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February 15, 2018

Kansas House Committee on Local Government
Representative Kristey Williams, Chair

RE: 2018 HB 2629: Homes Associations Subject to Consumer Protection Act

Hearing Date: February 15, 2018

TESTIMONY IN OPPOSITION TO HB2629
OF RONALD W. NELSON

Chair Williams and members of the committee:

I am here today to speak against HB 2629, which would make the Kansas Consumer Protection Act apply against Kansas homes associations. Although I am not today appearing on its behalf, I am the current President of the Prairie Village Homes Association, having been a member of the board of directors for 10 years. I am also a City Councilor for the City of Prairie Village.

I am a practicing attorney in Johnson County with my focus in divorce and family law. In the past, however, I represented both individuals and homes associations regarding real estate contracts and litigation.

I want to talk with you today about why this bill, though well intentioned, does not properly consider the impact upon a large number of homes associations and organizations that do not fall into the often-held view of the out-of-control, overly controlling homes association.

People think of many things when they hear the phrase “homes association”: limitations, restrictions, prohibitions, and rules and regulations on style, appearance, landscaping, and uniformity. Sometimes people complain that homes associations are too powerful or too intrusive, or too overburdened with detailed rules and regulations about paint color, whether garage doors may be open and when, and other similar rules.

But what is a “homes association?” And how did they come about?

Homes associations are a relatively recent invention in historical terms. The first homes associations were created in the mid-to-late 1800s. And although homes associations started to become more common after World War II, it wasn't until the mid-1960s that the number of homes associations in the United States rose dramatically.

The Prairie Village Homes Association was one of the first homes associations created during the 1940s. The Prairie Village Homes Association was originally incorporated by the JC Nichols Company in March 1945. Bounded roughly by 75th Street on the South, 67th Street on the North, Mission Road on the East and Nall Avenue on the West, the Prairie Village Homes Association encompasses approximately 1700 homes, making it one of the largest homes associations in the Midwest.

Initially, the Prairie Village Homes Association was to perform a broad range powers and duties to provide many of the services that are now provided by the City of Prairie Village. But with the incorporation of the City of Prairie Village, the Prairie Village Homes Association – and other homes associations within the city limits of Prairie Village, like other similar homes associations in other cities throughout Kansas – ceded those broad powers and responsibilities to the city, leaving for the PVHA only general “look and feel” regulations to make sure that some uniformity in appearance could be maintained.

Unlike “modern” homes associations, established in the 1990s and later, “uniformity” in the 1940s and 1950s did not implicate the detailed regulations many attributes to homes associations developed from the 1990s and later.

Instead, the restrictions and limits provided for in the original Declaration of Restrictions for the Prairie Village Homes Association and other homes associations established around the same time, were modest.

For example, Section 2 of the PVHA Deed Restrictions states: “Any residence erected wholly or partially on any of the following lot or on any part or parts thereof, as indicated in this section, shall front or present a good frontage on the street or streets designated. . . .”

Section 3 of the PVHA Deed Restrictions required that, “Any residence erected wholly or partially on any of said lots hereby restricted shall cost not less than \$5,000.00.”

Section 11 provides that, “No livestock or poultry may be kept or maintained on any of the lots hereby restricted, without the consent in writing of J. C. Nichols Company.

One of the only sections dealing with “look and feel” to make sure that there was some uniformity in the homes built in the homes association area was that the homes could be no more than “one and one-half stories in height.” Other restrictions address window, porch, and vestibule projections, property line and street setbacks, and restrictions on the type and kind of outbuildings that could be constructed.

The Prairie Village Homes Association dues are set in the original deed restrictions – and cannot be changed without agreement of two-thirds of each one of the separate blocks of houses within the PVHA – making it virtually impossible to modify the dues structure or any of the restrictions set forth in the original set of deed restrictions. This means that the PVHA – and other similar homes associations – can only collect dues set when the association was originally established – for the PVHA, approximately \$1 to \$2 per month depending on the lot square footage. For example, the homes associations dues on my own home (which is one of the larger lots in the PVHA) is \$24 per year – meaning that the total intake for the 1700 home association is about \$35,000 per year.

My review of the bill raises several serious concerns about the impact upon older homes associations:

1. The bill defines a “consumer” as not only a current member of the homes association, but to include a “prospective purchaser, lessee, assignee, or recipient of a unit” within the common interest community (the definition of which includes homes associations) and a “co-obligor or surety for the unit owner.”

This broad definition of a “consumer” would expose homes associations to an almost limitless range of potential claimants and complainers.

2. The bill provides that if a “consumer” “believes that the board of directors . . . has violated the rights of the consumer as established by the uniform common interest owners bill of rights act,” that consumer may file a complaint.

The Uniform Common Interest Owners Bill of Rights Act provides, among other things, the kind and types of notice that must be given to owners, the procedures that must be used when conducting board of directors’ meetings and meetings of the members, and other basic procedural matters. Many, if not the vast majority of the membership on boards of directors of homes associations have no legal training, are unaware of the basic requirements of parliamentary procedures, and often carry on the meetings of the association in an informal manner – often because no members of the association are in attendance. It is difficult to recruit members for volunteer committees of homes associations, must less for the boards of directors of homes associations. Over the last 10 years, interest in serving on homes associations boards of directors and volunteer committees has plunged, leading small homes associations to have to dig into their already meager incomes to pay for those amenities they must provide – such as landscaping, watering, and weed control on homes association islands.

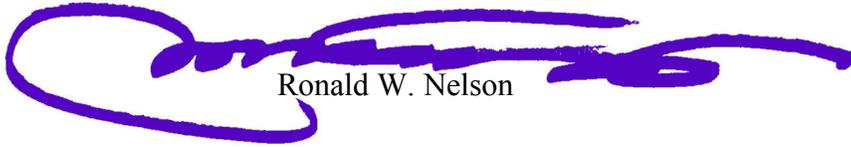
Allowing these kinds of actions against volunteer boards by the wide-range of potential complainants that this bill includes would devastate the ability of homes associations to bring in anyone to carry on the basic governance of the homes association.

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3. The bill requires an annual registration fee be paid by each homes association “based on the number of units in the common interest community as determined by the attorney general, but in no case greater than \$500.”

As mentioned before, as one of the largest homes associations in the Midwest, the Prairie Village Homes Association would clearly be in the top-tier registrations fees of any homes associations. And without its limited budget – that cannot be expanded or modified – even \$500 per year would severely strain the already tenuous balance for older homes associations that must preserve their reserves for ever into the future – all without hope to bring in more funds.

While I am sure that the sponsors of this bill have the best of intentions in putting forward this bill, the unintended consequences for a large number of older homes associations would be devastating to them, and far outweigh the benefits that would be gained by passing this bill.



Ronald W. Nelson