

**SENATE BILL No. 114**

By Committee on Ways and Means

2-7

1 AN ACT concerning homeowners associations; amending K.S.A. 2010  
2 Supp. 58-4608 and 58-4618 and repealing the existing sections; also  
3 repealing K.S.A. 2010 Supp. 58-4610.  
4

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

6 Section 1. K.S.A. 2010 Supp. 58-4608 is hereby amended to read as  
7 follows: 58-4608. (a) The association shall:

8 (1) Adopt and may amend bylaws and may adopt and amend rules;

9 (2) adopt and may amend budgets;

10 (3) have the power to require that disputes between the association  
11 and unit owners or between two or more unit owners regarding the  
12 common interest community be submitted to nonbinding alternative  
13 dispute resolution as a prerequisite to commencement of a judicial  
14 proceeding;

15 (4) promptly provide notice to the unit owners of any legal  
16 proceedings in which the association is a party other than proceedings  
17 involving enforcement of rules, covenants or declarations of restrictions,  
18 or to recover unpaid assessments or other sums due the association;

19 (5) establish a reasonable method for unit owners to communicate  
20 among themselves and with the board of directors concerning the  
21 association;

22 (6) have the power to suspend any right or privilege of a unit owner  
23 that fails to pay an assessment, but may not:

24 (A) Deny a unit owner or other occupant access to the owner's unit;

25 ~~(B) suspend a unit owner's right to vote except involving issues of~~  
26 ~~assessments and fees; or~~

27 ~~(C) (B)~~ withhold services provided to a unit or a unit owner by the  
28 association if the effect of withholding the service would be to endanger  
29 the health, safety, or property of any person; and

30 (7) have all other powers that may be exercised in this state by  
31 organizations of the same type as the association.

32 (b) The board of directors may determine whether to take  
33 enforcement action by exercising the association's power to impose  
34 sanctions or commencing an action for a violation of the declaration,  
35 bylaws, and rules, including whether to compromise any claim for unpaid  
36 assessments or other claim made by or against it. The board of directors

1 does not have a duty to take enforcement action if it determines that,  
2 under the facts and circumstances presented:

3 (1) The association's legal position does not justify taking any or  
4 further enforcement action;

5 (2) the covenant, restriction, or rule being enforced is, or is likely to  
6 be construed as, inconsistent with law;

7 (3) although a violation may exist or may have occurred, it is not so  
8 material as to be objectionable to a reasonable person or to justify  
9 expending the association's resources; or

10 (4) it is not in the association's best interests to pursue an  
11 enforcement action.

12 (c) The board of directors' decision under subsection (b) not to  
13 pursue enforcement under one set of circumstances does not prevent the  
14 board of directors from taking enforcement action under another set of  
15 circumstances, but the board of directors may not be arbitrary or  
16 capricious in taking enforcement action.

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

18 Sec. 2. K.S.A. 2010 Supp. 58-4618 is hereby amended to read as  
19 follows: 58-4618. (a) An association shall deliver any notice required to  
20 be given by the association under this act to any mailing or electronic  
21 mail address a unit owner designates. Otherwise, the association may  
22 deliver notices by:

23 (1) Hand delivery to each unit owner;

24 (2) hand delivery, United States mail postage paid, or commercially  
25 reasonable delivery service to the mailing address of each unit;

26 (3) electronic means, if the unit owner has given the association an  
27 electronic address; ~~or~~

28 (4) *posting any notice on the association's website;*

29 (5) *posting any notice on a bulletin board in the association's office*  
30 *or at other public locations that owners have access to at all times; or*

31 ~~(4) (6)~~ any other method reasonably calculated to provide notice to  
32 the unit owner.

33 (b) The ineffectiveness of a good faith effort to deliver notice by an  
34 authorized means does not invalidate action taken at or without a  
35 meeting.

36 Sec. 3. K.S.A. 2010 Supp. 58-4608, 58-4610 and 58-4618 are  
37 hereby repealed.

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