HOUSE BILL No. 2253

By Committee on Local Government

AN ACT concerning homeowners' associations and associations of apartment owners; relating to certain duties, required procedures, attorney fees, dispute resolution and duties of the attorney general.

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15 Be it enacted by the Legislature of the State of Kansas:
16 Section 1. (a) For the purposes of this act:
17 (1) “Act” means the homeowners’ association act.
18 (2) “Dispute” means a disagreement regarding the rights or obligations of the homeowners’ association or the home owners, apartment owners or residents.
19 (3) “Homeowners’ association” means a for-profit homeowners’ association, a non-profit homeowners’ association as defined in K.S.A. 60-3611, and amendments thereto, and an association of apartment owners as defined in K.S.A. 58-3102, and amendments thereto.
20 (4) “Mediation” shall have the meaning ascribed to it in K.S.A. 5-502(f), and amendments thereto.
21 (5) “Resident” means a real property owner or lessee whose property is subject to the jurisdiction of a non-profit homeowners’ association as defined in K.S.A. 60-3611, and amendments thereto. The term shall not include persons renting or leasing a home, apartment or condominium unit subject to the authority of a for-profit homeowners’ association or an association of apartment owners.
22 (b) Sections 1 through 6, and amendments thereto, shall be known and may be cited as the homeowners’ association act.
23 Sec. 2. The governing board of a homeowners’ association, hereinafter referred to as the board of directors, is subject to the following:
24 (a) The board of directors may amend the by-laws of the association only upon approval of a majority of homeowners, apartment owners or residents voting in person, by proxy or by absentee ballot at a duly-noticed and duly-constituted homeowners, apartment owners or residents meeting.
25 (b) All elections for the membership on the board of directors shall be by secret ballot and conducted in a manner to assure the integrity of the election process.
(c) All meetings of the board of directors shall be open to all homeowners, apartment owners or residents of a homeowners’ association. The board of directors shall not meet in closed executive session unless it is in consultation with its attorneys about matters properly a part of the attorney-client relationship or if it involves personnel matters or personal matters between the board of directors and the homeowner, apartment owner or resident of a confidential nature.

(d) The board of directors, at least 30 days before adopting any proposed assessments, special charges or fees of general application, shall give in writing to the homeowners, apartment owners or residents, full disclosure concerning any proposed assessments, special charges or fees of general application. All homeowners, apartment owners or residents shall be given the opportunity to comment on such proposals. Assessments, charges and fees shall be equitable and proportionate to the respective interests of the homeowners, apartment owners or residents.

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

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

(g) Upon written request, the board of directors shall provide a prospective homeowner, apartment owner or resident, at no cost, a copy of the homeowners’ association by-laws.

(h) The board of directors shall cause an annual audit of the homeowners’ association’s receipts and expenditures to be made by a certified public accountant. Such audit shall be based upon the expenditures and receipts occurring during a calendar year or the homeowners’ association tax year if different from a calendar year and shall be made at the expense of the homeowners’ association. A copy of such audit shall be made available to any member of the homeowners’ association upon receipt of a written request from such member. The homeowners’ association shall also file a
copy of such audit with the attorney general within 30 days after
receipt thereof.

Sec. 3. Within 60 days of the effective date of this act, a homeowners’
association shall adopt procedures to implement the following:
(a) The selection of one board member and two nonboard members
who are homeowners, apartment owners or residents of the homeowners’
association to receive and tally the ballots cast for the election of members
of the board of directors, to verify the number of votes received against
the number of persons voting and proxies voted and to report the results
to the board of directors and for publication of the results to the home-
eowners, apartment owners or residents of such homeowners’ association;
(b) provide homeowners, apartment owners or residents information
concerning their rights under this act; and
(c) provide a homeowner, apartment owner or resident with a list of
all the homeowners, apartment owners or residents in the association
along with their current mailing addresses, no later than 10 business days
following the receipt of a written request by a homeowner, apartment
owner or resident.

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

Sec. 5. In a civil action by a homeowner, apartment owner or
resident against a homeowners’ association, should the plaintiff home-
eowner, apartment owner or resident substantially prevail or the home-
eowners’ association be found to be substantially unjust in its actions, the
court shall may award such homeowner, apartment owner or resident
actual costs and expenses, including reasonable attorney fees.

Sec. 6. (a) Upon the written request of any homeowner, apart-
ment owner or resident, a homeowners’ association shall participate in
mediation of a dispute. A homeowners’ association shall make a written
request for mediation with a homeowner, apartment owner or resident
when a dispute arises. The homeowner’s, apartment owner’s or resident’s
participation in mediation shall be optional.

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

(c) Prospective mediators shall be required to disclose to the parties
the mediator’s education, training, relevant experience and professional
and community affiliations, the names of any participants in mediation
conducted by the mediator who are willing to act as references and any
possible conflicts of interest.

(d) If the parties cannot agree upon the selection of a mediator, a
mediator shall be designated by the attorney general.

(e) Mediation shall not exceed two hours in duration unless the par-
ties agree to a longer period. Costs of the mediation shall be paid \( \frac{2}{3} \) by
the homeowners’ association and \( \frac{1}{3} \) by the homeowner, apartment owner
or resident.

(f) Parties at their own expense may be assisted by legal counsel at
the mediation.

(g) The terms of any settlement agreement shall be open to disclosure
to any homeowner, apartment owner or resident.

(h) The attorney general shall maintain a list of qualified mediators
for purposes of this act.

(i) The provisions of this section shall not apply to any homeowners’
association with an annual budget less than $100,000 unless the hom-
eowners’ association opts in to the provisions of this section.

Sec. 6. 7.  (a) The attorney general shall develop written educational
materials and a website with an interactive question-and-answer feature
for the purpose of providing guidance to homeowners’ associations and
their homeowners, apartment owners or residents regarding best prac-
tices of corporate governance including the following:

1. Election procedures including secret ballots, absentee ballots,
proxies and election monitoring procedures;

2. Appropriateness of executive sessions during board meetings;

3. Necessity for providing advance notice to homeowners, apartment
owners or residents prior to board consideration of certain matters;

4. Prompt disclosure of board minutes to homeowners, apartment
owners or residents;

5. Necessity for providing access to homeowners, apartment owners
or residents to association records and appropriate copying costs;

6. Appropriate procedures for the approval of amendments to by-
laws;

7. Conflict of interest rules covering directors, officers, employees
and committee members in connection with homeowners’ association
business and homeowner’s, apartment owner’s or resident’s concerns;

8. Appropriate rules regarding the possible shifting of legal costs to
and among homeowners, apartment owners or residents, directors per-
sonally and homeowners’ associations;

9. Appropriate utilization of mediation procedures; and

10. Other matters deemed to be important in the overall governance
and operation of a homeowners’ association.
(b) Homeowners’ associations shall notify their homeowners, apartment owners or residents of the availability of this information and the website no later than the next annual meeting following the effective date of this act.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.