

**TESTIMONY OR PRESENTATION INFORMATION
FOR
LOCAL GOVERNMENT COMMITTEE**

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Name of Conferee/Presenter Lisa Montague
Agency represented constituent from Overland Park
Bill # 2733

- Proponent
 Opponent
 Neutral

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- Oral In Person
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Thank you,

Debra Heideman, Local Government

Committee Assistant

Room 149-S, 785-296-7681

February 19th, 2024

Testimony From Lisa J. Montague in support of HB 2733 For The Committee on Local Government

Esteemed members of the Local Government Committee, I write to you in support of HB 2733, a bill for Kansas Homes Associations (HOA) performing home repairs on a homeowners house (unit) to be completed in accordance with applicable codes and standards and for enforcement by the Kansas Attorney General. I am unable to attend this hearing in person, as I am following requirements of my sister's physicians to avoid contact with others as much as possible, as I prepare to travel tomorrow to Boston, to care for my sister who has terminal cancer. She is receiving treatment that could save her life, but requires a 24/7 caregiver for 30 days. I have to stay healthy for her. When this bill comes to the floor of the legislature, I hope to be able to testify in person.

The bill as written, is sorely needed for homeowners in my city of Overland Park, as many of these procedures are covered under building code, that is by city ordinance. Unless a permit is required for the procedure, the city does not inspect the work. In my situation, regarding the roof on my house that needs replacement, the city does not require permits or do they inspect these roof replacements. City officials told me to do so would require hiring extra inspectors and they can't afford it. I've communicated with 2 different city council people on trying to do something about this to no avail. Johnson County licenses contractors, but otherwise has no responsibility in cities. They oversee the unincorporated areas of the county and do require permits and inspections for things the cities may not. Other cities, like Leawood and Prairie Village require permits to put on a new roof and do the inspections. The licensed and registered roofers who have come to my house to do roof inspections/estimates say they prefer this permit requirement. The only change I would recommend to the committee on the bill as written, is to drop the word "certain" from the statement announcing the Act. All home repairs have to be done by contractors according to the applicable city and county building laws. Unless the HOA is going to do something better than the established building codes and standards, this should be understood.

I own a townhouse in a maintenance provided community in Overland Park. I own every element of my house, including the land directly underneath the house. This is not a condominium. My HOA makes it very clear I am to buy homeowners insurance every year and not condominium insurance. My HOA does not own any part of my house and they do not insure my house. Over these years, as I have had occurrences involving my roof, I have notified

my insurance company as well as the property management company for our Homes Association. I have followed the section in our CC&Rs for "insured loss." For 5 years I have not been able to get my roof fixed and I want to address that shortly. First, I would like to ask you consider amending this bill to include a section that says **A homeowners Association cannot prevent a homeowner from doing repair, care and replacement to the exterior of their own house(unit) as closely as possible to the original design of the house and observing current colors and materials. The homeowner will also follow local building codes and ordinance and in accordance with the HOA CC&R's, which are part of the deed to the house, filed with the local county Registrar of Deeds.**

There are opponents to this additional language, who take the position that they pay dues to the homes association for exterior maintenance for their houses and the HOA must do so. They take issue with having to make repairs themselves, when it was their understanding when they bought their home. They want this to be done and that the dues they pay covers this work. In the case of my homes association, the language in our CC&Rs uses the word "**shall**" in speaking to the HOA's obligation to perform exterior maintenance to our houses in regard to exterior maintenance "repair, care and replacement." The word "shall," according to Wayne Scheiss, senior lecturer at University of Texas School of Law, teaching legal writing, legal drafting and "plain English," says the word "shall" is the most misused word in all legal language. He says "To correctly use shall, confine it to the meaning "has a duty to" and "use it to impose a duty o a capable actor." He goes on to say, "The word '**will**' creates a promise or a contractual obligation. As I said, our CC&R's use the word shall as I've already stated, regarding our HOA board's responsibility to perform "repair, care and replacement." As Mr. Scheiss explained, "There is a duty to..." All that said, there is nothing in our CC&Rs that prevents a homeowner from doing repair, care and replacement on the exterior of their own house. Kansas law would even say the homeowner has a responsibility to mitigate damage.

The section in our CC&Rs under "insured loss" directs a homeowner to hire qualified contractors (licensed, insured and where appropriate bonded) to do so. This is the section I have followed with the damaged roof on my house since my first insurance claim in 2019. That was the first year we had a polar vortex collapse that caused water to come through and stain the ceiling on the front portion of my house' vaulted ceiling. There was ice and snow on the roof. The extreme cold created a freeze and thaw or as my insurance company said, ice dams. The roof on my house was replaced by the HOA in 2012. The original design of my house had a shake shingle roof. The way shake shingle roofs are installed, there is ventilation so the wood shakes can dry out properly when they get wet. The shakes also provide some insulation. When I purchased my house, the shake shingles remained on my house with an asphalt shingle roof over it. I was told by the property manager in 2002, that the HOA was in the process of replacing all these roofs. The shake was no longer legal in Overland Park and having the asphalt

over the shake, using the shakes as a roof deck, also not legal. These things are considered fire hazards. I disclosed this information to my insurance company, who charged me a higher premium. In 2012, once the roof was replaced and had only one layer of roof on my house, they lowered the premium. It took 10 years of those higher premiums, but eventually the roof was replaced. I sent a copy of the invoice from the contractor to the HOA for the roof to establish it had been replaced and my premium was lowered. Had there been other problems with the roof prior to that time? There had. Water used to come through next to my chimney during a heavy rain. The HOA contractor had come to work on the flashing around my chimney before the roof replacement and he had to do it again after the new roof was installed. Even with the new roof, water would run down the front of my house in a hard rain. I requested to hire my own gutter contractor at my expense to help correct this problem and was given approval. This was all before 2019, under a different HOA board and Architectural Control Committee Chair, a committee I served on for 13 years, until 2016.

It's important to understand how a homeowner lives under the choices people on a board or a committee make for their house. The Homes Association has the power to "remove," anything a homeowner does to their own house that they did not approve. Then they can give the homeowner the bill to have done that to their house. The board has given themselves the power to fine homeowners for infractions decided by members of the board. They have established a committee to perform this function called the Standards Committee. The board has the power to put liens on owner's houses and to foreclose on them. There is a level of threatening undercurrent living within this HOA structure, that is a deterrent to someone like me just calling a roofing company and replacing my roof without HOA approval. I've been told by the architect I hired to help me develop a plan to fix the ventilation and insulation problem with my vaulted ceiling, as it was determined by 2 forensic engineers, that when the shake shingle roof was removed, my house lost ventilation. No exhaust vents were installed when the composite shingle roof was put down over plywood or OSB, once the shake and other roofing materials were removed. No soffit vents were in the front and maybe one small one in the back of the house. The roofers left me with an unvented roof. The original design of my house was changed. I went from some ventilation and insulation from the shake shingles, to none. In 2012, I was not notified I was getting a roof replacement. A truck full of men drove up to my house. They proceeded to take off the roof that was there and put on another one. There was no notification or communication this was going to happen or an opportunity to coordinate for my adding insulation or ventilation. The roofers sealed up all the rafter spaces for that part of my house.

Due to this, I find this is what happens to my house as ice and snow melts on my roof during and after a polar vortex collapse These took place in winters 2019, 2021 and this last January. Each time, my house sustains more damage from water coming through the seams of the

vaulted roof ceiling and now other areas of the second story of my house. Each time I notified the HOA property manager. In 2019, my insurance company sent an adjuster who found "shoddy workmanship." When I had roofers come to do estimates, one suggested the chimney might be a problem, as the crown, "looked like something blew it up." I had a chimney company do an inspection. They found on their video inspection that perhaps lightening had struck my chimney causing damage to the crown and inside the chimney. I alerted my insurance company, who sent a forensic engineer to examine my house. He found the problem was not the chimney and was due to the shoddy workmanship where step flashing was missing from a sidewall and at the base of a valley, shingles were not nailed down. I had a second chimney inspection with another company. This company had much newer equipment and I could see in the color video, that the interior of my chimney was perfectly intact. It was very clean. So I would not be in a position to have anyone pointing fingers at my chimney again, I hired this company to rehab my chimney. A new crown was fabricated. New stainless steel caps were placed on the flues. The chimney was water sealed after power washing. I had more work done for the interior of the chimney, spending close to \$10,000. This company replaced chimney flashing and I had that double checked by a licensed registered roofing company I hired to make the temporary repairs of installing the missing sidewall step flashing and put ice and water shield at the base of that valley before they nailed down the shingles. I informed the property manager I had this done. I informed her that I considered these to be temporary repairs. I would watch to see if there was damage after all this work. I let her know, I considered this to be a temporary fix and there could be a new roof needed in the future. All the chimney work I had done was submitted and approved by the ARC chair and I paid all the bills, as my responsibility. The HOA paid nothing. I submitted all this information to my insurance company for their file on my house. The insurance adjuster said to me when all this was done, about the fabrication of the roof from 2012, "I bet you wish you knew who did this." I did know.

In 2019, I checked with JOCO license office about the status of all the contractors I thought of hiring to do the work and also about the contractor who had done the 2012 roof. I learned the contractors I wanted to hire were licensed, but the one who had done the roof had not had a license since 2003. He never renewed that license. I did the same thing with the KS Roofing Registry in Topeka. Again, I learned the roofers I was considering were currently registered with the state, but the contractor who did my roof never had been registered. At this point, I was asked if I would be willing to speak with one of their investigators. I agreed. That investigator told me that I could not file a complaint under the Roofing Registration Act, as the roof had been installed in 2012 and the law did not take effect until the next year, but I was able to be a witness for that investigation and I assisted them over a number of years. The end result from that investigation, the contractor was fined and barred from doing roofing or construction in the state of Kansas at the end of 2022. The HOA had a multiyear contract with

him. A couple of years prior to 2022, the contract was rewritten and given to a newly created LLC for the contractors sons, his long time employees doing work at our HOA. They have a contract to do work here to this day, which says all roofing goes through them. They subcontract and from what I have seen, the same sub contractor comes to do roofing. Currently, this company and the sub are not registered roofers or licensed in JOCO.

In February, or 2021, there was another polar vortex collapse. This time, water came through every seam of my vaulted ceiling and a new patch in an area with a typical attic space. I contacted my insurance company and made another claim. This time, they said they would pay nothing for the roof as before, but would pay to help remove and replace the popcorn ceiling in these areas only. It was an open claim, however and I had a restoration company, a licensed contractor in JOCO, I wished to engage. They were approved by the insurance company and the adjuster indicated he wanted to communicate with that contractor. The potential was there for them to pay on anything else discovered, other than the roof. At this point, I wanted to replace my entire roof and found a roofing company I trusted. I also wanted to pay to address ventilation and insulation issues to finally fix the problem created with the removal of that shake shingle roof. I informed the property manager who told me I would have to go through the ARC committee. This was an insured loss, that's not part of the procedure, but I complied.

The property manager sent a roofer to look at my house. He apparently said he found a small hole in the mortar in the northwest corner of my chimney and maybe water came in there. I had to get another chimney inspection that showed that was not the case and also paid another forensic engineer to evaluate. He found the water intrusion was not coming from the chimney, also. The chimney had been water sealed. For water to have caused the damage, the water would have had to jump from the front of my roof over the ridge to run down the backside of my house. The problem he found concurred with the other information I'd been given before, not proper ventilation and not enough insulation between the rafters. Also, the house, having been built in the 1970s, has 6 inch rafters. In this day and age, they should be 10 inch rafters. That limits the space to put in enough insulation, baffles and the like. I want the roof to be right and the interior of my house repaired correctly. I trusted the contractors I wanted to hire and pay to do the entire job based on city ordinance and building codes. I was going to pay for all of this myself, even though, in the words of the qualified roofer I wanted to hire, "None of this is your fault. You should not have to pay for any of this."

The ARC committee had the proposal from the roofing company. The company could warranty and guarantee what they would do would ventilate my roof. They had the 2 forensic engineers reports. The committee met. I was informed they did not vote. The ARC request I submitted to the HOA president who made a decision on his own to tell me I could not have the

ventilation that the licensed roofer proposed and is IRC code for a vaulted ceiling, "because it is not in keeping with the look of the community." He said I could have some box vents and soffits. No comment about my being able to replace my roof. Prior to this, the same HOA president had emailed me that if I just turned my humidifier down below 25% in the extremely cold weather, it would be fine. That was not a possibility with my asthma and the breathing problems of my nearly 100 year old mother with her health conditions. This is my home. Nobody should be telling me what the air quality should be in my own home. As it is, my house already has all the filters and interior ventilation a house can have. According to the contractor who manages all the systems in my house, the air completely recycles in my house each hour for 15 minutes, including the humidified air. I struggle to keep my humidity about 35% as it is. Below that, is considered dry desert conditions.

I also was told by my contact person with the roofing company that the ARC chair had called him twice before the committee met or had my information presented and told him, "he did not think he could get this through the committee." Clearly, the decision was made before the committee even met. I was told by one of the members that they did not understand what they were looking at, because they thought it was a work order.

At this point, after years of feeling "little ladied" by members of the HOA board, ARC committee and contractor, I filed a HUD complaint under the Fair Housing Act. My mother and I were both named as complainants based on our sex and disability. Asthma is covered under the Fair Housing Act and so were all my mother's conditions. I have other disabling conditions as well.

HUD accepted my case for investigation. Before the investigation even started, the investigator proposed doing "conciliation." I'd hoped this situation could be mediated and I heartily agreed. I proposed that I be allowed to replace my entire roof and gutters, that I would pay for it all, according to International Residential Code. I would use my own licensed/registered contractor(s) and would have the work done in colors and materials in keeping with the look of the community. This was in June, 2021, when the federal government was still on their Covid rules. I have the file from that investigation from HUD. I discovered the HOA engaged 2 law firms with a total of 4 lawyers and 1 legal assistant. The investigation is required by law to be completed in 100 days. The first lawyers wrote to the investigator that he was going to be out of town in July and August. The attorney for the other firm, which was being paid by the HOA State Farm D&O insurance, said he needed a month to get familiar with this case. So far, there had been no investigation, just me saying I wanted to replace my own roof without HOA interference, to code, using licensed/registered contractors. Needless to say, the estimates expired from the roofer. The supply chain issues began. Prices skyrocketed. The investigation exceeded the 100 days and in fact, I had to wait for nearly two years. I was told by

the investigator, that any agreement I might make with the HOA would have to be approved by HUD.

The result of the HUD investigation showed there had not been discrimination, although the HUD investigation did not follow the mandatory portions of their own handbook. My mother was never interviewed and actually, neither was I. They did not come to my house. The investigation report was filled with false statements, which I could have disproved.

I asked for a reconsideration of the investigation report, sending my supporting documentation for all the false statements. The Head of Investigations in Washington DC wrote to say that the investigation was fine and case closed. The HOA board and Property management company put that investigation report on the community portal on the internet. I informed the property manager I wanted it removed from their platform, because it contained false statements that I see as defamatory against me. HUD agreed to make the report non-disclosure at my request. I'd informed them about the false statements. An attorney for the HOA informed me that since it was a government report, they could freely publish it. I later learned the government cannot be sued for defamation. They have sovereign immunity and have never given permission to do so. Where did the false statements originate and told to HUD? From members of the current HOA board.

When I had written my original HUD complaint, I did say that another reason this mistreatment as happening to me could be due to my having been a witness for the KS AG Roofing Registry in the investigation of the contractor. There was no protection for me from retaliation for that it seems. I had provided the AG's office with supporting documentation of dozens of roof problems in this community over a 3 year period. All the roofs worked on by the same contractor and his employees/subs. I helped them, but they could not help me.

So, where can someone in my position go? The architect I hired to design something for me to be a fix for the vaulted ceiling told me this is going to cost tens of thousands of dollars. That's without the cost of replacing the roof.

Some might say I'm the only person who wants to repair their own house at their own expense. I happen to know that's not true. I know others in my own community who want to do the same to preserve the integrity of their own homes. I know there are others in other HOA communities.

For the opponents who will say, try to elect a new board. Call for a special meeting. Do a petition. Try to get other community support. To those opponents I can say, my neighbors and I have tried all of those things to no avail. Things only got worse. For those who say, "just move." I've lived in my house for nearly 22 years. I've spent tens of thousands of dollars making repairs and improvements to this house during all these years. I've created a universal

design for my mother's disabilities and they are useful to me to be able to age in place. I am 70 years old. My mother lived with me, until she died at 100 last year. This is my home. I should not be required to move. As the roof contractor said to me, "None of this is your fault."

For the opponents who say, "just hire a lawyer." The most expensive HOA case in America happened in JOCO. It cost \$1 million in legal fees counting the two parties. I know people in my own HOA who went to court. Doing so caused them lasting psychological and emotional trauma. I have talked to numerous attorneys. One told me my case would cost \$250,000 and he did not want to bankrupt me. Another told me "HOA cases are dirtier than child custody cases. They are dirtier than sex abuse cases. They are dirty dirty dirty and I don't want to do it." The only attorney who would consider my case said I would have to sue each of the 9 members of our board as individuals for breach of fiduciary duties. Remember the word, "shall" aka, a duty to perform? They are fiduciaries and I would have to sue for breach of fiduciary duty. They are mostly in their 70s and 80s. I'm 70 years old. I only have a few good years left. Is this what is required of me? To wait for even more damage to my house, as just happened in January of this year? To take greater toll on me personally? To be bankrupted? The solution for me and anyone in my position is to make it clear the HOA cannot prevent me or any homeowner from making repairs to the house they own.

As for the HB 2733 enforcement provisions, if I have a problem with an insurance company, I can call the insurance commission. If I have a problem with a real estate agent, I can go to the real estate board. If something goes wrong at a pharmacy, I can contact the pharmacy board and on and on. People living in HOAs, who pay taxes as well as our due, need to have a place to go for enforcement of the HOA law and in particular, the proposed amended HB 2733. Find a fair way to fund the AGs enforcement.

Thank you for your time and attention considering my testimony and this bill. Please send an amended bill to the floor of the legislature for their consideration.