

As Amended by House Committee

Session of 2016

HOUSE BILL No. 2557

By Committee on Local Government

1-27

1 AN ACT concerning ~~consumer protection and the Kansas uniform~~  
2 common interest ~~communities owners bill of rights act~~; amending  
3 K.S.A. 2015 Supp. 58-4609 ~~and 58-4618~~ and repealing the existing  
4 ~~section sections~~.

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

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

8 (1) ~~"Consumer" means:~~

9 (A) ~~An actual or prospective purchaser, lessee, assignee or recipient~~  
10 ~~of a unit in a common interest community as defined in K.S.A. 2015 Supp.~~  
11 ~~58-4602(n), and amendments thereto; and~~

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

13 (2) ~~"Division" means the division of consumer protection of the~~  
14 ~~office of the Kansas attorney general.~~

15 (b) ~~Any consumer who believes that the board of directors or the~~  
16 ~~property manager of a common interest community has violated the rights~~  
17 ~~of the consumer as established by the Kansas uniform common interest~~  
18 ~~owners bill of rights act, K.S.A. 2015 Supp. 58-4601 et seq., and~~  
19 ~~amendments thereto, may file a complaint with the division.~~

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

24 (c) ~~This section shall be a part of and supplemental to the Kansas~~  
25 ~~consumer protection act.~~

26 ~~Sec. 2. Section 1.~~ K.S.A. 2015 Supp. 58-4609 is hereby amended to  
27 read as follows: 58-4609. (a) In the performance of their duties, officers  
28 and members of the board of directors appointed by the declarant shall  
29 exercise the degree of care and loyalty to the association required of a  
30 trustee. Officers and members of the board of directors not appointed by  
31 the declarant *and the property manager appointed by the board* shall  
32 exercise the degree of care and loyalty to the association required of an  
33 officer or director of a corporation organized, and are subject to the  
34 conflict of interest rules governing directors and officers, under existing  
35 law. The standards of care and loyalty described in this section apply  
36 regardless of the form in which the association is organized.

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

5 (c) The board of directors may not:

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

8 (2) amend the bylaws;

9 (3) terminate the common interest community;

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

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

15 ~~(d) This section shall take effect on and after January 1, 2011.~~  
16 ~~Members of the board of directors or the property manager may not:~~

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

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

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

22 ~~(4) foreclose on a unit owner's property; or~~

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

25 ~~(e) Unit owners may:~~

26 ~~(1) Remove a property manager or nonrenew the contract of such~~  
27 ~~property manager hired by the board of directors by a  $\frac{2}{3}$  vote of all unit~~  
28 ~~owners; and~~

29 ~~(2) dissolve the common interest community by a  $\frac{2}{3}$  vote of all unit~~  
30 ~~owners present at a meeting vote in favor of such loan. All unit owners~~  
31 ~~shall be notified by certified mail, return receipt requested, of any~~  
32 ~~meeting called to arrange a loan.~~

33 **Sec. 2. K.S.A. 2015 Supp. 58-4618 is hereby amended to read as**  
34 **follows: 58-4618. (a) Except as provided in subsection (b), an**  
35 **association shall deliver any notice required to be given by the**  
36 **association under this act to any mailing or electronic mail address a**  
37 **unit owner designates. Otherwise, the association may deliver notices**  
38 **by:**

39 **(1) Hand delivery to each unit owner;**

40 **(2) hand delivery, United States mail postage paid, or**  
41 **commercially reasonable delivery service to the mailing address of**  
42 **each unit;**

43 **(3) electronic means, if the unit owner has given the association**

1 **an electronic address; or**

2 **(4) any other method reasonably calculated to provide notice to**  
 3 **the unit owner.**

4 **(b) (1) An association for a common interest community for a**  
 5 **recreational lake development which contains more than 500 units**  
 6 **where less than 50% of such units contain a residence shall comply**  
 7 **with subsection (a) when providing notice for an annual meeting.**

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

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

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

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

14 **(c) The ineffectiveness of a good faith effort to deliver notice by**  
 15 **an authorized means does not invalidate action taken at or without a**  
 16 **meeting.**

17 *(d) Foreclosure of liens pursuant to K.S.A. 58-3123 or 58-3710, and*  
 18 *amendments thereto, or any authority contained in the association's*  
 19 *declaration may not be initiated unless the foreclosure is effectuated in*  
 20 *accordance with this section:*

21 *(1) Prior to initiating a foreclosure action against a unit owner for*  
 22 *unpaid fees and assessments, the association shall file a lien against the*  
 23 *unit which lien shall state the then current amount of fees and assessments*  
 24 *due.*

25 *(2) Not less than 30 days written notice shall be mailed to the unit*  
 26 *owner of the intent of the association to file a lien unless the default is*  
 27 *cured within the 30-day period. The notice shall state the then current*  
 28 *amount of assessments and fees due.*

29 *(3) The notice shall be mailed to the last known address of the unit*  
 30 *owner as shown on the association's records and, if the subject unit*  
 31 *address is different from the last known address, the notice shall also be*  
 32 *mailed to the unit address. A copy of the notice shall also be sent to any*  
 33 *mortgagee of the unit owner if the mortgagee has requested such notice in*  
 34 *writing.*

35 *(4) The notices required by this subsection shall be mailed by*  
 36 *certified mail, return receipt requested.*

37 **Sec. 3. K.S.A. 2015 Supp. 58-4609**~~is~~ **and 58-4618 are hereby**  
 38 **repealed.**

39 **Sec. 4. This act shall take effect and be in force from and after its**  
 40 **publication in the statute book.**