

Your Carefully Crafted HOA Documents, Now Rewritten by the Kansas Legislature

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The Kansas Legislature recently passed House Bill 2472, the “Kansas Uniform Common Interest Owners Bill of Rights” (the Act)¹. According to the Community Associations Institute, which serves such associations, sometimes known as homeowner associations (HOA), nationwide there are approximately 305,400 association governed communities with 24.4 million housing units and 60.1 million residents.² These numbers include “a significant and increasing number of Kansans.”³ Due to the growing prevalence of this type of living arrangement, the effective management of these communities has become increasingly important. Despite the fact that there was no blood in the street, mismanagement examples presented to the Kansas Legislature, the Act, set to become effective January 1, 2011,⁴ sets forth strict guidelines that establish uniform powers, duties, and limitations for all common interest communities.⁵ The scope of the Act is broad; it applies to all communities that contain 12 or more units used for residential purposes.⁶ The Act could apply to everything from comprehensive condo projects to communities where the only shared space is a patch of grass.

The Act sets forth various powers and duties of owner associations.⁷ Not surprisingly, many of the powers and duties appear to be aimed at accounting for and saving money. For example, the Act requires associations to adopt, and allows them to amend, budgets.⁸ This particular provision was probably designed to help cut down on fiscally irresponsible behavior by associations. Unfortunately this provision will be burdensome for the vast majority of associations that have operated effectively using their own methods of accounting. Another provision aimed at saving money involves the option to settle disputes via alternative dispute resolution.⁹ In other words, associations may require that disputes between the association and the unit owners or between two or more unit owners be settled using alternative dispute resolution rather than in a court of law.¹⁰ This provision was, seemingly, included to prevent overbearing associations from constantly threatening unit owners with litigation. It is unclear, however, how often these threats actually occur. One of the more questionable provisions of the Act involves limitations on the power of associations to suspend any right or privilege of a unit owner who fails to pay an assessment.¹¹ The Act provides that an association may not withhold services if doing so would endanger the health, safety, or property of any person.¹²

The Act also lays out the various powers and duties of the board of directors.¹³ It establishes a duty of care and loyalty to be exercised by each member of the board.¹⁴ In addition, directors are not allowed to amend the declaration¹⁵ or bylaws¹⁶ and they can't terminate the common interest community.¹⁷ Furthermore, in an effort to keep board members from overextending their power, the act prevents them from electing members to the board¹⁸ and from determining the qualifications, powers, duties, or terms of office of board members.¹⁹

One of the more noteworthy sections of the Act sets forth an open meetings²⁰ and open records²¹ requirement. Meetings of the board of directors and committees of the association must be open to the unit owners except during executive session.²² In addition, associations are required to provide notice of meetings (except for emergency meetings) at least 10 days in advance but not more than 60 days in advance.²³ The notice must state the time, date, and place of the meeting.²⁴ The open records portion provides that if any materials are distributed to the board of directors before the meeting, then the board must make copies of those materials reasonably available to all unit members.²⁵ This section is, presumably, to help ensure that the board of directors doesn't conduct business behind the backs of the unit owners. There are numerous problems with this section. For one, the Act doesn't require the unit members to RSVP, so it will be difficult for the board to know how to accommodate everyone. The board might have to resort to renting a space somewhere, which is an added cost. Another problem involves the potential cost of making copies of board materials reasonably available to all unit members. Depending on the size of the board packet and the number of attendees, the cost could become significant. Even if the cost isn't significant, however, the provision creates an expense formerly not present.

The passage of the Kansas Uniform Common Interest Owners Bill of Rights undoubtedly pleased most who participated in the discussion; however, one overarching concern has to be that the Act might result in decreased volunteerism. Currently, many HOAs have difficulty finding members who are willing to volunteer their time to serve on committees and boards. Those who do are often relatively unsophisticated in terms of the law. By imposing numerous new requirements on these individuals, it will likely become even more difficult to

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FOOTNOTES

1. H.B. 2472 § 1(a).
2. <http://www.caionline.org/info/research/Pages/default.aspx>.
3. H.B. 2472 § 1(b)(1).
4. H.B. 2472 § 1(d).
5. H.B. 2472 § 1(c).
6. H.B. 2472 § 6(a).
7. H.B. 2472 § 8(a).
8. H.B. 2472 § 8(a)(2).
9. H.B. 2472 § 8(a)(3).
10. *Id.*
11. H.B. 2472 § 8(a)(6).
12. H.B. 2472 § 8(a)(6)(C).
13. H.B. 2472 § 9(a).
14. *Id.*
15. H.B. 2472 § 9(c)(1).
16. H.B. 2472 § 9(c)(2).
17. H.B. 2472 § 9(c)(3).
18. H.B. 2472 § 9(c)(4).
19. H.B. 2472 § 9(c)(5).
20. H.B. 2472 § 12(a).
21. H.B. 2472 § 12(f).
22. H.B. 2472 § 12(a).
23. H.B. 2472 § 11(c).
24. *Id.*
25. H.B. 2472 § 12(f).

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fill the necessary positions. Another general concern regarding passage of the Act involves the impairment of existing contractual relationships. An individual who buys a home in an association signs documentation that legally binds him or her to the rules and requirements of the association. Essentially, the new Act serves to rewrite contracts even if everyone involved is getting exactly what they bargained for.

While each of the aforementioned concerns seemingly has merit, the Kansas Legislature apparently decided that the good outweighed the bad and decided to pass the Act. Whether it results in the more effective management of common interest communities remains to be seen as it hasn't become effective as of yet. Certainly however, passage of the Act represents a sweeping reform that should grab the attention of associations all across Kansas. It could also be viewed as a full employment act for attorneys, since associations that operated quite well without us in the past, will now need us more than ever. ■

About the Authors

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