

## HOUSE BILL No. 2330

By Committee on Federal and State Affairs

2-12

---

1 AN ACT concerning consumer protection and common interest  
2 communities; amending K.S.A. 2014 Supp. 58-4609 and repealing the  
3 existing section.  
4

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

6 New Section 1. (a) As used in this section:

7 (1) "Consumer" means:

8 (A) An actual or prospective purchaser, lessee, assignee or recipient  
9 of a unit in a common interest community as defined in K.S.A. 2014 Supp.  
10 58-4602(n), and amendments thereto; and

11 (B) a co-obligor or surety for a unit owner.

12 (2) "Division" means the division of consumer protection of the  
13 Kansas attorney general's office.

14 (b) Any consumer who believes that the board of directors or the  
15 property manager of a common interest community has violated the rights  
16 of the consumer as established by the Kansas uniform common interest  
17 owners bill of rights act, K.S.A. 2014 Supp. 58-4601 et seq., and  
18 amendments thereto, may file a complaint with the division.

19 The division shall investigate each complaint. If the division  
20 determines the complaint is valid it may utilize any remedy available  
21 under the Kansas consumer protection act, K.S.A. 50-623 et seq., and  
22 amendments thereto.

23 (c) This section shall be a part of and supplement to the Kansas  
24 consumer protection act.

25 Sec. 2. K.S.A. 2014 Supp. 58-4609 is hereby amended to read as  
26 follows: 58-4609. (a) In the performance of their duties, officers and  
27 members of the board of directors appointed by the declarant shall exercise  
28 the degree of care and loyalty to the association required of a trustee.  
29 Officers and members of the board of directors not appointed by the  
30 declarant *and the property manager appointed by the board* shall exercise  
31 the degree of care and loyalty to the association required of an officer or  
32 director of a corporation organized, and are subject to the conflict of  
33 interest rules governing directors and officers, under existing law. The  
34 standards of care and loyalty described in this section apply regardless of  
35 the form in which the association is organized.

36 (b) An association shall have a board of directors created in

1 accordance with its declaration or bylaws. Except as otherwise provided in  
2 the declaration, the bylaws, subsection (c), or other provisions of this act,  
3 the board of directors acts on behalf of the association.

4 (c) The board of directors may not:

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

7 (2) amend the bylaws;

8 (3) terminate the common interest community;

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

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

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

15 *Members of the board of directors or the property manager may not:*

16 (1) *Be paid a fee for arranging a loan from any person or financial*  
17 *institution;*

18 (2) *arrange a loan unless  $\frac{2}{3}$  of the unit owners agree in writing;*

19 (3) *bring legal action against a unit owner without first submitting*  
20 *the dispute to mediation;*

21 (4) *foreclose on a unit owner's property; or*

22 (5) *restrict the number of rental properties in a common interest*  
23 *community.*

24 (e) *Unit owners may:*

25 (1) *Remove a property manager or nonrenew the contract of such*  
26 *property manager hired by the board of directors by a  $\frac{2}{3}$  vote of all unit*  
27 *owner's; and*

28 (2) *dissolve the common interest community by a  $\frac{2}{3}$  vote of all unit*  
29 *owners.*

30 Sec. 3. K.S.A. 2014 Supp. 58-4609 is hereby repealed.

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