

Senate Substitute for HOUSE BILL No. 2267

AN ACT concerning homeowners associations; amending K.S.A. 2011 Supp. 58-4608, 58-4610 and 58-4618 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 58-4608 is hereby amended to read as follows: 58-4608. (a) The association shall:

- (1) Adopt and may amend bylaws and may adopt and amend rules;
- (2) adopt and may amend budgets;
- (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;
- (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;
- (5) establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;
- (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
 - (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 association's 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) 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.

(d) *The provisions of subsection (a)(6)(B) shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.*

~~(d)~~(e) This section shall take effect on and after January 1, 2011.

Sec. 2. K.S.A. 2011 Supp. 58-4610 is hereby amended to read as follows: 58-4610. (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;
- (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;
- (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;
- (4) specify the powers the board of directors or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(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

(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.

(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 adopted as rules.

(c) *The requirements of this section shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.*

~~(e)~~(d) This section shall take effect on and after January 1, 2011.

Sec. 3. K.S.A. 2011 Supp. 58-4618 is hereby amended to read as follows: 58-4618. (a) *Except as provided in subsection (b)*, 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) (1) *An association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence shall comply with subsection (a) when providing notice for an annual meeting.*

(2) *For all other meetings such association shall:*

(A) *Post a notice on the association's website;*

(B) *send a notice by electronic mail to all unit owners who request such notice; and*

(C) *post a sign containing the meeting notice at the main entrance of the common interest community.*

~~(b)~~(c) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

Sec. 4. K.S.A. 2011 Supp. 58-4608, 58-4610 and 58-4618 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.