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February 23, 2018

Representative Kristey Williams, Chairman  
Local Government Committee  
Kansas House of Representatives  
Kansas State Capitol  
300 SW 10<sup>th</sup> Street, Room 165-W  
Topeka, KS 66612

Re: House Bill 2629

Dear Representative Williams:

Thank you for the opportunity to supplement my February 15 testimony about this Bill.

First, it is noteworthy that not one aggrieved home owner attended the hearing.

Second, and most importantly, this Bill should be rejected because it will discourage volunteers from serving as directors of their home owners associations. The combination of inadvertently violating the Consumer Protection Act and investigations by the Attorney General will discourage any knowledgeable home owners from volunteering.

Representative Schwab and I have discussed home owners associations in his district. I understand some constituents were ignored. However, education, rather than regulation, is the key to a successful home owners association. With adequate time and education (as discussed below), we can reach common ground for the benefit of home owners. However, this Bill as drafted creates enormous unintended consequences. Here's why:

Representative Schwab testified the Bill is intended to insert an enforcement mechanism into the Common Interest Owners Bill of Rights, K.S.A. § 58-4601. He said H.B. 2629 isn't intended to delve into real estate matters. He offered an example of a home owner's lawn sprinkler which sprays onto a neighbor's lawn. He said H.B. 2629 would not insert the Attorney General's office or the Consumer Protection Act into this type of problem.

I disagree. The majority of my law practice involves working with home owners associations and their members. Representative Schwab's example is a valid illustration of what we describe as "neighbor-to-neighbor" disputes. We hear complaints about barking dogs, fences, trailers, dying landscaping, outbuildings, and vehicles of all sorts, just to name a few.

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The attached items illustrate how neighbor-to-neighbor and other real estate issues will be affected by H.B. 2629.

Exhibit A is a portion of restrictive covenants that apply to the Proponent's home in Olathe. This portion is a common example of covenants affecting thousands of homes in Johnson County. Please note paragraph R, which says:

"R. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. . . ."

Exhibit B is a portion of the document in the Proponent's subdivision which creates his home owners association. Subparagraph (f) authorizes his association to enforce the neighborhood's covenants. Again, this enforcement duty is common throughout Johnson County.

Exhibit C is Section 58-4604 of the Bill of Rights. This section imposes a duty of "good faith" on home owners associations. The legislative history for Section 4604 (Exhibit D) underscores the complicated nature of "good faith."

Assume this home owner complains to his home owners association that the neighboring lawn sprinkler is noxious, offensive, and an annoyance and nuisance. The home owner demands action by the board of directors. He contends directors have a duty to enforce the subdivision's covenants.

If H.B. 2629 is enacted, this home owner can complain to the Attorney General that his home owners association violated the Bill of Rights. He can contend his association did not act in good faith because it refused to enforce a legitimate restrictive covenant.

How will the Attorney General react to his call? What is the authority of the Attorney General in this issue? Will the Attorney General request a response from each board member?

The Bill of Rights is based on a model prepared by the Commissioner of Uniform State Laws. Before it became law, the Bill of Rights was thoroughly studied by a committee appointed by the Kansas Judicial Council. Neither the drafters nor the committee included any reference to the Consumer Protection Act. Neither group included any oversight by the Attorney General's office. Indeed, the Attorney General's office participated in the committee.

As you heard, more than 30 states regulate home owners associations. Kansas should not experiment with a law that has not been tested in states where home owners associations are much more prevalent. I encourage your Committee to research experiences of other states. H.B. 2629 does not have a comparable counterpart in other states.

Representative Kristey Williams, Chairman

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I urge you to withhold action until you can describe the scope of the problem, if any. On February 15, you received written testimony from more than 15 representatives of home owners associations who asked you to oppose this Bill or to study potential substitutes. Those opponents represent thousands of Kansas home owners. In contrast, there was generalized testimony from one Proponent asking for unspecified relief. Disparity in this testimony shows there is no need for change to the current law.

If you're looking for a method to resolve these disputes, I suggest modifying the provisions of the law relating to alternative dispute resolution (Section 58-4621).

Kansas home owners associations and your Committee have common goals. Home owners associations strive to maintain and preserve home values. Homes are a primary source of tax revenue in our state. Therefore, vibrant home owners associations are important to local governments and your Committee.

Thank you for your consideration.

Sincerely,



Rod Hoffman

RJH:vh

Enclosures

cc w/enc: Rep. Scott Schwab

thereof. In the event the owner fails or refuses to remove the animal, the Board of Directors may cause the animal to be removed.

N. No school or other buses, motor homes, mobile homes, autos, campers, camper-trailers, recreational vehicles, tractors or trucks shall be parked at the curb for more than twenty-four (24) hours at any one time. No school bus, camper, motor home, mobile home, camper, camper-trailer, recreational vehicle, tractor, truck with a capacity in excess of 3/4 ton, truck with camper attached or boat shall be parked or left outside on any lot for more than twenty-four (24) hours at any one time; such vehicles shall be stored in a garage if kept on a lot for more than twenty-four (24) hours. No major repair work shall be done on any car, truck, trailer or other vehicle while parked outside the garage or in the street. No autos, buses, boats, trucks, race cars, wrecked cars, modified stock cars, trailers, or vehicles that are not in operating condition, are not registered or whose presence might create an unsightly appearance or create a nuisance or be a hazard to life or health shall be allowed to be parked or left on any lot or at the curb. No trash, old appliances, junk or other refuse shall be allowed to accumulate on any lot.

O. All doors on garages shall be kept closed, except when opened for the purpose of parking or removal of motor vehicles.

P. No exterior clotheslines may be erected or maintained on any of the lots hereby restricted. Flagpoles may be erected and maintained only with the approval of the ACC with respect to location, design, height and color.

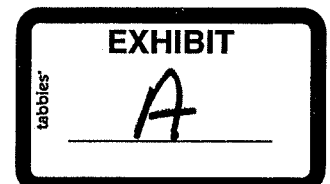
~~Q. No exterior Christmas lights and/or holiday decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 15th of each calendar year.~~

R. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Outside trash burning shall be prohibited, except on lots that have residences under construction.

S. No radio or television aerial wire, antenna, antenna tower, satellite dish (in excess of 36" in diameter) or solar or other energy collector, whether permanent or temporary, shall be maintained outside of any structure. The ACC shall have the right to approve the location and screening of any allowable satellite dish.

T. No tanks for the storage of oil or other fluids may be maintained on any portion of the premises above or below the surface of the ground.

U. No trash, ashes, or other refuse shall be thrown, dumped or placed upon any undeveloped portion of the subdivision.



#### SECTION 4. OTHER LANDS - HOW THEY MAY BE ADDED

Developer, at its discretion, may from time to time add to the District such land as now or hereinafter owned or approved for addition by it, provided that the land so added to the District shall at that time be bound by all of the terms of this Declaration and all amendments thereto.

#### SECTION 5. USE OF COMMON AREAS

The Owners of land within the District shall have the exclusive right to the use of all Common Areas within the District as it from time to time exists.

The PARKHILL MANOR HOMES ASSOCIATION shall have the right and the power to make reasonable rules and regulations which shall govern the use of the Common Areas and implement the terms of this Declaration and the Declaration of Restrictions as the context requires.

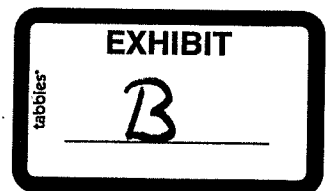
#### SECTION 6. POWERS AND DUTIES OF THE ASSOCIATION

(1) The Association shall have the following powers and duties:

(a) To care for, spray, trim, protect, replace and replant trees, shrubbery, bushes, flowers, grass and sod in the Common Areas set aside for the exclusive use of the Owners in the District.

(b) To provide, maintain, protect and, when necessary, design, construct, reconstruct and replace protective lighting within the District when adequate service of that type is not available from any public source.

(c) To provide for the maintenance of any gateways, entrances, drinking fountains, swimming pools (and related amenities) and ornamental



features now existing or which may hereafter be erected or created in said District in any public street or park, or on any land set aside for the exclusive use of the Owners in the District; and also to provide for the maintenance of any streams or natural water-courses within the District.

(d) To provide for the operation and maintenance of and also to establish and enforce rules for the use by the members of any tennis courts, swimming pools, playgrounds, beach areas, green areas and parking areas which now exist or which may hereinafter be included, created, owned or erected by the Association in the District.

(e) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it; and to pay such taxes as may be assessed against land in the semipublic places or common areas within the District.

(f) To enforce, either in its own name or in the name of any Owner within the District, any or all building or other restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such District, either in the form as originally placed thereon or as modified subsequently thereto, and impose and collect fines for violations of such restrictions; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or reservations are set

House Status: Adjourned until Monday, February 05, 2018 at 11:00 a.m.  
Senate Status: Adjourned until Monday, February 05, 2018 at 02:30 p.m.

# 2017 Statute

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**58-4604. Same; duty of good faith.** (a) Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement.

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

**History:** L. 2010, ch. 116, § 4; July 1.

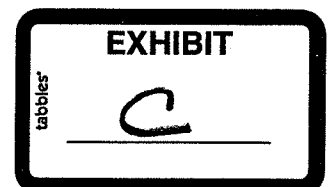
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**SECTION 4. OBLIGATION OF GOOD FAITH.** Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement.

**Kansas Comment**

The Committee made no changes in the uniform act. This is a mandatory provision.

**ULC Comment**

This section sets forth a basic principle running throughout this Act: in transactions involving common interest communities, good faith is required in the performance and enforcement of all agreements and duties. Good faith, as used in this Act, means observance of two standards: "honesty in fact," and observance of reasonable standards of fair dealing. While the term is not defined, the term is derived from and used in the same manner as in Sections 2-103(i)(b) and 7-404 of the Uniform Commercial Code.

