

**As Amended by House Committee**

*Session of 2009*

**HOUSE BILL No. 2253**

By Committee on Local Government

2-4

10 AN ACT concerning homeowners' associations and associations of apart-  
11 ment owners; relating to certain duties, required procedures, attorney  
12 fees, dispute resolution and duties of the attorney general.  
13

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

15 Section 1. (a) For the purposes of this act:

16 (1) "Act" means the homeowners' association act.

17 (2) "Dispute" means a disagreement regarding the rights or obliga-  
18 tions of the homeowners' association or the home owners, apartment  
19 owners or residents.

20 (3) "Homeowners' association" means a for-profit homeowners' as-  
21 sociation, a non-profit homeowners' association as defined in K.S.A. 60-  
22 3611, and amendments thereto, and an association of apartment owners  
23 as defined in K.S.A. 58-3102, and amendments thereto.

24 (4) "Mediation" shall have the meaning ascribed to it in K.S.A. 5-  
25 502(f), and amendments thereto.

26 (5) "Resident" means a real property owner or lessee whose property  
27 is subject to the jurisdiction of a non-profit homeowners' association as  
28 defined in K.S.A. 60-3611, and amendments thereto. The term shall not  
29 include persons renting or leasing a home, apartment or condominium  
30 unit subject to the authority of a for-profit homeowners' association or an  
31 association of apartment owners.

32 (b) Sections 1 through 6, and amendments thereto, shall be known  
33 and may be cited as the homeowners' association act.

34 Sec. 2. The governing board of a homeowners' association, herein-  
35 after referred to as the board of directors, is subject to the following:

36 (a) The board of directors may amend the by-laws of the association  
37 only upon approval of a majority of homeowners, apartment owners or  
38 residents voting in person, by proxy or by absentee ballot at a duly-noticed  
39 and duly-constituted homeowners, apartment owners or residents  
40 meeting.

41 (b) All elections for the membership on the board of directors shall  
42 be by secret ballot and conducted in a manner to assure the integrity of  
43 the election process.

1 (c) All meetings of the board of directors shall be open to all hom-  
2 eowners, apartment owners or residents of a homeowners' association.  
3 The board of directors shall not meet in closed executive session unless  
4 it is in consultation with its attorneys about matters properly a part of the  
5 attorney-client relationship or if it involves personnel matters or personal  
6 matters between the board of directors and the homeowner, apartment  
7 owner or resident of a confidential nature.

8 (d) The board of directors, at least 30 days before adopting any pro-  
9 posed assessments, special charges or fees of general application, shall  
10 give in writing to the homeowners, apartment owners or residents, full  
11 disclosure concerning any proposed assessments, special charges or fees  
12 of general application. All homeowners, apartment owners or residents  
13 shall be given the opportunity to comment on such proposals. Assess-  
14 ments, charges and fees shall be equitable and proportionate to the re-  
15 spective interests of the homeowners, apartment owners or residents.

16 (e) The board of directors, during reasonable business hours, shall  
17 provide a homeowner, apartment owner or resident access, at no cost, to  
18 the homeowner's association records, including, but not limited to,  
19 minutes of meetings, budget and financial records, all bills from utility  
20 companies, suppliers, contractors, bill payments, tax filings, audits, re-  
21 imbursements to board members and homeowners, apartment owners or  
22 residents, attorney bills and any other statements where checks are being  
23 disbursed for payment.

24 (f) The board of directors shall provide a homeowner, apartment  
25 owner or resident with copies of association records, including minutes  
26 of meetings, budget and financial records no later than 10 business days  
27 following the receipt of a written request by a homeowner, apartment  
28 owner or resident of the homeowner's association. The cost to the hom-  
29 eowner, apartment owner or resident requesting such copies should not  
30 exceed the reasonable and prevailing commercial duplication costs for  
31 copying.

32 (g) ~~The~~ **Upon written request, the** board of directors shall provide  
33 a prospective homeowner, apartment owner or resident, at no cost, a copy  
34 of the homeowners' association by-laws.

35 **(h) The board of directors shall cause an annual audit of the**  
36 **homeowners' association's receipts and expenditures to be made**  
37 **by a certified public accountant. Such audit shall be based upon**  
38 **the expenditures and receipts occurring during a calendar year or**  
39 **the homeowners' association tax year if different from a calendar**  
40 **year and shall be made at the expense of the homeowners' asso-**  
41 **ciation. A copy of such audit shall be made available to any member**  
42 **of the homeowners' association upon receipt of a written request**  
43 **from such member. The homeowners' association shall also file a**

1 **copy of such audit with the attorney general within 30 days after**  
2 **receipt thereof.**

3 Sec. 3. Within 60 days of the effective date of this act, a homeowners'  
4 association shall adopt procedures to implement the following:

5 (a) The selection of one board member and two nonboard members  
6 who are homeowners, apartment owners or residents of the homeowners'  
7 association to receive and tally the ballots cast for the election of members  
8 of the board of directors, to verify the number of votes received against  
9 the number of persons voting and proxies voted and to report the results  
10 to the board of directors and for publication of the results to the hom-  
11 eowners, apartment owners or residents of such homeowners' association;

12 (b) provide homeowners, apartment owners or residents information  
13 concerning their rights under this act; and

14 (c) provide a homeowner, apartment owner or resident with a list of  
15 all the homeowners, apartment owners or residents in the association  
16 along with their current mailing addresses, no later than 10 business days  
17 following the receipt of a written request by a homeowner, apartment  
18 owner or resident.

19 **Sec. 4. Each resident shall have the right to attend any regular**  
20 **or special meeting of the board of directors of the homeowners'**  
21 **association or any regular or special meeting of the homeowners'**  
22 **association. At any such meeting, the resident shall be entitled to**  
23 **speak on any issue discussed at such meeting regardless of whether**  
24 **or not such resident's dues or assessments are delinquent at the**  
25 **time of such meeting.**

26 Sec. ~~4~~ 5. In a civil action by a homeowner, apartment owner or  
27 resident against a homeowners' association, should the plaintiff hom-  
28 eowner, apartment owner or resident substantially prevail or the hom-  
29 eowners' association be found to be substantially unjust in its actions, the  
30 court ~~shall~~ **may** award such homeowner, apartment owner or resident  
31 actual costs and expenses, including reasonable attorney fees.

32 Sec. ~~5~~ 6. (a) Upon the written request of any homeowner, apart-  
33 ment owner or resident, a homeowners' association shall participate in  
34 mediation of a dispute. A homeowners' association shall make a written  
35 request for mediation with a homeowner, apartment owner or resident  
36 when a dispute arises. The homeowner's, apartment owner's or resident's  
37 participation in mediation shall be optional.

38 (b) If the parties agree to mediation, a mediator shall be appointed  
39 by mutual agreement of the homeowners' association and the hom-  
40 eowner, apartment owner or resident within 60 days of the written  
41 request.

42 (c) Prospective mediators shall be required to disclose to the parties  
43 the mediator's education, training, relevant experience and professional

- 1 and community affiliations, the names of any participants in mediation  
2 conducted by the mediator who are willing to act as references and any  
3 possible conflicts of interest.
- 4 (d) If the parties cannot agree upon the selection of a mediator, a  
5 mediator shall be designated by the attorney general.
- 6 (e) Mediation shall not exceed two hours in duration unless the par-  
7 ties agree to a longer period. Costs of the mediation shall be paid  $\frac{2}{3}$  by  
8 the homeowners' association and  $\frac{1}{3}$  by the homeowner, apartment owner  
9 or resident.
- 10 (f) Parties at their own expense may be assisted by legal counsel at  
11 the mediation.
- 12 (g) The terms of any settlement agreement shall be open to disclosure  
13 to any homeowner, apartment owner or resident.
- 14 (h) The attorney general shall maintain a list of qualified mediators  
15 for purposes of this act.
- 16 (i) The provisions of this section shall not apply to any homeowners'  
17 association with an annual budget less than \$100,000 unless the hom-  
18 eowners' association opts in to the provisions of this section.
- 19 ~~Sec. 6.~~ **7.** (a) The attorney general shall develop written educational  
20 materials and a website with an interactive question-and-answer feature  
21 for the purpose of providing guidance to homeowners' associations and  
22 their homeowners, apartment owners or residents regarding best prac-  
23 tices of corporate governance including the following:
- 24 (1) Election procedures including secret ballots, absentee ballots,  
25 proxies and election monitoring procedures;
- 26 (2) appropriateness of executive sessions during board meetings;
- 27 (3) necessity for providing advance notice to homeowners, apartment  
28 owners or residents prior to board consideration of certain matters;
- 29 (4) prompt disclosure of board minutes to homeowners, apartment  
30 owners or residents;
- 31 (5) necessity for providing access to homeowners, apartment owners  
32 or residents to association records and appropriate copying costs;
- 33 (6) appropriate procedures for the approval of amendments to by-  
34 laws;
- 35 (7) conflict of interest rules covering directors, officers, employees  
36 and committee members in connection with homeowners' association  
37 business and homeowner's, apartment owner's or resident's concerns;
- 38 (8) appropriate rules regarding the possible shifting of legal costs to  
39 and among homeowners, apartment owners or residents, directors per-  
40 sonally and homeowners' associations;
- 41 (9) appropriate utilization of mediation procedures; and
- 42 (10) other matters deemed to be important in the overall governance  
43 and operation of a homeowners' association.

1 (b) Homeowners' associations shall notify their homeowners, apart-  
2 ment owners or residents of the availability of this information and the  
3 website no later than the next annual meeting following the effective date  
4 of this act.

5 Sec. ~~7~~ **8**. This act shall take effect and be in force from and after its  
6 publication in the Kansas register.