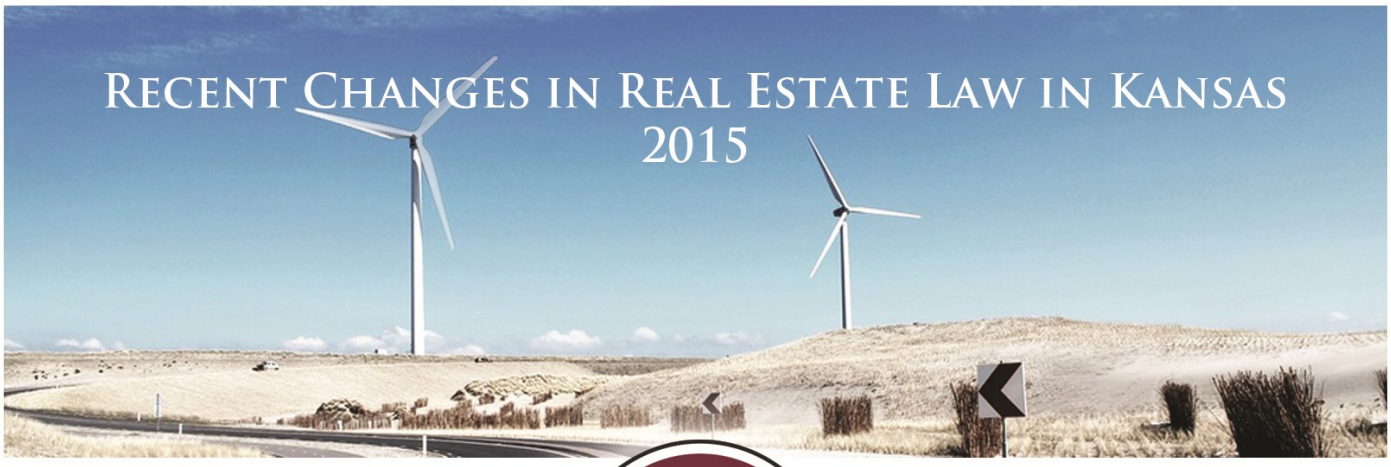
Recent Changes in Real Estate Law in Kansas
2015



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Adams Jones Attorneys

Adam Andrus

Mert Buckley

Pat Hughes

Roger Hughey

Dixie Madden

Jason Reed

Brad Stout

Monte Vines

"Preeminent Presence in Kansas Real Estate"

Top Band in Kansas Real Estate. Chambers USA again awarded Adams Jones its highest rating in the first band of leading firms for real estate in Kansas, saying Adams Jones' Real Estate Group is known for its "preeminent presence in the Kansas real estate market." Those attorneys selected from the firm in the area of real estate include **Mert Buckley, Roger Hughey** and **Brad Stout**. **Brad Stout, Monte Vines** and **Pat Hughes** were selected for general commercial litigation in Kansas. The rankings were compiled from interviews with clients and attorneys by a team of full-time researchers.

Best Lawyers in America. Mert Buckley, Pat Hughes, and Roger Hughey were selected for the 2015 Edition of The Best Lawyers in America in the area of Real Estate; **Brad Stout** was selected for Eminent Domain and Condemnation Law; **Pat Hughes** was selected for Commercial Litigation and Land Use & Zoning Law; **Monte Vines** was selected for Commercial Litigation, Ethics and Professional Responsibility Law, Legal Malpractice Law, Litigation-Banking & Finance and Litigation-Real Estate; and **Dixie Madden** for Corporate Law and Health Care Law. The Best Lawyers lists, representing 80 specialties in all 50 states and Washington, DC, are compiled through an exhaustive peer-review survey in which thousands of the top lawyers in the U.S. confidentially evaluate their professional peers. *The Best Lawyers in America*® 2015. Copyright 2014 by Woodward/White, Inc., Aiken, SC.

Super Lawyers. Selection to the 2014 Missouri & Kansas Super Lawyers included **Mert Buckley and Pat Hughes** in the area of Real Estate and **Monte Vines** in the area of Business Litigation.

Overview

This summary of recent changes in Kansas Real Estate Law was prepared by the Real Estate Group at Adams Jones. Our real estate attorneys continually monitor Kansas case decisions and legislation so we remain current on developments in real estate law in Kansas. We feel this up-to-date knowledge prepares us to address client needs more quickly and efficiently because our "research" is often already done when a question arises.

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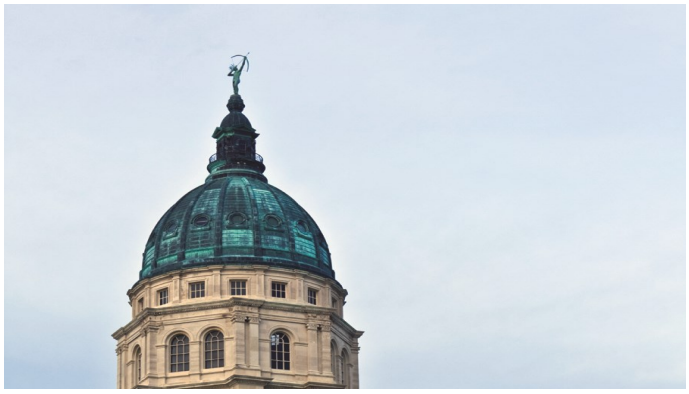


Legislation

Annexation – HB 2003

Land owned by a city must adjoin the city in order to be annexed.

This bill arises from a situation in Cherokee County in which the City of Galena annexed a piece of land it already owned, which did not adjoin the city, and intended to use the property as a landfill. The County Commissioners and surrounding property owners spoke in favor of this bill which requires that land owned by a city, or held in trust for the city, must adjoin the city in order to be annexed.

Another part of the annexation statutes allows a city to annex land which does not adjoin the city if: the land is located in the same county as the city, the owner or owners petition to have their property annexed, and the board of county commissioners approves. This bill increased the county approval requirement to a vote of 2/3 of the members of the county commission.

Effective date: July 1, 2015.

Note: Not signed by the governor as of our publication deadline.

Board of Tax Appeals – HB 2240

BOTA employees can serve as hearing officers.

The 2014 legislature passed a law prohibiting employees of the State Board of Tax Appeals from serving as hearing officers. This amendment repeals that prohibition. The amendment also exempts Board members who are certified general real property appraisers from certain BOTA education requirements as long as they take the educational courses required to maintain their appraisal license.

Effective date: July 1, 2015.

Broker License: Kansas Real Estate Brokers' and Salespersons' License Act – SB108

Prohibited acts, continuing education and fees.

Several amendments were made to the Kansas Real Estate Brokers' and Salespersons' License Act:

Continuing education. Expands the approved list of continuing education providers to now include an independent entity that has been approved by the Kansas Real Estate Commission ("Commission").

Threatening behavior. Current law prevents a licensee from engaging in threatening or physical abuse or harassment towards a client or customer. This amendment extends the probation to a former client or customer.

New prohibited acts. No applicant or licensee shall:

1. Engage in fraud or make any substantial misrepresentation to the Commission
2. Commit forgery in any representation or document submitted to the Commission
3. Sign any documents submitted to the Commission unless authorized to do so
4. Interfere with any investigation or proceeding before the Commission, including but not limited to: threatening behavior, destroying evidence, refusing to appear or testify, and not responding in a timely manner to any request from the Commission
5. Not return a document or instrument to the rightful owner without just cause
6. Demonstrate incompetency in dealings with the Commission.

Contact with seller or landlord. Current law prohibits a buyer's or tenant's agent from submitting an offer to a seller or landlord who is known to be represented by an agent, unless that agent is present. The amendment expands this to permit a licensee to present an offer to a seller or landlord if the agent or *transaction broker* of the seller or landlord is present.

Fees. Raises maximum fees for licensees.
Original salesperson's license from $100 to $150
Original broker's license from $150 to $200
Renewal of salesperson's license from $100 to $150
Renewal of broker's license from $150 to $200.

Effective date: July 1, 2015.

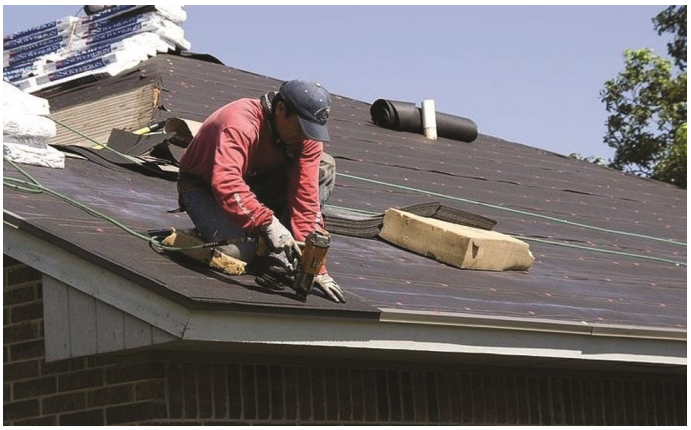
Contractors-Roofing – HB 2254

General contractors exempted from registration.

The Kansas Roofing Registration Act became effective July 1, 2013 and required every "roofing contractor" to obtain a roofing contractor registration certificate from the Kansas Attorney General in order to provide commercial and residential roofing services for a fee in Kansas. This amendment exempts general contractors.

There are two ways to become an exempt general contractor:

1. Upon request of the attorney general, the general contractor can demonstrate:



A. Complies with all laws to do business, including local requirements involving roofing services;
B. Engages in roofing services in addition to construction, installation, renovation, repair, maintenance, alteration or waterproofing services on the project, and roofing services do not exceed 50% of the total project cost; and
C. Does not conduct door-to-door sales.

Or:

2. The general contractor contracts for the roofing services, and upon request of the attorney general, demonstrates as follows:
   A. General contractor does not directly supervise the roofing contractor's employees/agents and the general contractor is a separate legal entity;
   B. General contractor and its agents and employees do not engage in roofing services;
   C. Roofing contractor is validly registered with the state attorney general and general contractor has a copy of the registration certificate;
   D. Contract between general contractor and roofer specifies that the roofing contractor shall perform the roofing services and maintain direct supervision and notify general contractor if the roofing contractor's roofing registration certificate is suspended or otherwise not in compliance;
   E. General contractor complies with all laws to do business, including local requirements involving roofing services; and
   F. Does not conduct door-to-door sales.

Effective date: July 1, 2015.

Firearms in Buildings – SB 45

Now permissible to carry concealed firearms in a building without a concealed carry license.

Current law allows persons to carry an open firearm in a building and to carry a concealed firearm if they have a concealed carry license. This amendment to the Personal and Family Protection Act now allows an individual to carry a concealed firearm without a concealed carry license, both in private and public buildings. Some special rules apply for schools, correctional facilities, courtrooms, and health care facilities.

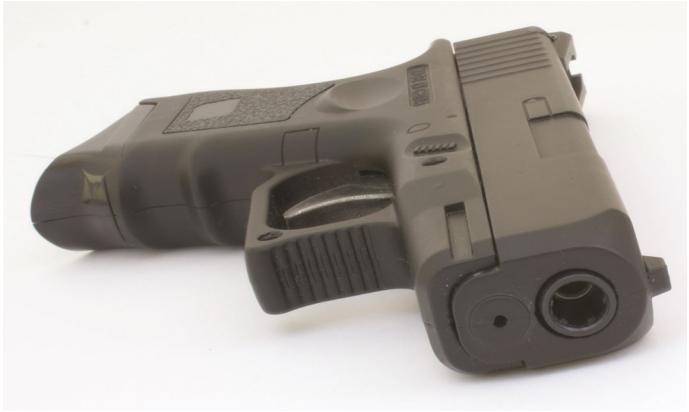
A public or private employer may restrict or prohibit an employee from carrying a concealed handgun onto the employer's business premises pursuant to personnel policies, but cannot prohibit an employee from possessing a handgun "in a private means of conveyance, even if parked on the employer's premises."

Handguns may be prohibited from a building only by posting signage in accordance with rules issued by the Kansas Attorney General.

A private entity which provides "adequate security measures" (e.g. metal detectors, metal detector wands) in a private building, and posts the required signage prohibiting carrying of a concealed handgun, shall not be liable for "any wrongful act or omission relating to actions of persons carrying a concealed handgun concerning acts or omissions regarding such handguns."

A private entity which does not provide adequate measures and allows the carrying of a concealed handgun likewise shall not be liable for wrongful acts or omissions relating to the actions of persons carrying a concealed handgun.

Effective July 1, 2015.



Kansas Department of Wildlife, Parks and Tourism-Land Purchases – SB 120

Authorization for KDWPT to purchase additional land.

The Kansas Department of Wildlife, Parks and Tourism (KDWPT) is restricted by statute from purchasing more than 320 acres of land in the aggregate without an act of the legislature. This amendment reduces the threshold to 160 acres. The bill also exempts this restriction from the purchase of less than 640 acres of land purchased with natural resource damage and restoration funds in Cherokee, Crawford, Labette and Neosho counties.

Renewable Energy Standards – House Sub. for SB 91

Ad valorem tax exemption limited to ten years for future wind farms. Current exemptions continue.

Current law requires Kansas utilities to generate or purchase at least 15% of their energy from renewable

sources, mostly wind farms, and that requirement goes to 20% by the year 2020. (Renewable energy credits may also be purchased toward reaching the requirement.) Renewable energy projects are also exempt from ad valorem real estate taxes. Opponents of the law wanted to remove this purchasing requirement and also remove the tax exemption.

The compromise changes the purchasing requirements of 15% now, and 20% by 2020, to "goals" instead of mandates beginning January 1, 2016. The ad valorem tax exemption will be limited to 10 years instead of being permanent, and the facility will then be taxed as commercial property. Existing projects will keep their exemptions for the life of the property used to generate electricity using renewable energy resources.

Two details to note: The exemption from real estate taxes continues for projects which have filed an application for exemption or received a conditional use permit on or before December 31, 2016.

And the bill says: "Nothing in this act shall be construed to impair any existing contracts, leases or agreements."

Effective Date: July 1, 2015.

State Building Projects – HB 2395

Dollar threshold raised for convening a negotiating committee.

Raises the dollar threshold for when the Secretary of Administration must convene a negotiating committee to consider hiring architectural, engineering or land surveying services for a project for construction of a building or major improvements to a building for a state agency. Current levels are $750,000 when architectural services are wanted, and $500,000 for engineering and land surveying services. This amendment raises the threshold to $1,000,000 for a project needing any of these services.

Effective date: July 1, 2015.

Federal

Truth in Lending-Real Estate Settlement Procedures Act – New Disclosures

The Consumer Financial Protection Bureau has issued the sweeping TILA-RESPA Integrated Disclosures Rule or TRID. This rule combines the TILA and RESPA disclosures into one disclosure form, as well as numerous other changes for residential closings. It applies to most closed-end consumer credit transactions secured by real estate, with some exceptions. The rule is 1,888 pages long and beyond the scope of this publication. More information can be found at the consumer finance protection bureau website: www.consumerfinance.gov. Compliance deadline is August 1, 2015.

Cases & Attorney General Opinions

Adverse Possession

Tenant does not become adverse possessor by failing to pay rent for more than 15 years.

In *MFA Enterprises, Inc. v. Delange*, 50 Kan. App. 2d 1049, 336 P.3d 891 (2014), a landlord sued to evict a tenant and the tenant asserted that he owned the property in Hepler, Kansas, by adverse possession. The lease agreement allowed either party to terminate the agreement by serving 30 days' written notice on the other party, and allowed the lessor to end the lease in the case of a default in the payment of rent, but did not otherwise have a termination date. By 2012 it had been 19 years since the tenant had paid rent. However, consistent with the lease, the tenant had continued to pay taxes on only the improvements while the landlord paid taxes on the land.
When the landlord filed an eviction action, the tenant claimed ownership by adverse possession on the basis that he and his son continued to use the land even though they had not paid rent since 1993. The tenant also argued that the landlord had abandoned the lease agreement more than 15 years before the lawsuit was filed.

The Kansas Court of Appeals noted that the parties could not be deemed to have abandoned the lease agreement because the tenant continued to perform under the lease, in part by paying taxes on the improvements as required by the lease agreement. The Court also found that the failure to pay rent merely gave the landlord the option to terminate the lease; an action it did not take until its notice of termination in 2012. Since the lease remained in effect, the tenant's possession could not be adverse to the true

owner because the true owner was permitting the lessee to be in possession. Moreover, the Court noted that even if the lease agreement had terminated, Delange would have been a holdover tenant, not an adverse possessor.

Agricultural Land Ownership

All references in the agricultural corporation laws to a "limited corporate partnership" are deemed to mean a "limited partnership."

Op. Att'y Gen. No. 2014-08. The Kansas Attorney General opined that the legislature intended for references to a "limited corporate partnership" in the Kansas agricultural corporation laws to instead refer to a "limited partnership." While the term "limited partnership" is defined in Kansas laws, "limited corporate partnership" is no longer defined as a result of various amendments. Therefore, the Attorney General opined that two subsections of a statute listing the exceptions to restrictions on agricultural land ownership should instead refer to a "limited partnership" (K.S.A. 17-5904(a)).

Bankruptcy – Manufactured Home

Lender's lien did not attach to manufactured home due to collateral description in mortgage.

Gracy v. Ark Valley Credit Union (*In re Gracy*), 522 B.R. 686 (Bankr. D. Kan. 2015). Ark Valley made two loans to Gracy secured by mortgages on Gracy's land, as well as the improvements and fixtures on the land. The bankruptcy trustee argued Ark Valley had an unperfected lien in Gracy's manufactured home which could be avoided under the trustee's strong-arm powers and preserved for the bankruptcy estate. If successful, the trustee could then argue that Gracy's bankruptcy estate should receive part of the $347 monthly payments being made to Ark Valley.

Ark Valley's loans to Gracy were consumer transactions involving consumer goods under the Kansas Uniform Commercial Code ("UCC"). For consumer goods, under the UCC, a specific description of the manufactured home was required in the two mortgages in order for Ark Valley's lien to "attach" to the manufactured home. The collateral description of "fixtures" was insufficient; therefore, Ark Valley did not have a lien on the manufactured home for the bankruptcy trustee to avoid and preserve for the bankruptcy estate.

Brokerage Relationships in Real Estate Transactions Act (BRRETA)

Transaction brokers' and statutory agents' liability under K.S.A. 58-30,111 is the same.

Op. Att'y Gen. No. 2014-11. The Kansas Real Estate Commission requested this opinion to address different views within the real estate industry over the common law liability of a transaction broker versus the common law liability of a statutory agent under K.S.A. 58-30,111, a statute within the Brokerage Relationships in Real Estate Transactions Act (BRRETA). The Attorney General opined that BRRETA does not eliminate all common law causes of action unless there is a conflict between the common law and BRRETA. The Attorney General also opined that under K.S.A. 58-30,111, there is no distinction between a transaction broker and a statutory agent; the statute provides both the same protection from liability in the circumstances specified.

Community Associations

When approval of a committee of owners is required for an improvement but no committee has been established, owner does not breach the covenants by proceeding without approval.

Broman v. Enfield, Kansas Court of Appeals Slip Op. 110,043. Sally Enfield bought a house that was in some degree of disrepair in a community governed by restrictive covenants. The covenants required the approval of a committee selected by a majority of owners before an owner could remove native vegetation or undertake alterations such as erecting a fence. Ms. Enfield removed diseased trees and built a fence without permission. She was apparently unaware of the covenants at the time.

Her neighbors sued to enforce the covenants. Because no committee had ever been selected by a majority of lot owners, the neighbors argued that Enfield needed to get permission from the neighbors directly. The district court sided with the neighbors on their claim that Enfield violated the covenants.

The Court of Appeals, however, disagreed. Because no committee had been formed, there was no body from which Enfield could seek permission. The appellate court found, therefore, that the formation of a committee was a condition precedent to the requirement that Ms. Enfield get the approval prior to altering the condition of her lot. This condition was not met. As a result, she did not breach the covenants by erecting a fence or removing native growth.

Delinquent Tax Foreclosure Sales

District court clerk is authorized to sign order for foreclosure sale.

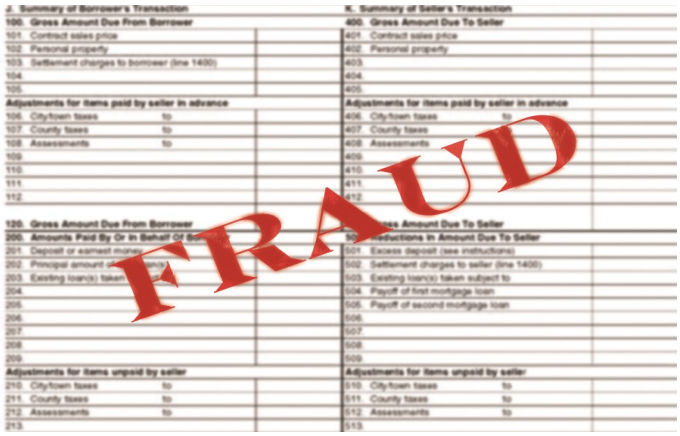
Op. Att'y Gen. No. 2014-15. The Attorney General opined that an order of sale issued pursuant to K.S.A. 79-2804 in conjunction with a delinquent tax foreclosure can be executed by the clerk of a district court.

Financing – Fraud

Attorney suspended from practicing law for two years for committing fraud in drafting real estate transaction documents and instructing title officer to alter closing statements.

In re Singer, 300 Kan. 830, 335 P.3d 627 (2014). Mark R. Singer, an attorney in Overland Park, represented BQI,

LLC ("BQI") in purchasing an inn. BQI was assuming an existing mortgage and also obtaining a loan that would be secured by a second mortgage. As a condition to the new loan, BQI was required to pay part of the purchase price at closing. Singer drafted the real estate transaction documents listing a purchase price of $10.9 million, which included $1.9 million to be paid for services to be provided by the seller to BQI pursuant to a "consulting agreement." In reality, the purchase price was $9 million and BQI was not paying the seller $1.9 million at closing.



Singer instructed the title officer to not disclose the consulting agreement to the lender and instructed the title officer to keep this information confidential, telling her it "'shouldn't matter'" to the lender unless the lender was "'a vulture.'" He further instructed the closer to show the $1.9 million as a credit of "amount due" instead of "cash due."

As soon as the transaction closed, BQI terminated the "consulting agreement" and as a result, BQI's equity in the property was only the $50,000 earnest money rather than $1.9 million. When BQI defaulted not long after closing, the lender discovered Singer's actions.

In a lawsuit involving the title company, the lender and Singer, the jury found Singer committed fraud and his fraud caused the lender's monetary loss. A judgment of $1.7 million was entered against Singer.

In a subsequent disciplinary proceeding, the Kansas Supreme Court suspended Singer for two years.

Implied Trusts

Implied trust can be created in a joint tenancy when it is shown by a preponderance of the evidence that the person taking title to property agreed to hold it for the benefit of a person providing purchase money.

In *Nguyen v. Pham (In re Nguyen)*, 514 B.R. 719 (2014) (unpublished opinion), the bankruptcy court ruled that a debtor's transfer to his sister of unimproved real property using a quit-claim deed "could not be avoided as fraudulent because debtor held only bare legal title." The bankruptcy trustee appealed and the case was reviewed and affirmed by the Bankruptcy Appellate Panel.
Debtor's mother and his mother's husband purchased unimproved real property in 2007. Two-thirds of the purchase price was provided by the debtor's mother and one -third by her husband. At the purchase, title to the property was transferred to the mother and her husband in joint tenancy. They then immediately executed a warranty deed to the debtor, his sister and the mother's husband as joint tenants.

In 2008, the debtor executed a quit-claim deed to the property in favor of his sister and his mother's husband. He received no consideration.

In 2009, the debtor filed for Chapter 7 bankruptcy relief and the bankruptcy trustee claimed the debtor's transfer to his sister should be set aside on the grounds that it had been constructively fraudulent. In response, the debtor's mother claimed to be the equitable owner of a two-thirds interest in the property.

Trustee argued that the 2007 transfer from the mother to the debtor was legally presumed to have been a gift. However, the debtor and the mother testified that rather than receiving a gift, the debtor had held the one-third interest for his mother's benefit and that the transfer was essentially an estate-planning device.

The bankruptcy court found that the elements of a fraudulent transfer were not present because there had been no transfer of an interest in property (one of the elements of a fraudulent transfer), but only of bare legal title. Thus, the trustee was denied the relief of avoiding the transfer to the sister and appealed.

The Bankruptcy Appellate Panel affirmed on the grounds that the transaction between the mother and the debtor had created an implied trust. The panel rejected the trustee's argument that an implied trust could not be created in property held in joint tenancy.

Landowner Liability

Kansas law would not automatically absolve owners of business property from liability for runaway vehicles in their parking lots.

State Farm Fire and Cas. Co. v. Bell, 30 F. Supp. 3d 1085 (D. Kan. 2014) concerns the liability of a landowner for an injury to a pedestrian struck by a car while standing on the sidewalk in front of the property.

Jamie Bell was on the sidewalk in front of a convenience store when an unlicensed minor driver mistakenly pressed the accelerator rather than the brake and drove an SUV over the curb, onto the sidewalk and into Bell, causing serious injuries. Bell sued the owner and operator of the convenience store, alleging that the convenience store breached its duty to keep her reasonably safe by failing to install parking bollards, wheel stops or other precautions to protect pedestrians on the sidewalk between the storefront and the parking spaces.

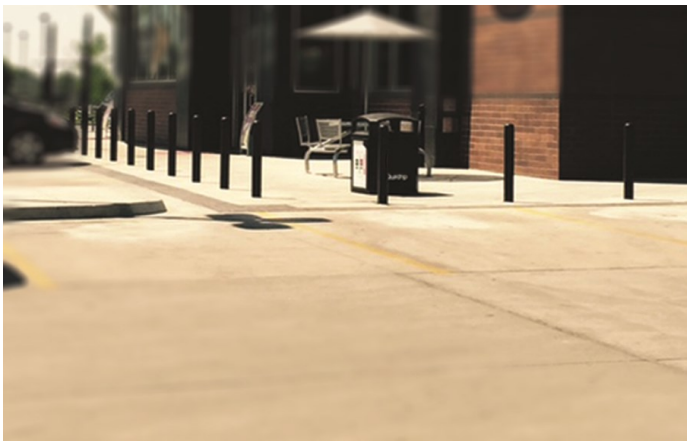
The convenience store filed a motion for summary judgment, arguing that it could not be liable for the injuries because they were caused by the negligent and/or criminal actions of the driver and other "third parties over which defendant had no control."

Although the owner or operator of a business does not ordinarily have liability for injuries inflicted on patrons by a third party's criminal act in the business's parking lot, if the owner can reasonably foresee a "risk of peril above and beyond the ordinary," the owner has a duty to take appropriate protective measures, according to prior Kansas case law. The federal district court in this case predicted that the Kansas Supreme Court would conclude that the foreseeability of a vehicle incursion accident is a question for the jury, not the court, and that the Kansas Supreme Court would not adopt a *per se* rule absolving an owner against liability.

Mechanic's Lien

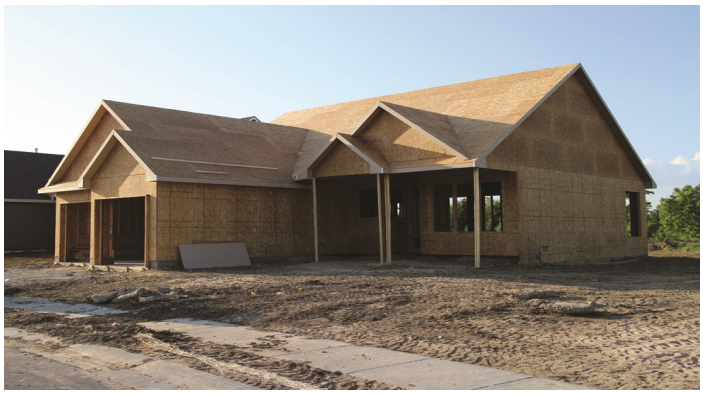
Mechanic's lien coverage does not extend to the supplier of a sub-subcontractor. The Kansas Fairness in Private Construction Act does not preclude application of forum selection clause.

Bowen Engineering Corp. v. Pacific Indem. Co., ___ F. Supp. 3d ___, 2015 WL 73759 (D. Kan. 2015). Bowen was a supplier who was owed money for work on a biofuels construction project in Kansas. Bowen claimed breach of contract, unjust enrichment and foreclosure of a mechanic's lien.



The mechanic's lien failed because it was determined that Bowen was a supplier to a sub-subcontractor, placing it outside the coverage of K.S.A. 60–1103(a).

The other claims were transferred to Missouri under a clause in the construction contract. Bowen argued that the Kansas Fairness in Private Construction Act (KFPCA) prohibited such a contract clause because KFPCA states that "[t]he rights and duties prescribed by this act" cannot be modified by contract, and KFPCA establishes venue in the county where the real property is located (K.S.A. 16–1806). Judge Marten found there was no "strong public policy" that warranted abrogation of the contract terms agreed to by the parties.



Mechanic's Lien–Unjust Enrichment/Quasi-Contract

Subcontractor recovers personal judgment against owner under theory of quasi-contract.

In *Gleason & Son Signs v. Rattan*, 50 Kan. App. 2d 952, 335 P.3d 1196 (2014), a subcontractor was hired to install a sign on a motel property. A part owner of the motel (Rattan) directed the subcontractor to install the sign in the wrong place – not on motel property. The mistake was discovered before the work was completed, but the subcontractor still claimed expenses against Rattan of $2,901.06 for the misdirected work. The district court ruled in favor of the subcontractor.

On appeal, Rattan argued that a subcontractor is not entitled to recover against an owner on a claim of quasi-contract or unjust enrichment. Generally, a subcontractor or materialman cannot obtain a personal judgment against an owner on the basis of quasi-contract or unjust enrichment, but those reasons did not apply to the subcontractor who installed the sign under the directions from Rattan because (1) the misdirected work was outside the original contract and so a mechanic's lien was unavailable; (2) this was not a case in which the owner had paid the general contractor and general contractor failed to pay a subcontractor; (3) the subcontractor had no remedies against the person to whom it originally looked for payment, the general contractor, since it was the owner who misdirected the work; and (4) there were defenses available to the contractor against the subcontractor that the owner would not have known about.

The Court of Appeals held that the subcontractor could assert a claim directly against the owner because the subcontractor "relied to its detriment on Rattan's incorrect information and [the subcontractor] would not have begun installing the sign at the first location but for this incorrect information."

Merger

Oil and gas lease terminates when working interest owner becomes owner of the land.

In re Barker, 50 Kan. App. 2d 375, 327 P.3d 1036 (2014). This case held that an oil and gas lease servitude on land terminates when the owner of the servitude acquires ownership of the land.

Robert Barker was the lessee under an oil and gas lease on land his parents owned. After their deaths, the land passed to Mr. Barker and his wife as joint tenants. The county continued to tax the royalty interest and working interest separately, but Barker argued that the interests were merged by operation of law when he and his wife acquired title from his parents. The Court of Tax Appeals ruled in favor of the county and the Court of Appeals reversed, finding that the interests were merged, thereby extinguishing the oil and gas lease.

The Court concluded that "when the burdens and benefits are united through common ownership in either a single person or a group of persons, an easement or profit ceases to have any function." The Court also found that Robert, as a joint tenant, "owns the whole and every part of the land" and the purpose of the oil and gas lease was no longer served.

Mortgages – Modification

Lender could not revoke an offer to modify loan after borrower returned a signed loan modification agreement.

In re Smith, 2014 WL 2024905 (Bankr. D. Kan. 2014). Nationstar Mortgage told the Smiths that it would modify their mortgage loan if the Smiths first made three monthly trial payments. The Smiths returned a forbearance agreement as Nationstar requested, and then timely made the three monthly payments. Nationstar also sent them a loan modification agreement which the Smiths signed and returned. Nationstar did not sign the loan modification agreement, but later revoked the offer, stating that the loan "did not meet investor guidelines."

In a dispute over the amount of Nationstar's claim in bankruptcy, Judge Nugent ruled that Nationstar could not revoke its offer after the borrowers had signed and returned the modification agreement unless Nationstar could show that it was substantially justified in revoking the offer, which it failed to do. By signing and returning the loan modification agreement, the Smiths had accepted Nationstar's offer to restructure the loan and formed a binding contract.

Property Tax Appeal

Notice of appeal can be signed by tax representative who is not an attorney.

In re Protest Appeal of Rakestraw Bros., L.L.C., 50 Kan. App. 2d 1038, 337 P.3d 62 (2014) and *In re Protest Appeals of Lyerla*, 50 Kan. App. 2d 1012, 336 P.3d 882 (2014) both involved essentially the same legal question. In both cases, the Kansas Court of Tax Appeals ("COTA") had dismissed property tax appeals that had been heard by the small-claims division of COTA on the theory that the notices of appeal had not been signed by the taxpayer personally, by an officer of the taxpayer, or by an attorney for the taxpayer, but only by a taxpayer representative who was not a licensed Kansas attorney. COTA held that it lacked subject matter jurisdiction because a notice of appeal was required to be signed by the taxpayer or its attorney under COTA's regulations.

The Kansas Court of Appeals reversed. It found that as an administrative agency, COTA lacked the power to enact regulations restricting its own jurisdiction unless the Legislature gave it such power, which it had not done. The court also held that the Legislature expressly provided in K.S.A. 2011 Supp. 74-2433f(f) that a taxpayer may appear in the small-claims division through a tax representative or agent. Therefore, timely filed notice-of-appeal forms signed by tax representatives were sufficient to invoke COTA's subject-matter jurisdiction to hear the appeals even if the representatives were neither attorneys nor the taxpayers' officers or employees.

The decisions of COTA dismissing the appeals were reversed, and the cases were remanded for hearings on the merits of the appeals.

Real Estate Services of Adams Jones

Brokers and Salespersons. Advise licensees of responsibilities under Kansas law, including the Real Estate Brokers' and Salespersons' License Act and the Brokerage Relationships in Real Estate Transactions Act.

Commercial Leasing. Work with a variety of commercial leases including office, warehouse, retail, and ground leases for commercial landlords and tenants.

Commercial Purchases and Sales. Assist clients in completing real estate transactions through contract preparation, due diligence review, title examinations, and environmental review.

Condemnation. Represent landowners in condemnation actions by governmental entities.

Condominiums. Prepare condominium declarations and governing documents.

Construction Law. Prepare and enforce mechanics' liens and claims against payment and performance bonds. Prepare and review construction contracts. Represent owners, contractors and subcontractors in disputes.

Covenants & Restrictions. Create community associations, covenants and restrictions for commercial and residential properties.

Creditors' Rights. Represent commercial creditors and financial institutions in protecting and recovering assets and property in foreclosures and workouts.

Developer Incentives. Assist developers utilizing Community Improvement District funding, Tax Increment Financing, tax abatements, and other development incentives.

Financing. Prepare and review loan documents and security instruments for lenders and borrowers.

Land Use/Zoning. Appear before the Board of Zoning Appeals and appellate bodies on land-use issues for landowners and governmental entities.

Litigation/Alternative Dispute Resolution. Resolve disputes for clients in the most appropriate forum available for their controversy, including negotiation, mediation, arbitration, and litigation. We believe our strong real estate practice gives us an edge when called upon to convince a decision maker of our client's position. Cases have included enforcement of contracts, boundary disputes, nuisances, and brokerage commission claims. Available to serve as mediators and arbitrators of real estate disputes and expert witnesses in real estate cases.

Natural Resources. Represent quarry owners in leasing and selling rock quarries. Represent oil and gas operators, lease owners and contractors over lease operations.

Tax Appeals. Prepare and process appeals of real estate tax valuations and assessments, including actions before the Court of Tax Appeals. Resolve issues with special assessments and improvement districts. Particular experience with taxation, oil and gas interests, hotels, and income-producing properties.

Title and Boundary Disputes. Represent landowners in disputes with adjoining neighbors over easements, fences, adverse possession, boundaries and trespass. Represent landowners, lenders and title insurers in title and lien priority disputes.

Title Insurance. Assist purchasers and lenders in securing appropriate title insurance coverage. Represent title insurance companies in claims.

Wind Energy. Represent lenders, landowners, county governments, and neighbors in proposed and completed wind farm projects across Kansas.

Practice Areas

Business & Corporate
Condemnation & Tax Appeals
Employment Law
Estate Planning & Probate
Estate & Trust Disputes
Land Use & Zoning
Litigation
Real Estate

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