



**The Law Office of
Donna L. Huffman**

February 11, 2019

The Honorable Fred Patton
Chairman of the House Judiciary Committee
Kansas House of Representatives

RE: Testimony Regarding the Kansas Consumer Protection Act
Proposed Edit HB 2162 - Room 346S

Dear Chairman Patton,

Chairman Patton and members of this Honorable Committee. I appear today along with other Kansans from multiple districts urging you to clarify the language in the Kansas Consumer Protection Act which is important to the continued protections Kansans need. This proposed edit provides continuity as some judges, not all, are reading a sentence in the Act to provide a blanket exception to financial institutions such as banks, mortgage companies, and servicers.

I appear today to explain how the current construction of a single sentence in the act not only is being used by financial institutions to escape liability, but also has impacted Kansans which includes stories of those that were left with no avenue for relief and some of those who were able to obtain the intended relief along with some examples of continuing impact and an illustration of the impact to other areas including education and the Kansas economy which Appointed Guardian and Conservator David Kirk will explain how the intended use of the KCPA saved this state over \$300,000.00 in a single instance.

Although I have many examples of issues, the fine Kansans with me today are here to share their stories. People think of our friends and neighbors that might be subject to an action from a financial institution as someone who is not paying or doing the right thing. That's just not the case.

I first give you Mr. Randy Schneider with his wife Amy from Jefferson County.

Randy Schneider: We kept our credit perfect and not only paid our home loan on an autodraft through our checking account, we also were adding about \$170.00 every other week to our principal so we could get our home paid off fast. We never missed a payment and were always ahead. I became disabled and we still paid our payment. After 35 months our mortgage

company said we were more than \$4,000.00 behind when we were way ahead. They actually started charging two late charges a month even though we were never late. To try and get away because they were threatening us with foreclosure, we refinanced and they charged us more than \$800 for a prepayment penalty that is prohibited in Kansas. We just asked for some of our money back but they ignored us. After a time I decided it just wasn't right so we ended up suing for our money. We then found that they were increasing our interest rate over our contract. We also found that they hid these math adjustments that they now say they didn't have the software to service our loan. They hid all these adjustments taking money off and putting it back on which we had to get an expert and he can't even recreate the accounting. We think it's over \$11,000.00 in overcharges and rather than just do the right thing they made us sue them so even if we win we have gotten nothing back and years of them hiding documents and information because we obviously would owe more than that for our attorney. So they have deep pockets and think it's right to put us through depositions and fight even making us go to 3 other states multiple times. It's worth it for them to spend all that money because they know if we go away so will everyone else. It's wrong. These big companies outspending us so they can keep what they never should have taken. We never knew what they took and we surely would have never known. We borrowed money just to help pay expenses while we have to fight for what was always ours. If you don't fix that sentence in the KCPA then you are letting them take anything they want from anybody because they can't be held accountable and nobody could afford the fight.

It's not just Randy and Amy who have dealt with deceptive businesses. I'd like to introduce you to Scott Schneider from Shawnee County (no relation to Randy) who would like to share with you what happened to him and his wife who is home with their children right now.

Scott Schneider: My mortgage company started playing games with our payments and refusing payments which became so confusing nobody could figure it out. We pay our bills and we want to pay our bills but we had no choice but to find an attorney to get involved. Without our attorney we would have lost our home and owed money for years with nowhere to go. She got it all straightened out but it took time and none of it was cheap because we obviously needed to pay her but also then had to pay for the mortgage companies attorney. We ended up under water and have keep our loan current since 2011 when we got all this straightened out. We obviously live in Kansas. We had hail damage and our insurance company State Farm paid us for the damage. Our mortgage company promised to send the check back to us but they didn't. We sent many overnight letters and they made us sue them for the money because they refused to return our roof money even ignoring we owed the roofing company for our roof. We were not only embarrassed by not paying the roofer, they made us sue them for it. Even after we sued them they denied having the money although State Farm gave us copies of the check and it was clearly deposited by them. They hid where they put the money because it was never on even one mortgage statement or escrow statement. It was almost two years into the lawsuit that they finally sent us the money. They did not pay us the interest we owed the roofing company for being late and they did not want to pay us for our attorney time either. We are expected to walk away and pay more than the roof cost in attorney fees like it doesn't matter they were stealing from us. They argue that the KCPA doesn't apply to them because they have some exception. No business

should be able to do this and I'm here to tell you that on top of the roof money they also have overcharged us because they add miscellaneous fees and charges they don't explain. They even call and collect on my wife for attorney fees from where we are suing them like we should have to

pay not only our attorney but theirs. They charge more than the pay by phone legal limit which we pay sometimes when it's tight because we don't want to go late. They do what they want and worse they know they can do what they want. I'm here because I want other people not to go through this. I can't live in peace because for some reason they feel it makes more sense to spend years and tens of thousands of dollars rather than to just to the right thing being honest in how they account for our loan or just even give us our insurance money back in the first place.

Scott Schneider's story isn't the only one. I've had other clients from his mortgage company and others that have done the same thing. I have also seen an example of this in consumer complaints I looked at a while back in the AG's Office with Jim Welch.

Mr. Jonathan Reaves from Marshall County is here to talk to you about why he needed the KCPA and why he needs it again.

Jonathan Reaves: All I wanted to do was keep good credit and pay our bills. My daughter got sick and was life flighted so we decided before things got too bad to sell the house and move in with family so we could get support. We found a cash buyer and thought we'd be okay. My mortgage company refused to give us a payoff even though we had a buyer. Our realtor got involved she got an attorney and more than 6 months he found us Ms. Huffman to help too. The realtor could not sell and nobody was going to work with us. It took years and the KCPA action we took helped us pay for our attorney. Even though everything is confidential I still need KCPA again because now they are trying to collect and stuff is going wrong with the IRS along with my credit report. It's like they wrote off the money they paid many times so they come out ahead. I should never have needed any attorney although I ended up needing two. I was drug around by that for years although I had other things to worry about. Now I can't pay for an attorney and they will say it doesn't apply so without the KCPA I feel I'll deal with it forever.

Our friends and neighbors not only watch what is happening, but they pay for it. Attorney David Kirk as Guardian and Conservator in Johnson County will speak to the impact and costs on the Kansas budget with potential homelessness without the ability to raise the KCPA.

David Kirk: I was appointed Guardian and Conservator for D.W. on February 1, 2018. She was already in a nursing home and had been for almost a year at that time.

She lived in her home in Topeka from the time the house was free and clear as a result of her the KCPA claim until early 2017 with her adult son and his teenage daughter. Three generations under the same roof pooling their money and taking care of each other.

If Dorothy had not had that house, she would have been in skilled care or long term care far sooner and maybe as early as 2011 or 2012. There are limited opportunities for low income people to live in assisted living. Her income alone would not have gotten her a nice, wheelchair accessible apartment, that would replace her house.

My best guess is that the son and grand daughter would have dropped her off at the emergency room and left if they could not find an appropriate three bedroom apartment that was handicap accessible. The State of Kansas could have paid for her Medicaid bed in a nursing home for 5 or 6 years. 60 months at \$180/day is \$328,500. Her income to set off against that bill is about \$800/month. 5 years of income is \$48,000.

As it is, Mrs. White had some assets. Part of her back bills have been paid from the sale of her property and she has qualified for Medicaid but only from the middle of 2017. Not a bad deal for the State of Kansas.

I also present this committee with brief comments from Lisa Stewart of USD 500 in Kansas City Kansas serving as Director of Student Services.

Lisa Stewart: I came today because I am committed to the strength of our Kansas families which is key to the educational process. When families struggle with financial issues, particularly those brought in these types of situations we've heard described this results in instability. Displacement and home struggles are toxic to these families. These families need access to courts and attorneys because many we serve can barely afford their minimum needs so they certainly cannot afford the extra fees and the impacts of being nicked and dined while fearing homelessness.

Ms. Stewart comes as a dedicated educator because this is a serious Kansas issue that if not left with no avenue for redress in the courts has a trickle down effect that Mr. Kirk was able to measure on an individual basis and Ms. Stewart has seen impact our schools.

Not with us today are two Brown County couples, one foster parents who cannot make their mortgage company provide a statement, payoff, or speak to them despite proof every payment has been made by wire from their financial institution. Another, dealing with brain cancer while worrying that the company they said owned their mortgage in 2010 popped up their head now collecting because their servicer claimed they owned the mortgage and debt so apparently their payments have not been going to the right debt owner. Neither can afford attorneys nor should they have to because they should have the KCPA which provides not only a penalty but attorney fees.

I had a mortgage company and served on the Kansas Board of Mortgage Professionals for 6 years in various capacities including Education Co-Chair and Assistant Director of Legislative Affairs. We pushed for legislation in conjunction with the Kansas Office of the State Banking Commission that required standards and accountability. I urge you to have serious concerns with opposition to financial institutions to being covered by the KCPA. If we've learned anything over the last decade, it is not to give a pass to this industry. If the business model isn't to lie, cheat, or steal, then they have nothing to worry about. This isn't about parties or special interest, it's about people and all people deserve to be protected. Just as we all expect to be treated equally under the law, businesses should likewise be held to the same standards without preference.

This Committee should come together and protect **all Kansans** and provide no special exception to a certain group, particularly one that wasn't intended. I thank this Honorable Committee for your time and anticipated efforts and I invite questions now or at any time during the proceeding.

Sincerely Yours,

/s/ Donna L. Huffman

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