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UPDATED
March 22, 2018

To: House Committee on Local Government

From: Katelin Neikirk, Research Analyst

Re: The Kansas Uniform Common Interest Owners Bill of Rights Act

This memorandum contains background information on the Kansas Uniform Common Interest Owners Bill of Rights Act (UCIOBORA), a brief history of the legislation that lead to the adoption of UCIOBORA, a summary of its provisions, and a summary of how homeowner's associations (HOAs) are established and registered in Kansas.

UCIOBORA Background

The UCIOBORA, which can be found in KSA 58-4601 through KSA 58-4623, became effective on January 1, 2011. The Act sets uniform powers, duties, and limitations for all common interest communities and their associations, bylaws, unit owners, boards of directors, meetings, records, and related items.

The purposes of UCIOBORA are to establish uniform rules of law to clarify the rights and duties of unit owners and associations in all forms of common interest communities; to provide for the effective operation of common interest communities in the interest of their owners and their residents; and to address current and potential areas of conflict and tension between unit owners and associations, boards, and managers in a comprehensive and balanced manner.

History of Legislation Resulting in UCIOBORA

In 2009, the House Committee on Local Government considered 2009 HB 2253, related to homeowners' associations. 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 a homeowners' association, 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 common interest communities. The Committee heard objections to several subjects contained in the bill, including: mandatory audits, rights of lessees, secret ballots, mediation, and the role of the Attorney General's Office. It was the opinion of the Committee that provisions related to these subjects were unnecessary since 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 their 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). The Committee determined the UCIOA was too large to review if they were to provide a recommendation to the 2010 Legislature, and opted to focus their efforts on the UCIOBORA. After reviewing the UCIOBORA, the Committee unanimously selected it as a platform for the legislation it recommended. The Committee selected the UCIOBORA over the 2009 HB 2253, as it was more comprehensive in scope and more balanced in treatment of possible management and ownership issues. The Committee found the UCIOBORA was written in plain English and could be understood by individuals without legal training. The Committee did recommend several amendments to the UCIOBORA to adapt it for use in Kansas.

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

Summary of UCIOBORA Provisions

The UCIOBORA's application is limited to communities that contain 12 or more units used for residential purposes. However, actions or decisions of a community's association or board of directors concerning events and circumstances which occurred before the effective date are not included under the UCIOBORA.

The UCIOBORA also specifies certain arrangements that are exempt, such as an arrangement between the associations for two or more common interest communities to share certain costs, or an arrangement between an association and the owner of real estate not included in the common interest community to share certain costs.

Definitions

The UCIOBORA contains the following key definitions:

- Association - the unit owners association;
- Board of directors – the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association;
- Common elements – those portions of the property not owned individually by unit owners, but in which an indivisible interest is held by all unit owners, generally including the grounds, parking areas, and recreational facilities;
- Common interest community – real estate described in a common interest community declaration regarding which unit owners are obligated to pay for a share of real estate taxes, insurance premiums, maintenance, improvements or

services related to common portions of the real estate described in the declaration;

- Declarant – a person or group of persons acting in concert that, as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of or reserves or succeeds to any declarant right; and
- Declaration – the instrument, however designated, that creates a common interest community, including any amendments to that instrument.

Powers and Duties of the Unit Owners Association

The UCIOBORA establishes the powers and duties of the unit owners association, which include the following:

- Adopt and may amend bylaws, rules, and budgets;
- May require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to a court proceeding;
- Provide notice to unit owners of any legal proceedings in which the association is a party, other than proceedings involving enforcement of rules, covenants, or declarations of restrictions, or to recover unpaid assessments or other monies due to the association;
- Establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;
- May suspend any right or privilege of a unit owner who fails to pay an assessment, this may not include:
 - Denying a unit owner or other occupant from accessing the owner's unit;
 - Suspend a unit owner's right to vote, except concerning fees and assessments; or
 - Withhold services provided to a unit or unit owner by the association if withholding that service would endanger the health, safety, or property of any person.

Powers and Duties of the Board of the Directors

The powers and duties of the board of directors established under the UCIOBORA include:

- Must exercise the degree of care and loyalty required of a trustee, if the officers and members of the board of directors are appointed by the declarant;
- Must exercise the degree of care and loyalty required of an officer or director of a corporation, if the officers and members of the board of directors are not appointed by the declarant;
- May not amend the declaration except as provided by law;
- May not amend the bylaws;
- May not terminate the common interest community;
- May not elect members of the board of directors, but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of the board of directors' members; and
- May not determine the qualifications, powers, duties, or terms of office of board of directors' members.

Removal of a Board Member

Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is present, may hold a vote to remove any member of the board of directors and any officer elected by the unit owners, with or without cause. However, a member appointed by a declarant cannot be removed by a unit owner vote during a period of declarant control. If a member is elected or appointed pursuant to the declaration by persons other than the declarant or unit owners, the member can only be removed by the person who appointed or elected the member. At any meeting at which a vote to remove a member is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

Association Bylaws

The UCIOBORA states the bylaws of an association must do the following:

- Provide the number of members of the board of directors and titles of officers of the association;
- Provide for election by the board of directors or by the unit owners, of a president, treasurer, secretary, and any other officers of the association required;
- Specify the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies;

- Specify the powers the board of directors or officers may delegate to other persons or to a managing agent;
- Specify officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- Specify a method for the unit owners to amend bylaws;
- Contain any provision necessary to satisfy requirements in the UCIOBORA or the declaration concerning meetings, voting, quorums, and other activities of the association; and
- May provide for any other necessary or appropriate matters.

Meeting, Quorums, and Voting Requirements

The UCIOBORA requires that an association hold an annual meeting, as well as special meetings. A special meeting will be held if the president, a majority of the board of directors, or at least 10 percent, or any lower percentage specified in the bylaws, of the association's voting members request a meeting. During the period of declarant control, the board of directors is required to meet at least two times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After termination of the period of declarant control, the board of directors must meet at least once a year and such meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings.

Meetings of the board of directors and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The board of directors and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session.

According to the UCIOBORA, a quorum is present throughout any meeting of the unit owners if persons entitled to cast 20 percent of the votes in the association are present in person or by proxy at the beginning of the meeting or have cast absentee ballots. A quorum of the board of directors is established when a majority of the voting members are present.

Unit owners may vote at a meeting in person, by absentee ballot, by proxy, by secret ballot, or by electronic or paper ballot when a vote is conducted without a meeting. An association may determine other voting provisions, unless otherwise required.

Document retention requirements

The UCIOBORA requires the association to retain the following for five years:

- Detailed records of receipt and expenditure records;

- Minutes of all meetings, excluding executive sessions, and records of all actions taken by unit owners or the board of directors without a meeting, and a record of all actions taken by a committee in place of the board of directors on behalf of the association;
- Names of unit owners and their addresses;
- Original or restated organizational documents, bylaws, and all amendments to them, and all rules currently in effect;
- All financial statements and tax returns for the past three years;
- Names and addresses of its current board of directors' members and officers;
- Most recent annual report, if any;
- Financial and other records to enable the association to comply with other requirements of law;
- Copies of current contracts to which the association is party;
- Records of board of directors or committee actions to approve or deny any requests for design or architectural approval from unit owners; and
- Ballots, proxies, and other records relating to voting by unit owners for one year after the election, action, or vote.

All records retained by an association must be available for examination and copying by a unit owner or the owner's agent at a reasonable fee.

Association Rules

Under the UCIOBORA, all rules must be reasonable.

The UCIOBORA requires the board of directors to provide notice to unit owners before adopting, amending, or repealing any rule. The board of directors is also required to provide unit owners with notice of the board's action and a copy of the new or revised rule.

The association may not prohibit the display of signs regarding candidates for public or association office or ballot questions on a unit or on a limited common element adjoining a unit. However, the association may adopt rules concerning the time, place, size, number, and manner of those signs so long as those rules are consistent with current law.

Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

The association may only adopt rules concerning the use of or behavior in residential units to implement a provision of the declaration or to regulate any behavior in or occupancy of a unit which violates or adversely affects the use and enjoyment of other units or of the common elements.

Budget Requirements

The board of directors must propose and adopt a budget for the common interest community at least once a year. During a meeting at which a budget or budget amendment is considered, unit owners must be given reasonable opportunity to comment before the board may take action. The board of directors can propose a special assessment at any time. The board of directors can approve a special assessment to respond to an emergency with a vote of two-thirds of its membership. However, the board of directors must provide notice to unit owners and can only spend funds on the purpose described in the vote.

Authority to Bring Court Action

A declarant, association, unit owner, or any other person subject to UCIOBORA may bring an action to enforce a right granted or obligation imposed by UCIOBORA, the declaration, or the bylaws. The court may award reasonable attorney's fees and costs. Parties to a dispute arising under the UCIOBORA, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution. However, 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. Remedies provided by the UCIOBORA are required to be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

Formation of an HOA in Kansas

According to HOA-USA, Inc., an industry organization, common interest communities in Kansas generally file as a nonprofit corporation and follow the associated state laws (citation: <https://hoa-usa.com/statelaws/ks.aspx>). There is no statute requiring formation of an HOA or establishing a registration process.

Requirements related to the formation of any form of corporation in Kansas can be found in the Kansas General Corporation Code, located in Articles 60 through 74 of Chapter 17 of the Kansas Statutes Annotated.

KSA 17-6004 requires articles of incorporation to be filed with the Secretary of State's Office. KSA 2017 Supp. 17-7506 also prescribes that the secretary of state shall charge a fee not to exceed \$50 for filing articles of incorporation for a non-profit organization. Additionally, KSA 2017 Supp. 17-7504 establishes an annual reporting requirement and \$40 filing fee for non-profit corporations. The report must include the following;

- The name of the corporation;
- The location of the principal office;

- The names and addresses of the president, secretary and treasurer or equivalent of such officers, and the members of the governing body;
- The number of memberships or the number of shares of capital stock issued; and
- If the corporation is a parent corporation holding more than 50 percent equity ownership in any other business entity registered with the secretary of state, the name and identification number of any such subsidiary business entity.

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