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February 5, 2016

Local Government Committee
Kansas House of Representatives

Re: HB 2557

Ladies and Gentlemen:

Thank you for allowing me to testify about this bill.

I am a member of the Oak Valley Homes Association, which consists of 186 homes in Lenexa. In my law practice, I represent more than 100 homes associations in northeast Kansas.

Background

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

Before its passage, the Bill of Rights was prepared by a committee appointed by the Kansas Judicial Council. This committee considered many issues. Their final recommendation was based on a model prepared by the National Conference of Commissioners on Uniform State Laws, which provides states with well-conceived, well-drafted legislation.

In Kansas, the first community associations began in 1914 with creation of a neighborhood named Mission Hills in Johnson County. Its developer, J. C. Nichols, in a recorded document called a "Declaration," created an organization of all homeowners in the neighborhood. The purpose of this organization was to provide basic services and enforce covenants on homes. During his life, Nichols created nearly 30 community associations, all of which still exist, totaling more than 18,000 homes.

Today, approximately 310,000 Kansans live in 135,000 homes in nearly 2,000 community associations. (See Exhibit A from Community Associations Institute.) These associations range from six to more than 1,000 homes. Cedar Creek, a subdivision in northern Olathe, eventually will have about 4,500 homes in its community association.

Community associations provide a host of amenities such as swimming pools, tennis courts, clubhouses, walking trails, and play areas. Some associations provide trash removal, water, snow removal, landscaping, mowing yards, and repair and maintenance, such as painting and roof replacement.

In 1963, the Kansas Apartment Ownership Act (K.S.A. § 58-3101) was enacted to govern condominiums, a common form of community association. In 1975, the Townhouse Ownership Act (K.S.A. § 58-3701) became effective to govern townhomes, villas, and patio-style communities.

Often city governments require creation of community associations as part of development of residential subdivisions. This ensures ongoing maintenance of property such as streamways and ponds in the subdivisions. These areas are owned by the community association, which divides the maintenance costs among all homeowners in the subdivision.

Human nature shows some homeowners may become frustrated with their community. However, it's important to remember that each community association is a simple, democratic form of government. Each owner may vote to elect the board of directors in his community. If owners are dissatisfied with their directors, they may remove the offending board members at the next annual meeting. Or, better yet, owners can become involved by seeking election to the board. Most community associations must continually recruit interested owners to fill these volunteer positions.

House Bill 2557

Based on my experience, the Bill of Rights isn't broke and doesn't need fixing.

If you believe amendments are necessary, I believe you should ask the Judicial Council to study the issues raised in HB 2557. Most issues contained in this bill were considered but rejected by the national conference on state laws which drafted the Bill of Rights, and were considered and rejected again by the Judicial Council.

I urge you not to make any decisions based on requests by a handful of homeowners. Silence by the super-majority of Kansas homeowners indicates there is no problem with the existing Bill of Rights.

House Bill 2557 would do the following:

- Allow complainants to contact a new division of the Kansas Attorney General's office who could investigate and enforce alleged violations under the Kansas Consumer Protection Act.

- Allow homeowners to terminate contracts.

- Allow homeowners to terminate community associations.
- Require a super-majority of homeowners to approve loans.
- Require mediation before bringing any legal action against a unit owner.
- Limit the method to restrict rental homes in a community association.

Here are pitfalls of each proposal:

FIRST, before considering a new division in the Attorney General's office, it's important to understand the types of complaints which often arise in community associations. Complaints depend on the type of the community, but here's a sampling:

- The shrubs at my home haven't been trimmed recently.
- My lawn is the worst in the neighborhood.
- I'm paying $200 annually but not getting anything in return.
- My neighbor's dog barks all the time.
- Who is complaining about my dog? Why aren't they checking out all the other violators in the neighborhood?
- My association won't approve the type of shingle I want.
- My association doesn't have any standards when approving shingles.
- My neighborhood has private streets, but my association won't enforce parking rules.
- The association won't let me park where I want.

In addition to the problems outlined below, there are two additional effects you must consider.

If directors of community associations are subject to investigation by the Attorney General, they likely will resign. This bill will discourage volunteers willing to serve their neighborhoods and directors of their community associations.

SECOND, termination of community associations will affect more than homeowners. Many mortgage lenders, especially in townhome and condominium communities, make loans based on the knowledge the community association will provide certain services. In a

condominium or townhome building, this often means maintaining the private streets or common areas as well as the exteriors of the buildings. Termination of community associations would undermine the collateral of these mortgage lenders. In addition, termination of community associations would leave unanswered questions about maintenance of streamways, ponds, entryway monuments, cul-de-sac islands, swimming pools and clubhouses. Therefore, termination of these associations would undermine sound planning.

THIRD, requiring mediation of every dispute before a lawsuit is filed is a noble goal, but does not work in the real world. More than 99 percent of lawsuits involving community associations simply involve the collection of delinquent assessments. When homeowners move into a neighborhood, they quickly understand they are required to pay assessments to support the operation of the commonly owned property. Community associations view litigation as the last resort. No one wants to sue their neighbors, but some disputes require lawsuits. In fact, mediation often isn't successful until after a lawsuit has been filed. Lawsuits allow parties to conduct "discovery" to learn the facts and review the documents.

FOURTH, restriction of the number of rental properties in a residential community has gathered more interest since the economic downturn of 2008. This has occurred because the Federal Housing Authority, which backs the mortgages of Freddie Mac and Fannie Mae, has established new guidelines for mortgage loans. Lenders want to know how many rental properties exist in a townhome or condominium community before making a standard mortgage loan. Many mortgage lenders make loans to home buyers who will reside in their communities rather than investors who are interested in owning an investment property. In addition, many homeowners are interested in preserving their neighborhoods as communities where owners live in the homes they own.

There are additional flaws in HB 2557, but these are the major issues. Please reject it.

Thank you.

Rod Hoffman

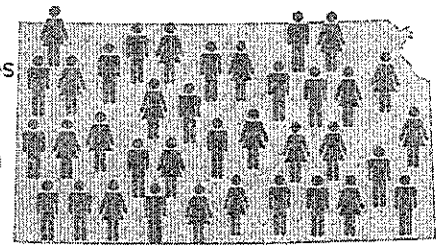
Attachment

Kansas Community Associations

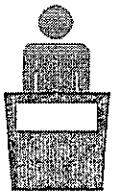
facts & figures

EXHIBIT tabbies A

» Approximately **310,000** Kansans live in **135,000** homes in nearly **2,000** community associations.

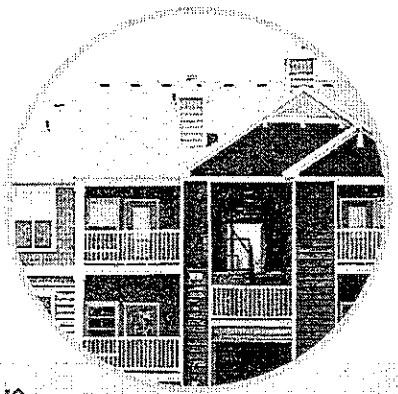


» These residents pay **$300 million** a year to maintain their communities. These costs would otherwise fall to the local government.



» **11,000** Kansans are elected to their community association boards each year, providing **$400,000** in service.

» Homes in community associations are generally valued at least **5–6%*** more than other homes.



77 » percent of residents feel that the rules protect and enhance property values. (4% disagree and the remainder are neutral).

84 » percent of residents oppose additional regulation of community associations.

96 » percent of residents rate their community association experience as positive (64%) or neutral (26%).

9.8.15

Community associations are private entities, not governments. Residents vote for fellow homeowners to provide leadership—making decisions about operation, administration and governance of the community.

Assessments paid by association members cover the costs of conducting association business—such as common area maintenance, repair and replacement, essential services, routine operations, insurance, landscaping, facilities maintenance as well as savings for future needs.

CAI supports public policy that recognizes the rights of homeowners and promotes the self-governance of community associations—affording associations the ability to operate efficiently and protect the investment owners make in their homes and communities.

When state legislatures consider amending the laws governing community associations, CAI recommends consideration is first given to well-drafted model statutes that are the product of non-partisan, thoughtful deliberation. These statutes are developed and promoted by the Uniform Law Commission—the Uniform Condominium Act and Uniform Common Interest Ownership Act, also known as UCIOA.

community ASSOCIATIONS INSTITUTE

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SOURCES

Community Associations Fact Book 2014.

Verdict, Americans Grade Their Associations, Board Members and Community Managers.

www.cairf.org

*Agan, A. & Tabarrok, A. (2005). What are private governments worth. *Regulation*, 28 (3), 14-17.