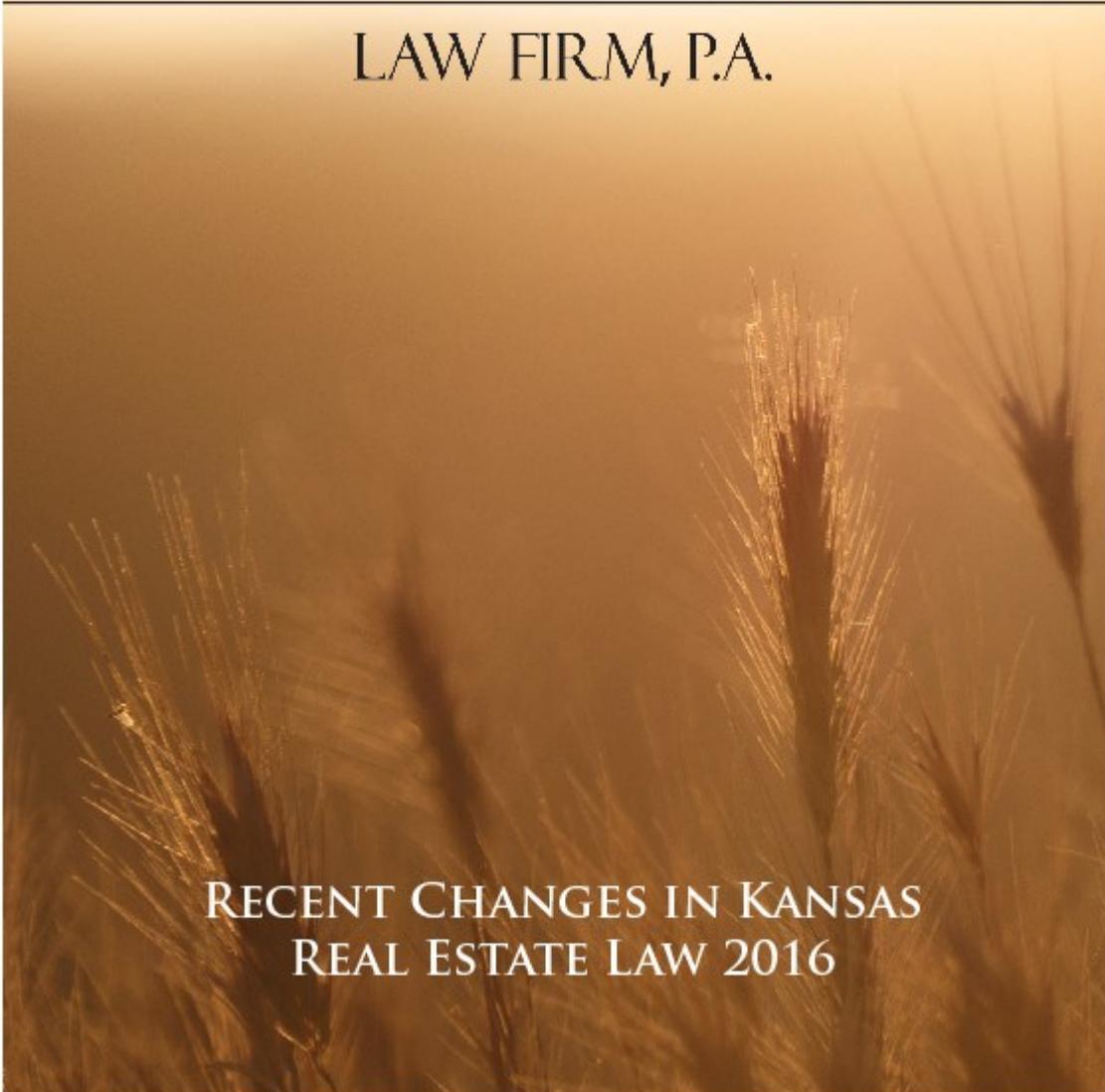




ADAMS **AJ** JONES

LAW FIRM, P.A.



RECENT CHANGES IN KANSAS
REAL ESTATE LAW 2016

Adams Jones Attorneys



Adam Andrus



Mert Buckley



Pat Hughes



Mike Andrusak



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. Chambers cited sources as saying about Adams Jones: “They react quickly, provide outside-the-box solutions, and provide value above and beyond the legal work required.” Those attorneys selected from the firm in the area of real estate include **Mert Buckley**, **Roger Hughey** and **Brad Stout**. 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.



Selections for 2016 Best Lawyers in America:

<u>Real Estate</u> Mert Buckley Pat Hughes	<u>Commercial Litigation</u> Pat Hughes Monte Vines	<u>Corporate Law</u> Dixie Madden	<u>Health Care</u> Dixie Madden	<u>Land Use and Zoning</u> Pat Hughes
<u>Eminent Domain & Condemnation</u> Brad Stout	<u>Litigation—Banking and Finance</u> Monte Vines	<u>Ethics of Professional Responsibility</u> Monte Vines	<u>Litigation-Real Estate</u> Brad Stout Monte Vines	<u>Legal Malpractice -Defendants</u> Monte Vines

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.

This publication is intended for informational purposes only and should not be construed as legal advice for a particular matter. Portions of this material are derivative works of copyrighted material reprinted with permission of the Kansas Bar Association.

Table of Contents

Legislation – 2016

Asbestos Licensing – HB 2516	1
Commercial Broker Lien Act – House Sub. for Sen. Bill 44	1
Community Improvement Districts – House Sub. for Sen. Bill 149	1
Conservation Reserve Enhancement Program (“CREP”) – SB 330	1
Contaminated Property Redevelopment Act – House Sub. for Sen. Bill 227	1
Drones – SB 319	1
Easement-Water District – SB 412	2
Economic Development Projects – HB 2632	2
Firearms – HB 2502	2
Fire Districts – HB 2438	2
Local Government Controls – SB 366	3
Mortgage Business Act – SB 369	3
Nongame and Endangered Species Act – Sen. Sub. for HB 2156	3
Real Estate Licensure – SB 352	4
Real Property Tax Lid – HB 2088	4
STAR Bonds – SB 161	4
Taxation of Real Estate – House Sub. for SB 280	4

Regulations

Real Estate Licensing Fees	6
----------------------------------	---

Cases & Attorney General Opinions

Ad Valorem Taxation – Cost approach to value can consider the purchase price of land purchased for a casino	7
Adverse Possession – Adverse possession fails because occupant was in possession with owner’s consent	7
Annexation – City’s substantial compliance with annexation statutes sufficient to uphold an annexation	8
Bankruptcy–Fraud – Debtor denied discharge of \$900K debt for misrepresentations about collateral	8
Condemnation–Award – Compensation and damages can take into consideration anything a hypothetical buyer would consider. Statutory discount factors can be used to determine post-taking value of partially condemned property	9
Construction Contracts – Clause requiring contract disputes to be resolved in Luxembourg is enforceable	9
County Road Vacation – County commission vacating a road on its own motion need not follow all of the procedures required when vacating a road on the petition of an adjacent landowner	10
Deeds–Transfer on Death – Quit-claim deed left nothing to pass under Transfer on Death Deed	10
Eminent Domain–Appeal – Voluntary dismissal of appeal of condemnation award was allowed to be re-filed	11
Fixtures – Mobile home a fixture to real estate under common law	11
Homestead – Homestead exemption is not lost by absence from property if owner has the intent to eventually return	11
Homestead – Judicial lien on homestead created in divorce proceeding valid and not avoidable in bankruptcy	12
Homestead–Judgment Liens – Homestead exemption protects property from judgment for repairs	12
Mineral Deeds–Subject to a Lease – A mineral deed which states it is “subject to” the terms of a lease does not necessarily incorporate the terms of that lease	12
Mineral Rights–Reversionary Interest–Fee Simple Determinable – The statute of limitations does not run on a claim of an owner of a reversionary interest, because the interest automatically vests when the defeasing condition is satisfied ...	13
Notes and Mortgages–Statute of Limitations – Statute of limitations prevents children from recovering money loaned to mother to build her house	13
Taxation of Real Estate – Land not classified as agricultural when 9 acres used for haying and 1 acre for residence	14
Tax Increment Financing – Successful challenge to valuation of real property does not alter the adjusted TIF base valuation; cities can apply less than all of TIF revenues to the payment of TIF bonds	14
Tax Valuation–Real Property – Statute restricting increased valuation of property after successful valuation appeal unconstitutional	15
Water – Landowners compete for water rights	15

Real Estate Services of Adams Jones

Listing of Services	16
---------------------------	----



LEGISLATION

Asbestos-Licensing – 2016 House Bill 2516

State certification no longer required.

Persons performing asbestos removal and encapsulation work will no longer be required to meet state-specific certification requirements. This bill instead requires compliance with federal training requirements.

Effective date: July 1, 2016.

Commercial Broker Lien Act – 2016 House Sub. for Sen. Bill 44

Deadline extended to file lien for unpaid leasing commission.

Currently a broker may file a lien for unpaid commissions in a lease transaction if filed within 90 days after the tenant takes possession. The amendment extends the filing deadline to 180 days after the tenant takes possession. Testimony for the bill said the additional time would allow parties to resolve disputes over unpaid commissions and hopefully result in a decrease of lien filings.

The bill also clarified some ambiguity in the existing statute which does not change existing law.

Effective Date: July 1, 2016.

Community Improvement Districts – 2016 House Sub. for Sen. Bill 149

Maximum amount of state CID administration fund increased.

All sales taxes collected under the Community Improvement District Act are paid to the state treasurer and 2% of that amount is credited to the CID sales tax administration fund to pay for administration and enforcement of collection. The maximum aggregate amount collected in any fiscal year was amended from \$60,000 to \$200,000.

Effective Date: July 1, 2016.

Conservation Reserve Enhancement Program (“CREP”) – 2016 Sen. Bill 330

Establishment of Conservation Reserve Enhancement Program (“CREP”).

This bill establishes the Kansas Conservation Reserve Enhancement Program “for the purpose of implementing beneficial water quality and water quantity projects concerning targeted watersheds....”

Effective date: July 1, 2016.

Contaminated Property Redevelopment Act – 2016 House Sub. for Sen. Bill 227

State procedure to clean up contaminated property.

This creates the Contaminated Property Redevelopment Act and is generally a state version of the federal law that allows innocent parties to purchase contaminated property without liability for cleanup costs if certain conditions exist and required steps are taken. The Act also establishes the Contaminated Property Redevelopment Fund to help municipalities redevelop contaminated properties.

Effective Date: July 1, 2016.

Drones – 2016 Sen. Bill 319

Drones used for harassment or stalking.



The Kansas Protection from Stalking Act was amended to include the use of drones for harassment or stalking purposes. Stalking is defined as “an intentional harassment of another person that places the other person in reasonable fear for that person’s safety.” Harassment is defined as “a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. ‘Harassment’ shall include any course of conduct carried out through the use of an unmanned aerial system over or near any dwelling, occupied vehicle or other place where one may reasonably expect to be safe from uninvited intrusion or surveillance.”

Effective Date: July 1, 2016.

Easement-Water District – 2016 Sen. Bill 412

Easement for water rights on Kansas River expanded in Johnson County.

Water District No. 1 in Johnson County has an existing easement along the Kansas River related to diversion of water. This amendment expands the easement right to include “hydropower generation equipment and facilities for the production of electricity.”

Effective date: July 1, 2016.

Economic Development Projects – 2016 House Bill 2632

Eligible area expanded; STAR bond amendments.

Definition of Eligible Area. An “eligible area” for certain redevelopment projects currently includes a “blighted area, conservation area, enterprise zone, intermodal transportation area, major tourism area or a major commercial entertainment and tourism area, or bioscience development area.” The bill added to this definition “a building or buildings which are 65 years of age or older and any contiguous vacant or condemned lots.” K.S.A. 12-1770a.

STAR Bond Amendments. Several amendments were made to the STAR bond financing act (K.S.A. 12-17,162 *et. seq.*):

A STAR bond district may not include real property which has been part of another STAR bond project unless the STAR bond district and project were approved by the Secretary of Commerce before March 1, 2016.

When property is added to a STAR bond district, the base year of the original property remains the same and the base year of the newly-added property is the 12-month period immediately prior to the month in which the land is added to the district.

A *portion* of tax increment revenue from a district may now be used to pay STAR bonds. Previously all of the tax increment revenue was required to be used for bond payments.

Tax increment revenue from retail automobile dealers is not included in the tax increment for any project district established and approved by the Secretary of Commerce after January 1, 2017.

The Department of Commerce is required to report specified economic information for all STAR bond projects to the legislature by January 31 of each year.

Effective Date: July 1, 2016.

Firearms – 2016 House Bill 2502

Regulation of Firearms -- Amendments

Various changes were made to laws concerning firearms. We excluded portions that do not affect real estate directly.

Air Guns. Excludes an “air gun” from the definition of a “weapon.” Allows schools to prohibit possession of an air gun on school property or school-supervised activity, except when participating in activities of an organization that meets a statutory definition that essentially provides youth development by engaging in “activities designed to promote and encourage self-confidence, teamwork and a sense of community.”

Active-Duty Military Personnel. Special provisions for military personnel regarding concealed carry licensing.

Public Buildings. Current law allows prohibition of a concealed firearm throughout a public building if “adequate security measures” are in place and signs are posted as required by the Act. This amendment makes these laws applicable to carrying concealed weapons in a “public area” of a state or municipal building. Exemptions granted under current law will now expire July 1, 2017. The state capitol remains specifically outside the definition of a “state and municipal building.”

Adequate Security Measures. This currently means the use of electronic equipment and personnel at public entrances to detect and restrict the carrying of concealed weapons. The amendment now requires personnel to be armed.

Effective Date: July 1, 2016.

Fire Districts – 2016 House Bill 2438

City adjoining a fire district may be included in the district.



Current law allows a city to join a fire district if the city lies “within” the fire district. This amendment allows all or any part of a city to join a fire district if the city adjoins or lies within the district.

Effective date: Upon publication in Kansas Register.

Local Government Controls – 2016 Sen. Bill 366

Limitations placed on local governments regulating real estate.

Rent and Price Controls. Current law prohibits a city or county from enacting laws that would control rental rates in any privately-owned residential or commercial property. This bill expands the restriction to also prohibit control over the purchase price agreed upon between the parties to a sale of privately-owned real estate. This does not affect the right of a political subdivision from managing or controlling property in which it has an ownership interest, or entering into agreements that control rent or purchase prices in exchange for grants or incentives. But the governing body may not impose rent or price controls as a condition for issuing a building permit, plat or request for various zoning and land use approvals.

Inspection of Property. The bill also prohibits local governments from enacting laws allowing periodic inspections of the interior of privately-owned residential property unless the person legally in possession of the property grants consent. This does not apply to inspections of mixed-use residential/commercial property; nor does it prohibit a local government from conducting plan reviews, periodic construction inspections, or final occupancy inspections necessary for building permits.

Effective Date: July 1, 2016.

Mortgage Business Act – 2016 Sen. Bill 369

Amendments to the Kansas Mortgage Business Act.

Several amendments were made to the Kansas Mortgage Business Act (the “Act”).

Definitions. Definitions were added for: Application, Individual, Mortgage Servicer, Mortgage Servicing and Not-for-Profit. The definition of “mortgage business” was revised to include “holding the rights to mortgage loans in the primary market.” “Primary market” was amended “to mean a market where a mortgage business is conducted,” including activities where a person assumes or accepts mortgage business responsibilities of the original parties to the transaction.

Licensing. Not-for-profits which provide loans as part of “a mission of building or rehabilitating affordable homes to low-income consumers” were exempted from the licensing requirements of the Act.

The bill removed the exemption from its licensing requirements for a person licensed as a supervised lender under the Uniform Consumer Credit Code who conducts mortgage business. Those supervised lenders must now become licensed under the Act.

Clarified that nothing under the Act requires a non-depository mortgage business to acquire any license other than licensing under the Act.

Display of License. Revisions were made to requirements for display of license.

Powers of Commissioner. The state banking commissioner, or its designee, was given “authority to receive and act on consumer complaints,” and to provide advice on rights and duties under the Act. The Commissioner was also given authority to enter into informal agreements, rather than an order, to address violations of the Act (this provision expires July 1, 2021).

Safe Harbor. “Except for refund of an excess charge, no liability is imposed under [the Act] for an act done or omitted in conformity” with a rule and regulation or written interpretation of the Commissioner if the rule, regulation or interpretation is later held invalid for any reason.

Bond Requirements. Clarified and revised bond requirements of licensees.

Required Information. Licensees are no longer required to maintain a journal of mortgage transactions, but must now maintain other specified information about a mortgage transaction and make it available to the Commissioner.

Annual Reporting Requirements. The Commissioner may require “reports filed with the nationwide mortgage licensing system and registry” to be filed as part of a licensee’s annual report filed with the Commissioner.

Effective date: July 1, 2016.

Nongame and Endangered Species Act – 2016 Sen. Sub. for House Bill 2156

No permit required for certain activities.



Current law protects various wildlife listed on the Kansas Threatened and Endangered Species List. This includes certain mussels, snakes, snails, skunks, birds and other wildlife. A special permit is required for anyone to act contrary to rules which protect wildlife on the list. This bill creates three exceptions from the permit requirement:

1. Normal farming and ranching practices unless a permit is required by another state or federal agency. Intentional taking of a threatened or endangered species is not excepted.
2. Development of residential and commercial property

on private property with private, non-public funds, unless a permit is required by another state or federal agency.

3. Activities where a permit for scientific, educational or exhibition has already been obtained.

A recovery plan is now required for new listings of endangered or threatened species after July 1, 2016. If the recovery plan is not completed within four years, no permit shall be required for activities for which a permit would otherwise be required until completion of the recovery plan.

Effective Date: July 1, 2016.

Real Estate Licensure – 2016 Sen. Bill 352

Non-resident brokers may obtain Kansas salesperson's license.



Currently, non-resident real estate brokers may obtain a Kansas broker's license if the broker meets certain requirements of the Kansas Real Estate Brokers' and Salespersons' License Act. This amendment allows non-resident brokers to also obtain a salesperson's license in Kansas if certain statutory qualifications are met. Amends K.S.A. 58-3040.

Effective date: July 1, 2016.

Real Property Tax Lid – 2016 House Bill 2088

Effective date of tax lid moved up one year.

The 2015 legislature placed a tax lid on cities and counties which prohibits an increase in property tax dollars levied above the rate of inflation unless approved by a vote of the electorate.

The restriction was originally due to begin January 1, 2018. This bill accelerates the effective date of the tax lid to January 1, 2017. It also amends the types of events attributable to increases in property tax values that are excluded in determining the mandatory tax level before voter approval is required. Some of these exceptions are:

- New structures or improvements or remodeling to existing structures (not ordinary maintenance or repair)

- Expiration of tax abatement
- Property that has changed in use
- Certain bond and interest payments
- Certain special assessments
- Certain expenditures resulting from state and federal mandates
- Expenses relating to certain disasters or emergencies declared by a state or federal official
- Increased costs above the consumer price index for law enforcement, fire protection or emergency medical services (but not those for construction or remodeling of buildings)
- Expiration of Tax Increment Financing, property tax abatements and similar tax incentives for property
- Certain increases from loss of property valuation due to legislative action, judicial action or Board of Tax Appeals.

Effective date: July 1, 2016.

STAR Bonds – 2016 House Sub. for Sen. Bill 161

Prohibition of STAR Bonds in Wyandotte County vetoed.

A funding bill for many state agencies contained a prohibition against approval of STAR Bonds in Wyandotte County. The Governor vetoed this section of the bill and the Governor's veto was sustained March 23, 2016.

Taxation of Real Estate – 2016 House Sub. for Sen. Bill 280

Various changes to process for taxation of real estate and tax appeals.

Note: This bill passed both houses unanimously but was vetoed by the Governor on May 17, 2016. The legislature overrode his veto on June 1, 2016, by votes of 120-0 in the House and 39-1 in the Senate.

The following summary was prepared by the Kansas Legislative Research Department:

Property Tax—Various Provisions; House Sub. for SB 280

House Sub. for SB 280 makes a number of changes in law generally relating to property taxation.

Tax appeal decisions. One set of provisions in the bill clarifies the law governing the issuance and review of Board of Tax Appeals (BOTA) decisions. An aggrieved party is authorized to file a petition for reconsideration after a full and complete opinion had been rendered. Also, an aggrieved party may file a petition for review in the Kansas Court of Appeals after a full and complete BOTA opinion has been issued. Taxpayers also may appeal any summary decision or full and complete BOTA opinion by filing a petition for review in District Court. Tax appeals to District Court are considered *de novo* trials with evidentiary hearings during which issues of law and fact will be determined

anew. District Court reviews of BOTA orders relating to property valuation are to be conducted by the court of the county in which the property in question is located.

Removal of appraisers. The bill authorizes the Department of Revenue's Director of Property Valuation to remove from the list of persons eligible to serve as county or district appraisers anyone failing to meet continuing education requirements established by the state; pleading guilty or *nolo contendere* or having been convicted of certain crimes; or having been the subject of a final civil judgment finding fraud, misrepresentation, or deceit in appraising property.

Delinquent property taxes. Another provision raises the interest rate for delinquent real property taxes by five percent. Prior law provided that the interest rate for delinquent property taxes was established at a foundation rate developed in KSA 2015 Supp. 79-2968 (a federally-determined underpayment rate plus one percent). The bill raises the interest rate to the foundation rate plus an additional five percent.



Tax liens. The bill prohibits tax liens being filed against the owner or lessee of certain real property upon which abandoned or repossessed personal property was situated, provided such personal property had been assessed taxes that had not yet been paid. The bill extinguishes all tax liens on the owner or lessee acquiring this type of personal property, and the owner or lessee is not liable for any property taxes owed prior to the date the personal property was acquired.

Delinquent tax list checks. County treasurers are required to check delinquent real property tax lists for the preceding seven years before allowing certain claims to be paid by counties.

Valuation of oil and gas leases. New language requires production information used to establish the fair market value of producing oil and gas leases that have commenced production during the preceding calendar year be limited to production occurring prior to April 1 of the calendar year in which the property is assessed. Information used to establish the fair market value of any base lease or property producing oil and gas for the first time in economic quantities on

and after October 1 of the preceding calendar year will be limited to production occurring prior to July 1 of the calendar year in which the property is being assessed.

"Bed and breakfast" property. The definition of "bed and breakfast" property defined as residential and eligible for the 11.5 percent assessment rate is expanded to include property with 5 or fewer bedrooms available for overnight guests who stay for not more than 28 consecutive days.

Recreation commission budget. The bill grants the Blue Valley Unified School District the power to approve or modify the proposed budget of the Blue Valley Recreation Commission.

Airport property tax exemption. A property tax exemption is provided for tax years 2016 to 2020 for property owned and primarily operated as an airport by a healthcare foundation also exempt for federal income tax purposes.

Property valuation procedure. With respect to matters properly submitted to BOTA regarding property valuation, county appraisers are required to demonstrate compliance with valuation methodologies developed by the Director of Property Valuation.

County appraisers are prohibited from requesting certain information from taxpayers, including appraisals conducted for the purpose of obtaining mortgage financing, fee appraisals conducted within the previous 12 months, and documents detailing certain lease agreements.

During informal meetings with taxpayers, county appraisers substantiating the valuation of property are required to provide a summary of the reasons valuation had been increased, list all assumptions used in determining the value of the property, provide a description of the property characteristics, and provide all specific valuation records and conclusions. County appraisers at this time are required to take into account all evidence provided by taxpayers regarding deferred maintenance and depreciation of the property in question.

Agricultural use. A taxpayer's classification of property as land devoted to agricultural use is deemed valid when executed lease agreements or any other documentation is provided demonstrating a commitment to use the property for agricultural purposes, provided no other actual use of the property is evident.

For parcels containing agricultural land and land used for suburban residential, rural home sites, or farm home sites, county appraisers are required to disaggregate the portion devoted to agricultural use and value it separately. [Adams Jones' comment: This action appears to be in response to *In re Protest of Jones* (2016). See case summary under "Taxation of Real Estate."]

Mass appraisal. Appraisal procedures and standards utilized by county appraisers are no longer required to be adaptable to mass appraisal. Moreover, appraisals produced by the computer-assisted mass appraisal system no longer meet the definition of “written appraisal” pursuant to KSA 79-504.

At informal hearings involving valuation of property established by counties under computer-assisted mass appraisal, the results of independent market-based appraisals conducted within the previous three months by persons certified pursuant to KSA 2015 Supp. 58-4102 presented by taxpayers are presumed to be correct and valid. Counties have the option of appealing the results of such independent appraisals to BOTa.

For two years following a taxable year wherein the valuation of a parcel of commercial real property has been reduced due to the appeals process, county appraisers are required to review the computer-assisted mass appraisal of the property and, under certain circumstances when such valuation has increased by more than five percent, adjust the value of the property based on information provided in the previous appeal, or order a certified independent fee appraisal.

For counties failing to meet certain minimum commercial appraisal standards, the Director of Property Valuation is required to perform (or contract with an independent third party to perform) a market-based appraisal of at least one percent of commercial properties otherwise appraised under computer-assisted mass appraisal to test the accuracy of that system. The bill requires properties to be selected to represent a sample of commercial property types which failed to meet statistical compliance, and property owners of the selected commercial parcels are allowed to meet with appraisers to offer pertinent data and insight on issues affecting valuation. If the quality assurance analysis reveals a statistical deviation of more than 5 percent on more than 25 percent of the audited properties, the Director is required to perform additional audits and take any corrective action necessary to ensure fair and accurate appraisals.

Inspection of parcels. The bill repeals statutory language that had deemed counties to be in compliance with a requirement to view and inspect all real estate parcels once every 6 years when 17 percent or more of the parcels had been viewed or inspected in any given year.

Fee-simple appraisal option. Within 60 days after notice of informal meeting results or final determination of valuation has been mailed, aggrieved taxpayers who have not filed further appeals with BOTa will have the option of filing with their county appraisers certified fee-simple appraisals that reflect the valuation of the property in question as of January 1 of the tax year in question. County appraisers subsequently are required to review and consider such appraisals prior to mailing supplemental notices of final determination of valuations

within 90 days. County appraisers face the burden of proof in disputing the fee-simple appraisal valuations and further are required to explain the reasons such valuations were not utilized in the supplemental notices. Taxpayers aggrieved of the final valuations in such notices have an additional 30 days to appeal to BOTa.

Study result presentations. For all counties failing to meet minimum requirements for substantial appraisal compliance, the Director is required to present the most recent sales-ratio study results, as well as the results of any subsequent audits, to boards of county commissioners in open meetings. Any such presentations are required to include summary information on the number of valuation protest and their outcomes.

Market study analysis publication. Finally, the bill requires appraisers to publish the results of the annual market study analysis in both the official county newspaper and on the official county website, if the county has an official county website. The bill also changes the timing of publication from at least five business days prior to the mailing of valuation notices to at least ten business days prior to the mailing of the valuation notices.

Regulations

Real Estate Licensing Fees-K.A.R. 86-1-5, Kansas Register, Vol. 34, No. 44, October 29, 2015.

Licensing fees increased for realtors.

The Kansas Real Estate Commission increased various licensing fees pursuant to last year’s authorization from the Kansas Legislature for higher fees (2015 Sen. Bill 108).

Original salesperson’s license: a prorated fee based on a two-year amount of \$125

Original broker’s license: a prorated fee based on a two-year amount of \$175

Renewal of salesperson’s license: two-year fee of \$125

Renewal of broker’s license: two-year fee of \$175

Effective date: December 1, 2015.

CASES & ATTORNEY GENERAL OPINIONS



Ad Valorem Taxation

Cost approach to value can consider the purchase price of land purchased for a casino even though there was only one potential legally-permitted purchaser who could use the property for that use; however, costs of business start-up cannot be included as soft-costs of construction.

In re Kansas Star Casino, L.L.C., 302 Kan. App. 2d 405, 353 P.3d 1124 (2015). Kansas Star Casino, L.L.C. owns 195.5 acres in Sumner County used for a casino. For 2012, the appraised value of the property was in excess of \$80,000,000. The Court of Tax Appeals reached that value in part using a value for the land of \$16,931,250, based on the price Kansas Star's parent had paid for the land. The taxpayer argued to the Kansas Court of Appeals that the land should have been valued based on the "sales of agricultural property in the surrounding area." The County cross-appealed and argued that the tax valuation, which was based on the cost approach, should have included financing costs, organizational, administrative, and legal costs; costs of rental trailers to accommodate Kansas Racing and Gaming Commission employees during construction; and the cost of a marquee sign in the construction costs considered in the valuation.

Highest and best use was as a casino. The land owned by the casino was purchased through option contracts that were entered into before the gaming facilities manager, and thus the location of the casino, had been selected. The prices were far in excess of market value for sales of similar land in the area. As a result, Kansas Star argued that the actual acquisition prices, which were the result of the unique circumstances in which the buyer had the management contract that allowed the construction of a casino, should not control and that the value attributed to the management contract should be subtracted.

By statute, a property's fair market value for tax purposes must be based on its "highest and best use." To evaluate the "highest and best use," it is necessary to consider not only what uses would result in maximum productivity, but also, among other things, what uses would be legally permissible.

Kansas Star argued that if the land were vacant on the date of valuation (an assumption used in determining the highest and best use), using it for a casino would not have been a legally-permissible use in the absence of a management contract, and thus could not be considered as the highest and best use for the purposes of the tax appraisal. The Kansas Court of Appeals held that the highest and best use of the land was for a casino, because a casino use was legally permissible to the holder of the management contract. The court found there were no comparable sales, because the subject property was the only property in the area actually sold for casino use. Thus, the purchase cost of the subject property was a proper basis on which to value it.

Certain costs not included in cost of construction. In resolving the County's cross appeal, the Court of Appeals held that it was proper under the cost approach to exclude the cost of a marquee sign as personal property because the County had not presented sufficient evidence to prove that the sign was a fixture. The court also agreed that the costs for trailers for Kansas Racing and Gaming Commission employees during construction were not construction costs because they were not necessary for the construction itself, but for compliance with the management contract. Similarly, the court agreed that administrative costs associated with the start-up of the business were not soft-costs of construction and were properly ignored in determining the cost of construction. Finally, the court rejected the argument that financing costs should have been included as soft-costs of construction because the County had failed to present evidence to support the assumptions on which its calculation of financing costs was based.

Adverse Possession

Adverse possession fails because occupant was in possession with the consent of the owner.



Ruhland v. Elliott, 302 Kan. 405, 353 P.3d 1124 (2015). This involves a scheme to avoid creditors that eventually backfired on the heirs of the grantor.

A man purchased land in 1963 and began residing on it with his wife (#2) in 1988. They deeded the property to her daughter in 1993 to avoid a possible tax lien by the IRS and claims of the man's ex-wife. The man and wife #2 divorced in 2006, but he continued to live there until his death in 2008. During all relevant times, the man resided on the property and treated it as his -- paying taxes, making improvements and collecting agricultural rent from a tenant.

After his death, litigation ensued in the family over the true owner of the property. The stepdaughter claimed ownership by the 1993 deed; the man's children claimed ownership by his adverse possession of the property after granting the deed. Someone claiming ownership by adverse possession must show to have:

1. possessed the property for a period of 15 years in a manner that is

2. open, exclusive, and continuous; and
3. either (a) under a claim knowingly adverse or (b) under a belief of ownership.

The issue was whether he occupied the property “under a claim knowingly adverse.” Under Kansas law, when a person stays in possession of property after conveying the property to someone else, it is presumed that he or she remains in possession with the permission of the grantee. Someone in possession of property with the permission of the owner cannot establish that they hold the property “knowingly adverse” to the owner, and are thus unable to establish adverse possession.

Here the man deeded the property to his stepdaughter to avoid creditors, and there was never any subsequent act to show that he “no longer wanted the IRS or his ex-wife to believe that [his stepdaughter] held the title to the property.” He did not take any steps that were “knowingly adverse” to her ownership and the court ruled against the man’s heirs, finding no adverse possession.

Annexation

City’s substantial compliance with annexation statutes sufficient to uphold an annexation; substantive review of reasonableness of annexation decision is now allowed.



Stueckemann v. City of Basehor, 301 Kan. 718, 348 P.3d 526 (2015). The City of Basehor (“City”) unilaterally annexed a platted subdivision. The affected landowners and association for the subdivision sued to invalidate annexation, based in part on the fact that the map and legal descriptions initially used by the City were erroneous.

No harm, no foul. The City corrected the legal descriptions only after the public hearing. It nevertheless gave the affected landowners a renewed opportunity to voice opposition to the annexation after the corrected legal descriptions were announced at a City Council meeting. The Kansas Supreme Court held that the annexation would not be invalidated if the City substantially complied with the annexation statutes. The Court determined that the “fundamental purpose of the annexation provi-

sions requiring a description or depiction of the land subject to annexation is to inform the affected stakeholders of the city’s decision about what land is to be annexed,” and the purpose of the required notice, and a public hearing was to give the landowners an opportunity to be heard. Although the City handled the annexation imperfectly, these purposes were ultimately accomplished, so the annexation was not invalid.

Plan for police and streets adequate. The landowners and the association also challenged whether the service plan (for police protection and street and infrastructure maintenance) was adequate. The Court found that the service plan met the requirement that it be submitted in “good faith and with honest intentions” on the part of the City “to implement the plan as submitted,” and that it supplied “sufficient detail to provide a reasonable person with a full and complete understanding” of the City’s intentions and that the plan addressed the statutorily-required factors.

Bankruptcy – Fraud

Debtor denied discharge of \$900K debt for misrepresentations about collateral.

Long v. Yoder (In re Long), 538 B.R.108 (D. Kan. 2015). A Bankruptcy Court denied a debtor’s discharge of a \$906,551 debt because the debtor obtained money by making false representations [11 U.S.C Section 523 (a) (2)(A)]. The debtor appealed and lost.

The deal. Yoder loaned Long \$500,000, evidenced by a Promissory Note that said it was secured by a mortgage on property specifically described in the Note (“Property”). But no mortgage was ever recorded. Long also told Yoder there was \$1 million of equity in the Property. At the time of the loan, the Property had two deeds of trusts filed against it totaling \$920,180. (The transaction took place in Kansas City and the opinion interchangeably refers to mortgages and deeds of trust.) Long later refinanced the Property, not telling Yoder, and placed additional debt against it for a total indebtedness of \$1,345,350. Throughout this time period, Long continually assured Yoder that he had a secured mortgage on the Property, but did not provide Yoder with a copy of the mortgage despite numerous requests from Yoder.



The law. The Bankruptcy Code excepts from discharge any debt “for money, property, services . . . to the extent obtained by (A) false pretenses, a false representation or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” 11 U.S.C. Sec. 523(a)(2)(A).

He said. He said. This case hinged on the credibility of the testimony of Yoder (the lender) and Long (the debtor). The fundamental differences were these: Long claimed he did not understand that a mortgage was necessary to secure a loan on real estate. He also denied that Yoder had contacted him several times asking if the mortgage had been recorded.

Decision of fraud. The Bankruptcy Court believed Yoder. He was an experienced businessman, primarily in the aerospace business, but with little real estate experience other than personal residences. Yoder testified that he relied upon developing a relationship of trust with people before deciding to invest in business transactions with them. Long was a long-time family friend of Yoder and Yoder’s son. Long was experienced in the real estate lending industry, having worked for lenders offering residential home loans, including subprime residential home loans, for three years. Long also purchased and sold between 30 to 100 lower-value properties as investments which involved notes and mortgages.

The Bankruptcy Court entered a judgment and order denying discharge of the debt and the District Court affirmed that decision in this case finding that Yoder proved the required elements that (i) Long made false representations, (ii) with the intent to deceive Yoder, (iii) Yoder relied on the false representations, (iv) Yoder’s reliance was justifiable and (v) Yoder was damaged. Long appealed to the 10th Circuit on October 14, 2015.

The lesson. Treat a business deal with friends like a real business deal. Look at your loan documents and get a loan title policy.

Condemnation – Award

Compensation and damages can take into consideration anything a hypothetical buyer would consider. Statutory discount factors can be used to determine post-taking value of partially condemned property.

Kansas City Power & Light Co. v. Strong, 302 Kan. 712, 356 P.3d 1064 (2015). In a condemnation case, Kansas City Power & Light Company (“KCPL”) condemned a power line easement across Strong’s properties, which were in agricultural use. In a jury trial, Strong introduced evidence from a developer, who was not an appraiser, about how a hypothetical developer buyer would value the property based on its development potential. His testimony did not employ the cost, income, or comparable sales approaches to valuing property used by licensed appraisers. Strong also introduced evidence about various things a developer would consider in deciding how much to pay for the property after the taking, including

such things as the impact on the view from the lots a developer could create out of the remainder. KCPL appealed and argued the evidence introduced by Strong was not properly admissible.

When an entity with the power of eminent domain takes only a portion of a landowner’s property, the compensation and damages due the landowner is the difference between the “fair market value” of the entire property immediately before the taking and the “value” of the part remaining immediately after the taking.

K.S.A. 26-513(d) requires the jury to consider all factors connected with the taking and use of the property that affect the total compensation and damages in determining the value of the remainder. It provides a list of some of those possible factors that could make the remainder worth less than the value of the entire property before the taking, such as “the remaining appearance, productivity, convenience, use, view, and cohesion.” Other factors not specifically listed in the statute can also be considered, including “any evidence tending to show what a hypothetical buyer would consider in determining a purchase price for the property.” These factors include items for which a landowner would not be entitled to compensation if they were merely impacts suffered by landowner’s property from the condemning authority’s action and none of the landowner’s land was taken.

In this case, the Kansas Supreme Court looked at the language of the statute and applied it as written to allow Strong’s evidence to be admitted without respect to whether similar evidence had been excluded as inadmissible in previous Kansas appellate court cases.



Construction Contracts

Forum selection clause requiring disputes of Kansas project to be resolved in Luxembourg courts is enforceable.

Herr Industrial, Inc. v. CTI Systems, SA, 112 F.Supp.3d 1174 (D. Kan. 2015). A U.S. company contracted with a company from Luxembourg to build a paint shop for the foreign company in Kansas. The contract provided that the exclusive jurisdiction for resolving any disputes was

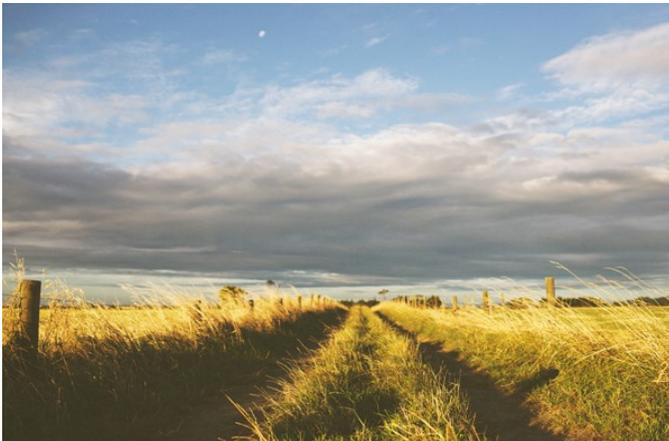
Luxembourg. The Luxembourg company brought a lawsuit in Luxembourg, claiming it had paid too much. When the U.S. company did not participate in the Luxembourg action, a default judgment was entered against it.

The U.S. company then brought a suit in federal court in Kansas, claiming damages for breach of contract and for remedies under the Kansas Fairness in Private Construction Contract Act (the “Act”). The court in Kansas found that the forum selection clause was enforceable, even though the Act deems void and unenforceable as against public policy a contract provision in a construction contract that waives or extinguishes procedural rights in connection with litigation to resolve disputes. The court found that the Act does not express any public policy against forum selection clauses. Although the Act provides that for some claims Kansas is the proper venue, there were no such claims asserted in the Luxembourg suit. The court also found that the forum selection clause was not unreasonable and one-sided because it constrained both sides to use only Luxembourg courts, not only the U.S. company. The foreign judgment was held to be enforceable.

Comment: When entering into a construction contract, make sure you are comfortable with having to resolve any disputes within the jurisdiction specified in the contract.

County Road Vacation

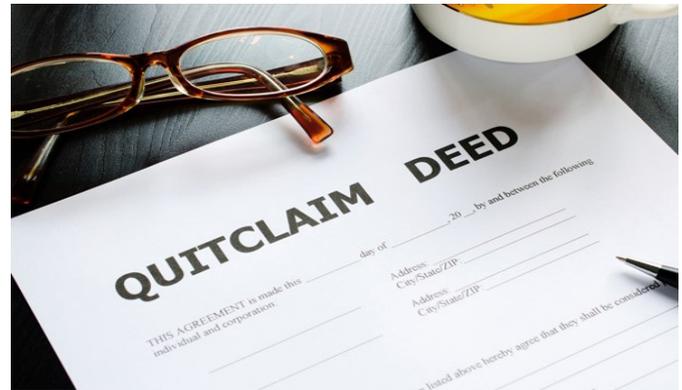
County commission vacating a road on its own motion need not follow all of the procedures required when vacating a road on the petition of an adjacent landowner.



Op. Att’y Gen. No. 2015-18. The Office of the Attorney General addressed what procedures a county must follow to vacate a road on the county’s own motion. Counties can vacate roads upon a petition of an adjacent landowner following notice, a viewing, a report of viewers and a decision -- procedures required by K.S.A. 2015 Supp. 68-104 and K.S.A. 68-106. A county can also vacate a road when the board of county commis-

sioners deems it necessary and it determines either that the “road is not a public utility by reason of neglect, non-use, or inconvenience” or that “from other cause or causes such road has become practically impassable and the necessity for such road as a public utility does not justify the expenditure of the necessary funds to repair such road or put the same in condition for public travel.” K.S.A. 68-102(b). The Attorney General’s Office concluded that when a county is acting on its own motion, the only notice required is under K.S.A. 68-102a and, as with any road vacation, there must be the entry of an order.

Deeds – Transfer-on-Death



Quit-claim deed executed after Transfer on Death Deed leaves nothing for the beneficiary of the TOD.

Sheils v. Wright, 51 Kan. App. 2d 814, 357 P.3d 294 (2015). Kansas law provides property owners with several ways to leave real estate at their death: by will, a joint tenancy deed, or a Transfer on Death Deed (“TOD”). Here, the grantor created a conflict by signing both a Transfer on Death Deed and a joint tenancy deed to different people.

First, a Transfer on Death Deed was signed and recorded, transferring title to the grantor’s brother. Later, the grantor signed a joint tenancy quit claim deed, granting the property to himself and a nephew as joint tenants. The quit claim deed was delivered to the grantor’s attorney with instructions to record it, but wasn’t recorded until after the grantor died. A transfer on death deed transfers title to the named beneficiary, effective upon death of the grantor. It can be revoked prior to death by recording a revocation during the grantor’s lifetime. A joint tenancy deed will automatically transfer title to the surviving joint tenant upon the death of the other joint tenant.

A Transfer on Death Deed is subject to all conveyances made during a grantor’s life. So the beneficiary of a Transfer on Death Deed receives nothing if the grantor conveyed the property described in the TOD before death. That was the result here.

The Court of Appeals held that the quit claim deed conveyed the property in joint tenancy to the nephew, transferring title to the nephew upon death of the grantor. So there was no property left to pass to the brother under the TOD at the time of death.

The Court also noted that a deed is not effective between parties until it is delivered. And it held that the grantor “delivered” the deed by delivering it to his attorney, making it effective between the grantor and the nephew, even though it wasn’t recorded until after the death of the grantor.

Eminent Domain – Appeal

Voluntary dismissal of appeal of condemnation award was allowed to be re-filed.

Neighbor v. Westar Energy, Inc., 301 Kan. 916, 349 P.3rd 469 (2015). Westar Energy condemned an easement over real estate owned by David Neighbor through a proceeding under the Eminent Domain Procedure Act (“EDPA”), K.S.A. 26–501 *et seq.* Neighbor filed a timely appeal under the EDPA appealing the appraisers’ award. He subsequently filed a motion to dismiss which the district court granted, dismissing the appeal without prejudice. About five months later, Neighbor filed a second appeal. Neighbor relied on the Kansas “savings statute,” K.S.A. 60-518 (which applies to litigation in general and permits timely-filed cases dismissed without prejudice to still be considered if refiled within six months), to save the appeal from being considered untimely. The district court refused to apply the savings statute to an eminent domain appeal and dismissed the second appeal with prejudice.

The Kansas Supreme Court reversed, holding that because eminent domain appeals are docketed as a new civil action under the Eminent Domain Procedure Act, and tried as any other civil action, the K.S.A. 60–518 savings statute applies to eminent domain appeals as well as other general litigation. In reaching this holding, the court disapproved *Elwood–Gladden Drainage District v. Ramsel*, 206 Kan. 75, 476 P.2d 696 (1970), and *City of Wellington v. Miller*, 200 Kan. 651, 438 P.2d 53 (1968).

Fixtures



Mobile home can become a fixture to real estate under common law principles even if it does not become a fixture under the Kansas Manufactured Housing Act.

Gracy v. Ark Valley Credit Union (In re Gracy), 522 B.R. 686 (Bankr. D. Kan. 2015), *vacated sub nom. Morris v. Ark Valley Credit Union (In re Gracy)*, 536 B.R. 887 (D. Kan. 2015). In this bankruptcy case, the trustee sought to avoid a credit union’s security interest in a manufactured home. The dispute was about whether the mobile home was collateral under a mortgage that covered fixtures but did not specifically identify the mobile home. Title to the mobile home had not been eliminated under the Kansas Manufactured Housing Act (KMHA) elimination provision, K.S.A. § 58–4214, which, if followed, would have resulted in the mobile home being deemed a fixture by statute.



The case turned on the question of whether the mobile home was a “fixture.” On appeal from the bankruptcy court judgment, the federal district court held that even though the debtor’s manufactured home did not become a fixture under the elimination provision KMHA, that did not preclude it from being a fixture under common law. The court held that the KMHA was not the exclusive mechanism by which a manufactured home can become a fixture and that it supplements, rather than replaces, the common law of fixtures.

Homestead

Homestead exemption is not lost by absence from property if owner has the intent to eventually return.

In re Gaines, 2015 WL 2376323 (Bankr. D. Kan. 2015). This is a bankruptcy case in which the court considered the question of whether Robert Gaines and Tina Watson, an unmarried couple, could each claim a homestead exemption in a house in Oberlin titled in Robert’s name in which Tina, but not Robert, was living.

In order to qualify for a homestead exemption, property must be “occupied” by the owner or family of the owner. Kansas case law extends the exemption to an absent owner who shows an intent to return.

Robert owned the Oberlin home and had lived there until he moved away in 2008. Tina lived in the house from 2008 until 2010, when she moved to Salina, where Robert was then working. Robert subsequently rented the home out. In 2011, Robert and Tina moved in together. In 2013, Tina moved back into the Oberlin house after the tenants had left, and at various times thereafter lived in both Oberlin and Salina. At the time they filed a bankruptcy petition, they were living apart.

Both Tina and Robert testified that they intended to return to Oberlin to live full time. Robert testified he planned for the Oberlin house to be his retirement home. The bankruptcy court found that Robert's and Tina's repeated absence from the Oberlin property did not preclude it from being their homestead. It found that the evidence, including evidence that they had belongings and furnishing in the Oberlin home, was contrary to a conclusion that they intended to abandon the house as their homestead. Each having occupied the residence as a homestead, each could continue to claim it as a homestead, even when not occupying the residence, when each showed an intention to return and inhabit the house. Robert renting out the house when he lived elsewhere was not inconsistent with his intent to eventually return.



Homestead

Judicial lien on homestead created in divorce proceeding valid and not avoidable in bankruptcy.

In re Okrepka, 533 B.R. 327 (Bankr. D. Kan. 2015). Prior to filing bankruptcy, debtor/wife was awarded the marital residence by the divorce court in exchange for paying her ex-husband an "Equalization Payment" for his interest in their house. The question in bankruptcy court was whether she could discharge the Equalization Payment obligation under the divorce decree free of any lien of the ex-spouse on the homestead. The Bankruptcy Court held that a divorce court can create a lien on a homestead awarded to one spouse in that proceeding, and that lien is not avoidable in bankruptcy. It also granted relief from stay to allow sale of the homestead to enforce the lien to ensure an equitable distribution of property.

Homestead – Judgment Liens

Homestead exemption protects property from judgment for repairs.

In re Fakhari, 545 B.R. 303 (Bankr. D. Kan. 2016). Roofing company repaired a homeowner's roof but wasn't paid for the work. It did not file a mechanic's lien, but instead sued and obtained a money judgment against the homeowner for the unpaid work. The homeowner later filed bankruptcy and the roofing company sought relief from stay to foreclose its judgment in state court.

The Bankruptcy Court denied relief from stay because the roofing company did not have a judgment which attached as a lien against the homestead. Kansas homestead laws exempt a homestead from "forced sale under any process of law" with exceptions, one exception being "for the erection of improvements thereon." K.S.A. 60-2301 and Kan. Const. Art. 15, § 9.

The court noted "repairs" are not considered "improvements" to property and thus do not meet the exception from the homestead law protections. (The same distinction exists under the mechanics' lien statutes.) The evidence from the state court case showed roofing company's work was for repairs, and not improvements to homeowner's property, so its judgment didn't attach to the homestead. The motion for relief was denied because the roofing company had no lien to foreclose.

Mineral Deeds -- Subject to a Lease

A mineral deed which states it is "subject to" the terms of a lease does not necessarily incorporate the terms of that lease.

Netahla v. Netahla, 301 Kan. 693, 346 P.3d 1079 (2015). A term mineral deed conveyed minerals "subject to" the terms of an existing oil and gas lease. The term of the deed was for 15 years "and as long thereafter as oil and/or gas is produced from these premises or the property is being developed or operated...." Production was realized and then the well was shut in, but the lease continued by payment of shut-in royalties. The question



in this case was whether payment of delay rentals extended the term of the mineral deed.

The Supreme Court reversed the Court of Appeals and District Court by holding that the terms of the lease were not incorporated into the mineral deed when the deed stated it was "subject to" the terms of the lease. The Court further held that payment of shut-in royalties may extend the lease term, but they do not amount to "production" as required by the language of the deed in order to extend the mineral term.



Mineral Rights – Reversionary Interest -- Fee Simple Determinable

The statute of limitations does not run on a claim of an owner of a reversionary interest, because the interest automatically vests when the defeasing condition is satisfied.

Oxy USA, Inc. v. Red Wing Oil, LLC, 51 Kan. App. 2d 1028, 360 P.3d 457 (2015) is a quiet title action brought to determine who held the mineral rights to certain property. A 1945 deed reserved to the grantor, Luther, a one-half interest in subsurface minerals for 20 years and so long thereafter as minerals were produced. Luther's interest was subsequently divided. The surface and the remaining one-half mineral interest were now owned by King. From March 27, 1945 until 2009, no minerals were produced from the property, but there was production from other properties with which the property was unitized. In 2009, Oxy USA, Inc. (the lessee of the unit) drilled a producing well on the subject property and brought this action to determine to whom to pay royalties attributable to the mineral interests conveyed in 1945: to the successors of Luther, or to King.

Luther's successors claimed that King, owner of the reversionary interest, was barred from asserting her interest by the statute of limitations because she failed to bring an action within 15 years after production on the property ceased, and that King was estopped (legally prevented) from defending her claim of ownership of the reversionary interest by her acquiescence to them holding the mineral interest.

To determine the solution, the Court of Appeals first identified that the 1945 deed created a defeasible property interest, with the grantee of the deed receiving the reversionary interest in one-half of the minerals. That interest automatically reverted to the grantee at the cessation of production. Although there was production in the unit in which the property was unitized, there was no production on the property itself. Recent case law has established that for conveyances before 1980, production on property unitized with property on which there is a reversionary mineral interest does not prevent the reversion from occurring when the deed creating the reversion does not provide otherwise. Therefore, absent some intervening defense, King would be the owner of the entire mineral estate. [For interests that expire after the Supreme Court's decision in *Classen v. Federal Land Bank of Wichita*, 228 Kan. 426, 617 P.2d 1255 (1980), production in the context of a defeasible term mineral interest includes production on a unitized or consolidated lease property.]

The district court had ruled that King's reversionary interest had been triggered, but that her claim was now untimely and that she acquiesced in the continuation of the Luther mineral interest. The Court of Appeals rejected the statute of limitations argument because the deed created a fee simple determinable, vesting the mineral interests in the grantee (King, as successor) immediately at the satisfaction of the conditions for reversion. Therefore, there was nothing that King needed to do to regain the mineral rights. To the extent King and her predecessors allowed Luther and his predecessors to remain holders of part of the mineral interest, they were tenants at will with King and she was not required to institute an action to evict them.

As to the argument that King could not assert her claim because she had allowed Luther's successors to retain their interests while no production was occurring on the property, the Court of Appeals rejected that argument because King was not shown to have specific knowledge of whether Luther's successors were receiving royalty payments.

Notes and Mortgages – Statute of Limitations

Statute of limitations prevents children from recovering money loaned to mother to build her house.

In re Area, 51 Kan. App. 2d 549, 351 P.3d 663 (2015). Five of seven children loaned money to their mother for her to build a house. Mother signed a note and mortgage, but made no payments. Mother lived in the house approximately 15 years, eventually moving into assisted living shortly before her death. Mother received medical assistance from the Kansas Medicaid program, and as a result of this, the state sought recovery of these payments from her estate. The state sought priority over the mortgage claim of the children, arguing that the note and mortgage were unenforceable because of the statute of limitations. The Court of Appeals agreed with the state, finding:

1. Kansas requires that an action must be brought on any written contract within five years. The note matured July 1, 2005 and the children didn't take any action until November 2010 when they paid taxes, insurance, maintenance and marketing of the property--all after the five-year statute of limitations had run.
2. Kansas has no public policy to allow different rules for notes and mortgages involving family members.
3. The administrator of the estate had a fiduciary duty to challenge the validity of the note and mortgage.

Comments: Hindsight is 20/20, especially with a family transaction that seemed to follow the rules by executing a note and mortgage in the first place. Here are a few steps that may have avoided this result: a) a longer term note; b) an occasional, modest payment (each payment starts the five year counting over again); or c) renew the note at its maturity.

Taxation of Real Estate

Land not classified as agricultural when 9 acres used for haying and 1 acre for residence.

In re Protest of Jones, ___ Kan. App. 2d ___, 367 P.3d 306 (2016). Kansas law requires agricultural property to be valued with a "use value" appraisal, which is usually lower than the market value appraisal required for residential property. K.S.A. 2013 Supp. 79-1476. The Joneses purchased 10.4 acres of bare ground in Wyandotte County in 1994, built a house on it in 1995, and began using about 9 acres of the land for hay production in 2011. The county still classified the property as residential after the hay production began. The Joneses appealed, claiming a portion of the property should be classified for agricultural use. The Board of Tax Appeals (BOTA) and the Court of Appeals both ruled the property use was residential and not agricultural.

The governing statute says that agricultural use does *not* include land "used for recreational purposes,...suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes.." K.S.A. 2013 Supp. 79-1476. Also, Directive #92-022 of Kansas Department of Revenue, Division of Property Division states in part: "Although the house, garage and surrounding landscaped lawn may only occupy one acre, the remaining acreage should not be valued as agricultural land if the primary function is for residential or recreational purposes."

BOTA found the following facts supported its finding of residential use, and the Court of Appeals agreed: the taxpayer testified the primary use of the property was as a home; the property was purchased in 1994, the house built in 1995, and hay production didn't begin until 2011; the property had a driveway, pond and detached garage, all of which benefitted the home and were not for agricultural use; and Wyandotte County is one of the three most populated counties in the state.

Comment: The 2016 Legislature seems to have responded by requiring separate valuations for agricultural and residential uses. See "Taxation of Real Estate," 2016 House Sub. for Sen. Bill 280.

Tax Increment Financing



A successful challenge to the valuation of real property within a TIF district does not alter the adjusted base valuation of the district; cities can apply less than all of the available tax revenues from a TIF district to the payment of TIF bonds.

Op. Att'y Gen. No. 2016-4. The Office of the Attorney General addressed two questions about the Tax Increment Finance Act.

How TIFs work. The Act allows cities to create special districts in which municipal redevelopment projects are funded by bonds to be paid from future tax revenues from the district. The assumption behind TIF districts is that the bond-funded expenditures in the district will increase the assessed value of property within the district so that the bonds can be paid with new tax revenues. The formula for the distribution of tax revenues from the district relies in part on the "base year assessed valuation." The "base year assessed valuation" is "the assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district was established.

Base tax year cannot be revised. The Attorney General opined the statutes do not permit the base year assessed valuation to be revised if, in the year the redevelopment district is established, a taxpayer is able to get a reduction in the assessed valuation of real property within the district.

Not all TIF revenue must go toward bond payments. The second question considered by the Attorney General was whether a city can pledge less of increased tax revenues realized from the redevelopment project to the payment of TIF bonds than the TIF Act allows, thereby allowing some tax revenues that could otherwise go to pay TIF bonds to be distributed among the taxing subdivisions within the TIF district. The Attorney General said yes, opining that the statutes allow a city to pledge less of the increased tax revenues towards

repayment of the TIF bonds by either specifying a set amount or by designating a percentage of the increased tax revenues. But the calculations must still be based upon the actual “base year assessed valuation.” The statutes do not allow a city to arbitrarily increase or decrease the “base year assessed valuation.”

Tax Valuation – Real Property

Statute restricting increases in valuation of real property after successful valuation appeal is unconstitutional.

Board of County Comm’rs v. Jordan, ___ Kan. ___, ___ P.3d ___ (2016). In 2014, the Kansas Legislature enacted a statute, K.S.A. 79-1460, which prohibited increasing the tax valuation of real property for two years following a taxpayer’s successful valuation appeal unless there are documented substantial and compelling reasons, as defined in the statute, to do so. Twenty-one Kansas counties challenged the statute, arguing that it was unconstitutional.

In the absence of a successful valuation appeal, counties are not required to have substantial and compelling reasons for increasing the valuation of a property and they appraise property at its fair market value. Properties falling within the statute, however, cannot be appraised in the two years following a successful appeal using the same methodology as properties with respect to which there has been no successful appeal. As a result, the statute can result in some properties being valued on a different basis than others, and does result in a different method of valuation. Because the Kansas Constitution requires that all property in the state subject to taxation is valued and taxed on “a uniform and equal basis,” Kansas Constitution Article 11, § 1(a), the Kansas Supreme Court struck down the offending portions of the statute as unconstitutional.



Water

Landowners compete for water rights.

Garetson Brothers v. American Warrior, Inc., 51 Kan. App. 2d 370, 347 P.3d 687 (2015). In Kansas, all unused water belongs to the state. Property owners are

allowed to use water if they obtain a “right” by statute. There are two rights to use water: vested rights and appropriation rights. Vested rights are those water rights which were established before enactment of the Kansas Water Appropriations Act in 1945. Appropriation rights are water rights established under the Water Appropriations Act. Seniority in water rights is determined by the first to divert water and use it for beneficial purposes.

This case involved a dispute between water users. A senior owner of vested rights (established pre-1945) claimed that a junior owner of appropriation rights was impairing his vested rights in the water. The state Division of Water Resources office submitted a report showing the junior owner’s use substantially impaired the water rights of the senior holder. Based on this report, the court issued a temporary restraining order prohibiting the junior holder from pumping water until final resolution of the case.

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 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.

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



Adams Jones is a charter member of **Meritas**, an international affiliation of independent high-quality, medium-sized law firms with commercial law emphasis. This affiliation provides Adams Jones and its clients with ready access to legal expertise throughout the United States and in other countries. Meritas is your gateway to over 7,000 experienced lawyers in more than 170 full-service business law firms in over 70 countries – all rigorously qualified, independent and collaborative. Connect with a Meritas law firm and benefit from local insight, local rates and world-class client service. Membership in Meritas is by invitation only, and members are held accountable to specific service standards and other strict membership requirements.



1635 N. Waterfront Parkway, Suite 200
Wichita, KS 67206-6623
(316) 265-8591
Fax (316) 265-9719
www.adamsjones.com