As Amended by Senate Committee

Session of 2011

SENATE BILL No. 114

By Committee on Ways and Means

2-7


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

Section 1. K.S.A. 2010 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 the power to suspend an owner's right to vote on all issues when the owner is a developer who owns properties and is delinquent in the payment of assessments or fees; and

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

Sec. 2. K.S.A. 2010 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 any 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) This section shall take effect on and after January 1, 
2011.

Sec. 3. K.S.A. 2010 Supp. 58-4618 is hereby amended to read 
as follows: 58-4618. (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) posting any notice on the association's website;
(5) posting any notice on a bulletin board in the association's 
office or at other public locations that owners have access to at all 
times; or
(6) 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.
Sec. 4. K.S.A. 2010 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.