

KANSAS HOMEOWNERS BILL OF RIGHTS

Many Kansas homeowners in planned residential subdivisions, including townhomes and condominiums, are members of associations of homeowners. These associations are governed by their Declarations, Bylaws and Rules. On January 1, 2011, they will also be governed by the Kansas Uniform Common Interest Owners Bill of Rights. The full law includes useful background information about operations of Associations. A primary theme is transparency by decision makers. The law outlines basic powers and duties of Associations and their Boards of Directors. In certain provisions, the law mandates that communities operate in certain ways. However, some provisions defer to each Association's governing documents. Therefore, directors and homeowners should always compare their governing documents with the law. Here is a summary. The full law is House Bill 2472 found at www.kslegislature.org.

ANNUAL AND SPECIAL MEETINGS

Associations shall notify Owners of the date, time, place and agenda of each annual and special meeting, not less than 10 days or more than 60 days before the meeting. Notice may be made by any method reasonably calculated to provide notice.

Associations shall hold special meetings of Owners if its President, a majority of Directors, or Owners having at least 10 percent of the votes, request the Secretary call a meeting. Only matters described in the notice may be considered at a special meeting.

The Declaration or Bylaws may allow for Owners' meetings to be conducted by telephone, video or other conferencing process.

Unless prohibited or limited by the Declaration or Bylaws, Owners may vote at meetings in person, by secret ballot, absentee ballot or proxy. Unless prohibited or limited by the Declaration or Bylaws, Associations may conduct votes by electronic or paper ballot without a meeting. The law includes rules for absentee ballots and proxies.

Owners present in person, by proxy or by absentee ballot at any meeting of Owners which a quorum is present may remove any Director and any Officer elected by Owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal subject to certain meeting conditions. (This does not apply to members appointed by the Declarant during the period of Declarant control.)

BYLAWS

Association Bylaws must:

- Provide the number of Directors and the titles of Officers.
- Provide for election of Officers by Directors or, if the Declaration requires, by Owners.
- Specify the qualifications and powers of Directors or Officers to delegate to other persons or to a managing agent.
- Specify if Officers may prepare, execute, certify and record amendments to the Declaration on behalf of an Association.
- Specify a method for Owners to amend the Bylaws.
- Contain provisions necessary to satisfy requirements in this law or the Declaration concerning meetings, voting, quorums and other activities of the Association.

ENFORCEMENT

Any person or entity subject to this law may file a lawsuit to enforce it. The court may award reasonable attorney fees.

DIRECTORS MEETINGS

Meetings of Directors and committees authorized to act for an Association must be open to all Owners except during executive sessions. No final vote or action may be taken during an executive session. Executive sessions may be held only to:

- consult with an attorney,
- discuss existing or potential litigation,
- discuss labor or personnel matters,
- discuss contracts or other transactions to purchase goods or provide services currently being negotiated, including a review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage, or
- prevent public knowledge of the matter to be discussed if Directors or a Committee determines that public knowledge would violate the privacy of any person.

At each Directors meeting, reasonable opportunity must be given to Owners to comment regarding any matter affecting the community. Public comment sessions may be limited to a specific portion of the meeting.

Directors shall give notice of each meeting to all Owners at least five days before the meeting with two exceptions: emergencies or when a schedule of meetings is provided. Notices must state the date, time, and place and agenda. (Ten days notice must be provided for budget discussions.)

If materials are distributed to Directors, copies should be available to Owners, except unapproved minutes or materials to be considered in executive session.

Unless the Declaration or Bylaws otherwise provide, Directors may meet by telephone, video or other conferencing process. The meeting notice must state how Owners may hear the discussion and comment at the meeting as provided above.

If an action by Directors does not comply with this section, it is valid unless set aside by a Court. Any challenge to an action by Directors for failure to comply with this law may not be brought more than 60 days after the minutes of the Directors meeting are approved or distributed to Owners.

Unless the Bylaws specify a larger number, a quorum of Directors is a majority of Directors. If a quorum is present when a vote is taken, the vote of a majority of Directors is required to approve any action unless a greater vote is required by the Declaration or Bylaws.

Unless otherwise provide by Bylaws, Association meetings must be conducted in accordance with the most recent edition of *Robert's Rules of Order Newly Revised*.

POWER AND DUTIES OF ASSOCIATION

Associations shall:

- Adopt Bylaws. (Associations may adopt and amend rules.)
- Adopt a budget.
- Have the power to require disputes between the Association and Owners or between two or more Owners be submitted to nonbinding alternative dispute resolution before commencing litigation.
- Provide prompt notice to Owners of any legal proceedings involving the Association other than enforcement of Rules, Covenants or Declarations or to recover unpaid assessments.
- Establish a reasonable method for Owners to communicate among themselves with Directors concerning the Association.
- Have the power to suspend rights and privileges of Owners who fail to pay an assessment, but Associations may not:
 - Deny access to an Owner's Unit.
 - Suspend an Owner's right to vote except on issues of assessment or fees.
 - Withhold services, if withholding the service would endanger the health, safety or property of any person.

POWER AND DUTIES OF DIRECTORS

- Directors shall exercise a degree of care and loyalty to an Association required of an officer or director of any corporation. (Officers and Directors appointed by a Declarant shall exercise the degree of loyalty and care to the Association required of a trustee.)
- Officers and Directors may not:
 - Amend a Declaration except as provided by law.
 - Amend the Bylaws.
 - Terminate the Association.
 - Elect Directors. (But Directors may fill vacancies in its membership for unexpired portions of any term or, if earlier, until the next regularly scheduled election of Directors.)
 - Determine the qualifications, powers, duties or terms of office of Directors.
- Directors may determine whether to take enforcement actions allowed by the Association's governing documents, including whether to compromise claims for unpaid assessments or any other claim. Directors do not have a duty to enforce the governing documents under certain circumstances described in the law. A decision not to pursue enforcement under one set of circumstances does not prevent Directors from enforcement under another set of circumstances. However, Directors may not be arbitrary or capricious in enforcement actions.

BUDGET REQUIREMENTS

Directors shall propose and adopt a budget at least annually. Notice of any meeting when the budget will be considered must be given to Owners at least ten days before the meeting date. At any meeting at which a budget or amendment is considered, Owners must be given reasonable opportunity to comment on the proposal prior to Directors taking action.

Directors, at any time, may propose a special assessment with the same notice requirements as above. Two-thirds of directors may also make special assessments in emergencies and then notify owners. Funds of emergency assessments may only be used for the purpose described in the vote.

OPEN RECORDS

Associations must retain these records for five years, unless otherwise noted:

- Detailed records of receipts and expenditures affecting the operation and administration of the Association.
- Minutes of all meetings of all Owners and Directors other than executive sessions, records of all actions taken by Owners or Directors without a meeting, and records of actions taken by committees in place of Directors.
- Names of all Owners in a form that permits preparation of a list of names in alphabetical order showing the number of votes each Owner is entitled to cast.
- Original or restated organizational documents, bylaws and rules currently in effect.
- All financial statements and tax returns for the past *three* years.
- Names and addresses of current Directors and Officers.
- The recent Annual Report to the Secretary of State.
- Financial and other records sufficiently detailed to enable Associations to comply with other requirements of law.
- Current contracts to which it is a party.
- Records to approve or deny requests for architectural approval.
- Ballots, proxies, and other records related to voting by Owners for *one* year after the election, action or vote.

All records must be available for examination and copying by Owners during reasonable business hours or a mutually convenient time and location upon ten days written notice. The notice must reasonably identify the specific records. Certain records may be withheld to the extent they concern:

- Personnel, salary or medical records related to individuals.
- Contracts, leases or other commercial transactions to purchase goods or services currently being negotiated.
- Existing or potential matters involving federal, state or local government tribunal for enforcement of the Declaration, Bylaws or rules.
- Communications with the Association's attorney which otherwise are protected by attorney/client privilege or the attorney work product doctrine.
- Information or disclosure which would violate laws other than this law.
- Records of executive sessions of Directors.
- Individual Owner files other than those of the requesting Owner.

Associations may charge a reasonable fee for providing copies. Associations are not obligated to compile or synthesize information when responding to requests.

RULES

Before adopting, amending or repealing any rules, Directors shall give all Owners notice of their intent and provide the text of the proposed rule or change and the date on which the Directors will act on the proposed rule or amendment after considering comments of all Owners. Following adoption, amendment or repeal of the rule, the Association shall notify all Owners of its action and provide a copy of any new or revised rule.