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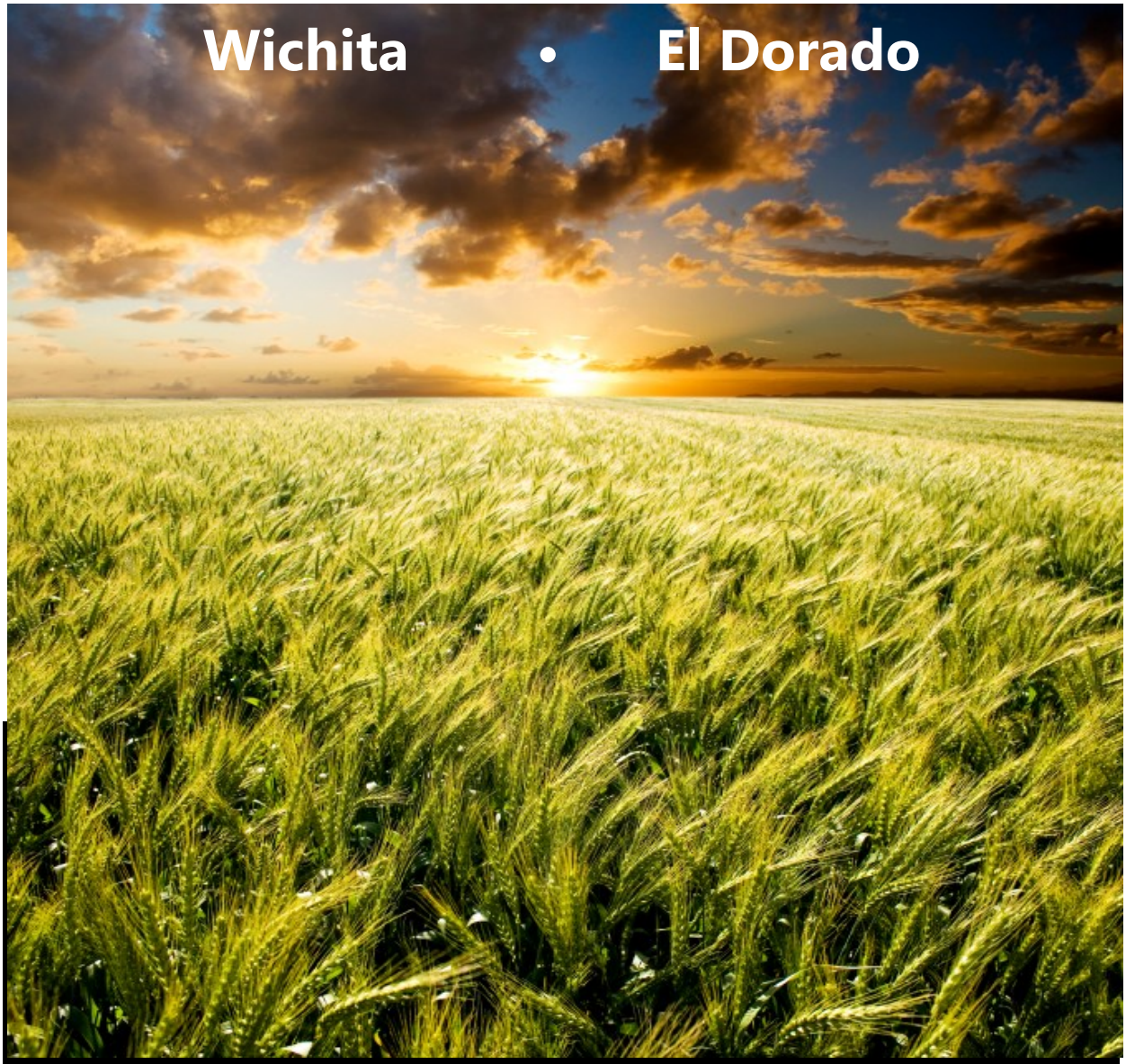

RECENT CHANGES IN KANSAS REAL ESTATE LAW 2025

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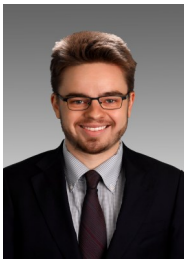
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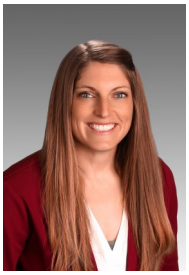
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Preeminent Presence in Kansas Real Estate

Top Band in Kansas Real Estate. Chambers USA again awarded Adams Jones its highest rating as a first band of leading firms for real estate in Kansas. Chambers USA says Adams Jones has: "excellent experience in property transactions, zoning issues and finance work" and "a strong reputation in all manner of real estate litigation, including zoning and easement disputes...and possesses additional expertise in general commercial cases" and "maintains a noteworthy strength in professional liability, estates and trusts and municipal government disputes." Those attorneys selected from the firm in the area of real estate include **Mert Buckley, Brad Stout, Pat Hughes and Cody Branham**. Selected for general commercial litigation were **Brad Stout, Monte Vines and Pat Hughes**. The rankings were compiled from interviews with clients and attorneys by a team of full-time researchers.

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. 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

2024 Legislation

Amendments to the STAR Bonds Financing Act

2024 House Bill 2001 amends the STAR Bond program to authorize projects involving major professional sports complexes and provide said projects with additional sources of revenue for bond repayment. A minimum capital investment of $1 billion would be required and the projects would sunset on June 30, 2025, unless a one-year extension is approved by the Legislative Coordinating Council.

New Kansas Contract and Restrictions on Covenants which Violate the Kansas Act Against Discrimination

2024 House Bill 2562, amongst other provisions, enacts the Kansas Contract for Deed Act and makes any restrictive covenant on real property on any deed, plat, declaration, restriction, covenant, or other conveyance in violation of the Kansas Act Against Discrimination void and unenforceable.

Under the Kansas Contract for Deed Act, if there is a mortgage on the subject property, a seller cannot enter into a contract for deed unless the seller has disclosed the mortgage to the buyer and disclosed the contract for deed to the mortgage holder. The Act also provides buyers with an opportunity to cure a default within certain time periods.

With respect to restrictive covenants which violated the Kansas Act Against Discrimination, the bill allows the owner of the real property to release such covenants from their property by recording a certificate of release of prohibited covenants with the register of deeds.

New Commercial Financing Disclosures Act

2024 Sen. Bill 345 requires a lender in a commercial financing transaction to make certain disclosures to the borrower, including but not limited to the manner, frequency, and amount of each payment for the borrower. Notably, the Act does not apply to banks, loans for personal family or household purposes, parties who consummate less than 5 commercial financing transactions in a 12-month period, commercial financing transactions secured by real estate or a lease, or commercial financing transaction of less than $500,000.

Real-Time or Instant Payment Deposit of Real Estate Closing Funds

2024 Sen. Bill 356, among other provisions, permits title insurance agents to deposit escrow, settlement, and closing funds for real estate closings that exceed $2,500, including closings involving refinances of existing mortgage loans, to be in the form of a real-time or instant payment through the FedNow service operated by the federal reserve banks or The Clearing House payment company's Real-Time Payments system.

Amendments to the Kansas Probate Code Regarding Publication Notices for Sales of Real Property at Auction

2024 Sen. Bill 379 amends provisions in the Kansas Probate Code regarding the publication notice required to be given to creditors with respect to the administration or probate of a will and for publication notice of sales of real and personal property at auction. The bill also clarifies the process by which small estates may be transferred to a successor by affidavit.

CASES & ATTORNEY GENERAL OPINIONS

Adverse Possession

A party asserting ownership through adverse possession must provide clear and convincing evidence of a good-faith belief in ownership, and a mere assumption of possession is insufficient.

Griffin v. Wilson, 556 P.3d 935 (Kan. Ct. App. 2024). Patricia Griffin filed a quiet title action against Lonnie and Lori Wilson, claiming ownership of a 0.70-acre tract in Thomas County by adverse possession. The disputed land, enclosed by a fence about 12 feet north of the surveyed boundary, had been farmed by Griffin's tenant since the early 1990s.

The Wilsons contended they had used the land to move cattle and for travel by horse and four-wheeler. The district court ruled for Griffin, finding her possession open, exclusive, and continuous for over 15 years, and based on a reasonable belief that the land was hers.

The Court of Appeals reversed, holding Griffin lacked substantial evidence of a good-faith belief in ownership. She never personally farmed the land and merely assumed her tenant did, without verification. She also failed to show that her predecessors shared this belief. The Court held that such assumptions fell short of the statutory standard for adverse possession.

Commercial Leases

A commercial lease requiring percentage rent is enforceable when unambiguous, and conflicting lease provisions must be interpreted harmoniously to reflect the parties' intent.

Genesis Health Clubs Mgmt., LLC v. BeautyDot Mgmt., LLC, 543 P.3d 565 (Kan. Ct. App. 2024). Genesis Health Clubs Management, LLC leased commercial space to BeautyDot Management, LLC and BeautyDot Medical, LLC (collectively, "BeautyDot") for an aesthetics and spa business. The lease required a $5,000 monthly base rent plus 5% of gross revenue over $20,000 as "Percentage Rent."

While BeautyDot initially acknowledged this obligation, it later claimed the lease did not require Percentage Rent. The district court agreed, finding conflicting provisions negated the requirement.

The Court of Appeals reversed, holding the lease clearly required Percentage Rent in addition to base rent. The Court emphasized that contract terms must be read as a whole and not rendered meaningless, finding the district court improperly disregarded key rent provisions.

Commissions

A real estate agent is entitled to commissions on contracts classified as "pending" at the time of termination if the contracts later close, as provided under the terms of the parties' agreement.

Mock v. Prestige Realty & Assocs., L.L.C., 556 P.3d 938 (Kan. Ct. App. 2024). Jessica Mock entered into an independent contractor agreement with Prestige Realty and Association, L.L.C. Mock was entitled to 55% of commissions on company-generated leads and, upon termination, commissions on "pending contracts," less fees. However, the agreement also stated that "active contracts" generated by the company would remain with Prestige, forfeiting Mock's commission.

Mock resigned in September 2020 while four deals she had worked on were nearing closing. Prestige denied her commissions, citing the "active contracts" clause. Mock sued for breach of contract, and the district court awarded her $7,804.25. The court found the "pending contracts" clause entitled her to payment, reasoning that was the only logical reading of the agreement.

On appeal, Prestige argued the agreement was misinterpreted. The Court of Appeals disagreed, finding that "pending" had clear contractual significance. Given Mock's substantial involvement in the transactions, the Court affirmed the district court's decision.

Consumer Protection

The scope of a contractor's obligations under a construction contract is assessed through principles of substantial performance, while claims under the Kansas Consumer Protection Act ("KCPA") require clear evidence of either deceptive or unconscionable practices.

Alenco, Inc. v. Warrington, 65 Kan. App. 2d 79, 560 P.3d 586 (2024). In 2019, Alenco, Inc. contracted with homeowners William Warrington and Trina LeMaster for $30,000 to install siding, shutters, and guttering. The contract specified "Cedar Ridge" siding with an R-value of 4.0. Near completion, the homeowners discovered "CraneBoard" siding with a lower R-value of 2.2 and withheld the remaining $27,000, citing breach of contract.

Alenco claimed the substitution resulted from manufacturer errors and offered remedies, including free insulation or a $2,000 discount, which the homeown-

ers rejected. Alenco sued for breach of contract; the homeowners counterclaimed, alleging breach and violations of the Kansas Consumer Protection Act (KCPA) for deceptive and unconscionable practices.

At trial, evidence showed Alenco relied on outdated marketing materials and was unaware of the discrepancy until notified. The jury found Alenco had substantially performed in good faith, that the homeowners breached by withholding payment, and that Alenco did not knowingly engage in deceptive practices.

After trial, the homeowners asked the court to rule on their unconscionability claim under the KCPA. The district court found Alenco's conduct unconscionable, despite the jury's findings, citing misleading representations and failure to deliver as promised.

The Court of Appeals affirmed the jury's verdict, emphasizing substantial performance and good-faith efforts. It reversed the unconscionability ruling, holding the district court improperly overrode the jury's factual findings. While courts may assess unconscionability, they cannot disregard jury determinations on deceptive conduct. Alenco's mistake, the court found, stemmed from honest error—not intentional wrongdoing.

Easements

Apportionment of easement depends on the parties' intent; exceeding scope of easement is trespass for which nominal damages, actual damages or injunction might be available.

Drouhard v. City of Argonia, 64 Kan. App. 2d 246, 561 P.3d 156 (2024). Shawn Drouhard's predecessor granted the City of Argonia an easement to operate a well and transport water, including rights to install waterlines, pumps, and access the property. Sixteen years later, the City installed a coin-operated machine on the property to sell untreated water to the public. Drouhard blocked access with a non-functional car, which the City towed—later returning it damaged. Drouhard sued for conversion and trespass.

The district court found the coin-operated device exceeded the easement's scope and constituted a trespass. It awarded $1,481.60 in actual damages (the City's profit from the machine), $2.50 per day in nominal damages, and issued an injunction against further use of the device.

On appeal, the Court of Appeals affirmed the trespass finding, rejecting the City's claim that the device was a permissible "pump." While it qualified as a pump, the Court held the easement benefited only the City, not the public. The City's argument that it could apportion its easement rights to third parties was also rejected; apportionment cannot expand the original scope of use.

As to damages, the Court upheld the use of the City's profits as a valid measure and found the district court properly declined to award damages based on rental value. However, it reversed the award of nominal damages, noting they are only appropriate in the absence of actual damages, and that the so-called nominal damages were improperly used to increase compensation.

Easements

Highway right-of-way easement does not include the rights needed to place a private pipeline.

Ross v. Nelson, 319 Kan. 266 (2024). With approval from the Norton County Board of Commissioners, Terry Nelson installed pipelines in a public road right-of-way to transport water from a well to a livestock barn, and to return nutrient-rich wastewater to fertilize crops. The landown-

ers holding the underlying fee title sued for trespass.

Nelson argued the pipelines were a lawful use of the right-of-way for transporting commodities. The Kansas Supreme Court disagreed, holding that while public-purpose pipelines may be allowed in highway easements, private pipelines are not. The Court ruled the installation constituted a trespass, regardless of county approval.

The case also involved a nuisance claim related to Nelson's use of animal waste as fertilizer. Nelson argued he was shielded by K.S.A. 2-2302, which protects lawful agricultural practices. The Court held the statute did not apply, since the activity involved an underlying trespass and therefore was not in conformity with law.

Electrical Cooperatives

Under K.S.A. 17-4627, an electric cooperative has a statutory easement to conduct maintenance by replacing and making improvements to equipment, which necessarily includes technological advances to manage the flow of electricity, and safety features.

Brungardt v. DS&O Elec. Coop., Inc., 564 P.3d 820 (Kan. Ct. App. 2025). Jason and Christine Brungardt own a 76-acre property in Saline County, home to Kansas's second-highest hill. A prior owner leased part of the property in 1974 for construction of a 240-foot radio tower. The lease prohibited subleasing or assignment for non-broadcasting uses without the lessor's consent. VBA II, LLC is the current lessee.

In 2013, Brungardt contracted with DS&O Electric Cooperative, Inc. to supply electricity to their home—under a nearly identical agreement to the one between DS&O and VBA. In 2018, DS&O replaced a 29-foot wooden pole servicing the radio tower with a 45-foot pole equipped with an antenna, claiming it aided in electric service. Brungardt had previously denied DS&O's request to install a communications antenna and sued for trespass, ejectment, and to quiet title.

DS&O claimed protection under K.S.A. 17-4627, which allows electric cooperatives to maintain lines once they've been in place for two years. The district court granted summary judgment to both DS&O and VBA.

On appeal, Brungardt argued that the statute didn't authorize the installation of communications equipment. The Court of Appeals disagreed, holding that the new pole and antenna supported DS&O's ability to provide and monitor electric service. The Court found that the equipment was part of modern maintenance and system improvements, and thus protected under the statute.

Foreclosure

A quiet title action cannot be used to collaterally attack a final foreclosure judgment.

Dies v. Dies, 543 P.3d 90 (Kan. Ct. App. 2024). Carol Dies owned property in Marion County encumbered by a 2004 mortgage to Wells Fargo. In 2011, she deeded a portion to her son, Ronald Dies Sr., and his wife, Ruthann. That deed was recorded in March 2011.

In 2012, Wells Fargo initiated foreclosure, including the tract conveyed to Ronald Sr. and Ruthann. The petition named Carol and unidentified occupants (John and Mary Doe), but not Ronald Sr. or Ruthann. Carol was personally served; notice was published and Doe defendants were served by residence. Following judgment, the property was sold at auction and eventually conveyed to Jeanne McGinn.

In 2021, Ronald Sr. executed a transfer-on-death deed to his son, Ronald Dies Jr., who later filed a

quiet title action claiming the foreclosure was void due to lack of notice to his parents.

The district court agreed and voided the foreclosure and subsequent transfers, citing due process violations. Court of Appeals reversed, holding the foreclosure judgment was final and not subject to collateral attack. Any due process claims should have been raised through a direct challenge under K.S.A. 60-260(b)(4), which Ronald Jr. never pursued. The Court found his quiet title action improper and untimely.

Fraud by Silence

Failure of a seller of real estate to disclose the extent of damages paid by the Kansas Department of Transportation for a right-of-way is sufficient to support a fraud-by-silence claim.

Aguilar v. Aponte, 557 P.3d 912 (Kan. Ct. App. 2024). In August 2020, KDOT agreed to pay Segundo Aponte Caceda and Rosario Acosta De Aponte (the "Apontes") $63,605 for a 0.78-acre right-of-way on their property near Dodge City. The payment included compensation for proximity damages, tree replacement, septic line relocation, and fencing. The Apontes accepted the offer in October 2020.

Soon after, the Apontes listed the property for sale, excluding the 0.78-acre tract. Juan and Noar Aguilar (the "Aguilars") viewed the property and were told that highway work was forthcoming but that "the City would take care of it." The Apontes did not disclose the KDOT settlement. The parties executed a purchase agreement for $278,900, later amended to exclude the right-of-way and note the sale was "as is." The sale closed on November 30, 2020.

In December, the Aguilars learned of the KDOT settlement and sued for fraud by silence and breach of contract. The district court found the Apontes had fraudulently withheld material information about the extent of the damages and the compensation received. The court awarded the Aguilars $63,305 in damages.

On appeal, the Apontes argued the nondisclosure was immaterial. The Court of Appeals affirmed, finding the Apontes' failure to disclose the settlement and damage details supported a valid fraud-by-silence claim, as a reasonable buyer would consider that information material.

Homeowners' Associations

A homeowners' association is responsible for maintaining fences installed by the developer if the governing declaration so provides, even if the fence is located on individual lots rather than common areas.

Restum v. Hawthorne Master Homeowners' Ass'n, 549 P.3d 412 (Kan. Ct. App. 2024). Ron and Amy Restum owned a home in Wichita's Hawthorne neighborhood, where the developer had installed a 2,500-foot privacy fence along the eastern boundary of several lots, including the Restums'. When the fence deteriorated, the Restums requested repairs from the Hawthorne Master Homeowners' Association ("Association"), which refused, asserting it was not responsible for fences located on private lots.

The dispute turned on Section 6.1(B) of the Declaration of Covenants, which required the Association to "maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association." The district court granted summary judgment for the Association, reasoning the obligation applied only to fences on common areas.

The Court of Appeals reversed, holding the Declaration's language unambiguously required the Association to maintain all developer-installed fences, regardless of location. The Court emphasized supporting provisions, including easement rights for fence maintenance, and noted that ambiguities in

restrictive covenants are construed against the drafter—in this case, the Association.

Implied Easements

Any implied easement under which both the quasi-dominant estate and the quasi-servient estate shared the use of a sewage lagoon did not justify the quasi-dominant estate's continued use of the lagoon after shared use of the lagoon became unlawful.

Dick v. ReWell, LLC, 552 P.3d 21 (Kan. Ct. App. 2024). This case concerned two residential lots that shared a sewage lagoon on the plaintiff's property when the lots were under common ownership. After the lots were severed, there was no written easement, but the defendants continued using the lagoon as before. County regulations later prohibited shared lagoon use. The district court ruled the defendants had no ongoing right to use the lagoon, and the defendants appealed, arguing an implied easement arose at severance. Both the district court and Court of Appeals rejected this, finding no evidence of an intent to create an exclusive easement—required under current regulations—since both lots had historically shared the lagoon. As no exclusive easement existed, the defendants had no right to continue using it.

Landowner Liability

Public utility holder of utility easement not insulated from negligence or trespass liability for fire started from falling utility pole.

Heritage Tractor, Inc. v. Evergy Kansas Central, Inc., 64 Kan. App. 2d 511, 552 P.3d 1266 (2024). When a 50-year-old, uninspected wooden power pole owned by Evergy collapsed and caused a fire at Heritage Tractor, Inc., Heritage sued for negligence and trespass, seeking over $3 million in damages. The district court granted summary judgment for Evergy, citing a Kansas Corporation Commission (KCC) tariff limiting liability to willful or wanton conduct. While the KCC can regulate utility-customer relationships through tariffs, the Kansas Court of Appeals declined to enforce the limitation, finding it overly broad and unreasonable. The Court also held that whether Evergy took sufficient steps to prevent the pole's failure was a question for trial.

Premises Liability

Public library is within the scope of Kansas Tort Claims Act recreational use immunity.

Zaragoza v. Board of Johnson County Commissioners, 64 Kan. App. 2d 358 551, P.3d 175 (2024). This case addressed whether Kansas Tort Claims Act immunity for recreational use extended to injuries in a library parking lot. Brenda Zaragoza was injured after stepping off a curb at a county library and alleged the county negligently maintained the area. The county obtained summary judgment under K.S.A. 75-6104(o), which grants immunity for recreational use of public property.

On appeal, Zaragoza argued that her injury was not tied to recreational activity and that the library was not covered by the statute. The Kansas Court of Appeals disagreed, holding that libraries qualify as recreational facilities and that immunity is not limited to outdoor spaces or injuries arising from recreation. It also found the parking lot to be part of the recreational property and rejected any showing of gross or wanton conduct sufficient to overcome immunity.

Quiet Title

In order to create a reversionary interest, a deed must clearly and explicitly reserve a reversionary interest in the grantor to create a fee simple determination interest.

Clark v. City of Williamsburg, 541 P.3d 764 (Kan. Ct. App. 2024). This case concerned ownership of two tracts of land adjacent to former Kansas Highway 273 (K-273) in Williamsburg. Darreld and Helen Goodwill deeded the tracts to the Kansas Highway Commission in 1970 and 1972 via "Deeds for Highway Purposes," conveying fee simple title but reserving mineral rights. In 2002, the City of Williamsburg annexed K-273 and received a quitclaim deed from the State covering various tracts, including the 1972 tract. The 1970 tract, while adjacent to K-273, was not expressly listed.

In 2003, Eric Clark purchased adjacent property from the Goodwills' successors, excluding land pre-

viously deeded for highway use. In 2020, a dispute arose after the City's mayor mowed land Clark claimed to own. Clark sued to quiet title and for trespass, asserting the City held only a 20-foot easement. The City claimed ownership through the State's quitclaim deed.

The district court granted summary judgment to the City, finding it held title to both tracts and Clark retained only the mineral rights. On appeal, Clark argued the deeds conveyed only a fee simple determinable interest that reverted once highway use ceased. The Court rejected this, holding the deeds conveyed fee simple title with no reversionary language. Clark also claimed the City never received title to the 1970 tract, but the Court found he lacked standing to challenge the transfer, as the dispute—if any—was between the State and the City.

Quiet Title

An oral agreement to convey real property must be supported by credible evidence of offer, acceptance, and consideration to avoid application of the statute of frauds, and equitable claims like unjust enrichment must show a substantial injustice to merit relief.

Ritchey v. Lewis, 560 P.3d 1191 (Kan. Ct. App. 2024). In 2019, engaged couple Billy Jo Lewis and Peter Ritchey purchased adjacent properties: Ritchey bought 40 acres of unimproved land for $150,000, and Lewis, a licensed realtor, bought a 10-acre parcel with a house for $800,000. Lewis acted as the buyers' agent and negotiated both purchases based in part on Ritchey's financing ability. She later claimed Ritchey had promised her a right of first refusal if he ever sold the land.

After the couple split in 2021, Ritchey listed the land for sale. Lewis filed a mechanic's lien and notified the title company of her alleged right, stalling the sale. Ritchey sued to cancel the lien, quiet title, and sought damages for slander of title, abuse of process, and tortious interference. Lewis counterclaimed for breach of contract, promissory estoppel, and unjust enrichment. She later dismissed the lien voluntarily.

The district court found no right of first refusal—written or oral—and declined to apply promissory estoppel or unjust enrichment. It found Ritchey's testimony that such a promise would have signaled relationship concerns more credible than Lewis's claim.

On appeal, Lewis argued the court misapplied unjust enrichment by ignoring her claim that Ritchey induced her to pay more for the house to benefit him. The Court of Appeals disagreed, finding no inequity: Lewis negotiated the deal herself, the house appreciated significantly, and Ritchey paid his share of taxes and mortgage. The Court concluded any benefit Ritchey received was not unjust given their independent purchases and shared financial decisions.

Restrictive Covenants

Restrictive covenants prohibiting short-term rentals are enforceable if uniformly applied.

Parkwood Hills Homes Ass'n v. Ramakrishnan, 549 P.3d 415 (Kan. Ct. App. 2024). In 2004, Sundar and Nirmala Ramakrishnan purchased a home in Johnson County's Parkwood Hills subdivision, where the covenants prohibited rentals of less than six months. In 2019, they moved to a nearby home and began listing their Parkwood Hills property as a short-term rental, in violation of the covenant.

In 2020, the Parkwood Hills HOA notified the Ramakrishnans of the restriction. After discussions failed, the HOA filed for a permanent injunction in 2021. The Ramakrishnans argued the HOA's enforcement was inconsistent and possibly racially motivated. During litigation, the HOA identified two other short-term rental violators: Sharon Powers, against whom it obtained a default judgment, and Yulin Li, who agreed to stop renting short term.

The district court granted the injunction, finding no

evidence of discriminatory enforcement. The Court of Appeals affirmed, holding that the HOA had sufficient grounds to enforce the covenant.

Right of First Refusal

The holder of a right of first refusal forfeits their rights when they fail to timely act or engage in good faith, allowing the property owner to proceed with a third-party sale.

Van Swol v. Geiger, 556 P.3d 935 (Kan. Ct. App. 2024). In 2015, Dannis and Marilyn Van Swol purchased property in Brown County from Julian Geiger, who retained a right of first refusal. The agreement required Van Swol to offer the property to Geiger before selling to a third party. If no price was agreed upon, an appraisal would set the price. Alternatively, if Van Swol received a third-party offer, Geiger could match it.

Van Swol claimed they approached Geiger several times to sell, but he declined or failed to respond. In December 2021, they entered a contract with a third party and notified Geiger, who did not exercise his right but later refused to sign a release, causing the contract to expire. A similar situation occurred with a second contract in April 2022. Van Swol then filed a quiet title action, alleging Geiger's refusal to release his rights was interfering with their ability to sell.

At trial, Van Swol testified they had a new offer, but Geiger again failed to indicate any intent to purchase. Geiger argued the agreement required an appraisal before third-party offers could be pursued. The district court disagreed, interpreting the contract as allowing two independent procedures—either an appraisal or a third-party offer.

On appeal, Geiger claimed the agreement required a three-step process: offer, appraisal, then third-party sale. The Court of Appeals affirmed the district court, finding Van Swol complied with the agreement and that Geiger's failure to act in good faith forfeited his rights under the right of first refusal.

Right to Repurchase

Ambiguities in real estate covenants must be resolved in favor of unrestricted property use.

Robl v. Carson, 548 P.3d 771 (Kan. Ct. App. 2024). In 1991, Reflection Ridge, Inc. filed covenants for a Wichita subdivision, later amended in 1994 to include a repurchase provision. It required buyers to begin home construction within 18 months of closing with an approved builder. If not, the "Seller" retained an option to repurchase the lot for the original purchase price within five years after the 18-month period expired. The provision stated it would run with the land and bind successors.

In 1995, Developer sold a lot to Dennis and Jenell Smith under this amended covenant. Developer dissolved in 1997. The Smiths never built on the lot and transferred it in 2019 to Cypress Point, LLC, which soon sold it to Steven and Vera Robl. The Robls then sold the lot to Elaine Carson. The deed referenced restrictions of record but did not mention a repurchase right.

Carson failed to develop the lot within 18 months, prompting the Robls to attempt to repurchase it, claiming a right under the recorded covenant. Carson refused, asserting that only the Developer had held that right.

The district court sided with the Robls, interpreting the covenant as giving any "seller" a repurchase right. The Court of Appeals reversed, finding the covenant's language more reasonably indicated that the repurchase right was exclusive to the Developer as part of its development control efforts—not transferrable to future private sellers.

Tax Sales

Notice of tax sale by publication can be sufficient even if the government does not first attempt actual service through the Kansas Secretary of State.

Unified Gov't of Wyandotte Cnty./Kansas City v. Adauto, 559 P.3d 354 (Kan. Ct. App. 2024). The Unified Government of Wyandotte County/Kansas City, Kansas sold property owned by Mosaic Construction Company, LLC at a tax sale. Mosaic moved to set aside the sale, claiming it had not received notice. Unified Government had attempted to serve Mosaic at several addresses, including its listed tax address and registered office, but was

unsuccessful. It then served notice by publication.

Mosaic appealed, arguing that the government should have first attempted service through the Kansas Secretary of State. The Court of Appeals affirmed the district court's ruling, holding that due process did not require service through the Secretary of State because there was no indication that would have resulted in actual notice. The Court found that Mosaic had not shown its correct address or agent was readily ascertainable, and thus, service by publication was permissible under the circumstances.

Zoning

County can delegate power to issue conditional use permits to board of zoning appeals; conditional use permits need not follow the same procedures as zoning changes.

Am. Warrior, Inc. v. Bd. of Cnty. Commissioners of Finney Cnty., Kansas, 319 Kan. 78, 552 P.3d 1219 (2024). Finney County's zoning regulations authorize the Board of Zoning Appeals to issue conditional use permits. Under K.S.A. 12-757, amending zoning regulations requires a public hearing before the planning commission, a recommendation to the county commission, and final approval by that commission.

When Huber Sand, Inc. applied for a conditional use permit to operate a sand and gravel quarry, it followed the county's zoning process. After a public hearing, the Board of Zoning Appeals approved the permit despite opposition from over 100 local residents. A nearby property owner and an oil and gas leaseholder challenged the permit, arguing that the county's procedure violated state law.

The district court upheld the permit, finding that the Board of County Commissioners could delegate permitting authority to the Board of Zoning Appeals. The Court of Appeals reversed in a split decision, and the Kansas Supreme Court granted review.

The central issue was whether Finney County's procedure complied with state law. While K.S.A. 12-757 governs amendments to zoning regulations, the issuance of a conditional use permit does not amend those regulations. Thus, the county could adopt its own process for such permits. This delegation of authority to the Board of Zoning Appeals was consistent with K.S.A. 12-759(e), which allows such boards to grant exceptions as provided in the zoning regulations.

Zoning

Governing body can apply protest petition statute to planned unit developments to trigger 3/4 supermajority voting requirement to approve.

Austin Props., LLC v. City of Shawnee, 564 P.3d 1262 (Kan. 2025). Austin Properties, LLC applied for approval of a planned unit development (PUD) under the City of Shawnee's zoning code. Nearby residents filed a protest petition, triggering a statutory requirement for a 3/4 supermajority vote. The vote fell short, and the proposal failed. Austin Properties sought judicial review, arguing the denial was unreasonable and that the City misapplied zoning protest procedures to the PUD. The district court upheld the City's decision.

On appeal, the Kansas Court of Appeals considered whether the statutory protest procedure under K.S.A. 12-757 — which applies to zoning amendments — could be applied to PUDs. The Court held it could, as PUDs amend land use restrictions and thus qualify as zoning changes.

The Court also addressed the effect of a failed supermajority vote. Austin Properties argued the City was required to either formally deny the application or remand it to the planning commission. The City contended that the failure to meet the supermajority threshold constituted an automatic denial. The Court of Appeals sided with the City.

The Kansas Supreme Court reversed. It found that because Shawnee's zoning code expressly incorporated K.S.A. 12-757, the City was bound by its procedures. Under that statute, failure to achieve a supermajority vote does not equal denial. The City was required to either vote to deny the application or return it to the planning commission with an explanation.

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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 closings.

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 economic development incentives such as Industrial Revenue Bonds, Community Improvement Districts, Tax Increment Financing, tax abatements, and other development incentives.

Financing. Represent borrowers and lenders in financing of commercial real estate and businesses.

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 Board 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.

NOTES

Practice Areas

Business & Corporate
Condemnation & Tax Appeals
Employment Law
Estate Planning & Probate
Estate & Trust Disputes
Family Law
Intellectual Property
Land Use & Zoning

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