

Testimony of Randall S. Barbour
Kansas Land Title Association
House Judiciary Committee
Written Testimony in Opposition to House Bill 2500
January 28, 2020

Chairman Patton and members of the House Judiciary Committee:

On behalf of the Kansas Land Title Association (KLTA), please let me express our concerns about certain portions of HB 2500 - AN ACT concerning the Kansas power of attorney act. Since 1907, the KLTA has represented the interests of licensed abstractors and title insurance agents who specialize in the orderly and secure transfer of real estate in Kansas.

The proposed change regarding K.S.A. §58-658(a)(4) increases the risk of fraud and abuse by suggesting that a person accepting a Power of Attorney has no duty to review it. While we think this change is better left out, it will not substantially affect our position of requiring review of all POAs for acceptability. Requests to use powers of attorney on a homestead are the majority of POA requests we receive and approximately half of those present us with a power of attorney which was drafted without the aid of counsel. Constitutional homestead is so powerful, so misunderstood and so often handled incorrectly that we will not tell any of our members they can accept a Certification alone on real estate transactions in lieu of reviewing the POA. The new Certifications created by the proposed change shown as K.S.A. §58-658(e)(2) do not provide us with the protections afforded by a Certification of Trust as set out in K.S.A. §58a-1013. (An act by a trustee exceeding his authority is merely voidable whereas an act by an attorney in fact exercising powers he has not been granted is void.)

The proposed change to K.S.A. §58-658(g)(5) on page 5 of the bill allows us to reject a power of attorney in good faith. Most of our members, before rejecting a power of attorney, will ask an underwriting attorney or other outside counsel to review the document for acceptability when they think there is a problem with the form. We think that rejection after review by a title attorney is sufficient enough evidence of good faith that we do not object to this new provision.

Our members ARE, however, concerned with the proposed change included as K.S.A. §58-658(h). Attorneys have differing opinions on many legal interpretations. Being subjected to possible attorney fees and costs if a rejection is successfully challenged in court is unacceptable. Especially when the rejection was based on a good faith belief that acceptance of the power of attorney would result in a void transaction. We request the committee modify the language with an exception for rejections made in good faith. Failure to lessen the harshness of this provision by pushing the risk of loss back on the parties dealing with an attorney in fact will definitely lead to unintended consequences.

For these reasons, the Kansas Land Title Association opposes HB 2500 and suggests §58-658(h) be amended to only allow recovery of attorney fees and costs when the court finds the refusal was not made in good faith. We have suggested potential amending language which can be found on the back of this testimony.

Thank you very much for your consideration today.

Randall S. Barbour
KLTA Legislative Co-Chairman

Possible amendment to HB 2500, page 5, lines 27-31:

(h) A third person that refuses to accept a power of attorney in violation of this section is subject to a court order mandating acceptance of the power of attorney. If the refusal is found by the court to not be in good faith as described in subsection (g)(5) of this act, ~~R~~reasonable attorney fees and costs may be awarded in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.