
Reader's Note

The statute below contains three kinds of governing provisions. Some are **mandatory**, meaning that FCHA must comply with them. Others are **enabling**, meaning FCHA may comply with them but is not required to do so. Finally, some provisions are **default**, meaning that they apply if FCHA does not already have bylaws or rules covering them.

References to the period during which the "declarant" controlled the association are lined through as they no longer apply. The beginnings of all **default** provisions are underlined.

All **mandatory** provisions have been melded into our Revised Bylaws. In most other cases, we have tried to preserve our bylaws as they already existed.

FCHA Bylaws Committee

K.S.A. 58-4601 et seq

KANSAS UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT

AN ACT concerning housing; amending K.S.A. 19-26,103, 19-26,104, 58-3119 and 58-3120 and K.S.A. 2009 Supp. 12-1750, 12-1756a and 12-1756g and repealing the existing sections; also repealing K.S.A. 2009 Supp. 58-3830.

Be it enacted by the Legislature of the State of Kansas:

K.S.A. 58-4601 (Short title)

(a) sections 1 through 22, and amendments thereto, shall be known as the Kansas Uniform Common Interest Owners Bill of Rights Act. (Added to Revised Bylaws Article 2 after "Acceleration").

(b) The legislature finds as a matter of public policy:

(1) That a significant and increasing number of Kansans live in common interest communities;

(2) that effective operation of these common interest communities is in the interest of their owners, residents, and the state; and

(3) that the adoption of uniform rules to govern the rights and duties of unit owners, associations, and developers will help to ensure that common interest communities operate effectively and fairly.

(c) The public purposes of this act are to establish uniform rules of law to clarify the rights and duties of unit owners and associations in all forms of common interest communities, to provide for the effective operation of common interest communities in the interest of their owners and their residents and to address current and potential areas of conflict and tension between unit owners and associations, boards and managers in a comprehensive and balanced manner.

(d) This section take effect on and after January 1, 2011. **(No action was required for this entire section. It only provides a rationale for the new law.)**

K.S.A. 58-4602 (Definitions)

As used in this act:

(a) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under K.S.A. 58-4620, and amendments thereto. **(Added to Revised Bylaws Article 2 after "Articles".**

(b) "Association" means the unit owners association.

(c) "Board of directors" means the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association. **(Added to Revised Bylaws Article 2 after "Association")**

(d) "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments. **(Added to Revised Bylaws Article 2 after "Board of Directors")**

(e) "Common elements" means those portions of the property not owned individually by unit owners, but in which an indivisible interest is held by all unit owners, generally including the grounds, parking areas and recreational facilities. **(Added to Revised Bylaws Article 2 after "Common Area")**

(f) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in that declaration. The term does not include an arrangement described in K.S.A. 58-4607, and amendments thereto. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest. **(Added to Revised Bylaws Article 2 after "Common Facilities")**

(g) "Declarant" means a person or group of persons acting in concert that:

(1) As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or **(No longer applicable.)**

(2) reserves or succeeds to any declarant right. **(No longer applicable.)**

(h) "Declaration" means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument. **(No action required. Already included.)**

(i) "Limited common element" means a portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units. **(Not applicable.)**

(j) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. In the case of a land trust, the term means the settlor of the trust rather than the trust or the trustee. **(Added to Revised Bylaws Section 2 after "Owner".)**

(k) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. **(Added to Revised Bylaws Section 2 after "Properties")**

(l) "Residential purposes" means use for dwelling or recreational purposes, or both. **(Not applicable.)**

(m) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property. **(Added to Revised Bylaws Article 2 after "Record")**

(n) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy. **(Added to Revised Bylaws Article 2 after "Rule")**

(o) "Unit owner" means a person that owns a unit. **(Added to Revised Bylaws Article 2 after "Unit owner")**

(p) This Section take effect on and after January 1, 2011.

K.S.A. 58-4603 (No Variation in Agreement)

(a) Except as expressly provided in this act, the provisions of this act shall be mandatory and apply notwithstanding contrary provisions in the declaration or bylaws of a common interest community and shall not be varied or waived by agreement. **(No action required)**

(b) This Section take effect on and after January 1, 2011.

K.S.A. 58-4604 (Obligation of Good Faith)

(a) Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement. **(Added to Revised Bylaws Article 8 Section 1 i and Article 9 Section 2 t)**

(b) This Section take effect on and after January 1, 2011.

K.S.A. 58-4605 (Applicability to New Common Interest Communities)

(a) This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes and are created within this state after the effective date of this act. **(No action required)**

(b) This Section take effect on and after January 1, 2011.

K.S.A. 58-4606 (Applicability to Preexisting Common Interest Communities)

(a) This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes created in this state before the effective date of this act; but this act, and amendments thereto, do not apply with respect to actions or decisions of an association or its board of directors concerning events and circumstances occurring before the effective date of this act. **(No action required)**

(b) This act, and amendments thereto, do not invalidate existing provisions of the declaration, bylaws, plats or plans of those common interest communities; provided, however, the provisions of the declaration or bylaws of a common interest community that are may not be enforced with respect to events and circumstances occurring after the effective date of the act. **(All conflicting portions have been addressed. No further action required.)**

(c) The declaration, bylaws, plats or plans of any common interest community created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before the effective date of this act. **(No action required)**

(d) This Section take effect on and after January 1, 2011.

K.S.A. 58-4607 (Exempt Real Estate Arrangements)

(a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community. **(Not applicable.)**

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this act. **(Not applicable.)**

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree. **(Not applicable.)**

(d) This Section take effect on and after January 1, 2011.

K.S.A. 58-4608 (Powers and Duties of Unit Builders Association)

(a) The association shall:

(1) adopt and may amend bylaws and may adopt and amend rules; **(No action required. Satisfied by Revised Bylaws Article 7 Sections 1 & 2 and Article 14)**

(2) adopt and may amend budgets; **(No action required. Satisfied by Revised Bylaws Article 9 Section 2 a)**

(3) have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding; **(Added to Revised Bylaws Article 9 Section 1 as new item g)**

(4) promptly provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules, covenants or declarations of restrictions, or to recover unpaid assessments or other sums due the association; **(Added to Revised Bylaws Article 9 Section 2 as new item u)**

(5) establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association; **(Added to Revised Bylaws Article 9 Section 2 as new item v)**

(6) have the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:

(A) Deny a unit owner or other occupant access to the owner's unit;

(B) Suspend a unit owner's right to vote except involving issues of assessments and fees; or **(Amended Revised Bylaws Article 3 Section 1 b)**

(C) Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and

(7) have all other powers that may be exercised in this state by organizations of the same type as the association.

(b) The board of directors may determine whether to take enforcement action by exercising the associations power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The board of directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) The association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The board of directors' decision under subsection (b) above not to pursue enforcement under one set of circumstances does not prevent the board of directors from taking enforcement action under another set of circumstances, but the board of directors may not be arbitrary or capricious in taking enforcement action. **(Amended Revised Bylaws Article 9 Section 1 to Added items b and c above as new items e and f)**

(d) This Section take effect on and after January 1, 2011.

K.S.A. 58-4609 (Executive Board Members and Officers)

(a) ~~In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the board of directors not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under existing law. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.~~ **(Portions regarding a declarant have been lined through. Remaining portions were used to amend Revised Bylaws Article 9 Section 2 to add new item t)**

(b) An association shall have a board of directors created in accordance with its declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or other provisions of this act, the board of directors acts on behalf of the association. **(Satisfied by Revised Bylaws Article 8)**

(c) The board of directors may not:

(1) Amend the declaration except as provided by law other than this act;

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the board of directors, but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of board of directors' members; or

(5) determine the qualifications, powers, duties, or terms of office of board of directors' members. **(Portions not lined through were used to amend Revised Bylaws Article 9 to add all of (c) above as new Section 3 and Revised Bylaws Article 9 Section 2 r)**

(d) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4610 (Bylaws)

(a) The bylaws of the association must:

(1) Provide the number of members of the board of directors and the titles of the officers of the association; **(Satisfied by Revised Bylaws Article 8 Section 1 a and Article 10 Section 1)**

(2) provide for election by the board of directors or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify; **(Satisfied by Revised Bylaws Article 10 Section 1)**

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies; **(Satisfied by Revised Bylaws Article 8 and Article 9 Section 3 d)**

(4) specify the powers the board of directors or officers may delegate to other persons or to a managing agent; **(Might be satisfied by an expansion of Revised Bylaws Article 9 Section 1 d beginning "Bylaws must...")**

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association; **(Amended Revised Bylaws Article 10 Section 7 c)**

(6) specify a method for the unit owners to amend the bylaws; **(Satisfied by Revised Bylaws Article 7 and Article 14)**

(7) contain any provision necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and **(Satisfied by Revised Bylaws Article 7)**

(8) provide for any matter required by law of this state other than this act to appear in the bylaws of organizations of the same type as the association. **(No action required)**

(b) Subject to the declaration and this act, the bylaws may provide for any other necessary or appropriate matters, including, but not limited to, an election oversight committee and other matters that could be dopted as rules. **(No action required)**

(c) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4611 (Unit Owner Meetings)

(a) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws. **(Satisfied by Revised Bylaws Article 7 Section 1)**

(b) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the board of directors or unit owners having at least 10%, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting. **(Amended Revised Bylaws Article 7 Section 2 and Section 3 a)**

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any method reasonably calculated to provide notice to the person. The notice for any meeting must state the time, date, and place of the meeting and the items on the agenda, including: **(Amended Revised Bylaws Article 7 Section 3 a)**

(1) A statement of the general nature of any proposed amendment to the declaration or bylaws; **(No action required)**

(2) any budget proposals or changes; and **(No action required)**

(3) any proposal to remove an officer or member of the board of directors. **(No action required)**

(d) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency. **(Added to Revised Bylaws Article 7 Section 3 a)**

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association. **(No action required)**

(f) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with and amendments thereto. **(No action required)**

(g) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4612 (Meetings of Board and Committees)

(a) Meetings of the board of directors and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The board of directors and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. **(Amended Revised Bylaws Article 8 Section 4 d)** An executive session may be held only to:

(1) consult with the association's attorney concerning legal matters;

(2) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(3) discuss labor or personnel matters;

(4) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) prevent public knowledge of the matter to be discussed if the board of directors or committee determines that public knowledge would violate the privacy of any person. **(Amended Revised Bylaws Article 9 Section 3 to add as new item f)**

(b) For purposes of this section, a gathering of board of directors at which the board members do not conduct association business is not a meeting of the board of directors. The board of directors and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section. **(Amended Revised Bylaws Article 9 Section 3 to add new item g)**

~~(c) Except as provided in subsection (i), during the period of declarant control, the board of directors shall meet at least two times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community.~~ After termination of the period of declarant control, the board of directors shall meet at least once a year and such meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings. **(Declarant portion no longer applicable. Remaining portion satisfied by Revised Bylaws Article 8 Section 4)**

(d) At each board of director's meeting, the board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association. **(Added to Revised Bylaws Article 8 Section 4 e)**

(e) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each Board of Directors meeting to each board member and to the unit owners. The notice must state the time, date, place, and agenda of the meeting and, as provided in subsection (c) of sections 11 and 19, and amendments thereto, be given at least five days prior to the meeting date. **(Amended Revised Bylaws Article 8 Section 4 a)**

(f) If any materials are distributed to the board of directors before the meeting, the board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session. **(Amended Revised Bylaws Article 8 Section 4 b)**

(g) Unless the declaration or bylaws otherwise provide, the board of directors may meet by telephonic, video, or other conferencing process if:

(1) The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided subsection (d).

(h) After termination of any period when the declarant controls the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(i) ~~During the period of declarant control, instead of meeting, the board of directors may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent. (No longer applicable up to this point)~~ After termination of the period of declarant control, The board of directors may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the board. **(Amended Revised Bylaws Article 9 to add new Section 3 h)**

(j) Even if an action by the board of directors is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the board of directors for failure to comply with this section may not be brought more than 60 days after the minutes of the board of directors of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later. **(Amended Revised Bylaws Article 9 to add new Sections 3 & 4)**

(k) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4613 (Quorum)

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast 20% of the votes in the association:

(1) Are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with the association's procedures which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of paragraphs (1) and (2). **(No action required)**

(b) Unless the bylaws specify a larger number, a quorum of the board of directors is present for purposes of determining the validity of any action taken at a meeting of the board of directors only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the board of directors unless a greater vote is required by the declaration or bylaws. **(Amended Revised Bylaws Article 8 Section 4 c)**

(c) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised. **(Amended Revised Bylaws Article 7 to add new Section 6)**

(d) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4614 (Voting; Proxies; Ballots)

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by secret ballot, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d). **(Absentee balloting not allowed. Voting procedures as outlined in Revised Bylaws Article 4 Section 2 establish voting in person or by proxy.)**

(b) Unless contrary provisions of the declaration or bylaws so provide, at a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. **(No action required. Contrary procedures are outlined in Revised Bylaws Article 2 Section 2)**

(3) Unless a greater number or fraction of the votes in the association is required by this act or the declaration, a majority of the votes cast determines the outcome of any action of the association. **(No action required. Specific procedures are outlined in Revised Bylaws Article 7 Section 3b, 3c 4b, 4c.)**

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting. **(No action required. Procedures are outlined in Revised Bylaws Article 2 Section 2.)**

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so. **(No action required. Voting procedures are outlined in Revised Bylaws Article 2 Section 2.)**

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person, other than a member of the board of directors may not cast undirected proxies representing more than 15% of the votes in the association.. **(Added to Revised Bylaws Article 7 Section 5; Renumber items (1) - (6) as b - g)**

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. If a vote without a meeting is permitted and used, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) Indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so. **(No action required. Revised Bylaws limits votes to meetings with votes only being cast in person or by proxy. See, for example, Revised Bylaws Article 4 Section 2, second para.)**

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action. **(No action required.)**

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: **(Not applicable.)**

(1) This section applies to lessees as if they were unit owners; **(Not applicable.)**

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and **(Not applicable.)**

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. **(Not applicable.)**

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote. **(Not applicable.)**

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association. **(Not applicable.)**

(h) This section shall take effect on and after January 1, 2011.

K.S.A. 58-4615 (This section number was passed over when HB 2472 was converted to statute. No content is missing. Just a numbering error.)

K.S.A. 58-4616 (Association Records)

(a) The association, or its agents, must retain the following for five years unless otherwise provided:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and board of directors other than executive sessions, a record of all actions taken by the unit owners or board of directors without a meeting, and a record of all actions taken by a committee in place of the board of directors on behalf of the association;

- (3) the names of unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;
- (4) its original or restated organizational documents, if required by law other than this act, bylaws and all amendments to them, and all rules currently in effect;
- (5) all financial statements and tax returns of the association for the past three years;
- (6) a list of the names and addresses of its current board of directors' members and officers;
- (7) its most recent annual report, if any, delivered to the secretary of state;
- (8) financial and other records sufficiently detailed to enable the association to comply with other requirements of law;
- (9) copies of current contracts to which it is a party;
- (10) records of board of directors or committee actions to approve or deny any requests for design or architectural approval from unit owners; and
- (11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) through (g), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

- (1) During reasonable business hours or at a mutually convenient time and location; and
- (2) upon 10 days' written notice reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel, salary, and medical records relating to specific individuals;
- (2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;
- (3) existing or potential litigation or mediation, arbitration, or administrative proceedings;
- (4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

- (5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
 - (6) information the disclosure of which would violate law other than this act;
 - (7) records of an executive session of the board of directors; or
 - (8) individual unit files other than those of the requesting owner.
- (d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.
- (e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner. Copied records may be used for any reasonable purposes other than for commercial purposes.
- (f) An association is not obligated to compile or synthesize information. **(Amended Revised Bylaws Article 4 to add all the above as new Section 3 and to excise all old language.)**
- (g) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4617 (Rules)

- (a) Before adopting, amending, or repealing any rule, the board of directors shall give all unit owners notice of:
- (1) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and
 - (2) a date on which the board of directors will act on the proposed rule or amendment after considering comments from unit owners.
- (b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.
- (c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.
- (d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions. The association may adopt rules governing the time, place, size, number,

and manner of those displays that are not inconsistent with K.S.A. 58-3820, and amendments thereto.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) Association rules that affect the use of or behavior in units that may be used for residential purposes, shall be adopted only to:

(1) implement a provision of the declaration; or

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable. **(Amended Revised Bylaws Article 9 Section 3 starting at i to add this entire Section.)**

(i) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4618 (Notices to Unit Owners)

(a) An association shall deliver any notice required to be given by the association under this act to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(1) Hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting. **(Amended Revised Bylaws Article 7 Section 3 a to add this Section. Also amended Revised Bylaws Article 7 Section 4 a to add this Section.)**

K.S.A. 58-4619 (Removal of Officers and Directors)

(a) Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) if a member may be elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the person that elected or appointed that member; and

(3) the unit owners may not consider whether to remove a member of the board of directors or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the board of directors or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote. **(Amended Revised Bylaws Article 8 Section 1 to e (1) and (2))**

(c) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4620 (Adoption of Budgets and Special Assessments)

(a) The board of directors shall propose and adopt a budget for the common interest community at least annually. Notice of any meeting at which a budget will be considered must be given to unit owners at least 10 days prior to the meeting date and, in accordance with subsection (g) of K.S.A. 58-4612, and amendments thereto, a copy of the proposal must be made available to any unit owner who requests it. At any meeting at which a budget or budget amendment is considered, in accordance with subsection (d) of K.S.A. 58-4612, and amendments thereto, unit owners must be given a reasonable opportunity to comment on the proposal prior to the board taking action. **(Amended Revised Bylaws Article 9 Section 2 a to add (1) and (2))**

(b) The board of directors, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), notice and consideration of any proposed special assessment shall follow the procedures set out in subsection (a).

(c) If the board of directors determines by a 2/3 vote of the membership of the board that a special assessment is necessary to respond to an emergency:

(1) The special assessment shall become effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the board of directors may spend the funds paid on account of the emergency assessment only for the purposes described in the vote. (Amended Revised Bylaws Article 5 Section 4 to add subsection (b) using subsection (c) above)

(d) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4621 (Effect of Violations on Rights of Action; Attorneys Fees)

(a) A declarant, association, unit owner, or any other person subject to this act may bring an action to enforce a right granted or obligation imposed by this act, the declaration, or the bylaws. The court may award reasonable attorney's fees and costs.

(b) Parties to a dispute arising under this act, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or non-binding alternative dispute resolution, but:

(1) A declarant may agree with the association to do so only after the period of declarant control has expired; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

(c) The remedies provided by this act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. (Amended Revised Bylaws to add new Article 11)

(d) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4622 (Supplemental General Principles of Law; Conflicts)

(a) The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this act except to the extent inconsistent with this act. If there is a conflict between this act and other law of this state, this act prevails. (Amended Revised Bylaws to add new Article 13)

(b) This Section shall take effect on and after January 1, 2011.

K.S.A. 58-4623 (Relation to Electronic Signatures in Global and National Commerce Act)

(a) This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section

101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b). **(Not applicable.)**

(b) This Section shall take effect on and after January 1, 2011.
