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Via e-mail and Federal Express

Kansas House of Representatives
Local Government Committee
c/o Rich Mergen, Committee Assistant
300 SW 10th Ave., Rm. 276-W
Topeka, KS 66612-1504
rich.mergen@house.ks.gov

Re: HB 2557

Dear Ladies and Gentlemen:

Thank you for giving me the opportunity to comment about this bill. I ask you to vote against this bill.

I am President of and have served on the Board of Cedar Creek Community Services Corporation since 2006. The Cedar Creek Community, located in Olathe, Kansas, is comprised of approximately 1,240 homes, making it one of the largest, if not the largest HOA in the state. This HOA is set up differently than most; Services Corporation is the "amenities" HOA that oversees our many lakes, parks, trails, clubhouses, pools, tennis courts, common areas, etc. The assessments for these expenses are passed through to Cedar Creek Village I, which then in turn assesses the unit owners. In addition, there are 18 separate neighborhoods in Cedar Creek, each with their own separate expenses to maintain their specific neighborhood and common areas, and each with its own neighborhood committee that approves their budget. Village I administers the assessments for these expenses against the unit owners and also has its own administrative budget. We also have a non-residential association (commercial and office buildings) that shares in some of the expenses for the amenities common areas and is assessed by Services Corporation.

As you can tell, this is a complicated structure that was set up in 1996. When the legislature passed House Bill No. 2472 in 2010, it did so without input from our HOA. Why the largest HOA in the state was not asked for input at the time is beyond me. Many parts of K.S.A. 58-4601 et seq. are unworkable for an HOA our size and with our structure, but we do what we can to assure compliance. We hope you will take the time and allow us to have a voice in discussing this proposed Bill.

With regard to HB 2557:

1. Consumer Protections Act provisions. Our HOA works as hard as possible to make sure the business we transact is as transparent as possible and is done in the best interest of the community. Notwithstanding, with over 3,000 residents there are always some who disagree with our actions and at times even threaten legal action. Allowing them to what

amounts as an easy avenue to voice their complaints to an outside party will do nothing but cause us (a volunteer Board) to expend unnecessary time and expense (attorney's fees) in responding to such complaints. There is already an avenue provided to disconcerted residents—the district court—if they feel strongly enough that they have been wronged. Subjecting Board Members to this separate avenue of possible personal liability will do nothing but discourage people from volunteering. I, for one, will resign.

2. Preclusion of obtaining a loan without 2/3rd's vote of all unit owners. There are times that the HOA may need to take a loan out for unexpected expenses. For instance, if the pump on our waterfall feature (one of our many aesthetic amenities) went out and it needed to be replaced, that would mean an unbudgeted expense of $50,000. We could wait a full year to include it in next year's assessments, or we could take out a short term loan to get it replaced immediately. This bill would require us to get 2/3rd's approval of all unit owners to take out a loan. We can't even get 5% of unit owners to show up at our annual meeting. As you are all politicians, you know what it is like to get 2/3rd's of your electorate to even vote—it never happens. Could you imagine being a city council of a small town, which is about the size of Cedar Creek, and requiring 2/3rd's vote of your electorate before you can take out a loan to pay for a necessary expense? Imposing this requirement on an HOA of our size, that oversees a combined budget of well over $1,000,000, makes no business sense whatsoever.

3. Requiring mediation and precluding foreclosure. As to requiring mediation, this would be acceptable (and in most instances preferable) regarding legal action if it were a bi-lateral requirement (meaning it is required of the unit owner also), and *except as it relates to enforcement and collection of delinquent assessments.* Our process in assessment collection consists of sending out numerous notices to the delinquent unit owner, including offering to set up a payment plan. The last notice notifies them that legal will be commenced unless paid within ten (10) days. Mediation would be just an unnecessary and time-consuming step over an issue that, quite frankly, cannot be mediated. It's fairly black and white when someone owes an assessment. There's no "offset" allowed (this would only necessarily spread the amount offset over the other unit owners) and we have already previously offered a payment plan. Only when a unit owner no long owns the home in the subdivision will we consider accepting less than what is owed in a settlement of some kind. As to precluding a foreclosure, this is one of the few tools that an HOA has to collect a delinquent assessment when a unit owner cannot or refuses to pay. Obtaining a judgment and imposing a lien on the property is just the initial step. Rather than chasing a judgment debtor's bank accounts and other assets, foreclosure of the lien for the delinquent assessments is the most efficient way of getting the assessments paid. **Please understand that enforcement is for the good of the community and other unit owners; if we don't collect delinquent assessments, it just necessarily will raise the assessments of the remaining unit owners.**

Thank you for your consideration.

Sincerely,

J. Lawrence Louk