

As Amended by House Committee

Session of 2013

HOUSE BILL No. 2204

By Committee on Judiciary

2-1

1 AN ACT concerning civil procedure; relating to redemption of real  
2 property; amending K.S.A. 2012 Supp. 60-2414 and repealing the  
3 existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2012 Supp. 60-2414 is hereby amended to read as  
7 follows: 60-2414. (a) *Right of redemption by defendant owner.* Except as  
8 stated in subsection (m) and as otherwise provided by law, the defendant  
9 owner may redeem any real property sold under execution, special  
10 execution or order of sale, at any time within 12 months from the day of  
11 sale, for the amount paid by the current holder of the certificate of  
12 purchase, including expenses incurred by the holder of the certificate of  
13 purchase in accordance with subsection (d), together with interest at the  
14 rate provided for in subsection (e)(1) of K.S.A. 16-204, and amendments  
15 thereto, costs and taxes to the date of redemption. The defendant owner in  
16 the meantime shall be entitled to the possession of the property. If the court  
17 finds after hearing, either before or after sale, upon not less than 21 days'  
18 notice to all parties, that the property has been abandoned, or is not  
19 occupied in good faith, the period of redemption for the defendant owner  
20 may be shortened or extinguished by the court. The right of redemption  
21 shall not apply to oil and gas leaseholds. Except for mortgages covering  
22 agricultural lands or *for mortgages covering* single or two-family  
23 dwellings owned by or held in trust for natural persons *owning or holding*  
24 *such dwelling as a principal* **their residence**, the mortgagor may agree in  
25 the mortgage instrument to a shorter period of redemption than 12 months  
26 or may wholly waive the period of redemption.

27 (b) *Redemption by lien creditor.* Except as provided in subsection  
28 (m), for the first three months of the redemption period, if any, the right of  
29 the defendant owner or successors and assigns to redeem is exclusive. If  
30 no redemption is made by the defendant owner during the time in which  
31 the defendant owner has the exclusive right to redeem, any creditor  
32 referred to in subsection (c) may redeem the property during the balance of  
33 the redemption period remaining. If the defendant owner has waived the  
34 right of redemption, a creditor shall have a right to redeem the property for  
35 a period of three months from the date of the judicial sale. If the defendant  
36 owner has agreed to a period of redemption of three months or less, a

1 creditor shall have a right to redeem for a period of three months from the  
2 date of expiration of the defendant owner's redemption period. If the court  
3 shortens or extinguishes the period of redemption because of abandonment  
4 or lack of good faith occupation as provided in subsection (a), the court  
5 shall specify in the order a time not to exceed three months during which a  
6 creditor may redeem. The first creditor redeeming must pay only the  
7 amount of the successful sale bid, the expenses incurred by the holder of  
8 the certificate in accordance with subsection (d), together with interest at  
9 the rate provided for in subsection (e)(1) of K.S.A. 16-204, and  
10 amendments thereto, costs and taxes to the date of redemption. After  
11 redemption by a creditor, no further redemption shall be allowed except by  
12 the defendant owner or such owner's successors and assigns. If a creditor  
13 redeems during the period of redemption for the defendant owner, the  
14 defendant owner shall have the balance of such period, but in no event less  
15 than 14 days from the filing of the affidavit required in subsection (f), to  
16 redeem from the creditor. When the defendant owner or such owner's  
17 successors and assigns redeem subsequent to redemption by a creditor, the  
18 defendant owner or such owner's successors and assigns shall pay an  
19 amount equal to the redemption amount paid by such creditor, plus the  
20 amount required by subsection (f), and expenses incurred by the creditor in  
21 accordance with subsection (d), together with interest at the rate provided  
22 for in subsection (e)(1) of K.S.A. 16-204, and amendments thereto, costs  
23 and taxes to the date of redemption.

24 (c) *Creditors who may redeem.* Any creditor ~~whose~~ *who has a claim*  
25 *on the property that is the subject of the action pursuant to this section*  
26 *and such claim is or becomes a lien prior to the expiration of the time*  
27 *allowed by law for the redemption by creditors may redeem. A mortgagee*  
28 *may redeem upon the terms prescribed by this section before or after the*  
29 *debt secured by the mortgage falls due.*

30 (d) *Terms of redemption; rights of parties.* During the period allowed  
31 for redemption, the holder of the certificate of purchase or the creditor who  
32 has redeemed may pay the taxes on the lands sold, insurance premiums on  
33 the improvements thereon, other sums necessary to prevent waste, and  
34 interest or sums due, upon any prior lien or encumbrance on the real  
35 property. Upon the redemption of the property, the holder of the certificate  
36 or the creditor who has redeemed shall be entitled to repayment of all sums  
37 thus paid, together with interest at the rate provided for in subsection (e)(1)  
38 of K.S.A. 16-204, and amendments thereto. All expenses incurred by the  
39 holder of the certificate or the creditor who has redeemed shall be as  
40 shown by receipts or vouchers filed in the office of the clerk of the district  
41 court.

42 (e) *Effect of failure of debtor to redeem; deficiency.* If the defendant  
43 owner or such owner's successors or assigns fail to redeem as provided in

1 this section, the holder of the certificate of purchase or the creditor who  
2 has redeemed prior to the expiration of the redemption period will hold the  
3 property absolutely. If it is held by a redeeming creditor, the lien and the  
4 claim out of which it arose will be held to be extinguished, unless the  
5 redeeming creditor is unwilling to hold the property and credit the  
6 defendant owner with the full amount of the redeeming creditor's lien and,  
7 at the time of redemption, files with the clerk of the district court a  
8 statement of the amount that the redeeming creditor is willing to credit on  
9 the claim. If the redeeming creditor files such a statement and the  
10 defendant owner or such owner's successors and assigns fail to redeem, the  
11 creditor's claim shall be extinguished by the amount in the statement. The  
12 sheriff, at the end of the redemption period, shall execute a deed to the  
13 current owner of the certificate of purchase or the creditor who has  
14 redeemed prior to the expiration of the redemption period.

15 (f) *Mode of redemption.* The party redeeming shall pay the money  
16 into the office of the clerk of the district court for the use of the persons  
17 entitled to it. The clerk shall give a receipt for the money, stating the  
18 purpose for which it is paid. The clerk shall also enter the transaction on  
19 the appearance docket of the case, showing the amount paid. A redeeming  
20 creditor, or agent of the creditor, shall also file an affidavit stating as nearly  
21 as practicable the amount still unpaid due on the claim of that creditor and  
22 any lesser amount the creditor is willing to credit on the claim in  
23 accordance with subsection (e). The creditor's claim, or such lesser amount  
24 as the creditor is willing to credit on the claim in accordance with  
25 subsection (e), shall be added to the redemption amount to be paid by the  
26 defendant owner or such owner's successors and assigns.

27 (g) *Redemption of property sold in parcels, or undivided portions.*  
28 Whenever the property has been sold in parcels, any distinct portion of that  
29 property may be redeemed by itself. If a creditor has redeemed, the  
30 amount of the creditor's claim or such lesser amount as the creditor is  
31 willing to credit on the claim as stated in the affidavit under subsection (f)  
32 shall be added to each parcel sold pro rata in proportion to the amount for  
33 which it was originally sold. When the interests of several tenants in  
34 common have been sold on execution the undivided portion of any or  
35 either of them may be redeemed separately.

36 (h) *Transfer of right of redemption.* The rights of the defendant owner  
37 in relation to redemption may be assigned or transferred, and the assignee  
38 or transferee shall have the same right of redemption as the defendant  
39 owner. The assigned or transferred right of redemption shall not be subject  
40 to levy or sale on execution.

41 (i) *Holder of legal title.* The holder of the legal title at the time of  
42 issuance of execution or order of sale shall have the same right of  
43 redemption upon the same terms and conditions as the defendant in

1 execution and shall be entitled to the possession of the property the same  
2 as the defendant in execution.

3 (j) *Injury or waste after sale.* After the sheriff makes the deed to the  
4 purchaser or party entitled to a deed under sale as provided in this section,  
5 the purchaser or party may assert a claim for damages against any person  
6 committing or permitting any injury or waste upon the property purchased  
7 after the sale and before possession is delivered under the conveyance.

8 (k) *Second sale not permitted.* Real estate once sold upon order of  
9 sale, special execution or general execution shall not again be liable for  
10 sale for any balance due upon the judgment or decree under which it is  
11 sold, or any judgment or lien inferior thereto, including unadjudicated  
12 junior liens filed after the petition is filed in the district court to foreclose  
13 the senior lien against the real estate.

14 (l) *Injunction or receiver to protect property.* The holder of the  
15 certificate of purchase shall be entitled to prevent any waste or destruction  
16 of the premises purchased. For that purpose the court, on proper showing,  
17 may issue an injunction or, when required to protect the premises against  
18 waste, appoint a receiver who shall hold the premises until the purchaser is  
19 entitled to a deed. The receiver may rent, control and manage the premises  
20 but the income during that time, except the fees and expenses of the  
21 receiver and the amount that is necessary to keep up repairs, prevent waste  
22 and pay real estate taxes and insurance premiums, shall go to the person  
23 who otherwise would be entitled to possession during the period of  
24 redemption.

25 (m) *Owners reduced redemption period.* In the event a default occurs  
26 in the conditions of the mortgage or instrument of the most senior lien  
27 foreclosed before  $\frac{1}{3}$  of the original indebtedness secured by the mortgage  
28 or lien has been paid, the court shall order a redemption period of three  
29 months. If, after proper showing, the court finds that the total outstanding  
30 amount of all mortgages or liens is less than  $\frac{1}{3}$  of the market value of the  
31 property, the court shall order a redemption period of 12 months. If the  
32 court finds after a hearing with not less than 21 days' notice to all parties,  
33 that the defendant owner has involuntarily lost such owner's primary  
34 source of income after the date of the foreclosure sale and prior to  
35 expiration of a three-month period of redemption, the court may extend the  
36 three-month period of redemption an additional three months. If the court  
37 orders a redemption period of six months or less, the right of the defendant  
38 owner or successors and assigns to redeem is exclusive for the first two  
39 months of the redemption period. This subsection shall not apply in the  
40 event redemption rights have been shortened, waived or terminated  
41 pursuant to subsection (a).

42 Sec. 2. K.S.A. 2012 Supp. 60-2414 is hereby repealed.

43 Sec. 3. This act shall take effect and be in force from and after its

- 1 publication in the statute book.