

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2557

As Amended by House Committee on Local
Government

Brief*

HB 2557 would amend the Kansas Uniform Common Interest Owners Bill of Rights Act by establishing restrictions on members of the board of directors or property manager of a common interest community with regard to arranging loans, and by establishing a notification process that must be followed before foreclosure could be initiated.

In addition, the bill would require the property manager appointed by the board of directors to exercise the same degree of care and loyalty to the association as required of the officers and members of the board of directors not appointed by the declaration or bylaws of the association.

Restrictions on Arranging Loans

Under the bill, members of the board of directors and the property manager of a common interest community would not be allowed to:

- Be paid a fee for arranging a loan from any person or financial institution; or
- Arrange a loan unless two-thirds of the unit owners present at a meeting vote in favor of the loan. All unit owners would have to be notified by certified mail, return receipt requested, of any meeting called to arrange a loan.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Notification Required Prior to Initiation of Foreclosure

The bill would prohibit initiation of foreclosure of liens made pursuant to the Apartment Ownership Act (KSA 58-3123), the Townhouse Ownership Act (KSA 58-3710), or any authority contained in a unit owners association declaration, unless the process below is followed:

- Prior to initiating foreclosure for unpaid fees and assessments, the unit owners association would have to file a lien against the unit, stating the then-current amount of fees and assessments due;
- Not less than 30 days written notice would have to be mailed to the unit owner of the intent of the association to file a lien unless the default is cured within the 30-day period. The notice would have to state the then-current amount of fees and assessments due;
- The notice would be required to be mailed to the last known address of the unit owner, and, if not the same, the notice also would be required to be mailed to the unit address. The bill also would require the notice be sent to any mortgagee of the unit owner if the mortgagee has requested such notice in writing; and
- All notices described above would have to be mailed by certified mail, return receipt requested.

Background

At the hearing before the House Committee on Local Government, Representatives Schwab and Grosserode testified in support of the bill, describing difficulties some of their constituents have experienced with homeowners' associations. A private citizen also testified in support of the bill.

Opponents testifying against the bill included an attorney who represents home associations, the president of a company that manages homeowners' associations, and a representative of the Kansas Credit Attorneys Association. Written testimony in opposition to the bill was provided by the presidents of two owners associations. No neutral testimony was presented.

The House Committee amended the bill to:

- Strike provisions that would have required the Consumer Protection Division of the Office of the Kansas Attorney General to investigate complaints from owners or lessees of units in common interest communities;
- Modify provisions related to loans;
- Strike provisions that would have required mediation prior to legal action, prohibited foreclosure, restricted the number of rental properties in a common interest community, allowed unit owners to remove or not renew the contract of a property manager by a two-thirds vote of all unit owners, and dissolve the common interest community by a two-thirds vote of all unit owners; and
- Establish a notification process that would have to be followed before foreclosure could be initiated.

The fiscal note prepared by the Division of the Budget on the bill as introduced is not applicable to the bill as amended by the House Committee. All costs were related to provisions that were stricken by the Committee.