



To: House Commerce, Labor and Economic Development
From: Patrick Vogelsberg, Vice President of Governmental Affairs
Date: February 22, 2019
Subject: Neutral on HB 2314 – Abandoned Property.

Honorable Chairman Tarwater and members of the House Commerce, Labor and Economic Development Committee:

Thank you for the opportunity to appear in front of you today on behalf of the Kansas Association of REALTORS® (KAR) and provide neutral testimony on HB 2314 which would amend the current statutory law regarding abandoned property. Through the comments provided in our testimony, we hope to provide some additional legal and public policy context on this issue.

KAR represents nearly 10,000 members involved in residential, commercial and agricultural real estate and has advocated on behalf of the state's 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.

Current Law

Under K.S.A. 12-1750(c), "abandoned property" means "any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 90 days" or "commercial real estate for which the taxes are delinquent for the preceding two years and which has a blighting influence on surrounding properties."

Under this statute, "commercial real estate" means "any real estate for which the present use is other than one to four residential units or for agricultural purposes." Although the statute does not provide for an explicit definition of the term "residential real estate" for the purposes of the abandoned housing provisions, the implication through a reading of the "commercial real estate" definition would be that "residential real estate" is any real estate consisting of one to four residential units.

Regarding residential real estate, there are basically two triggers that must occur under the current language found in K.S.A. 12-1750(c) before a property can be considered "abandoned property" under the statute. First, the ad valorem taxes on the property must be delinquent for at least the two preceding years. Second, the property must be unoccupied by persons legally in possession for the preceding 90 days. K.S.A. 12-1750(c).

Most importantly, both of these factors must be satisfied before the district court will approve a petition by an organization to take temporary possession of the property. In our opinion, the intent behind the two-factor test is to ensure that legitimate and responsible property owners are not unduly or unreasonably deprived of ownership and possession of their property.

The reason the current statute requires the two-factor test is to protect property owners from an unreasonable determination that they have permanently “abandoned” their property from non-use. Under the common law rules relating to the abandonment of property, a finding of “abandonment” basically means that the property owner has expressed an intent to permanently renounce ownership or possession of the property, either expressly or implicitly through his or her actions. However, under the common law, non-use in itself is not sufficient to show that the property is abandoned.

Under the current language found in the statute, the organization bears the burden to prove that the property owner has demonstrated an intent to renounce possession of the property by showing that the property owner has failed to pay property taxes on the property for at least two years and has failed to maintain a residence in the home for at least 90 continuous days. Absent one factor from the two-factor test, the actions of the property owner in doing one of these things does not demonstrate that he or she has “abandoned” the property.

HB 2314

As drafted, HB 2314 would provide an alternative definition of “abandoned property” under the Kansas Abandoned Housing Act to allow the governing body of a city or a qualified non-profit organization 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 365 days and has a blighting influence on surrounding properties.

The definition is very similar to the common law test and demonstrates that the property owner intends to “abandon” the property implicitly through his or her actions through non-use of the property and failing to maintain the property in a manner that does not lead to a “blighting influence.” Again, the property cannot be “abandoned” through non-occupancy alone.

It is important to note that it is the district court that would need to be satisfied that the property has been abandoned and ultimately approve a petition for temporary possession - not the local government itself. KAR is satisfied that our Kansas district courts can oversee these petitions in a neutral and deliberative way. If a respondent feels the district court has abused its discretion, the appellate courts are available for redress.

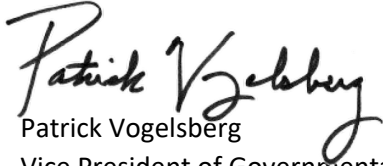
One concern that we have with the current bill is in Section 2(a)(1)(B) and (2)(B). This would broaden the intended uses of the property that is temporarily possessed by an organization to include, “ancillary facilities related to housing, including infrastructure, parks and parking facilities...” We support the original intent of the statute, which was to solely rehabilitate housing.

Conclusion

In closing, HB 2314, could enhance an existing tool to revitalize residential neighborhoods in distressed areas while protecting the property rights of private property owners. If the committee works this bill we would encourage consideration of changes to Section 2(a)(1)(B) and (2)(B) in line with our testimony. Furthermore, we

would oppose changes to broaden the definition of “blighting influence” found in the legislation or attempts to go to a one-factor test of abandonment. Thank you for the opportunity to provide written comments on this issue.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Vogelsberg". The signature is written in a cursive style with a large, prominent initial "P".

Patrick Vogelsberg
Vice President of Governmental Affairs
Kansas Association of REALTORS®