

SENATE BILL No. 609

By Committee on Federal and State Affairs

2-13

9 AN ACT concerning certain homeowners associations; amending K.S.A.
10 2007 Supp. 58-3830 and repealing the existing section.

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

13 New Section 1. Sections 1 through 6 shall be known and may be cited
14 as the homeowners association dispute resolution act.

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

16 (a) "Homeowners association" means a nonprofit homeowners or-
17 ganization as defined in K.S.A. 60-3611, and amendments thereto, with
18 an annual operating budget of \$100,000 or more.

19 (b) "Mediation" has the meaning ascribed thereto by K.S.A. 5-502,
20 and amendments thereto.

21 (c) "Dispute" means a disagreement regarding the rights or obliga-
22 tions of the homeowners association or the residents.

23 (d) "Resident" means a real property owner or lessee whose property
24 is subject to the jurisdiction of a homeowners association.

25 New Sec. 3. (a) Upon written request of any resident, an association
26 shall participate in mediation of a dispute. An association may make a
27 written request for mediation with a resident. A resident may, but shall
28 not be required to, participate in mediation of a dispute.

29 (b) If the resident requests or agrees to mediation, a mediator shall
30 be appointed by mutual agreement of the association and the resident
31 within 60 days of the written request.

32 (c) Prospective mediators shall be required to disclose to the parties
33 the mediator's education, training, relevant experience and professional
34 and community affiliations the names of any participants in mediation
35 conducted by the mediator who are willing to act as references and any
36 possible conflicts of interest.

37 (d) If the parties cannot agree upon the selection of a mediator, a
38 mediator shall be designated by the attorney general.

39 (e) Mediation shall not exceed two hours in duration unless the par-
40 ties agree in advance to a longer period. Unless agreed otherwise by the
41 resident, $\frac{2}{3}$ of the costs of the mediation shall be paid by the association
42 and the balance by the resident.

43 (f) Parties, at their own expense, may be assisted by legal counsel at

1 the mediation.

2 (g) The term of any settlement agreement shall be open to disclosure
3 to any resident.

4 (h) The attorney general shall maintain a list of qualified mediators
5 for purposes of this act.

6 New Sec. 4. (a) The attorney general shall develop written educa-
7 tional materials and a website with an interactive question-and-answer
8 feature for the purpose of providing guidance to homeowners associations
9 and their residents regarding best practices of corporate governance in-
10 cluding the following:

11 (1) Election procedures including secret ballots, absentee ballots,
12 proxies and election monitoring procedures;

13 (2) appropriateness of executive sessions during board meetings;

14 (3) necessity for providing advance notice to residents prior to board
15 consideration of certain matters;

16 (4) prompt disclosure of board minutes to residents;

17 (5) necessity for providing access to residents to association records;

18 (6) appropriate procedures for the approval of amendments to by-
19 laws and declarations;

20 (7) conflict of interest rules covering directors, officers, employees
21 and committee members in connection with association business and res-
22 idents' concerns;

23 (8) appropriate rules regarding the possible shifting of legal costs to
24 and among residents, directors personally and associations;

25 (9) appropriate utilization of mediation procedures; and

26 (10) other matters deemed to be important in the overall governance
27 and operation of a homeowners association.

28 (b) Homeowners associations shall notify their residents of the avail-
29 ability of this information and the website no later than the next annual
30 meeting following the effective date of this act.

31 New Sec. 5. The board of directors homeowners associations subject
32 to the following shall:

33 (a) The board of directors may amend the by-laws and declarations
34 of the association only upon approval of a majority of residents voting at
35 a duly-noticed and duly-constituted resident meeting.

36 (b) The board of directors may not vary any obligations imposed by
37 law on the association or its board of directors by creating or amending
38 by-laws and declarations or by any other authorization.

39 (c) All elections for the membership on the board of directors shall
40 be by secret ballot and conducted in a manner to assure the integrity of
41 the election process.

42 (d) All meetings of the board of directors shall be subject to the Kan-
43 sas open meetings act.

1 (e) At least 15 days prior to the imposition of, or increase in the
 2 amount of, any assessments, special charges or fees of general application,
 3 the board of directors shall provide written disclosure to residents of the
 4 amount of such assessment, charges or fees or any increase in the amount
 5 thereof. Such notice also shall state a date of a hearing to be held for the
 6 consideration of such assessments, charges or fees at which residents shall
 7 be given the opportunity to comment thereon. Any such assessments,
 8 charges and fees shall be equitable and proportionate to the respective
 9 interests of the residents.

10 New Sec. 6. Except as provided below, within 60 days of the effective
 11 date of this act, all associations shall adopt rules to implement the
 12 following:

13 (a) Appointment of one or more neutral and independent election
 14 inspectors with plenary authority to conduct the election of directors in
 15 a verifiable manner to ensure the integrity of the election process no later
 16 than 45 days prior to the date of the election.

17 (b) Provide residents with copies of association records, including
 18 minutes of meetings, upon written request no later than 10 business days
 19 following the receipt of a written request by the resident.

20 (c) Provide residents with copies of all budget and financial records.
 21 Such request shall be in writing. Such information shall be provided no
 22 later than 10 business days following the receipt of the written request.

23 (d) Adopt, no later than one year following the effective date of this
 24 act, a voluntary and nonbinding dispute resolution for disputes between
 25 and among the association and its residents.

26 (e) Provide residents information concerning their rights under this
 27 act.

28 Sec. 7. K.S.A. 2007 Supp. 58-3830 is hereby amended to read as
 29 follows: 58-3830. ~~(a) An association shall:~~

30 ~~—(1) Open all meetings of the board of the homeowner's association~~
 31 ~~to all homeowners, and~~

32 ~~—(2) adopt an annual budget and within 30 days after the adoption of~~
 33 ~~such budget shall make a copy thereof available to any member of the~~
 34 ~~association upon the request of such member.~~

35 ~~—(b) For the purposes of this section, "association" means a nonprofit~~
 36 ~~homeowners association as defined in K.S.A. 60-3611 and amendments~~
 37 ~~thereto. (a) As used in this section:~~

38 (1) "Association" means a nonprofit homeowners association as de-
 39 fined in K.S.A. 60-3611, and amendments thereto.

40 (2) "Board" or "board of directors" means the board of directors of
 41 an association.

42 (b) All meetings of the board of directors shall be open to all members
 43 of the association.

- 1 (c) *Members of the board shall be elected from the membership of the*
- 2 *association. Members of the board shall hold office for a term not to exceed*
- 3 *one year, but may be reelected at the expiration of the term of office.*
- 4 (d) *Each year, the board of directors shall adopt an annual budget.*
- 5 *Within 30 days after the adoption of such budget, the board shall make*
- 6 *a copy available to any member of the association upon the request of*
- 7 *such member.*
- 8 Sec. 8. K.S.A. 2007 Supp. 58-3830 is hereby repealed.
- 9 Sec. 9. This act shall take effect and be in force from and after its
- 10 publication in the Kansas register.