

Approved: March 9, 2010
Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on March 1, 2010, in Room 144-S of the Capitol. Senator Ostmeyer introduced pages from Cheyenne County.

All members were present except:
Senator Oletha Faust-Goudeau- excused

Committee staff present:
Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Others attending:
See attached list.

SB 470 and HB 2472 - Kansas uniform common interest owners bill of rights act were discussed. .The consensus of the Committee was to work HB 2472 since both bills were identical except for one sentence. Senator Huntington explained amendments to HB 2472. She believes it gives homeowners minimum regulation with protection for cause of action. Questions and answers followed.

Senator Wagle moved to include a section in the bill allowing a secret ballot. Senator Huntington seconded the motion. The motion carried.

Senator Wagle questioned what this legislation would trump on a functional operating community association. Mike Heim, revisor, answered and explained the legislation. (Attachment 1)

The percentage of home owners required at a meeting was discussed. Senator Kultala moved that under 100 home owners 25% be present and over 100 home owners 10% be present. Senator Huntington seconded the motion. The motion failed.

Senator Huntington moved to accept the amendment to new section 8, line 9. Senator Huelskamp seconded the motion. The motion passed.

Senator Huntington moved to accept the amendment to new section 8, line 17. Senator Wagle seconded the motion. The motion passed.

Senator Huntington moved to accept the amendment to new section 10 (b), line 18. Senator Petersen seconded the motion. The motion passed.

Senator Huntington moved to accept the amendment to new section 12 (c), line 34. The motion was seconded by Senator Kultala. The motion passed.

Senator Huntington moved to accept the amendment to new section 14 (6), line 15. Senator Kultala seconded the motion. The motion passed.

Senator Wagle moved to remove new section 22 lines 21, 22, and 23. The motion was seconded by Senator Huelskamp. The motion passed.

The next meeting is scheduled for March 2, 2010.

The meeting was adjourned at 10:30 a.m..



As Amended by House Committee

Session of 2010

HOUSE BILL No. 2472

By Committee on Local Government

1-19

10 AN ACT enacting the Kansas uniform common interest owners bill of
11 rights act; amending K.S.A. 58-3119 and 58-3120 and repealing the
12 existing sections; also repealing K.S.A. 2009 Supp. 58-3830.
13

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

15 New Section 1. (a) Sections 1 through 23, and amendments thereto,
16 shall be known as the Kansas uniform common interest owners bill of
17 rights act.

18 (b) The legislature finds as a matter of public policy:

19 (1) That a significant and increasing number of Kansans live in com-
20 mon interest communities;

21 (2) that effective operation of these common interest communities is
22 in the interest of their owners, residents, and the state; and

23 (3) that the adoption of uniform rules to govern the rights and duties
24 of unit owners, associations, and developers will help to ensure that com-
25 mon interest communities operate effectively and fairly.

26 (c) The public purposes of this act are to establish uniform rules of
27 law to clarify the rights and duties of unit owners and associations in all
28 forms of common interest communities, to provide for the effective op-
29 eration of common interest communities in the interest of their owners
30 and their residents and to address current and potential areas of conflict
31 and tension between unit owners and associations, boards and managers
32 in a comprehensive and balanced manner.

33 New Sec. 2. As used in this act:

34 (a) "Assessment" means the sum attributable to each unit and due to
35 the association pursuant to the budget adopted under section 19, and
36 amendments thereto.

37 (b) "Association" means the unit owners association.

38 (c) "Board of directors" means the body, regardless of name, desig-
39 nated in the declaration or bylaws which has power to act on behalf of
40 the association.

41 (d) "Bylaws" means the instruments, however denominated, that
42 contain the procedures for conduct of the affairs of the association, re-
43 gardless of the form in which the association is organized, including any

Proposed Amendments

Prepared by: Mike Heim
Revisor of Statutes
Office
February 26, 2010

z2472h1.pdf

Senate Local Government

3-1-2010

Attachment 1-1

1 amendments to the instruments.

2 (e) "Common interest community" means real estate described in a
3 declaration with respect to which a person, by virtue of the person's own-
4 ership of a unit, is obligated to pay for a share of real estate taxes, insur-
5 ance premiums, maintenance, or improvement of, or services or other
6 expenses related to, common elements, other units, or other real estate
7 described in that declaration. The term does not include an arrangement
8 described in section 7, and amendments thereto. For purposes of this
9 paragraph, ownership of a unit does not include holding a leasehold
10 interest.

11 (f) "Declarant" means a person or group of persons acting in concert
12 that:

13 (1) As part of a common promotional plan, offers to dispose of the
14 interest of the person or group of persons in a unit not previously disposed
15 of; or

16 (2) reserves or succeeds to any declarant right.

17 (g) "Declaration" means the instrument, however denominated, that
18 creates a common interest community, including any amendments to that
19 instrument.

20 (h) "Limited common element" means a portion of the common el-
21 ements allocated for the exclusive use of one or more but fewer than all
22 of the units.

23 (i) "Person" means an individual, corporation, estate, trust, partner-
24 ship, limited liability company, association, joint venture, public corpo-
25 ration, government or governmental subdivision, agency, or instrumen-
26 tality, or any other legal or commercial entity. In the case of a land trust,
27 the term means the settlor of the trust rather than the trustee.

28 (j) "Record", used as a noun, means information that is inscribed on
29 a tangible medium or that is stored in an electronic or other medium and
30 is retrievable in perceivable form.

31 (k) "Residential purposes" means use for dwelling or recreational
32 purposes, or both.

33 (l) "Rule" means a policy, guideline, restriction, procedure, or regu-
34 lation of an association, however denominated, which is not set forth in
35 the declaration or bylaws and which governs the conduct of persons or
36 the use or appearance of property.

37 (m) "Unit" means a physical portion of the common interest com-
38 munity designated for separate ownership or occupancy.

39 (n) "Unit owner" means a person that owns a unit.

40 New Sec. 3. Except as expressly provided in this act, the provisions
41 of this act shall be mandatory and apply notwithstanding contrary provi-
42 sions in the declaration or bylaws of a common interest community and
43 shall not be varied or waived by agreement.

1 New Sec. 4. Every contract or duty governed by this act imposes an
2 obligation of good faith in its performance or enforcement.

3 New Sec. 5. This act, and amendments thereto, apply to all common
4 interest communities that contain 12 or more units that may be used for
5 residential purposes and are created within this state after the effective
6 date of this act.

7 New Sec. 6. (a) This act, and amendments thereto, apply to all com-
8 mon interest communities that contain 12 or more units that may be used
9 for residential purposes created in this state before the effective date of
10 this act; but this act, and amendments thereto, do not apply with respect
11 to actions or decisions of an association or its board of directors concern-
12 ing events and circumstances occurring before the effective date of this
13 act.

14 (b) This act, and amendments thereto, do not invalidate existing pro-
15 visions of the declaration, bylaws, plats or plans of those common interest
16 communities; provided, however, the provisions of the declaration or by-
17 laws of a common interest community that are contrary to the mandatory
18 provisions of this act, and amendments thereto, may not be enforced with
19 respect to events and circumstances occurring after the effective date of
20 the act.

21 (c) The declaration, bylaws, plats or plans of any common interest
22 community created before the effective date of this act may be amended
23 to achieve any result permitted by this act, regardless of what applicable
24 law provided before the effective date of this act.

25 New Sec. 7. (a) An arrangement between the associations for two or
26 more common interest communities to share the costs of real estate taxes,
27 insurance premiums, services, maintenance or improvements of real es-
28 tate, or other activities specified in their arrangement or declarations does
29 not create a separate common interest community.

30 (b) An arrangement between an association and the owner of real
31 estate that is not part of a common interest community to share the costs
32 of real estate taxes, insurance premiums, services, maintenance or im-
33 provements of real estate, or other activities specified in their arrange-
34 ment does not create a separate common interest community. However,
35 assessments against the units in the common interest community required
36 by the arrangement must be included in the periodic budget for the
37 common interest community, and the arrangement must be disclosed in
38 all public offering statements and resale certificates required by this act.

39 (c) A covenant that requires the owners of separately owned parcels
40 of real estate to share costs or other obligations associated with a party
41 wall, driveway, well, or other similar use does not create a common in-
42 terest community unless the owners otherwise agree.

43 New Sec. 8. (a) The association shall:

- 1 (1) Adopt and may amend bylaws and may adopt and amend rules;
 2 (2) adopt and may amend budgets;
 3 (3) have the power to require that disputes between the association
 4 and unit owners or between two or more unit owners regarding the com-
 5 mon interest community be submitted to nonbinding alternative dispute
 6 resolution as a prerequisite to commencement of a judicial proceeding;
 7 (4) promptly provide notice to the unit owners of any legal proceed-
 8 ings in which the association is a party other than proceedings involving
 9 enforcement of rules, or to recover unpaid assessments or other sums due
 10 the association;
 11 (5) establish a reasonable method for unit owners to communicate
 12 among themselves and with the board of directors concerning the
 13 association;
 14 (6) have the power to suspend any right or privilege of a unit owner
 15 that fails to pay an assessment, but may not:
 16 (A) Deny a unit owner or other occupant access to the owner's unit;
 17 (B) suspend a unit owner's right to vote; or
 18 (C) withhold services provided to a unit or a unit owner by the as-
 19 sociation if the effect of withholding the service would be to endanger
 20 the health, safety, or property of any person; and
 21 (7) have all other powers that may be exercised in this state by or-
 22 ganizations of the same type as the association.
 23 (b) The board of directors may determine whether to take enforce-
 24 ment action by exercising the association's power to impose sanctions or
 25 commencing an action for a violation of the declaration, bylaws, and rules,
 26 including whether to compromise any claim for unpaid assessments or
 27 other claim made by or against it. The board of directors does not have
 28 a duty to take enforcement action if it determines that, under the facts
 29 and circumstances presented:
 30 (1) The association's legal position does not justify taking any or fur-
 31 ther enforcement action;
 32 (2) the covenant, restriction, or rule being enforced is, or is likely to
 33 be construed as, inconsistent with law;
 34 (3) although a violation may exist or may have occurred, it is not so
 35 material as to be objectionable to a reasonable person or to justify ex-
 36 pending the association's resources; or
 37 (4) it is not in the association's best interests to pursue an enforce-
 38 ment action.
 39 (c) The board of directors' decision under subsection (b) not to pur-
 40 sue enforcement under one set of circumstances does not prevent the
 41 board of directors from taking enforcement action under another set of
 42 circumstances, but the board of directors may not be arbitrary or capri-
 43 cious in taking enforcement action.

, covenants or declarations
of restrictions,

except on issues involving
assessments and fees

1-4

1 (d) ~~Unless expressly prohibited by the declaration, an association shall~~
2 ~~have the power to borrow money and assign its right to future income,~~
3 ~~including the right to receive assessments, as provided in this subsection.~~
4 ~~—At least 14 days prior to entering into any loan agreement on behalf of~~
5 ~~the association, the board of directors shall disclose to all unit holders the~~
6 ~~amount and terms of the loan and the estimated effect of such loan on~~
7 ~~any common expense assessment. Unit owners shall then have a reason-~~
8 ~~able opportunity to submit comments to the board of directors with re-~~
9 ~~spect to such loan.~~

10 ~~—If the board of directors proposes to enter into a loan agreement on~~
11 ~~behalf of the association and to assign the right to future income as se-~~
12 ~~curity for such loan pursuant to this section, unit owners of units to which~~
13 ~~at least a majority of the votes in an association are allocated, or any larger~~
14 ~~percentage or fraction stated in the declaration, must vote in favor of or~~
15 ~~agree to such assignment.~~

16 New Sec. 9. (a) In the performance of their duties, officers and
17 members of the board of directors appointed by the declarant shall ex-
18 ercise the degree of care and loyalty to the association required of a
19 trustee. Officers and members of the board of directors not appointed by
20 the declarant shall exercise the degree of care and loyalty to the associ-
21 ation required of an officer or director of a corporation organized, and
22 are subject to the conflict of interest rules governing directors and offi-
23 cers, under existing law. The standards of care and loyalty described in
24 this section apply regardless of the form in which the association is
25 organized.

26 (b) An association shall have a board of directors created in accord-
27 ance with its declaration or bylaws. Except as otherwise provided in the
28 declaration, the bylaws, subsection (c), or other provisions of this act, the
29 board of directors acts on behalf of the association.

30 (c) The board of directors may not:

31 (1) Amend the declaration except as provided by law other than this
32 act;

33 (2) amend the bylaws;

34 (3) terminate the common interest community;

35 (4) elect members of the board of directors, but may fill vacancies in
36 its membership for the unexpired portion of any term or, if earlier, until
37 the next regularly scheduled election of board of directors' members; or

38 (5) determine the qualifications, powers, duties, or terms of office of
39 board of directors' members.

40 New Sec. 10. (a) The bylaws of the association must:

41 (1) Provide the number of members of the board of directors and the
42 titles of the officers of the association;

43 (2) provide for election by the board of directors or, if the declaration

1 requires, by the unit owners, of a president, treasurer, secretary, and any
2 other officers of the association the bylaws specify;

3 (3) specify the qualifications, powers and duties, terms of office, and
4 manner of electing and removing board of directors' members and offi-
5 cers and filling vacancies;

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

8 (5) specify the officers who may prepare, execute, certify, and record
9 amendments to the declaration on behalf of the association;

10 (6) specify a method for the unit owners to amend the bylaws;

11 (7) contain any provision necessary to satisfy requirements in this act
12 or the declaration concerning meetings, voting, quorums, and other ac-
13 tivities of the association; and

14 (8) provide for any matter required by law of this state other than
15 this act to appear in the bylaws of organizations of the same type as the
16 association.

17 (b) Subject to the declaration and this act, the bylaws may provide
18 for any other necessary or appropriate matters, including matters that
19 could be adopted as rules.

20 New Sec. 11. (a) An association shall hold a meeting of unit owners
21 annually at a time, date, and place stated in or fixed in accordance with
22 the bylaws.

23 (b) An association shall hold a special meeting of unit owners to ad-
24 dress any matter affecting the common interest community or the asso-
25 ciation if its president, a majority of the board of directors or unit owners
26 having at least ~~25%~~ 10%, or any lower percentage specified in the bylaws,
27 of the votes in the association request that the secretary call the meeting.
28 If the association does not notify unit owners of a special meeting within
29 30 days after the requisite number or percentage of unit owners request
30 the secretary to do so, the requesting members may directly notify all the
31 unit owners of the meeting. Only matters described in the meeting notice
32 required by subsection (c) may be considered at a special meeting.

33 (c) An association shall notify unit owners of the time, date, and place
34 of each annual and special unit owners meeting not less than 10 days or
35 more than 60 days before the meeting date. Notice may be by any method
36 reasonably calculated to provide notice to the person. The notice for any
37 meeting must state the time, date, and place of the meeting and the items
38 on the agenda, including:

39 (1) A statement of the general nature of any proposed amendment
40 to the declaration or bylaws;

41 (2) any budget proposals or changes; and

42 (3) any proposal to remove an officer or member of the board of
43 directors.

, but not limited to, an election
oversight committee and other

1 (d) The minimum time to give notice required by subsection (c) may
2 be reduced or waived for a meeting called to deal with an emergency.

3 (e) Unit owners must be given a reasonable opportunity at any meet-
4 ing to comment regarding any matter affecting the common interest com-
5 munity or the association.

6 (f) The declaration or bylaws may allow for meetings of unit owners
7 to be conducted by telephonic, video, or other conferencing process, if
8 the alternative process is consistent with subsection (g) of section 12, and
9 amendments thereto.

10 New Sec. 12. (a) Meetings of the board of directors and committees
11 of the association authorized to act for the association must be open to
12 the unit owners except during executive sessions. The board of directors
13 and those committees may hold an executive session only during a regular
14 or special meeting of the board or a committee. No final vote or action
15 may be taken during an executive session. An executive session may be
16 held only to:

17 (1) consult with the association's attorney concerning legal matters;
18 (2) discuss existing or potential litigation or mediation, arbitration, or
19 administrative proceedings;

20 (3) discuss labor or personnel matters;

21 (4) discuss contracts, leases, and other commercial transactions to
22 purchase or provide goods or services currently being negotiated, includ-
23 ing the review of bids or proposals, if premature general knowledge of
24 those matters would place the association at a disadvantage; or

25 (5) prevent public knowledge of the matter to be discussed if the
26 board of directors or committee determines that public knowledge would
27 violate the privacy of any person.

28 (b) For purposes of this section, a gathering of board of directors at
29 which the board members do not conduct association business is not a
30 meeting of the board of directors. The board of directors and its members
31 may not use incidental or social gatherings of board members or any other
32 method to evade the open meeting requirements of this section.

33 (c) During the period of declarant control, the board of directors shall
34 meet at least ~~four~~ times a year. At least one of those meetings must be
35 held at the common interest community or at a place convenient to the
36 community. After termination of the period of declarant control, the
37 board of directors shall meet at least once a year. All board of director's
38 meetings must be at the common interest community or at a place con-
39 venient to the community unless the unit owners amend the bylaws to
40 vary the location of those meetings.

41 (d) At each board of director's meeting, the board shall provide a
42 reasonable opportunity for unit owners to comment regarding any matter
43 affecting the common interest community and the association.

two

1 (e) Unless the meeting is included in a schedule given to the unit
2 owners or the meeting is called to deal with an emergency, the secretary
3 or other officer specified in the bylaws shall give notice of each board of
4 directors meeting to each board member and to the unit owners. The
5 notice must state the time, date, place, and agenda of the meeting and,
6 except as provided in subsection (c) of sections 11 and 19, and amend-
7 ments thereto, be given at least five days prior to the meeting date.

8 (f) If any materials are distributed to the board of directors before
9 the meeting, the board at the same time shall make copies of those ma-
10 terials reasonably available to unit owners, except that the board need not
11 make available copies of unapproved minutes or materials that are to be
12 considered in executive session.

13 (g) Unless the declaration or bylaws otherwise provide, the board of
14 directors may meet by telephonic, video, or other conferencing process
15 if:

16 (1) The meeting notice states the conferencing process to be used
17 and provides information explaining how unit owners may participate in
18 the conference directly or by meeting at a central location or conference
19 connection; and

20 (2) the process provides all unit owners the opportunity to hear or
21 perceive the discussion and to comment as provided in subsection (d).

22 (h) After termination of any period when the declarant controls the
23 association, unit owners may amend the bylaws to vary the procedures
24 for meetings described in subsection (g).

25 (i) During the period of declarant control, instead of meeting, the
26 board of directors may act by unanimous consent as documented in a
27 record authenticated by all its members. The secretary promptly shall
28 give notice to all unit owners of any action taken by unanimous consent.
29 After termination of the period of declarant control, the board of directors
30 may act by unanimous consent only to undertake ministerial actions or to
31 implement actions previously taken at a meeting of the board.

32 (j) Even if an action by the board of directors is not in compliance
33 with this section, it is valid unless set aside by a court. A challenge to the
34 validity of an action of the board of directors for failure to comply with
35 this section may not be brought more than 60 days after the minutes of
36 the board of directors of the meeting at which the action was taken are
37 approved or the record of that action is distributed to unit owners, which-
38 ever is later.

39 New Sec. 13. (a) Unless the bylaws otherwise provide, a quorum is
40 present throughout any meeting of the unit owners if persons entitled to
41 cast 20% of the votes in the association:

- 42 (1) Are present in person or by proxy at the beginning of the meeting;
43 (2) have cast absentee ballots solicited in accordance with the asso-

1 ciation's procedures which have been delivered to the secretary in a timely
2 manner; or

3 (3) are present by any combination of paragraphs (1) and (2).

4 (b) Unless the bylaws specify a larger number, a quorum of the board
5 of directors is present for purposes of determining the validity of any
6 action taken at a meeting of the board of directors only if individuals
7 entitled to cast a majority of the votes on that board are present at the
8 time a vote regarding that action is taken. If a quorum is present when a
9 vote is taken, the affirmative vote of a majority of the board members
10 present is the act of the board of directors unless a greater vote is required
11 by the declaration or bylaws.

12 (c) Except as otherwise provided in the bylaws, meetings of the as-
13 sociation must be conducted in accordance with the most recent edition
14 of *Roberts' Rules of Order Newly Revised*.

15 New Sec. 14. (a) Unless prohibited or limited by the declaration or
16 bylaws, unit owners may vote at a meeting in person, by absentee ballot
17 pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or,
18 when a vote is conducted without a meeting, by electronic or paper ballot
19 pursuant to subsection (d).

20 (b) Unless contrary provisions of the declaration or bylaws so provide,
21 at a meeting of unit owners the following requirements apply:

22 (1) Unit owners who are present in person may vote by voice vote,
23 show of hands, standing, or any other method for determining the votes
24 of unit owners, as designated by the person presiding at the meeting.

25 (2) If only one of several owners of a unit is present, that owner is
26 entitled to cast all the votes allocated to that unit. If more than one of
27 the owners are present, the votes allocated to that unit may be cast only
28 in accordance with the agreement of a majority in interest of the owners,
29 unless the declaration expressly provides otherwise. There is majority
30 agreement if any one of the owners casts the votes allocated to the unit
31 without protest being made promptly to the person presiding over the
32 meeting by any of the other owners of the unit.

33 (3) Unless a greater number or fraction of the votes in the association
34 is required by this act or the declaration, a majority of the votes cast
35 determines the outcome of any action of the association.

36 (4) Subject to subsection (a), a unit owner may vote by absentee ballot
37 without being present at the meeting. The association promptly shall de-
38 liver an absentee ballot to an owner that requests it if the request is made
39 at least three days before the scheduled meeting. Votes cast by absentee
40 ballot must be included in the tally of a vote taken at that meeting.

41 (5) When a unit owner votes by absentee ballot, the association must
42 be able to verify that the ballot is cast by the unit owner having the right
43 to do so.

- 1 (c) Except as otherwise provided in the declaration or bylaws, the
2 following requirements apply with respect to proxy voting:
- 3 (1) Votes allocated to a unit may be cast pursuant to a directed or
4 undirected proxy duly executed by a unit owner.
- 5 (2) If a unit is owned by more than one person, each owner of the
6 unit may vote or register protest to the casting of votes by the other
7 owners of the unit through a duly executed proxy.
- 8 (3) A unit owner may revoke a proxy given pursuant to this section
9 only by actual notice of revocation to the person presiding over a meeting
10 of the association.
- 11 (4) A proxy is void if it is not dated or purports to be revocable without
12 notice.
- 13 (5) A proxy is valid only for the meeting at which it is cast and any
14 recessed session of that meeting.
- 15 (6) A person may not cast undirected proxies representing more than
16 15% of the votes in the association.
- 17 (d) Unless prohibited or limited by the declaration or bylaws, an as-
18 sociation may conduct a vote without a meeting. If a vote without a meet-
19 ing is permitted and used, the following requirements apply:
- 20 (1) The association shall notify the unit owners that the vote will be
21 taken by ballot.
- 22 (2) The association shall deliver a paper or electronic ballot to every
23 unit owner entitled to vote on the matter.
- 24 (3) The ballot must set forth each proposed action and provide an
25 opportunity to vote for or against the action.
- 26 (4) When the association delivers the ballots, it shall also:
- 27 (A) Indicate the number of responses needed to meet the quorum
28 requirements;
- 29 (B) state the percent of votes necessary to approve each matter other
30 than election of directors;
- 31 (C) specify the time and date by which a ballot must be delivered to
32 the association to be counted, which time and date may not be fewer than
33 three days after the date the association delivers the ballot; and
- 34 (D) describe the time, date, and manner by which unit owners wish-
35 ing to deliver information to all unit owners regarding the subject of the
36 vote may do so.
- 37 (5) Except as otherwise provided in the declaration or bylaws, a ballot
38 is not revoked after delivery to the association by death or disability or
39 attempted revocation by the person that cast that vote.
- 40 (6) Approval by ballot pursuant to this subsection is valid only if the
41 number of votes cast by ballot equals or exceeds the quorum required to
42 be present at a meeting authorizing the action.
- 43 (e) If the declaration requires that votes on specified matters affect-

, other than a member of the
board of directors.

1 ing the common interest community be cast by lessees rather than unit
2 owners of leased units:

3 (1) This section applies to lessees as if they were unit owners;

4 (2) unit owners that have leased their units to other persons may not
5 cast votes on those specified matters; and

6 (3) lessees are entitled to notice of meetings, access to records, and
7 other rights respecting those matters as if they were unit owners.

8 (f) Unit owners must also be given notice of all meetings at which
9 lessees are entitled to vote.

10 (g) Votes allocated to a unit owned by the association must be cast in
11 any vote of the unit owners in the same proportion as the votes cast on
12 the matter by unit owners other than the association.

13 New Sec. 15. (a) The association, or its agents, must retain the fol-
14 lowing for five years unless otherwise provided:

15 (1) Detailed records of receipts and expenditures affecting the op-
16 eration and administration of the association and other appropriate ac-
17 counting records;

18 (2) minutes of all meetings of its unit owners and board of directors
19 other than executive sessions, a record of all actions taken by the unit
20 owners or board of directors without a meeting, and a record of all actions
21 taken by a committee in place of the board of directors on behalf of the
22 association;

23 (3) the names of unit owners in a form that permits preparation of a
24 list of the names of all unit owners and the addresses at which the asso-
25 ciation communicates with them, in alphabetical order showing the num-
26 ber of votes each owner is entitled to cast;

27 (4) its original or restated organizational documents, if required by
28 law other than this act, bylaws and all amendments to them, and all rules
29 currently in effect;

30 (5) all financial statements and tax returns of the association for the
31 past three years;

32 (6) a list of the names and addresses of its current board of directors'
33 members and officers;

34 (7) its most recent annual report, if any, delivered to the secretary of
35 state;

36 (8) financial and other records sufficiently detailed to enable the as-
37 sociation to comply with other requirements of law;

38 (9) copies of current contracts to which it is a party;

39 (10) records of board of directors or committee actions to approve
40 or deny any requests for design or architectural approval from unit own-
41 ers; and

42 (11) ballots, proxies, and other records related to voting by unit own-
43 ers for one year after the election, action, or vote to which they relate.

1 (b) Subject to subsections (c) through (g), all records retained by an
2 association must be available for examination and copying by a unit owner
3 or the owner's authorized agent:

4 (1) During reasonable business hours or at a mutually convenient
5 time and location; and

6 (2) upon 10 days' written notice reasonably identifying the specific
7 records of the association requested.

8 (c) Records retained by an association may be withheld from inspec-
9 tion and copying to the extent that they concern:

10 (1) Personnel, salary, and medical records relating to specific
11 individuals;

12 (2) contracts, leases, and other commercial transactions to purchase
13 or provide goods or services currently being negotiated;

14 (3) existing or potential litigation or mediation, arbitration, or admin-
15 istrative proceedings;

16 (4) existing or potential matters involving federal, state, or local ad-
17 ministrative or other formal proceedings before a governmental tribunal
18 for enforcement of the declaration, bylaws, or rules;

19 (5) communications with the association's attorney which are other-
20 wise protected by the attorney-client privilege or the attorney work-prod-
21 uct doctrine;

22 (6) information the disclosure of which would violate law other than
23 this act;

24 (7) records of an executive session of the board of directors; or

25 (8) individual unit files other than those of the requesting owner.

26 (d) An association may charge a reasonable fee for providing copies
27 of any records under this section and for supervising the unit owner's
28 inspection.

29 (e) A right to copy records under this section includes the right to
30 receive copies by photocopying or other means, including copies through
31 an electronic transmission if available upon request by the unit owner.
32 Copied records may be used for any reasonable purposes other than for
33 commercial purposes.

34 (f) An association is not obligated to compile or synthesize
35 information.

36 New Sec. 16. (a) Before adopting, amending, or repealing any rule,
37 the board of directors shall give all unit owners notice of:

38 (1) Its intention to adopt, amend, or repeal a rule and provide the
39 text of the rule or the proposed change; and

40 (2) a date on which the board of directors will act on the proposed
41 rule or amendment after considering comments from unit owners.

42 (b) Following adoption, amendment, or repeal of a rule, the associ-
43 ation shall notify the unit owners of its action and provide a copy of any

1 new or revised rule.

2 (c) An association may adopt rules to establish and enforce construc-
3 tion and design criteria and aesthetic standards if the declaration so pro-
4 vides. If the declaration so provides, the association shall adopt proce-
5 dures for enforcement of those standards and for approval of construction
6 applications, including a reasonable time within which the association
7 must act after an application is submitted and the consequences of its
8 failure to act.

9 (d) A rule regulating display of the flag of the United States must be
10 consistent with federal law. In addition, the association may not prohibit
11 display on a unit or on a limited common element adjoining a unit of the
12 flag of this state, or signs regarding candidates for public or association
13 office or ballot questions. The association may adopt rules governing the
14 time, place, size, number, and manner of those displays that are not in-
15 consistent with K.S.A. 58-3820, and amendments thereto.

16 (e) Unit owners may peacefully assemble on the common elements
17 to consider matters related to the common interest community, but the
18 association may adopt rules governing the time, place, and manner of
19 those assemblies.

20 (f) Association rules that affect the use of or behavior in units that
21 may be used for residential purposes, shall be adopted only to:

- 22 (1) Implement a provision of the declaration; or
23 (2) regulate any behavior in or occupancy of a unit which violates the
24 declaration or adversely affects the use and enjoyment of other units or
25 the common elements by other unit owners.

26 (g) An association's internal business operating procedures need not
27 be adopted as rules.

28 (h) Every rule must be reasonable.

29 New Sec. 17. (a) An association shall deliver any notice required to
30 be given by the association under this act to any mailing or electronic
31 mail address a unit owner designates. Otherwise, the association may
32 deliver notices by:

- 33 (1) Hand delivery to each unit owner;
34 (2) hand delivery, United States mail postage paid, or commercially
35 reasonable delivery service to the mailing address of each unit;
36 (3) electronic means, if the unit owner has given the association an
37 electronic address; or
38 (4) any other method reasonably calculated to provide notice to the
39 unit owner.

40 (b) The ineffectiveness of a good faith effort to deliver notice by an
41 authorized means does not invalidate action taken at or without a meeting.

42 New Sec. 18. (a) Unit owners present in person, by proxy, or by
43 absentee ballot at any meeting of the unit owners at which a quorum is

1 present, may remove any member of the board of directors and any officer
2 elected by the unit owners, with or without cause, if the number of votes
3 cast in favor of removal exceeds the number of votes cast in opposition
4 to removal, but:

5 (1) A member appointed by the declarant may not be removed by a
6 unit owner vote during the period of declarant control;

7 (2) if a member may be elected or appointed pursuant to the decla-
8 ration by persons other than the declarant or the unit owners, that mem-
9 ber may be removed only by the person that elected or appointed that
10 member; and

11 (3) the unit owners may not consider whether to remove a member
12 of the board of directors or an officer elected by the unit owners at a
13 meeting of the unit owners unless that subject was listed in the notice of
14 the meeting.

15 (b) At any meeting at which a vote to remove a member of the board
16 of directors or an officer is to be taken, the member or officer being
17 considered for removal must have a reasonable opportunity to speak be-
18 fore the vote.

19 New Sec. 19. (a) The board of directors shall propose and adopt a
20 budget for the common interest community at least annually. Notice of
21 any meeting at which a budget will be considered must be given to unit
22 owners at least 10 days prior to the meeting date and, in accordance with
23 subsection (g) of section 12, and amendments thereto, a copy of the pro-
24 posal must be made available to any unit owner who requests it. At any
25 meeting at which a budget or budget amendment is considered, in ac-
26 cordance with subsection (d) of section 12, and amendments thereto, unit
27 owners must be given a reasonable opportunity to comment on the pro-
28 posal prior to the board taking action.

29 (b) The board of directors, at any time, may propose a special as-
30 sessment. Except as otherwise provided in subsection (c), notice and con-
31 sideration of any proposed special assessment shall follow the procedures
32 set out in subsection (a).

33 (c) If the board of directors determines by a $\frac{2}{3}$ vote of the member-
34 ship of the board that a special assessment is necessary to respond to an
35 emergency:

36 (1) The special assessment shall become effective immediately in ac-
37 cordance with the terms of the vote;

38 (2) notice of the emergency assessment must be provided promptly
39 to all unit owners; and

40 (3) the board of directors may spend the funds paid on account of
41 the emergency assessment only for the purposes described in the vote.

42 New Sec. 20. (a) A declarant, association, unit owner, or any other
43 person subject to this act may bring an action to enforce a right granted

1 or obligation imposed by this act, the declaration, or the bylaws. The court
2 may award reasonable attorney's fees and costs.

3 (b) Parties to a dispute arising under this act, the declaration, or the
4 bylaws may agree to resolve the dispute by any form of binding or non-
5 binding alternative dispute resolution, but:

6 (1) A declarant may agree with the association to do so only after the
7 period of declarant control has expired; and

8 (2) an agreement to submit to any form of binding alternative dispute
9 resolution must be in a record authenticated by the parties.

10 (c) The remedies provided by this act shall be liberally administered
11 to the end that the aggrieved party is put in as good a position as if the
12 other party had fully performed.

13 New Sec. 21. The principles of law and equity, including the law of
14 corporations and any other form of organization authorized by the law of
15 this state, the law of real estate, and the law relative to capacity to contract,
16 principal and agent, eminent domain, estoppel, fraud, misrepresentation,
17 duress, coercion, mistake, receivership, substantial performance, or other
18 validating or invalidating cause supplement the provisions of this act ex-
19 cept to the extent inconsistent with this act. If there is a conflict between
20 this act and other law of this state, this act prevails.

21 ~~New Sec. 22. In applying and construing this uniform act, consid-~~
22 ~~eration must be given to the need to promote uniformity of the law with~~
23 ~~respect to its subject matter among the states that enact it.~~

24 New Sec. 23. This act modifies, limits, and supersedes the federal
25 electronic signatures in global and national commerce act, 15 U.S.C. sec-
26 tion 7001, et seq., but does not modify, limit, or supersede section 101(c)
27 of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of
28 any of the notices described in section 103(b) of that act, 15 U.S.C. section
29 7003(b).

30 Sec. 24. K.S.A. 58-3119 is hereby amended to read as follows: 58-
31 3119. The bylaws, *subject to the provisions of sections 1 through 23, and*
32 *amendments thereto*, may provide for the following:

33 (a) The election ~~from among the apartment owners~~ of a board of
34 directors, the number of persons constituting the same, and that the terms
35 of ~~at least one-third (1/3) of the directors shall expire annually~~; the powers
36 and duties of the board; the compensation, if any, of the directors; the
37 method of removal from office of directors; and whether or not the board
38 may engage the services of a manager or managing agent.

39 (b) Method of calling meetings of the apartment owners; what per-
40 centage, ~~if other than a majority of apartment owners~~, shall constitute a
41 quorum.

42 (c) Election of a president from among the board of directors who
43 shall preside over the meetings of the board of directors and of the as-

And by renumbering the remaining
sections accordingly

- 1 sociation of apartment owners.
- 2 (d) Election of a secretary who shall keep the minute book wherein
3 resolutions shall be recorded.
- 4 (e) Election of a treasurer who shall keep the financial records and
5 books of account.
- 6 (f) Maintenance, repair and replacement of the common areas and
7 facilities and payments therefor, including the method of approving pay-
8 ment vouchers.
- 9 (g) Manner of collecting from the apartment owners their share of
10 the common expenses.
- 11 (h) Designation and removal of personnel necessary for the mainte-
12 nance, repair and replacement of the common areas and facilities.
- 13 (i) Method of adopting and of amending administrative rules and reg-
14 ulations governing the details of the operation and use of the common
15 areas and facilities.
- 16 (j) Such restrictions on and requirements respecting the use and
17 maintenance of the apartments and the use of the common areas and
18 facilities, not set forth in the declaration, as are designed to prevent un-
19 reasonable interference with the use of their respective apartments and
20 of the common areas and facilities by the several apartment owners.
- 21 (k) The percentage of votes required to amend the bylaws.
- 22 (l) Other provisions as may be deemed necessary for the administra-
23 tion of the property consistent with this act.
- 24 Sec. 25. K.S.A. 58-3120 is hereby amended to read as follows: 58-
25 3120. The manager or board of directors, as the case may be, shall keep
26 detailed, accurate records in chronological order, of receipts and expend-
27 itures affecting the common areas and facilities, specifying and itemizing
28 the maintenance and repair expenses of the common areas and facilities
29 and any other expenses incurred. Such records and the vouchers author-
30 izing the payments shall be available for examination by the apartment
31 owners at convenient hours of week days, *pursuant to the rights and*
32 *limitations of section 15, and amendments thereto.*
- 33 Sec. 26. K.S.A. 58-3119 and 58-3120 and K.S.A. 2009 Supp. 58-3830
34 are hereby repealed.
- 35 Sec. 27. This act shall take effect and be in force from and after
36 January 1, 2011, and its publication in the statute book.