

February 10, 2016

Mr. Chairman and Local Government Committee members,

Thank you for allowing me to testify as a proponent for HB 2557 yesterday and granting me an extension of time to submit this written testimony. I was out of town when I heard of the meeting and unable to prepare this document beforehand.

In an effort to not be misunderstood, I will prepare you that I do not candy-coat my words. While the length of this testimony might seem long, I can assure you it will be worth the reading time.

After hearing the testimony of Rod Hoffman the CAI attorney that testified in opposition of the bill, I will offer some pertinent details that should fill in any blanks. Representative Campbell asked him about HOAs and foreclosures and how the first mortgages are paid. Mr. Hoffman failed to mention it's widely known that HOAs focus foreclosure efforts on the mortgage-free properties. Nationally, strangely enough, many of those homes end up in the hands of board members or property managers. Mr. Hoffman is currently trying to foreclose on my home and coincidentally two of the board members in my HOA were making offers to purchase it in the Johnson County courtroom with plenty of witnesses. That seems to be a conflict of interest when the very people who are trying to foreclose on the property of a neighbor are also trying to acquire that property for their own real estate portfolio!

He did acknowledge that my HOA has many problems. He stopped short of telling you we have TEN MILLION DOLLARS in dues unaccounted for. We have a ONE MILLION DOLLAR loan which was arranged by a CAI property manager AFTER he claims he paid off \$500,000 in old debt with the dues. We have failed maintenance so severe the structural integrity of many of the homes is compromised and a former employee of the former CAI property manager resigned and became a whistle blower and presented me with photographs and a notarized affidavit. Mr. Hoffman believes the dues are not high enough when they are currently \$250 per month/\$3,000 per year and combined with the average county property tax bill these homeowners are paying nearly \$5,000 per year on property that is selling in the \$100,000 range. Adding the cost of homeowners insurance of \$1,000 per year there isn't a way to justify spending this \$500 per month in addition to a mortgage payment for those with a mortgage. Especially when the wait list for service orders is the 12th of never. He forgot to mention my HOA has lost their insurance twice in three years due to lawsuits. At the same time he forgot to mention on April 23, 2015 he told Judge Kevin Moriarity in the Johnson County courthouse that he filed 25 lawsuits in Quivira Falls the previous year. With fifty-two weeks in a year, that is a lawsuit filed every other week. Does that sound like an attorney that is trying to help a community get back on their feet?

In addition, QFCA was found guilty in a jury trial of violating the *Kansas Uniform Common Interest Owners Bill of Rights Act* and the *Kansas Consumer Protection Act* in the Lytle vs Quivira Falls lawsuit. See www.jococourts.org 11CV05582. This case was the result of QFCA's CAI property manager covering up the rotten frame on the home after they had been exposed by the whistle blower and the media for doing that exact same thing. While the jury found QFCA guilty of all counts of the lawsuit the determination for the violation of the KCPA was decided by Judge Moriarity. He found them guilty and stated it was the first HOA that he could find in case law that had been found guilty of a consumer protection law. Following this lawsuit the HOA insurance was canceled by State Farm Insurance. The next carrier warned the HOA to stay out of lawsuits and they refused to do so ending with the second carrier canceling the policy. The last I knew the insurance premiums for QFCA were \$27,500 per year with a \$15,000 deductible for each incident. That expense is of course paid by the dues. The current lawsuit that Mr. Hoffman filed against me on behalf of QFCA and I counter sued has

not been reported to the insurance company. There are numerous counts in my counterclaim and they include violations of the *Kansas Consumer Protection Act* and the *Kansas Uniform Common Interest Owners Bill of Rights Act*. Same circuit court. Same HOA. Same attorney representing the homeowner. The four day jury trial which QFCA wanted is set for June 20, 2016. I have tried three times to settle this case and I've placed the money in my attorney's escrow account but the bullying continues by the QFCA board of directors and their attorneys. The amount I have placed in escrow is more than enough to cover the cost of replacing the driveway and the fence but they are more interested in spending \$150K to \$200K in legal expenses to try and foreclose on my townhome. They would like for everyone to believe I am a "deadbeat" but I have an 813 credit score. I don't pay for services not rendered. Would our Kansas Attorney General tell consumers to pay for services never rendered? That is the fallacy of the HOA concept; the homeowner is expected to pay even when the failed maintenance on their property (the responsibility of the HOA per contract) causes massive damage to the interior of their home!

Some of my neighbors have told me they have been advised they will not receive services if they associate with me. This is another bullying tactic. If I were a minority, I could receive assistance from the federal government through HUD. Since, I'm not considered a minority, I am on my own to fight these despots and their CAI attorneys, and insurance companies through the legal system. As Mr. Hoffman stated part of the goal in foreclosing is to force the homeowner to sell and get out of the HOA. There is no consideration for the fact some of us have invested massive amounts of money to customize the homes to our lifestyle and selling at a \$200,000 loss is not easy to do. Not to mention the legal fees that have have been paid and continue. And there is no mention of the fact I am a target because I have exposed the bad actors in my HOA and their shady business practices and failure to follow the CC&Rs.. As I stated in my verbal testimony the goal of the HOA is to make sure the homeowners that expose the truth are terrorized if they do not keep their mouths shut. Otherwise, they can expect the HOA attorneys to try and bankrupt them with legal expenses and take their homes.

I should mention this is the third time I have been in a lawsuit with this HOA. The first time was to see the financial records. The board president told the judge there were no records and ten months later was caught with another board member and a former board member shredding those records. The second and third times have been counterclaims because of failed maintenance and breach of contract. In over ten years of living in Quivira Falls I have received one load of rock around the landscaping. All other maintenance necessary to keep my house standing has been done when I hired my own contractors. Since I turned twenty-nine years old I have owned a number of homes in Kansas and Missouri. None were in HOAs except this one. Combined, the time, effort, energy, and money on maintenance on all of those homes does not equal what I have spent on this HOA home that is supposed to include exterior maintenance per the contract.

Mr. Hoffman implied only two homeowners in Kansas are disgruntled. Let me assure you, I could fill buses full of homeowners to testify for this bill. However, the reason that will never happen is because homeowners have learned by observing what happens to those who speak up and expose the truth. They do not ever want to be on the radar screen of their HOA board members and suffer the retaliation of those who have spoken out. I have been contacted by many Kansas HOA homeowners. The numbers are staggering. And the stories are disgusting, horrible, painful to hear, and sadly, I can do nothing to help these people. Some of them have become suicidal they are so distraught over their HOA situations. Only you, the Kansas legislators can help us.

Mr. Rodney Wright testified as a CAI property manager from Wichita. He stated there were no HOA problems in Wichita. In talking with him after the meeting he isn't aware one of the worst HOA cases

in the country is right in Wichita, Kansas. A condo owner was beaten by a board member with a crowbar! That happened in 2011 and the case remains in the court system. Taxpayer dollars are being spent due to the actions of an HOA board president. The victim was very active in helping the legislators understand the need for the *Kansas Uniform Common Interest Owners Bill of Rights Act* and the perpetrator knew that. In talking with Representative Scapa he is very familiar with the case. This case has not been turned over to the HOA insurance carrier so all of the condo owners will be paying the legal bills and settlement, if the jury makes that award.

Violence and lawsuits in HOAs costs all homeowners not only in property values but legal expenses that are paid for by the dues. There would be far more lawsuits against HOAs if the legal expense was not in the tens of thousands of dollars for the homeowner who is often times up against a multi-billion dollar insurance company and their team of attorneys.

Million dollar loans may not be secured by the homeowners property, but the HOA dues are encumbered to make the payments. At this time, new buyers into an HOA with massive debt have no clue they will be paying for years on a debt that happened long before their purchase. It is not required in Kansas for Realtors to disclose such information, but it should be. And the homeowner doesn't see the Covenants, Conditions and Restrictions (CC&R's) before the they are sitting at the closing table. They should have a minimum of fifteen days before closing to read those documents and have an attorney explain their risks, if they wish. Even at that, the testimony submitted by Representative Schwab clearly explains how some/many HOA boards completely ignore the CC&Rs, Articles of Incorporation, and By-Laws. They make the rules as they go along. Change them on a whim. And still have the ability to fine, lien, and foreclose on the homeowners they do not like or wish to silence.

The HOA concept was a failure from day one. Every single HOA in America is just one vote away from disaster. One vote can put a power-hungry little Nazi-type personality on the board and the entire community goes down the drain. Backed up by a money-hungry CAI attorney and property manager and the nightmares are endless. There is no way to protect ourselves as homeowners from this happening. It does not matter if the homes are multi-million dollar homes in Cedar Creek in Olathe or sixty thousand dollar townhomes in Quivira Falls. The risks are all the same.

The CAI has done nothing to help the homeowners or property values. An HOA expert, George Staropoli from Arizona explains that perfectly in the testimony he submitted to you via email.

Kansas homeowners deserve not to be or become victims. When other states are totally saturated with HOAs and buyers refuse to buy into HOAs it's not difficult to figure out what will happen. Economic growth will come to the states that are aggressive and stop this HOA housing nightmare before it gets worse. Please pass HB 2577 with enough teeth that generations of future Kansas homeowners will be forever grateful for the actions you take today.

Together, we can make a difference towards stopping the HOA abuse by starting with throwing the CAI out of Kansas!

You have my support and gratitude,

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

Suggestions For Additions/Changes in Bold Type For HB 2557

All Realtors must advise a buyer before showing them the property that it is part of an HOA. Buyers must sign a document stating should they purchase the property they are signing away their Constitutional Rights, becoming business partners with all of the other property owners in a non-profit corporation, and they will become the guarantor on all debts, loans, lawsuits, settlements, liabilities, construction defects and disaster rebuilds for that HOA.

Why is this necessary? Because far too many do not realize the risks they are taking when they buy an HOA property. They are finding out after the purchase. Younger buyers, foreigners, and those who are buying with a blind faith and trust in their Realtor are the ones I am hearing many complaints from.

Transfer fees cannot exceed \$150 on HOA real estate transactions.

Why is this necessary? Because nationally the trend is for hundreds or even thousands of dollars to be charged in HOA transfer fees. Kansas has some that are outrageous already and it must be capped.

CC&Rs and Articles of Incorporation must be presented to the buyer no less than 15 days before the closing. If the buyer opts to rescind the contract after reading the documents they can.

Why is this necessary? Because buyers are not seeing these documents until they are sitting at the closing table. With some CC&Rs being hundreds of pages it is unlikely a buyer will read them before signing.

Every tenant in a property located in an HOA must be given a copy of the CC&Rs by their landlord. If the city where the property is located has a requirement to register the property as a rental there will be a fine assessed and paid to the HOA, if they fail to do so. Tenants must comply with the CC&Rs the same as owner occupied units.

Why is this necessary? Because tenants suffer consequences for things they did not know they had to comply with. If the rules are only white curtains and they put up pink curtains resulting in a fine they cannot be held responsible for something they did not know existed.

All debts and liabilities in the form of loans and lawsuits of the HOA must be revealed to the buyer or heir at the time of the showing of the property or transfer of title.

Why is this necessary? Because the buyers/heirs need to know their dues will be used to pay these expenses and it could very well generate a special assessment once they purchase or inherit the property.

Real estate companies and for sale by owner signs can be placed in accordance with industry standard sizes on properties for sale or rent. They cannot be placed on common ground.

Why is this necessary? Because owners who wish to sell or rent their own property do not have easy access to MLS. And Realtors need to be able to place the signs on the location for those who drive by or live in the neighborhood to see and might be interested in that property. Placement of the signs must not violate any city or county signage codes.

If the HOA opts to exercise their foreclosure rights on liens they must do so in the exact same manner for ALL homeowners. No foreclosing on the mortgage-free properties unless they are foreclosing on those with mortgages. No foreclosure filing shall be made unless the dues are delinquent for a minimum of 24 months. A certified letter must be sent 10 days prior to the foreclosure petition being filed with the county court. The mailing address will be the one listed on the county record where the property tax bill is sent. The same certified letter mailing process must be done before placing a lien on the property. No fees shall be assessed to the homeowner other than the price of the certified mail.

Why is this necessary? Because the targets for foreclose are the homeowners that have paid their mortgages in full. Homeowners should not be forced to keep a mortgage on their property in order to protect themselves from the HOA foreclosure target list. Disputes with HOAs can take years to resolve. If the contract has been breached the homeowner has a right to non-binding mediation to show proof and have discussion of the issues before the HOA can start foreclosure proceedings.

No banks, insurance companies, lenders, or vendors can be required or contracted with if the owner of such is also the contracted property manager of an HOA/POA/CID/PUD or any other common interest ownership property.

Why is this necessary? Because there are property managers around the country who also own the banks, insurance companies, etc. that the HOAs are required to do business with if the property manager is contracted to manage the HOA. This is a conflict of interest and it's not in the best interest of the homeowners for many reasons.

With 100% of the title holders signatures the HOA can be dissolved. Legal documents must be filed with the recorder's office of the county and the HOA cannot be resurrected on those properties at a later date. This does not apply to attached units, condos, or those with shared utilities, or common ownership areas. An example would be an HOA with an entrance sign. The homeowner with the sign on their property can rightfully remove the sign and eliminate the liability and maintenance from their property.

Why is this necessary? Many HOAs in Kansas have only an entrance sign and no amenities. They are paying dues and have an elected board. However, they still have the risks if they make the mistake of appointing a 'Neighborhood Watch' person or some other volunteer position on behalf of the HOA. The Trayvon Martin case in Florida is a perfect example of the liability a 'Neighborhood Watch' volunteer brings to an HOA. I have heard from several Kansas homeowners with the entrance sign in their yard. They do not want the liability of the sign should a child play on the sign and it falls and they are injured or killed. Nor, do they want to pay to maintain the sign if the HOA fails to do so and it becomes an eyesore on their property.

All HOAs or COAs with an annual intake of dues in the amount of \$50,000 or more must have an annual audit by an independent licensed auditor. A copy of that audit must be provided to the homeowners upon request at no charge. Potential buyers may purchase a copy for a nominal fee.

My HOA CC&Rs required an annual audit at the time I purchased. Those were not done for seven years and \$10,000,000 remains unaccounted for to this day. The board member responsible dropped dead when I hired an attorney to gain access to the financial records. I prayed for the *Kansas Uniform Common Interest Owners Bill of Rights Act* to require annual audits. It did not pass. Shortly thereafter, my HOA board changed the by-laws to say "the treasurer may recommend an annual audit" and

removed “the treasurer shall cause an annual audit”. With dues in the hundreds of thousands and even millions of dollars in some HOAs we cannot allow no auditing on the money. HOAs are a thieves paradise all across America. The embezzlement cases by board members and property managers are appearing daily in the media. If the audits are not done, the board officers shall be jailed.

No city, county, or unincorporated areas shall require a developer to create an HOA. Developers can place restrictions on properties for size, set backs, type of construction, and materials, etc. at the time they develop the community. City and County codes shall enforce their own violations.

Why is this necessary? It is well-known fact HOAs are destroying home ownership in America. Every HOA is one vote away from becoming a financial disaster and war zone. Homeowners historically do not attend the meetings because of the fighting, feuding, name calling and pure ugliness. Board members are volunteers with no requirements for background checks, skills, or experience in business managements, project management, strategic planning, financial management, and most have no community relations skills. With their only source of help being a property manager that only needs a business card and a working phone number to be in the business, not to mention having access to millions of dollars of other people's money at their disposal. More and more HOAs are becoming nothing short of war zones with neighbors fighting neighbors; some being physically injured and others resulting in murder. Today a neighbor can be your best friend, tomorrow they are on the HOA board foreclosing on your home and trying to buy it for their own real estate portfolio. Board members and their cronies are pressuring neighbors to shun and bully neighbors they do not like or those who expose the bad actors. Developers are filing bankruptcy in the middle of the construction project living the HOA members to figure out how to acquire the amenities they were promised. Property managers and board members are being charged with embezzlement on a daily basis across America and Kansas is no exception to that risk. The courts are inundated with HOA lawsuits. This is costing the innocent taxpayers who have no clue what is happening in the HOA industry. And the CAI attorneys are getting rich suing homeowners who cannot afford legal battles resulting in the loss of their mortgage-free homes.

The core of a true Kansan is better than this! We are the heart of the nation with a history of taking care of each other. We don't need anymore of this insanity on Kansas soil. And we don't need a bunch of lobbyists from the \$90 billion HOA industry coming here with the intent to stop our legislators from protecting us and our property. Our cities and counties have bought into this nightmare HOA concept which is nothing more than double taxation without representation. Only our Kansas legislators can stop this from continuing. Kansas HOA victims are counting on you. All across the nation you are being watched to lead the way and stand up for what's right by the homeowners, even if you are the only legislators in the country that will!