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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 3552

03/08/2018 Authored by Smith; Dehn, R., and Hausman
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices Policy

1.1 A bill for an act
1.2 relating to real property; modifying the definition of residential use under the
1.3 Minnesota Common Interest Ownership Act; amending Minnesota Statutes 2016,
1.4 section 515B.4-111; Minnesota Statutes 2017 Supplement, section 515B.1-103.

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

1.6 Section 1. Minnesota Statutes 2017 Supplement, section 515B.1-103, is amended to read:

1.7 515B.1-103 DEFINITIONS.

1.8 In the declaration and bylaws, unless specifically provided otherwise or the context
1.9 otherwise requires, and in this chapter:

1.10 (1) "Additional real estate" means real estate that may be added to a flexible common
1.11 interest community.

1.12 (2) "Affiliate of a declarant" means any person who controls, is controlled by, or is under
1.13 common control with a declarant.

1.14 (A) A person "controls" a declarant if the person (i) is a general partner, officer, director,
1.15 or employer of the declarant, (ii) directly or indirectly or acting in concert with one or more
1.16 other persons, or through one or more subsidiaries, owns, controls, holds with power to
1.17 vote, or holds proxies representing, more than 20 percent of the voting interest in the
1.18 declarant, (iii) controls in any manner the election of a majority of the directors of the
1.19 declarant, or (iv) has contributed more than 20 percent of the capital of the declarant.

1.20 (B) A person "is controlled by" a declarant if the declarant (i) is a general partner, officer,
1.21 director, or employer of the person, (ii) directly or indirectly or acting in concert with one
1.22 or more other persons, or through one or more subsidiaries, owns, controls, holds with

2.1 power to vote, or holds proxies representing, more than 20 percent of the voting interest in
2.2 the person, (iii) controls in any manner the election of a majority of the directors of the
2.3 person, or (iv) has contributed more than 20 percent of the capital of the person.

2.4 (C) Control does not exist if the powers described in this subsection are held solely as
2.5 a security interest and have not been exercised.

2.6 (3) "Allocated interests" means the following interests allocated to each unit: (i) in a
2.7 condominium, the undivided interest in the common elements, the common expense liability,
2.8 and votes in the association; (ii) in a cooperative, the common expense liability and the
2.9 ownership interest and votes in the association; and (iii) in a planned community, the common
2.10 expense liability and votes in the association.

2.11 (4) "Association" means the unit owners' association organized under section 515B.3-101.

2.12 (5) "Board" means the body, regardless of name, designated in the articles of
2.13 incorporation, bylaws or declaration to act on behalf of the association, or on behalf of a
2.14 master association when so identified.

2.15 (6) "CIC plat" means a common interest community plat described in section 515B.2-110.

2.16 (7) "Common elements" means all portions of the common interest community other
2.17 than the units.

2.18 (8) "Common expenses" means expenditures made or liabilities incurred by or on behalf
2.19 of the association, or master association when so identified, together with any allocations
2.20 to reserves.

2.21 (9) "Common expense liability" means the liability for common expenses allocated to
2.22 each unit pursuant to section 515B.2-108.

2.23 (10) "Common interest community" or "CIC" means contiguous or noncontiguous real
2.24 estate within Minnesota that is subject to an instrument which obligates persons owning a
2.25 separately described parcel of the real estate, or occupying a part of the real estate pursuant
2.26 to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate
2.27 taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of;
2.28 or (iv) construction, maintenance, repair or replacement of improvements located on, one
2.29 or more parcels or parts of the real estate other than the parcel or part that the person owns
2.30 or occupies. Real estate which satisfies the definition of a common interest community is
2.31 a common interest community whether or not it is subject to this chapter. Real estate subject
2.32 to a master declaration, regardless of when the master declaration was recorded, shall not

3.1 collectively constitute a separate common interest community unless so stated in the master
3.2 declaration.

3.3 (11) "Condominium" means a common interest community in which (i) portions of the
3.4 real estate are designated as units, (ii) the remainder of the real estate is designated for
3.5 common ownership solely by the owners of the units, and (iii) undivided interests in the
3.6 common elements are vested in the unit owners.

3.7 (11a) "Construction defect claim" means a civil action or an arbitration proceeding based
3.8 on any legal theory including, but not limited to, claims under chapter 327A for damages,
3.9 indemnity, or contribution brought against a development party to assert a claim,
3.10 counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of,
3.11 real or personal property caused by a defect in the initial design or construction of an
3.12 improvement to real property that is part of a common interest community, including an
3.13 improvement that is constructed on additional real estate pursuant to section 515B.2-111.
3.14 "Construction defect claim" does not include claims related to subsequent maintenance,
3.15 repairs, alterations, or modifications to, or the addition of, improvements that are part of
3.16 the common interest community, and that are contracted for by the association or a unit
3.17 owner.

3.18 (12) "Conversion property" means real estate on which is located a building ~~that~~ occupied
3.19 for multifamily residential rental use at any time within two years before (i) creation of the
3.20 common interest community ~~was occupied for residential use,~~ or (ii) changes in the
3.21 declaration or plat to allow sales of individual dwellings as units, wholly or partially by
3.22 persons other than purchasers of and persons who occupy with the consent of purchasers
3.23 of individual units.

3.24 (13) "Cooperative" means a common interest community in which the real estate is
3.25 owned by an association, each of whose members is entitled to a proprietary lease by virtue
3.26 of the member's ownership interest in the association.

3.27 (14) "Dealer" means a person in the business of selling units for the person's own account.

3.28 (15) "Declarant" means:

3.29 (i) if the common interest community has been created, (A) any person who has executed
3.30 a declaration, or a supplemental declaration or amendment to a declaration adding additional
3.31 real estate, except secured parties, a spouse holding only an inchoate interest, persons whose
3.32 interests in the real estate will not be transferred to unit owners, or, in the case of a leasehold
3.33 common interest community, a lessor who possesses no special declarant rights and who

4.1 is not an affiliate of a declarant who possesses special declarant rights, or (B) any person
4.2 who reserves, or succeeds under section 515B.3-104 to any special declarant rights; or

4.3 (ii) any person or persons acting in concert who have offered prior to creation of the
4.4 common interest community to transfer their interest in a unit to be created and not previously
4.5 transferred.

4.6 (16) "Declaration" means any instrument, however denominated, that creates a common
4.7 interest community.

4.8 (16a) "Development party" means an architect, contractor, construction manager,
4.9 subcontractor, developer, declarant, engineer, or private inspector performing or furnishing
4.10 the design, supervision, inspection, construction, coordination, or observation of the
4.11 construction of any improvement to real property that is part of a common interest
4.12 community, or any of the person's affiliates, officers, directors, shareholders, members, or
4.13 employees.

4.14 (17) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal
4.15 or equitable interest in the common interest community, but the term does not include the
4.16 transfer or release of a security interest.

4.17 (18) "Flexible common interest community" means a common interest community to
4.18 which additional real estate may be added.

4.19 (19) "Leasehold common interest community" means a common interest community in
4.20 which all or a portion of the real estate is subject to a lease the expiration or termination of
4.21 which will terminate the common interest community or reduce its size.

4.22 (20) "Limited common element" means a portion of the common elements allocated by
4.23 the declaration or by operation of section 515B.2-109(c) or (d) for the exclusive use of one
4.24 or more but fewer than all of the units.

4.25 (21) "Master association" means an entity created on or after June 1, 1994, that directly
4.26 or indirectly exercises any of the powers set forth in section 515B.3-102 on behalf of one
4.27 or more members described in section 515B.2-121(b), (i), (ii) or (iii), whether or not it also
4.28 exercises those powers on behalf of one or more property owners' associations described
4.29 in section 515B.2-121 (b)(iv). A person (i) hired by an association to perform maintenance,
4.30 repair, accounting, bookkeeping or management services, or (ii) granted authority under an
4.31 instrument recorded primarily for the purpose of creating rights or obligations with respect
4.32 to utilities, access, drainage, or recreational amenities, is not, solely by reason of that
4.33 relationship, a master association.

5.1 (22) "Master declaration" means a written instrument, however named, (i) recorded on
5.2 or after June 1, 1994, and (ii) complying with section 515B.2-121, subsection (e).

5.3 (23) "Master developer" means a person who is designated in the master declaration as
5.4 a master developer or, in the absence of such a designation, the owner or owners of the real
5.5 estate subject to the master declaration at the time the master declaration is recorded, except
5.6 (i) secured parties and (ii) a spouse holding only an inchoate interest. A master developer
5.7 is not a declarant unless the master declaration states that the real estate subject to the master
5.8 declaration collectively is or collectively will be a separate common interest community.

5.9 (24) "Period of declarant control" means the time period provided for in section
5.10 515B.3-103(c) during which the declarant may appoint and remove officers and directors
5.11 of the association.

5.12 (25) "Person" means an individual, corporation, limited liability company, partnership,
5.13 trustee under a trust, personal representative, guardian, conservator, government,
5.14 governmental subdivision or agency, or other legal or commercial entity capable of holding
5.15 title to real estate.

5.16 (26) "Planned community" means a common interest community that is not a
5.17 condominium or a cooperative. A condominium or cooperative may be a part of a planned
5.18 community.

5.19 (27) "Proprietary lease" means an agreement with a cooperative association whereby a
5.20 member of the association is entitled to exclusive possession of a unit in the cooperative.

5.21 (28) "Purchaser" means a person, other than a declarant, who by means of a voluntary
5.22 transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest of
5.23 less than 20 years, including renewal options, or (ii) a security interest.

5.24 (29) "Real estate" means any fee simple, leasehold or other estate or interest in, over,
5.25 or under land, including structures, fixtures, and other improvements and interests that by
5.26 custom, usage, or law pass with a conveyance of land though not described in the contract
5.27 of sale or instrument of conveyance. "Real estate" may include spaces with or without upper
5.28 or lower boundaries, or spaces without physical boundaries.

5.29 (30) "Residential use" means use as a an individual dwelling, whether primary, secondary
5.30 or seasonal, but not (i) transient use such as hotels or motels, or (ii) multifamily residential
5.31 rental use in a condominium or planned community in which individual dwellings do not
5.32 constitute units or separate parcels of real estate.

6.1 (31) "Secured party" means the person owning a security interest as defined in paragraph
6.2 (32).

6.3 (32) "Security interest" means a perfected interest in real estate or personal property,
6.4 created by contract or conveyance, which secures payment or performance of an obligation.
6.5 The term includes a mortgagee's interest in a mortgage, a vendor's interest in a contract for
6.6 deed, a lessor's interest in a lease intended as security, a holder's interest in a sheriff's
6.7 certificate of sale during the period of redemption, an assignee's interest in an assignment
6.8 of leases or rents intended as security, in a cooperative, a lender's interest in a member's
6.9 ownership interest in the association, a pledgee's interest in the pledge of an ownership
6.10 interest, or any other interest intended as security for an obligation under a written agreement.

6.11 (33a) This definition of special declarant rights applies only to common interest
6.12 communities created before August 1, 2010. "Special declarant rights" means rights reserved
6.13 in the declaration for the benefit of a declarant to:

6.14 (i) complete improvements indicated on the CIC plat, planned by the declarant consistent
6.15 with the disclosure statement or authorized by the municipality in which the CIC is located;

6.16 (ii) add additional real estate to a common interest community;

6.17 (iii) subdivide or combine units, or convert units into common elements, limited common
6.18 elements, or units;

6.19 (iv) maintain sales offices, management offices, signs advertising the common interest
6.20 community, and models;

6.21 (v) use easements through the common elements for the purpose of making improvements
6.22 within the common interest community or any additional real estate;

6.23 (vi) create a master association and provide for the exercise of authority by the master
6.24 association over the common interest community or its unit owners;

6.25 (vii) merge or consolidate a common interest community with another common interest
6.26 community of the same form of ownership; or

6.27 (viii) appoint or remove any officer or director of the association, or the master association
6.28 where applicable, during any period of declarant control.

6.29 (33b) This definition of special declarant rights applies only to common interest
6.30 communities created on or after August 1, 2010. "Special declarant rights" means rights
6.31 reserved in the declaration for the benefit of a declarant and expressly identified in the

7.1 declaration as special declarant rights. Such special declarant rights may include but are not
7.2 limited to the following:

7.3 (i) to complete improvements indicated on the CIC plat, planned by the declarant
7.4 consistent with the disclosure statement or authorized by the municipality in which the
7.5 common interest community is located, and to have and use easements for itself and its
7.6 employees, agents, and contractors through the common elements for such purposes;

7.7 (ii) to add additional real estate to a common interest community;

7.8 (iii) to subdivide or combine units, or convert units into common elements, limited
7.9 common elements and/or units, pursuant to section 515B.2-112;

7.10 (iv) to maintain and use sales offices, management offices, signs advertising the common
7.11 interest community, and models, and to have and use easements for itself and its employees,
7.12 agents, and invitees through the common elements for such purposes;

7.13 (v) to appoint or remove any officer or director of the association during any period of
7.14 declarant control;

7.15 (vi) to utilize an alternate common expense plan as provided in section 515B.3-115(a)(2);

7.16 (vii) to grant common element licenses as provided in section 515B.2-109(e); or

7.17 (viii) to review, and approve or disapprove, the exterior design, materials, size, site
7.18 location, and other exterior features of buildings and other structures, landscaping and other
7.19 exterior improvements, located within the common interest community, and any
7.20 modifications or alterations thereto.

7.21 Special declarant rights shall not be reserved or utilized for the purpose of evading any
7.22 limitation or obligation imposed on declarants by this chapter.

7.23 (34) "Time share" means a right to occupy a unit or any of several units during three or
7.24 more separate time periods over a period of at least three years, including renewal options,
7.25 whether or not coupled with a fee title interest in the common interest community or a
7.26 specified portion thereof.

7.27 (35) "Unit" means a portion of a common interest community the boundaries of which
7.28 are described in the common interest community's declaration and which is intended for
7.29 separate ownership, or separate occupancy pursuant to a proprietary lease.

7.30 (36) "Unit identifier" means English letters or Arabic numerals, or a combination thereof,
7.31 which identify only one unit in a common interest community and which meet the
7.32 requirements of section 515B.2-104.

8.1 (37) "Unit owner" means a declarant or other person who owns a unit, a lessee under a
8.2 proprietary lease, or a lessee of a unit in a leasehold common interest community whose
8.3 lease expires simultaneously with any lease the expiration or termination of which will
8.4 remove the unit from the common interest community, but does not include a secured party.
8.5 In a common interest community, the declarant is the unit owner of a unit until that unit has
8.6 been conveyed to another person.

8.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.8 Sec. 2. Minnesota Statutes 2016, section 515B.4-111, is amended to read:

8.9 **515B.4-111 CONVERSION PROPERTY.**

8.10 (a) A unit owner of a unit occupied for multifamily residential rental use in a common
8.11 interest community containing conversion property shall not, for a period of one year
8.12 following the recording of the declaration creating the common interest community or
8.13 modifying the declaration or plat to allow sales of individual dwellings as units, require any
8.14 occupant of the unit to vacate the unit unless the unit owner gives notice to the occupant in
8.15 the manner described in this section. The notice shall be given no later than 120 days before
8.16 the occupant is required to vacate the unit. The notice shall be sufficient as to all occupants
8.17 of a unit if it is hand delivered or mailed to the unit to be vacated, addressed to the occupants
8.18 thereof. If the holder of the lessee's interest in the unit has given the unit owner an address
8.19 different than that of the unit, then the notice shall also be given to the holder of the lessee's
8.20 interest at the designated address. The notice shall comply with the following requirements:

8.21 (1) The notice shall set forth generally the rights conferred by this section.

8.22 (2) The notice shall have attached a form of purchase agreement setting forth the proposed
8.23 terms of sale of the unit to the holder of the lessee's interest as contemplated by subsection
8.24 (d) and a statement of any significant restrictions imposed by the declaration on the use and
8.25 occupancy of the unit.

8.26 (3) The notice shall state that the occupants of the residential unit may demand to be
8.27 given 60 additional days before being required to vacate, if any of them, or any person
8.28 residing with them, is (i) 62 years of age or older, (ii) a person with a disability as defined
8.29 in section 268A.01, or (iii) a minor child on the date the notice is given. This demand must
8.30 be in writing, contain reasonable proof of qualification, and be given to the declarant within
8.31 30 days after the notice of conversion is delivered or mailed.

8.32 (4) The notice shall be contained in an envelope upon which the following shall be boldly
8.33 printed: "Notice of Conversion."

9.1 (b) Notwithstanding subsection (a), an occupant may be required to vacate a unit upon
9.2 less than 120 days' notice by reason of (i) nonpayment of rent, utilities or other monetary
9.3 obligations, violations of law, waste, or conduct that disturbs other occupants' peaceful
9.4 enjoyment of the premises, or (ii) renovation, repair, or maintenance in a unit used for
9.5 multifamily residential rental without intent to offer the unit or any part thereof for sale as
9.6 a separate unit. The terms of the tenancy may not be altered during the notice period, except
9.7 that the holder of the lessee's interest or other party in possession may vacate and terminate
9.8 the tenancy upon one month's written notice to the declarant. Nothing in this section prevents
9.9 the unit owner and any occupant from agreeing to a right of occupancy on a month-to-month
9.10 basis beyond the 120-day notice period, or to an earlier termination of the right of occupancy.

9.11 (c) No repair work or remodeling may be commenced or undertaken in the occupied
9.12 units or common areas of the building during the notice period, unless reasonable precautions
9.13 are taken to ensure the safety and security of the occupants.

9.14 (d) For 60 days after delivery or mailing of the notice described in subsection (a), the
9.15 holder of the lessee's interest in the unit on the date the notice is mailed or delivered shall
9.16 have an option to purchase that unit on the terms set forth in the purchase agreement attached
9.17 to the notice. The purchase agreement shall contain no terms or provisions which violate
9.18 any state or federal law relating to discrimination in housing. If the holder of the lessee's
9.19 interest fails to sign a binding purchase agreement for the unit during that 60-day period,
9.20 the unit owner may not offer to dispose of an interest in that unit during the following 180
9.21 days at a price or on terms more favorable to the offeree than the price or terms offered to
9.22 the holder. This subsection and subsection (a)(2) do not apply to any unit in a conversion
9.23 property if that unit will be restricted exclusively to nonresidential use or if the boundaries
9.24 of the converted unit do not substantially conform to the boundaries of the residential unit
9.25 before conversion.

9.26 (e) If a unit owner, in violation of subsection (b), conveys a unit to a purchaser for value
9.27 who has no knowledge of the violation, the recording of the deed conveying the unit or, in
9.28 a cooperative, the conveyance of the right to possession of the unit, extinguishes any right
9.29 a holder of a lessee's interest who is not in possession of the unit may have under subsection
9.30 (d) to purchase that unit, but the conveyance does not affect the right of the holder to recover
9.31 damages from the unit owner for a violation of subsection (d).

9.32 (f) If a notice described in subsection (a) specifies a date by which a unit or proposed
9.33 unit must be vacated or otherwise complies with the provisions of chapter 504B, the notice
9.34 also constitutes a notice to vacate specified by that statute.

10.1 (g) An occupant of space for residential use in a conversion property shall not have any
10.2 of the rights set out in this section or under any municipal ordinance if the holder of the
10.3 lessee's interest in the space received written notice of intent to convert to a common interest
10.4 community (i) before signing a lease or a lease renewal or before occupying the space and
10.5 (ii) less than two years before the common interest community is created.

10.6 (h) A notice of intent to convert to a common interest community shall identify the
10.7 conversion property by both legal description and street address and state that (i) the declarant
10.8 intends to convert the property to a planned community, condominium, or cooperative form
10.9 of common interest community, specifying the intended form, and (ii) persons entering into
10.10 leases subsequent to the receipt of the notice of intent to convert will not have the rights
10.11 available to an occupant or a person holding the lessee's interest under this section.

10.12 (i) Nothing in this section permits a unit owner to terminate a lease in violation of its
10.13 terms.

10.14 (j) Failure to give notice as required by subsection (a) is a defense to an action for
10.15 possession.

10.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.