

## MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Sharon Schwartz at 3:35 p.m. on March 17, 2009, in Room 446-N of the Capitol.

All members were present except

Representative Michael Peterson - Absent

Representative Mike Slattery - Absent

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes

Martha Dorsey, Kansas Legislative Research Department

Jill Shelley, Kansas Legislative Research Department

Carol Bertram, Committee Assistant

Conferees appearing before the Committee:

Senator Julia Lynn, 9<sup>th</sup> District

Representative Terrie Huntington, 25<sup>th</sup> District

Representative Gene Rardin, 16<sup>th</sup> District

Nila Ridings, Homeowner

Cherylaine Sullivan, Homeowner

Julia Ancrum, Homeowner

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors

Jim Parker, Quail Creek Home Owners Association

Robert Hjetland, Prairie Trace Community Association

Others attending:

See attached list.

Chair Schwartz opened the hearing on **HB 2253 - Enacting the homeowner's association act.**

Ken Wilke, Office of Revisor of Statutes, presented an overview of **HB 2253** and stood for questions. He stated this subject has been around for at least two years and it concerns problems and grievance procedures for members of homeowner associations. He went on to review each section and subsection of the bill.

**Proponents:**

Senator Julia Lynn appeared before the Committee in support of **HB 2253 (Attachment 1)**. She stated there is a lack of transparency and no accountability in how funds are spent, but that **HB 2253** would provide a statutory framework and system of accountability to protect dues-paying homeowners association members and board officers. Questions and answers followed.

Representative Terrie Huntington appeared before the Committee in support of **HB 2253 (Attachment 2)**. She stated this bill directs homeowner association governing boards to abide by their bylaws, to hold open meetings and elections, and if not, provides a method through the Consumer Protection Division of the Attorney General's office to mediate disputes so that residents may resolve issues without hiring an attorney and resorting to a civil suit. This is a statewide issue, with associations in Johnson County, Sedgwick County and Shawnee County. Questions and answers followed.

Representative Gene Rardin appeared before the Committee in support of **HB 2253 (Attachment 3)**. He stated this bill takes needed steps to curb the mismanagement, incompetence and worse which has too often been demonstrated by a few, but very significant in impact, homeowner associations.

Nila Ridings, a homeowner in the Quivira Falls Community, appeared before the Committee in support of **HB 2253 (Attachment 4)**. She stated that at the time she purchased her home, the same board president had been in office for over 20 years. He died in 2008 leaving a massive debt with no money in the account. To date, an audit has not been done since 1999. The current board continues to operate the community in the same secrecy and manner as did the former president. Ms. Ridings went on to show slides from a CD which showed pictures of the condition of her home and other homes in the Quivira Falls Community. Two CD's

## CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:35 p.m. on March 17, 2009, in Room 446-N of the Capitol.

pertaining to the condition of houses in the Quivira Falls, Overland Park Community, can be located in the Legislative Research Department of the Capitol. Questions and answers followed.

Cherylaine Sullivan, a homeowner in the Quivira Falls Community, appeared before the Committee in support of **HB 2253** ([Attachment 5](#)). She stated the Community is worth approximately \$100 million with association dues in excess of \$1 million annually, and yet there hasn't been an audit of these funds since 1999. Issues are unresolved due to a lack of statutes in Kansas to protect homeowners of property in maintenance-provided communities. Questions and answers followed.

Julia Ancrum, a homeowner in the Quivira Falls Community, appeared before the Committee in support of **HB 2253** ([Attachment 6](#)). As a licensed child care provider in Kansas, she noted the need for her to provide a safe environment for the children in her care. She described the problems she had with the Quivira Falls Community Board in replacing a broken fence she had surrounding her home. She urged the Committee to pass **HB 2253** to provide a law to protect homeowner association members from problems like she had encountered.

### **Proponents - Written Only:**

Norma Campaneris, Homeowner, Quivira Falls Community ([Attachment 7](#)).  
Huey P. Strickland, Homeowner, Quivira Falls Community ([Attachment 8](#)).  
Jeff Kittinger, Homeowner, Quivira Falls Community ([Attachment 9](#)).  
Marilyn McClure, Homeowner, Quivira Falls Community ([Attachment 10](#)).  
Linda Smith, Homeowner, Quivira Falls Community ([Attachment 11](#)).  
Carmen Campaneris, Homeowner, Quivira Falls Community ([Attachment 12](#)).  
Danny J. Sybugh, Homeowner, Quivira Falls Community ([Attachment 13](#)).  
Angela Fleming, Homeowner, Quivira Falls Community ([Attachment 14](#)).  
Ron Olberding, Home Owner, Quivira Falls Community ([Attachment 15](#)).  
Sylvia McCombs and Charles C. Maack, Wichita, KS ([Attachment 16](#)).

### **Neutral:**

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors(KAR), stated KAR has no position on the underlying legislation, but it does have concerns with the language found in Section 2(g) ([Attachment 17](#)). He said amending the language to require disclosure only when the prospective property owners make a written request, would add clear guidelines on when the disclosures need to be provided. He requested the Committee adopt an amendment that would add the words "upon written request" to the beginning of Section 2(g). Questions and answers followed.

### **Opponents:**

Jim Parker, Quail Creek Home Owners Association, ([Attachment 18](#)) stated he had three requests for changes with the bill as it is written:

1. Section 1, paragraph 5 should be deleted, along with all references throughout the bill to "or residents". He said most homeowner associations are not, and should not be, required to provide information to renters or lessors.
2. Second sentence in Section 5, paragraph e: this sentence should be amended to show that two-thirds of the mediation cost would be borne by whichever party initiates the request for mediation. The bill as written requires the association to pay two-thirds in all circumstances.
3. Section 6, paragraph b: a better solution would be to require the Secretary of State's Office to notify all homeowners' associations throughout the state within 30 days after publication in the Kansas Register.

Questions and answers followed.

Robert Hjetland, Prairie Trace Community Association, ([Attachment 19](#)) reviewed six concerns he had with the bill as it is presently written. In conclusion, he stated many items in this bill are covered by the

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:35 p.m. on March 17, 2009, in Room 446-N of the Capitol.

homeowners' Covenants and Bylaws while other items are covered in Robert's Rules of Order. He stated this bill will require additional duties of the boards, which serve without compensation.

Questions followed; Representative Rardin and Representative Huntington stood to answer questions.

There being no further conferrees to appear before the Committee on **HB 2253**, Chair Schwartz closed the hearing on **HB 2253**.

The meeting was adjourned 5:10 p.m.

The next meeting of the Local Government Committee will be Thursday, March 19, 2009.

  
\_\_\_\_\_  
Representative Sharon Schwartz, Chair

# HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: 3-17-09

NAME	REPRESENTING
Julia Anchem	
Norma Campaneri	
<del>Bob Anchem</del>	
Jeffrey Kettinger	
Vera Sidings	Quivira Falls
G. Sullivan	Quivira Falls
R.L. Hyatt	TOPEKA
Jim Parker	Topeka-Quail Creek H.O. Assn.
Luke Bell	Kansas Association of REALTORS
ERIK SARTORIUS	City of OVERLAND PARK
Michelle Schroeder	Dawson brot Relations
MIKE TAYLOR	UNITED GOV

**Please use black ink**

STATE CAPITOL—142-E  
TOPEKA, KANSAS 66612  
(785) 296-7382  
IN SESSION: julia.lynn@senate.ks.gov



SENATOR JULIA LYNN

INTERIM: julia@senatorjulia.lynn.com  
18837 W. 115TH TERR.  
OLATHE, KANSAS 66061  
(913) 832-5311

## COMMITTEE ASSIGNMENTS

## SESSION:

COMMERCE - VICE CHAIR

ASSESSMENT &amp; TAXATION - CO-VICE CHAIR

JUDICIARY

## INTERIM:

JOINT COMMITTEE: ARTS AND CULTURAL RESOURCES

CHILDRENS ISSUES

ECONOMIC DEVELOPMENT

TESTIMONY FOR HOUSE COMMITTEE ON LOCAL GOVERNMENT  
3:30 PM - TUESDAY, MARCH 17, 2009  
SENATOR JULIA LYNN

**HB 2253 - Enacting the Homeowner's Association Act**

Thank you Madame Chair and members of the House Local Government Committee for allowing me the opportunity to stand and testify regarding HB 2253. I am Senator Julia Lynn.

Senate District 9 in Johnson County, my home district, includes the cities of Olathe, Lenexa, DeSoto and certain precincts in Overland Park. Average income is in excess of \$76,000 per year. The average home price is \$225,000. Property tax averages \$4600 per year. Johnson County is indeed a prosperous and attractive place to live and work.

There are approximately 100 homes associations in the Ninth District in Johnson County. I have met with members of two separate homeowners associations in my district, and have heard the same stories of problems with "runaway boards of directors".

Homeowners association boards have no accountability. Each board has their own separate set of by-laws, so there is no continuity statewide in homeowners association governance. There is no accountability between officers and association members who pay the dues that the officers utilize.

Because of these things, there is lack of transparency and no accountability in how funds are spent. There are no consequences to boards who by-pass approved by-laws of associations and mis-direct or mis-use funds. House Bill 2253 provides a statutory framework and system of accountability to protect dues-paying homeowners association members and board officers.

For these reasons, I ask the Committee to consider this bill favorably and pass it out of Committee to the House floor for their consideration. Thank you for your time.

**Local Government**Date: 3-17-09Attachment # 1

**TERRIE W. HUNTINGTON**  
 REPRESENTATIVE, 25TH DISTRICT  
 6264 GLENFIELD  
 FAIRWAY, KANSAS 66205  
 (913) 677-3582



TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 CHAIR: HIGHER EDUCATION  
 MEMBER: EDUCATION BUDGET  
 SELECT COMMITTEE  
 ON KPERS  
 JOINT COMMITTEE  
 ON PENSIONS,  
 INVESTMENTS &  
 BENEFITS

March 17, 2009

**Testimony by Representative Terrie Huntington  
 House Committee on Local Government  
 House Bill 2253  
 Homes Associations and Associations of Apartment Owners**

Chairman Schwartz, Vice Chairman Holmes and Ranking Minority Garcia: thank you for hearing House Bill 2253 pertaining to Homes Associations. As you are no doubt aware, more and more Kansas residents are choosing to live in maintenance-free developments, whether they are gated communities, patio homes, or apartments. This housing choice is not limited to retired citizens, but is also the choice for citizens who don't want the responsibility of home maintenance and lawn care.

Many of these residences are governed by Homes Associations, for which homeowners pay into a maintenance fund large sums of money in order to receive snow removal services, lawn and landscaping services, street maintenance, roof repairs or exterior painting. These associations are governed by a board of directors elected by members of the Homes Association, usually with annual or bi-annual elections.

HB 2253 is not directed to those Homes Associations that govern communities, where members pay a small annual fee to receive a directory or for garbage collection. It does not apply to those Homes Association Boards that abide by their bylaws, have open meetings, publish annual financial statements, and determine by committee how dues shall be spent.

What this bill attempts to solve is a series of problems incurred by residents of Homes Associations whose Board of Directors circumvent the bylaws, which often times prevents resolution to grievances brought before the Board. This is a property rights bill, and it is the first step in codifying what many states have legislated in several pages of statutes. ***It is a statewide issue, with associations in Johnson County, Sedgwick County and Shawnee County.***

It directs homes association governing boards to abide by their bylaws, to hold open meetings and elections, and if not, provides a method through the Consumer Protection Division of the Attorney General's office to mediate disputes so that residences may resolve issues without hiring an attorney and resorting to a civil suit.

Passage of this bill will set a course for some homeowners to finally resolve costly disputes that could have been resolved if the Homes Association had followed their own rules.

Thank you for your thoughtful consideration of HB 2253, which passed the House last year as HB 2686 on a vote of 109-14, had a hearing in the Senate but, for lack of time, was not worked.

# # #

State of Kansas  
House of Representatives

**Gene Rardin**  
16TH DISTRICT  
STATE CAPITOL  
TOPEKA, KANSAS 66612  
(785) 296-7698  
rardin@house.state.ks.us



10900 W. 104TH STREET  
OVERLAND PARK, KANSAS 66214  
(913) 492-2253

**MEMORANDUM**

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:**  Representative Gene Rardin, District 16

**DATE:** March 17, 2009

**RE:** HB 2253— AN ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

This bill takes needed steps to curb the mismanagement, incompetence and worse which has too often been demonstrated by a few, but very significant in impact, Homeowner's Associations.

As state legislators we simply cannot allow these unregulated associations, in some cases handling millions of dollars in funds and holding the quality of life and financial well-being of their members in their hands to operate behind closed doors without oversight, regulation or clearly accessible low cost alternatives for redress of legitimate grievances by their members.

Victims of these practices, some of whom are here today, are looking to us, their state legislature, to move to rectify this situation and that's why I'm here today in support of HB 2253.

As you listen to those who are here to testify, I hope you will come to the same conclusion that I have.

**Local Government**

**Date:** 3-17-09

**Attachment #** 9

## Memorandum

To:

The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

From:

Nila Ridings  
12350 W. 107<sup>th</sup> Terrace  
Overland Park, Kansas 66210

March 17, 2009

RE:

HB 2253-An act concerning Homeowner's Association and Associations of Apartment Owners; relating to certain duties, required procedures, attorney fees, dispute resolution and duties of the Attorney General

### Due Diligence Performed Before Purchase in September 1999

Refused copy of audit (because I was not an owner yet)-later learned there had been no audits since 1999-Accounts receivable are over \$1,000,000.00 annually and to date approximately \$10,000,000.00 remains unaudited.

Contacted the Quivira Falls "Sales Office" prior to purchase and later learned this is not a sales office for the community, it is an independent realtor's office that has numerous investment properties in the subdivision with a listing in the phone book as the Quivira Falls Sales Office.

Seller assured me all wood rot would be repaired before we closed-that was only partially done three months after I closed and left unpainted for two years and then painted with watered down paint so thin you could see through it. Ultimately, the new wood rotted and the condition of my house worsened.

### Trying to protect my investment

November 2007, I hired my own contractor, mortgaged my house and paid for repairs and stucco myself in the amount of \$22,000.00 after paying almost \$7,000.00 in homes association dues since purchasing the property.

At the advice of four different attorneys, I'm currently withholding dues of approximately \$200.00 per month in an effort to recover my money.

**Local Government**

**Date:** 3-17-09

**Attachment #** 4-1



My latest appraisal from Johnson County was over \$120,000.00 less than I have invested in the property due to the condition of the houses around me.

March of 2008, I filed a lawsuit derivatively on behalf of the community in an effort to bring transparency to the financial records and debt of the community which I have been told is somewhere between 500K and 1.5 million dollars. This lawsuit has drug on due to the board members refusal to reveal the records; claiming they no longer have records, or I suspect they are using their attorney to increase my legal expenses. At one point, they offered for me and my attorney to see the records but ONLY if we signed a confidentiality agreement that would preclude any other members of the association from ever knowing what I saw. At this point, we await the judge's decision and my attorney has stopped billing for his time due to the financial hardship it has caused me. Yet, he strongly believes the homeowners in this community need a voice to help them.

This lawsuit was the result of my contacting numerous government agencies in search of help and being told they could offer nothing because Kansas has no laws to protect homeowners in communities with homes associations.

#### **With Regard to Board Members/Method of Management-Intimidation and Fear**

As a new resident, I attended board meetings explaining my concerns about the condition of my house and the rapid deterioration. One board member visited my home, saw the mess, and advised me to let it go back to the bank! Another board member told me if I removed the wood rot on my house and replaced it with stucco (which was voted upon by the community in 1999) they would sue me and make me take the stucco off of my house and put the wood rot back on!

We have board members (past and present) who are known investors with close associations to outside investors in the neighborhood so it is not to their advantage to increase the value of the real estate.

I have been told by other residents that board members have contacted them threatening to attach something to their deeds if they repaired their homes and some have been required to sign documents requiring them to pay for their repairs with no date of when they will be reimbursed from the homes association. Additionally, once they signed they were told no copies could be made of the document because the copy machine was broken!

In another case, an elderly resident had an agreement to pay for repairs upon completion of the work and it was approved by the board president. When the work was not done, and she did not pay, she was greeted by the Johnson County Sheriff's Deputy with papers that she was being sued. Not only did she pay an attorney she paid to have the work completed as well.

At the time I purchased my home, the same board president had been in office for over 20 years. When I questioned him about the audits, he advised there was 200K in the bank and all bills were paid. Later, I learned of the massive debt and no money in the accounts. He died in June of 2008

with three rental properties (that I'm aware of) in the community and ownership of property in the State of California of which he was running for the board of at the time of his death. The current board has taken no action towards researching the possibility of malfeasance or theft on his part. They have continued to operate the community with the same secrecy and bullying practices that he used.

Currently, I feel I am incarcerated in a prison run by people trained under Adolf Hitler with financial management being overseen by Bernard Madoff. This has gone on far too many years and without oversight by a government agency or laws to protect residents in these communities we have no hope for a brighter future.

## Memorandum

To:

The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

From:

Cherylaine (CJ) Sullivan  
10967 Westgate  
Overland Park, KS 66210

March 17, 2009

RE:

HB 2253-An Act Concerning Homeowner's Associations and Associations of Apartment Owners; relating to certain duties, required procedures, attorney fees, dispute resolution and duties of the Attorney General

I am offering this testimony in support of HB 2253-

Since 1992, I've been a homeowner in Quivira Falls; a Johnson County, Kansas maintenance provided community consisting of 513 individually owned properties. Our community is worth approximately one hundred million dollars. As of August 2007, I have been a community activist in an effort to uncover, verify, and resolve long-standing issues regarding the following:

- 1) Lack of accountability on homes association dues in excess of \$1,000,000.00 (one million dollars) annually. CPA firm uncovered discrepancies between what had been reported by the board and the firm's findings; noted on review, "Money posted to the ledger but not deposited in the bank."
- 2) The HOA Treasurer has failed in his/her fiduciary responsibilities; such as no knowledge of tax filings/documents, bank records, accounts payable, payroll records, indebtedness and failed to conduct audits as per the by-laws of the community association since 1999. Resulting in approximately ten millions dollars of unaccounted monies. Included in the debt was unpaid waste water bills in excess of one year. Trash collection was delinquent over ninety days, numerous water bills were unpaid, and a bank loan was in arrears.

Local Government

Date: 3-17-09

Attachment # 5-1

3) HOA by laws have not been followed pertaining to elections, community and board meetings, transparency of records, maintenance of residential properties thus to the point of dilapidation resulting in violation of the City of Overland Park codes.

4) Bullying tactics and unnecessary lawsuits against homeowners by the board members.

Additionally, my personal concern is the condition of the exterior of my house because stucco was installed over wood rot and the value of my property is depreciating rapidly. (more than current economic situations dictate)

I have now had enough exposure to this living environment to know it does not build a productive viable sense of community and respect. Over the years, I have seen a tremendous increase in rental properties in the area and a greater presence of law enforcement. Approximately a year ago, I had a break-in at my home with an attempt to steal my car. I fear my personal safety is in jeopardy.

I am here today because my efforts to resolve these issues have been unsuccessful due to a lack of statues in Kansas to protect the owners of property in maintenance-provided communities making the future look bleaker than the past.

MEMORANDUM

TO:

The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

FROM:

Julia and Joe Ancrum, Homeowners of Quivira Falls Community Association  
10892 Bradshaw Overland Park, KS 66210

DATE:

March 17, 2009

RE:

HB 2253-An ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

We are offering this testimony in support of HB 2253

The issue: dilapidated and falling down fence that surrounded my home in Quivira Falls, a maintenance provided community in Overland Park, Kansas

The concern: dilapidated and falling down fence at my home in Quivira Falls. I am a licensed child care provider in Kansas and my agreement with the state is to provide a safe and debris-free yard for the children in my care. Due to lack of maintenance and termite infestation our fence was in need of replacement.

After many attempts and interactions both in writing and in person requesting that the Homeowners' Association (HOA) replace our unsafe fence, and finding out that there was no repair schedule, we replaced it ourselves. We were concerned that I would lose my child care license.

The Board sued us and demanded we remove the new fence. They said the fence did not meet the requirements of the architectural policy. We hired an attorney to represent us. After much ado the case was settled out of court with the agreement that our new fence would be torn down and replaced with a new fence that was erected by the HOA. The fence we had up and the fence they put up looked identical except for the type of wood used. In reality to this day, the community has vinyl, split-rail, pine, cedar, plastic and chain-link fences so our fence really was not out of architectural design.

Our cash outlay was attorney fees and the cost of the fence was over \$6,200. The funds the Board used to litigate this case came directly from the monthly dues collected from the homeowners. We feel that this was an irresponsible and frivolous law suit.

Conclusion: We gave the Board ample time to replace the fence, they did not do it, I replaced the fence and they sued me. Had the HOA fixed the fence in a timely manner, thousands of dollars and countless time and trouble could have been saved. We need HB2253 to become a law to protect Kansas HOA members from these kinds of situations

Local Government  
Date: 3-17-09  
Attachment: 6

MEMORANDUM

TO: The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

FROM: Your Name *NORMA CAMPANERIS*

DATE: March 5, 2009

RE: HB 2253- AN ACT Concerning Homeowner's Associations and  
Associations of Apartment Owners; Relating to certain duties, Required  
procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

We at Quivira Falls live in a dictatorship-plain and simple.

Homeowners must pay their dues, even though there has been no

Audit for over 9 years, homes are rotting, general maintainance is

inadequate, our bills go unpaid by the board, services barley

exist, and by-laws and covenants are not followed. There are many, many,

closed Board meetings, yet open board meetings are once every 4 to 6 weeks,

"open forums" are at the end of the 2 hour meeting, anyone that has not paid their

dues is not allowed to speak, others must submit in writing their question or com-

met, on a special form, and if it's not to the boards liking, it is not addressed.

None of the "open forum" is included in the biased newsletter. Our annual

dues are over one Million dollars. We must pay our dues regardless, or have

a lien put on our home, our credit ruined, while our dues pay attorneys fees used

against us. It's a one way street, we must keep what is in our deeds, the board

does not have to keep the by-laws and covenants, nor do they need to answer

for the mismanagement, or worse, of our dues...and still there are NO laws on

the Kansas books to protect us. Please, I pray, help us!

Thank you,

*Norma F. Campaneris*  
Norma F. Campaneris

note: I would like to see page 3, #'s 1,2,3,4,5,& 6  
removed from the bill.

Local Government

Date: 3-17-09

Attachment # 7-1



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

PAUL J. MORRISON  
ATTORNEY GENERAL

October 16, 2007

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

Norma Campaneris  
10969 Westgate  
Overland Park, Kansas 66210

Dear Ms. Campaneris:

Attorney General Morrison has asked me to acknowledge receipt of both of your letters expressing concern regarding a homeowner's association and the failure to provide copies of audits to homeowners. I apologize for the delay in responding.

Unfortunately, we cannot help you. The Attorney General is required by law to represent the interests of the state of Kansas and its public officials, and, therefore, we cannot intervene in disputes between home owners and their associations. The only statute addressing these associations is K.S.A. 58-3830 which provides, as follows:

"Homeowners association; budget; board meetings open to members. (a) An association shall:

"(1) Open all meetings of the board of the homeowner's association to all homeowners; and

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

"(b) For the purposes of this section, 'association' means a nonprofit homeowners association as defined in K.S.A. 60-3611 and amendments thereto.

You may want to contact an attorney to discuss what legal remedies are available.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
PAUL J. MORRISON

Mary Feighny  
Deputy Attorney General

MF/jm

7-2

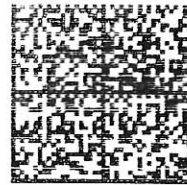


**TORNEY GENERAL PAUL J. MORRISON**  
120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597

8210

Norma Campaneris  
10969 Westgate  
Overland Park, Kansas 66210

FIRST CLASS AUTO



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10/16/2007  
Mailed From 6661  
US POSTAGE



8-29-07

Norma F. Campanone  
10969 Westgate  
Overland Park, KS 66210

Kansas Attorney General  
Paul Morrison  
Memorial Hall, 2nd floor  
120 S.W. 10th Street  
Topeka, KS 66612

Re: NO AUDITS FOR 6½ YEARS!

Quinn Falls Community Association  
Ryan Rader, President  
18990 Westgate  
Overland Park, KS 66210

Mr. Paul Morrison,

Mr. Ryan Rader has failed to provide audits to residents owners for the last 6½ years, starting with the year 2000, as required by the by-laws.

In 2005 audits for 2000 thru 2004 were requested to no avail.

In spring of 2006 Mr. Rader retained Dana F. Cole Auditing firm.

On 8-7-07 a board meeting was held at above, many residents owners attended and demanded the audit - Mr. Rader said "by fall".

On 8-20-07 I called the above mentioned auditing firm and spoke with John. John told me that the firm was having problems receiving information from Quevira Falls Office and that the firm was still on the year 2000. John also said that a meeting was scheduled with Linda, from the Quevira Falls office and Ryan Rader.

On 8-21-07 I attended a board meeting, as above, and inquired as to how we would have the audit by fall, if the auditors were still on 2000, and having problems receiving information from Quevira Falls. They answered there was a meeting scheduled on Thursday, 8-23-07 with the auditors and the info the auditors were needing was "from the past auditors on 1999".

On 8-29-07 I again called the auditing Co for the outcome of the 8-23-07 meeting. I was told that all calls regarding the Quevira Falls audit were to be directed to the Quevira Falls Office!!

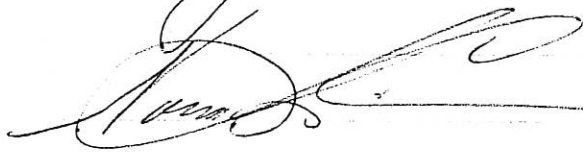
Ryan Rader has had some problems

with the City of Overland Park regarding  
Dunbar Falls, as well, and has received  
some fines. There are a great deal of problems  
with the up-keep-repairs, etc. and lack  
of money! Our dues (total) are \$190<sup>00</sup> a  
month and 513 homes which totals in  
the millions over the years of no audit.  
Mr. Rader has held the office of President  
for approximately 30 years plus, with  
different boards and has all sorts of answers  
for any question - as he had had complete  
control all these years.

Please look into this for all of us who  
hold our biggest investment here, our  
homes. Something is greatly amiss!

Please feel free to contact me with any  
questions.

Thank you,



Amfomous  
10 Westgate  
Viveland Park, KS 66210



Kansas Honey General  
Paul Morrison  
Memorial Hall, 2nd Floor  
120 S.W. 10th St.  
Topeka, KS 66612

9-7

## MEMORANDUM

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:** Huey P. Strickland, Resident  
Quivira Falls Community Association, Overland Park, KS

**DATE:** March 15, 2009  
**RE:** HB 2253– AN ACT Concerning Homeowner’s Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this brief testimony in support of HB2253. I want to thank the Kansas House Committee on Local Government for this opportunity to be heard.

I purchased a town house in the Quivira Falls Community Association (QFCA) Overland Park, in June, 1999. After reviewing the Association Covenants and Bylaws which granted every QFCA homeowner the right to examine the financial and operating records of the Association, I submitted my request to review those records. Shortly after requesting the records, I was assured by the long-term QFCA Board President, Ryan Rader (now deceased) that the records would be available for examination later, but that they were then being reviewed by the auditors. From time to time over the next several years, I again requested the records, and the same lame excuse was offered as to why they were never available.

I was later surprised to learn that QFCA audits had been suspended by the Board in 1999, and that they remained suspended over the next ten years, during which approximately \$10,000,000 flowed into and out of QFCA accounts with error-ridden financial reports and no accounting oversight. Such suspension was and is in gross violation of QFCA Covenants and Bylaws. Compounding the lack of accountability and transparency from the Board, QFCA properties entered a period of severe deterioration and general unrest in the Community. In spite of growing unrest, the Board continued to operate in secrecy and denial of wrongdoing.

After several years of frustration with the Board, I and others in the Community decided to take legal action to force the Board to assume some modicum of financial responsibility in governing the Association. My initial demand letter and a copy of my legal petition are provided for your review. Supported by legal advice from the Association attorney, the Board continued its strategy of delay and stalling in producing the documents which had been requested. Finally, the Board admitted that most of the documents which had been requested during the past several years had apparently been destroyed, lost, or were otherwise unavailable. This seemed to support the Board President’s earlier public declaration at a Community meeting when he said “If you think there’s been fraud, you’ll never find it.”

Local Government  
Date: 3-17-09  
Attachment # 8-1

After Rader's untimely death, I continued to press for an audit, but this too resisted by the Board on grounds that, in light of severe lack of funds, a formal audit would be too expensive. Finally, I prepared a "Case for an Audit" and distributed it to all households in the Community. I have also provided to the Committee copies of this document. In July, 2008, the Board finally conceded to retain a CPA firm to conduct a "Special Engagement" to examine the records of just the preceding accounting year which ended June 30, 2008.

The CPA was obviously frustrated with the condition of the records, but was finally able to publish a report to the Community. Very telling was the CPA's concern was that some \$6,800 came into the office in the month of June (2008), but "never made it to the bank." When I approached one of the Board member's about my concern as to where the money went, he suggested that we just forget about it because it was, after all, "insignificant."

In closing, I believe that the situation in the Quivira Falls Community is becoming more typical across America as tyrannical and often corrupt Association Boards "slam the door" in the face of their own residents who just want to be assured that their hard-earned money is being spent responsibly, and that Community financial records remain open for examination by any resident who may request them.

Thank you again for this opportunity to give my brief testimony in support of this extremely important legislation. I will be glad to answer any questions you have.

Huey Strickland  
10853 Rosehill Road  
Overland Park, KS 66210  
Phone: 913-317-8055  
Fax: 913-538-7019

**MEMORANDUM**

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:** Your Name *JEFF KITTINGER*  
*10761 OAKMONT*  
**DATE:** March 5, 2009 *OVERLAND PARK, KS 66210*

**RE:** HB 2253– AN ACT Concerning Homeowner’s Associations and  
Associations of Apartment Owners; Relating to certain duties, Required  
procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

*SEE ATTACHED SHEETS*

*2*

Local Government  
Date: 3-17-09  
Attachment # 9-1

To: Representative Gene Rardin

15 Mar 2009

I've live at Quivira Falls since 1987. During that time I've paid monthly dues which has added up to around 35 -40 K. Although I have paid this amount in dues I haven't received the exchange I should. per the bylaws of Quivira Falls which states they are to maintain all of the buildings, property, retaining walls, driveways, etc. in this development. This is their obligatory duty.

In the first part of 2002 I requested to have the retaining wall repaired behind my house. Nothing was ever done. I requested this many, many times throughout the years until some time in 2007. One day I noticed a crack in the concrete curb wall supporting the basement walkout walls. This crack was about 5/8 of an inch wide and went clear through the curb wall. I also had a crack completely across my patio, my front stoop had cracked in half, my side walk had cracked in half ( both of these had also happened to my neighbors stoops as well), my deck had sunk an 1 ½ inches and the posts had moved out and over toward the failing retaining wall, my driveway had dropped at the garage floor form 2 ½ -4 inches and the driveway had sunk in the middle pulling the driveway away from the garage floor ( this also happened to my neighbors). I contacted an engineer at my expense to do a survey of my property. The survey results were conclusive that the retaining wall was failing and wasn't doing its job resulting in erosion and damage to my property and home. (see engineer's report)

I sent the engineers report to the Quivira Falls office 2 times without response and on the third time I sent it certified mail and still no response. I eventually had to get the City of Overland Park, KS to come out and look at what was going on and look at the engineers report. The City ordered Quivira Falls to replace the retaining wall..

As a result of the deteriorating and failing retaining wall my home has sustained major damage which Quivira Falls refuses to address.

The damage that has occurred as a result of the retaining wall failure is as follows:

1. There is a 5/8 inch crack in the curb wall foundation.
2. The deck I installed in 2004 sunk 1 ½ "and the three post have moved out and over in the direction of the failed retaining wall 1 ½"- 2 "
3. Patio has dropped and cracked in half.
4. The corner of the connecting garage has sunk 1".
5. The sidewalk has dropped and cracked in half by the front stoop.
6. The front stoop cracked in half.
7. The driveway has dropped 2 ½ "- 4 "at the point where it connects to the garage floor.
8. The driveway sunk in the middle cracking it and pulling it away from the garage floor.



9. The slab of the basement floor separated from the foundation 5/8" causing a 5/8"-1/8" separation in an 8 ft span causing a radon gas leak of 115.7 pCi/L which the EPA recommendation to take action is at 4.0 pCi/L. This is extremely hazardous to our health. (see attached copy of the test report)

(See attached pictures of damages caused by the retaining wall failure. )

A stucco and deck program went into effect in 1999 and when it did all exterior repair and painting ceased resulting in wood rot. (see attached pictures)

Since the beginning of the stucco and deck program we had to pay extra amount on our dues monthly. This was an additional \$60 per month and to date we've put in around \$7,500. Since I'm a contractor I requested permission to installed my own deck with the agreement that the money, in the amount of \$8950.00, that I spent on the deck installation would be applied toward the stucco installation.

This is the year my house was slated to have the stucco installed. However it was told to me that they now don't have the money to have it done and don't know when it will be done. So basically they don't have the money that I've paid in.

I've obtained estimates to repair everything that was the result of the failing retaining wall with the exception of raising and ptering of the garage foundation. This came to about \$30,000.

I quit paying dues to Quivira Falls under a year ago because nothing was getting done in return for the money I've spent over the years for the service. I also didn't want them to use the money we've put in for maintenance to fight their legal battles for them being obligatorily negligent.

Since I haven't paid the dues they've listed me in their newspaper as being delinquent on my dues without explanation, placed a lien on my property and just last week turned me into a collection agency.

I also became aware that Quivira Falls are wanting to put an assessment on everyone's property to pay for repairs.

This is true.

Jeff Kittinger

  
10761 Oakmont

Overland Park, KS 66210

913-226-7556



# Engineering and Inspection Services, Inc.

11421 West 70th. Ter.

Shawnee, Kansas 66203

(913) 268 - 0707 ; Fax. (913) 268 - 4698

Jeff Kittinger  
10761 Oakmont  
Lenexa, Kansas 66210

September 29, 2006

Regarding: Foundation Inspection

Dear Mr. Kittinger,

I performed a foundation inspection at 10761 Oakmont on September 29, 2006. The home has a poured concrete foundation and frame construction. For report purposes the home is assumed to face north. The structure is an attached town home at the east end of the building complex.

Laser level readings were taken of the foundation support system below the living area of the home. These readings were within 1/2-inch of level. In my opinion, this is within acceptable limits.

Laser level readings were taken of the two garages. The southeast corner of the two garages is 1-inch lower than the west side.

Laser level readings were taken of the wood deck. The south side of the deck (side away from the home) is about 1-inch lower than the side next to the home. The deck columns at each end of the deck lean 11/16-inch toward the south (away from the home).

Exterior observations were made and the following was noted:

1. The ground has a steep slope away from the back of the home. There is as much as a 7-foot drop in 15-feet.
2. The retaining wall is constructed of timber. The timber has deteriorated and is not retaining the soil.
3. An electrical box southwest of the home is leaning out of position and has exposed wires. This was caused by the soil moving downward toward the steep slope at the back of the home.
4. The driveway is sloped toward the west, which is the direction of the steep slope at the side of the home.
5. The driveway has settled next to the home causing water to run toward the foundation next to the front porch.
6. There is a 3/32-inch wide crack in the concrete patio below the deck indicating settlement at the south side of the patio.
7. The foundation has an 11/16-inch wide crack that is located 5'-6" west of the east end of the deck. This would indicate the foundation has moved toward the east. This is toward the direction where the retaining wall has failed and where there is evidence of soil moving down the steep slope.

The laser level readings indicate the home is moving toward the failed retaining wall. There is evidence of soil migrating down the slope where the retaining wall has failed. The electrical box is leaning and the wires to it are exposed as one example of this. This is a dangerous condition. If the soil is not stopped from further migration, it could

Mr. Kittinger

September 29, 2006

cause serious and expensive damage to the foundation and structure of the home.

I have photos in my file of the exterior conditions at the time of this inspection.

I recommend an experienced engineer design a retaining wall ~~along the back~~ of the home. The retaining wall needs to be installed by a contractor experienced in retaining wall installation. This work needs to be expedited so the home does not experience any further movement.

This report is confidential and for your exclusive use. No other person or company is authorized to use this report for any purpose without your permission. This inspection is item specific. Only the items discussed in this report were inspected. All other items are outside the scope of this inspection. This examination does not include or attempt to check for termite activity or damage from any type of destructive insect or pest. If termite or pest investigation is desired a licensed pest control operator will need to be engaged. Water damage or structural components that were concealed from view by finished or stored materials are also not examined. No existing conditions were reviewed for possible asbestos, lead paint, radon gas, mold, or any other toxic substance or environmental risks. Additionally when making visual observations of a building, it is required that certain assumptions be made regarding the existing conditions. Because these assumptions may not be verifiable without expending added sums of money or destroying apparent adequate or serviceable portions of the building, the owner of this report agrees that, except for negligence on the part of the engineer in analyzing visually observed conditions, we will be held harmless, indemnified and defended by you from and against all claims, losses, liabilities, or expenses (including legal fees) arising out of the services provided by this report. By the use of this report it is understood the above conditions are agreed to.

Please call if you have questions.

Respectfully,

  
David R. Hobbs, P. E.

c/o Alpha Energy Laboratories  
 2501 Mayes Rd  
 Suite 100  
 Carrollton, TX 75006  
 (877) 795-1000



**RADON TEST REPORT**

Jeff Kittinger  
 10761 Oakmont  
 Overland Park, KS 66210

**Date Received:** 8/28/2008  
**Report Date:** 8/29/2008  
**Revised Date:** 8/29/2008

Dear Consumer:

You have taken an important step to find the radon level in the home.

**NEHA ID#:** 101132 AL  
**State ID#:**  
**NJ MEB:** MEB90095

**HERE ARE YOUR RADON TEST RESULTS:**

LAB ID# KIT ID#	RADON LEVEL (pCi/L)	TEST LOCATION	TEST PARAMETERS	
			Start/Stop Date Time	TEST METHOD EPA-402-R-92-004
776696 KB45063	115.7	Test Room Location: Basement Test Floor: Basement	Short Term 8/24/2008 to 8/26/2008 7:57 to 9:20	Activated Charcoal

Use the chart below to compare your radon test results with the EPA guideline. The higher a home's radon level, the greater the health risk to you and your family.

Radon Level (pCi/L)	Description
0.4	Average outdoor radon concentration
1.3	Average indoor radon concentration
4.0	<b>EPA RECOMMENDED ACTION GUIDELINE</b>

**RADON HEALTH RISK INFORMATION**

Radon is the second leading cause of lung cancer, after smoking. The US Environmental Protection Agency (EPA) and the Surgeon General strongly recommend taking further action when the home's radon test results are 4.0 pCi/L or greater. The concentration of radon in the home is measured in picocuries per liter of air (pCi/L). Radon levels less than 4.0 pCi/L still pose some risk and in many cases may be reduced. If the radon level in your home is between 2.0 and 4.0 pCi/L, the EPA recommends that you consider correcting the problem in your home. The indoor radon level national average is about 1.3 pCi/L. The more elevated a home's radon level, the greater the health risk to you and your family. Smokers and former smokers are at especially high risk. There are straightforward ways to correct a home's radon problem that are not too costly. Even homes with very high levels can be reduced to below 4.0 pCi/L. The EPA recommends that you use an EPA or state-approved contractor to correct radon problems.

QAQC- Alpha Energy Test kits have an estimated accuracy level of ± 5%.

Confidentiality: The information contained in this report is confidential. If you received this report in error, please return it to the address above.

Kidde/ Alpha Energy Laboratories is responsible solely for the analysis of samples returned to us. We do not provide sampling services and are not responsible for erroneous radon concentrations resulting from incorrect sampling procedures.

Measurement Specialist /  
 Laboratory Director

Date 8/29/2008

## MEMORANDUM

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:** Your Name *Marilyn McClure*

**DATE:** March 5, 2009

**RE:** HB 2253— AN ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

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The townhome complex where I live and own a unit has deteriorated in appearance and general upkeep over the last several years. There are units without siding that were slated for replacement years ago, fences and decks that are falling down/rotting, units in need of paint, and areas with major erosion problems. The Association has no money for addressing these problems even though dues have been continuously collected from members and increased steadily over the years. The Association has been unable to account for past allocation of the dues and money that was to go for the siding and decks/fences. The bylaws dictated an audit was to be done annually and recently the homeowners discovered one had not been conducted in a number of years nor could the board come up with needed information or money to pay for it to be completed. There has been no accountability for the dues collected and members needing improvements must now take care of them at their own expense. The only thing that is a guarantee is trash pick-up and summer lawn mowing - a small return for dues of \$200 per month. I recently had some exterior painting done at my own expense to cover bare wood trim as the contractor hired by the association years ago had not done an adequate job of coverage, no priming was done, and paint is chipping as the original product was of poor quality. I could cite further problems but suffice to say most of feel stuck here with no recourse but to pay our high dues, cope with inadequate maintenance, and try to keep our property values up at our own expense.

Hopefully this will serve as a testimonial to help bring about laws to prevent future developments of this sort.

Local Government  
Date: 3-17-09  
Attachment # 10

## MEMORANDUM

TO: The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

FROM: Linda Smith  
DATE: March 4, 2009  
RE: HB 2253-AN ACT Concerning Homeowner's Associations and  
Associations of Apartment Owners, Relating to certain duties, Required  
procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

The Coca-Cola commercials were funny. But, to be forced to "sue yourself" is not funny at all in real life. It is a waste of time and money for the judicial system; it is ineffective for all participants; and it increases hostility within the community. That leads to more lawsuits and more waste.

Our community, Quivira Falls, has been torn apart and perhaps permanently damaged because of a system that allows no redress except the courts. Everyone – city, county, state – all say, "Yes, you've got a problem. Sorry, we can't help you. You'll have to take it to the courts."

To take the issue to the courts means that an already financially strapped community must pay continuing legal fees. The people who bring the complaint have to not only pay their own attorney fees; they have to continually pay the dues that pay for the lawyer who fights them. They also have to fight the perception that they're raising costs for everyone else because they're bringing the lawsuit.

In our community, the board did not hold an audit for years, despite the by-law requirements. When the community protested, the board closed its meetings to the homeowners for months. Financial information that, again according to the by-laws, is to be available to all residents was either withheld or "lost."

It may be that Kansas state law forbids some or all of these actions. I don't know. If so, there is apparently no enforcement of these laws except at the additional expense of those who have protested.

Considering the number of homeowner's associations in Kansas and the amount of money they collect for dues, there has to be a better way to resolve this type of conflict.

Local Government  
Date: 3-17-09  
Attachment # 11

## MEMORANDUM

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government


**FROM:** Your Name

**DATE:** March 5, 2009

**RE:** HB 2253— AN ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

I have lived in a Homeowner's Association for ten years. They have all of the rights and we have no rights. Please pass this to protect us. I would like to see page three, numbers one, two, three, four, five and six removed from the bill.

Thank you,  
Carmen Campaneris  


Local Government

Date: 3-17-09

Attachment # 12

## MEMORANDUM

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:** Your Name

**DATE:** March 5, 2009

**RE:** HB 2253— AN ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

*As a member of an Overland Park home owners association, I am deeply concerned about how little current Kansas law protects our interests. When the leadership of associations acts against the members, there is little the ranks and file can do to correct the problem. This new bill can be a powerful tool to protect home owners from exploitation. Please take this bill seriously so that the rights of dues paying members can be enforced.*

*Sincerely*

*Danny J. Bybongle*

Local Government

Date: 3-17-09

Attachment # 13



## MEMORANDUM

**TO:** The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

**FROM:** Angela Fleming

**DATE:** March 16, 2009

**RE:** HB 2253– AN ACT Concerning Homeowner's Associations and Associations of Apartment Owners; Relating to certain duties, Required procedures, Attorney fees, Dispute resolution and Duties of the Attorney General

I am offering this testimony in support of HB2253.

In June 2006, I purchased a unit within the Quivira Falls Association HOA. This testimonial is an effort to share with you some of the issues that have arisen as a result.

### **Lack of Maintenance to Outside Structure – Breach of Duties**

At the time that I purchased my home, I was told by both the seller and the HOA itself that repairs would be made to the siding on my home, which was in desperate repair. Shortly after my purchase, I filed a work request for these repairs with the HOA (even though I was told the seller had already done so). By summer 2007, when no activity had occurred, I began to attend Board meetings. In an October 2007 meeting, we were assured by the Board that all siding repairs would be completed by the end of the calendar year. Unfortunately, 2007 came and went with the Board not fulfilling their commitment to my home or me. The Board attempted to excuse their lack of response to our siding issues by saying that over 150 homes (more than ¼ of the community) had siding issues and that they did not have the income to fix them all. To me, this was not a solvent answer, as the by-laws I purchased in to directly stated that the HOA was responsible for maintaining the outside of my home.

In March 2008, I was notified that the City of Overland Park had become involved on wood rot issues and that they were mandating all structures in Quivira Falls be fixed within a 2 year window set by the City. Board members notified us if we did not assist them financially in helping to get these repairs made, that we would be fined personally by the City for having wood rot on our homes. After visiting with a City representative, I learned that this was not true, and was simply a scare tactic to get homeowners to pay for the work to their homes on their own.

Additionally, in March/April 2008, the Board issued a memo regarding a “special assessment” they wanted homeowners to consider in an effort to raise additional funds to fund the wood rot issue our community was experiencing. Based on concerns we had about the prior management of HOA funds, the lack of reserves that had been allocated to perform this work, and direct communication from the HOA stating that even if the assessment was passed, there were no guarantees the siding on my home would be fixed – I could not in good faith vote to give them more money only to be unsure of how it would be used. Needless to say, this “special assessment” failed.

**Local Government**  
**Date:** 3-17-09  
**Attachment #** 14-1

In September 2008, I was contacted by a maintenance associate of the HOA, who told me they had gotten a chance to look at the siding on my home and anticipated there were \$1,500.00 in siding repairs needed. I was told because the HOA had no money, I needed to pay this out of my own pocket if I wanted repairs to be done. I was told that the HOA would reimburse me, at a later date for this expense. After this conversation, I contacted the HOA office manager and asked if it was possible to receive a letter dictating the scope of the estimated work, how the work would be performed, when the work would be performed by, and when reimbursement might be provided by the HOA to myself for out of pocket expenses. I was notified that the Board was not releasing letters to residents containing the information I requested. I was told that I needed to instead, come into the office and sign a form letter that had been prepared for this purpose that identified the following:

- 1) That the resident was in approval of this work and willing to pay for the charges out of their own pocket.
- 2) That the resident could not subsidize this payment, by withholding dues to "reimburse" themselves
- 3) That the resident could not be guaranteed a date for reimbursement - and that no timeline for reimbursement had been scheduled.

I had also inquired as to whether or not the Quivira Falls Board of Directors would be willing to reimburse fees and interest incurred - if a homeowner had to take out a loan to pay for these monies. I was told that they had not been approached with that question, but that their initial response was "no".

Based on all of this information, I notified the Board that I could not in good faith agree to those terms. While I was/am highly concerned with the siding on my home, offering a fee and interest free loan to the association - with no repayment terms - would, in my opinion, have been a bad business decision.

It is now March 2009 and the siding on my home has still not been maintained/repaired. I have water that enters my home from these siding failures – and is damaging the interior of my home. I cringe when I look at the investment I purchased rotting into the ground because our HOA is not holding up their end of the agreement and providing the services clearly stated in our by-laws.

### **Other Large Scale Issues**

- Not paying our wastewater/trash bills. This inaction led to a suit being filed by the Board of County Commissioners of Johnson County in 2008.
- Annual audit required by by-laws; not conducted since 1999 (8 years – perhaps 9 now - that were not completed).
- Lack of financial transparency. Had to pursue legal route to obtain information on how our dues were being spent and why we have such a shortage of dues to cover necessary items.

In essence, I pay just under \$200/month to an association that does very little, if anything, for me. I have no recourse for this inaction, as if I don't pay my dues, a lien will be filed on my home. Please help us in obtaining legislation in our state that will allow communities, such as ours, to flourish instead of being run into the ground.

Date:

Allen and Olberding Builders Inc.  
10308 Metcalf #308  
Overland Park, KS 66212  
Phone: 816/943-8600 Fax: 943-8601

Memorandum

To:  
The Honorable Sharon Schwartz, Chair  
The Honorable Mitch Holmes, Vice Chair  
The Honorable Delia Garcia, Ranking Minority  
Members, House Committee on Local Government

From:  
Ron Olberding  
President  
Edward Wayne Industries  
Phone 816/943-8600  
Fax 816/943-8601

RonOlberding@sbcglobal.net  
www.JambBrace.com  
March 17, 2009

RE:  
HB 2253-An act concerning Homeowner's Associations and Associations of  
Apartment Owners; relating to certain duties, required procedures, attorney fees,  
dispute resolution and duties of the Attorney General

After performing repairs and restorations to some homes in Quivira Falls, I would  
like to offer some insight from a professional contractor's viewpoint.

This community was sold as a maintenance provided subdivision but my findings  
reflected everything but quality maintenance. It can't classify it as mediocre.  
It appeared nothing had been done in years.

Siding-

- Was not properly caulked and painted
- Water damaged to the point it rotted the frame
- Further deterioration would ultimately cause the weight of the structure to  
collapse. At one location, the rot was so severe the siding supporting the  
electrical meter gave way and allowed water to run into the house via the electric

**Local Government**

Date: 3-17-09

Attachment # 15-1

lines and the meter pulled away from the house. Damage also occurred to the finished basement on this home due to water leakage.

#### Roofing

- Improperly installed
- Ceilings were damaged inside the home from water damage
- Lack of ventilation

The monthly dues paid by the homeowner's should warrant better quality work than is being done. The value of these homes will continue to depreciate if they are left in this condition. The more time that passes the greater the cost of restoration.

I support this bill after seeing these conditions and talking with numerous homeowners about the management of Quivira Falls.



Terrie Huntington &lt;terriehuntington@gmail.com&gt;

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**FW: House Bill 2253 Condos and HOA**

1 message

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**Sylvia McCombs <SylviaMcCombs@mccurdyauction.com>**Tue, Mar 17, 2009 at  
11:34 AM

To: terriehuntington@gmail.com

Please see letters from me and Chuck Maack. Below

Just this week we had another problem. We learned that the Insurance carrier has denied coverage in the lawsuit that the HOA president filed without authority of the board and he lied to the members in February telling them we did. I was refused the right to see the documents. The president of the Association has had the letter since November and won't drop the lawsuit He tells the owners that they are covered. We have spent \$30,000 already and we are just starting discovery. Can you imagine what this is going to cost us???

To make matters worse, the president of the HOA is a member of the bar and a Judge. Everyone is scared of him and will say nothing for fear of reprisal.

---

**From:** Sylvia McCombs  
**Sent:** Wednesday, March 04, 2009 5:44 PM  
**To:** 'raj@rajforkansas.com'  
**Subject:** House Bill 2253 Condos and HOA

Dear Mr. Goyle,

Please see the attached text of HB 2253 concerning HOA and Condos.

I urge you to vote in favor of passing this bill.

See my note below to Rep Huntington and that of my Neighbor Mr. Chuck Maack,

Several of my neighbors have also written to Rep Huntington expressing support.

**Sylvia J. McCombs, CPA**  
**Chief Financial Officer**  
**McCurdy Auction, LLC**  
**Real Estate Specialists**  
519 N. Oliver  
Wichita, KS 67208  
phone : 316-683-0612 ext. 3007  
fax : 316-683-8822  
email : [smccombs@mccurdyauction.com](mailto:smccombs@mccurdyauction.com)  
web : [www.mccurdyauction.com](http://www.mccurdyauction.com)

Dear Mrs. Huntington,  
I just read the bill. I am so pleased. If I never meet you in person, please give yourself a huge hug from all the condo owners in Wichita and all of Kansas.

**Local Government**Date: 3-17-09Attachment # 16-1

**We have so needed this protection for so long.** I do hope this passes and becomes law. **My community has been in turmoil for years over lawsuits and lack of full disclosure to the homeowners.**

We have spent over \$350,000 in legal fees (both plaintiffs and defendants) with no resolution to the overall problems. I believe that this bill will greatly improve transparency and provide a better foundation for the condominium lifestyle to continue.

Our condominium provides an atmosphere where the elderly can share their time and talents with the younger residents and the younger residents "adopt" the elderly and look after them. It can be a great community lifestyle under the right conditions. The sense of community is strong even with all the turmoil. Our neighborhood is safe and people watch out for each other. When an owner is sick, the neighbors rally. This is what community is all about. But sometimes, the management of the Condominium can become a hot seat of abuse of power by Boards. We have a budget of over a half million dollars and the dues are ever increasing to pay for lawyers and insider contracts! This year alone, I estimate that \$50,000 will be spent from our budget on legal fees. All for no real good reason.

We don't want to give up that sense of community because of a few misguided Boards that don't understand who they work for. House Bill 2253 is exactly what we need.

**The proposed Attorney General website is a fabulous idea.** To date, we have had no real resources other than consulting lawyers at our own (Owner) cost. I can't wait to see it brought to life. Yesterday, we had our annual condominium homeowners meeting and I related to the membership how hard you have been working to help us. They are equally as appreciative as I am.

**As a sitting Board Member, and former Treasurer, I have been fighting for these same concepts proposed in the Bill within my community only to be met with other Board Members opposition who keep secrets and have secret meetings.**

We have an excellent set of By-laws, Declaration and rules, **but no way to force compliance** from the Board other than a Stockholder (Member) derivative suit. No one wants to have to sue the Association. I think this bill will send a clear message to the Boards of such organizations that our lawmakers take in interest in our Rights and Restrictions under the Condominium Declaration.

**As a CPA, I understand the nature of Fiduciary duty to our owners/members and appreciate that you and our other lawmakers are giving homeowners the tools necessary** to assure that owners interests come first, and that their money is not unwisely spent in closed door meetings, without any condominium owners' rights to speak or act.

Please keep me informed of the progress of the bill.

Again, Thank-you for your time and talent in helping the condominium owners of this State. Please let me know if I can do anything to assist you. You have my full support.

---

Dear Mrs. Huntington,

I was just made aware of House Bill 2253 regarding "AN ACT concerning homeowners' associations and associations of apartment owners; relating to certain duties, required procedures, attorney fees, dispute resolution and duties of the attorney general."

I commend you for drafting this bill that is likely sorely needed by many associations and the residents of those associations. The association where I reside has been in turmoil over the past couple years by a Board of Directors, and more so certain members of that Board of Directors, using their powers as Directors inappropriately, using foul and slanderous language during official meetings and continuing that same language in the community, filing lawsuits that are more acts of vengeance than merit, and having developed a manner of leadership that threatens members with lawsuits should they take exception to the manner in which they choose to operate.

We have an excellent "Gold Book" of regulations that were brought up to the highest legal standards by the Board of Directors and management company in existence prior to the present board. Yet these regulations are being abused at the whim of and with the personal interpretation of those regulations by certain members of the current board. Though the Gold Book follows State and Federal laws and regulations, these regulations are not strictly followed. The former Treasurer on this Board, a CPA and carry-over from the Board that improved conditions, resigned from her position because of her concern for the actions of this board in violation of regulations. When she attempted to explain the importance of following State and Federal laws and regulations, she was verbally taken to task, to a degree threatened, and experienced foul language from other Board members.

It is boards such as ours that require the oversight of the Attorney General and a Bill such as you are proposing. Members of associations need a State authority to whom to bring attention to matters such as I have described, and we would hope that the State authority would question such boards and require a written and official explanation of the manner in which they operate when it appears that operation is contrary to the laws and regulations of State and Federal government.

Again, thank you for proposing this bill.

Charles C. Maack

8201 East Harry #1804

Wichita, Kansas 67209

Email: [maack1@cox.net](mailto:maack1@cox.net)

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 **2253.pdf**  
35K

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16-4





To: House Local Government Committee

From: Luke Bell, Vice President of Governmental Affairs

Date: March 5, 2009

Subject: **HB 2253** – Enacting Various Procedural Requirements on Homeowners' Associations and Apartment Owners' Associations through the Homeowners' Association Act

Chairperson Schwartz and members of the House Local Government Committee, thank you for the opportunity to provide neutral testimony on **HB 2253** on behalf of the Kansas Association of REALTORS® (KAR). KAR has faithfully represented the interests of the 9,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

Summary of the Legislation

Among other things, **HB 2253** would enact various new procedural requirements on the governing boards of homeowners' associations and apartment owners' associations. In particular, Section 2(g) of HB 2253 would require the board of directors of any homeowners' association or apartment owners' association to provide a copy of the association's bylaws to any prospective homeowner, apartment owner or resident at no cost.

KAR Has No Position on the Underlying Legislation, But We Do Have Concerns with the Language Found in Section 2(g) Requiring the Disclosure of Association Bylaws

Although KAR has not taken a position on the underlying legislation at this time, we do have concerns with the language found in Section 2(g) that requires the disclosure of the association's bylaws to any prospective homeowner, apartment owner or resident at no cost. As an alternative to this language, we would respectfully request that the committee adopt our attached balloon amendment that would add the words "upon written request" to the beginning of Section 2(g).

Until a prospective homeowner, apartment owner or resident makes a written request to the board of directors, it is unclear under the current language when a homeowners' association (or homeowner selling his or her property) would have an opportunity to provide the information required under Section 2(g). By amending the language to require disclosure only when the prospective property owners make a written request, it adds a sufficient level of certainty into the statute that will provide clear guidelines on when the disclosures need to be provided.

785.267.3610  
VOICE

800.366.0069  
TOLL FREE

785.267.1867  
FAX

Local Government

Date: 3-17-09

Attachment # 17-1

W

17-2

Kansas Association of REALTORS®  
Proposed Balloon Amendment for HB 2253 – March 5, 2009

HB 2253

1 owners, apartment owners or residents of a homeowners' association.  
2 The board of directors shall not meet in closed executive session unless  
3 it is in consultation with its attorneys about matters properly a part of the  
4 attorney-client relationship or if it involves personnel matters or personal  
5 matters between the board of directors and the homeowner, apartment  
6 owner or resident of a confidential nature.

7 (d) The board of directors, at least 30 days before adopting any pro-  
8 posed assessments, special charges or fees of general application, shall  
9 give in writing to the homeowners, apartment owners or residents, full  
10 disclosure concerning any proposed assessments, special charges or fees  
11 of general application. All homeowners, apartment owners or residents  
12 shall be given the opportunity to comment on such proposals. Assess-  
13 ments, charges and fees shall be equitable and proportionate to the re-  
14 spective interests of the homeowners, apartment owners or residents.

15 (e) The board of directors, during reasonable business hours, shall  
16 provide a homeowner, apartment owner or resident access, at no cost, to  
17 the homeowner's association records, including, but not limited to,  
18 minutes of meetings, budget and financial records, all bills from utility  
19 companies, suppliers, contractors, bill payments, tax filings, audits, re-  
20 imbursements to board members and homeowners, apartment owners or  
21 residents, attorney bills and any other statements where checks are being  
22 disbursed for payment.

23 (f) The board of directors shall provide a homeowner, apartment  
24 owner or resident with copies of association records, including minutes  
25 of meetings, budget and financial records no later than 10 business days  
26 following the receipt of a written request by a homeowner, apartment  
27 owner or resident of the homeowner's association. The cost to the hom-  
28 eowner, apartment owner or resident requesting such copies should not  
29 exceed the reasonable and prevailing commercial duplication costs for  
30 copying.

Upon written request,

31 (g) The board of directors shall provide a prospective homeowner,  
32 apartment owner or resident, at no cost, a copy of the homeowners' as-  
33 sociation by-laws.

34 Sec. 3. Within 60 days of the effective date of this act, a homeowners'  
35 association shall adopt procedures to implement the following:

36 (a) The selection of one board member and two nonboard members  
37 who are homeowners, apartment owners or residents of the homeowners'  
38 association to receive and tally the ballots cast for the election of members  
39 of the board of directors, to verify the number of votes received against  
40 the number of persons voting and proxies voted and to report the results  
41 to the board of directors and for publication of the results to the hom-  
42 eowners, apartment owners or residents of such homeowners' association;

43 (b) provide homeowners, apartment owners or residents information

TESTIMONY - HOUSE COMMITTEE ON LOCAL GOVERNMENT

March 5, 2009

HOUSE BILL NO. 2253

TO: Honorable Members of the House Committee on Local Government  
and Committee Staff

Good afternoon. My name is Jim Parker. I'm appearing before you today on behalf of Quail Creek Homeowners Association, Inc. (for which I serve as a paid Bookkeeper). The Association is non-profit, as defined in K.S.A. 60-3611, and is managed by unpaid homeowner volunteers who are themselves members of the Association.

I'm testifying in opposition to certain provisions of this Bill but not necessarily to the Bill itself. These concerns were discussed with the Board of Directors of the Association at its February 10 monthly Board meeting.

**Our first and primary concern is the first sentence in Section 1, paragraph (5).**

Linking "real property owner" and "lessee" as "residents" and then frequently referring throughout the Bill to "or residents" is a problem. There seems to be an attempt to confer equal standing to "someone renting from a homeowner" and "the homeowner". This contradicts legal relationship specifications in the Covenants and Bylaws of most, if not all, homeowners' associations, particularly those that are "non-profit corporations".

Generally speaking, Covenants and Bylaws of homeowners' associations assume "non-owner residents" (renters, lessees, etc.) have no participatory rights regarding operations of the Association, nor does the Association have any obligation to provide them with minutes or other Association documents, whether requested or not (although they often do so voluntarily). The Association is only required to communicate with the homeowners, and the homeowners have the responsibility for communicating with their "non-owner residents", as required. Likewise, "non-owner residents" have the right to communicate with their homeowner landlords, not the homeowners' association directly.

**We feel that all of Section 1, paragraph 5 should be deleted, along with all references throughout the Bill to "or residents".**

**Our second concern is the second sentence in Section 5, paragraph (e).** This states that the homeowners' association shall always bear two-thirds of the mediation costs, regardless of which party initiates the request for mediation. That might sound reasonable where a "for-profit" homeowners' association, which might have the financial resources with which to absorb such a cost, is involved; however, we feel it is unreasonable that a "non-profit" homeowners' association, in which the collective homeowners (including the complainant) would have to indirectly share in the costs, would automatically be required to assume two-thirds of the mediation cost. **We feel this sentence should be amended to show that two-thirds of the mediation cost would be borne by whichever party initiates the request for mediation.**

TESTIMONY - HOUSE COMMITTEE ON LOCAL GOVERNMENT  
March 5, 2009  
HOUSE BILL NO. 2253

TO: Honorable Members of the House Committee on Local Government  
and Committee Staff

**Our third concern is Section 6, paragraph (b).** According to their meeting minutes, when the House Commerce and Labor Committee was working a very similar Bill (HB 2826) on February 25, 2008, Representative Brunk asked Renae Jefferies from the Revisor's Office "how the homeowners' association would know to implement these changes required by the act. Ms. Jefferies said that it was usually (*my emphasis*) in the newspaper. They would learn of it the same way that they do any change in the law." Most, if not all, homeowners' associations are required to hold annual meetings, but these may take place at any time of the year, depending upon the associations' Covenants and Bylaws. It is certainly conceivable that a homeowners' association could have an annual meeting after publication in the Kansas register but before publication in the local newspaper (if published at all), thus being in violation of the law through no fault of theirs. **We think a better solution would be to require the Secretary of State's Office to notify all homeowners' associations throughout the state within 30 days after publication in the Kansas register.** After all, homeowners' associations are required to be registered with, and to have paid the appropriate annual fee to, the Secretary of State's Office, which has a complete record of such associations and does, from time to time, send out mailings to the various associations.

Thank you for the opportunity to discuss this Bill with your Committee. I would be glad to answer any questions or concerns you may have.

Respectfully Submitted,



James H. (Jim) Parker  
3336 SW Belle Ave.  
Topeka, KS 66614  
Phone: (785) 272-6001  
Email: jimparker1@cox.net

TESTIMONY-HOUSE COMMITTEE ON LOCAL GOVERNMENT

HOUSE BILL NO. 2253

Mar. 5, 2009

TO: Honorable Members of the House Committee on Local Government  
And Committee Staff

Good afternoon. My name is Robert Hjetland. I'm appearing before you today on behalf of Prairie Trace Community Association (of which I am an unpaid Board member and President). This Association is non-profit, as defined in K.S.A. 60-3611, and is managed by unpaid homeowner volunteers who are themselves members of the Association.

Our Association consists of 49 owner occupied units, located in the 3400 area of Southwest Belle Ave., Topeka. Our Association was started in 1985 and about 18% are original members. The average tenure is 17 years with over 68% being retired.

I'm testifying in opposition to certain provisions of this Bill and the Bill itself. These concerns were discussed with the Board of Directors at our February monthly Board meeting.

**My first concern is the first sentence in Section 1, paragraph (5).** Linking "real property owner" and "lessee" as "residents" and then frequently referring throughout the Bill to "or residents" is a problem. There seems to be an attempt to confer equal standing to "someone renting from a homeowner" and "the homeowner". This contradicts legal relationship specifications in the Covenants and Bylaws of most, if not all, homeowners' associations, particularly those that are "non-profit corporations". Generally speaking, Covenants and Bylaws of homeowners' associations assume "non-owner residents" (renters, lessees, etc.) have no participatory rights regarding operations of the Association, nor does the Association have any obligation to provide them with minutes or other Association documents, whether requested or not (although they often do so voluntarily). The Association is only required to communicate with the homeowners, and the homeowners have the responsibility for communicating with their "non-owner residents", as required. Likewise, "non-owner residents" have the right to communicate with their homeowner landlords, not the homeowners' association directly. **I feel that all of Section 1, paragraph 5 should be deleted, along with the many references throughout the Bill to "or residents".**

Section 2 of this bill is almost a copy of our existing convent, if you omit the "apartment owners or residents" references. Reference paragraph (g) we do, but at a cost.

Section 3. Paragraph (a). Again from our convent, less paragraph (b).

Section 4 makes no mention if the judgment goes the other way. This is one sided.

**My second concern is Section 5, paragraph (a).** This states that should any homeowner, apartment owner or resident request mediation the homeowners' association must mediate, however should the association wish to mediate with the other party it can

TESTIMONY-HOUSE COMMITTEE ON LOCAL GOVERNMENT  
HOUSE BILL NO. 2253  
Mar. 5, 2009

decline. **This is one sided, I feel if one party requests mediation the other must participate.**

**My third concern is the second sentence in Section 5, paragraph (e).** This states that the homeowners' association shall always bear two-thirds of the mediation costs, regardless of which party initiates the request for mediation. **I feel this sentence should be amended to show that one-half of the mediation cost would be borne by both parties.**

**My fourth concern is Section 6, paragraph (a).** I agree that attorney general should develop, and provide the items as listed. However, who is to bear the cost of this project? (See Goossen/Yoder letter of Feb. 19, 2009)

**My fifth concern is Section 6, paragraph (b).** Who is going to notify the Homeowners associations of this bill? The Secretary of State's Office? After all, homeowners' associations are required to be registered with, and to have paid an annual fee to, the Secretary of State's Office, which has a complete record of such associations and does, from time to time, send out mailings to the associations.

**My sixth concern is Section 6, paragraph (a) item (8).** "appropriate rules regarding the possible shifting of legal cost to and among homeowners, apartment owners or resident, directors personally, and homeowners' association." Given this possibility can you imagine getting people to serve on the board?

**I would like to see the following changes to this bill. In Section 6, paragraph (i).** Change this paragraph to read; **This bill shall not apply to any homeowners' association with an annual *operating* budget less than \$250,000 (annually adjusted for CPI) unless the homeowners' association opts in the provisions of this bill.**

**Some other solutions are,** Possible a grandfather clause for association 20 years or older to be exempt, or a size exemption for association with 50-75 or less members.

In conclusion I speak against this bill. Many of the items in this bill are covered by the homeowners' Covenants and Bylaws, Others items are covered in Robert's Rules Of Order. This bill put will require additional duties of the boards, which serve without compensation

Thank you for the opportunity to discuss this Bill with your Committee. I would be glad to answer any questions or concerns you may have.

Respectfully Submitted,

Robert L. Hjetland

## An opinion

I believe an individual under the guise of this bill (*BH2253-An Act concerning homeowners' associations and associations of apartment owners*) has been rebuked by the board and the members of his homeowners association. I don't think this bill is going solve the problem. I find it hard to believe that the convent and by laws, which govern the association do not include most of the items mentioned in this bill.

I also believe this bill will open the door to pettie litigation, increase the burdens on association boards, add cost to the associations and the state government, as well as increasing the burdens on the court system.