

## Kansas Condo Statutes

### **West's Kansas Statutes Annotated Chapter 58. Personal and Real Property Article 31. Apartment Ownership Act**

#### **58-3101. Name of act; citation**

This act shall be known and may be cited as the "apartment ownership act."

#### **58-3102. Definitions**

As used in this act and the act of which this section is amendatory, unless the context otherwise requires:

- (a) "Apartment" or "condominium unit" means a part of the property intended for any type of independent use whether residence, office, the operation of any industry or business or other use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, and with a direct exit to a public street or highway or to a common area leading to such street or highway. To the extent that walls, floors, and ceilings are designated as the boundaries of a condominium unit or apartment by the declaration, all doors and windows therein, and all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the furnished surfaces thereof, shall be deemed a part of such unit, while all other portions of such walls, floors and ceilings shall be deemed a part of the common areas and facilities. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a unit, any portions thereof serving only that unit shall be deemed a part of that unit, while any portions thereof serving more than one unit or any portion of the common elements shall be deemed a part of the common areas and facilities. All space, interior partitions, and other fixtures and improvements within the boundaries of a unit shall be deemed a part of that unit. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single unit, but located outside the boundaries thereof, shall be deemed a limited common area and facility appertaining to that unit exclusively.
- (b) "Apartment owner" means the person or persons owning an apartment or condominium unit in fee simple absolute and an undivided interest in the fee simple estate of the common areas and facilities as specified and established in the declaration.
- (c) "Apartment number" means the number, letter, or combination thereof designating the apartment or condominium unit in the declaration.
- (d) "Association of apartment owners" means all of the apartment or condominium unit owners acting as a group in accordance with the bylaws and declaration.
- (e) "Building" means a building, containing one or more apartments or condominium units, or two or more buildings, each containing one or more apartments or condominium units and comprising a part of the property.
- (f) "Condominium" means "property" as hereinafter defined.

(g) "Common areas and facilities," unless otherwise provided in the declaration or lawful amendments thereto means and includes:

- (1) The land on which the building is located;
- (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of the building;
- (3) the basements, yards, gardens, parking areas and storage spaces;
- (4) the premises for the lodging of janitors or persons in charge of the property;
- (5) installations of central services such as power, lights, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
- (6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;
- (7) such community and commercial facilities as may be provided for in the declaration; and
- (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(h) "Convertible land" shall mean a building site for one or more proposed additional condominium units within the submitted land which may be created in accordance with the declaration and this act.

(i) "Common expenses" means and includes:

- (1) All sums lawfully assessed against the apartment owners by the association of apartment owners;
- (2) expenses of administration, maintenance, repair or replacement of the common areas and facilities;
- (3) expenses agreed upon as common expenses by the association of apartment owners; and
- (4) expenses declared common expenses by provisions of this act, or by the declaration or the bylaws.

(j) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(k) "Declaration" means the instrument by which the property is submitted to the provisions of this act as hereinafter provided, and such declaration as from time to time may be lawfully amended.

(l) "Expandable condominium" shall mean a condominium to which additional real property may be added in accordance with the provisions of the declaration and of this act.

(m) "Limited common areas and facilities" means and includes those common areas and facilities designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(n) "Majority" or "majority of apartment owners" means the apartment owners with 51% or more of the votes in accordance with the percentages assigned in the declaration to the apartments for voting purposes.

(o) "Par value" shall mean a number of dollars or points assigned to each condominium unit by the declaration. If par value is stated in terms of dollars, that statement shall not be deemed to reflect or control value for taxation, fair market value, or for any purpose.

(p) "Person" means individual, corporation, partnership, association, trustee or other legal entity.

(q) "Property" means and includes the land, the building, all improvements and structures thereon, all owned in fee simple absolute and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this act.

(r) "Recording officer" means the register of deeds of the county in which the property is located.

(s) "Size" shall mean the approximate square feet of floor space of each condominium unit computed by reference to the declaration and floor plans and rounded off to a whole number. Certain spaces may be excluded or estimated in determining size if the same basis of calculation is used for all units of the condominium and is described in the declaration or floor plans.

(t) "Submitted land" shall mean real property, and any incidents thereto or interests therein, lawfully submitted to the provisions of this act as hereinafter provided.

#### **58-3103. Application of act**

This act shall be applicable only to property, the sole owner or all of the owners of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided.

#### **58-3104. Status of the apartments**

Each apartment, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property.

#### **58-3105. Ownership of apartments**

Each apartment owner shall be entitled to the exclusive ownership and possession of his or her apartment.

#### **58-3106. Common areas and facilities**

(a) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities as expressed in the declaration. The declaration may allocate to each apartment or condominium unit an undivided interest in the common areas and facilities proportionate to either the size or par value of each apartment or condominium unit. The undivided interests in the common areas and facilities shall add up to one (1) if stated as fractions or one hundred percent (100%) if stated as percentages. The undivided interest allocated to each apartment or condominium unit shall be reflected by the

declaration or by an exhibit or schedule accompanying the declaration and recorded simultaneously therewith.

(b) Except as otherwise provided in this act, the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners expressed in an amended declaration duly recorded. The undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(c) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this act as provided in K.S.A. 58-3116 and 58-3126. Any covenant to the contrary shall be null and void.

(d) Each apartment owner may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(e) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out only as provided herein and in the bylaws.

(f) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments.

(g) If a condominium contains any convertible land or is an expandable condominium, the undivided interests in the common areas and facilities may be reallocated and altered without the consent of all apartment owners as set forth in the declaration and in this act.

(h) Until an amendment to the declaration is executed and recorded by the declarant and the board of directors of the association of apartment owners, as provided by this act, interests in the common areas and facilities shall not be allocated to any condominium unit proposed for construction to be created within any convertible land or on any additional land if the condominium is an expandable condominium.

(i) To reallocate and alter interests in the common areas and facilities after units are constructed upon convertible or additional land, the declarant and the board of directors of the association of apartment owners shall execute and record an amendment to the declaration which shall reallocate and alter undivided interests in the common areas and facilities among all owners on an equitable formula set forth in said declaration so that the condominium units constructed upon convertible or additional land shall be allocated undivided interests in the common areas and facilities on the same basis and formula as the units depicted on the floor plans recorded simultaneously with the original declaration. Such reallocation and alteration by the declarant and the board of directors shall not require the consent of

all the owners of units.

**58-3107. Compliance with covenants, bylaws and administrative provisions**

Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to the owner's apartment. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages or injunctive relief or both maintainable by the manager or board of directors on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

**58-3108. Certain work prohibited**

No apartment owner shall do any work which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament without in every such case the unanimous consent of all the other apartment owners being first obtained.

**58-3109. Liens against apartments; removal from lien; effect of part payment**

(a) Subsequent to recording the declaration as provided in this act, and while the property remains subject to this act, no lien shall thereafter arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities, appurtenant to such apartment, in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: *Provided*, That no labor performed or materials furnished with the consent or at the request of an apartment owner or his or her agent or his or her contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against the apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the association of apartment owners, the manager or board of directors, in accordance with this act, the declaration or bylaws, shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien pursuant to the lien law against each of the apartments and shall be subject to the provisions of subparagraph (b) hereunder.

(b) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge or other satisfaction the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his or her rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied or discharged.

**58-3110. Common profits and expenses**

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the undivided interest in the common areas and facilities.

**58-3111. Contents of declaration**

The declaration shall contain the following particulars:

1. Description of the land submitted to the provisions of this act.
2. Description of the condominium units or apartments which are constructed or are to be constructed.
3. The apartment number of each apartment or condominium unit, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification.
4. Description of the common areas and facilities.
5. Description of the limited common areas and facilities, if any, stating to which apartments or condominium units their use is reserved.
6. The undivided interest in the common areas and facilities appertaining to each apartment or condominium unit and its owner for all purposes, including voting, and the method and formula by which the undivided interests in the common areas and facilities may be reallocated and altered consistent with the provisions of this act.
7. Statement of the purposes for which the building and each of the apartments or condominium units are intended and restricted as to use.
8. The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city or county in which the building or buildings are located.
9. Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property.
10. Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this act.
11. The method by which the declaration may be amended, consistent with the provisions of this act.
12. If the condominium contains any convertible land the declaration shall also contain the following:
  - (a) A legal description of all convertible land within the condominium.
  - (b) A statement of the maximum number of condominium units that may be created within such convertible land.
  - (c) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality in construction, the principal materials to be used, and architectural style.

(d) A description of all other improvements that may be made on all convertible land within the condominium.

(e) A statement that any condominium units constructed on all convertible land will be substantially identical to the condominium units on other portions of the submitted land, or a statement describing what other types of units may be created thereon.

(f) A description of the declarant's reserved right if any to create limited common areas and facilities within any convertible land.

13. If the condominium is an expandable condominium the declaration shall also contain the following:

(a) The reservation of an option to expand the condominium.

(b) A statement of any limitations on that option, including, without limitation, a statement as to whether the consent of any condominium unit owners shall be required, and if so, a statement as to the method whereby such consent shall be ascertained; or a statement that there are no such limitations.

(c) Time limit, not exceeding seven (7) years from the recording of the declaration, upon which the option to expand the condominium shall expire, together with a statement of the circumstances, if any which will terminate that option prior to the expiration of the time limit so specified.

(d) A legal description of all land that may be added to the condominium.

(e) A statement as to whether, if any of the additional land is added to the condominium, all of it or any particular portion of it must be added, and if not, a statement of any limitations as to what portions may be added or a statement that there are no such limitations.

(f) A statement as to whether portions of the additional land may be added to the condominium at different times, together with any limitations, fixing the boundaries of those portions by legal descriptions.

(g) A statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium or a statement that no assurances are made in that regard. A summary statement of the extent to which any structures erected on a portion of the additional land added to the condominium will be compatible with structures on the submitted land in terms of quality of construction, the principal materials to be used, and architectural style, or a statement that no assurances are made in those regards.

(h) A description of all other improvements that will be made on any portion of the additional land added to the condominium, or a statement of any limitations as to what other improvements may be made thereon, or a statement that no assurances are made in that regard.

(i) A statement that any units created on any portion of the additional land added to the condominium will be substantially identical to the units on the submitted land, or a statement of

any limitations as to what types of units may be created thereon, or a statement that no assurances are made in that regard.

(j) A description of the declarant's reserve right, if any, to create limited common areas and facilities within any portion of the additional land added to the condominium.

#### **58-3112. Contents of deeds of apartments or condominium units**

Deeds of apartments or condominium units shall include the following particulars:

1. Description of the land as provided in K.S.A. 58-3111, or the post-office address of the property, including in either case the liber, page and date of recording of the declaration.
2. The apartment number of the apartment or condominium unit in the declaration and any other data necessary for its proper identification.
3. Statement of the use for which the apartment or condominium unit is intended and restrictions on its use.
4. The undivided interest appertaining to the apartment or condominium unit in the common areas and facilities.
5. Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and this act.

#### **58-3113. Copy of the floor plans to be filed**

Simultaneously with the recording of the declaration there shall be filed in the office of the recording officer a set of the floor plans of the building showing the layout, location, apartment numbers and dimensions of the apartments, stating the name of the building or that it has no name, and bearing the verified statement of a registered architect or licensed professional engineer certifying that it is an accurate copy of portions of the plans of the building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

If such plans do not include a verified statement by such architect or engineer that such plans fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built, there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the plans theretofore filed, or being filed simultaneously with such amendment, fully and accurately depict the layout, location, apartment numbers and dimensions of the apartments as built.

Such plans shall be kept by the recording officer in a separate file for each building, indexed in the same manner as a conveyance entitled to record, numbered serially in the order of receipt, each designated "apartment ownership," with the name of the building, if any, and each containing a reference to the liber, page and date of recording of the declaration. Correspondingly, the record of declaration shall contain a reference to the file number of the floor plans of the building affected thereby.

#### **58-3114. Blanket mortgages and other blanket liens affecting an apartment at time of first conveyance**

At the time of the first conveyance of each apartment, every mortgage and other lien affecting such



apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded.

**58-3115. Recording; plat not recorded, when**

(a) The declaration, any amendment or amendments thereof, any instrument by which the provisions of this act may be waived, and every instrument affecting the property or any apartment or condominium unit shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless duly recorded.

(b) In addition to records and indexes required to be maintained by the recording officer, the recording officer shall maintain an index or indexes whereby the record of each declaration contains a reference to the record of each conveyance of an apartment or condominium unit affected by such declaration, and the record of each conveyance of an apartment or condominium unit contains a reference to the declaration of the property of which it is a part.

(c) There shall be recorded simultaneously with the declaration one or more plats of survey showing the legal description, the location and dimensions of the submitted land, any convertible lands within the submitted land and any additional land if the condominium is an expandable condominium. The plat of survey shall further show the location and dimensions of all existing condominium units and common areas and facility improvements of the submitted land. When converting all or any portion of any convertible land or adding additional land to an expandable condominium, the declarant shall record amended plats of survey which shall show the location and dimensions of all existing condominium units and common area and facility improvements upon the convertible or additional land.

(d) The register of deeds shall not record any plat of survey pursuant to this act unless such plat of survey is accompanied by a receipt from the county treasurer for real estate taxes and assessments on the submitted land in accordance with K.S.A. 19-1207(b), and amendments thereto.

**58-3115a. Conversion of convertible lands**

The declarant may convert all or any portion of any convertible land into one or more condominium units and common areas and facilities subject to any restrictions and limitations which the declaration may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of an amendment to the declaration and the recording of floor plans and the plat of survey required by this act. All convertible lands shall be deemed a part of the common area and facilities until converted. Until the expiration of the period during which conversion may occur, or until actual conversion, whichever occurs first, the declarant alone shall be liable for real property taxes assessed against the convertible land and any improvements thereon and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium shall be subject to a claim for payment of such taxes or expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible land and any improvements thereon shall inure to the declarant. No such conversion shall occur after seven years from the recordation of the declaration or such shorter period of time as the declaration may specify.

**58-3115b. Expansion of condominiums**

The declarant may expand the condominium by adding land tracts in accordance with the provisions of the declaration and this act. Any such expansion shall be deemed to have occurred at the time of the

recordation of the plat of survey and floor plans required by this act, together with an amendment to the declaration duly executed by the declarant. Such amendment shall contain a legal description of the land added to the condominium and shall reallocate undivided interests in the common areas and facilities in accordance with this act.

**58-3115c. Certain sections supplemental to apartment ownership act; certain condominiums unaffected**

K.S.A. 58-3115a, 58-3115b and 58-3115c shall be a part of and supplemental to the apartment ownership act. No condominium created prior to the effective date of this act shall be affected by this act without the consent of all of the condominium owners expressed in an amended declaration duly recorded.

**58-3116. Removal from provisions of this act**

(a) All of the apartment owners may remove a property from the provisions of this act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided.

(b) Upon removal of the property from the provisions of this act, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

**58-3117. Removal no bar to subsequent resubmission**

The removal provided for in the preceding section shall in no way bar the subsequent resubmission of the property to the provisions of this act.

**58-3118. Bylaws**

The administration of every property shall be governed by bylaws, a true copy of which shall be annexed to the declaration and made a part thereof. No modification of or amendment to the bylaws shall be valid unless set forth in an amendment to the declaration and such amendment is duly recorded.

**58-3119. Same; contents**

The bylaws, subject to the provisions of K.S.A. 58-4601 through 58-4614 and 58-4616 through 58-4623, and amendments thereto, may provide for the following:

(a) The election of a board of directors, the number of persons constituting the same, and the terms of the directors; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent.

(b) Method of calling meetings of the apartment owners; what percentage shall constitute a quorum.

(c) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the association of apartment owners.

- (d) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.
- (e) Election of a treasurer who shall keep the financial records and books of account.
- (f) Maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.
- (g) Manner of collecting from the apartment owners their share of the common expenses.
- (h) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.
- (i) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.
- (j) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners.
- (k) The percentage of votes required to amend the bylaws.
- (l) Other provisions as may be deemed necessary for the administration of the property consistent with this act.

**58-3120. Books of receipts and expenditures; availability for examination**

The manager or board of directors, as the case may be, shall keep detailed, accurate records in chronological order, of receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the apartment owners at convenient hours of week days, pursuant to the rights and limitations of K.S.A. 58-4616, and amendments thereto.

**58-3121. Waiver of use of common areas and facilities; abandonment of apartment**

No apartment owner may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his or her apartment.

**58-3122. Separate taxation**

Each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.

**58-3123. Priority of liens**

- (a) All sums assessed by the association of apartment owners but unpaid for the share of the common

expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (i) tax liens on the apartment in favor of any assessing unit and special district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a first mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the first mortgage, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessment by the association of apartment owners chargeable to such apartment which become due prior to the acquisition of title to such apartment by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners including such acquirer, his or her successors and assigns.

**58-3124. Joint and several liability of grantor and grantee for unpaid common expenses**

In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

**58-3125. Insurance**

The manager of the board of directors, if required by the declaration, bylaws or by a majority of the apartment owners, or at the request of a mortgagee having a first mortgage of record covering an apartment, shall have the authority to, and shall, obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of such manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his or her own apartment for his or her benefit.

**58-3126. Disposition of property; destruction or damage**

If, within one hundred twenty (120) days of the date of the damage or destruction to all or part of the property, it is not determined by the association of apartment owners to repair, reconstruct or rebuild, then and in that event:

- (a) The property shall be deemed to be owned in common by the apartment owners;

(b) The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(c) Any liens affecting any of the apartments shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(d) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the apartment owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the apartment owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each apartment owner.

#### **58-3127. Actions**

Without limiting the rights of any apartment owner, actions may be brought by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities of more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities of more than one apartment may be made on the person designated in the declaration to receive service of process.

#### **58-3128. Personal application**

(a) All apartment owners, tenants of such owners, employees of owners and tenants, or any other persons that may in any manner use property or any part thereof submitted to the provision of this act shall be subject to this act and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this act.

(b) All agreements, decisions and determinations lawfully made by the association of apartment owners in accordance with the voting percentages established in the act, declaration or bylaws shall be deemed to be binding on all apartment owners.

#### **58-3129. Invalidity of part**

If any provision of this act or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the act and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

#### **West's Kansas Statutes Annotated**

#### **Chapter 58. Personal and Real Property**

#### **Article 37. Townhouse Ownership Act**

#### **58-3701. Name of act; citation**

This act shall be known and may be cited as the "townhouse ownership act."

## **58-3702. Definitions**

As used in this act, unless the context otherwise requires:

(a) "Townhouse unit" means one single-family townhouse residential unit which may be joined together with at least one additional single-family townhouse residence by a common wall or walls, and/or roof, and/or foundation: *Provided, however*, That in any event, the term "townhouse unit" shall not mean an apartment as defined in K.S.A. 58-3102, and any amendments thereto.

(b) "Townhouse owner" means the person or persons owning the real estate in fee simple on which a townhouse unit is located.

(c) "Association of townhouse owners" referred to hereinafter as the "association," shall mean and refer to a nonprofit corporation formed pursuant to article 60 of chapter 17 of the Kansas Statutes Annotated, which owns, in fee simple, the common areas and facilities for the common use and enjoyment of the townhouse owners, as set forth in the declaration and articles of incorporation. Every person or entity who is an owner of fee simple title to a townhouse unit in a townhouse project area subject to this act, shall be a member of the corporation, with voting rights as set forth in the declaration and articles of incorporation. The association shall exercise all of the powers and duties reasonably necessary to provide for the management, maintenance, preservation, architectural control and as insurance trustee for the benefit of each townhouse unit owner in accordance with the bylaws and articles of the association and the declaration.

(d) "Common areas and facilities" shall mean any portion of the real estate and all improvements located thereon submitted to the provisions of this act owned by the association for the common use and enjoyment of the townhouse unit owners. Unless otherwise provided in the declaration or lawful amendments thereto, common areas and facilities shall mean and include:

(1) All real estate owned in fee simple by the association;

(2) all community buildings, swimming pools, tennis courts, playground equipment, recreational facilities, structures, trees, landscaping or other improvements located upon real estate owned by the association;

(3) all paved private drives, streets and open parking areas located upon real estate owned by the association;

(4) all installation of central services for the benefit of more than one owner, such as television antennas, incinerators, trash receptacles, pipes, wires, conduits and other public utility lines and facilities situated thereon;

(5) all easements, rights and appurtenances thereto necessary to the existence, maintenance and safety of the townhouse units; and

(6) all personal property owned by the association intended for use in connection with the operation of swimming pools, tennis courts, recreational facilities, building, structures or other facilities of the association.

(e) "Common expenses" means:

(1) All sums lawfully assessed against the townhouse unit owners by the association pursuant to the declaration;

(2) expenses of administration, maintenance, repair or replacement of the common areas and facilities incurred by the association pursuant to the declaration;

(3) expenses agreed upon as common expenses by the association at special or regular meetings held pursuant to the declaration; and

(4) expenses declared common expenses by provisions of this act or by the declaration or the bylaws of the association.

(f) "Declaration" means covenants and restrictions which run with the land and create certain land use restrictions, maintenance assessments which become liens against the real estate and easements in favor of all townhouse unit owners and the association.

Said declaration shall be recorded in the office of the register of deeds in the county where the real estate is located and shall be the instrument by which real estate is submitted to the provisions of this act.

**58-3703. Scope of act**

This act shall be applicable only to real estate which is submitted to the provisions hereof by duly executing and recording a declaration as hereinafter provided.

**58-3704. Townhouse units**

Each townhouse unit, together with all rights appurtenant thereto, shall for all purposes constitute real property.

**58-3705. Covenants, conditions and restrictions**

Each townhouse unit owner shall comply with all the covenants, conditions and restrictions set forth or referred to in the declaration and all amendments thereto.

**58-3706. Declaration; contents**

The declaration shall contain the following particulars:

(a) Description of the real estate on which the townhouse units are or are to be located.

(b) Description of the townhouse units.

(c) Description of the common areas and facilities.

(d) All common expenses and the method by which such expenses may be incurred and charged to the townhouse unit owners.

(e) All lien rights of the association for non-paid common expenses.

(f) All easements created for the benefit of the association and all townhouse unit owners.

(g) All provisions relating to insurance required to be obtained and maintained by the association and/or by each townhouse unit owner, including the obligation of the insurance trustee to use proceeds received after loss for rebuilding.

(h) The method by which the declaration may be amended, consistent with the provisions of this act.

(i) Such other provisions not inconsistent with this act as the declarant may deem necessary.

**58-3707. Recordation of declaration and legal description; plat not recorded, when**

(a) There shall be recorded simultaneously with the declaration, at the office of the register of deeds, one or more plats of survey showing the legal description, the location and dimensions of the submitted land, the location and description of any land which may be added to the townhouse project if such right is set forth in the declaration, and the location and dimensions of each townhouse unit and all common area improvements.

(b) The register of deeds shall not record any plat of survey pursuant to this act unless such plat of survey is accompanied by a receipt from the county treasurer for real estate taxes and assessments on the submitted land in accordance with K.S.A. 19-1207(b), and amendments thereto.

**58-3708. Amendments to declaration**

The declaration, any amendment, or amendments thereof, any instrument by which the provisions of this act may be waived, and every instrument affecting the common area and facilities, or any townhouse unit, shall be entitled to be recorded. Neither the declaration nor any amendment thereof shall be valid unless duly recorded.

**58-3709. No exemption from liability**

No townhouse unit owner may exempt himself or herself from liability for his or her contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities, or by abandonment of his or her townhouse unit.

**58-3710. Common expenses; liens; foreclosure sale**

All sums assessed by the association, but unpaid, for the share of the common expenses chargeable to any townhouse unit shall constitute a lien on such townhouse unit prior to all other liens except (i) tax liens on the townhouse unit in favor of any assessing unit and special district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the association in like manner as a mortgage of real property, and in any such foreclosure, the townhouse unit owner shall be required to pay a reasonable rental for the townhouse unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The association shall have power, unless prohibited by the declaration, to bid on the townhouse unit at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. The suit to recover a money judgment for unpaid common expenses shall be maintainable by the association without foreclosing or waiving the liens securing the same. Where the mortgagee under a first mortgage of record or other purchaser of a townhouse unit obtains title to the townhouse unit as a result of foreclosure of the first mortgage, such acquirer of title, his or her successors and assigns shall not be liable for the share of the common expenses or assessment by the association chargeable to such townhouse unit which become due prior to the acquisition of title to such townhouse unit by such buyer. Such unpaid share of common expenses or assessments shall, however, be deemed to be common expenses collectible from all of the townhouse owners, including such acquirer, his or her successors and assigns.



**58-3711. Same; effect of conveyances**

In a voluntary conveyance, the grantee of a townhouse unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grantor conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the board of directors of the association setting forth the amount of the unpaid assessments against the grantor, and such grantee shall not be liable for nor shall the townhouse unit conveyed be subject to a lien for any unpaid assessments against the grantor in excess of the amount therein set forth.

**58-3712. Insurance coverage; proceeds; blanket coverage**

The declaration shall require each townhouse owner to maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the townhouse unit, excluding land, foundation and excavations. The declaration shall require that such insurance shall provide for payment for losses thereunder by the insurer to the association, or its nominee, as insurance trustee for the benefit of each owner, the holder of each first mortgage of record thereon, and the association as their interests appear and as set forth in the declaration. The declaration shall provide that the proceeds from insurance received by the insurance trustee shall be used to repair, reconstruct or rebuild the townhouse units damaged or destroyed by said fire or other casualty, unless all townhouse unit owners and their first mortgagees agree in writing to not repair, reconstruct or rebuild. The declaration may require the board of directors of the association to obtain and maintain such insurance under one blanket fire and extended coverage policy providing such insurance for all owners and first mortgagees of townhouse units, as their interests may appear pursuant to the declaration. In such event, the declaration may provide that the insurance premiums are common expenses to be paid as set forth in the declaration. In such event, each townhouse unit owner shall be furnished a memorandum of insurance coverage approved by the commissioner of insurance setting forth the essential coverages of the blanket policy. Provision for such blanket insurance shall be without prejudice to the right of each townhouse unit owner to insure his or her own townhouse unit under a separate policy if benefits thereunder are payable to the association or its nominee as insurance trustee for the benefit of the association and all owners and their first mortgagees, as their interests may appear.

**58-3713. Townhouse units unaffected, when**

No townhouse unit created prior to the effective date of this act shall be affected by this act without the consent of all townhouse owners and their first mortgagees expressed in an amended declaration duly recorded.

**West's Kansas Statutes Annotated**

**Chapter 58. Personal and Real Property**

**Article 46. Kansas Uniform Common Interest Owners Bill of Rights Act**

**58-4601. Kansas uniform common interest owners bill of rights act; findings; purpose**

(a) K.S.A. 58-4601 through 58-4614 and 58-4616 through 58-4623, and amendments thereto, shall be known as the Kansas uniform common interest owners bill of rights act.

(b) The legislature finds as a matter of public policy:

(1) That a significant and increasing number of Kansans live in common interest communities;

(2) that effective operation of these common interest communities is in the interest of their owners, residents, and the state; and

(3) that the adoption of uniform rules to govern the rights and duties of unit owners, associations, and developers will help to ensure that common interest communities operate effectively and fairly.

(c) The public purposes of this act 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.

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

**58-4602. Same; definitions**

As used in this act:

(a) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under K.S.A. 58-4620, and amendments thereto.

(b) "Association" means the unit owners association.

(c) "Board of directors" means the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association.

(d) "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any amendments to the instruments.

(e) "Common elements" means 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.

(f) "Common interest community" means 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. The term does not include an arrangement described in K.S.A. 58-4607, and amendments thereto. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest.

(g) "Declarant" means a person or group of persons acting in concert that:

(1) 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

(2) reserves or succeeds to any declarant right.

(h) "Declaration" means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument.

(i) "Limited common element" means a portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units.

(j) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. In the case of a land trust, the term means the settlor of the trust rather than the trust or the trustee.

(k) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Residential purposes" means use for dwelling or recreational purposes, or both.

(m) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

(n) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy.

(o) "Unit owner" means a person that owns a unit.

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

**58-4603. Same; provisions mandatory**

(a) Except as expressly provided in this act, the provisions of this act shall be mandatory and apply notwithstanding contrary provisions in the declaration or bylaws of a common interest community and shall not be varied or waived by agreement.

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

**58-4604. Same; duty of good faith**

(a) Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement.

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

**58-4605. Same; application of act**

(a) This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes and are created within this state after the effective date of this act.

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

**58-4606. Same; prospective application; supersedes existing provisions**

(a) This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes created in this state before the effective date of this act; but this act, and amendments thereto, do not apply with respect to actions or decisions of an association or its board of directors concerning events and circumstances occurring before the effective date of this act.

(b) This act, and amendments thereto, do not invalidate existing provisions of the declaration, bylaws, plats or plans of those common interest communities; provided, however, the provisions of the declaration or bylaws of a common interest community that are contrary to the mandatory provisions of this act, and amendments thereto, may not be enforced with respect to events and circumstances occurring after the effective date of the act.

(c) The declaration, bylaws, plats or plans of any common interest community created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before the effective date of this act.

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

**58-4607. Same; arrangements not considered common interest communities**

(a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this act.

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

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

**58-4608. Same; association duties; restrictions; board of directors discretion**

(a) The association shall:

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

(2) adopt and may amend budgets;

(3) have the power to 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 commencement of a judicial proceeding;

(4) 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 restrictions, or to recover unpaid assessments or other sums due the association;

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

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

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

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

(C) 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

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

(b) The board of directors may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The board of directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

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

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

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

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

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

(d) The provisions of subsection (a)(6)(B) shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.

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

**58-4609. Same; officers, board of directors duties; restrictions**

(a) In the performance of their duties, officers and members of the board of directors appointed by the declarant shall exercise the degree of care and loyalty to the association required of a trustee. Officers and members of the board of directors not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under existing law. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

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

(c) The board of directors may not:

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

(2) amend the bylaws;

(3) terminate the common interest community;

(4) 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 board of directors' members; or

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

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

**58-4610. Same; bylaws**

(a) The bylaws of the association must:

(1) Provide the number of members of the board of directors and the titles of the officers of the association;

(2) provide for 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;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies;

(4) specify the powers the board of directors or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for 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.

(b) Subject to the declaration and this act, the bylaws may provide for any other necessary or appropriate matters, including, but not limited to, an election oversight committee and other matters that could be adopted as rules.

(c) The requirements of this section shall not apply to an association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence.

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

**58-4611. Same; association meetings; notice**

(a) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

(b) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the board of directors or unit owners having at least 10%, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting.

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any method reasonably calculated to provide notice to the person. The notice for any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(1) A statement of the general nature of any proposed amendment to the declaration or bylaws;

(2) any budget proposals or changes; and

(3) any proposal to remove an officer or member of the board of directors.

(d) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(f) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with subsection (g) of K.S.A. 58-4612, and amendments thereto.

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

**58-4612. Same; open meetings; executive session restrictions; copies of materials to owners; declarant control, special procedures**

(a) 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. An executive session may be held only to:

(1) consult with the association's attorney concerning legal matters;

(2) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(3) discuss labor or personnel matters;

(4) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) prevent public knowledge of the matter to be discussed if the board of directors or committee determines that public knowledge would violate the privacy of any person.

(b) For purposes of this section, a gathering of board of directors at which the board members do not conduct association business is not a meeting of the board of directors. The board of directors and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(c) Except as provided in subsection (i), during the period of declarant control, the board of directors shall 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 shall 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.

(d) At each board of director's meeting, the board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association.

(e) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each board of directors meeting to each board member and to the unit owners. The notice must state the time, date, place, and agenda of the meeting and, except as provided in subsection (c) of K.S.A. 58-4611 and



58-4620, and amendments thereto, be given at least five days prior to the meeting date.

(f) If any materials are distributed to the board of directors before the meeting, the board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(g) Unless the declaration or bylaws otherwise provide, the board of directors may meet by telephonic, video, or other conferencing process if:

(1) The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(h) After termination of any period when the declarant controls the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(i) During the period of declarant control, instead of meeting, the board of directors may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent. After termination of the period of declarant control, the board of directors may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the board.

(j) Even if an action by the board of directors is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the board of directors for failure to comply with this section may not be brought more than 60 days after the minutes of the board of directors of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

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

**58-4613. Same; quorum requirements; rules of order**

(a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast 20% of the votes in the association:

(1) Are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with the association's procedures which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of paragraphs (1) and (2).

(b) Unless the bylaws specify a larger number, a quorum of the board of directors is present for purposes of determining the validity of any action taken at a meeting of the board of directors only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding

that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the board of directors unless a greater vote is required by the declaration or bylaws.

(c) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

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

**58-4614. Same; unit owner voting procedures**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by secret ballot, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

(b) Unless contrary provisions of the declaration or bylaws so provide, at a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this act or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A person, other than a member of the board of directors may not cast undirected proxies representing more than 15% of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. If a vote without a meeting is permitted and used, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) Indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units:

(1) This section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

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

**58-4616. Same; record keeping requirements; records open to unit owners; copy fees**

(a) The association, or its agents, must retain the following for five years unless otherwise provided:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and board of directors other than executive sessions, a record of all actions taken by the unit owners or 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;

(3) the names of unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than this act, bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current board of directors' members and officers;

(7) its most recent annual report, if any, delivered to the secretary of state;

(8) financial and other records sufficiently detailed to enable the association to comply with other requirements of law;

(9) copies of current contracts to which it is a party;

(10) records of board of directors or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) through (g), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) During reasonable business hours or at a mutually convenient time and location; and

(2) upon 10 days' written notice reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1) Personnel, salary, and medical records relating to specific individuals;

(2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(3) existing or potential litigation or mediation, arbitration, or administrative proceedings;

(4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

(5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;

(6) information the disclosure of which would violate law other than this act;

(7) records of an executive session of the board of directors; or

(8) individual unit files other than those of the requesting owner.

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner. Copied records may be used for any reasonable purposes other than for commercial purposes.

(f) An association is not obligated to compile or synthesize information.

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

**58-4617. Same; rules; adoption procedures; notice**

(a) Before adopting, amending, or repealing any rule, the board of directors shall give all unit owners notice of:

(1) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the board of directors will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions. The association may adopt rules governing the time, place, size, number, and manner of those displays that are not inconsistent with K.S.A. 58-3820, and amendments thereto.

(e) 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.

(f) Association rules that affect the use of or behavior in units that may be used for residential purposes, shall be adopted only to:

(1) Implement a provision of the declaration; or

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

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

**58-4618. Same; delivery of notice**

(a) Except as provided in subsection (b), an association shall deliver any notice required to be given by the association under this act to any mailing or electronic mail address a unit owner designates.

Otherwise, the association may deliver notices by:

(1) Hand delivery to each unit owner;

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

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

(4) any other method reasonably calculated to provide notice to the unit owner.

(b)(1) An association for a common interest community for a recreational lake development which contains more than 500 units where less than 50% of such units contain a residence shall comply with subsection (a) when providing notice for an annual meeting.

(2) For all other meetings such association shall:

(A) Post a notice on the association's website;

(B) send a notice by electronic mail to all unit owners who request such notice; and

(C) post a sign containing the meeting notice at the main entrance of the common interest community.

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

**58-4619. Same; board of directors; removal**

(a) 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 remove any member of the board of directors and any officer elected by the unit 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, but:

(1) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) if a member may be elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the person that elected or appointed that member; and

(3) the unit owners may not consider whether to remove a member of the board of directors or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the board of directors or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

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

**58-4620. Same; adoption of budget; special assessments**

(a) The board of directors shall propose and adopt a budget for the common interest community at least annually. Notice of any meeting at which a budget will be considered must be given to unit owners at least 10 days prior to the meeting date and, in accordance with subsection (g) of K.S.A. 58-4612, and amendments thereto, a copy of the proposal must be made available to any unit owner who requests it. At any meeting at which a budget or budget amendment is considered, in accordance with subsection (d) of K.S.A. 58-4612, and amendments thereto, unit owners must be given a reasonable opportunity to comment on the proposal prior to the board taking action.

(b) The board of directors, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), notice and consideration of any proposed special assessment shall follow the procedures set out in subsection (a).

(c) If the board of directors determines by a 2/3 vote of the membership of the board that a special assessment is necessary to respond to an emergency:

(1) The special assessment shall become effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the board of directors may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

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

**58-4621. Same; enforcement of rights**

(a) A declarant, association, unit owner, or any other person subject to this act may bring an action to enforce a right granted or obligation imposed by this act, the declaration, or the bylaws. The court may award reasonable attorney's fees and costs.

(b) Parties to a dispute arising under this act, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) A declarant may agree with the association to do so only after the period of declarant control has expired; and

(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.

(c) The remedies provided by this act shall 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.

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

**58-4622. Same; application of law**

(a) The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this act except to the extent inconsistent with this act. If there is a conflict between this act and other law of this state, this act prevails.

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

**58-4623. Same; act supersedes certain laws**

(a) This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

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