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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 1538

- 02/22/2017 Authored by Smith; Scott; Dehn, R.; Nelson and Pugh
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices Policy
- 03/07/2017 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time
- 04/27/2017 Calendar for the Day
Read for the Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to real property; amending the Minnesota Common Interest Ownership

1.3 Act to provide for construction defect claims; amending Minnesota Statutes 2016,

1.4 sections 515B.1-103; 515B.3-102; 515B.3-107; 515B.3-111; 515B.4-1021;

1.5 515B.4-113; 515B.4-116.

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

1.7 Section 1. Minnesota Statutes 2016, section 515B.1-103, is amended to read:

1.8 **515B.1-103 DEFINITIONS.**

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

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

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

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

1.21 (B) A person "is controlled by" a declarant if the declarant (i) is a general partner, officer,
1.22 director, or employer of the person, (ii) directly or indirectly or acting in concert with one
1.23 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 or personal injury caused by a defect in the initial design or
3.12 construction of an improvement to real property that is part of a common interest community,
3.13 including an improvement that is constructed on additional real estate pursuant to article 2
3.14 of this chapter. "Construction defect claim" does not include claims related to subsequent
3.15 maintenance, repairs, alterations, or modifications to, or the addition of, improvements that
3.16 are part of the common interest community, and that are contracted for by the association
3.17 or a unit owner.

3.18 (12) "Conversion property" means real estate on which is located a building that at any
3.19 time within two years before creation of the common interest community was occupied for
3.20 residential use wholly or partially by persons other than purchasers and persons who occupy
3.21 with the consent of purchasers.

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

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

3.26 (15) "Declarant" means:

3.27 (i) if the common interest community has been created, (A) any person who has executed
3.28 a declaration, or a supplemental declaration or amendment to a declaration adding additional
3.29 real estate, except secured parties, a spouse holding only an inchoate interest, persons whose
3.30 interests in the real estate will not be transferred to unit owners, or, in the case of a leasehold
3.31 common interest community, a lessor who possesses no special declarant rights and who
3.32 is not an affiliate of a declarant who possesses special declarant rights, or (B) any person
3.33 who reserves, or succeeds under section 515B.3-104 to any special declarant rights; or

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

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

4.6 (16a) "Development party" means an architect, contractor, construction manager,
4.7 subcontractor, developer, declarant, engineer, or private inspector performing or furnishing
4.8 the design, supervision, inspection, construction, coordination, or observation of the
4.9 construction of any improvement to real property that is part of a common interest
4.10 community, or any of the person's affiliates, officers, directors, shareholders, members, or
4.11 employees.

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

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

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

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

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

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

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

5.7 (24) "Period of declarant control" means the time period provided for in section
5.8 515B.3-103(c) during which the declarant may appoint and remove officers and directors
5.9 of the association.

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

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

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

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

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

5.27 (30) "Residential use" means use as a dwelling, whether primary, secondary or seasonal,
5.28 but not transient use such as hotels or motels.

5.29 (31) "Secured party" means the person owning a security interest as defined in paragraph
5.30 (32).

5.31 (32) "Security interest" means a perfected interest in real estate or personal property,
5.32 created by contract or conveyance, which secures payment or performance of an obligation.
5.33 The term includes a mortgagee's interest in a mortgage, a vendor's interest in a contract for

6.1 deed, a lessor's interest in a lease intended as security, a holder's interest in a sheriff's
6.2 certificate of sale during the period of redemption, an assignee's interest in an assignment
6.3 of leases or rents intended as security, in a cooperative, a lender's interest in a member's
6.4 ownership interest in the association, a pledgee's interest in the pledge of an ownership
6.5 interest, or any other interest intended as security for an obligation under a written agreement.

6.6 (33a) This definition of special declarant rights applies only to common interest
6.7 communities created before August 1, 2010. "Special declarant rights" means rights reserved
6.8 in the declaration for the benefit of a declarant to:

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

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

6.12 (iii) subdivide or combine units, or convert units into common elements, limited common
6.13 elements, or units;

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

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

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

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

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

6.24 (33b) This definition of special declarant rights applies only to common interest
6.25 communities created on or after August 1, 2010. "Special declarant rights" means rights
6.26 reserved in the declaration for the benefit of a declarant and expressly identified in the
6.27 declaration as special declarant rights. Such special declarant rights may include but are not
6.28 limited to the following:

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

- 7.1 (ii) to add additional real estate to a common interest community;
- 7.2 (iii) to subdivide or combine units, or convert units into common elements, limited
7.3 common elements and/or units, pursuant to section 515B.2-112;
- 7.4 (iv) to maintain and use sales offices, management offices, signs advertising the common
7.5 interest community, and models, and to have and use easements for itself and its employees,
7.6 agents, and invitees through the common elements for such purposes;
- 7.7 (v) to appoint or remove any officer or director of the association during any period of
7.8 declarant control;
- 7.9 (vi) to utilize an alternate common expense plan as provided in section 515B.3-115(a)(2);
- 7.10 (vii) to grant common element licenses as provided in section 515B.2-109(e); or
- 7.11 (viii) to review, and approve or disapprove, the exterior design, materials, size, site
7.12 location, and other exterior features of buildings and other structures, landscaping and other
7.13 exterior improvements, located within the common interest community, and any
7.14 modifications or alterations thereto.

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

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

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

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

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

8.1 Sec. 2. Minnesota Statutes 2016, section 515B.3-102, is amended to read:

8.2 **515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.**

8.3 (a) Except as provided in subsections (b) ~~and~~, (c), (d), and (e), and subject to the
8.4 provisions of the declaration or bylaws, the association shall have the power to:

8.5 (1) adopt, amend and revoke rules and regulations not inconsistent with the articles of
8.6 incorporation, bylaws and declaration, as follows: (i) regulating the use of the common
8.7 elements; (ii) regulating the use of the units, and conduct of unit occupants, which may
8.8 jeopardize the health, safety or welfare of other occupants, which involves noise or other
8.9 disturbing activity, or which may damage the common elements or other units; (iii) regulating
8.10 or prohibiting animals; (iv) regulating changes in the appearance of the common elements
8.11 and conduct which may damage the common interest community; (v) regulating the exterior
8.12 appearance of the common interest community, including, for example, balconies and patios,
8.13 window treatments, and signs and other displays, regardless of whether inside a unit; (vi)
8.14 implementing the articles of incorporation, declaration and bylaws, and exercising the
8.15 powers granted by this section; and (vii) otherwise facilitating the operation of the common
8.16 interest community;

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

8.19 (3) hire and discharge managing agents and other employees, agents, and independent
8.20 contractors;

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

8.25 (5) make contracts and incur liabilities;

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

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

8.30 (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to
8.31 real estate or personal property, but (i) common elements in a condominium or planned
8.32 community may be conveyed or subjected to a security interest only pursuant to section

9.1 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative
9.2 may be subjected to a security interest, only pursuant to section 515B.3-112;

9.3 (9) grant or amend easements for public utilities, public rights-of-way or other public
9.4 purposes, and cable television or other communications, through, over or under the common
9.5 elements; grant or amend easements, leases, or licenses to unit owners for purposes authorized
9.6 by the declaration; and, subject to approval by a vote of unit owners other than declarant
9.7 or its affiliates, grant or amend other easements, leases, and licenses through, over or under
9.8 the common elements;

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

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

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

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

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

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

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

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

9.30 (c) Notwithstanding subsection (a), powers exercised under this section must comply
9.31 with section 500.215.

10.1 (d) Notwithstanding subsection (a)(4) or any other provision of this chapter, the
10.2 association, before instituting litigation or arbitration involving construction defect claims
10.3 against a development party, shall:

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

10.10 (2) obtain the approval of owners of units to which a majority of the total votes in the
10.11 association are allocated, excluding votes allocated to units owned by a declarant or an
10.12 affiliate of a declarant. The association may obtain the required approval by a vote of the
10.13 members at any annual or special meeting of the members or, if authorized by the statute
10.14 under which the association is created and taken in compliance with that statute, by a vote
10.15 of the members taken by electronic means or by mailed ballots. The provisions of section
10.16 515B.3-110(c) also apply to any vote taken by electronic means or by mailed ballots. Proxies
10.17 may not be used in any vote taken pursuant to this paragraph unless the unit owner gives
10.18 the proxy after receipt of the notice required by subsection (d)(1) and the proxy expressly
10.19 references such notice.

10.20 (e) The association may intervene in a litigation or arbitration involving a construction
10.21 defect claim or assert a construction defect claim as a counterclaim, crossclaim, or third-party
10.22 claim before complying with subsections (d)(1) and (d)(2) but the association's complaint
10.23 in an intervention, counterclaim, crossclaim, or third-party claim shall be dismissed without
10.24 prejudice unless the association has complied with the requirements of subsection (d) within
10.25 75 days of the association's commencement of the complaint in an intervention or the
10.26 assertion of the counterclaim, crossclaim, or third-party claim.

10.27 Sec. 3. Minnesota Statutes 2016, section 515B.3-107, is amended to read:

10.28 **515B.3-107 UPKEEP OF COMMON INTEREST COMMUNITY.**

10.29 (a) Except to the extent provided by the declaration, this subsection or section
10.30 515B.3-113, the association is responsible for the maintenance, repair and replacement of
10.31 the common elements, and each unit owner is responsible for the maintenance, repair and
10.32 replacement of the unit owner's unit. Damage to the common elements or any unit as a result
10.33 of the acts or omissions of a unit owner or the association, including damage resulting from
10.34 the unit owner's or association's lack of maintenance or failure to perform necessary repairs

11.1 or replacement, is the responsibility of the person unit owner or association responsible for
11.2 causing the damage, or whose agents or invitees caused the damage.

11.3 (b) The association's board of directors shall prepare and approve a written preventative
11.4 maintenance plan and maintenance schedule for the common elements. The association
11.5 shall follow the approved preventative maintenance plan. The association's board may
11.6 amend, modify, or replace an approved preventative maintenance plan or an approved
11.7 maintenance schedule from time to time. The association must provide all unit owners with
11.8 a paper copy, electronic copy, or electronic access to the preventative maintenance plan,
11.9 the maintenance schedule, and any amendments or modifications to or replacements of the
11.10 preventative maintenance plan and the maintenance schedule. If a common interest
11.11 community was created on or before August 1, 2017, the association's board of directors
11.12 shall have until January 1, 2019, to comply with the requirements of this subsection.

11.13 ~~(b)~~ (c) The association shall have access through and into each unit for purposes of
11.14 performing maintenance, repair or replacement for which the association may be responsible.
11.15 The association and any public safety personnel shall also have access for purposes of
11.16 abating or correcting any condition in the unit which violates any governmental law,
11.17 ordinance or regulation, which may cause material damage to or jeopardize the safety of
11.18 the common interest community, or which may constitute a health or safety hazard for
11.19 occupants of units.

11.20 ~~(e)~~ (d) Neither the association, nor any unit owner other than the declarant or its affiliates,
11.21 is subject to a claim for payment of expenses incurred in connection with any additional
11.22 real estate.

11.23 Sec. 4. Minnesota Statutes 2016, section 515B.3-111, is amended to read:

11.24 **515B.3-111 TORT AND CONTRACT LIABILITY.**

11.25 (a) Neither the association nor any unit owner except the declarant is liable for that
11.26 declarant's torts in connection with any part of the common interest community. An action
11.27 alleging a tort or contract violation by the association shall not be brought against a unit
11.28 owner solely by reason of ownership. If the tort or contract violation occurred during any
11.29 period of declarant control and the association or a unit owner gives the declarant reasonable
11.30 notice of and an opportunity to defend against the action, the declarant who then controlled
11.31 the association is liable to the association or to any unit owner for (i) all losses not covered
11.32 by insurance suffered by the association or that unit owner, and (ii) all costs that the
11.33 association would not have incurred but for the tort or contract violation.

12.1 (b) Whenever the declarant is liable to the association or a unit owner under this section,
12.2 the declarant is also liable for all expenses of litigation, including reasonable attorney's fees,
12.3 incurred by the association or unit owner. Notwithstanding the foregoing, the declarant is
12.4 not liable under this section for attorney's fees or other expenses of litigation related to
12.5 construction defect claims brought by the association or a unit owner. Any statute of
12.6 limitation affecting a right of action under this section is tolled until the period of declarant
12.7 control terminates. A unit owner is not precluded from maintaining an action contemplated
12.8 by this section because of being a unit owner or an officer or director of the association.

12.9 (c) Except as provided in subsections (a) and (b) with respect to a declarant, no unit
12.10 owner shall have tort liability arising out of ownership of the common elements if the
12.11 association has liability insurance coverage on the occurrence in an amount not less than
12.12 \$1,000,000.

12.13 Sec. 5. Minnesota Statutes 2016, section 515B.4-1021, is amended to read:

12.14 **515B.4-1021 DISCLOSURE STATEMENT; GENERAL PROVISIONS; CIC**
12.15 **CREATED ON OR AFTER AUGUST 1, 2010.**

12.16 (a) A disclosure statement shall fully and accurately disclose:

12.17 (1) the name and, if available, the number of the common interest community;

12.18 (2) the name and principal address of each declarant holding any special declarant rights;
12.19 a description of the special declarant rights held by each declarant; a description of the units
12.20 or additional real estate to which the respective special declarant rights apply; and a copy
12.21 of any recorded transfer of special declarant rights pursuant to section 515B.3-104(a), or
12.22 any instrument recorded pursuant to section 515B.3-104(b), (g), or (h);

12.23 (3) the total number of units which all declarants have the right to include in the common
12.24 interest community and a statement that the common interest community is either a
12.25 condominium, cooperative, or planned community;

12.26 (4) a general description of the common interest community, including, at a minimum,
12.27 (i) the number of buildings, (ii) the number of dwellings per building, (iii) the type of
12.28 construction, (iv) whether the common interest community involves new construction or
12.29 rehabilitation, (v) whether any building was wholly or partially occupied, for any purpose,
12.30 before it was added to the common interest community, and the nature of the occupancy,
12.31 (vi) a general description of any roads, trails, or utilities that are located on the common
12.32 elements and that the association or master association will be required to maintain, ~~and~~

13.1 (vii) a description of any declarant licensing rights under section 515B.2-109(e), and (viii)
13.2 the initial maintenance plan and initial maintenance schedule under section 515B.3-107(b);

13.3 (5) declarant's schedule of commencement and completion of construction of any
13.4 buildings and other improvements that the declarant is obligated to build pursuant to section
13.5 515B.4-117;

13.6 (6) any expenses or services, not reflected in the budget, that the declarant pays or
13.7 provides, which may become a common expense; the projected common expense attributable
13.8 to each of those expenses or services; a description of any alternate common expense plan
13.9 under section 515B.3-115(a)(2)(i); and, if the declaration provides for an alternate common
13.10 expense plan, either (i) a statement that the alternate common expense plan will have no
13.11 effect on the level of services or amenities anticipated by the association's budget or disclosed
13.12 in the disclosure statement, or (ii) a statement describing how the services or amenities may
13.13 be affected;

13.14 (7) any initial or special fee due from the purchaser to the declarant or the association
13.15 at closing, together with a description of the purpose and method of calculating the fee;

13.16 (8) identification of any liens, defects, or encumbrances which will continue to affect
13.17 the title to a unit or to any real property owned by the association after the contemplated
13.18 conveyance;

13.19 (9) a description of any financing offered or arranged by the declarant;

13.20 (10) a statement as to whether application has been made for any project approvals for
13.21 the common interest community from the Federal National Mortgage Association (FNMA),
13.22 Federal Home Loan Mortgage Corporation (FHLMC), Department of Housing and Urban
13.23 Development (HUD), or Department of Veterans Affairs (VA), and which, if any, such
13.24 final approvals have been received;

13.25 (11) the terms of any warranties provided by the declarant, including copies of sections
13.26 515B.4-112 to 515B.4-115, and any other applicable statutory warranties, and a statement
13.27 of any limitations on the enforcement of the applicable warranties or on damages;

13.28 (12) a statement that:

13.29 (i) within ten days after the receipt of a disclosure statement, a purchaser may cancel
13.30 any contract for the purchase of a unit from a declarant; provided, that the right to cancel
13.31 terminates upon the purchaser's voluntary acceptance of a conveyance of the unit from the
13.32 declarant or by the purchaser agreeing to modify or waive the right to cancel in the manner
13.33 provided by section 515B.4-106(a);

14.1 (ii) if a purchaser receives a disclosure statement more than ten days before signing a
14.2 purchase agreement, the purchaser cannot cancel the purchase agreement; and

14.3 (iii) if a declarant obligated to deliver a disclosure statement fails to deliver a disclosure
14.4 statement which substantially complies with this chapter to a purchaser to whom a unit is
14.5 conveyed, the declarant shall be liable to the purchaser as provided in section 515B.4-106(d);

14.6 (13) a statement disclosing to the extent of the declarant's or an affiliate of a declarant's
14.7 actual knowledge, after reasonable inquiry, any unsatisfied judgments or lawsuits to which
14.8 the association is a party, and the status of those lawsuits which are material to the common
14.9 interest community or the unit being purchased;

14.10 (14) a statement (i) describing the conditions under which earnest money will be held
14.11 in and disbursed from the escrow account, as set forth in section 515B.4-109, (ii) that the
14.12 earnest money will be returned to the purchaser if the purchaser cancels the contract pursuant
14.13 to section 515B.4-106, and (iii) setting forth the name and address of the escrow agent;

14.14 (15) a detailed description of the insurance coverage provided by the association for the
14.15 benefit of unit owners, including a statement as to which, if any, of the items referred to in
14.16 section 515B.3-113(b), are insured by the association;

14.17 (16) any current or expected fees or charges, other than assessments for common
14.18 expenses, to be paid by unit owners for the use of the common elements or any other
14.19 improvements or facilities;

14.20 (17) the financial arrangements, including any contingencies, which have been made to
14.21 provide for completion of all improvements that the declarant is obligated to build pursuant
14.22 to section 515B.4-118, or a statement that no such arrangements have been made;

14.23 (18) in a cooperative:

14.24 (i) whether the unit owners will be entitled, for federal and state tax purposes, to deduct
14.25 payments made by the association for real estate taxes and interest paid to the holder of a
14.26 security interest encumbering the cooperative;

14.27 (ii) a statement as to the effect on the unit owners if the association fails to pay real estate
14.28 taxes or payments due the holder of a security interest encumbering the cooperative; and

14.29 (iii) the principal amount and a general description of the terms of any blanket mortgage,
14.30 contract for deed, or other blanket security instrument encumbering the cooperative property;

14.31 (19) a statement:

15.1 (i) that real estate taxes for the unit or any real property owned by the association are
15.2 not delinquent or, if there are delinquent real estate taxes, describing the property for which
15.3 the taxes are delinquent, stating the amount of the delinquent taxes, interest, and penalties,
15.4 and stating the years for which taxes are delinquent; and

15.5 (ii) setting forth the amount of real estate taxes, including the amount of any special
15.6 assessment certified for payment with the real estate taxes, due and payable with respect to
15.7 the unit in the year in which the disclosure statement is given, if real estate taxes have been
15.8 separately assessed against the unit;

15.9 (20) if the unit or other parcel of real estate being purchased is or may be subject to a
15.10 master declaration at the time of the conveyance from the declarant to the purchaser, a
15.11 statement to that effect, and all of the following information with respect to the master
15.12 association:

15.13 (i) copies of the following documents (which may be in proposed form if the master
15.14 declaration has not been recorded): the master declaration, the articles of incorporation,
15.15 bylaws, and rules and regulations for the master association, together with any amendments
15.16 thereto;

15.17 (ii) the name and address of the master developer, and the name, address, and general
15.18 description of the master association, including a general description of any other association,
15.19 unit owners, or other persons which are or may become members;

15.20 (iii) a description of any nonresidential use permitted on any property subject to the
15.21 master declaration;

15.22 (iv) a statement as to the estimated maximum number of associations, unit owners, or
15.23 other persons which may become members of the master association, and a description of
15.24 any period of control of the master association and rights to appoint master association
15.25 directors by a master developer or other person pursuant to section 515B.2-121(c);

15.26 (v) a description of any facilities intended for the benefit of the members of the master
15.27 association and not located on property owned or controlled by a member of the master
15.28 association;

15.29 (vi) the financial arrangements, including any contingencies, which have been made to
15.30 provide for completion of the facilities referred to in subsection (v), or a statement that no
15.31 arrangements have been made;

15.32 (vii) any current balance sheet of the master association and a projected or current annual
15.33 budget, as applicable, which budget shall include with respect to the master association

16.1 those items in paragraph (23), clauses (i) through (iii), and the projected monthly or other
16.2 periodic common expense assessment payment for each type of unit, lot, or other parcel of
16.3 real estate which is or is planned to be subject to assessment;

16.4 (viii) a description of any expenses or services not reflected in the budget, paid for or
16.5 provided by a master developer or another person executing the master declaration, which
16.6 may become an expense of the master association in the future;

16.7 (ix) a description of any powers delegated to and accepted by the master association
16.8 pursuant to section 515B.2-121(e)(2);

16.9 (x) identification of any liens, defects, or encumbrances that will continue to affect title
16.10 to property owned or operated by the master association for the benefit of its members;

16.11 (xi) the terms of any warranties provided by any person for construction of facilities in
16.12 which the members of the master association have or may have an interest, and any known
16.13 defects in the facilities which would violate the standards described in section
16.14 515B.4-113(b)(2);

16.15 (xii) a statement disclosing, after inquiry of the master association, any unsatisfied
16.16 judgments or lawsuits to which the master association is a party, and the status of those
16.17 lawsuits which are material to the master association;

16.18 (xiii) a description of any insurance coverage provided for the benefit of its members
16.19 by the master association; and

16.20 (xiv) any current or expected fees or charges, other than assessments by the master
16.21 association, to be paid by members of the master association for the use of any facilities
16.22 intended for the benefit of the members;

16.23 (21) a statement as to whether the unit will be substantially completed at the time of
16.24 conveyance to a purchaser, and, if not substantially completed, who is responsible to complete
16.25 and pay for the construction of the unit;

16.26 (22) copies of the following documents (which may be in proposed form if the declaration
16.27 has not been recorded): the declaration and any supplemental declaration, and any
16.28 amendments thereto (exclusive of the CIC plat); any other recorded covenants, conditions,
16.29 restrictions, and reservations affecting the common interest community; the articles of
16.30 incorporation, bylaws, and any rules or regulations of the association; the names of the
16.31 current members of the association's board of directors; any agreement excluding or
16.32 modifying any implied warranties; any agreement reducing the statute of limitations for the
16.33 enforcement of warranties; any contracts or leases to be signed by the purchaser at closing;

17.1 and a description of any material contracts, leases, or other agreements affecting the common
17.2 interest community; and

17.3 (23) a balance sheet for the association, following the creation of the association, current
17.4 within 90 days; a projected annual budget for the association; and a statement identifying
17.5 the party responsible for the preparation of the budget. The budget shall assume that all
17.6 units intended to be included in the common interest community, based upon the declarant's
17.7 good faith estimate, have been subjected to the declaration; provided, that additional budget
17.8 portrayals based upon a lesser number of units are permitted. The budget shall include,
17.9 without limitation:

17.10 (i) a statement of the amount included in the budget as a reserve for replacement, the
17.11 components of the common interest community for which the reserves are budgeted, and
17.12 the amounts of the reserves, if any, that are allocated for the replacement of each of those
17.13 components;

17.14 (ii) a statement of any other reserves;

17.15 (iii) the projected common expense for each category of expenditures for the association;

17.16 (iv) the projected monthly common expense assessment for each type of unit; ~~and~~

17.17 (v) a statement as to the components of the common interest community whose
17.18 replacement will be funded by assessments under section 515B.3-115(c) or (e), rather than
17.19 by replacement reserves as approved pursuant to section 515B.3-114(a). If, based upon the
17.20 association's then-current budget, the monthly common expense assessment for the unit at
17.21 the time of conveyance to the purchaser is anticipated to exceed the monthly assessment
17.22 stated in the budget, a statement to such effect shall be included.

17.23 (b) A declarant shall promptly amend the disclosure statement to reflect any material
17.24 change in the information required by this chapter.

17.25 (c) The master association, within ten days after a request by a declarant, a holder of
17.26 declarant rights, or a buyer referred to in section 515B.4-101(e), or the authorized
17.27 representative of any of them, shall furnish the information required to be provided by
17.28 subsection (a)(20). A declarant or other person who provides information pursuant to
17.29 subsection (a)(20), is not liable to the buyer for any erroneous information if the declarant
17.30 or other person: (i) is not an affiliate of or related in any way to a person authorized to
17.31 appoint the master association board pursuant to section 515B.2-121(c)(3), and (ii) has no
17.32 actual knowledge that the information is incorrect.

18.1 (d) This section applies only to common interest communities created on or after August
18.2 1, 2010.

18.3 Sec. 6. Minnesota Statutes 2016, section 515B.4-113, is amended to read:

18.4 **515B.4-113 IMPLIED WARRANTIES.**

18.5 (a) A declarant warrants to a purchaser that a unit will be in at least as good condition
18.6 at the earlier of the time of the conveyance or delivery of possession as it was at the time
18.7 of contracting, reasonable wear and tear excepted.

18.8 (b) A declarant warrants to a purchaser that:

18.9 (1) a unit and the common elements in the common interest community are suitable for
18.10 the ordinary uses of real estate of its type; and

18.11 (2) any improvements subject to use rights by the purchaser, made or contracted for by
18.12 the declarant, or made by any person in contemplation of the creation of the common interest
18.13 community, will be (i) free from defective materials and (ii) constructed in accordance with
18.14 applicable law, according to sound engineering and construction standards, and in a
18.15 workmanlike manner.

18.16 (c) In addition, a declarant warrants to a purchaser of a unit which under the declaration
18.17 is available for residential use that the residential use will not violate applicable law at the
18.18 earlier of the time of conveyance or delivery of possession.

18.19 (d) Warranties imposed by this section may be excluded or modified only as specified
18.20 in section 515B.4-114.

18.21 (e) For purposes of this section, improvements made or contracted for by an affiliate of
18.22 a declarant are made or contracted for by the declarant.

18.23 (f) Any conveyance of a unit transfers to the purchaser all implied warranties.

18.24 (g) This section does not in any manner abrogate the provisions of chapter 327A relating
18.25 to statutory warranties for housing, or affect any other cause of action under a statute or the
18.26 common law.

18.27 (h) A development party shall not have liability under this section for loss or damage
18.28 caused by the failure of the association or a unit owner to comply with obligations imposed
18.29 by section 515B.3-107.

19.1 Sec. 7. Minnesota Statutes 2016, section 515B.4-116, is amended to read:

19.2 **515B.4-116 RIGHTS OF ACTION; ATTORNEY'S FEES.**

19.3 (a) In addition to any other rights to recover damages, attorney's fees, costs or expenses,
19.4 whether authorized by this chapter or otherwise, if a declarant, an association, or any other
19.5 person violates any provision of this chapter, or any provision of the declaration, bylaws,
19.6 or rules and regulations any person or class of persons adversely affected by the failure to
19.7 comply has a claim for appropriate relief. Subject to the requirements of section 515B.3-102,
19.8 the association shall have standing to pursue claims on behalf of the unit owners of two or
19.9 more units.

19.10 (b) The court may award reasonable attorney's fees and costs of litigation to the prevailing
19.11 party. Punitive damages may be awarded for a willful failure to comply. This subsection
19.12 does not apply to litigation or arbitration involving construction defect claims.

19.13 (c) As a condition precedent to any construction defect claim, the parties to the claim
19.14 must submit the matter to mediation before a mutually agreeable neutral third party. If the
19.15 parties are not able to agree on a neutral third-party mediator, the parties may petition the
19.16 district court in the jurisdiction in which the common interest community is located to
19.17 appoint a mediator. The applicable statute of limitations and statute of repose for an action
19.18 based on breach of a warranty imposed by this section, or any other action in contract, tort,
19.19 or other law for any injury to real or personal property or bodily injury or wrongful death
19.20 arising out of the alleged construction defect, is tolled from the date that any party makes
19.21 a written demand for mediation under this section until the latest of the following:

19.22 (1) five business days after mediation is completed; or

19.23 (2) 180 days.

19.24 Notwithstanding the foregoing, mediation shall not be required prior to commencement
19.25 of a construction defect claim if the parties have completed home warranty dispute resolution
19.26 under section 327A.051.

19.27 ~~(e)~~ (d) The remedies provided for under this chapter are not exclusive and do not abrogate
19.28 any remedies under other statutes or the common law, notwithstanding whether those
19.29 remedies are referred to in this chapter.

19.30 Sec. 8. **EFFECTIVE DATE.**

19.31 Except as otherwise provided in section 3, this act is effective August 1, 2017, and
19.32 applies to construction defect claims commenced on or after that date.