



MARTIN | PRINGLE
ATTORNEYS AT LAW

ROD HOFFMAN
Overland Park Office
rhoffman@martinpringle.com

MARTIN, PRINGLE, OLIVER, WALLACE & BAUER, L.L.P.

Overland Park	Kansas City	Wichita
6900 College Boulevard	4700 Belleview	100 N. Broadway
Suite 700	Suite 210	Suite 500
Overland Park, KS 66211	Kansas City, MO 64112	Wichita, KS 67202
T 913.491.5500	T 816.753.6006	T 316.265.9311
F 913.491.3341	F 816.502.7898	F 316.265.2955

www.martinpringle.com

March 3, 2015

House Judiciary Committee

Re: House Bill 2330

Ladies and Gentlemen:

Thank you for allowing me to testify about this bill. I am a Lenexa resident and a member of the Oak Valley Homes Association, which consists of approximately 185 homes.

In my law practice I have represented more than 100 homes associations in northeast Kansas.

In 2010, the Kansas Legislature adopted the Uniform Common Interest Owners Bill of Rights, Kan. Stat. Annot. 58-4601.

Before its passage, the draft bill of rights was prepared by a committee appointed by the Kansas Judicial Council. After considerable study, the committee considered many options. Included in their study were model laws prepared by the National Conference of Commissioners on Uniform State Laws, which provides states with well-conceived, well-drafted legislation.

In Kansas, community associations began in 1914 with the creation of a neighborhood in Johnson County named Mission Hills. Its developer, J. C. Nichols, through a recorded document called a "Declaration," created an organization of all homeowners in the residential subdivision to provide basic services and enforce covenants on the use of property in the community. In his lifetime, Nichols created more than two dozen community associations, all of which exist today, totaling more than 18,000 homes in northeastern Johnson County.

Today, Kansas community associations range from townhome communities consisting of six homes to large suburban communities of more than 1,000 homes. Cedar Creek, a subdivision in northern Olathe, eventually will have 4,500 homes in its community association.

Some community associations provide a host of amenities such as swimming pools, tennis courts, clubhouses, walking trails and play areas. Other associations are charged with providing trash removal, utilities such as water, snow removal, landscaping and/or mowing in residential yards, and maintenance of exteriors of homes such as painting and roof replacement.

In 1963, the Kansas Apartment Ownership Act became effective to govern condominiums. In 1975, the Townhouse Ownership Act became effective. Both of these laws govern community associations.

Often local municipalities require creation of community associations as part of the development of residential communities. This is because residential developments often include property such as streamways or ponds, or traffic devices such as islands, in cul-de-sac streets which require ongoing maintenance. Therefore, local governments require the developer to create an association of all owners in the subdivision to maintain these areas. This organization allows the entire group of owners to divide maintenance costs which would be prohibitive for one or two homeowners in the community. Under the recorded documents, these streamways or ponds are owned by the owners association.

Some owners associations, primarily condominium and townhome projects, own streets, parking lots and lawns. Again, local municipalities don't want responsibility for maintaining these areas. Therefore, an association of owners is necessary to establish a budget among themselves to maintain these areas.

Understandably, some homeowners become frustrated with their community associations. However, it's important to remember that each association is a simple, pure democratic form of government. Each owner has one vote to elect the board of directors. A homeowner who believes he has been aggrieved by some act of directors may take steps to remove the offending board members. Or, better yet, become involved in management of the association by seeking election to the board. Most community associations must recruit interested owners to seek these positions.

House Bill 2330 has flaws.

If this Committee and the Legislature believe amending K.S.A. 58-4601, et seq. is necessary, this Committee should ask the Judicial Council to reconsider the issues raised in HB 2330. Most of these issues were considered but rejected by the national conference on state laws which drafted the bill, and were considered and rejected again by the Judicial Council Committee.

- ... For example, HB 2330 would provide rights to two groups (prospective purchasers of homes, and tenants), although neither of those groups are members of any community association. In simple terms, because they don't own homes in

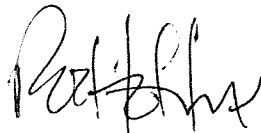
these residential areas, these two groups don't have skin in the game. It's nonsensical to assume their rights are affected.

- ... HB 2330 would incorporate the Kansas Consumer Protection Act. Nearly every state has a consumer protection act. Before Kansas considers expanding the scope of consumer protection to community associations, the Legislature should investigate whether other states have tried a similar remedy.
- ... HB 2330 would require parties to submit disputes to mediation before litigation is brought against a homeowner. This provision ignores the reality that more than 99½ percent of litigation involving owners associations is filed because homeowners fail to pay the assessments which their neighbors are paying. While mediation may be useful to resolve disputes, mediation isn't free. HB 2330 doesn't explain who will pay the mediator. And this requirement could encourage homeowners to delay paying their assessments.
- ... Furthermore, if homeowners are entitled to mediation before they are sued for nonpayment, the same benefit should be applied to all classes of persons who don't pay their obligations, including tenants, credit card users, hospital patients and borrowers of student loans, just to name a few.
- ... HB 2330 would allow two-thirds of owners to vote to disband associations. Most, if not all governing documents (the recorded documents which create homes associations) already include provisions for termination. This bill fails to address the effects of termination: namely, after termination of an owners association, what happens to the old, worn out swimming pools or clubhouses, or the streamways, ponds or entryway monuments owned by these associations?

There are additional flaws in HB 2330, but these are major items.

Please reject it.

Thank you.



Rod Hoffman