees but have no requirement to abide by the statutes of minimum duties and obligations set in law to protect the sellers they are working with.**

**Why is this bill necessary?**

- Provides protection to consumers and accountability for buyers and sellers in real estate transactions for the largest financial transaction individuals will make while not hampering market innovation.
- Requires individuals engaged in wholesale activity to pass required real estate prelicense education and examinations along with a background check. Promotes education, best practices, and conformity with Kansas laws and regulations.
- Provides oversight by KREC to investigate consumer complaints. Provides an avenue for the public to resolve disputes and claims that otherwise could only be addressed by litigation which is costly to the public and difficult to resolve.
- Creates minimal duties/responsibilities through brokerage relationships that cannot be waived in a transaction, as well as mandatory disclosures re: exactly what duties and responsibilities they will not be performing to increase transparency and accountability with the consumer including fees and commission charged.
- Provides for broker supervision and an added layer of accountability in all real estate transactions

KREC is also requesting reasonable powers to stop activities requiring a Kansas real estate license performed by an unlicensed individual by granting KREC the authority to issue cease and desist orders. Many other Kansas agencies, boards and commissions have similar authority to take this action.

KREC has worked with the Kansas Association of Realtors on this legislation and they are in full support.

Thank you for the opportunity to provide comments on SB 382 and we request the members of the Committee support these changes to protect consumers. I will stand for questions at the appropriate time.