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THE KANSAS UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT AND HOMEOWNERS ASSOCIATIONS

This memorandum discusses the Kansas Uniform Common Interest Owners Bill of Rights Act¹ (UCIOBORA, or Act) and homeowners associations (HOAs) within the state. The UCIOBORA is the primary document that details the role and responsibilities of HOAs and other forms of common interest communities.² This memorandum will provide a brief history of the legislation that led to the adoption of the UCIOBORA, a summary of its provisions, a summary of how HOAs are established, and recent HOA legislation considered by the Kansas Legislature.

UCIOBORA Background

In 2009, the House Committee on Local Government considered 2009 HB 2253, related to HOAs. The Committee referred the bill to the Kansas Judicial Council (Council) for review. The Council appointed an advisory committee (Committee) to conduct a thorough review of the bill. The Committee consisted of the president of an HOA, a resident of a condominium community, a realtor, a developer, a representative of a title company, a property manager, a State representative, a State senator, a district judge, an Assistant Attorney General, an attorney, and a law professor. The Committee met four times in 2009 and concluded 2009 HB 2253 did not provide comprehensive and balanced solutions to issues that cause problems or tensions within HOAs. The Committee heard objections to several subjects contained in the bill, such as mandatory audits, rights of lessees, secret ballots, mediation, and the role of the Attorney General's Office, and it was the opinion of the Committee that the objected provisions were unnecessary because a large number of associations were not experiencing problems in these areas. The Committee also found that some provisions of the bill were not balanced in its treatment of unit owners and board issues.

The Committee considered legislation prepared by the Uniform Law Commission, specifically the 2008 UCIOBORA and the 2008 Uniform Common Interest Ownership Act (UCIOA), but determined the UCIOA was too large for review and so opted to focus solely on the UCIOBORA. After review, the Committee unanimously selected it as a platform for the legislation, with some amendments, instead of 2009 HB 2253, as it was more comprehensive in scope and more balanced in treatment of possible management and ownership issues.

The Committee's recommendation became [2010 HB 2472](#), the Kansas Uniform Common Interest Owners Bill of Rights. In 2010, the Council testified in support of the bill in the

1 [KSA 2023 Supp. 58-4601 et seq.](#)

2 This memorandum shall refer to all common interest communities as either "HOAs" or "associations."

House Committee on Local Government. The bill was passed during the 2010 Legislative Session and became effective on January 1, 2011.

Summary of UCIOBORA

Application

[KSA 58-4606](#) states that the UCIOBORA applies to all “common interest communities”³ that comprise 12 or more residential units. The Act applies to all HOAs, though it expressly excludes any actions or decisions made by an association or its board of directors regarding an event or circumstances prior to when the Act became effective on January 1, 2011. Furthermore, the Act does not invalidate existing provisions of the declaration, bylaws, plats, or plans of an association, provided that any such provisions contrary to the UCIOBORA are not enforced after January 1, 2011.⁴

[KSA 58-4607](#) also provides the following situations that would not be considered “common interest communities” for the purposes of the UCIOBORA:

- An arrangement between two or more common interest communities to share the cost of real estate taxes, insurance premiums, services, maintenance or improvement of real estate, or other activities specified in their arrangement or declaration;
- An arrangement between an association and a property owner that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvement of real estate, or other activities specified in their arrangement or declaration;⁵ and
- Covenants that require the owners of separately owned parcels of real estate to share costs or other obligations associated with a part wall, driveway, well, or other similar use.

Formation of Homeowners Associations

State statute does not expressly require that HOAs incorporate as a corporation. However, the UCIOBORA requires HOAs to take certain actions and responsibilities that can only be carried out legally by a formally organized association.⁶ Furthermore, [KSA 58-4622](#)

3 A “common interest community” is defined in KSA 58-4602 as real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in that declaration.

4 Statute does clarify that provisions in violation of the UCIOBORA may be amended to “achieve any result permitted by this act.”

5 Statute would require assessments against units within the common interest community required by any such arrangement to be included in the periodic budget for the common interest community.

6 The powers of a corporation can be found in [KSA 17-6102](#).

states that, among other things, the law of corporations applies except in instances where it is inconsistent with UCIOBORA.

The formation of a corporation of any form is governed by the Kansas General Corporation Code, contained in Chapter 17, Articles 60 through 74 of the *Kansas Statutes Annotated*.

Unit Owners Association

Powers and Duties

[KSA 58-4608](#) provides HOAs with the following powers and duties:

- Adopt and amend bylaws;
- Adopt and amend rules;
- Have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the HOA be submitted to nonbinding alternative dispute resolution (such as arbitration or mediation) as a prerequisite to commencement of a judicial proceeding;
- Promptly provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules, covenants or declarations of restricts, or to recover unpaid assessments or other sums due the association;
- Establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;
- Have the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:
 - Deny a unit owner or other occupant access to the owner's unit;
 - Suspend a unit owner's right to vote except involving issues of assessments and fees; or
 - Withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and
- Have all other powers that may be exercised in this state by organizations of the same type as the association.

Association Bylaws

[KSA 58-4610](#) requires that most HOAs⁷ have bylaws that provide for:

- The number of members of the board of directors and the titles of the officers of the association;
- Election by the board of directors or, if the declaration requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- The qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies;
- The powers the board of directors or officers may delegate to other persons or to a managing agent;
- The officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- A method for the unit owners to amend the bylaws;
- Any provisions necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and
- Any matter required by law of this state other than this act to appear in the bylaws of organizations of the same type as the association.

State law also allows for HOAs to have bylaws required by the declaration that provide for necessary and appropriate matters, such as election oversight committees.

Meeting, Quorums, and Voting Requirements

Annual Meetings. [KSA 58-4611](#) requires an HOA to hold an annual unit owners meeting at a time, date, and location established by the HOA's bylaws. The association is required to notify all unit owners of the time, date, and place of each annual meeting 10 to 60 days⁸ before the meeting date. The notice may be given by "any method reasonably calculated to provide notice to the person"⁹ and must contain the time, date, and place of the meeting as well as the agenda items being discussed, including, but not limited to:

7 All common interest communities for a recreational lake development that are composed of more than 500 units, less than 50.0 percent of which are residential, are exempted from the bylaws requirement.

8 The minimum notice of 10 days is allowed to be reduced or waived if the meeting is called to address an emergency.

9 Further guidance on how an association may provide notice can be found in [KSA 58-4618](#).

- A statement of the general nature of any proposed amendment to the declaration or bylaws;
- Any budget proposals or changes; and
- Any proposal to remove an officer or member of the board of directors.

During meetings, unit owners are required to be given a reasonable opportunity to comment regarding any matter affecting the HOA or the association. Furthermore, meetings are allowed to be conducted by telephone, video, or other conference process if permitted by the HOA's declaration or bylaws.

Special Meetings. Statute allows for an HOA president, majority of the board of directors, or at least 10.0 percent¹⁰ of unit owners to call for a special meeting of unit owners for the purposes of addressing any matter affecting the HOA or association.

Open Meetings. [KSA 58-4612](#) requires that all meetings of the board of directors and committees of the association be open to all unit owners except during executive sessions. Additionally, boards of directors are prohibited from using incidental or social gatherings or any other method to evade open meeting requirements. Statute requires that boards of directors shall meet at least two times a year and that at least one of the meetings must be at the association or at a place convenient to the association members. During meetings, the board is required to provide a reasonable opportunity for unit owners to comment regarding any matter affecting the HOA or association.

If the association is under declarant control, KSA 58-4612 allows for the board of directors, in lieu of a meeting, to act by unanimous consent as documented and authenticated by all members. If an association is not under declarant control, statute only allows for ministerial actions or actions to implement actions taken at a previous meeting of the board.

Quorum Requirements. [KSA 58-4613](#) requires any meeting of the unit owners of an association is required to have at least 20 percent of the votes in the association represented in the following capacity to constitute a quorum:

- Present in person or by proxy at the beginning of the meeting; or
- Have cast absentee ballots solicited in accordance with the association's procedures, which have been delivered to the Secretary in a timely manner.

For purposes of voting, a quorum of an association's board of directors is a majority of board members who are entitled to cast votes. If such a quorum is met, any action taken requires a majority of votes of the members present to pass.¹¹

Unit Owner Voting. [KSA 58-4614](#) allows for unit owners to vote in the following manners:

- At an in-person meeting;

¹⁰ Statute allows for an association's declarations or bylaws to establish a threshold below 10 percent.

¹¹ Statute allows for an association's bylaws to alter the quorum requirements in KSA 58-4613.

- By secret ballot;
- By absentee ballot; or
- By electronic or paper ballot when conducted without a meeting.

Unless otherwise prohibited or limited by an association's declaration or bylaws, KSA 58-4614 provides for further clarification on permissible manners and means by which unit owners can vote during meetings. This includes, but is not limited to, the manner in which in-person voting may be conducted, how to allocate votes for a unit with multiple owners, requirements for proxy voting, and voting requirements should the declaration require the participation of unit lessees rather than unit owners.

Document Retention Requirements

[KSA 58-4616](#) requires that an association or its agent must retain the following records for at least five years:

- Detailed records of receipts and expenditures;
- Minutes of all meetings of its unit owners and board of directors, including records of all actions taken without a meeting or by a committee in place of the board of directors;
- Names, addresses, and the number of votes for all unit owners;
- Original or restated organizational documents, bylaws, and all rules currently in effect;
- List of the names and addresses of its current board of directors' members and officers;
- Most recent annual report;
- Financial and other records sufficiently detailed to enable association compliance with the law;
- Copies of current contracts; and
- Records of board of directors or committee actions for approval or denial of a design or architectural approval from a unit owner.

Additionally, the association must retain all financial statements and tax returns of the association for the past three years and all ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote.

Association Rules

[KSA 58-4617](#) requires that all unit owners are provided notice prior to the adoption, amendment, or repealing of any association rule. The notice must state the intention of the meeting to adopt, amend, or repeal a rule, provide the text of the rule or proposed changes, and the date on which the board of directors will meet to act upon the proposed adoption, amendment, or repeal. Associations may also adopt rules that effect the “use of or behavior in units that may be used for residential purposes” shall only be adopted to do the following:

- Implement a provision of the declaration; or
- Regulate any behavior in or occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

Statute additionally allows the following regulations with specific stipulations:

- Construction, design, and aesthetic standards so long as the declaration provides for such standards;
- Regulate the display of the United States flag in manners consistent with federal law; and
- Regulate only the time, place, and manner of peaceful assemblies on common elements of the community that are related to the association.

Association Budgets

[KSA 58-4620](#) requires the board of directors of an association to adopt an annual budget. Unit owners must be provided notice of any meeting at which a budget will be considered, as previously discussed. The budget meeting must also provide unit owners with a “reasonable opportunity” to comment on the budget proposals prior to board action.

Statute also permits the board of directors to establish a special assessment in the same manner as a budget is adopted. However, if the board of directors determines by an affirmative vote of two-thirds or more that the special assessment is required to respond to an emergency, the assessment would become effective immediately, notice would be required to be provided promptly to all unit owners, and the funds raised by the emergency special assessment could only be used for the purposes described in the vote.

Board of Directors

Powers and Duties

[KSA 58-4609](#) requires an association to have a board of directions that is created in accordance with the association’s declaration or bylaws. Such board of directors shall take action upon behalf of the association but is prohibited from doing the following:

- Amending the declaration, except as provided by law;
- Amending the bylaws;
- Terminating the common interest community;
- Electing members of the board of directors, except for purposes of filling vacancies on the board for the remainder of the term; or
- Determining the qualifications, powers, duties, or terms of office of members of the board of directors.

[KSA 58-4608](#) further states that the board of directors of an association can enforce the association’s declaration, bylaws, and rules by imposing sanctions or commencing an action for a violation. However, the board of directors does not have a duty to take such enforcement action if it determines the facts and circumstances of the situation show that:

- The association’s legal position does not justify taking any or further enforcement action;
- The covenant, restriction, or rule being enforced is or likely is inconsistent with law;
- The violation was or is not so material as to be objectionable to a reasonable person or justifies expending association resources; or
- It is not in the association’s best interests to pursue an enforcement action.

Decisions made under these criteria for one circumstance do not set a precedent for future circumstances, though statute requires that the board of directors “may not be arbitrary or capricious in taking enforcement action.”

In carrying out their duties, KSA 58-4609 requires the board of directors to exercise “the degree of care and loyalty to the association required of a trustee.” As such, the board of directors is also subject to the conflict of interest rules governing directors and officers under existing law, and the standards of care and loyalty are not dependent upon the form in which the association is organized.

Removal of a Board Member

[KSA 58-4619](#) allows for any unit owner present in person, by proxy, or by absentee ballot to remove any member from the board of directors so long as a quorum is present and the number of votes cast to remove said member exceed the number of votes cast to retain said member.¹² Prior to the taking of a vote for removal, the board is required to provide a “reasonable opportunity” for the member under consideration for removal to speak. Statute also establishes the following conditions regarding the removal of a board member:

¹² Statute allows for the removal of a board member or board members with or without cause.

- A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;
- If the member was elected or appointed by persons other than the declarant or the unit owners, the member may only be removed by the persons that elected or appointed the member; and
- Consideration for removal cannot be made unless the subject was listed in the notice of the meeting.

Recourse for Violations of UCIOBORA

KSA 58-4621 establishes the enforcement procedures for the UCIOBORA by providing a declarant, association, unit owner, or any other person subject to the UCIOBORA with the right to bring an action in court to enforce a right granted or obligation imposed by the UCIOBORA, the declaration, or the bylaws. The law allows for the awarding by the court of reasonable attorney's fees and costs.

The law also allows for the parties in a dispute arising from the UCIOBORA, the declaration, or the bylaws to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, such as arbitration, with the following requirements:

- A declarant may agree with the association to do so only after the period of declarant control has expired; and
- An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

These remedies are required to be “liberally administered” so that the aggrieved party is put “in as good a position as if the other party had fully performed.”

Recent HOA Legislation

During the 2024 Legislative Session, the House Committee on Local Government had hearings on two bills regarding HOAs: [2023 HB 2268](#) and [2024 HB 2733](#).

2023 HB 2268

HB 2268 would have prohibited HOAs from preventing, impairing, restricting the use of, or adversely affecting the cost of efficiency of solar energy devices on units within the HOA.

The bill had a hearing on [February 14, 2024](#), and had 5 oral proponents, 17 written-only proponents, and no neutral or opposition testimony. A vote to recommend the bill favorably for passage failed and the bill remained in committee until the conclusion of the 2024 Session.

2024 HB 2733

HB 2733 would have required any HOA that was conducting certain home repairs to do so in accordance with applicable codes and standards. Failure of an HOA to do so would have allowed the Attorney General to take legal action against the HOA and establish jurisdiction of the court to enforce the provisions of the bill.

The bill had a hearing on [February 19, 2024](#), and had one oral proponent, one written-only proponent, and no neutral or opposition testimony. The committee voted to recommend the bill favorably for passage and the bill was stricken from the calendar by Rule 1507.