

HOUSE BILL No. 2330

By Committee on Federal and State Affairs

2-12

1 AN ACT concerning consumer protection and common interest
2 communities; amending K.S.A. 2014 Supp. 58-4609 and repealing the
3 existing section.
4

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

6 New Section 1. (a) As used in this section:

7 (1) "Consumer" means:

8 (A) An actual or prospective purchaser, lessee, assignee or recipient
9 of a unit in a common interest community as defined in K.S.A. 2014 Supp.
10 58-4602(n), and amendments thereto; and

11 (B) a co-obligor or surety for a unit owner.

12 (2) "Division" means the division of consumer protection of the
13 Kansas attorney general's office.

14 (b) Any consumer who believes that the board of directors or the
15 property manager of a common interest community has violated the rights
16 of the consumer as established by the Kansas uniform common interest
17 owners bill of rights act, K.S.A. 2014 Supp. 58-4601 et seq., and
18 amendments thereto, may file a complaint with the division.

19 The division shall investigate each complaint. If the division
20 determines the complaint is valid it may utilize any remedy available
21 under the Kansas consumer protection act, K.S.A. 50-623 et seq., and
22 amendments thereto.

23 (c) This section shall be a part of and supplement to the Kansas
24 consumer protection act.

25 Sec. 2. K.S.A. 2014 Supp. 58-4609 is hereby amended to read as
26 follows: 58-4609. (a) In the performance of their duties, officers and
27 members of the board of directors appointed by the declarant shall exercise
28 the degree of care and loyalty to the association required of a trustee.
29 Officers and members of the board of directors not appointed by the
30 declarant *and the property manager appointed by the board* shall exercise
31 the degree of care and loyalty to the association required of an officer or
32 director of a corporation organized, and are subject to the conflict of
33 interest rules governing directors and officers, under existing law. The
34 standards of care and loyalty described in this section apply regardless of
35 the form in which the association is organized.

36 (b) An association shall have a board of directors created in

1 accordance with its declaration or bylaws. Except as otherwise provided in
2 the declaration, the bylaws, subsection (c), or other provisions of this act,
3 the board of directors acts on behalf of the association.

4 (c) The board of directors may not:

5 (1) Amend the declaration except as provided by law other than this
6 act;

7 (2) amend the bylaws;

8 (3) terminate the common interest community;

9 (4) elect members of the board of directors, but may fill vacancies in
10 its membership for the unexpired portion of any term or, if earlier, until the
11 next regularly scheduled election of board of directors' members; or

12 (5) determine the qualifications, powers, duties, or terms of office of
13 board of directors' members.

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

15 *Members of the board of directors or the property manager may not:*

16 (1) *Be paid a fee for arranging a loan from any person or financial*
17 *institution;*

18 (2) *arrange a loan unless $\frac{2}{3}$ of the unit owners agree in writing;*

19 (3) *bring legal action against a unit owner without first submitting*
20 *the dispute to mediation;*

21 (4) *foreclose on a unit owner's property; or*

22 (5) *restrict the number of rental properties in a common interest*
23 *community.*

24 (e) *Unit owners may:*

25 (1) *Remove a property manager or nonrenew the contract of such*
26 *property manager hired by the board of directors by a $\frac{2}{3}$ vote of all unit*
27 *owner's; and*

28 (2) *dissolve the common interest community by a $\frac{2}{3}$ vote of all unit*
29 *owners.*

30 Sec. 3. K.S.A. 2014 Supp. 58-4609 is hereby repealed.

31 Sec. 4. This act shall take effect and be in force from and after its
32 publication in the statute book.