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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2711

01/31/2022 Authored by Wazlawik, Bahner, Elkins and Youakim
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
03/28/2022 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law
03/30/2022 Adoption of Report: Placed on the General Register
Read for the Second Time

1.1 A bill for an act
1.2 relating to common interest communities; establishing procedures for levying a
1.3 fine or limited assessment or initiating a foreclosure; amending Minnesota Statutes
1.4 2020, section 515B.3-102.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2020, section 515B.3-102, is amended to read:

1.7 515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.

1.8 (a) Except as provided in subsections (b), (c), (d), and (e), (f), (g), and (h) and subject
1.9 to the provisions of the declaration or bylaws, the association shall have the power to:

1.10 (1) adopt, amend and revoke rules and regulations not inconsistent with the articles of
1.11 incorporation, bylaws and declaration, as follows: (i) regulating the use of the common
1.12 elements; (ii) regulating the use of the units, and conduct of unit occupants, which may
1.13 jeopardize the health, safety or welfare of other occupants, which involves noise or other
1.14 disturbing activity, or which may damage the common elements or other units; (iii) regulating
1.15 or prohibiting animals; (iv) regulating changes in the appearance of the common elements
1.16 and conduct which may damage the common interest community; (v) regulating the exterior
1.17 appearance of the common interest community, including, for example, balconies and patios,
1.18 window treatments, and signs and other displays, regardless of whether inside a unit; (vi)
1.19 implementing the articles of incorporation, declaration and bylaws, and exercising the
1.20 powers granted by this section; and (vii) otherwise facilitating the operation of the common
1.21 interest community;

1.22 (2) adopt and amend budgets for revenues, expenditures and reserves, and levy and
1.23 collect assessments for common expenses from unit owners;

2.1 (3) hire and discharge managing agents and other employees, agents, and independent
2.2 contractors;

2.3 (4) institute, defend, or intervene in litigation or administrative proceedings (i) in its
2.4 own name on behalf of itself or two or more unit owners on matters affecting the common
2.5 elements or other matters affecting the common interest community or, (ii) with the consent
2.6 of the owners of the affected units on matters affecting only those units;

2.7 (5) make contracts and incur liabilities;

2.8 (6) regulate the use, maintenance, repair, replacement, and modification of the common
2.9 elements and the units;

2.10 (7) cause improvements to be made as a part of the common elements, and, in the case
2.11 of a cooperative, the units;

2.12 (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to
2.13 real estate or personal property, but (i) common elements in a condominium or planned
2.14 community may be conveyed or subjected to a security interest only pursuant to section
2.15 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative
2.16 may be subjected to a security interest, only pursuant to section 515B.3-112;

2.17 (9) grant or amend easements for public utilities, public rights-of-way or other public
2.18 purposes, and cable television or other communications, through, over or under the common
2.19 elements; grant or amend easements, leases, or licenses to unit owners for purposes authorized
2.20 by the declaration; and, subject to approval by a vote of unit owners other than declarant
2.21 or its affiliates, grant or amend other easements, leases, and licenses through, over or under
2.22 the common elements;

2.23 (10) impose and receive any payments, fees, or charges for the use, rental, or operation
2.24 of the common elements, other than limited common elements, and for services provided
2.25 to unit owners;

2.26 (11) impose interest and late charges for late payment of assessments and, after notice
2.27 and an opportunity to be heard before the board or a committee appointed by it, levy
2.28 reasonable fines for violations of the declaration, bylaws, and rules and regulations of the
2.29 association;

2.30 (12) impose reasonable charges for the review, preparation and recordation of
2.31 amendments to the declaration, resale certificates required by section 515B.4-107, statements
2.32 of unpaid assessments, or furnishing copies of association records;

3.1 (13) provide for the indemnification of its officers and directors, and maintain directors'
3.2 and officers' liability insurance;

3.3 (14) provide for reasonable procedures governing the conduct of meetings and election
3.4 of directors;

3.5 (15) exercise any other powers conferred by law, or by the declaration, articles of
3.6 incorporation or bylaws; and

3.7 (16) exercise any other powers necessary and proper for the governance and operation
3.8 of the association.

3.9 (b) Notwithstanding subsection (a) the declaration or bylaws may not impose limitations
3.10 on the power of the association to deal with the declarant which are more restrictive than
3.11 the limitations imposed on the power of the association to deal with other persons.

3.12 (c) No less than 15 days before levying a fine pursuant to subsection (a)(11), levying a
3.13 limited assessment, or initiating a foreclosure, an association must provide written notice
3.14 to a unit owner that:

3.15 (1) indicates the amount, date, and reason for the levy or foreclosure;

3.16 (2) identifies the violation for which a fine is being levied and the specific section of
3.17 the declaration, bylaws, or rules and regulations allegedly violated;

3.18 (3) states that all unpaid fines and assessments are liens which, if not satisfied, could
3.19 lead to foreclosure of the unit;

3.20 (4) describes the right of the unit owner to be heard by the board or a committee appointed
3.21 by the board;

3.22 (5) states that if the assessment, fees, charges, or fine is not paid, the amount owed may
3.23 increase as a result of the imposition of attorney fees and other costs of collection; and

3.24 (6) informs the unit owner that foreclosure prevention and other homeownership
3.25 assistance is available from, and includes the contact information for, the Minnesota
3.26 Homeownership Center.

3.27 (d) No attorney fees are chargeable on the unit owner for the 15-day period and, if
3.28 applicable, any period up to and including the time a decision is rendered by the board, or
3.29 a committee appointed by the board, after a hearing.

3.30 (e) For the purposes of this section "limited assessment" means an assessment for an
3.31 expense other than common expenses or special assessments that is limited to a particular
3.32 unit owner.

4.1 ~~(e)~~ (f) Notwithstanding subsection (a), powers exercised under this section must comply
4.2 with section 500.215.

4.3 ~~(d)~~ (g) Notwithstanding subsection (a)(4) or any other provision of this chapter, the
4.4 association, before instituting litigation or arbitration involving construction defect claims
4.5 against a development party, shall:

4.6 (1) mail or deliver written notice of the anticipated commencement of the action to each
4.7 unit owner at the addresses, if any, established for notices to owners in the declaration and,
4.8 if the declaration does not state how notices are to be given to owners, to the owner's last
4.9 known address. The notice shall specify the nature of the construction defect claims to be
4.10 alleged, the relief sought, and the manner in which the association proposes to fund the cost
4.11 of pursuing the construction defect claims; and

4.12 (2) obtain the approval of owners of units to which a majority of the total votes in the
4.13 association are allocated. Votes allocated to units owned by the declarant, an affiliate of the
4.14 declarant, or a mortgagee who obtained ownership of the unit through a foreclosure sale
4.15 are excluded. The association may obtain the required approval by a vote at an annual or
4.16 special meeting of the members or, if authorized by the statute under which the association
4.17 is created and taken in compliance with that statute, by a vote of the members taken by
4.18 electronic means or mailed ballots. If the association holds a meeting and voting by electronic
4.19 means or mailed ballots is authorized by that statute, the association shall also provide for
4.20 voting by those methods. Section 515B.3-110(c) applies to votes taken by electronic means
4.21 or mailed ballots, except that the votes must be used in combination with the vote taken at
4.22 a meeting and are not in lieu of holding a meeting, if a meeting is held, and are considered
4.23 for purposes of determining whether a quorum was present. Proxies may not be used for a
4.24 vote taken under this paragraph unless the unit owner executes the proxy after receipt of
4.25 the notice required under subsection ~~(d)~~ (g)(1) and the proxy expressly references this notice.

4.26 ~~(e)~~ (h) The association may intervene in a litigation or arbitration involving a construction
4.27 defect claim or assert a construction defect claim as a counterclaim, crossclaim, or third-party
4.28 claim before complying with subsections ~~(d)~~ (g)(1) and ~~(d)~~ (g)(2) but the association's
4.29 complaint in an intervention, counterclaim, crossclaim, or third-party claim shall be dismissed
4.30 without prejudice unless the association has complied with the requirements of subsection
4.31 ~~(d)~~ (g) within 90 days of the association's commencement of the complaint in an intervention
4.32 or the assertion of the counterclaim, crossclaim, or third-party claim.