

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2629

By Committee on Local Government

2-6

1 AN ACT concerning ~~consumer protection~~ and common interest
2 communities; **relating to enforcement powers of the attorney**
3 **general**; amending K.S.A. 2017 Supp. 58-4609 and repealing the
4 existing section.

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. 2017 Supp.~~
11 ~~58-4602(n), and amendments thereto; and~~

12 (B) ~~a co-obligor or surety for a unit owner, as defined in K.S.A. 58-~~
13 ~~4602(o), and amendments thereto.~~

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

16 (b) ~~Any consumer who believes that the board of directors or the~~
17 ~~property manager of a common interest community has violated the rights~~
18 ~~of the consumer as established by the Kansas uniform common interest~~
19 ~~owners bill of rights act, K.S.A. 2017 Supp. 58-4601 et seq., and~~
20 ~~amendments thereto, may file a complaint with the division. The division~~
21 ~~shall investigate each complaint. If the division determines the complaint~~
22 ~~is valid, it may utilize any remedy available under the Kansas consumer~~
23 ~~protection act, K.S.A. 50-623 et seq., and amendments thereto.~~

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

26 New Sec. 2. **Section 1.** (a) Every common interest community subject
27 to the Kansas uniform common interest owners bill of rights act, K.S.A.
28 58-4601 et seq., and amendments thereto, shall file a registration statement
29 with the attorney general on or before July 1 of each year containing the
30 name and address of the common interest community, the names of the
31 board of directors and the property manager and such other information as
32 required by the attorney general. The registration statement shall be
33 accompanied by an annual registration fee in an amount based on the
34 number of units in the common interest community as determined by the
35 attorney general, but in no case greater than ~~\$500~~ **\$50**.

36 (b) There is hereby established in the state treasury the common

1 interest community fund which shall be administered by the attorney
2 general. All expenditures from the common interest community fund shall
3 be for enforcement of the Kansas uniform common interest owners bill of
4 rights ~~act as provided in section 1, and amendments thereto~~. All
5 expenditures from the common interest community fund shall be made in
6 accordance with appropriation acts upon warrants of the director of
7 accounts and reports issued pursuant to vouchers approved by the attorney
8 general.

9 (c) All moneys received by the attorney general for the registration of
10 common interest communities shall be deposited in the state treasury in
11 accordance with the provisions of K.S.A. 75-4215, and amendments
12 thereto, and shall be credited to the common interest community fund.

13 **New Sec. 2. (a) In addition to the provisions of K.S.A. 2017 Supp.**
14 **58-4621, and amendments thereto, any member of the board of**
15 **directors or any property manager who knowingly violates any of the**
16 **provisions of the Kansas uniform common interest owners bill of**
17 **rights act shall be liable for the payment of a civil penalty in an action**
18 **brought by the attorney general, in a sum set by the court not to**
19 **exceed \$500 for each violation. The court shall have jurisdiction to**
20 **issue injunctions or writs of mandamus to enforce the provisions of the**
21 **act.**

22 **(b) Civil penalties sued for and recovered by the attorney general**
23 **shall be paid into the attorney general's common interest community**
24 **fund.**

25 Sec. 3. K.S.A. 2017 Supp. 58-4609 is hereby amended to read as
26 follows: 58-4609. (a) In the performance of their duties, officers and
27 members of the board of directors appointed by the declarant shall exercise
28 the degree of care and loyalty to the association required of a trustee.
29 Officers and members of the board of directors not appointed by the
30 declarant *and the property manager appointed by the board* shall exercise
31 the degree of care and loyalty to the association required of an officer or
32 director of a corporation organized, and are subject to the conflict of
33 interest rules governing directors and officers, under existing law. The
34 standards of care and loyalty described in this section apply regardless of
35 the form in which the association is organized.

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

40 (c) The board of directors may not:

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

43 (2) amend the bylaws;

1 (3) terminate the common interest community;

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

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

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

8 Sec. 4. K.S.A. 2017 Supp. 58-4609 is hereby repealed.

9 Sec. 5. This act shall take effect and be in force from and after its
10 publication in the statute book.