

**Senate Substitute for HOUSE BILL No. 2267**

By Committee on Local Government

3-31

1 AN ACT concerning homeowners associations; amending K.S.A. 2010  
2 Supp. 58-4608, 58-4610 and 58-4618 and repealing the existing  
3 sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 58-4608 is hereby amended to read as  
7 follows: 58-4608. (a) The association shall:

8 (1) Adopt and may amend bylaws and may adopt and amend rules;

9 (2) adopt and may amend budgets;

10 (3) have the power to require that disputes between the association  
11 and unit owners or between two or more unit owners regarding the  
12 common interest community be submitted to nonbinding alternative  
13 dispute resolution as a prerequisite to commencement of a judicial  
14 proceeding;

15 (4) promptly provide notice to the unit owners of any legal  
16 proceedings in which the association is a party other than proceedings  
17 involving enforcement of rules, covenants or declarations of restrictions,  
18 or to recover unpaid assessments or other sums due the association;

19 (5) establish a reasonable method for unit owners to communicate  
20 among themselves and with the board of directors concerning the  
21 association;

22 (6) have the power to suspend any right or privilege of a unit owner  
23 that fails to pay an assessment, but may not:

24 (A) Deny a unit owner or other occupant access to the owner's unit;

25 (B) suspend a unit owner's right to vote except involving issues of  
26 assessments and fees; or

27 (C) withhold services provided to a unit or a unit owner by the  
28 association if the effect of withholding the service would be to endanger  
29 the health, safety, or property of any person; and

30 (7) have all other powers that may be exercised in this state by  
31 organizations of the same type as the association.

32 (b) The board of directors may determine whether to take  
33 enforcement action by exercising the association's power to impose  
34 sanctions or commencing an action for a violation of the declaration,  
35 bylaws, and rules, including whether to compromise any claim for unpaid  
36 assessments or other claim made by or against it. The board of directors

1 does not have a duty to take enforcement action if it determines that, under  
2 the facts and circumstances presented:

3 (1) The association's legal position does not justify taking any or  
4 further enforcement action;

5 (2) the covenant, restriction, or rule being enforced is, or is likely to  
6 be construed as, inconsistent with law;

7 (3) although a violation may exist or may have occurred, it is not so  
8 material as to be objectionable to a reasonable person or to justify  
9 expending the association's resources; or

10 (4) it is not in the association's best interests to pursue an enforcement  
11 action.

12 (c) The board of directors' decision under subsection (b) not to pursue  
13 enforcement under one set of circumstances does not prevent the board of  
14 directors from taking enforcement action under another set of  
15 circumstances, but the board of directors may not be arbitrary or  
16 capricious in taking enforcement action.

17 (d) *The provisions of subsection (a)(6)(B) shall not apply to ~~any~~[an]*  
18 *association for [a] common interest community for a recreational lake*  
19 *development which contains more than 500 units where less than 50% of*  
20 *such units contain a residence.*

21 ~~(d)~~(e) This section shall take effect on and after January 1, 2011.

22 Sec. 2. K.S.A. 2010 Supp. 58-4610 is hereby amended to read as  
23 follows: 58-4610. (a) The bylaws of the association must:

24 (1) Provide the number of members of the board of directors and the  
25 titles of the officers of the association;

26 (2) provide for election by the board of directors or, if the declaration  
27 requires, by the unit owners, of a president, treasurer, secretary, and any  
28 other officers of the association the bylaws specify;

29 (3) specify the qualifications, powers and duties, terms of office, and  
30 manner of electing and removing board of directors' members and officers  
31 and filling vacancies;

32 (4) specify the powers the board of directors or officers may delegate  
33 to other persons or to a managing agent;

34 (5) specify the officers who may prepare, execute, certify, and record  
35 amendments to the declaration on behalf of the association;

36 (6) specify a method for the unit owners to amend the bylaws;

37 (7) contain any provision necessary to satisfy requirements in this act  
38 or the declaration concerning meetings, voting, quorums, and other  
39 activities of the association; and

40 (8) provide for any matter required by law of this state other than this  
41 act to appear in the bylaws of organizations of the same type as the  
42 association.

43 (b) Subject to the declaration and this act, the bylaws may provide for

1 any other necessary or appropriate matters, including, but not limited to,  
2 an election oversight committee and other matters that could be adopted as  
3 rules.

4 *(c) The requirements of this section shall not apply to ~~any~~ [an*  
5 *association for a] common interest community for a recreational lake*  
6 *development which contains more than 500 units where less than 50% of*  
7 *such units contain a residence.*

8 ~~(e)~~ *(d)* This section shall take effect on and after January 1, 2011.

9 Sec. 3. K.S.A. 2010 Supp. 58-4618 is hereby amended to read as  
10 follows: 58-4618. (a) *Except as provided in subsection (b),* an association  
11 shall deliver any notice required to be given by the association under this  
12 act to any mailing or electronic mail address a unit owner designates.  
13 Otherwise, the association may deliver notices by:

14 (1) Hand delivery to each unit owner;

15 (2) hand delivery, United States mail postage paid, or commercially  
16 reasonable delivery service to the mailing address of each unit;

17 (3) electronic means, if the unit owner has given the association an  
18 electronic address; or

19 (4) any other method reasonably calculated to provide notice to the  
20 unit owner.

21 *(b) (1) An association for ~~any~~ [a] common interest community for a*  
22 *recreational lake development which contains more than 500 units where*  
23 *less than 50% of such units contain a residence shall comply with*  
24 *subsection (a) when providing notice for an annual meeting.*

25 *(2) For all other meetings such association shall:*

26 *(A) Post a notice on the association's website;*

27 *(B) send a notice by electronic mail to all unit owners who request*  
28 *such notice; and*

29 *(C) post a sign containing the meeting notice at the main entrance of*  
30 *the common interest community.*

31 ~~(b)~~ *(c)* The ineffectiveness of a good faith effort to deliver notice by  
32 an authorized means does not invalidate action taken at or without a  
33 meeting.

34 Sec. 4. K.S.A. 2010 Supp. 58-4608, 58-4610 and 58-4618 are hereby  
35 repealed.

36 Sec. 5. This act shall take effect and be in force from and after its  
37 publication in the statute book.