

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Sharon Schwartz at 3:35 p.m. on January 28, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Mario Goico - Excused
Representative Steve Heubert - Excused
Representative Michael Peterson - Excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, 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:

Professor Michael Davis, Kansas Judicial Council
Senator Terrie Huntington, 7th District
Sylvia J. McCombs, Homeowner, Cedar Lakes Village
Harry Bonet, Private Citizen, Cedar Lakes Village
Representative Gene Rardin, 16th District
Cherylaine J. Sullivan, Private Citizen
Nila Ridings, Private Citizen
Rod Hoffman, Attorney, Kansas City, Missouri
Jerry L. Berg, President, CB Property Management, Inc., Wichita
Christine Lentz, Curry Association Management, Inc.
John E. Hartman, President, Nottingham Forest South HOA
Mark Mayer, Private Citizen
Whitney Damron, Kansas Bar Association
Luke Bell, Kansas Association of Realtors
Drew Quin, Private Citizen

Others attending:

See attached list.

Chair Schwartz opened the hearing on **HB 2472 - Kansas uniform common interest owners bill of rights act.**

The Chair recognized Mike Heim Office of the Revisor of Statutes, to present the Committee with an overview of **HB 2472**. He stated this bill would enact the Kansas Uniform Common Interest Owners Bill of Rights. It would establish rules to govern the rights and duties of owners, associations, and developers of common interest communities. It also would establish rules to provide effective operations of these entities as well as establish rules regarding the roles of associations and boards of directors.

Questions from the Committee followed.

Proponents

Chair Schwartz recognized Professor Michael Davis, a member of the Kansas Judicial Council. (Attachment #1) He informed the Committee of what the Council was trying to accomplish in designing this bill, and noted no legislation will avoid all conflict, but the Judicial Council recommends adoption of the Uniform Common Interest Owners Bill of Rights Act as appropriate and important state policy.

Questions by the Committee followed.

Senator Terrie Huntington appeared before the Committee in support of **HB 2472**. (Attachment #2) She stated this bill is a comprehensive bill, based on model legislation, which addresses the governance of

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Minutes of the House Local Government Committee at 3:35 p.m. on January 28, 2010, in Room 144-S of the Capitol.

apartments, townhomes, and gated communities. It would remind the boards of directors of home associations that there are rules and procedures to follow, that adherence to bylaws is mandatory, that citizens have a voice in the establishment of the rules and regulations under which they must abide, that financial statements are the property of the homes association members, and as such they can be viewed and/or copied, upon request. **HB 2472** is a necessary first step that consolidates into Kansas statutes rules and regulations for associations that are the first line of governance for property owners.

Sylvia J. McCombs, homeowner, Cedar Lakes Village, Wichita, appeared before the Committee as a proponent for **HB 2472**. (Attachment #3) She urged the Committee to not only pass this legislation but to insure that it can be enforced.

Harry Bonet, private citizen, Cedar Lakes Village, Wichita, presented testimony in support of **HB 2472**. (Attachment #4) He suggested enforcement measures be added to the bill.

Representative Gene Rardin, District 16, presented testimony in support of **HB 2472**. (Attachment #5) He stated this bill takes needed steps to curb mismanagement and slipshod business practices which have been demonstrated in some Kansas common interest community associations.

Cherylaine J. Sullivan, private citizen, offered testimony in support of **HB 2472**. (Attachment #6) She asked the Committee to consider adding an auditing requirement of homeowner association monies collected and spent to this bill. Also, she proposed that Kansas HOAs collecting over \$100,000 annually be required to submit or have available upon request an audit by an outside, qualified auditor to retain their not-for-profit status with the Kansas Secretary of State.

Nila Ridings, private citizen, presented testimony in support of **HB 2472** and offered several suggestions for the Committee to consider to be included in this bill. (Attachment #7)

Rod Hoffman, attorney, Kansas City, offered testimony in support of **HB 2472**. (Attachment #8) He stated in his opinion the Committee's attention should be directed to modernizing the statutes that authorize creation of ownership of condominiums and town homes. The condo and town home statutes should be updated to provide clear delineation of responsibilities of developers to home buyers and to home associations.

Jerry L. Berg, private citizen, offered testimony in support of **HB 2472**, and presented the Committee with suggestions as to changes to improve the bill. (Attachment #9)

Christine Lentz, Curry Association Management, appeared in support of **HB 2472**. (Attachment #10) She stated that her biggest concern is the burden that will be placed on homeowner associations through out the State of Kansas, the economic burden of compliance with this bill as written and the lack of volunteerism this bill could produce.

John E. Hartman, Nottingham Forest South HOA, appeared in support of **HB 2472**. He said he is sure the intentions of the bill are good, however, the unintended consequences are not. For homeowner associations, this bill would add increased expenses, greater records keeping, and a more daunting task of trying to find volunteers to serve on the Board. (Attachment #11)

Mark Mayer, private citizen, appeared in support of **HB 2472**. He stated that the rules and regulations provided under this bill can provide protection to homeowners so that they can become involved with their neighbors. He also said the bill was difficult to understand and cumbersome. (Attachment #12)

Huey P. Strickland, private citizen, appeared as a proponent for **HB 2472**. (Attachment #13) He stated that community financial records should remain open for examination by any resident who may request them.

Neutral

Whitney Damron, Kansas Bar Association (KBA), appeared as a neutral for **HB 2472**, stating the KBA does not have a formal opinion on the bill as written. However, the KBA is concerned with the past consideration of loser pay provisions and requests the Committee's assistance in avoiding including such language in this

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bill, should it be the Committee's desire to advance it out of Committee. (Attachment #14)

Luke Bell, Kansas Association of Realtors (KAR), offered neutral testimony on **HB 2472**. (Attachment #15) He stated the KAR supports the general intent behind the bill, but has concerns with the scope and size of the Uniform Common Interest Owners Bill of Rights Act. He said, certain retroactive provisions of the bill have the potential to impair and negatively affect existing contractual relationships. Finally, the provisions of the bill could be burdensome for volunteer-driven homeowners' associations and could make it more difficult to identify volunteers who are willing to serve in any capacity.

There was one written-only testimony submitted in support of **HB 2472**. It was from Charles C. Maack, Cedar Lakes Village Association. (Attachment #16)

Chair Schwartz opened the floor to any questions the Committee might have of the above-mentioned conferees. Questions and discussion followed. Chair Schwartz then appointed a subcommittee consisting of Representative Mah, Chair; Representative Otto; and Representative Seiwert to review the testimonies and come back with recommendations.

Chair Schwartz recognized Drew Quin from the gallery to speak to the bill. He spoke in opposition to the bill. There was no written testimony submitted.

Chair Schwartz closed the hearing on **HB 2472**.

There being no further business before the Committee at this time the meeting was adjourned at 5:30 p.m.

The next meeting of the Committee will be February 2, 2010.

S. S.

Representative Sharon Schwartz, Chair

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: *January 28, 2010*

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Chris Brainard	Covey Assoc. Mgt
Jason Burgess	CURT MANAGING
Robert Board	ASHTON ESTATES
Christy Leidy	Curry Assoc. Mgt.
Lyndall Ford	Villas of St Andrews
Drew M. Quinn	Lionsgate Homes Assoc.
MARK MAYOR	Nottingham Forest South HOA
JOHN HANTMAN	NOTTINGHAM FOREST SOUTH HOA
Michelle Peterson	Capital Strategies
Rod Hoffm	Self
Harry Bred	WICHITA CLUCA
Nancy Strickland	Self
Zila Fudings	Self
Michael Davis	ICS. JUD. COUNCIL
Randy M. Harrell	Judicial Council
Joseph Molin	ICS BAR ASSN
Sylvia J McCombs	Cedar Lakes Wichita

Michaela Bradley

Please use black ink



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MEMORANDUM

TO: House Local Government Committee
FROM: Kansas Judicial Council
DATE: January 28, 2010
**RE: Judicial Council Testimony on 2010 HB 2472 Relating to the
Kansas Uniform Common Interest Owners Bill of Rights Act**

In June 2009 House Local Government Chair Schwartz requested that the Judicial Council study 2009 HB 2253 relating to homeowners' associations. The Judicial Council accepted the assignment and appointed an advisory committee of experienced persons including the president of a homeowners' association, a resident of a condominium community, a realtor, a developer, a representative of a title company, a property manager, a state representative, a state senator, a district judge, an Assistant Attorney General, an attorney and a law professor. A list of the Committee members is included with this testimony.

The Committee met four times in the summer and fall of 2009 and concluded that House Bill 2253 did not provide comprehensive and balanced solutions to issues that cause problems or tensions among common interest communities. It was the opinion of the Committee that this was likely because the bill was initially drafted in response to specific problems at a small number of common interest communities.

The Committee heard objections to several subjects contained in the bill, including mandatory audits, rights of lessees, secrets ballots, mediation, and the role of the Attorney General's Office. It was the opinion of the Committee that provisions relating to these subjects were unnecessary because a large number of associations were not experiencing problems in these areas. The Committee also found that some provisions of HB 2253 were not balanced in their treatment of unit owner/board issues.

Local Government

Date: 1-28-10

Attachment # 1

After review of legislation of other states, the Committee turned its attention to consideration of legislation prepared by the Uniform Law Commissioners, specifically the 2008 Uniform Common Interest Owners Bill of Rights Act (UCIOBORA). After reviewing the UCIOBORA, the Committee unanimously selected it as a platform for the legislation that it now recommends. The principal reason it was chosen over HB 2253 is that the UCIOBORA is both more comprehensive in scope and more balanced in treatment of possible management/ownership flashpoints than HB 2253. The Committee found that almost every provision of UCIOBORA is written in plain English that can be read and understood by board members, unit owners and interested parties, whether or not they are legally trained. After deciding that the UCIOBORA would be the basis for legislation recommended by the Committee, the Committee made several amendments to adapt it for use in Kansas.

The following is a summary of the highlights of the proposed legislation:

- The bill seeks to address critical aspects of association governance, with focus on the relationship between the association and its individual members.
- A statement of the public purposes of the act is included (Section 1).
- The act contains a section defining the terms used in the act (Section 2).
- The act is mandatory, with a few exceptions specifically noted in the act. The act imposes an obligation of good faith in its performance and enforcement and applies to all common interest communities containing twelve or more units (Sections 3, 4, 5 & 6).
- The powers and duties of the unit owners (Section 8) and the board of directors (Section 9) are described. The power to borrow money was added to the proposed act by the drafting Committee as one of the powers of the association (Section 8 (d)).
- The bill includes:
 - treatment of the association bylaws (Section 10);
 - meetings of the unit owners (Section 11);
 - meetings of the board of directors (Section 12);
 - quorums (Section 13);
 - voting procedures (Section 14);
 - record keeping and maintenance of records (Section 15);
 - rules and rule making (Section 16);
 - requirements relating to notice (Section 17);

removal of officers and directors (Section 18);

adoption of budgets and special assessments (Section 19);

sections relating to the effect of the violation of the rights of action (Section 20); and

general statements that are included in all uniform laws relating to conflicts with other state laws, application of the act and the act's interaction with the Federal Electronics Signatures Global and National Commerce Act (Sections 21, 22, & 23).

- The act also amends K.S.A. 58-3119 and K.S.A. 58-3120 to conform those sections of the Kansas Apartments Owners Act and repeals K.S.A. 59-3830, because it is fully covered in the act (Sections 24, 25, & 26).
- The bill includes an effective date of January 1, 2011, to allow time to make any necessary changes in bylaws or covenants and to allow time for education programs for boards and developers (Section 27).

The latest information from the Community Associations Institute indicates that at the end of 2009, there were an estimated 305,400 association-governed communities with 24.4 million housing units and 60.1 million residents. While Kansas does not have as many of these communities as states such as California, Arizona, Nevada and Florida, there are a significant number of these communities in Kansas, and in the last few years there have been a number of issues relating to such communities brought to the legislature.

It is the opinion of the Committee and the Judicial Council that enactment of the Uniform Common Interest Owners Bill of Rights Act (HB 2472) will clarify the rights and duties of unit owners and associations and provide for the effective operation of these communities in the interest of the owners and their residents. The act also addresses current and potential areas of conflict and tension between the unit owners and associations' boards and managers in a comprehensive and balanced manner.

No legislation will avoid all conflict, but the Judicial Council recommends that adoption of the Uniform Common Interest Owners Bill of Rights Act is an appropriate and important state policy.

Committee Members

Hon. Robert J. Fleming, Chair, Parsons, District Judge in 11th Judicial District and member of the Kansas Judicial Council.

Emilie Burdette, Topeka, Assistant Attorney General in the Consumer Protection and Antitrust Division.

Professor Michael J. Davis, Lake Quivira, property law professor and former Dean of the Kansas University School of Law.

Gerald L. Goodell, Topeka, attorney and member of the Kansas Judicial Council.

Robert L. Hjetland, Topeka, president of homeowners association.

Rep. Terrie Huntington, Fairway, State Representative from the 25th House District.

Jeanette Johnson, Topeka, realtor and former President of the Kansas Association of Realtors.

Senator Julia Lynn, Olathe, State Senator from the 9th Senate District.

LewJene Schneider, Maize, attorney and developer.

Hayden St. John, Topeka, President of Lawyers Title of Topeka.

C. J. Sullivan, Overland Park, librarian, elder advocate, and townhome resident.

Maggie Warren, Topeka, President, Wheatland Property Management, Inc.

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ETHICS AND ELECTIONS
PUBLIC HEALTH AND WELFARE
LOCAL GOVERNMENT
TRANSPORTATION

January 28, 2010

Testimony by Senator Terrie Huntington
House Committee on Local Government
House Bill 2472

Kansas Uniform Common Interest Owners Bill of Rights Act

Chairman Schwartz, Vice Chairman Holmes and Ranking Member Garcia: Thank you for the opportunity to speak to you about HB 2472. Last year the committee referred HB 2253 to the Judicial Council, and you will be hearing from Professor Michael J. Davis about the Council process.

For your review, I have included my testimony from last year.

To summarize Homes Association legislation, in 2007, an attorney who lives in Prairie Village and is a member of a Homes Association came to me with concerns about the election process whereby the Board of Directors are voted upon to serve a specific term. He was also concerned about a dispute resolution process, one that could ultimately satisfy the grievance by the HOA or a property owner toward another property owner or toward the Association or the HOA Board of Directors. We worked with the revisor and brought before House Elections & Local Government HB 2445.

In 2008, after hearing from many interested parties about the need for reform of Homes Association governance, the bill was re-written, HB 2826, and incorporated language to more specifically put into statute rules for HOA boards. It also established an education and mediation process through the Kansas Attorney General's office. Another provision provided that the court award costs, expenses and attorney fees to the prevailing party in a civil action. That bill was heard and passed out of the Commerce & Labor Committee, passed out of the House, and subsequently went to Senate Judiciary where it had a hearing but there was not time to work the bill.

In 2009, more interested property owners entered the process, and a bill was drafted to address apartments and condominiums, and the draft went from a simple two-page bill to a 5-page bill that addressed dispute resolution, established a mediation process, provided that the board of directors give 30-day notice before adopting new assessments (to allow for feedback), provided for an audit of receipts and expenditures, and again added a provision that the AG's office, in the Consumer Protection Division, provide a list of mediators that could address grievances, in order to minimize the need for civil litigation.

Knowing that there were many questions and concerns, the Chairman and committee wisely sent the bill to the Judicial Council for review. I was asked to serve on the committee that reviewed the bill, and with travel schedules, was able to attend two of the four meetings.

This fall there was an article in the Sun Newspapers, a local Johnson County publication, featuring an association that has testified before this committee about issues they faced. That prompted letters from residents in other HOAs to write their Representatives, asking them to support the bill addressing changes in the Common Interest Owners Bill of Rights Act. You will hear today from residents in Wichita who need a change in the statutes to facilitate progress in their HOA. You've heard former Representative Jason Watkins testify in favor of these bills, and he resides in and was President of his HOA in west Wichita.

What you have before you today is a comprehensive bill, model legislation, which addresses the governance of apartments, townhomes, and gated communities. It reminds the Boards of Directors of Homes Associations that there are rules and procedures to follow, that adherence to bylaws is mandatory, that citizens have a voice in the establishment of the rules and regulations under which they must abide, that financial statements are the property of the Homes Association members, and as such, they can be viewed and/or copied, upon request.

Does this bill solve all of the problems that you'll hear about today? Probably not. But it is a necessary first step that consolidates into our Kansas statutes rules and regulations for associations that are the first line of governance for property owners.

Thank you for your affirmative consideration of HB 2472.

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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.

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House Committee on Local Government Testimony on
Uniform Common Owners Interest Bill of Rights Act
January 28, 2010 Sylvia J. McCombs

My name is Sylvia McCombs. I am a CPA licensed in Kansas, Homeowner CLVCA and CFO of McCurdy Auction Service, a real estate auction specialty company. I hold a BBA in Business with an emphasis in accounting. I have lived at Cedar Lakes Village for 11 Years. I have previously worked for Raytheon Company for several years as an Aircraft Financing Principal Analyst, and also as the Finance Manager and Treasurer of a 17 unit restaurant management company for 12 years. I was previously licensed as A Real Estate Broker in Kansas.

I became aware of the nature of conflict between HOA Boards and homeowners in 2005 when I was physically bruised and assaulted by a Board member trying to block my inquiry into the clubhouse cocktail bar records. The Board member did not want me to find the answer to where over \$5,000 was. I found it. He had it; for two years. The director was charged with battery and disorderly conduct and took a plea bargain to the lesser charge of abusive conduct and language.

In 2006, I offered my time and accounting talents and to be of service to my community, ran for the Board and was elected. I served as Treasurer for a two-year term from February 2006 to February 2008, and was re-elected in February 2008 as both Director and Treasurer. I was also elected to the larger Landowners association as both Director and Treasurer of that organization for a term.

The newly elected 2008 Board of Directors of Cedar Lakes Condo Association has not respected the rights of homeowners, nor put their best interest above the personal animus they feel towards anyone who does not completely agree with them. When I began to disagree with the position of the President, I was threatened with removal and began to experience the intimidation that the President has shown towards me and others,

In the summer of 2008, the Board held an illegal meeting with no proper notice on May 21, 2008 to file a lawsuit against the former manager (and member) for electronic data that they already had. When I admitted that I had received it and that all the other Board members had been notified of such, a closed meeting on July 24, 2008 was held where I had no protection of other members as witnesses to harass and intimidate me for not supporting their fabricated charges for a lawsuit. This lawsuit cost homeowners several thousand dollars and was dismissed by CLVCA when it became obvious that the charge was frivolous. I had already prepared a statement of resignation as Treasurer and read it to them at that meeting. The new management company was obviously inexperienced and the new Board refused to hold them accountable to the members. I could not jeopardize my standing as a CPA and be a part of this. Bills were not getting paid and there were no work orders as required in the Management Contract.

From there, things got even worse. The President sued the former property Manager and his company without a vote or authorization from the Board. When a countersuit was filed by the defendants, the president lied to the members telling them that our insurance company would pay for the attorneys and there was no risk because the insurance would pay any judgment if we lost. He certainly led us to believe there was NO WAY we would lose. He called the countersuit a "House of Cards...House of Cards" as he laid playing cards down on the table while making his speech. He said all this after he had already received a letter of denial from the Insurance Carrier. Had the homeowners known the truth, they would have demanded immediate settlement.

Local Government

Date: 2-28-10

Attachment # 9

The homeowner's money was wasted on an attorney friend of several of the Board members and we got stuck with a bill for about \$150,000.

Because I was opposed to this wasteful litigation, I suffered public humiliation at the hands of the Board Members led by the President, a former military captain who was found to be fraternizing with his subordinates and now lawyer and administrative hearing judge. . A military style "Statement of Particulars" was mailed with the annual homeowner packet stating among other things that I was sleeping with the married former manager, that I had breeched my duty by paying the legally assessed dues to the larger association and several other salacious and slanderous charges.

On October 30, 2008 a members meeting was called to vote to remove me. I brought an attorney to try to reason with them that they were slandering me and should stop. The Present called the police and not only had him removed from the meeting, but told the police he was a judge and had my attorney removed from MY property. The President outlawed members from taping meetings (but he can tape us) so that no evidence should be brought about his tyrannical behavior. He told the members that: **I could be "placed under house arrest and stripped of my privileges."**

He would not allow me to defend myself and when I attempted to show a power point, he ripped my computer cords from the wall and had one of his fellow intimidators take my screen down. A vote was called and I was never allowed to speak in my defense. In trying to get the Board to stop slandering me, it cost me \$3,800.00 in attorney fees and never have they retracted or apologized. The vote FAILED TO REMOVE ME and this angered the dictator even more.

In the summer of 2009, another of the president's wolf pack Board discharged a taser (twice) in the Board meeting room in the direction of me and the former manager's wife. We called the police and made a report. The President then wrote that he "Found that I should be fined \$100.00 for calling the police. It cost me \$2,000 in attorney fees to fight for my civil rights to call the police when I am in fear for my safety.

When I gave a deposition in the lawsuit, and did not agree to all the wrong things he had done, the president held a closed meeting for just the Board two hours after my deposition and he threatened to "SHRED ME"

I wrote a return email to several neighbors when one of them bashed and claimed a member was a rapist, and the Board publicly sanctioned me and not the other resident for writing an email. They published this "verdict of admonishment" to all my neighbors.

The president wrote to me that he wished the police man on site when our clubhouse burned down would have tasered me because "a little shock therapy would do you good".

After many, many incidents of denial to requests for records from both me as a Director and several other members who are so frightened of being sued by the President, a member was actually charged with stalking for writing a request for the records and formally complaining about the president.

One member was sued in small claims when he made a report about a private meeting in which the President was criticized. The judge threw it out. The homeowner is still without the maintenance he requested as retaliation for his criticism.

Since I attempted to get the records on behalf of these members I have been accused of breach of duty and on January 13th at a supposed proper Board meeting, the Board voted to deny my rights as a director. The President swore to "Rain the wrath of the Board of accountancy" upon me. When I read the Kansas Statute regarding our rights, I was called a bitch and told to go F&ck myself. I was told by the president, You're damn right, I want you to sue me. I'll drive you to the courthouse.

All of these events were orchestrated and carried out by the President of the Board, who is a lawyer and administrative law judge who has put fear in the minds and hearts of my fellow homeowners who cannot afford the attorney fees to defend themselves. They are afraid to ask for their rights to be upheld when contracts are not bid for and \$150,000 is wasted on improper contracting for roofs, and \$125,000 for attorney fees and judgments against the Association and now their common property is in danger of being destroyed and not rebuilt as the law demands. They are too scared to stop the spending and are seeing our property values plummet. Prices have dropped disproportionately to the market. We cannot give our homes away. I have lost \$20,000 in value in the last year. This is not a market reaction, but rather a lack of amenities such as paint, sprinklers, siding, pools, club house and have spent thousand on attorneys just to protect my name. I haven't even addressed the deferred maintenance that must be done in order to sell my unit.

No one wants to live in this dictatorship. The condition of the property has suffered due to all the litigation and I urge you to not only pass legislation but insure that it can be enforced without homeowners going bankrupt trying to protect their homes.

Thank-you for you work on our behalf,
Sylvia J McCombs

AFFIDAVIT

STATE OF KANSAS)
) ss.
SEDGWICK COUNTY)

On this 22 day of January, 2010, Harry Bonet, of lawful age, being first duly sworn, upon his oath states:

1. I am an owner and member of Cedar Lakes Village Condominium Association and reside at 8201 E. Harry, Condo # 902, Wichita, Kansas, 67207
2. I make this verified statement on my own behalf; and I have read and know the contents, matters and things set forth are true as I am informed and verily believe.
3. The fire on December 13, 2009 caused massive damage to the commonly owned clubhouse, but there are concrete structures like swimming pools, fountains, and large sections of the building that appear to be unharmed, including the building foundation.
4. The amenities were defined in my common property when I purchased my property and I am opposed to any of those being further destroyed with out my having a say in that decision, by at least my vote in accordance with our Declaration and member protections.
5. I agree that every one should have a right to examine the records and know that Sylvia McCombs has been denied access for herself and others.
6. The CLVCA dues and annual assessment appear to set higher than can be supported by the current 2010 costs, because of the grossly reduced facilities we will be supporting. The Board has assessed at the same rate as last year though the differences are obvious. I have asked Director McCombs to object and for the assessment s to be reduced to the limits set by the Declaration and Bylaws.
7. Jon L. Frobish and the majority of this Board threaten filing lawsuits. I cannot afford such retaliatory action. I am aware that there are several members that wish to have our rights protected but are afraid to join as parties in a lawsuit in these circumstances.

VERIFICATION

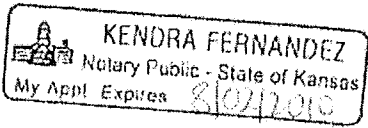
[Signature]
Harry Bonet

Before me, the undersigned, a Notary Public, within and for said County and State, on this 22 day of January, 2010, personally appeared Harry Bonet, to me personally known to be the identical person who executed the within and foregoing verification under oath and acknowledged to me that he executed same as his free and voluntary act and deed for the uses and purposes of the above Petition.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year above written.

[Signature]
Notary Public

My Appointment Expires:



Local Government
Date: 2-28-10
Attachment # 4

State of Kansas
House of Representatives



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

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

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: January 28, 2010

RE: HB 2472- AN ACT Concerning the Kansas Uniform Common Interest
Owners Bill of Rights Act.

I am offering this testimony in support of HB2472.

This bill takes needed steps to curb mismanagement and slip-shod business practices which have been demonstrated in some Kansas Common Interest Community Associations.

Victims of these practices, some of whom are here today, are looking to us, their state legislature, to move to rectify this situation.

As state legislators, we simply cannot allow these unregulated common interest community 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 without effective oversight, regulation and clearly accessible, low cost alternatives for redress of legitimate grievances by their members.

I urge your support for this bill.

Local Government
Date: 2-28-10
Attachment # 5

To: Members of the Kansas House Committee on Local Government

Date: January 28, 2010

Regarding: House Bill 2472 – The Kansas Uniform Common Interest Owners Bill of Rights Act

From: Cherylaine J Sullivan (CJ)
10967 Westgate Road
Overland Park, KS 66210

I am offering testimony in support of HB 2472 with the following suggestions for your consideration:

Page 3 Line 21 – suggest the words “may be amended” be changed to “must be amended.” Without this change, Homeowners Association (HOA) Boards or their agents could continue with old bylaws and covenants that would violate the spirit of this act.

Page 4 Line 6 – suggest that Line 7 end with “is a party.” I believe homeowners should be notified of any legal action taken against them for any reason.

Page 5 Lines 9-14 – suggest wording that prevents Boards or their agents from borrowing money without prior approval of a majority of homeowners

Page 8 Lines 31-37 – These lines allow Boards or their agents to continue doing whatever they please concerning open meetings, homeowner comment, meeting materials distribution or meeting agendas without regard to the proposed HB 2472. Law suits should be the last resort and (j) may encourage use of the courts for these matters.

Page 9 Lines 14-15 – suggest words, “unless prohibited by the declarations or bylaws” be deleted --- there are many reasons proxies would be needed for voting

Page 14 Lines 32-34 – suggest “emergency” be more clearly defined
I fear Boards or their agents could see almost anything as an “emergency.”

I ask for your consideration for the provision of an auditing requirement of HOA monies collected and spent be included in HB 2472. I understand that an HOA collecting and spending several hundred dollars may not need a formal, annual audit. I propose that Kansas HOAs collecting over \$100,000. annually be required to submit or have available upon request an audit by an outside, qualified auditor to retain their not-for-profit status with the Kansas Secretary of State. My HOA collects over \$1,000,000. annually and the association bylaws do not require audits.

Thank You.

Local Government

Date: 2-28-10

Attachment # 6

January 28, 2010

To:

The Honorable Representative Sharon Schwartz, Chair
The Honorable Mitch Holmes, Vice Chair
The Honorable Delia Garcia, Ranking Minority Leader
Members, House Committee on Local Government
Kansas State Representatives:

Mario Goico
Lana Gordon
Steve Heubert
Ann Mah
Bill Otto
Michael Peterson
Joe Seiwert
Mike Slattery

From:

Nila Ridings
12350 W. 107th Terrace
Overland Park, KS 66210

RE: Support for HB 2472-The Kansas Uniform Common Interest Owners Bill of Rights Act

In September of 2005, I purchased a townhome in a maintenance-provided community in Johnson County, Kansas. What I thought I was buying into is the complete opposite of what I've lived with.

This experience has taught me how absolutely necessary it is for laws to govern homes associations in the State of Kansas. Without laws, they are capable of: Destroying lives, real estate property values, creating hostile living environments, ruining credit ratings of individuals, engaging in unnecessary litigation, and spending monies collected in the form of dues and assessments on anything they so desire with no accountability to anyone.

For the past two and one half years I have exhausted myself seeking help for members of these communities. I have determined it is only through our Kansas legislators that we can be helped.

I would like to see the following included in HB2472:

1) All references to the board should include any agents, property managers, or any other party acting on the board's behalf in the management of the community or it's financial management.

Local Government

Date: 2-28-10

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(Reason) I filed a lawsuit in March of 2008 to see the financial records of the community where I own property. In April 2009 after spending thousands of dollars on an attorney and legal expenses the judge ordered the records be turned over to me. The board treasurer gave me a handful of documents claiming there were no bank records. Our community collects over 1.2 million dollars per year. I consulted with the Johnson County District Attorney's office and was told to file a police report for embezzlement. The detective subpoenaed the bank records.

(End result) He found entries on the ledgers where cash was received, but never deposited into the bank accounts. He interviewed board members-all of which pointed their fingers at a board president that was dead. There had been no audits on the money since 1999. (Totally over 10M dollars with no audits) Even though many newsletters and board meetings gave the indication audits were in the process of being done.

3) All community associations that collect in excess of \$100,000.00 annually shall be required to have annual audits performed. No exceptions.

4) All loans acquired by board members shall be approved by a majority vote of the homeowners.

(Reason) We had a situation where board members were trying to borrow 100K from local banks without homeowner knowledge of it yet the responsible party for repayment would have been the homeowners had the loan been received.

5) No legal action shall be taken against a homeowner without prior mediation.

6) The word "may" should be replaced with "shall" to avoid any opportunity for board members to use that loophole to their advantage.

7) Any method of communication (ie) newsletter or website to the members shall have a method of response for all.

(Reason) Our board members publish a monthly newsletter filled with false information. It is more like a tabloid newspaper and they use it to make villains out of the members they do not like. There is no way for the "villains" to defend themselves.

I am appreciative of the efforts that have been put forth to try and bring HB2472 to the point of a vote. However, having lived through what I have, I recognize the importance of all minute details being addressed and added to make this an ironclad law for the State of Kansas homeowners buying into these communities. All across the United States homes associations are becoming the norm. I would like to know anyone with the idea of establishing such a community in Kansas is well aware this state has done it's due diligence and will not allow it's

residents to be victims of unscrupulous practices any longer.

I recognize there are well-run communities in these environments, but overall they are only as good as the integrity and respect of the board members and the agents and property managers they contract with.

Thank you for considering my suggestions.

SLAGLE, BERNARD & GORMAN

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ROBERT A. STOPPERAN*
KATHERINE L. O'CONNOR*
JONATHAN N. DILLY*
AMY L. JOHNSON*

FRANK B.W. McCOLLUM*
OF COUNSEL

WARREN E. SLAGLE
(1915-1999)

**ADMITTED IN MISSOURI AND KANSAS

Ms. Sharon Schwartz
Chair, Local Government Committee
House of Representatives, Room 149-S
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Re: House Bill No. 2472

Dear Ms. Schwartz:

I am writing about House Bill No. 2472 recently introduced to your committee to provide some regulation of common interest communities. Thank you for your consideration.

In most parts of Kansas, homes associations are rare, but they have existed in the Kansas City area for nearly 100 years. Their operation has been so successful and important to home buyers that real estate developers seldom create new residential subdivisions without establishing a common interest community, often called homes associations. Today there are hundreds of active associations in my adopted home of Johnson County. Many are assisted by professional property managers. My parents live in Garden City, where there are perhaps three or four associations. It's only a guess, but I suspect that this proposed legislation, if adopted, would affect hundreds of thousands of Kansans.

In my law practice, I have the opportunity to represent more than 150 home owner controlled homes associations. They are condominium projects, town homes communities and subdivisions of single family homes. They range in size from 16 homes to more than 500. Some have swimming pools with beautiful clubhouses. Some have only a monument at the entrance to their neighborhood. With their boards of directors, I advise associations about the meaning of their governing documents and help them enforce restrictive covenants. Their goals are universally the same—maintain the livability of their neighborhoods and their home values.

You may remember that I contacted you last year about 2009 House Bill 2253. In my correspondence to you, I suggested that your committee consider reviewing the Uniform Common Interest Ownership Act (UCIOA) as a substitute to last year's proposal. Certainly, the bill before you is a substantial improvement over HB 2253. However, I still believe your committee should study UCIOA or its related acts for several

Page 2

reasons, which I'll explain below. Also, I want to offer some comments about HB 2472.

As you know, no state has adopted this Bill of Rights. Of course, it is fairly new, but its lack of acceptance by any state is worthy of your attention. I'm not here to attack the proposed Bill of Rights, which is a common sense approach to many issues that affect homes associations. However, in comparison to UCIOA and related acts, this Bill of Rights is "UCIOA Lite."

Please don't construe my comments as any criticism of the committee of the Judicial Council that studied these bills. I observed one of their meetings. Their thoughtful study and editing of the Bill of Rights created a worthwhile product. But the committee didn't investigate the scope of any so-called problem with Kansas homes associations. Rather, it appears than one or two absolutely dreadful and neglected situations are driving this process. In my experience, these situations didn't arise because adequate laws weren't enacted to protect homeowners. Homes associations are small democratic institutions, even without legislation in place to protect home owners. Apathy is the biggest enemy of homes associations. Just two months ago, no one bothered to attend the annual meeting of a large homes association in Overland Park. A Bill of Rights isn't necessary if owners become actively engaged as home owners. If they don't become active, a Bill of Rights isn't enough. Before you make a final decision on this proposal, I encourage you to visit with a larger number of persons involved in homes associations. There are dozens of professional managers who work full time for homes associations. They know the ABCs of homes associations. Also consider talking to directors of active associations and especially to directors in newly built condominium or townhome associations.

In my opinion, your attention should be directed to modernizing the statutes that authorize creation of condominiums and town homes. The Apartment Ownership Act, which allows condominiums, was enacted in 1963, when condominiums were novel home ownership concept. Today, the statute is a dinosaur in comparison to similar statutes in nearly every state. The Townhome statute was adopted in 1975. Today both of these types of homes are highly popular. Again, I'm speculating, but I'll bet if you've heard complaints from constituents about homes associations, many of those problems originated during construction of the projects or while the developer remained in control of the home owners association. After the developer turns over control of the association to homeowners, association often receive blame for problems that they didn't create. The condo and townhome statutes should be updated to provide clear delineation of responsibilities of developers to home buyers and to homes associations. The Bill of Rights only indirectly addresses the so-called time frame of "developer control" of homes association. The draft uniform laws are very helpful on these issues.

--In addition to two statutes cited above, there are at least six additional Kansas statutes that regulate operations of homes associations or enforcement of restrictive covenants. It would be extremely helpful if all were consolidated or, at a minimum, cross referenced in one location.

Page 3

Finally, let me address a few points about HB 2472:

--As I mentioned, apathy is a major problem for homes associations. Section 8 requires a majority of votes in an association before the association may borrow money. A better method would be to require a majority of the quorum defined in the association's governing documents.


--Undirected proxies are common. And proxies are important to achieve quorum requirements. Usually these are given to the current directors. Section 14 says person may not cast undirected proxies representing more that 15 percent of the voters in the association. This proposed section may create confusion when directors are given these proxies.

--Assessments are the lifeblood of associations. They cannot perform their obligations unless everyone pays. Especially in small associations, it isn't fair to homeowners who pay to provide services to owners who don't pay. Many associations provide services including trash removal to owners. For delinquent owners, these associations often discontinue trash service. It sounds harsh but this often encourages prompt payment. But Section 8 appears to prohibit this practice. This prohibition and others in the HB 2472 raises a question based on the U.S. Constitution. Article I of the Constitution provides that states may not enact laws impairing the obligations of contracts. In Kansas and all states, declarations of restrictions and homes association declarations are contracts among all property owners that are subject to the declarations. Why should this bill override declarations that were accepted by homebuyers before they moved into their subdivisions.

--There are no penalties for violation of this bill.

--Section 15 of the bill appears to require committees to maintain records of all actions. Many associations have social committees who plan small events such as a picnic. This bill doesn't distinguish between their roles compared to the important review process of Architectural Review Committees.

Thank you for all of your efforts on this bill and everything that you do this session.

Sincerely,

Rod Hoffman

Kansas Legislature
House Local Government Committee
UCOIBORA – Codification of Common Owner Interest Laws
Summary of Testimony of Jerry L. Berg on January 28, 2010

Respectfully:

Thank you for the chance to provide my experiences as they relate to a vital need, and for the work of this committee. I have extensive background on this subject and have followed your work closely. I generally agree with the recommendations of the Kansas Judicial Council Report of December 4, 2009. Before I deal with narrow issues a base observation needs to be made about the need for such codification.

Condo living is different from more common and traditional arrangements. The benefit of communal condominium living is a higher standard of residential life derived from efficiently living closely with each other and sharing common amenities and the expenses of keeping them. Close living begs tolerance in being considerate of your neighbors. It is for that reason and that all “real” property is commonly and privately owned that the owners and the Directors elected to protect and govern the affairs and conflicts that arise from this form of ownership must have a clear set of Rights and Duties that allows for expected standards of conduct of the residents and fair Board decisions in conflicts between owners, including the Association as a whole. Members own their unit, but also own the buildings and grounds in common with the other homeowners. This gives each homeowner a property interest in the use of other units, and the right to expect reasonable standards of conduct to be maintained. Kansas Boards of Directors have simple failed to set and protect such standards.

The nature of Kansans you are working to protect is unique. People like me (strong willed, but dedicated to service to others first) rarely end up living in a condominium. Generally a shared common area residential property attracts those who delegate the care and management of their property in large part to others and do not want to have to be directly involved. Many for one reason or another are very uncomfortable in deals with their rights, issues and/or other people especially those that are strong willed. By comparison the elected directors are often those seeking some modicum of political power over others (big fish in a small pond). Adding to that poor mix is the fact that such close living mandates detailed protections (good rules) to follow strictly. Unfortunately, many “big fish” have little regard for those necessary rules and ignore or abuse them. Statutory codification with detailed “Rights” is more likely to succeed than just KSA 58-3107, that requires “strict compliance” with Declarations and Condo Rules, etc.

My major reservation from the Uniform Act and the Report is in phrase §20(c) ***“The remedies provided by this act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully preformed.”*** It simply is not strong enough. American judges are so inclined against awards of fees and costs that there is just way to much wiggle room in that language. People like Kansas Administrative Law Judge, lawyer and the ultimate “big fish”, once in power can simply litigate sheepish people into the loss of their rights without stronger wording. CLVCA has the “English rule” (essentially, loser pays) but with the out of the judges discretion “may”; which is very much like the proposed phrase “to the end..is put”. The word “shall” needs to be added. If not, judges will do as they are trained and taught; and despots will dispose of rights.

I have some direct comments about issues under the act considered. Section 19; **Budgets** should be required in November with proposed rates noticed in early December each year, rather than forcing members to try to un-ring a bell under oppressive dues rates already in effect. However, if proper requirements under the Kansas Apartment Ownership Act setting controls are enforced then the remedy exists under K.S.A 60-907(a) **Illegal Assessment**. There needs to be direct reference for the

Local Government

Date: 2-28-10

Attachment # 9

enforcement provisions mentioned above to be brought as a necessity in such situations where dues are set high, mostly just because they want more money. It happens far too often, for budget requirements to not be legislated. The notice requirements have already been cut to the bone, stop or ad teeth to let members know when they are about top lose their shorts.

Section 8, **Loans**; is dangerously low as to percentages of member votes to pass authority to borrow. Remember this is one Board committing the expense of future boards during the terms of the loan. It can be abused and there is devastating impact when a Board opts to borrow rather than a proper special assessment (Chisholm Creek siding project). It can cripple a community for decades.

Section 9, **Directors**; creative despots can vote to limit powers thinking that is permissible since they are not removing a Director. That is of course not available under Kansas Corporation laws but it needs to be set out as not an option in some fashion here.

Section 11 & 12 **Member forum**; these are crucial sections' dealing with requirements to discuss needs before it grows to out of control disputes. Several Boards have felt superior to the "poor masses" and simple eliminated that opportunity and use of "their" time, forgetting who owns the property. In that same vein, the requirement of availability of materials to members at meetings (or before) is important also; without it the discussion sound as if they were spoken in ancient "Hebrew".

Section 14, **Voting**; very well crafted and essential; many Board get confused about "Absentee Ballots" in lieu of, rather than in addition to, proxies (a base corporation code requirement). This clarification is needed.

Section 15, **Records**; at least quarterly financial reports to members should be a base, or required to be available as they are distributed to Board members (which ever is shorter). I take umbrage with the "10 day" provision, understanding full well the pragmatic problems for smaller associations. However, when the questions are of honest dealings by those that control the records, giving them ten days to alter or destroy incriminating records that belong to the members is just too much. The current law, K.S.A. 58-3120 allows surprise inspections or examinations, since the records are there for the protection of the members and they own them, it is hard to understand this weakness in this act. Additionally, electronic records should be available to members in electronic (accessible) formats. Making life miserable for those seeking records has become a power game with more than one Board I have experienced.

Section 17, **Notice**; A method of notice TO association Boards must be required also.

Section 18, **Removal**; See comments above (heading - **Directors**) there would seem to be a benefit of a phrase require rudimentary administrative due process; or simply setting out: having charges in advance and the ability to present witness and exhibits, cross-examination and a written decision, etc.

Finally, when a Director treats an association as his alter ego, the Kansas provisions for busting corporate protection, added to the immunity statute for volunteers, effectively means there is little anyone can do to slow down a despot. (See attached) I tend to agree with the last paragraph in the ULC comment and think this area needs work.

I have put my parting thought on a separate page which I ask to be provided to every committee member.

Sincerely,

Jerry L. Berg

Jerry L. Berg, 8201 E. Harry, Condo #2201, Wichita, Ks 67207 (316) 682-0936, cell 210-5856; jerry.berg1@cox.net





January 28, 2010

Ms. Sharon Schwartz
Chair, Local Government Committee
House of Representatives
Kansas State Capital
300 SW 10th Street
Topeka, Kansas 66612

Re: **House Bill No. 2472**

Dear Ms. Schwartz:

Madam Chairman and Members of the Committee my name is Christine Lentz and I am Senior Vice President of Curry Association Management. We are a property management firm specializing in the management of Homes and Condo Associations located in Kansas City. Our firm represents approximately 150 HOA's of which over 50 are located in Kansas. We have over 23,000 home owners under our umbrella of management.

I have managed Homes Associations for over 11 years and have attended more than 1,000 Board of Directors meetings during my tenure at Curry.

I commend the committee for their efforts to establish a Bill of Rights to protect homeowners. Our property management staff consisting of 15 managers carefully studied the Bill of Rights and came away with the feeling that the majority of the Bill is good sound business practices. However, I would like to address the practicality of some of the provisions in the Bill for you to reconsider. Practices on paper verses actual implementation can be two very different scenarios.

Section 8 – Powers and Duties of the Association

- In this provision it will require notice to be given to all homeowners for any legal action taken by or against the HOA. The cost to notify

all owners would be an undue burden on an HOA and could cause panic within a community.

- The association will no longer have the ability to prohibit a delinquent owner from voting on Association issues or allow the HOA to suspend services such as trash when paid for by the HOA. I am certain that if any owner contracted for trash service on their own and they stopped paying their bill their trash service would cease. This type of leverage is effective and is fair to the other residents that pay for such services. If we can no longer keep an owner from voting or receiving services what incentive do they have to pay their dues?
- The Bill will require a vote of the owners in order for the HOA to enter into a loan agreement on behalf of the community. The lack of participation by its Members in most communities makes this provision almost impossible for most communities of any size to operate if funds are needed to improve or maintain common areas or elements. This will tie the hands of Board Members and make their job even more difficult. Keep in mind Board Members are elected by the Members of the Association to represent them and to make decision on their behalf.

Section 12 Meetings of Board of Directors and Committees

- The section will require minutes to be taken during committee meetings. We have hundreds of committees that plan events for their neighbors such as fishing tournaments, pool parties for kids when they go back to school, etc. Requiring these committee members to take minutes regarding the plans they make is impractical and will most certainly in my opinion stop these types of activities from occurring in the future, as volunteers will not want the added burden.
- The Bill will require the HOA to produce copies of all materials (except for unapproved minutes and items to be discussed in executive session) to be given to homeowners who attend the meeting. How do we know how many will attend? You put no burden on the homeowner to make their attendance known. Further, if notice is to be given to all owners 5 days in advance of all

Board meetings and no RSVP is required how do you expect a Board to plan? Most meetings are held in a Board Members living room. This section will require Associations to incur more cost to rent a location for all Board meetings not to mention the cost to produce copies of Board meeting packets. Which in some cases can be easily over 50 pages?

Section 16 Rules

- This section requires that homeowners be given the right to provide input when any changes are made with respect to rules and regulation of a HOA. While this practice sounds reasonable on paper let's say an HOA decides to change the rules on the usage of the community pool for instance they decide to change the rule about allowing flotation devices to prevent the possible drowning of small children under flotation devices. The entire process will be bogged down and additional costs incurred to notify members, hold meetings which means rent a space large enough to house the members thus ultimately just delaying the process. The board members must be able to make decisions on behalf of the community.

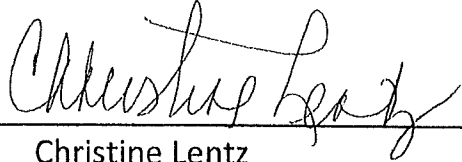
Finally, when a homeowner decides to buy a home in an Association they do so with the understanding that they are obligated and bound to the requirements of the Homes Associations legal documents. They make that choice.

Our biggest concern is the burden that will be placed on HOA's throughout the State of Kansas. Not only the economic burden they will bear in order to comply with this Bill as written but the lack of volunteerism that we feel this Bill will produce. The Bill as written will greatly reduce the ability of a Board of Directors to make decisions on behalf of their neighbors, in the best interest of their communities, in a timely fashion. Please remember the Board Members also live in these communities and in my opinion do not want to do harm to themselves, their neighbors or do something that will have a negative effect on their home values. Thus frustrating those who have volunteered their time to their communities and forcing the well intentioned Board Members to stop their involvement. I want to extend an invite to each of you or any of the committee members to attend any Board

Meeting with me I generally have 10 each month. I think in order for you to have a full understanding of the impact of this Bill you should experience it first hand as I have for the past 11 years.

Sincerely,

Curry Association Management, Inc.

By: 

Christine Lentz
Senior Vice President

Ms. Sharon Schwartz
Chair, Local Government Committee
House of Representatives, Room 149-S
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Re: House Bill No. 2472

Dear Ms. Schwartz:

I am writing to you regarding Bill 2472 as the President of Nottingham Forest South Home Owners Association, a community of 582 homes in Overland Park, Kansas. We have had an HOA for over twenty years, and my family and I have lived here since its inception. Somehow, our community passed through all stages of development into a finished community without any of the disasters happening that this Bill seeks to ameliorate. Likewise, dozens of developments surrounding ours have not had major problems that would be addressed by this Bill. One wonders why it is needed.

Our community HOA Board meets regularly, creates budgets, solves problems, publishes minutes and solicits volunteers for various functions. It maintains a website for community interaction and HOA publication. We have hired an HOA management company to provide day-to-day management of the small details, under the direction of our Board and subject to our rules, regulations, covenants, etc. The community runs fairly smoothly. If there is a weakness, it is in trying to interest community members to take on the fairly large responsibility of serving on the HOA. All this is accomplished without the proposed Bill 2472. Volunteers are though enough to find without the increased burden this Bill would add to HOA governance.

The proposed House Bill 2472 would seek to codify every aspect of every HOA in Kansas. It would create a one-size-fits-all solution to a multi-faceted section of our state's activities. It encompasses apartments, condominiums, townhouses and single family dwelling HOA's as well as new developments and stable older communities. My thought is that the Bill is trying to do too much. If there are problems that have arisen in Kansas, let's address them specifically, rather than trying to legislate every possible action or outcome for every type of structure.

In closing, I am sure the intentions of Bill 2472 are good. The unintended consequences are not. For HOA's, this Bill adds increased expenses, greater records keeping, and a more daunting task of trying to find volunteers to serve on our Board.

Sincerely,

John E. Hartman
13845 Hadley Street
Overland Park, KS 66223 (913-681-3570)

Local Government

Date: 2-28-10

Attachment # 11

Ms. Sharon Schwartz
Chair, Local Government Committee
House of Representatives, Room 149-S
Kansas State Capitol
300 SW 10th Street
Topeka, KS 66612

Dear Ms. Schwartz:

The following are my concerns with proposed House Bill 2472:

- a. Line 1. "significant and increasing number of Kansas lie in common interest communities". Please define common interest community. What number and "increasing" is the author quantifying? I believe the definition offered on page 2 is incomplete and too obscure for this bill. Essentially every municipality has common interest areas. Does not every town have a park which is open to the community? KS has several levels of communities, i.e. classes of communities which have different rules/regulations which they need to consider. Typically the larger the community the more regulation, the smaller, the lesser amount of regulation. Everyone in a community pays a tax to the city for insurance, improvements. So is this bill focused on every community? I do not believe that, but in the first paragraph it is completely unclear.
- b. New section 5. This provides some direction of communities with "12 or more units", a unit definition we can only assume being a dwelling of some type. The bill focuses on every landowner who would like to develop his 6-10 acres of ground. Certainly small landowners develop ground for residential and commercial uses regularly. It happens regularly that a landowner develops property and then an adjacent property owner develops once some infrastructure is provided for water/sewer if they share common utilities. How does the author want to prevent the possible HOA from forming and generating some common area? How does the author want to regulate that HOA? It appears to me that the bill's author is primarily focused on large developments (1500 units) next to a small development (12 units) and the smaller development wanting equal or more rights to the infrastructure than the larger development. However, many communities in KS do not have 1500 homes. Many communities in KS are communities with <200-300 homes total.
- c. Are we planning to implement more strict regulations on possible home owner associations than are planned for current small communities? If so, how does the author decide to enforce the regulations?
- d. Notice of proceedings and meetings. We agree that preplanned dates should be notified to the "unit owners". However additional requests, such as mail service of agendas/video broadcast of meetings and other regulations suggested in this bill, are beyond reason for HOA's to manage cost effectively.

If unit owners fail to pay dues, then an HOA should be able to suspend their services, just as a municipality can discontinue utilities for homeowners for non-payment. Without an HOA

Local Government

Date: 2-28-10

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having a means of ensuring dues are paid, why would a home owner pay? And why would people want to move into a community that had rules with no means of enforcement?

This is just a short list of my concerns with this bill.

Summary:

The rules and regulations provided under this bill can provide protection to homeowners so that they can become involved with their neighbors. However, the direction of the bill becomes virtually impossible to understand and cumbersome. Many of these regulations are more stringent than that of 80+% of the communities in KS. I believe that finally on page 15 of the Bill it references specifically apartments – which may be authors' sole focus. Dwellings such as single family homes, mobile home parks, temporary trailer units, and other possible homes are not listed within the document. However, the Bill simply does not define what a "unit" is.

I believe the author is trying to protect specific apartment complex developments to allow for an equitable participation for those people in the rental communities. However, the wording of the Bill makes it difficult to understand its purpose. The problem with this bill is that it expects people to participate in their community – and frankly, that does not occur. Very few people get involved in their community for maintenance, improvements, and socialization. Non-participation is a common issue regardless of location.

The Bill can overlap many facets of developers, communities, and other possible residences of people which cannot be foreseen and considered. If we are going to protect the "unit owner" from not participating in their community, then if that "unit owner" fails to participate, then a "common interest community" needs to proceed forward and protect their investment for the better good of the community. Failure of one unit cannot drag down the whole investment.

Since I understand that there are ten proponents for the Bill and no opponents for the Bill, I would also ask the following questions:

1. Did the House send a copy of the proposed Bill to every landowner in KS as required in this regulation for their input?
2. Did the House send a copy of the proposed Bill to every KS developer for their input?
3. Did the House send a copy of this Bill to each community, large and small, in KS for their communication to possible developers in their annex areas informing them of new regulations?
4. Did the House send a copy of this Bill to each current registered and non-registered associations for their consideration?
5. Did the House send a copy of the Bill to every property management company for their input?
6. Did the House send a copy to every apartment complex owner and manager in KS for their input?

While I believe there are several good intentions in the bill, there needs to be some critical mass to manage before the regulations can take effect. I respectfully suggest 12 "units" is too small a community ; and suggest a significantly larger critical mass as 1000 units.

Budgeting can be difficult for everyone. However, like municipal budgets many of the items are standard-- power, water, sewer, road maintenance, police /fire protection. Smaller communities have similar needs but on a smaller scale.. There are many items which need to be paid annually but there may be a maintenance or improvement which is a larger capital cost above and beyond a normal operating budget. I do suggest that some of those items could be provided for guidance and regulation, but each "community of interest" should be able to work out those issues amongst themselves without the KS House trying to regulate individual lives.

Mark Mayer

MEMORANDUM

TO: Members, Kansas House Committee on Local Government

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

DATE: January 28, 2010
HB 2472– Kansas Uniform Common Interest Owners Bill of Rights Act.

I am offering this brief testimony in support of HB 2472. I want to thank the Kansas House Committee on Local Government for this opportunity to contribute to the discussion.

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 (\$10 million) 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." 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.

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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 available to answer any questions you may have.

Huey Strickland
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TO: The Honorable Sharon Schwartz, Chair
And Members of the House Local Government Committee

FROM: Whitney Damron
On behalf of the Kansas Bar Association

RE: HB 2472 – Kansas Uniform Common Interest Owners Bill of
Rights

DATE: January 28, 2010

Good afternoon Madam Chair Schwartz and Members of the House Local Government Committee. I am Whitney Damron and I appear before you today to offer comments on HB 2472 on behalf of the Kansas Bar Association.

For the past several years as this legislation has been considered in both the House and the Senate, the Kansas Bar Association has appeared to express concerns with language contained in past bills referred to as “loser pay provisions,” which means the losing party of any litigation brought under the act would be responsible for the attorney fees and costs incurred by the successful party. The loser pay provisions of past homeowner act legislation has typically been a one-way street: The plaintiff, i.e., the homeowner, could recover costs but the defendant, i.e., the homeowner’s association, if successful, could not.

We found this variation an untenable modification of the traditional loser pay example and expressed our concerns to that approach as well.

The KBA has generally opposed loser pay provisions as they tend to discourage settlement and resolution of litigation and also serve to hinder or otherwise keep citizens and business from seeking redress in the courts when they have been wronged due to the potential costs of litigation and judgment.

Our nation’s legal history has included the principle of each party paying for their own attorney fees in most kinds of litigation. We believe that principle should be maintained in this legislation as well.

In 2009, after another year of hearings on the bill without agreement, we supported the Chair of this committee’s recommendation to seek a review by the Judicial Council. As we heard from Mr. Randy Hearrell of Judicial Council when this bill was requested for introduction earlier this year and during testimony today, leading experts and lay people have spent considerable

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time studying all aspects of this legislation, including a review of other state laws and model acts and their findings and recommendations have led to the introduction of HB 2472.

The recommendations of Judicial Council do not include a "loser pay" provision.

Accordingly, the KBA would respectfully request this Committee follow the recommendations of Judicial Council in this regard as HB 2472 is considered.

We would note that courts do have discretion to allow for attorney fees in cases of frivolous actions and other circumstances where deemed appropriate by action of the judge of upon motion of a party to the action.

We wish to acknowledge the diligent work of Senator Terrie Huntington as she continues to work towards a compromise on this issue that is responsive to the needs of the interested parties and also express our appreciation to her for listening to our concerns over the past few years on this legislation. We also appreciate the hard work Randy Hearrell and the members of Judicial Council have provided on this matter as well.

The Kansas Bar Association does not have a formal opinion on the bill as written. However, we did want the Committee to know of our concerns with the past consideration of loser pay provisions and request your assistance in avoiding including such language in this bill, should it be your desire to advance it out of Committee.

On behalf of the Kansas Bar Association, I thank you for your consideration of our opinion on HB 2472 and would be pleased to stand for questions when appropriate.

Whitney Damron

About the KBA:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 6,900 members, including lawyers, judges, law students, and paralegals.

For more information:

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To: House Local Government Committee

Date: January 28, 2010

Subject: **HB 2472** -- Enacting the Kansas Uniform Common Interest Owners Bill of Rights Act and Regulating Homeowners' Associations and Common Interest Communities

Chairperson Schwartz and members of the House Local Government Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® to offer neutral testimony on the provisions of **HB 2472**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

HB 2472 would enact the Kansas Uniform Common Interest Owners Bill of Rights Act that would impose certain new requirements on homeowners' associations and common interest communities in Kansas. If passed by the Kansas Legislature, our state would be the first state to adopt the Uniform Common Interest Owners Bill of Rights Act (UCIOBORA).

KAR Supports the General Intent Behind **HB 2472**, But Has Concerns with the Scope and Size of the Uniform Common Interest Owners Bill of Rights Act (UCIOBORA)

First, we would like to emphasize that we generally support the intent behind the provisions of **HB 2472** that would provide certain procedural and substantive protections to the residents of common interest communities. In general, we would agree that an increasing number of Kansans in urban areas reside in a common interest community and that those communities should operate in a fair and effective manner.

However, we are very concerned with the implications and possible unintended consequences for existing homeowners' associations and common interest communities of passing such a sweeping piece of legislation that contains 19 pages of new statutory language and 25 new separate statutes that has not been previously reviewed, passed or enforced by any other states at this time.

Although this issue was discussed in some detail by the Kansas Judicial Council, we continue to believe that this issue deserves a very careful and deliberate study in front of the relevant legislative committees. In our opinion, the provisions of **HB 2472** have the potential to impair existing contractual relationships and could impose unreasonable burdens on unsophisticated volunteers who serve as a director or officer in a common interest community or homeowners' association.

Certain Retroactive Provisions of **HB 2472** Have the Potential to Impair and Negatively Affect Existing Contractual Relationships

Under the language in Section 6 on page 3 of the legislation, the act would prohibit an existing common interest community or homeowners' association from enforcing its bylaws, covenants or declarations if those provisions would contradict the provisions of the act. In general, the Kansas Legislature has exercised prudent restraint in the past when presented with similar opportunities to enact retroactive legislation that will negatively affect existing contractual provisions and relationships.

In our opinion, existing covenants and declarations are contractual relationships that could be impaired by the provisions of **HB 2472**. If possible, we believe the Kansas Legislature should exercise qualified restraint when presented with an opportunity to pass retroactive legislation that will impair or negatively affect an existing contractual relationship.

Provisions of **HB 2472** Could Be Burdensome for Volunteer-Driven Homeowners' Associations and Could Make it More Difficult to Identify Volunteers Who are Willing to Serve in Any Capacity

Moreover, the provisions of **HB 2472** would impose many new requirements on the operation of common interest communities and homeowners' associations. Based on our general experience with these communities, many individuals who serve as directors and officers in common interest communities and homeowners' associations tend to be volunteers who are unfamiliar with open meetings issues and parliamentary procedures.

By imposing these numerous new requirements on these individuals, it could become increasingly difficult for common interest communities and homeowners' associations to entice interested individuals to serve in any capacity as a director or officer in one of these regulated communities. Furthermore, it has been noted that these new requirements could also make it more difficult for the common interest community or homeowners' association to obtain affordable liability insurance.

For all the foregoing reasons, we would urge the committee to carefully consider the full effects and implications of this legislation. Once again, thank you for the opportunity to provide comments on **HB 2472** and I would be happy to respond to any questions at the appropriate time.

House Committee on Local Government
House Bill 2472 - Proponent
Written Testimony by Charles C. Maack
Resident/Homeowner, Cedar Lakes Village Condominium Association
8201 E. Harry, #1804
Wichita, KS 67207

The proposed bill to be considered is sorely needed by many associations and the residents of those associations. The association where I reside, Cedar Lakes Village Condominium Association, Wichita, Kansas, has been in turmoil over the past couple years by a Board of Directors, and more so certain members of that Board of Directors, particularly the President of the Board, using their powers as Directors inappropriately, using foul, denigrating, and slanderous language during official meetings and continuing that same language in the community, taking exception when resident/homeowners question actions they are performing contrary to the Association "Gold Book" rules and regulations, and filing lawsuits that are more acts of vengeance than merit, (eight lawsuits were filed against the former management company and on site manager who continues as a resident, and every lawsuit either was dismissed having no merit, or ended up with one costing we homeowner members from our Association treasury \$86,000.00 with possibly more costs still to come, because the current board wrongfully and irresponsibly sued the former management company. Many of we resident homeowners knew the lawsuit would lose and asked the Board to drop the lawsuit, but the Board ignored us. The Board President even claimed at a annual general meeting that the lawsuit was covered by our association insurer when he was fully aware that the insurer had already advised him, personally in writing, that we were not covered. Many walked away from that meeting erroneously believing we were insured should the lawsuit be lost. This Board has developed a manner of leadership that threatens members with lawsuits, rejects email requests for answers to concerns that are addressed, notifies computer serving companies that abuse of the internet is occurring because of such email requests, files restraining orders to prevent a resident homeowner from addressing official concerns to them, and identifies them by name should they take exception to the manner in which they choose to operate. This is done by either the Board President's personal News-of-the-Day email sent daily to his own selected list of resident homeowners, wherein he excludes those resident homeowners whom he dislikes, or published in the monthly "Cedar Reader" flyer emailed and/or hand delivered to residences.

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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 and new management they since selected. 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. Though she has chosen to remain as a Director to hopefully bring some form of reasonableness to this Board, she continues to be abused verbally and in writing by the Board President and other Board members.

It is Boards such as ours that require the oversight of the Attorney General and a Bill such as that being proposed. Members of associations need a State authority to whom to bring attention 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 government.

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