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- Resources about wind and solar leasing
- Links to learn more about the Grain Belt Express
- Information about the Kansas Corporation Commission's linesiting investigation
- State statutes addressing transmission in Kansas

## **NEGOTIATING TRANSMISSION LINE EASEMENTS**

Kansas is experiencing unprecedented growth in renewable energy production, and the corresponding buildout of electric transmission infrastructure to move that new energy to consumers. Many factors at the state, federal, and global level, are contributing to this growth, and it continues at least into the near future, despite major recent energy policy shifts at the federal level. As a result, many Kansas landowners are facing great opportunities and challenges related to renewable energy leases and transmission line easements that could impact their land. The buildout of electric transmission infrastructure is important to Kansas to allow for growth of renewable energy production that will help meet the growing demand for electricity, and to allow for willing landowners to participate in the renewable energy industry. Additionally, an expanded grid will help provide better reliability for Kansans and our neighbors.

Before diving into specific contract provisions, it will be helpful to provide some background information about the current state of electric transmission in Kansas. At least two high profile Kansas transmission projects have recently led to more scrutiny of the transmission line-siting process within Kansas. The Wolf Creek-Blackberry line (KCC Docket No 23-NETE-585-STG) is a project in the eastern part of the state that runs diagonally from Coffey County to Crawford County. The Wolf Creek-Blackberry line siting was ultimately approved in a split



decision by the Kansas Corporation Commission (KCC). The <u>Grain Belt Express</u> project is another high profile project. The Grain Belt Express is a unique project because it will be the first HVDC transmission line constructed in Kansas, and will export renewable energy generated in Kansas to other states. The Grain Belt Express line, once constructed, will begin in Ford County, and traverse the state before exiting from Doniphan County. Renewable energy generated in Southwest Kansas will be exported to Missouri and states farther east. This line will also facilitate better interconnection between regional transmission organizations, specifically, the Southwest Power Pool (or SPP, of which Kansas is a member), MISO, AECI, and PJM, which can ultimately improve grid reliability and utilities' ability to respond to extreme weather events. [2]

The added scrutiny into the transmission line-siting process resulted in the KCC opening an investigation docket to study the principles and priorities for locating proposed transmission lines in future line-siting proceedings before the KCC. Numerous intervenors, including Kansas Farm Bureau, joined the docket to participate in the study and provide feedback on the appropriate weighting and standards for line-siting matters before the KCC. The KCC's oversight of transmission line-siting is relatively limited in Kansas. First, the KCC only has jurisdiction over transmission lines that are 230kv and larger, and at least five (5) miles long. Second, the KCC must determine only the necessity of a proposed project, and the reasonableness of a proposed route. The KCC's work must be done within 180 days of a line-siting application and must include consideration of energy needs inside and outside of Kansas. [4]

Whether a transmission project is subject to KCC oversight, or not, transmission line companies must acquire the rights to use property on which it wants to build and operate an electric transmission project. Components of a project will include electrical lines, substations, switching facilities, and operation and maintenance structures. Transmission projects that are subject to KCC authority (and some others) generally come with the right for the transmission company to use eminent domain to obtain land rights. Other transmission projects, like those for smaller projects, or for lines that tie electric generation projects to the grid (often referred to as gen-tie lines), often do not come with the authority to use eminent domain to acquire the rights to use private land. This distinction is important because projects that do not have the benefit of eminent domain authority often must pay landowners more for the right to build and operate a transmission line. Whether eminent domain authority exists, or not, transmission companies will almost always attempt to acquire rights in land via agreement with the landowner, and resort to eminent domain only when voluntary negotiations fail.

While a transmission company may seek to purchase land where substantial structures will be located (like substations, and maintenance buildings), the transmission company will likely seek an easement for the area where the transmission lines will be located. An easement is a legal interest in land that can give the transmission company the right to access the land, construct and operate the line,

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perform maintenance on the line and the ground located underneath the line, and any other rights specifically set forth in the easement agreement. The width of the easement sought by the transmission company will vary by project, but will often be between 150 to 250 feet.

Transmission easement agreements will have a long-term effect on the current landowners, the land and future generations of landowners. Therefore, it is important to seek counsel from an attorney and accountant prior to signing any agreement. Landowners should take their time, and consider all the aspects of a transmission easement before signing it.

The following are some initial considerations and a checklist provided as a guide when reviewing transmission line easements. They represent the types of issues landowners will want to consider as they enter into an agreement. Every contractual agreement between a landowner and a developer has unique possibilities that differ across regions and operations and should be negotiated with the help of legal counsel. It may be possible to negotiate for an attorney stipend for landowners as part of the easement agreement to help cover attorney costs.

#### **INITIAL CONSIDERATIONS:**

- Impacts to Agricultural Land and Company Codes of Conduct: Landowners typically retain existing surface or sub-surface rights when entering into a transmission line agreement. It is important, then, for landowners and developers to consider the compatibility of transmission line development with existing uses of agricultural land. Many transmission companies have developed internal codes of conduct that set standards for how they will approach work on agricultural lands, and restore agricultural lands after use-intensive phases like construction and decommissioning. These policies might have provisions that require the company to employ someone with knowledge of agriculture to oversee activities on agricultural lands, and to serve as the point of contact for agricultural landowners. Likewise, companies often adopt standards or codes of conduct that prohibit unfair, deceptive, or abusive practices when their employees or agents interact with landowners. At a minimum, landowners should ask to see any such policies and codes of conduct. If these policies are not included or incorporated into the lease agreements, they are unenforceable, aspirational documents at best. Ideally, these agricultural impact mitigation and code of conduct concepts would be written into the lease, or incorporated by reference to the company's standing policies.
- **Get it in Writing:** As with all contracts, if the parties have reached an agreement on a particular issue, and it is important to the transaction, then it should be stated with specificity in the agreement. It is often hard, and sometimes impossible, to prove that certain other agreements were reached when they are not contained within a written agreement that is signed by the parties. Landowners have no obligation to take a contracting agent's word with regard to matters that are important to them. The best practice is to get all the important aspects of the agreement in writing. Not only will it act to bind the parties to the promises to which they agreed, but it can also be helpful to identify misunderstandings in negotiations before the deal is finalized.

#### LANDOWNER CHECKLIST:

# • Area encumbered by the easement:

- The legal description should be clearly described and checked for its accuracy.
- The scope of the agreement should be limited to only the land or space that is necessary to serve its purpose.
- The center line and width for the right-of-way should be clearly described in the agreement.
- The agreement should state how and where access from public roads to and from the land will be permitted.
- Consider
  - desired setbacks from farming operations, residences, and property lines,
  - location of general exclusion areas for development, operation, and access, and
  - issues of privacy, access, general disruption, and safety, and how to mitigate them.



## • Term of Agreement:

- Transmission easement agreements are typically proposed to last for perpetuity (or forever). It is often possible, however, to negotiate for the easement to last for only so long as the line is in service.
- In any event, because these are very long-term agreements (possibly forever), often without an opportunity to renegotiate them in future, landowners will want to make sure they understand the terms of the agreement and how it will impact their land use.

## • Compensation for the Easement:

- o Compensation for a transmission easement depends on several factors:
  - The general location (e.g. proximity to urban areas, location on a particular parcel, like whether it is along a boundary line or cuts diagonally across a field, etc.)
  - The width and length of the easement
  - Type and value of land involved, which means that neighboring properties may not be compensated at comparable rates if there are significant differences in them (e.g. dryland v. irrigated, cropland v. grassland, soil class, etc.)
  - Anticipated and actual damages to the property caused by installation, maintenance and/or operation of the structures and lines
  - Fair Market Value (FMV)
    - Usually landowners are offered compensation based on some percentage of the FMV of the land, especially if the easement is being acquired for a transmission line for which eminent domain authority exists.
    - The amount offered, and ultimately paid, can be significantly greater if the transmission developer lacks the power of eminent domain that would allow them to acquire the easement through involuntary means. Therefore, landowners should determine whether eminent domain power exists for the project developer, and become familiar with typical compensation rates for similar transmission line access in Kansas or in other states.

## • Compensation for the Easement (cont'd):

- Some recent offers from transmission companies with eminent domain power have been for 110% of the FMV (remember, though, that the transmission company is not actually purchasing the land in an easement agreement, but rather the right to use it for the transmission line).
- Recent offers for transmission lines associated with a wind lease have been a one-time payment of \$10/linear foot. It can be difficult to negotiate financial terms within winds leases, but clarification of the type of transmission line, to fully evaluate the offer, could be helpful.
- Additional compensation may be allowed for interference with normal farming activities or the aesthetic appearance of the property (this may prove difficult to get the developer to agree to, but should be discussed in contract negotiations).
- Landowners may need to factor in possible increases in insurance premiums, especially if the agreement requires the landowner to indemnify for potential damages in the future (more on this below).
- o Consider the advantages and disadvantages of payment structures:
  - Generally, transmission line easement compensation involves a one-time, up-front payment. However, for some recent transmission projects, the developer has offered landowners the choice between a lump sum or smaller annual payments.
  - Consider potential tax consequences (i.e. all compensation in a single year v. spread over the life of the project).
  - Compare the lump sum payments using a standard financial annuity formula to find the annual payment equivalent.
  - There may be other compensation available for loss of viable agricultural operations, and property damage.

# • Rights the Developer Will Want

- To conduct certain activities on the land prior to construction:
  - Surveying (note, though, <u>K.S.A. 74-7046</u> allows certain surveying activities even in the absence landowner permission)
  - Taking soil samples
  - Environmental and/or wildlife studies
  - Other activities that may help determine feasibility of the transmission project
- To construct and install transmission lines and structures:
  - Foundations, concrete pads and footings
  - Guy wires, support fixtures, anchors and fences
  - Electrical transformation, electric distribution and transmission towers (poles wood/steel structures) and lines above ground or underground
  - Substations or switching facilities
  - Buildings needed for maintenance or storage
  - Private roads providing access from public roads to facilities or structures



## • Rights the Developer Will Want (cont'd):

- To operate, maintain, repair the transmission line:
  - Some agreements may also propose the right to replace a transmission line (even in the absence of natural disaster or other event that requires replacement). Landowners may be able to limit this right so that additional negotiations can occur in the event that the developer desires to upgrade or replace the line in the future.
  - Watch for language that would allow the developer to add commercial telecommunications or fiber optic cables beyond what is necessary for its purposes (like for offering these services to consumers). Such additional uses of the easement may entitle the landowner to more compensation.

#### Rights Reserved for the Landowner

- Landowners should concentrate on reserving any rights that are unique to their agricultural or other operations on the land.
- Landowners may want to include a "catch-all" provision where the landowner reserves or retains all rights with respect to the use of the land not given explicitly to developer.
  - If negotiations to include this phrase are not fruitful, perhaps more specific provisions can be incorporated into the agreement, like:
    - The right to conduct farming or agricultural activities on the land or other activities involving the land such as mineral, oil, gas, or other natural resources, and
    - The right to use land to harvest crops, graze and/or hunt.

## Minimum Duties and Obligations of Developer

- These provisions can often be negotiated to be much more specific than what is likely offered by the transmission developer.
- o Standards for reclamation of premises these provisions can include things covering:
  - Reestablishment of vegetation
    - Seed mix specifications
    - Provisions for "reseeding" may be inadequate. If proper watering and weed control are not explicitly required, then a developer could meet their obligation by reseeding the area, even if their efforts do not result in a proper stand of vegetation.
    - Sometimes the Landowner may want to be responsible replanting vegetation, for a fee.
  - Long-term weed control
    - Consider including provisions about the use of chemicals to control weeds and brush.
  - Measures for dealing with soil
    - Require topsoil segregation, storage, and replacement in restoration.
    - Require measures for prevention, and remediation of soil compaction, like avoidance of the use of heavy equipment under wet conditions.
  - Rocks and trees removed for the project
    - Will they be removed from the site, or will trees be chipped and spread?
    - Will additional compensation be due when these resources are removed? If so, how will the value be determined?

## Minimum Duties and Obligations of Developer (cont'd):

- Consider operational compatibility
  - Request a survey and transmission plan from the developer.
    - Prohibit interference with existing irrigation systems, or make sure there are adequate accommodations or compensation to make the landowner whole despite the interference.
    - Determine whether the distance between the transmission structures and fences, ditches, or roads on the edge of the easement can that accommodate the width of equipment on site.
    - If new access roads will be necessary, make sure their location is noted on the plan, and the easement agreement provides for the maintenance and repair of them.
  - Types of Transmission Structures
    - Not all transmission structures will have the same impact on an operation. It may be
      possible to influence the types and specifications of planned structures through
      contract negotiations.
    - Find out whether the planned structures will be monopole, two-legged, or four-legged.
    - Try to eliminate the use of guy-wires because they can cause additional operational complexity and safety issues.
    - Establish a minimum height of the transmission line that will be sufficient to accommodate the largest farm equipment operated on the site.
  - Potential livestock displacement
    - Determine whether alternative grazing locations can be acquired, and at what cost.
    - Require prior notification when the construction is to begin, and when construction is completed.
    - Compensation for costs incurred from displacement and loss of native grassland cover may be available.
  - Fences, Gates, and Cattle guards
    - Developers will often install fencing, gates, and cattle guards, at no cost to the landowner, if doing so could be beneficial to their use of the property for the transmission project.
    - Establish a location to allow adequate access for developer and landowner.
    - Be sure to understand who will be responsible for maintaining these structures, and how will they be maintained.
    - Understand what developer personnel will access to the property.
    - The contract can even be very specific about requiring locked gates be kept locked before and after access, and that open gates be left open. This can be important when livestock utilize gate openings to move from pastures without a water source, to those with a water source.
    - Require that fences be braced before cutting, and that there be immediate repair of damaged fences.
    - Consider whether the operation could benefit from temporary protective fencing during construction.

- Minimum Duties and Obligations of Developer (cont'd):
  - Consider operational compatibility (cont'd)
    - Consider potential environment and wildlife concerns
      - Require developer to perform proper due diligence on environmental issues.
      - Address sensitive wildlife habitat or species of concern or of potential concern.
      - There should be an annual weed abatement program for invasive species control.
    - Consider potential archeological/historic concerns
      - Require the developer to identify archeological sites, especially places listed on the National Register of Historic Places.
      - Outline a procedure for dealing with archeological sites if they are uncovered.
    - Waterlines
      - Require the developer to provide immediate repair of water lines if damaged.
      - Establish that the developer will be responsible for hauling water until waterline is repaired.
  - Require developer to keep lands free from liens such as mechanic's liens.
    - The contract may provide the developer the option to contest the validity of liens, but require that it is done at no cost to landowner, and that the developer post a bond or escrow to cover the cost of removing a lien if the challenge is unsuccessful.
  - Require developer to comply with all federal, state and local law and regulations, and to obtain and comply with all necessary permits.
  - Ensure proper usage, storage, disposal and release of hazardous substances on the premises.
    - Developer may be allowed to use hazardous substances in its normal business operations provided such use is not harmful to landlord's operation and is done in compliance with all applicable laws.
    - Developer should indemnify landowner for any losses from the use or handling of such substances.
  - Electromagnetic fields
    - Electromagnetic fields (EMFs) are created by electric transmission lines and can have the following negative impacts:
      - adverse health impacts to individuals frequently in close proximity to them (like living and working very nearby),
        - Consider requiring EMF testing at the edge of the easement once the line is constructed.
      - interference with other communication devices (like cell phones, gps, etc.), and
        - Consider requiring mitigation measures for such interference.
      - electrification of fencing and other metal structures located below or near the transmission line
        - Consider requiring mitigation measures that reduce this impact and improve the safety of these structures.



## Minimum Duties and Obligations of Landowner

- Cooperation
  - The landowner must allow the developer the quiet use and enjoyment of the land without interference.
  - Landowner will not be allowed to engage in any activity that would hinder the developer's rights under the easement agreement.
  - Landowner will have to cooperate with developer in obtaining any necessary subordination agreements or approvals from existing lien holders.
- Ensure the proper usage, storage, disposal and release of hazardous substances on the premises by the landowner.
  - The landowner should carve out an exception for the use of hazardous substances in its normal business operations (agriculture use).

#### Taxes and Utilities

- All tax (personal or real estate) increases due to improvements associated with the project, as well as all sales and use taxes, should be the sole liability and responsibility of the developer.
- Developer should be responsible for all water, electric, telecommunications, and other utility services used for the transmission line.

#### Assignment Rights

- The developer will normally want to be able to assign all or a portion of their/its easement rights to another without consent from the landowner. Including:
  - the right to grant to a utility company the right to construct, operate and maintain the transmission line, interconnection and switching facilities on the premises,
  - the right to sell or otherwise transfer the easement to another party, and
  - the right to grant subleases or sub-easements (be careful to make sure the uses allowed by subleases or sub-easements are limited).
- The assignment usually allows the original developer to be released from further obligations.
  - The party receiving the assignment should be required to assume all responsibilities.
  - Landowners should understand the broad grant they are giving to developer and exercise caution.
  - Landowners should request that the developer provide prior written notice of any assignments, including: name, address and phone number of assignee, and confirmation of liability assumption by the assignee.

#### Indemnification and Hold Harmless

- Indemnification and hold harmless provisions describe who protects who, and under what circumstances. They can be some of the most important provisions of any contract.
  - The developer should be 100% responsible for all liabilities associated with transmission line activities/operations, both pre- and post-completion of the project.
    - It might be useful to include specific references for indemnification from the developer for environmental liabilities pertaining to wildlife, habitat, and hazardous materials.

## Indemnification and Hold Harmless (cont'd)

- While it would be great if the only indemnifying party is the developer, reciprocal indemnification obligations can be a good compromise, where each party (developer and landowner) will be required to provide indemnification to the other, under certain circumstances.
- These provisions should usually provide for indemnification for damages arising out of:
  - any operations or activities of the developer, its agents or assigns, on the premises,
  - any intentional act or omission on the part of either indemnifying party,
  - any breach of the agreement, and
  - any claims made by a neighbor or other 3rd party against the landowner, arising out of the activities of developer, its agents or assigns, including, but not limited to: nuisance, trespass, EMF interference, medical claims, other damages.
- Beware of language that forces the landowner to indemnify the developer for activities of any tenants, guests, or even trespassers.
- Finally, most easements contain a provision that includes paying the reasonable attorneys' fees for the party being indemnified. Note this may work very well if you are the party that has been damaged, however this can also work against you. Here is a quick example:
  - If your farm tenant were to fall asleep while driving a tractor and hit one of the transmission line structures and cut off the electrical power.
    - What would it cost to restore power and fix the tower/structure?
    - Who would pay for the damages?
    - What would litigation cost and could you be responsible for the developer's attorney fees if you lost?

#### Insurance

- The easement should require that the developer maintain appropriate liability insurance covering all of its activities on the premises and name the landowner as an additional insured.
  - The policy should require sufficient liability limits to protect the landowner.
    - The amount should be at least 1 million dollars or greater.
    - The amount of insurance coverage should also adjust over the course of time (to allow for inflation).
    - The developer should provide a certificate of insurance annually.
    - The policy should provide that it cannot be cancelled without at least 30 days written notice to the landowner.
    - The landowner should be careful about agreeing to language in the easement that allows developer to "self insure."
- Landowners should speak to their insurance agent about exposure to future liabilities and the possibility of insuring against this type of event. It may be possible to have the cost of such insurance built in to the compensation from the developer in the easement agreement.

#### Eminent Domain

- If a landowner ultimately declines a developer's offer for an easement, the developer may, in some situations, have the right of eminent domain (condemnation) to take the easement through involuntary means.
  - The developer can take the portion of the property from the landowner for "just compensation."
  - These matters are usually filed in the local district court.
  - These proceedings usually happen very quickly. It is always prudent to consult with an attorney prior to this type of hearing.
  - After the court finds that the developer is qualified to use eminent domain, it will appoint three appraisers and who are tasked with determining the FMV of the land interests taken by the developer.
  - The court will then consider the loss in value assessed by the appraisers to the premises and determine just compensation.
  - It is important to consider here that eminent domain should be considered as a last resort, and to understand that landowners will lose the power of negotiation in the hearing process. This could result in the loss of terms that are favorable to landowners being included in a final agreement.

#### Default and Termination

- Events that normally cause a default on the part of the developer and allow for the termination of the easement include:
  - failure to make the required payment(s), and
  - failure to pay for damages.
- Usually the agreements require a written notification of lack of payment or damages incurred by the landowner.
- The easement should provide that upon termination of the agreement, or removal of the transmission line from service, the developer must remove all towers, substations, switching facilities, equipment, machinery and any other structures on the premises.
  - A timeframe should be set for the developer to remove all materials and structures from the land in a timely fashion.
  - Any concrete pads should be removed to a depth below ground of three feet.
  - All debris should be removed from site.
  - Payment should be made for any property damages, tile damage, crop loss, seeding, fencing and/or soil compaction.
- If termination should occur, the developer should execute and record a document evidencing termination of the easement.

#### Miscellaneous

 Consider whether the transmission easement will impact the landowner's possible land uses, including the potential loss of some of those uses, like hunting or other recreational uses.



- Miscellaneous (cont'd)
  - Farm Tenants
    - Landowners should inform any farm tenants of the easement.
    - The easement is an agreement between the landowner and developer and not the farm tenant. The tenant has a separate agreement with the landowner which may be adversely affected by the easement (ex. lost acreage to farm, working around towers/structures and inability to conduct aerial spraying).
    - The landowner and farm tenant may need to modify their agreement regarding the new easement.
    - It is almost always advisable to have farm leases in writing.
  - Farm Service Agency (USDA) implications
    - Before signing an easement, landowners should consult the local FSA office to be sure or at least aware of any problems that transmission lines may cause if construction occurs over land under contract with the Federal Government (e.g. CRP).
    - Landowners should seek USDA approval if they participate in USDA programs, so payments are not lost or financial penalties are not triggered.
  - The manner in which notices are to be given to each party should be specified.
  - The easement should only be interpreted under the laws of the state in which the property is located.
  - Recording of Memorandum of the Easement
    - An easement is usually filed with the county Register of Deeds. However, sometimes an easement may not be recorded, but rather, a shortened memorandum that summarizes the essential terms so the existence of the easement will be filed in an abstract format. This prevents the financial terms from being disclosed, and reduces recording costs.



#### **END NOTES**

The Grain Belt Express project obtained a limited certificate of public convenience from the Kansas Corporation Commission in 2011, and approval of its proposed line-siting in 2013. The project has faced greater challenges while seeking state approvals for the portions located in Missouri and Illinois, which have slowed its progress. Most recently, the project suffered a setback in July 2025, when the US Department of Energy said it was pulling its conditional commitment for a \$4.9 billion federal loan guarantee that would help move the project forward.

Another transmission line issue that drew a lot of attention in 2024 was National Interest Electric Transmission Corridors (NIETCs). In an effort to expedite transmission buildout in the US, the Department of Energy (DOE) has authority to designate NIETCs, which are areas where transmission buildout could be most beneficial. After a NIETC designation is made, the statutes and regulations allow the Federal Energy Regulatory Commission (FERC) to usurp state authority, in some cases, to approve siting of transmission lines within a corridor. In 2024, DOE proposed ten difference NIETCs, two of which would have been located within Kansas. When the list was finetuned, DOE moved forward with only three of the proposed corridors, none of which are located in Kansas. To learn more about NIETCs, visit <a href="https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process">https://www.energy.gov/gdo/national-interest-electric-transmission-corridor-designation-process</a> (last accessed August 24, 2025).

In the Matter of the Investigation into the Principles and Priorities to be Established for Evaluating the Reasonableness of the Location of a Proposed Transmission Line in Future Line Siting Proceedings, <a href="Docket No. 24-GIME-102-GIE">Docket No. 24-GIME-102-GIE</a>, available at <a href="https://estar.kcc.ks.gov/estar/portal/kscc/PSC/DocketDetails.aspx?DocketId=011c7db2-df90-43c2-8d25-00e38bbfc176">https://estar.kcc.ks.gov/estar/portal/kscc/PSC/DocketDetails.aspx?DocketId=011c7db2-df90-43c2-8d25-00e38bbfc176</a>, last accessed August 24, 2025.

[4] K.S.A. 66-1,178. It is worth noting that in 2025, the Kansas Legislature amended K.S.A. 66-1,178 to extend the KCC's deadline for issuing its order with line-siting determinations from 120 days after application, to 180 days after application. This statutory change was supported by many of the intervenors in the line-siting investigation, with the hope that it will allow more time for landowner notice, and a more meaningful opportunity for landowners to provide feedback to effect necessary project changes before the KCC's decision is due.

This publication was originally written for The Kansas Farm Bureau Legal Foundation by Michael Irvin in 2010, and updated in 2025 by Wendee Grady, of Wendee Grady Law Office, LLC.

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