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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4199

03/05/2020 Authored by Sandell, Elkins and Huot
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to real property; creating an Office of Ombudsperson for Common Interest
1.3 Communities; creating a common interest community court calendar program;
1.4 providing for resolution of common interest community disputes; requiring
1.5 alternative dispute resolution in certain cases; providing for recovery of attorney
1.6 fees; imposing fees and appropriating money; amending Minnesota Statutes 2018,
1.7 sections 515B.3-106; 515B.4-116; proposing coding for new law in Minnesota
1.8 Statutes, chapters 45; 484; 515B.

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

1.10 Section 1. [45.0136] OFFICE OF OMBUDSPERSON FOR COMMON INTEREST
1.11 COMMUNITIES.

1.12 Subdivision 1. Creation. The commissioner shall establish a common interest community
1.13 ombudsperson office with the powers and duties prescribed in this section. The commissioner
1.14 shall appoint an ombudsperson who is an attorney and has experience with chapter 515B
1.15 (Minnesota Common Interest Ownership Act).

1.16 Subd. 2. Duties. The common interest community ombudsperson shall:

1.17 (1) assist unit owners in understanding their rights and responsibilities under the laws
1.18 governing common interest communities and their governing documents;

1.19 (2) assist common interest community associations and boards in carrying out their
1.20 duties;

1.21 (3) answer inquiries from members of the public regarding common interest communities;

1.22 (4) when appropriate, investigate disputes arising under chapter 515B and governing
1.23 documents, assist in resolving disputes, and provide advisory opinions regarding the rights
1.24 and responsibilities of the parties; and

2.1 (5) provide referrals to public and private agencies offering dispute resolution services.

2.2 **Sec. 2. [45.0137] COMMISSIONER TO COLLECT FEES; APPROPRIATION.**

2.3 By July 1 of each year, the commissioner shall establish and collect a fee from each
 2.4 association incorporated pursuant to section 515B.3-101. The fee under this section must
 2.5 be based on the number of unit owners in the common interest community but in no case
 2.6 shall the annual fee be less than \$..... Fees due under this section are subject to a
 2.7 percent late fee if not received by the commissioner by July 1. Fees collected under this
 2.8 section are to be deposited in the state treasury and credited to a common interest community
 2.9 ombudsperson account in the special revenue fund and are appropriated to the commissioner
 2.10 for the operation of the office under section 45.0136.

2.11 **Sec. 3. [484.016] COMMON INTEREST COMMUNITY CALENDAR PROGRAM.**

2.12 Subdivision 1. **Establishment; jurisdiction.** (a) A program is established in the Second
 2.13 and Fourth Judicial Districts to hear and determine matters related to disputes involving
 2.14 rights, duties, or liabilities of unit owners and associations under chapter 515B (Minnesota
 2.15 Common Interest Ownership Act) and governing documents of a common interest community
 2.16 or association.

2.17 (b) Outside the Second and Fourth Judicial Districts, a district court may establish the
 2.18 program described in paragraph (a) in counties that it specifies in the district.

2.19 Subd. 2. **Referee.** (a) The chief judge of the district court may appoint a referee for the
 2.20 common interest community calendar program. The referee must be learned in the law. The
 2.21 referee must be compensated according to the same scale used for other referees in the
 2.22 district court. Section 484.70, subdivision 6, applies to the program.

2.23 (b) The common interest community calendar program referee shall:

2.24 (1) hear and report all matters within the jurisdiction of the program and as may be
 2.25 directed to the referee by the chief judge; and

2.26 (2) recommend findings of fact, conclusions of law, temporary and interim orders, and
 2.27 final orders for judgment.

2.28 Recommended orders and findings of the referee are subject to confirmation by a judge.

2.29 Subd. 3. **Transmittal of court file; confirmation.** Upon the conclusion of the hearing
 2.30 in each case, the referee shall transmit the court file and the referee's recommended findings
 2.31 and orders in writing to a district court judge. The recommended findings and orders of the

3.1 referee become the findings and orders of the court when confirmed by the district court
3.2 judge. The order of the court is proof of the confirmation.

3.3 Subd. 4. **Review of referee orders.** Review of a recommended order or finding of the
3.4 referee by a district court judge may be had by notice served and filed within ten days of
3.5 effective notice of the recommended order or finding. The notice of review must specify
3.6 the grounds for the review and the specific provisions of the recommended findings or
3.7 orders disputed. Upon receipt of the notice of review, the district court judge shall set a time
3.8 and place for the review hearing.

3.9 Subd. 5. **Procedures; filing fee.** (a) The chief judge of the district must establish
3.10 simplified procedures for implementation of the program, including designation of a location
3.11 for the hearings. The chief judge may also appoint other staff as necessary for the program.

3.12 (b) The filing fee for actions governed by this section is the same as the filing fee for
3.13 conciliation court actions under section 357.022.

3.14 Sec. 4. Minnesota Statutes 2018, section 515B.3-106, is amended to read:

3.15 **515B.3-106 BYLAWS; ANNUAL REPORT.**

3.16 (a) A common interest community shall have bylaws which comply with this chapter
3.17 and the statute under which the association is incorporated. The bylaws and any amendments
3.18 may be recorded, but need not be recorded to be effective unless so provided in the bylaws.

3.19 (b) The bylaws shall provide that, in addition to any statutory requirements:

3.20 (1) A meeting of the members shall be held at least once each year, and a specified
3.21 officer of the association shall give notice of the meeting as provided in section 515B.3-108.

3.22 (2) An annual report shall be prepared by the association and a copy of the report shall
3.23 be provided to each unit owner at or prior to the annual meeting.

3.24 (c) The annual report shall contain at a minimum:

3.25 (1) a statement of any capital expenditures in excess of two percent of the current budget
3.26 or \$5,000, whichever is greater, approved by the association for the current fiscal year or
3.27 succeeding two fiscal years;

3.28 (2) a statement of the association's total replacement reserves, the components of the
3.29 common interest community for which the reserves are set aside, and the amounts of the
3.30 reserves, if any, that the board has allocated for the replacement of each of those components;

4.1 (3) a copy of the statement of revenues and expenses for the association's last fiscal year,
4.2 and a balance sheet as of the end of said fiscal year;

4.3 (4) a statement of the status of any pending litigation or judgments to which the
4.4 association is a party;

4.5 (5) a detailed description of the insurance coverage provided by the association including
4.6 a statement as to which, if any, of the items referred to in section 515B.3-113, subsection
4.7 (b), are insured by the association; and

4.8 (6) a statement of the total past due assessments on all units, current as of not more than
4.9 60 days prior to the date of the meeting.

4.10 (d) The annual report must be accompanied by:

4.11 (1) a description of a dispute resolution procedure established by the association under
4.12 section 515B.3-122 or, if a procedure is not established, a description of the meet and confer
4.13 process under section 515B.3-123; and

4.14 (2) a summary of the alternative dispute resolution requirements of section 515B.3-124
4.15 that includes the following statement: "Failure of a unit owner to comply with the alternative
4.16 dispute resolution requirements of Minnesota Statutes, section 515B.3-124, may result in
4.17 the loss of the right to sue the association or another unit owner for enforcement of applicable
4.18 law or governing documents."

4.19 **Sec. 5. [515B.3-122] DISPUTE RESOLUTION PROCEDURE.**

4.20 (a) This section applies to a dispute between an association and a unit owner involving
4.21 their rights, duties, or liabilities under this chapter or under the governing documents of the
4.22 common interest community or association. This section supplements, and does not replace,
4.23 section 515B.3-124, relating to alternative dispute resolution as a prerequisite to an
4.24 enforcement action.

4.25 (b) An association shall establish a fair, reasonable, and expeditious procedure for
4.26 resolving a dispute within the scope of this section. In developing a procedure, an association
4.27 shall make maximum, reasonable use of available local dispute resolution programs involving
4.28 a neutral third party, including community dispute resolution programs under chapter 494
4.29 and other low-cost mediation programs such as those listed on the Internet websites of the
4.30 Department of Consumer Affairs and the United States Department of Housing and Urban
4.31 Development. If an association does not establish a procedure for resolving a dispute within
4.32 the scope of this section, the process under section 515B.3-123 applies.

5.1 (c) At a minimum, a procedure established under this section must satisfy the following
5.2 requirements:

5.3 (1) the procedure may be requested in writing by either party to the dispute;

5.4 (2) the procedure must provide for prompt deadlines and state the maximum time for
5.5 the association to act on a request for the procedure;

5.6 (3) if the procedure is requested by a unit owner, the association must participate;

5.7 (4) if the procedure is requested by the association, the unit owner may elect not to
5.8 participate;

5.9 (5) if the unit owner participates but the dispute is resolved other than by agreement of
5.10 the unit owner, the unit owner may appeal to the association's board;

5.11 (6) a resolution of a dispute agreed to and signed by the parties binds the parties and is
5.12 judicially enforceable;

5.13 (7) the procedure must include a means by which the unit owner and the association
5.14 may explain their positions; and

5.15 (8) a unit owner may not be charged a fee to participate in the procedure.

5.16 **Sec. 6. [515B.3-123] MEET AND CONFER PROCESS.**

5.17 (a) This section applies if an association does not otherwise establish a fair, reasonable,
5.18 and expeditious dispute resolution procedure under section 515B.3-122. Either party to a
5.19 dispute within the scope of section 515B.3-122 may request in writing that the other party
5.20 meet and confer in an effort to resolve the dispute. A unit owner may refuse a request to
5.21 meet and confer. The association may not refuse a request to meet and confer.

5.22 (b) The board shall designate a member of the board to meet and confer. The parties
5.23 shall meet promptly at a mutually convenient time and place, explain their positions to each
5.24 other, and confer in good faith in an effort to resolve the dispute.

5.25 (c) A resolution of the dispute agreed to and signed by the parties, including the board
5.26 designee acting on behalf of the association, binds the parties and is judicially enforceable
5.27 if the resolution is consistent with the authority granted by the board to its designee or is
5.28 ratified by the board.

5.29 (d) A unit owner may not be charged a fee to participate in the process.

6.1 Sec. 7. [515B.3-124] ALTERNATIVE DISPUTE RESOLUTION REQUIRED.

6.2 (a) For purposes of this section:

6.3 (1) "alternative dispute resolution" means mediation, arbitration, conciliation, or other
6.4 nonjudicial procedure that involves a neutral party in the decision-making process. The
6.5 form of alternative dispute resolution chosen under this section may be binding or nonbinding
6.6 with the consent of the parties; and

6.7 (2) "enforcement action" means a civil action or proceeding, other than a cross-complaint,
6.8 involving rights, duties, or liabilities under this chapter or the governing documents of a
6.9 common interest community or association.

6.10 (b) An association or unit owner may not commence an enforcement action in district
6.11 court unless the parties have endeavored to submit their dispute to alternative dispute
6.12 resolution under this section. This section applies only to an enforcement action that is
6.13 solely for declaratory or injunctive relief, or for that relief in conjunction with a claim for
6.14 monetary damages not in excess of the jurisdictional limits under section 491A.01. Except
6.15 as otherwise provided by law, this section does not apply to an assessment dispute that does
6.16 not involve an assessment for a fine or to an action to enforce an agreement under section
6.17 515B.3-122 or 515B.3-123.

6.18 (c) A party to a dispute may initiate the process required by this section by serving on
6.19 the other parties to the dispute a request for resolution. The request for resolution must
6.20 include:

6.21 (1) a brief description of the dispute;

6.22 (2) a request for alternative dispute resolution;

6.23 (3) a notice that the party receiving the request for resolution is required to respond
6.24 within 30 days of receipt or the request will be deemed rejected; and

6.25 (4) if the party on whom the request is served is a unit owner, a copy of this section.

6.26 Service of the request for resolution may be by personal delivery, first-class mail, express
6.27 mail, facsimile transmission, or other means reasonably calculated to provide the party on
6.28 whom the request is served actual notice of the request. A party on whom a request for
6.29 resolution is served has 30 days following service to accept or reject the request. If a party
6.30 does not accept the request within that period, the request is deemed rejected by the party.

6.31 (d) If the party on whom a request for resolution is served accepts the request, the parties
6.32 shall complete the alternative dispute resolution within 90 days after the party initiating the

7.1 request receives the acceptance, unless this period is extended by written stipulation signed
 7.2 by all parties. The costs of the alternative dispute resolution must be borne by the parties.

7.3 (e) The statute of limitations for commencing an enforcement action is tolled during the
 7.4 following periods:

7.5 (1) the period provided in subsection (c) for response to a request for resolution; and

7.6 (2) if the request for resolution is accepted, the period provided by subsection (d) for
 7.7 completion of alternative dispute resolution, including any extension of time stipulated to
 7.8 by the parties.

7.9 (f) A party commencing an enforcement action shall include and file with the initial
 7.10 pleading a certificate stating that one or more of the following conditions is satisfied:

7.11 (1) alternative dispute resolution has been completed in compliance with this section or
 7.12 a request for resolution was rejected by the other party;

7.13 (2) one of the other parties to the dispute did not accept the terms offered for alternative
 7.14 dispute resolution; or

7.15 (3) preliminary or temporary injunctive relief is necessary or there is an immediate threat
 7.16 of irreparable harm.

7.17 Failure to file a certificate is grounds for dismissal unless the court finds that dismissal of
 7.18 the action for failure to comply with this section would result in substantial prejudice to one
 7.19 of the parties.

7.20 (g) In an enforcement action in which fees and costs may be awarded pursuant to section
 7.21 515B.4-116, the court, in determining the amount of the award, may consider whether a
 7.22 party's refusal to participate in alternative dispute resolution before commencement of the
 7.23 action was reasonable.

7.24 Sec. 8. Minnesota Statutes 2018, section 515B.4-116, is amended to read:

7.25 **515B.4-116 RIGHTS OF ACTION; ATTORNEY'S FEES.**

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

8.1 (b) The court may award reasonable attorney's fees and costs of litigation to the prevailing
8.2 party. The court shall award reasonable attorney fees and costs to the prevailing party in an
8.3 action to enforce an agreement under section 515B.3-122 or 515B.3-123 or to a unit owner
8.4 who is the prevailing party in an action arising out of the failure of an association to comply
8.5 with section 515B.3-107, subsection (a). Punitive damages may be awarded for a willful
8.6 failure to comply.

8.7 (c) As a condition precedent to any construction defect claim, the parties to the claim
8.8 must submit the matter to mediation before a mutually agreeable neutral third party. For
8.9 the purposes of this section, mediation has the meaning given under the General Rules of
8.10 Practice, rule 114.02 (7). If the parties are not able to agree on a neutral third-party mediator
8.11 from the roster maintained by the Minnesota Supreme Court, the parties may petition the
8.12 district court in the jurisdiction in which the common interest community is located to
8.13 appoint a mediator. The applicable statute of limitations and statute of repose for an action
8.14 based on breach of a warranty imposed by this section, or any other action in contract, tort,
8.15 or other law for any injury to real or personal property or bodily injury or wrongful death
8.16 arising out of the alleged construction defect, is tolled from the date that any party makes
8.17 a written demand for mediation under this section until the latest of the following:

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

8.19 (2) 180 days.

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

8.23 (d) The remedies provided for under this chapter are not exclusive and do not abrogate
8.24 any remedies under other statutes or the common law, notwithstanding whether those
8.25 remedies are referred to in this chapter.