

Substitute for HOUSE BILL No. 2826

By Committee on Commerce and Labor

2-26

9 AN ACT concerning homeowners' associations and associations of apart-
10 ment owners; relating to certain duties, required procedures, attorney
11 fees, dispute resolution and duties of the attorney general.
12

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

14 Section 1. (a) For the purposes of this act:

15 (1) "Act" means the homeowners' association act.

16 (2) "Dispute" means a disagreement regarding the rights or obliga-
17 tions of the homeowners' association or the home owners, apartment
18 owners or residents.

19 (3) "Homeowner's association" means a for-profit homeowners' as-
20 sociation, a non-profit homeowners' association as defined in K.S.A. 60-
21 3611, and amendments thereto, and an association of apartment owners
22 as defined in K.S.A. 58-3102, and amendments thereto.

23 (4) "Mediation" shall have the meaning ascribed to it in K.S.A. 5-
24 502(f), and amendments thereto.

25 (5) "Resident" means a real property owner or lessee whose property
26 is subject to the jurisdiction of a non-profit homeowners' association as
27 defined in K.S.A. 60-3611, and amendments thereto. The term shall not
28 include persons renting or leasing a home, apartment or condominium
29 unit subject to the authority of a for-profit homeowners' association or an
30 association of apartment owners.

31 (b) Sections 1 through 6, and amendments thereto, shall be known
32 and may be cited as the homeowners' association act.

33 Sec. 2. The governing board of a homeowners' association, herein-
34 after referred to as the board of directors, is subject to the following:

35 (a) The board of directors may amend the by-laws of the association
36 only upon approval of a majority of homeowners, apartment owners or
37 residents voting in person or by proxy at a duly-noticed and duly-consti-
38 tuted homeowners, apartment owners or residents meeting.

39 (b) The board of directors may not vary any obligations imposed by
40 state law on the homeowners' association or its board of directors by
41 creating or amending by-laws or by any other authorization.

42 (c) All elections for the membership on the board of directors shall
43 be by secret ballot and conducted in a manner to assure the integrity of

1 the election process.

2 (d) All meetings of the board of directors shall be open to all hom-
3 owners, apartment owners or residents of a homeowners' association.

4 (e) The board of directors shall not meet in closed executive session
5 unless it is in consultation with its attorneys about matters properly a part
6 of the attorney-client relationship or if it involves personnel matters of a
7 confidential nature.

8 (f) The board of directors, at least 15 days before adopting any pro-
9 posed assessments, special charges or fees of general application, shall
10 give in writing to the homeowners, apartment owners or residents, full
11 disclosure concerning any proposed assessments, special charges or fees
12 of general application. All homeowners, apartment owners or residents
13 shall be given the opportunity to comment on such proposals. Assess-
14 ments, charges and fees shall be equitable and proportionate to the re-
15 spective interests of the homeowners, apartment owners or residents.

16 Sec. 3. Except as provided in this section, within 60 days of the ef-
17 fective date of this act, a homeowners' association shall adopt rules to
18 implement the following:

19 (a) The selection of one board member and two nonboard members
20 who are homeowners, apartment owners or residents of the homeowners'
21 association to receive and tally the ballots cast for the election of members
22 of the board of directors, to verify the number of votes received against
23 the number of persons voting and proxies voted and to report the results
24 to the board of directors and for publication of the results to the hom-
25 eowners, apartment owners or residents of such homeowners' association;

26 (b) provide a homeowner, apartment owner or resident with copies
27 of association records, including minutes of meetings, no later than 10
28 business days following the receipt of a written request by a homeowner,
29 apartment owner or resident;

30 (c) provide a homeowner, apartment owner or resident with copies
31 of all budget and financial records, no later than 10 business days follow-
32 ing the receipt of a written request by a homeowner, apartment owner
33 or resident;

34 (d) provide for a voluntary and nonbinding dispute resolution pro-
35 cedure for disputes between and among the homeowners' association and
36 its homeowners, apartment owners or residents, to be fully implemented
37 no later than one year following the effective date of this act;

38 (e) provide homeowners, apartment owners or residents information
39 concerning their rights under this act; and

40 (f) provide a homeowner, apartment owner or resident with a list of
41 all the homeowners, apartment owners or residents in the association
42 along with their current mailing addresses, no later than 10 business days
43 following the receipt of a written request by a homeowner, apartment

1 owner or resident.

2 Sec. 4. In a civil action by a homeowner, apartment owner or resi-
3 dent against a homeowners' association, should the plaintiff homeowner,
4 apartment owner or resident prevail, the court shall award such hom-
5 eowner, apartment owner or resident actual costs and expenses, including
6 reasonable attorney fees.

7 Sec. 5. (a) Upon the written request of any homeowner, apartment
8 owner or resident, a homeowners' association shall participate in medi-
9 ation of a dispute. A homeowners' association may make a written request
10 for mediation with a homeowner, apartment owner or resident. The hom-
11 eowner's, apartment owner's or resident's participation in mediation shall
12 be optional.

13 (b) If the parties agree to mediation, a mediator shall be appointed
14 by mutual agreement of the homeowners' association and the hom-
15 eowner, apartment owner or resident within 60 days of the written
16 request.

17 (c) Prospective mediators shall be required to disclose to the parties
18 the mediator's education, training, relevant experience and professional
19 and community affiliations, the names of any participants in mediation
20 conducted by the mediator who are willing to act as references and any
21 possible conflicts of interest.

22 (d) If the parties cannot agree upon the selection of a mediator, a
23 mediator shall be designated by the attorney general.

24 (e) Mediation shall not exceed two hours in duration unless the par-
25 ties agree to a longer period. Costs of the mediation shall be paid $\frac{2}{3}$ by
26 the homeowners' association and $\frac{1}{3}$ by the homeowner, apartment owner
27 or resident.

28 (f) Parties at their own expense may be assisted by legal counsel at
29 the mediation.

30 (g) The term of any settlement agreement shall be open to disclosure
31 to any homeowner, apartment owner or resident.

32 (h) The attorney general shall maintain a list of qualified mediators
33 for purposes of this act.

34 (i) The provisions of this section shall not apply to any homeowners'
35 association with an annual budget less than \$100,000 unless the hom-
36 eowners' association opts in to the provisions of this section.

37 Sec. 6. (a) The attorney general shall develop written educational
38 materials and a website with an interactive question-and-answer feature
39 for the purpose of providing guidance to homeowners' associations and
40 their homeowners, apartment owners or residents regarding best prac-
41 tices of corporate governance including the following:

42 (1) Election procedures including secret ballots, absentee ballots,
43 proxies and election monitoring procedures;

- 1 (2) appropriateness of executive sessions during board meetings;
- 2 (3) necessity for providing advance notice to homeowners, apartment
- 3 owners or residents prior to board consideration of certain matters;
- 4 (4) prompt disclosure of board minutes to homeowners, apartment
- 5 owners or residents;
- 6 (5) necessity for providing access to homeowners, apartment owners
- 7 or residents to association records;
- 8 (6) appropriate procedures for the approval of amendments to by-
- 9 laws;
- 10 (7) conflict of interest rules covering directors, officers, employees
- 11 and committee members in connection with homeowners' association
- 12 business and homeowner's, apartment owner's or resident's concerns;
- 13 (8) appropriate rules regarding the possible shifting of legal costs to
- 14 and among homeowners, apartment owners or residents, directors per-
- 15 sonally and homeowners' associations;
- 16 (9) appropriate utilization of mediation procedures; and
- 17 (10) other matters deemed to be important in the overall governance
- 18 and operation of a homeowners' association.
- 19 (b) Homeowners' associations shall notify their homeowners, apart-
- 20 ment owners or residents of the availability of this information and the
- 21 website no later than the next annual meeting following the effective date
- 22 of this act.
- 23 Sec. 7. This act shall take effect and be in force from and after its
- 24 publication in the Kansas register.