

CHECKLIST FOR APPLYING UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT TO KANSAS COMMON INTEREST COMMUNITIES

The Judicial Council Homeowners' Association Advisory Committee has prepared the following checklist which is intended to assist common interest communities in reviewing their existing declaration, bylaws and rules to determine if any changes are necessary or desirable as a result of the passage of [2010 HB 2472](#), which is a modified version of the Uniform Common Interest Owners Bill of Rights Act.

I. Introduction and definition of “common interest community”

The 2010 Kansas legislature adopted a modified version of the Uniform Common Interest Owners Bill of Rights Act (“UCIOBORA” or “the Act”). The Act becomes effective January 1, 2011, and is the first comprehensive Kansas law governing basic relationships between unit owners in Kansas common interest communities (“CICs”) and their governing boards and managers.

A CIC is any residential group in which ownership of a unit obligates the owner 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” Basically, this definition covers any single-family, duplex or condominium development tied together by covenants, conditions or restrictions that requires its unit owners to pay dues to support common areas or other common costs related to the development. Most Kansas CICs will be either single family developments or condominiums. Any development with fewer than 12 units is explicitly excluded from the Act.

II. How the Act governs communities covered by its provisions

UCIOBORA has three kinds of governing provisions. Some of its provisions are **mandatory**, meaning that they apply to all common interest communities without regard to their existing declarations, bylaws or rules. Other provisions are **enabling**, meaning that they permit, but do not require, CICs to engage in the covered conduct so long as they follow the statutory scheme. And finally, some provisions are **default**, meaning that they apply if the CIC has no declaration, bylaw or rule applying to the covered conduct. Differentiating among these three kinds of provisions is fundamental to understanding what the Act requires, and will be a foundation of the checklist below.

The Act enables, but does not require, the CIC to amend its documents to comply with mandatory provisions or take advantage of enabling provisions. It does state, however, that any existing provisions that are contrary to mandatory requirements of the Act cannot be enforced after 1/1/11. And, obviously, the mandatory provisions apply whether they have been incorporated into the documents or not. If the CIC elects to amend its documents, any changes made under the Act must comply with the amendment provisions of its declaration and bylaws.

III. Checklist for Kansas CIC owners, Board members and managers

The checklist attempts to reduce an already-accessible Act to a level where all concerned with Kansas CICs can easily determine what, if anything, needs to be done to bring their governing documents or conduct into compliance. The checklist is broken down into the various aspects of CIC governance covered by the Act, and attempts to make clear which provisions are

mandatory (**must**), which are enabling (**may**) and which are default (**unless provided otherwise...**).

A. Powers of the CIC

The CIC **must**:

1. Adopt bylaws and an annual budget.
2. Have the power to require that disputes between the CIC and its unit owners, or between owners, be submitted to non-binding arbitration as a pre-requisite to filing a lawsuit.
3. Promptly provide notice to owners of any judicial proceedings concerning the CIC unrelated to enforcement against an individual owner.
4. Establish a reasonable method of communication between itself and the owners and between the owners themselves.
5. Have the power to suspend any right or privilege of an owner for failure to pay dues or assessments except that the CIC 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 CIC **may**:

1. Amend bylaws and budgets.
2. Exercise broad discretion in deciding when, and under what circumstances, it will bring enforcement actions against owners or others without jeopardizing its authority to file a subsequent 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 declaration or bylaws that generally acts on behalf of the CIC.
2. The Board **may not**:
 - a. amend the declaration, except as provided by law;
 - b. amend the bylaws;
 - c. terminate the CIC;
 - d. elect directors other than filling vacancies until the next election; or
 - e. determine their own qualifications, powers, duties, or terms of office.

C. *Bylaws*

1. The bylaws of the CIC **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 CIC the Board or an officer can delegate to others;
 - d. specify the officers who can amend the declaration on behalf of the CIC; and
 - e. provide for meetings, voting, quorums and other activities.
2. The bylaws **may**, subject to the declaration, provide for other matters, including an election oversight committee.

D. *Meetings of owners*

1. The owners **must** meet annually at a time, date and place in accordance with the bylaws.
2. Special meetings **must** be held to address any matter affecting the CIC if the president, a majority of the Board, or at least 10% (or less if stated in the bylaws) of the owners call such a meeting. If the special meeting has not been set within 30 days, the requesting owners may directly notify all the unit owners of the meeting.
3. Notification of meetings **must** be at least 10 days and no more than 60 days beforehand, and include:
 - a. 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 times to give notice **may** be reduced for an emergency meeting.
6. Meetings **may** take place by telephonic, video, or other conferencing process, if allowed by the declaration or bylaws.

E. *Meetings of the Board and its committees*

1. Meetings of the Board and its committees **must** be open to the owners except for executive sessions, which are limited to discussions involving:
 - a. consultation with the CIC'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 CIC's position; and
 - e. matters that would violate the privacy of any person.
2. Board members cannot use social or other casual meetings to evade the open meeting requirements, but a meeting at which business is not transacted is not a meeting of the Board.
3. The Board **must** meet twice a year during the period of declarant control, one of which must be at the CIC or a convenient place for owners. After termination of declarant control, the Board **must** meet at least annually, always at the CIC or a convenient place for the owners.
4. Unless the meeting is either an emergency or in a schedule previously given to the owners, the Board **must** notify the owners of a meeting at least five days in advance. Notice **must** include the time, date, place and agenda. Copies of materials distributed to the Board except for unapproved minutes or materials for executive sessions **must** be reasonably available to unit owners.
5. Meetings **may** be held by telephonic, video or other conferencing process 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 termination of declarant control the owners **may** amend the bylaws to vary the procedures regarding telephonic, video or other conferencing meetings.

F. *Quorums for meetings*

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 present and absentee votes.
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 longest in the Act, all of its provisions are default, that is, they only apply if there are not 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 by 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 CIC must deliver a ballot at least 3 days in advance; also the CIC must be able to verify the returned ballot.
5. If proxy voting is allowed, the proxies 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 votes in the association.
6. If votes without meetings are allowed, unit owners must be notified; the CIC 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.
7. There are also special provisions for the instances in which lessees are permitted to cast ballots rather than their owners, including a requirement that owners receive notice as well as the voting lessees.

H. *Records*

1. The first section of the records provision contains a laundry list of records that the CIC **must** retain for five 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, bylaws and rules;
 - e. financial statements and tax returns, (though only for 3 years);
 - f. names and addresses of current Board members;
 - g. the CIC's most recent annual report, if any;
 - h. copies of current contracts to which the CIC is a party;
 - i. records of architectural approvals, if any; and
 - j. ballots, proxies and other records relating to voting by unit owners for one year after the election, action or vote to which they pertain.

2. All records except those that may be withheld (see subsection 3 below) **must** be available for inspection and copying by the owners or their agents upon 10 days written notice reasonably identifying the specific records of the association that were requested, though the CIC is not obligated to compile or synthesize information and may charge a reasonable fee for copying.
3. Records that need not be shown or copied include:
 - a. personnel, salary or medical records;
 - b. commercial contracts being negotiated;
 - c. documents relating to existing or potential legal proceedings;
 - d. documents relating to existing or potential governmental enforcement actions;
 - e. communications with legal counsel;
 - f. records of executive sessions of the Board;
 - g. individual owners' files; and
 - h. any document the disclosure of which would violate some other law.

I. Rules

While the Act does not specifically grant the Board authority to adopt and promulgate rules for CIC 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 rules governing the time, place and manner of owners' assemblies on common areas.
5. 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 units or the common areas.
6. All rules must be reasonable.

J. Notices

1. The CIC **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 of the CIC.

K. Removal of Board members or officers

Owners **may** remove any Board member or officer who was elected by the owners, with two limitations:

1. The attempt to remove **must** have been listed as an item in the notice for 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 CIC at least annually. Prior to adoption:
 - a. all owners **must** receive notice at least ten days in advance;
 - b. a copy 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 (see 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 purposes described in the vote.