

*As Amended by Senate Committee*

*Session of 2011*

**SENATE BILL No. 114**

By Committee on Ways and Means

2-7

1 AN ACT concerning homeowners associations; amending K.S.A. 2010  
2 Supp. 58-4608, **58-4610** and 58-4618 and repealing the existing  
3 sections; ~~also repealing K.S.A. 2010 Supp. 58-4610.~~

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 58-4608 is hereby amended to read  
7 as follows: 58-4608. (a) The association shall:

8 (1) Adopt and may amend bylaws and may adopt and amend rules;

9 (2) adopt and may amend budgets;

10 (3) have the power to require that disputes between the association  
11 and unit owners or between two or more unit owners regarding the  
12 common interest community be submitted to nonbinding alternative  
13 dispute resolution as a prerequisite to commencement of a judicial  
14 proceeding;

15 (4) promptly provide notice to the unit owners of any legal  
16 proceedings in which the association is a party other than proceedings  
17 involving enforcement of rules, covenants or declarations of  
18 restrictions, or to recover unpaid assessments or other sums due the  
19 association;

20 (5) establish a reasonable method for unit owners to communicate  
21 among themselves and with the board of directors concerning the  
22 association;

23 (6) have the power to suspend any right or privilege of a unit  
24 owner that fails to pay an assessment, but may not:

25 (A) Deny a unit owner or other occupant access to the owner's  
26 unit;

27 ~~(B) suspend a unit owner's right to vote except involving issues of~~  
28 ~~assessments and fees; or~~

29 ***(B) suspend a unit owner's right to vote except involving issues***  
30 ***of assessments and fees; or***

31 ~~(C)~~ ***(C)*** withhold services provided to a unit or a unit owner by  
32 the association if the effect of withholding the service would be to  
33 endanger the health, safety, or property of any person; ~~and~~

1       (7) *have the power to suspend an owner's right to vote on all*  
2 *issues when the owner is a developer who owns properties and is*  
3 *delinquent in the payment of assessments or fees; and*

4       ~~(7)~~ (8) have all other powers that may be exercised in this state by  
5 organizations of the same type as the association.

6       (b) The board of directors may determine whether to take  
7 enforcement action by exercising the association's power to impose  
8 sanctions or commencing an action for a violation of the declaration,  
9 bylaws, and rules, including whether to compromise any claim for  
10 unpaid assessments or other claim made by or against it. The board of  
11 directors does not have a duty to take enforcement action if it  
12 determines that, under the facts and circumstances presented:

13       (1) The association's legal position does not justify taking any or  
14 further enforcement action;

15       (2) the covenant, restriction, or rule being enforced is, or is likely  
16 to be construed as, inconsistent with law;

17       (3) although a violation may exist or may have occurred, it is not  
18 so material as to be objectionable to a reasonable person or to justify  
19 expending the association's resources; or

20       (4) it is not in the association's best interests to pursue an  
21 enforcement action.

22       (c) The board of directors' decision under subsection (b) not to  
23 pursue enforcement under one set of circumstances does not prevent  
24 the board of directors from taking enforcement action under another set  
25 of circumstances, but the board of directors may not be arbitrary or  
26 capricious in taking enforcement action.

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

28       ***Sec. 2. K.S.A. 2010 Supp. 58-4610 is hereby amended to read as***  
29 ***follows: 58-4610. (a) The bylaws of the association must:***

30       ***(1) Provide the number of members of the board of directors and***  
31 ***the titles of the officers of the association;***

32       ***(2) provide for election by the board of directors or, if the***  
33 ***declaration requires, by the unit owners, of a president, treasurer,***  
34 ***secretary, and any other officers of the association the bylaws specify;***

35       ***(3) specify the qualifications, powers and duties, terms of office,***  
36 ***and manner of electing and removing board of directors' members***  
37 ***and officers and filling vacancies;***

38       ***(4) specify the powers the board of directors or officers may***  
39 ***delegate to other persons or to a managing agent;***

- 1       (5) *specify the officers who may prepare, execute, certify, and*  
2 *record amendments to the declaration on behalf of the association;*  
3       (6) *specify a method for the unit owners to amend the bylaws;*  
4       (7) *contain any provision necessary to satisfy requirements in*  
5 *this act or the declaration concerning meetings, voting, quorums, and*  
6 *other activities of the association; and*  
7       (8) *provide for any matter required by law of this state other*  
8 *than this act to appear in the bylaws of organizations of the same type*  
9 *as the association.*  
10       (b) *Subject to the declaration and this act, the bylaws may*  
11 *provide for any other necessary or appropriate matters, including, but*  
12 *not limited to, an election oversight committee and other matters that*  
13 *could be adopted as rules.*  
14       (c) *The requirements of this section shall not apply to any common*  
15 *interest community for a recreational lake development which contains*  
16 *more than 500 units where less than 50% of such units contain a*  
17 *residence.*  
18       ~~(e)~~ (d) *This section shall take effect on and after January 1,*  
19 *2011.*  
20       Sec. ~~2.~~ 3. K.S.A. 2010 Supp. 58-4618 is hereby amended to read  
21 as follows: 58-4618. (a) An association shall deliver any notice  
22 required to be given by the association under this act to any mailing or  
23 electronic mail address a unit owner designates. Otherwise, the  
24 association may deliver notices by:  
25       (1) Hand delivery to each unit owner;  
26       (2) hand delivery, United States mail postage paid, or  
27 commercially reasonable delivery service to the mailing address of  
28 each unit;  
29       (3) electronic means, if the unit owner has given the association an  
30 electronic address; ~~or~~  
31       (4) *posting any notice on the association's website;*  
32       (5) *posting any notice on a bulletin board in the association's*  
33 *office or at other public locations that owners have access to at all*  
34 *times; or*  
35       ~~(4)~~ (6) any other method reasonably calculated to provide notice to  
36 the unit owner.  
37       (b) The ineffectiveness of a good faith effort to deliver notice by  
38 an authorized means does not invalidate action taken at or without a  
39 meeting.

1       Sec.~~3~~. 4. K.S.A. 2010 Supp. 58-4608, 58-4610 and 58-4618 are  
2 hereby repealed.

3       Sec.~~4~~. 5. This act shall take effect and be in force from and after  
4 its publication in the statute book.  
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