

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.  
Topeka, Kansas 66612-1504  
(785) 296-3181 □ FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

*UPDATED*  
March 22, 2018

**To:** House Committee on Local Government

**From:** James Fisher, Research Analyst  
Joanna Dolan, Principal Research Analyst

**Re:** Common Interest Community Statutes

This memorandum is in response to your request for more information about statutes governing the registration and regulation of common interest communities (CIC), and mechanisms in place for filing complaints against CIC executive boards in other states. Below you will find an overview of applicable statutes from Colorado, Missouri, Nebraska, and Oklahoma.

Additionally, an overview of certain sections of the Uniform Common Interest Ownership Act (UCIOA) is also provided. The UCIOA is a model act developed by the Uniform Law Commission (ULC), the organization responsible for developing the Uniform Common Interest Owners Bill of Rights Act (UCIOBRA), which Kansas has amended and enacted. The UCIOA is a much larger model act than the UCIOBRA, and contains provisions for the formation, management, and termination of CIC. Please note the UCIOA has been adopted in eight states (Alaska, Colorado, Connecticut, Delaware, Minnesota, Nevada, Vermont, and West Virginia), and is not being considered by the Kansas Legislature.

## **Overview of Statutes in Other States**

### ***Colorado***

Colorado has adopted several articles provided in the UCIOA (1, 2, and 3). Certain sections of these articles are reviewed later in this memorandum. Additionally, the State has enacted CRS 38-33.3-401, a fourth article in the State's version of the UCIOA, which requires every unit owners association to register annually with the director of the Colorado Division of Real Estate (Division) in the form and manner prescribed by the director. The registration would require the following items:

- The name of the association, as shown in the Colorado Secretary of State's records;
- The name of the associations management company, managing agent, or designated agent, which may be the association's registered agent, as show in

the Colorado Secretary of State's records, or any other agent that the executive board has designated for purposes of registration under this section;

- Physical address of the homeowners association (HOA);
- A valid address; e-mail address, if any; website, if any; and telephone number for the association or its management company, managing agent, or designated agent; and
- The number of units in the association.

The registration is valid for one year. If an association fails to register or their registration has expired, rights granted to the association by other articles in the the State's UCIOA, such as the ability to impose or enforce a lien for assessments or pursue an action to employ an enforcement mechanism, would be suspended until the registration is valid.

Additionally, unit owners associations are required to submit a fee in an amount set by the director in accordance with Colorado Law. Associations are exempt from paying the registration fee, but not the general registration requirement, if the association has annual revenues of \$5,000 or less, or if the association is not authorized to make assessments and does not have revenue.

The Division does not have any investigative or enforcement authority to address HOA complaints, but the Division does collect complaints on their [website](#).

## **Missouri**

Missouri law does not contain specific provisions for the registration of CICs or mechanisms for unit owners to file a complaint against the owners association's executive body. In order to form or dissolve a CIC in Missouri, a declarant would follow the provisions of the state's nonprofit corporation law, which is similar to the process currently in place in Kansas.

Missouri does have a Condominium Property Act (CPA), which provides for the formation and dissolution of condominium property in the state. The CPA requires the owners of such property to make a declaration expressly stating the intent to establish condominium property, provide a legal description of the parcel(s) and/or unit(s), and state the percentage of ownership interest allocated to each unit. Other information pertaining to the platting and development of the property are also required.

Condominium unit owners may remove the property from the provisions of the law with a duly recorded instrument stating that intention, if the holders of all liens affecting any of the units consent or agree that their liens be transferred to the undivided interest of the unit owner. Upon removal of condominium property from the application of the law, the property shall be deemed to be owned in common by all of the owners. The undivided interest in the property owned in common by each owner is the percentage of undivided interest previously owned by such owner in the common elements.

## **Nebraska**

Nebraska law does not contain specific provisions for the registration of CICs or mechanisms for unit owners to file a complaint against the owners' association's executive body. In order to form or dissolve a CIC in Nebraska, a declarant would follow the provisions of the state's nonprofit corporation act.

## **Oklahoma**

Oklahoma has several statutes pertaining to the formation, powers, membership, and actions of HOAs.

Okla. Stat. Ann. §60-852 establishes that an owners association is formed by the execution of an instrument signed and acknowledged by all owners of the real property. The instrument sets forth the nature of the obligations of the members and is to be filed with the office of the county clerk of the county where the property is located.

Okla. Stat. Ann. §60-852 establishes the owners association's power to enforce any obligation in connection with membership in the owners association by means of a levy or assessment, which may become a lien upon the separately or commonly owned lots, parcels, or areas of defaulting owners or members, which may be foreclosed in any manner provided by Oklahoma law for the foreclosure of mortgages, deeds, or trust, with or without a power of sale. In an action brought to enforce any lien authorized pursuant to the provisions of this section, the prevailing party shall be entitled to recover reasonable attorney's fees to be fixed by the court, which shall be taxed as costs in the action. No lien may be placed or mortgage foreclosed unless the homeowner was informed, in writing, upon joining the owners association, of the existence and content of the owners association restrictions and rules, and of the potential for financial liability to the individual owner by joining the owners association.

Okla. Stat. Ann. §60-854 provides for the membership of an owners association and stipulates that the owners association may also enforce the covenant and restrictions of the real estate development when specified by the covenants and restrictions.

Okla. Stat. Ann. §60-856 allows any person owning property in a real estate development to bring action against any other person owning property in such development to enforce any of the restrictions or covenants of the real estate development specified by the covenants or restrictions. In any action to enforce any restriction or covenant, the prevailing party shall be entitled to recover reasonable attorney's fees to be fixed by the court, which shall be taxed as costs in the action.

No statutes pertaining to additional registration or a complaint process against the HOA were found.

## **Uniform Common Interest Owners Act Overview**

The UCIOA was originally drafted by the ULC in 1982 to provide comprehensive legislation to the states, containing a common structural and regulatory scheme equally applicable to the three most common forms of common ownership at the time: condominiums,

cooperatives, and planned unit developments. The ULC amended the UCIOA in 1994 and again in 2008. The the following eight states have enacted all or part of the UCIOA since 1982:

- Alaska (1982);
- Colorado (1982);
- Connecticut (1982, 1994, and 2008);
- Delaware (2008) ;
- Minnesota (1982);
- Nevada (1982);
- Vermont (1994 and 2008); and
- West Virginia (1982).

The UCIOA contains five articles dealing with the following subject areas:

- Article 1 – Definitions and general provisions;
- Article 2 – Creation, alteration, and termination of CICs;
- Article 3 – Management of CICs;
- Article 4 – Protection of purchasers; and
- Article 5 – Administration and registration of common interest communities.

The ULC recommends the adoption of the articles one through four, and refers to article five as “optional.”

Below you will find a brief overview of certain sections of the UCIOA that might be of interest regarding creation, registration, management, and termination of CICs.

### ***Article 1 – Definitions and General Provisions***

The first article of the UCIOA consists of two parts. Part one, among other things, contains the definitions used in the UCIOA, along with sections pertaining to taxation, local ordinances, eminent domain, and remedies. Part two relates to the applicability of the UCIOA, including its application to new and pre-existing CICs.

Some, but not all, definitions found in the UCIOA are listed below:

- “Common interest community” is the real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated 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 described in the declaration;
- “Declarant” is any person or group of persons acting in concert that:
  - As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of;
  - Reserves or succeeds to any special declaration right; or

- Applies for registration of a common interest community under Article 5;
- “Declaration” is the instrument, however denominated, that creates a common interest community, including any amendments to the instrument; and
- “Master association” is an organization described in Section 2-120 as any nonprofit or for profit corporation that exercises powers granted by the UCIOA on the behalf of one or more CIC, whether or not it is also an association described in Section 3-101.

## **Article 2 – Creation, Alteration, and Termination of CICs**

The second article pertains to the creation, alteration, and termination of CICs. Section 2-101 of the UCIOA would allow for the creation of a CIC by recording a declaration executed in the same manner as a deed. The declaration would need to be recorded in every county in which the CIC is located.

Section 2-105 establishes 15 items of information that must be contained within a declaration. These items included, but are not limited to, the following:

- The names of the CIC and the association, and statement that the common interest community is either a condominium, cooperative, or planned community;
- The name of every county in which any part of the CIC is situated;
- A legally sufficient description of the real estate included in the CIC;
- A statement of the maximum number of units the declarant reserves the right to create;
- A description of any limited common elements, or real estate that must become common elements; and
- Any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number, or other qualifications of persons who may occupy units.

Section 2-118 provides for the termination of a CIC. The section states, with exceptions, a CIC may be terminated only by agreement of unit owners to which at least 80 percent of the votes in the association are allocated, and with any other approvals required by the declaration. A declaration may also specify a small percentage of all units are restricted exclusively to nonresidential uses. The termination agreement must be evidenced in the same manner as a deed, by the requisite number of unit owners, and must specify a date after which the agreement is void unless it is recorded before that date. Section 2-118 also contains provisions relating to the sale of real estate in a CIC, how proceeds of that sale will be distributed to CIC members, and how liens against the association are handled during the termination process.

Section 2-120 requires all provisions of the UCIOA to apply to any nonprofit or for-profit corporation that exercises powers granted by the UCIOA on the behalf of one or more CICs.

These organizations are commonly referred to as “master associations.” Additionally, the section provides the following methodologies for electing the master association’s executive board after a period of declarant control:

- Unit owners of all CICs subject to the master association may elect all members of the master association’s executive board;
- All members of executive boards of all CICs subject to the master association may elect all members of the master association’s executive board;
- All unit owners of each CIC subject to the master association may elect specified members of the master association’s executive board; and
- All members of the executive board of all CIC subject to the master association may elect specified members of the master association’s executive board.

Section 2-121 allows for the merger of any two or more CICs of the same form of ownership by agreement of the unity owners, and makes the resulting CIC the legal successor for all purposes.

### **Article 3 – Management of CICs**

The third article provides for the organization of unit owners associations. Among other things, sections within this article provide for the following:

- Organization of unit owners associations\*;
- Powers and duties of the unit owners association\*;
- Authority of executive board members and officers\*;
- Bylaws\*;
- Meeting requirements\*;
- Quorum requirements\*;
- Voting, proxies, and ballots\*;
- Tort and contract liability;
- Insurance;
- Surplus funds;
- Assessments;
- Liens for sums due to associations, and enforcement;
- Association records\*;
- Rules\*;
- Notice to unit owners;
- Removal of officers and directors\*;
- Adoption of budgets, and special assessments\*; and
- Litigation involving a declarant\*.

\*Kansas has adopted a similar provision in the UCIOBRA.

#### **Article 4 – Protection of Purchasers**

The fourth article establishes protections for those purchasing real estate in a CIC, and includes sections pertaining to liability for public offering statement requirements, general provisions for public offering statements for communities subject to development rights, time shares, and CICs. It also provides for the purchasers' rights to cancel purchases, and contains provisions relating to the resale of units, escrow of deposits, and release of liens.

#### **Article 5 – Administration and Registration of Common Interest Communities**

The fifth article is considered optional by the ULC. This article requires a CIC to register with an appropriate state agency, as defined by the state adopting the model legislation. Small CICs of 12 or less units would be exempt from this requirement. Additionally, this section is for new developments and does not reference CICs already in existence.

Section 5-103 stipulates the information to be contained in an application for registration, and requires that appropriate fees be adopted through the regulatory authority of the appropriate state agency. If a registration would be filed prior to the completion of the project, the model legislation would require a declarant to include additional information with the registration pertaining to project cost and the completion estimate to ensure purchaser funds are not used to complete the project. The enforcing agency would then be required to acknowledge the receipt of the registration within a certain time frame and determine if the application satisfies requirements of the UCIOA and applicable rules and regulation, bylaws established by the CIC comply with the UCIOA, and whether it is likely any improvements a declarant has undertaken can be completed as represented in the registration. The state agency would then have the authority to approve or deny the registration.

Section 5-105 gives the agency authority to issue cease and desist orders after it determines, through a notice and hearing process, that any person in connection with a CIC has violated any provision of the model act, agency rules and regulations, or orders. The state agency may also issue orders requiring the CIC to comply with provisions of the UCIOA, rules and regulations, orders, or to take affirmative action to correct conditions resulting from certain conduct or failure to comply with provisions of the model act, and agency rules and regulations. The agency may revoke a CIC's registration if that CIC has:

- Failed to comply with a cease and desist order issued by the agency affecting that CIC;
- Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of units in that CIC;
- Failed to perform any stipulation or agreement made to induce the agency to issue an order relating to that CIC;
- Misrepresented or failed to disclose a material fact in the application for registration; or
- Failed to meet any of the conditions described in Sections 5-103 and 5-104 necessary to qualify for registration.

Section 5-108 gives the enforcement agency the ability to initiate public or private investigation within or outside the state to determine if any representation in any document or information filed with the agency is false or misleading, or whether any person has engaged, is engaging, or is about to engage in any unlawful act or practice. The state agency would also be granted the authority to issue subpoenas.

As noted previously, the UCIOA is an extensive act and the information provided in this memorandum are only a summary of certain sections. The UCIOA does not provide a mechanism for unit owners to file a complaint against the owners association's executive body. To view the full UCIOA, please see the [ULC's website](#).

JCF/kal