

APPLYING THE KANSAS UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT

INTRODUCTION

The Act becomes effective January 1, 2011.

The Act contains three (3) kinds of governing provisions. Some are mandatory, some are enabling and some take effect by default.

For example, the Act **enables**, but does not mandate the amendment of the controlling documents to take advantage of the enabling provisions. The Act does, provide, however, that any existing provisions of the controlling documents that are contrary to the mandatory provisions of the Act cannot be enforced after January 1, 2011.

INFORMATON FOR OWNERS, BOARD MEMBERS, AND MANAGERS

A. Powers of the common interest community (hereinafter "CIO" or "Association").

The CIO **must**:

1. Adopt bylaws and an annual budget.
2. Have the power to require that disputes between the CIO and it unit owners, or between owners, be submitted to non-binding alternative dispute resolution as a pre-requisite to filing a lawsuit.
3. Promptly provide notice to owners of any judicial proceedings concerning the CIO unrelated to enforcement against an individual owner.
4. Establish a reasonable method of communication between itself and the owners and between owners.
5. Have the power to suspend any right or privilege of an owner for failure to pay dues or assessments **except** the CIO may not:
 - a. deny the owner access to his or her unit;
 - b. suspend his or her right to vote except on financial issues; or
 - c. withhold services that would endanger health or safety.

The CIO **may**:

1. Amend bylaws and budgets.
2. Exercise broad discretion in deciding when, and under what circumstances, it is willing to bring enforcement actions against owners or other without jeopardizing its authority to file an enforcement action under different circumstances.

B. Powers of the Board of Directors ("Board") and its limitations

1. There **must** be a Board created in accordance with its controlling documents that generally acts on behalf of the CIO.

2. The Board **may not**:

- a. amend the declaration except as provided by law;
- b. amend the bylaws;
- c. terminate the CIO;
- d. elect directors except to fill vacancies until the next election; or
- e. determine their own qualifications, powers, duties, or term of office.

C. Bylaws

1. The bylaws of the CIO **must**:

- a. provide for the number of directors, the number and titles of officers, and the qualifications, powers, duties, terms of office, and the election processes for choosing and removing each;
- b. create a method for the owners to amend the bylaws;
- c. specify what powers of the CIO that the Board or officer may delegate to others;
- d. specify the officers who can amend the declaration on behalf of the CIO; and
- e. provide for meetings, voting and quorums and other activities.

2. The bylaws may, subject to the declaration, provide for other matters, including an election oversight committee.

D. Owners Meetings

1. The owners **must** meet annually at a time, date and place in accordance with the bylaws.

2. Owners **must** meet to address any matter affecting the CIO if the president, a majority of the Board, or at least 10% (or less is provided by the bylaws) of the owners call a meeting. If the special meeting is not set with 30 days, the requesting owners may directly notify all the owners of the meeting.

3. Notice of meetings **must** be at least 10 and no more than 60 days before the meeting and shall include:

- a. statement of the general nature of any proposed revisions to the declaration or bylaws;
- b. any budget proposals or changes; and
- c. any proposal to remove an officer or director.

4. Owners **must** be given a reasonable opportunity to comment during meetings.

5. Minimum notice time may be reduced for emergency meetings.

6. Meetings may be held telephonically, by video or other conferencing process, if permitted by the bylaws.

E. Board and committee meetings

1. Meeting of the Board and its committees **must** be open the all owners except for executive sessions, which are limited to discussions involving:

- a. consultation with the CIO's attorney;
- b. litigation or related alternative proceedings;
- c. labor or personnel matters;
- d. leases, commercial transactions or purchases if information released would compromise the CIO's position; and
3. matters that would violate the privacy of any person.

2. Board members cannot use social or other casual meetings to evade the open meetings requirements.

3. The Board **must** meet twice a year during the period of declarant control, one of which meetings must be at a place convenient to the owners. After termination of declarant control, the Board **must** meet at least annually, always at a convenient location for owner participation.

4. Unless the meeting is either an emergency or in a schedule previously given to owners, the Board **must** notify the owners of a Board meeting at least 5 days in advance. The notice **must** include the time, place and agenda. Copies of materials distributed to the Board except for unapproved minutes or materials for executive sessions **must** be reasonable available to owners.

5. Meetings may be held by telephone, video, or other conferencing methods unless prohibited by the declaration or bylaws, but the notice for such a meeting **must** state how it will be conducted and how owners may participate.

6. Anytime after declarant control the owners may amend the bylaws to vary to procedures regarding telephonic, video or other conferencing meetings.

F. Quorums

1. Unless the bylaws provide otherwise, a quorum at an owners' meeting is 20% of eligible votes, including those present, absentee votes (if allowed), or a combination of both.

2. Unless the bylaws provide otherwise, a quorum for a Board meeting is the number needed to cast a majority of votes.

3. Unless the bylaws provide otherwise, meetings must be conducted in accordance with the latest edition of *Robert's Rules of Order*.

G. Voting.

While the voting section is the largest in the Act, all of its provisions are default, that is, they only apply if there are no provisions covering the matter in the declaration or bylaws. The default provisions are:

1. Owners may vote in person, by secret ballot, by proxy or electronic means.

2. In person voting may be by voice, show of hands, standing or any other method.

3. A majority of the votes cast determines the outcome.

4. If absentee voting is allowed, the CIO must deliver a ballot at least 3 days in advance. The CIO must be able to verify the returned ballot.

5. If proxies are permitted, they can be either directed or undirected; are valid only for the meeting at which cast; must be dated and not revocable; and a person other than a member of the Board of Directors, may not cast undirected proxies representing more than 15% of the total number of votes available in the association.

6. If votes without meetings are allowed, owners must be notified; the CIO must deliver all ballots; the ballot must explain the issue and allow yes or no voting; and the ballot must explain the deadline for returning the ballot, as well as what percentage of approvals are needed to pass each issue.

H. Records

1. The first section of the records provision contains a laundry list of records that must be retained for 5 years, including copies of:

- a. all receipts and expenditures;
- b. Minutes of all meetings except executive sessions;
- c. names of all owners, in alphabetical order, with addresses;
- d. the declaration and bylaws;
- e. financial statements and tax returns, (only three years)
- f. names and addresses of current Board members;
- g. CIO's most annual reports, if any;
- h. copies of contracts to which the CIO is a party;
- i. records of architectural approvals; and
- j. ballots, proxies and other records relating to voting by owners for one year after the election, action or vote to which they pertain.

2. All records except those that may be withheld under subsection 3 below **must** be available for inspection and copying by owners or their agents upon 10 days written notice reasonably identifying the records requested. The CIO is not required to synthesize information and by charge a reasonable fee for copying.

3. Records that need not be shown or copied include:

- a. personnel, salary and medical records;
- b. commercial contracts being negotiated;
- c. documents relating to existing or potential legal proceedings;
- d. documents relating to existing or potential governmental actions;
- e. communication with legal counsel;
- f. individual owners' files;

- g. executive session records of the Board; and
- h. any document the disclosure of which would violate some other law.

I. Rules

While the Act does not specifically grant the Board the power to adopt rules for CIO owners, it does so inherently by limiting both the process and substance of any rulemaking as follows:

1. Before adopting, amending or repealing any rules, the Board **must** notify the owners of its intent and provide the text of the rule and the date on which the proposed action will be considered.
2. After adopting, amending or repealing any rule the Board **must** provide owners with a copy of the text of the change.
3. The Board may adopt rules regarding construction, design and aesthetic standards.
4. The Board may adopt behavioral rules for residential units, but only to:
 - a. implement a provision of the declaration; or
 - b. regulate behavior that adversely affects the use and enjoyment of other unit and common areas.
5. The Board may adopt rules governing the time, place and manner of owners' assemblies on common areas.
6. All rules must be reasonable.

J. Notices

1. The CIO **must** give owners notices at the mailing or electronic mail address each owner designates. In the absence of a designation, notice may be given by hand delivery, U.S. mail or commercial delivery service, electronically, or any other method reasonably calculated to provide notice.
2. An ineffective notice after a good faith effort to deliver does not nullify a subsequent action by the CIO.

K. Removal of Board members or officers.

Owners may remove any Board member or officer who was elected by the owners, with 2 limitations;

1. The attempt to remove **must** have been listed as an item in the notice of the meeting.

2. At the meeting, the member or officer being considered for removal **must** have a reasonable opportunity to speak before the vote.

L. Budgets and assessments.

1. The Board **must** propose and adopt a budget for the CIO at least annually. Prior to adoption:

- a. all owners **must** receive notice at least 10 days in advance;
- b. a copy of the proposal **must** be available to any owner who requests it; and
- c. owners **must** be given a reasonable opportunity to comment on the proposal before the Board takes action.

2. The Board may propose a special assessment at any time, but must follow the same procedures as with a budget, (subsection 1 above).

3. By a 2/3rds vote the Board may pass an emergency assessment without following the budget procedures provided that:

- a. notice is promptly provided to the owners; and
- b. the emergency funds are spent only on the purpose described in the vote.