A bill for an act

relating to real property; amending the Minnesota Common Interest Ownership Act; making clarifying, conforming, and technical changes; amending Minnesota Statutes 2008, sections 515B.1-102; 515B.1-103; 515B.1-107; 515B.1-112; 515B.1-115; 515B.1-116; 515B.2-101; 515B.2-102; 515B.2-105; 515B.2-106; 515B.2-108; 515B.2-109; 515B.2-110; 515B.2-111; 515B.2-112; 515B.2-113; 515B.2-114; 515B.2-118; 515B.2-119; 515B.2-121; 515B.2-124; 515B.3-101; 515B.3-102; 515B.3-103; 515B.3-104; 515B.3-105; 515B.3-106; 515B.3-109; 515B.3-110; 515B.3-112; 515B.3-113; 515B.3-114; 515B.3-115; 515B.3-116; 515B.3-117; 515B.3-120; 515B.3-121; 515B.4-101; 515B.4-102; 515B.4-104; 515B.4-105; 515B.4-106; 515B.4-107; 515B.4-108; 515B.4-110; 515B.4-111; 515B.4-115; 515B.4-116; proposing coding for new law in Minnesota Statutes, chapter 515B.

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

ARTICLE 1

APPLICABILITY, DEFINITIONS, AND OTHER GENERAL PROVISIONS

Section 1. Minnesota Statutes 2008, section 515B.1-102, is amended to read:

515B.1-102 APPLICABILITY.

(a) Except as provided in this section, this chapter, and not chapters 515 and 515A, applies to all common interest communities created within this state on and after June 1, 1994.

(b) The applicability of this chapter to common interest communities created prior to June 1, 1994, shall be as follows:

(1) This chapter shall apply to condominiums created under chapter 515A with respect to events and circumstances occurring on and after June 1, 1994; provided (i) that this chapter shall not invalidate the declarations, bylaws or condominium plats of those condominiums, and (ii) that chapter 515A, and not this chapter, shall govern all rights and

obligations of a declarant of a condominium created under chapter 515A, and the rights and claims of unit owners against that declarant.

(2) The following sections in this chapter apply to condominiums created under chapter 515: 515B.1-104 (Variation by Agreement); 515B.1-105 (Separate Titles and Taxation); 515B.1-106 (Applicability of Local ~~Ordinances, Regulations, and Building Codes~~ Requirements); 515B.1-107 (Eminent Domain); 515B.1-108 (~~Supplemental General Principles of Law Applicable~~ This Chapter Prevails; Supplemental Law); 515B.1-109 (Construction Against Implicit Repeal); 515B.1-110 (Vacation of Abutting Publicly Dedicated Property); 515B.1-112 (Unconscionable Agreement or Term of Contract); 515B.1-113 (Obligation of Good Faith); 515B.1-114 (Remedies to be Liberally Administered); 515B.1-115 (Notice); 515B.1-116 (Recording); 515B.2-103 (Construction and Validity of Declaration and Bylaws); 515B.2-104 (Description of Units); 515B.2-108(d) (Allocation of Interests); 515B.2-109(c) (Common Elements and Limited Common Elements); 515B.2-112 (Subdivision, Combination, or Conversion of Units); 515B.2-113 (Alteration of Units); 515B.2-114 (Relocation of Boundaries Between Adjoining Units); 515B.2-115 (Minor Variations in Boundaries); 515B.2-118 (Amendment of Declaration); 515B.2-119 (Termination of Common Interest Community); 515B.3-102 (Powers of Unit Owners' Association); 515B.3-103(a), (b), and (g) (Board; Directors ~~and~~, Officers~~; Period of~~, and Declarant Control); 515B.3-107 (Upkeep of Common Interest Community); 515B.3-108 (Meetings); 515B.3-109 (Quorums); 515B.3-110 (Voting; Proxies); 515B.3-111 (Tort and Contract Liability); 515B.3-112 (Conveyance of, or ~~Encumbrance of~~ Creation of Security Interests in Common Elements); 515B.3-113 (Insurance); 515B.3-114 (Replacement Reserves~~; Surplus Funds~~); 515B.3-115(c), (e), (f), (g), (h), and (i) (Assessments for Common Expenses); 515B.3-116 (Lien for Assessments); 515B.3-117 (Other Liens); 515B.3-118 (Association Records); 515B.3-119 (Association as Trustee); 515B.3-121 (Accounting Controls); 515B.4-107 (Resale of Units); 515B.4-108 (Purchaser's Right to Cancel Resale); and 515B.4-116 (Rights of Action; Attorney's Fees). Section 515B.1-103 (Definitions) shall apply to the extent necessary in construing any of the sections referenced in this section. Sections 515B.1-105, 515B.1-106, 515B.1-107, 515B.1-116, 515B.2-103, 515B.2-104, 515B.2-118, 515B.3-102, 515B.3-110, 515B.3-111, 515B.3-113, 515B.3-116, 515B.3-117, 515B.3-118, 515B.3-121, 515B.4-107, 515B.4-108, and 515B.4-116 apply only with respect to events and circumstances occurring on and after June 1, 1994. All other sections referenced in this section apply only with respect to events and circumstances occurring after July 31, 1999. A section referenced in this section does not invalidate the declarations, bylaws or condominium plats of condominiums created before August 1,

1999. But all sections referenced in this section prevail over the declarations, bylaws, CIC plats, rules and regulations under them, of condominiums created before August 1, 1999, except to the extent that this chapter defers to the declarations, bylaws, CIC plats, or rules and regulations issued under them.

(3) This chapter shall not apply to cooperatives and planned communities created prior to June 1, 1994, or to planned communities that were created on or after June 1, 1994, and before August 1, 2006, and that consist of more than two but fewer than 13 units; except by election pursuant to subsection (d), and except that sections 515B.1-116, subsections (a), (c), (d), (e), (f), and (h), 515B.4-107, and 515B.4-108, apply to all planned communities and cooperatives regardless of when they are created, unless they are exempt under subsection (e).

(c) This chapter shall not invalidate any amendment to the declaration, bylaws or condominium plat of any condominium created under chapter 515 or 515A if the amendment was recorded before June 1, 1994. Any amendment recorded on or after June 1, 1994, shall be adopted in conformity with the procedures and requirements specified by those instruments and by this chapter. If the amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions contained in this chapter shall also apply to that person.

(d) Any condominium created under chapter 515, any planned community or cooperative which would be exempt from this chapter under subsection (e), or any planned community or cooperative created prior to June 1, 1994, or any planned community that was created on or after June 1, 1994, and prior to August 1, 2006, and that consists of more than two but fewer than 13 units, may elect to be subject to this chapter, as follows:

(1) The election shall be accomplished by recording a declaration or amended declaration, and a new or amended CIC plat where required, and by approving bylaws or amended bylaws, which conform to the requirements of this chapter, and which, in the case of amendments, are adopted in conformity with the procedures and requirements specified by the existing declaration and bylaws of the common interest community, and by any applicable statutes.

(2) In a condominium, the preexisting condominium plat shall be the CIC plat and an amended CIC plat shall be required only if the amended declaration or bylaws contain provisions inconsistent with the preexisting condominium plat. The condominium's CIC number shall be the apartment ownership number or condominium number originally assigned to it by the recording officer. In a cooperative in which the unit owners' interests are characterized as real estate, a CIC plat shall be required. In a planned community, the preexisting plat or registered land survey recorded pursuant to chapter 505, 508, or

508A, or the part of the plat or registered land survey upon which the common interest community is located, shall be the CIC plat.

(3) The amendment shall comply with section 515B.2-118(a)(3) and (c); except that the unanimous consent of the unit owners shall not be required for (i) a clarification of the unit boundary description if the clarified boundary description is substantially consistent with the preexisting CIC plat, or (ii) changes from common elements to limited common elements that occur by operation of section 515B.2-109(c) and (d).

(4) Except as permitted by paragraph (3), no declarant, affiliate of declarant, association, master association nor unit owner may acquire, increase, waive, reduce or revoke any previously existing warranty rights or causes of action that one of said persons has against any other of said persons by reason of exercising the right of election under this subsection.

(5) A common interest community which elects to be subject to this chapter may, as a part of the election process, change its form of ownership by complying with section 515B.2-123.

(e) Except as otherwise provided in this subsection, this chapter shall not apply, except by election pursuant to subsection (d), to the following:

(1) a planned community which consists of two units, which utilizes a CIC plat complying with section 515B.2-110(d)(1) and (2), which is not subject to any rights to subdivide or convert units or to add additional real estate, and which is not subject to a master association;

(2) a common interest community ~~where the units consist~~ that consists solely of platted lots or other separate parcels of real estate designed or utilized for detached single family dwellings or agricultural purposes, ~~and~~ with or without common property, where ~~the~~ no association or ~~a~~ master association has ~~no~~ an obligation to maintain any building containing a dwelling or any agricultural building located or to be located on such platted lots or parcels; except that section 515B.4-101(e) shall apply to the sale of such platted lots or parcels of real estate if the common interest community is or will be subject to a master declaration;

(3) a cooperative where, at the time of creation of the cooperative, the unit owners' interests in the dwellings as described in the declaration consist solely of proprietary leases having an unexpired term of fewer than 20 years, including renewal options;

(4) planned communities utilizing a CIC plat complying with section 515B.2-110(d)(1) and (2) and cooperatives, which are limited by the declaration to nonresidential ~~use~~ uses alone or in combination with residential rental uses in which individual dwellings do not constitute units or other separate parcels of real estate; or

(5) real estate subject only to an instrument or instruments filed primarily for the purpose of creating or modifying rights with respect to access, utilities, parking, ditches, drainage, or irrigation.

(f) Section 515B.4-101(e) applies to any platted lot or other parcel of real estate that is subject to a master declaration and is not subject to or is exempt from this chapter.

(g) Section 515B.1-106 shall apply to all common interest communities.

(h) The amendments in this act to the following sections apply only to common interest communities created on or after August 1, 2010: section 515B.1-103(33) and sections 515B.2-110, 515B.3-104, 515B.3-105, 515B.3-115, 515B.3-116, 515B.4-102, and 515B.4-115.

(i) Section 515B.3-114, as amended by this act, applies to common interest communities only for the association's fiscal years commencing on or after January 1, 2012.

Sec. 2. Minnesota Statutes 2008, section 515B.1-103, is amended to read:

515B.1-103 DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

(10) "Common interest community" or "CIC" means contiguous or noncontiguous real estate within Minnesota that is subject to an instrument which obligates persons owning a separately described parcel of the real estate, or occupying a part of the real estate pursuant to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of; or (iv) construction, maintenance, repair or replacement of improvements located on, one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies. Real estate which satisfies the definition of a common interest community is a common interest community whether or not it is subject to this chapter. Real estate subject to a master ~~association~~ declaration, regardless of when the master ~~association~~ declaration was ~~formed~~ recorded, shall not collectively constitute a separate common interest community unless so stated in the master declaration ~~recorded against the real estate pursuant to section 515B.2-121, subsection (f)(1)~~.

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

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

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

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

(15) "Declarant" means:

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

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

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

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

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

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

(20) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section ~~515B.2-102(d) or (f)~~ 515B.2-109(c) or (d) for the exclusive use of one or more but fewer than all of the units.

(21) "Master association" means an entity created on or after June 1, 1994, that directly or indirectly exercises any of the powers set forth in section 515B.3-102 on behalf

of one or more members described in section 515B.2-121(b), (i), (ii) or (iii), whether or not it also exercises those powers on behalf of one or more property owners' associations described in section 515B.2-121(b)(iv). A person (i) hired by an association to perform maintenance, repair, accounting, bookkeeping or management services, or (ii) granted authority under an instrument recorded primarily for the purpose of creating rights or obligations with respect to utilities, access, drainage, or recreational amenities, is not, solely by reason of that relationship, a master association.

(22) "Master declaration" means a written instrument, however named, (i) recorded on or after June 1, 1994, ~~against property subject to powers exercised by a master association~~ and (ii) complying with section 515B.2-121~~,~~ subsection ~~(f)(1)~~(e).

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

~~(23)~~ (24) "Period of declarant control" means the time period provided for in section 515B.3-103(c) during which the declarant may appoint and remove officers and directors of the association.

~~(24)~~ (25) "Person" means an individual, corporation, limited liability company, partnership, trustee under a trust, personal representative, guardian, conservator, government, governmental subdivision or agency, or other legal or commercial entity capable of holding title to real estate.

~~(25)~~ (26) "Planned community" means a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be a part of a planned community.

~~(26)~~ (27) "Proprietary lease" means an agreement with a cooperative association whereby a member of the association is entitled to exclusive possession of a unit in the cooperative.

~~(27)~~ (28) "Purchaser" means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than (i) a leasehold interest of less than 20 years, including renewal options, or (ii) a security interest.

~~(28)~~ (29) "Real estate" means any fee simple, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not described in the

contract of sale or instrument of conveyance. "Real estate" may include spaces with or without upper or lower boundaries, or spaces without physical boundaries.

~~(29)~~ (30) "Residential use" means use as a dwelling, whether primary, secondary or seasonal, but not transient use such as hotels or motels.

~~(30)~~ (31) "Secured party" means the person owning a security interest as defined in paragraph ~~(31)~~ (32).

~~(31)~~ (32) "Security interest" means a perfected interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a mortgagee's interest in a mortgage, a vendor's interest in a contract for deed, a lessor's interest in a lease intended as security, a holder's interest in a sheriff's certificate of sale during the period of redemption, an assignee's interest in an assignment of leases or rents intended as security, in a cooperative, a lender's interest in a ~~cooperative share loan~~ member's ownership interest in the association, a pledgee's interest in the pledge of an ownership interest, or any other interest intended as security for an obligation under a written agreement.

~~(32)~~ (33) "Special declarant rights" means rights reserved in the declaration for the benefit of a declarant ~~to~~ and expressly identified in the declaration as special declarant rights. Such special declarant rights may include but are not limited to the following:

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

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

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

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

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

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

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

~~(viii)~~ (v) to appoint or remove any officer or director of the association~~, or the master association where applicable,~~ during any period of declarant control~~.~~;

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

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

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

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

~~(33)~~ (34) "Time share" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with ~~an estate or~~ a fee title interest in ~~a~~ the common interest community or a specified portion thereof.

~~(34)~~ (35) "Unit" means a portion of a common interest community the boundaries of which are described in the common interest community's declaration and which is intended for separate ownership, or separate occupancy pursuant to a proprietary lease.

~~(35)~~ (36) "Unit identifier" means English letters or Arabic numerals, or a combination thereof, which identify only one unit in a common interest community and which meet the requirements of section 515B.2-104.

~~(36)~~ (37) "Unit owner" means a declarant or other person who owns a unit, a lessee under a proprietary lease, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a secured party. In a common interest community, the declarant is the unit owner of a unit until that unit has been conveyed to another person.

EFFECTIVE DATE. The amendment to section 515B.1-103(33) is effective August 1, 2010, and applies only to common interest communities created on or after that date.

Sec. 3. Minnesota Statutes 2008, section 515B.1-107, is amended to read:

515B.1-107 EMINENT DOMAIN.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any material purpose permitted by the declaration, the award shall compensate the unit owner and secured party in the unit as their interests may appear, whether or not any common element interest is acquired. Upon acquisition, unless the order or final

certificate otherwise provides, that unit's allocated interests are automatically reallocated among the remaining units in proportion to their respective allocated interests prior to the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the ~~allocations~~ reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award shall compensate the unit owner and secured party for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the order or final certificate otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. In an eminent domain proceeding which seeks to acquire a part of the common elements, jurisdiction may be acquired by service of process upon the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition and their secured parties, as their interests may appear or as provided by the declaration.

(d) In any eminent domain proceeding the units shall be treated as separate parcels of real estate for valuation purposes, regardless of the number of units subject to the proceeding.

(e) Any distribution to a unit owner from the proceeds of an eminent domain award shall be subject to any limitations imposed by the declaration or bylaws.

(f) The court order or final certificate containing the final awards shall be recorded in every county in which any portion of the common interest community is located.

Sec. 4. **[515B.1-1105] VACATION OF ABUTTING PUBLICLY DEDICATED PROPERTY.**

(a) When, by operation or presumption of law, all or any portion of vacated property, such as a street, alley, right-of-way, or other publicly dedicated area, accrues to the owner or owners of property subject to a declaration, such portion of the vacated property shall,

by operation of law and without any corresponding amendment to the declaration or the CIC plat, become subject to all of the terms and conditions of the declaration. Except as otherwise provided in an amendment to the declaration that is adopted in accordance with section 515B.2-118 and the declaration:

(1) if the vacated rights accrue to one of more unit owners in a planned community, the vacated property shall accrue to the unit or units owned by such unit owners, but the interests allocated to the units pursuant to section 515B.2-108 and the declaration shall not change as a result thereof; and

(2) if the vacated rights accrue to the unit owners in a condominium by reason of their allocated interests in the common elements, or to the association in its capacity as the owner of the common elements of a cooperative or a planned community, the vacated property shall be treated as a part of the common elements.

(b) At any time after the vacation the association may, but is not obligated to, amend the declaration or CIC plat to confirm the inclusion of the vacated property in the common interest community in accordance with section 515B.2-118 and the declaration.

Sec. 5. Minnesota Statutes 2008, section 515B.1-112, is amended to read:

515B.1-112 UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. For purposes of this section, a contract includes a declaration, master declaration, the articles of incorporation and bylaws of an association or master association, and a proprietary lease.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect the other party's interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;

(3) the effect and purpose of the contract or clause; and

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transaction, provided, that this factor shall not, of itself, render the contract unconscionable.

Sec. 6. Minnesota Statutes 2008, section 515B.1-115, is amended to read:

515B.1-115 NOTICE.

Except as otherwise stated in this chapter all notices required by this chapter shall be in writing and shall be effective (i) upon hand delivery, ~~or~~ (ii) upon mailing if properly addressed with postage prepaid and deposited in the United States mail, or (iii) when given in compliance with section 515B.3-110(c), with respect to matters covered by that section.

Sec. 7. Minnesota Statutes 2008, section 515B.1-116, is amended to read:

515B.1-116 RECORDING.

(a) A declaration, bylaws, a supplemental declaration, any amendment to a declaration, supplemental declaration or bylaws, and any other instrument affecting a common interest community shall be entitled to be recorded. In those counties which have a tract index, the county recorder shall enter the declaration in the tract index for each unit or other tract affected. The county recorder shall not enter the declaration in the tract index for lands described as additional real estate, unless such lands are added to the common interest community pursuant to section 515B.2-111. The registrar of titles shall file the declaration in accordance with section 508.351 or 508A.351. The registrar of titles shall not file the declaration upon certificates of title for lands described as additional real estate, unless such lands are added to the common interest community pursuant to section 515B.2-111.

(b) The recording officer shall upon request promptly assign a number (CIC number) to a common interest community to be formed or to a common interest community resulting from the merger of two or more common interest communities.

(c) Documents recorded pursuant to this chapter shall in the case of registered land be filed, and references to the recording of documents shall mean filed in the case of registered land.

(d) ~~Subject to any specific requirements of this chapter~~ Except as provided in section 515B.2-109, 515B.2-112, 515B.2-114, or 515B.2-124, if a recorded document relating to a common interest community or a master association purports to require a certain vote or signatures approving any restatement or amendment of the document by a certain number or percentage of unit owners or secured parties, and if the amendment or restatement is to be recorded, an affidavit of the president or secretary of the association stating that the required vote or signatures have been obtained shall be attached to the document to be recorded and shall constitute prima facie evidence of the representations contained therein.

(e) Except as permitted under this subsection, a recording officer shall not file or record a declaration creating a new common interest community, unless the county

treasurer has certified that the property taxes payable in the current year for the real estate included in the proposed common interest community have been paid. This certification is in addition to the certification for delinquent taxes required by section 272.12. In the case of preexisting common interest communities, the recording officer shall accept, file, and record the following instruments, without requiring a certification as to the current or delinquent taxes on any of the units in the common interest community: (i) a declaration subjecting the common interest community to this chapter; (ii) a declaration changing the form of a common interest community pursuant to section 515B.2-123; or (iii) an amendment to or restatement of the declaration, bylaws, or CIC plat. In order for an instrument to be accepted and recorded under the preceding sentence, the instrument must not create or change unit or common area boundaries.

ARTICLE 2

CREATION, ALTERATION AND TERMINATION

Section 1. Minnesota Statutes 2008, section 515B.2-101, is amended to read:

515B.2-101 CREATION OF COMMON INTEREST COMMUNITIES.

(a) On and after June 1, 1994, a common interest community subject to this chapter may be created only as follows:

(1) A condominium may be created only by recording a declaration.

(2) A cooperative may be created only by recording a declaration and by immediately thereafter recording a conveyance of the real estate subject to that declaration to the association.

(3) A planned community which includes common elements may be created only by ~~simultaneously~~ recording a declaration ~~and~~. The declarant shall, immediately thereafter, record a conveyance of the common elements subject to that declaration, other than common elements described in section 515B.2-109(c) and (d), to the association; provided, that a delay in or failure to record the conveyance shall have no effect on the validity of the common interest community.

(4) A planned community without common elements may be created only by recording a declaration.

(b) Except as otherwise ~~expressly~~ provided in this chapter, the declaration shall be executed by ~~all persons whose interests in~~ the owner of the real estate ~~will be conveyed to unit owners or to the association~~ subject to the declaration at the time the declaration is recorded, except vendors under contracts for deed, and by every lessor of a lease the expiration or termination of which will terminate the common interest community. The

declaration shall be recorded in every county in which any portion of the common interest community is located. Failure of any party not required to execute a declaration, but having a recorded interest in the ~~common interest community~~ real estate subject to the declaration at the time the declaration is recorded, to join in the declaration shall have no effect on the validity of the common interest community; provided that the party is not bound by the declaration ~~until that~~ unless the party (i) executes a recorded instrument that utilizes a legal description of part or all of the common interest community complying with section 515B.2-104, or (ii) otherwise acknowledges the existence of the common interest community in a recorded instrument.

(c) In a condominium, a planned community utilizing a CIC plat complying with section 515B.2-110(c), or a cooperative, where the unit boundaries are delineated by a structure, a declaration, or an amendment to a declaration adding units, shall not be recorded unless the structural components of the structures containing the units and the mechanical systems serving more than one unit, but not the units, are substantially completed, as evidenced by a recorded certificate executed by a registered engineer or architect.

(d) A project which (i) meets the definition of a "common interest community" in section 515B.1-103(10), (ii) is created after May 31, 1994, and (iii) is not exempt under section 515B.1-102(e), is subject to this chapter even if this or other sections of the chapter have not been complied with, and the declarant and all unit owners are bound by all requirements and obligations of this chapter.

(e) The association shall be incorporated pursuant to section 515B.3-101 and the CIC plat shall be recorded as and if required by section 515B.2-110.

Sec. 2. Minnesota Statutes 2008, section 515B.2-102, is amended to read:

515B.2-102 UNIT BOUNDARIES.

(a) The declaration shall describe the boundaries of the units as provided in section 515B.2-105(5). The boundaries need not be delineated by a physical structure. The unit may consist of noncontiguous portions of the common interest community.

(b) In a condominium, a cooperative, or a planned community utilizing a CIC plat complying with section 515B.2-110(c),

(1) except as the declaration otherwise provides, if the walls, floors, or ceilings of a unit are designated as its boundaries, then the boundaries shall be the interior, unfinished surfaces of the perimeter walls, floors, ceilings, doors, windows, and door and window frames of the unit~~.~~, all paneling, tiles, wallpaper, paint, floor covering, and any other finishing materials applied to the interior surfaces of the perimeter walls, floors or ceilings,

are a part of the unit, and all other portions of the perimeter walls, floors, ceilings, doors, windows, and door and window frames, are a part of the common elements~~.~~; and

(2) except in common interest communities created before August 1, 2010, and except in common interest communities in which all units are restricted to nonresidential use, if unit area or volume is used to allocate interests, the description of the unit boundaries for similar types of units, such as residential units, garage units, or storage units, shall be the same.

(c) In a planned community utilizing a CIC plat complying with section 515B.2-110(d)(1) and (2), except as the declaration otherwise provides, the unit boundaries shall be the lot lines designated on a plat recorded pursuant to chapter 505 or the tract boundaries designated on a registered land survey recorded pursuant to chapter 508 or 508A.

~~(d) If any chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column, or any other fixture serving fewer than all units lies partially within and partially outside of the boundaries of the unit or units served, any portion thereof serving only that unit or units is a limited common element allocated solely to that unit or units, and any portion thereof serving any portion of the common elements is a part of the common elements.~~

~~(e) Subject to subsection~~ (d) Except as provided in section 515B.2-109(c), all spaces, ~~interior partitions, and other~~ fixtures and improvements located wholly within the boundaries of a unit are a part of the unit.

~~(f) Improvements such as shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, perimeter doors and windows, and their frames, constructed as part of the original construction to serve a single unit, and authorized replacements and modifications thereof, if located wholly or partially outside the unit's boundaries, are limited common elements allocated exclusively to that unit.~~

Sec. 3. Minnesota Statutes 2008, section 515B.2-105, is amended to read:

515B.2-105 DECLARATION CONTENTS; ALL COMMON INTEREST COMMUNITIES.

(a) The declaration shall contain:

(1) the number of the common interest community, whether the common interest community is a condominium, planned community or cooperative, and the name of the common interest community, which shall appear at the top of the first page of the declaration in the following format:

Common Interest Community No. ....

(Type of Common Interest Community)

(Name of Common Interest Community)

DECLARATION

(2) a statement as to whether the common interest community is or is not subject to a master association;

(3) the name of the association, a statement that the association has been incorporated and a reference to the statute under which it was incorporated;

(4) a legally sufficient description of the real estate included in the common interest community, a statement identifying any appurtenant easement necessary for access to a public street or highway, and a general reference to any other appurtenant easements;

(5) a description of the boundaries of each unit created by the declaration and the unit's unit identifier;

(6) in a planned community containing common elements, a legally sufficient description of the common elements;

(7) in a cooperative, a statement as to whether the unit owners' interests in all units and their allocated interests are real estate or personal property;

(8) an allocation to each unit of the allocated interests in the manner described in section 515B.2-108;

(9) a statement ~~of~~ (i) of the total number of units, and (ii) ~~which units will be~~ identifying any units that are restricted to residential use and ~~which units will be~~ any units that are restricted to nonresidential use;

(10) if applicable, a statement (i) of the maximum number of units ~~which~~ that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 515B.2-112, and (ii) in declarations recorded on or after August 1, 2010, identifying the units that a declarant may subdivide or convert or a statement that a declarant may subdivide or convert all units;

(11) any material restrictions on use, occupancy, or alienation of the units, or on the sale price of a unit or on the amount that may be received by an owner on sale, condemnation or casualty loss to the unit or to the common interest community, or on termination of the common interest community; provided, that these requirements shall not affect the power of the association to adopt, amend or revoke rules and regulations pursuant to section 515B.3-102;

(12) a statement as to whether time shares are permitted;

(13) a statement as to whether the common interest community includes any shoreland, as defined in section 103F.205, and, if the common interest community includes shoreland, a statement that the common interest community may be subject to county,

township, or municipal ordinances or rules affecting the development and use of the shoreland area; and

(14) ~~all~~ if applicable, matters required by sections 515B.1-103~~(32)~~(33), Special Declarant Rights; 515B.2-107, ~~Leaseholds~~ Declaration of Leasehold Common Interest Communities; 515B.2-109, Common Elements and Limited Common Elements; 515B.2-110, Common Interest Community Plat (CIC Plat); 515B.3-115, Assessments for Common Expenses; and 515B.2-121, Master Associations and, in declarations recorded on or after August 1, 2010, 515B.3-115, Assessments for Common Expenses.

(b) The declaration may contain any other matters the declarant considers appropriate.

Sec. 4. Minnesota Statutes 2008, section 515B.2-106, is amended to read:

515B.2-106 DECLARATION OF FLEXIBLE COMMON INTEREST COMMUNITIES.

(a) The declaration for a flexible common interest community shall include, in addition to the matters specified in section 515B.2-105:

(1) a reservation of any rights to add additional real estate;

(2) a statement of any time limit, not exceeding ten years after the recording of the declaration, upon which any right reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit. If no time limit is set forth in the declaration, the time limit shall be ten years after the recording of the declaration; provided, that the time limit may be extended by an amendment to the declaration approved in writing by the declarant, and by the vote or written agreement of unit owners, other than the declarant or an affiliate of the declarant, to whose units are allocated at least 67 percent of the votes in the association;

(3) a statement of any limitations on any rights reserved under paragraph (1), other than limitations created by or imposed pursuant to law;

(4) a legally sufficient description of the additional real estate;

(5) a statement as to whether portions of any additional real estate may be added at different times;

(6) a statement, based upon the declarant's good faith estimate, of (i) the ~~maximum~~ total number of units~~, based upon the declarant's good faith estimate,~~ that may be created within any additional real estate, and (ii) how many of those units will be restricted to residential use;

(7) a statement that any buildings and units erected upon the additional real estate, when and if added, will be compatible with the other buildings and units in the common

interest community in terms of architectural style, quality of construction, principal materials employed in construction, and size, or a statement of any differences with respect to the buildings or units, or a statement that no assurances are made in those regards;

(8) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to units created in the additional real estate, when and if added, or a statement of any differences with respect to the additional units;

(9) a statement as to whether any assurances made in the declaration regarding additional real estate pursuant to paragraphs (5) through (8) will apply if the real estate is not added to the common interest community.

(b) A declarant need not have an interest in the additional real estate in order to identify it as such in the declaration, and the recording officer shall index the declaration as provided in section 515B.1-116(a). Identification of additional real estate in the declaration does not encumber or otherwise affect the title to the additional real estate.

Sec. 5. Minnesota Statutes 2008, section 515B.2-108, is amended to read:

515B.2-108 ALLOCATION OF INTERESTS.

(a) The declaration shall allocate to each unit:

(1) in a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association and a portion of the votes in the association;

(2) in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association and a portion of the votes in the association; and

(3) in a planned community, a fraction or percentage of the common expenses of the association and a portion of the votes in the association.

(b) The declaration shall state the formulas used to establish allocations of interests. If the fractions or percentages are all equal the declaration may so state in lieu of stating the fractions or percentages. The declaration need not allocate votes <u>or a share of common expenses</u> to units that are auxiliary to other units, such as garage units or storage units. The allocations shall not discriminate in favor of units owned by the declarant or an affiliate of the declarant, except as provided in sections 515B.2-121 and 515B.3-115.

(c) If units may be added to the common interest community, the formulas used to reallocate the allocated interests among all units included in the common interest community after the addition shall be the formulas stated in the declaration.

(d) The declaration may authorize special allocations: (i) of unit owner votes among certain units or classes of units on particular matters specified in the declaration, or (ii) of common expenses among certain units or classes of units on particular matters specified

in the declaration. Special allocations may only be used to address operational, physical or administrative differences within the common interest community. A declarant may not utilize special allocations for the purpose of evading any limitation or obligation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

(e) The sum of each category of allocated interests allocated at any time to all the units must equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium or planned community, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. The granting of easements, licenses or leases pursuant to section 515B.2-109 or 515B.3-102 shall not constitute a partition.

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

Sec. 6. Minnesota Statutes 2008, section 515B.2-109, is amended to read:

515B.2-109 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

(a) Except as limited by the declaration or this chapter, common elements other than limited common elements may be used in common by all unit owners. Limited common elements are designated for the exclusive use of the unit owners of the unit or units to which the limited common elements are allocated, subject to subsection (b) and the rights of the association as set forth in the declaration, the bylaws or this chapter.

(b) Except for the limited common elements described in ~~section 515B.2-102,~~ subsections (c) and (d), ~~and (f)~~ or limited common elements allocated by the declarant pursuant to subsection (e), the declaration shall specify to which unit or units each limited common element is allocated.

(c) Unless otherwise provided in the declaration, if any chute, flue, duct, wire, pipe, conduit, bearing wall, bearing column, or other fixture or improvement: (i) serves more than one but fewer than all units and is located wholly or partially outside the unit boundaries, it is a limited common element allocated solely to the unit or units served; (ii) serves all units or any portion of the common elements, it is a part of the common elements; or (iii) serves only the unit and is located wholly within the unit boundaries, it is a part of the unit.

(d) Unless otherwise provided in the declaration, improvements such as shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, perimeter doors and windows, and their frames, constructed as part of the original construction to serve a single unit or units, and authorized replacements and modifications thereof, if located wholly or partially outside the unit boundaries, are limited common elements allocated solely to the unit or units served.

(e) If the declaration so provides, and subject to any different licensing provisions in a declaration recorded before August 1, 2010, the declarant may grant to a unit owner an exclusive license for the use of a common element originally designed and constructed to serve as a garage stall, storage locker, or other similar common element space, in which case the common element license shall be deemed to be appurtenant to the unit owner's unit, subject to transfer if so provided by the declaration. The declarant shall, at the time the license is granted, provide to the association a common element license evidenced by a separate instrument signed by the declarant, that, at a minimum, identifies the licensed common element, the unit identifier of the unit to which it is appurtenant, and a reference to the section of the declaration governing common element licenses. If the declaration so provides, the declarant may require the onetime payment to the declarant of a consideration for the grant of a license.

(1) Except as provided in the declaration or this subsection, no interest in the common element license may be held or transferred separate from the unit, and the purported transfer of any interest in the license other than to another unit owner shall be void.

(2) The right of any declarant to grant a common element license shall terminate at the earlier of (i) the conveyance of all units to persons other than a declarant or (ii) ten years after the recording of the declaration.

(3) The document granting the common element license shall not be recorded. The association shall maintain records of all common element licences, including originals or copies of the common element licenses and transfers of common element licenses authorized by the declaration.

(4) A common element license granted pursuant to this subsection shall not be subject to the approval requirements set forth in section 515B.3-102(a)(9).

~~(e)~~ (f) An allocation of limited common elements may be changed by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made and the association. The amendment shall be approved by the board of directors of the association as to form, and compliance with the declaration and this chapter. The association shall establish fair and reasonable procedures and time frames for

the submission and processing of the reallocations, and shall maintain records thereof. If approved, the association shall cause the amendment to be recorded promptly. The amendment shall be effective when recorded. The association may require the unit owners requesting the reallocation to pay all fees and costs for reviewing, preparing and recording the amendment and any amended CIC plat.

Sec. 7. Minnesota Statutes 2008, section 515B.2-110, is amended to read:

515B.2-110 COMMON INTEREST COMMUNITY PLAT (CIC PLAT).

(a) A CIC plat is required for condominiums and planned communities, and cooperatives in which the unit owners' interests are characterized as real estate. The CIC plat is a part of the declaration in condominiums, in planned communities utilizing a CIC plat complying with subsection (c), and in cooperatives in which the unit owners' interests are characterized as real estate, but need not be physically attached to the declaration.

(1) In a condominium, a planned community not utilizing a subdivision plat or registered land survey under subsection (d)(1), or a cooperative in which the unit owners' interests are characterized as real estate, the CIC plat shall comply with subsection (c).

(2) In a planned community, a CIC plat which does not comply with subsection (c) shall consist of all or part of a subdivision plat or registered land survey complying with subsection (d), or any combination thereof. The ~~CIC~~ subdivision plat or registered land survey need not contain the number of the common interest community and may be recorded at any time before the recording of the declaration; provided, that if the CIC plat complies with subsection (c), the number of the common interest community shall be included and the CIC plat shall be recorded at the time of recording of the declaration.

(3) In a cooperative in which the unit owners' interests are characterized as personal property, a CIC plat shall not be required. In lieu of a CIC plat, the declaration, or any amendment ~~to it~~ or supplemental declaration creating, converting, or subdividing units ~~in a personal property cooperative~~, shall include an exhibit containing a dimensioned, scale drawing ~~of each building, identifying the building, and showing the perimeter walls of each unit created or changed by the declaration or any amendment to it, including~~ showing (i) the boundaries of the land constituting the cooperative property, (ii) the location and dimensions of the front, rear, and side boundaries of each unit, and (iii) the unit's unit identifier~~,~~ and ~~its~~ location within the ~~building if the building contains more than one unit~~ cooperative property.

(b) The CIC plat, or supplemental or amended CIC plat, for condominiums, for planned communities using a plat complying with subsection (c), and for cooperatives in which the unit owners' interests are characterized as real estate, shall contain certifications

by a licensed professional land surveyor and licensed professional architect, as to the parts of the CIC plat prepared by each, that (i) the CIC plat accurately depicts all information required by this section, and (ii) the work was undertaken by, or reviewed and approved by, the certifying land surveyor or architect. The portions of the CIC plat depicting the dimensions of the portions of the common interest community described in subsections (c)(8), (9), and (10), ~~and (12),~~ may be prepared by either a land surveyor or an architect. The other portions of the CIC plat shall be prepared only by a land surveyor. A certification of the CIC plat or supplemental CIC plat, or an amendment to it, under this subsection by an architect is not required if all parts of the CIC plat, supplemental CIC plat, or amendment are prepared by a land surveyor. Certification by the land surveyor or architect does not constitute a guaranty or warranty of the nature, suitability, or quality of construction of any improvements located or to be located in the common interest community.

(c) A CIC plat for a condominium, a planned community not utilizing a subdivision plat or registered land survey under subsection (d)(1), or a cooperative in which the unit owners' interests are characterized as real estate, shall show:

(1) the number of the common interest community, and the boundaries, dimensions and a legally sufficient description of the land included therein;

(2) the dimensions and location of all existing~~,~~ roadways and material structural improvements ~~and roadways~~ that are part of the common elements;

(3) the intended location and dimensions of ~~any contemplated common element~~ all roadways and material structural improvements ~~to be constructed~~ that may be constructed by the declarant within the common ~~interest community~~ elements after the filing of the CIC plat, labeled either "MUST BE BUILT" or "NEED NOT BE BUILT";

(4) the location and dimensions of any additional real estate, labeled as such, and a legally sufficient description of the additional real estate;

(5) the extent of any encroachments by or upon any portion of the common interest community;

(6) the location and dimensions of all recorded easements within the land included in the common interest community burdening any portion of the land;

(7) the distance and direction between noncontiguous parcels of real estate;

(8) the location and dimensions of limited common elements, except that with respect to limited common elements described in section ~~515B.2-102, subsections (d) and (f)~~ 515B.2-109, subsections (c) and (d), only such material limited common elements as porches, balconies, decks, and patios, ~~and garages~~ shall be shown;

(9) the location and dimensions of the front, rear, and side boundaries of each unit and that unit's unit identifier;

(10) the location and dimensions of the upper and lower boundaries of each unit with reference to an established or assumed datum and that unit's unit identifier; and

(11) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate"~~;~~.

~~(12) any units which may be converted by the declarant to create additional units or common elements identified separately.~~

(d) A CIC plat for a planned community either shall comply with subsection (c), or it shall:

(1) comply with chapter 505, 508, or 508A, as applicable; and

(2) comply with the applicable subdivision requirements of any governmental authority within whose jurisdiction the planned community is located, subject to the limitations set forth in section 515B.1-106.

(e) If a declarant adds additional real estate, the declarant shall record a supplemental CIC plat or plats for the real estate being added, conforming to the requirements of this section which apply to the type of common interest community in question. If less than all additional real estate is being added, the supplemental CIC plat for a condominium, a planned community whose CIC plat complies with subsection (c), or a cooperative in which the unit owners' interests are characterized as real estate, shall also show the location and dimensions of the remaining portion.

~~(f) If, pursuant to section 515B.2-112, a declarant subdivides or converts any unit into two or more units, common elements or limited common elements, or combines two or more units, the declarant shall record an amendment to the CIC plat showing the location and dimensions of any new units, common elements or limited common elements thus created.~~

~~(g)~~ (f) A CIC plat which complies with subsection (c) is not subject to chapter 505.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to common interest communities created on or after that date.

Sec. 8. Minnesota Statutes 2008, section 515B.2-111, is amended to read:

515B.2-111 EXPANSION OF FLEXIBLE COMMON INTEREST COMMUNITY.

(a) To add additional real estate pursuant to a right reserved under section 515B.2-106(a)(1), the declarant and ~~all persons whose interests in~~ the owners of the

additional real estate ~~will be conveyed to unit owners or the association~~ to be added, except vendors under a contract for deed, shall execute and record ~~a supplemental declaration~~ an instrument, titled a "supplemental declaration," as provided in this section. The supplemental declaration ~~shall be titled a "supplemental declaration,"~~ shall be limited to matters authorized by this section, and shall include:

(1) a legally sufficient description of the real estate added by the supplemental declaration;

(2) a description of the boundaries of each unit created by the supplemental declaration, consistent with the declaration, and the unit's unit identifier;

(3) in a planned community containing common elements, a legally sufficient description of the common elements;

(4) a reallocation of the common element interests, votes in the association, and common expense liabilities as applicable, in compliance with the declaration and section 515B.2-108;

(5) a description of any limited common elements formed out of the additional real estate, designating the unit to which each is allocated to the extent required by section 515B.2-109;

(6) a statement, based upon the declarant's current good faith estimate, of the total number of units that may be created within any remaining additional real estate;

~~(6)~~ (7) a statement as to whether or not the period of declarant control has terminated, regardless of the reason for such termination; and

~~(7)~~ (8) an attached affidavit attesting to the giving of the notice required by subsection (b), if such notice is required.

(b) If the period of declarant control has terminated, a declarant shall give notice of its intention to add additional real estate to the association (Attention: president of the association) by a notice given in the manner provided in section 515B.1-115 not less than 15 days prior to recording the supplemental declaration which adds the additional real estate. A copy of the supplemental declaration shall be attached to the notice. The supplemental declaration may be in proposed form; however, following notice, the supplemental declaration shall not be changed so as to materially and adversely affect the rights of unit owners or the association unless a new 15-day notice is given in accordance with this section.

(c) A lien upon the additional real estate that is not also upon the existing common interest community is a lien only upon the units, and their respective interest in the common elements (if any), that are created from the additional real estate. Units within the common interest community as it existed prior to expansion are transferred free of

liens that existed only upon the additional real estate, notwithstanding the fact that the interest in the common elements is a portion of the entire common interest community, including the additional real estate.

(d) If a supplemental declaration in a planned community creates common elements, then a conveyance of the common elements to the association shall be recorded simultaneously with the supplemental declaration. If a supplemental declaration adds additional real estate to a cooperative, then a conveyance of the additional real estate to the association shall be recorded simultaneously with the supplemental declaration.

Sec. 9. Minnesota Statutes 2008, section 515B.2-112, is amended to read:

515B.2-112 SUBDIVISION, COMBINATION, OR CONVERSION OF UNITS.

(a) If the declaration so provides, (i) ~~one~~ a unit or ~~more~~ units that are not owned exclusively by a declarant or the association may be subdivided into two or more units or combined into a lesser number of units, or (ii) a unit or units owned exclusively by a declarant or the association may be subdivided, combined, or converted into one or more units, limited common elements, common elements, or a combination of units, limited common elements or common elements.

(b) If the unit or units are not owned exclusively by a declarant or the association, the unit owners of the units to be combined or subdivided shall cause to be prepared and submitted to the association for approval an application for an amendment to the declaration and amended CIC plat, for the purpose of subdividing or combining the unit or units. The application shall contain, at a minimum, a general description of the proposed subdivision or combination, and shall specify in detail the matters required by ~~subsection~~ subsections ~~(c)~~ (d)(2) ~~and~~, (3), and (4). The basis for disapproval of the application by the association shall be limited to (i) health or safety considerations, (ii) liability considerations for the association and other unit owners, (iii) aesthetic changes to the common elements or another unit, (iv) any material and adverse impact on the common elements or another unit, or (v) a failure to comply with the declaration, this chapter, or governmental laws, ordinances, or regulations. The association shall give written notice of its decision and required changes to the unit owner or owners who made the application. The association shall establish fair and reasonable procedures and time frames for the submission and prompt processing of the applications. If an application under this subsection is approved, the unit owner shall cause an amendment, and an amended CIC plat if required, to be prepared based upon the approved application.

(c) If the unit or units are owned exclusively by a declarant or the association, the declarant or the association, as applicable, shall have the authority to unilaterally prepare,

execute, and record, at its expense, an amendment to the declaration and an amended CIC plat subdividing, combining, or converting the unit or units. The amendment shall comply with subsection (d)(2), (3), (4), and (5), and shall be limited to those provisions necessary to accomplish the subdivision, combination, or conversion unless the consent of unit owners required to amend the declaration is obtained.

~~(c)~~ (d) An amendment approved under ~~this section~~ subsection (b) shall:

(1) be executed by the association and ~~by~~ each unit owner ~~and any secured party with respect to~~ of each unit to be combined or subdivided, ~~if approved under subsection (b)~~ and consented to by each secured party with a security interest in a unit to be combined or subdivided;

(2) assign a unit identifier to each unit resulting from the subdivision, conversion, or combination;

(3) reallocate the common element interest, votes in the association, and common expense liability, as applicable, formerly allocated to the unit or units ~~to be~~ being combined, converted, or subdivided (i) only among the resulting unit or units ~~resulting from the subdivision or combination~~, or (ii) among all remaining units in the case of a conversion of a unit or units entirely to common elements, as applicable, on the basis of the formula described in the declaration; ~~and~~

(4) reallocate limited common elements formerly allocated to the unit or units being combined, converted, or subdivided among the resulting unit or units, or designate part or all of the limited common elements as common elements in the case of a conversion of a unit or units; and

~~(4)~~ (5) conform to the requirements of the declaration and this chapter.

~~(d)~~ (e) If the association determines that the amendment and amended CIC plat conform to the ~~approved~~ application approved under subsection (b), the declaration, and this chapter, the association shall execute the amendment and cause the amendment and the amended CIC plat to be recorded. The association may require the unit owners executing the amendment to pay all fees and costs for reviewing, preparing, and recording the amendment and the amended CIC plat, and any other fees or costs incurred by the association in connection therewith.

~~(e) If the unit or units are owned exclusively by a declarant, the declarant shall have the authority to unilaterally prepare and record, at its expense, an amendment and an amended CIC plat subdividing, combining, or converting the unit or units. The amendment shall comply with subsections (c)(2), (3), and (4), and shall be limited to those provisions necessary to accomplish the subdivision, combination, or conversion unless the consent of unit owners required to amend the declaration is obtained.~~

(f) The amended CIC plat shall show the resulting common elements, limited common elements or units, as subdivided, combined, or converted.

(g) A secured party's interest and remedies shall be deemed to apply to the unit or units that result from the subdivision or combination of the unit or units in which the secured party held a security interest. If the secured party enforces any remedy, including foreclosure of its lien, against any of the resulting units, all instruments and notices relating to the foreclosure shall describe the subject property as described in ~~terms of~~ the amendment and the amended CIC plat which created the resulting units.

Sec. 10. Minnesota Statutes 2008, section 515B.2-113, is amended to read:

515B.2-113 ~~ALTERATIONS~~ ALTERATION OF UNITS.

(a) Subject to the provisions of the declaration and applicable law, a unit owner may, at the unit owner's expense, make any improvements or alterations to the unit, provided: (i) that they do not impair the structural integrity or mechanical systems, affect the common elements, or impair the support of any portion of the common interest community; (ii) that prior arrangements are made with the association to ensure that other unit owners are not disturbed; (iii) that the common elements are not damaged; and (iv) that the common elements and other units are protected against mechanics' liens.

(b) Subject to the provisions of applicable law, a unit owner of a unit in residential use may, at the unit owner's expense, make improvements or alterations to the unit as necessary for the full enjoyment of the unit by any person residing in the unit who has a disability, as provided in the Fair Housing Amendments Act, United States Code, title 42, section 3601, et seq., and the Minnesota Human Rights Act, chapter 363A, and any amendments to those acts. This subsection applies to all common interest communities subject to this chapter, chapter 515, or 515A, notwithstanding any contrary provision of section 515B.1-102.

(c) The declaration, bylaws, rules, and regulations, or agreements with the association may not prohibit the improvements or alterations referred to in subsection (b), but may reasonably regulate the type, style, and quality of the improvements or alterations, as they relate to health, safety, and architectural standards. In addition, improvements or alterations made pursuant to subsection (b) must comply with subsection (a)(i), (ii), (iii), and (iv).

(d) ~~Notwithstanding any contrary provision of section 515B.1-102, subsection (b) applies to all common interest communities subject to this chapter, chapter 515, or 515A.~~ The unit owner's rights under this section may not be waived.

(e) Subsection (b) does not apply to restrictions on improvements or alterations imposed by statute, rule, or ordinance.

(f) Subject to the provisions of the declaration and applicable law, a unit owner may, at the unit owner's expense, after acquiring title to an adjoining unit or an adjoining part of an adjoining unit, with the prior written approval of the association and first mortgagees of the affected units, remove or alter any intervening partition or create apertures therein, even if the partition is part of the common elements, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community. The adjoining unit owners shall have the exclusive license to use the space occupied by the removed partition, but the use shall not create an easement or vested right. Removal of partitions or creation of apertures under this ~~paragraph~~ subsection is not an alteration of boundaries. The association may require that the owner or owners of units affected replace or restore any removed partition, that the unit owner comply with subsection (a)(i), (ii) and (iii), and that the unit owner pay all fees and costs incurred by the association in connection with the alteration.

Sec. 11. Minnesota Statutes 2008, section 515B.2-114, is amended to read:

515B.2-114 RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS.

(a) Subject to the provisions of the declaration and applicable law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon the submission of an application to the association by the owners of those units and approval by the association. The application shall contain, at a minimum, a general description of the proposed relocation, and shall specify in detail the matters required by subsection (b)(2) and (3).

(b) The association shall establish fair and reasonable procedures and time frames for the submission and prompt processing of the applications. The basis for disapproval shall be limited to structural or safety considerations, or a failure to comply with the declaration, this chapter, or governmental laws, ordinances or regulations. If the application is approved, the unit owners making the application shall cause an amendment and amended CIC plat to be prepared based upon the approved application, and submit them to the association for approval. The amendment shall:

(1) be executed by the association and the unit owners making the application, and consented to by any secured party with respect to the units;

(2) identify the units involved;

(3) reallocate the common element interest, votes in the association and common expense liability formerly allocated to the units among the newly defined units on the basis described in the declaration;

(4) contain words of conveyance between them;

(5) contain such other provisions as may be reasonably required by the association; and

(6) conform to the requirements of the declaration and this chapter.

(c) The interest and remedies of a secured party which joins in the amendment pursuant to this section shall be deemed to be modified as provided in the amendment.

(d) The association may require the unit owners making the application to build a boundary wall and other common elements between the units, and to pay all fees and costs for reviewing, preparing and recording the amendment and the amended CIC plat, and any other fees or costs incurred by the association in connection therewith.

(e) The applicant shall deliver a copy of the recorded amendment and amended CIC plat to the association.

Sec. 12. Minnesota Statutes 2008, section 515B.2-118, is amended to read:

515B.2-118 AMENDMENT OF DECLARATION.

(a) The declaration, including any CIC plat, may be amended only by vote or written ~~agreement~~ consent of unit owners of units to which at least 67 percent of the votes in the association are allocated, or any greater or other requirement the declaration specifies, subject to the following qualifications:

(1) A declarant may execute supplemental declarations or amendments under section 515B.2-111 or 515B.2-112.

(2) The association and certain unit owners, as applicable, may execute amendments under section 515B.2-107, 515B.2-109, 515B.2-112, ~~515B.2-113,~~ 515B.2-114, ~~515B.2-119, 515B.2-122, 515B.2-123,~~ or 515B.2-124.

(3) Except for amendments or supplemental declarations under subsection (a)(1) and (2), and except as provided in sections 515B.1-102(d)(3) and 515B.2-106(a)(2), the unanimous written consent of the unit owners is required for any amendment which (i) creates or increases special declarant rights, (ii) increases the number of units, (iii) changes the boundaries of any unit, (iv) changes the allocated interests of a unit, (v) changes common elements to limited common elements or units, (vi) changes the authorized use of a unit from residential to nonresidential, or conversely, or (vii) changes the characterization of the unit owner's interest in a cooperative from real estate to personal property, or conversely~~; unless the amendment is expressly permitted or required by other~~

~~provisions of this chapter~~. Where the amendment involves the conversion of common elements into a unit or units, the title to the unit or units created shall, upon recording of the amendment, vest in the association free and clear of the interests of the unit owners and all secured parties holding security interests in units.

(4) In addition to any other requirements contained in this section, a declarant must execute an amendment that eliminates or modifies any special declarant rights held by that declarant.

(5) If any provision of this chapter, the declaration, the bylaws, or the articles of incorporation requires the consent of a secured party holding a security interest in a unit as a condition for the approval or effectiveness of an amendment to the declaration, the bylaws, or the articles of incorporation, the consent is deemed to be granted if the secured party's written refusal to consent is not received by the association within 60 days after the secured party receives from the association notice and a copy of the amendment, by certified United States mail, postage prepaid and return receipt requested. If the secured party has not otherwise provided to the association an address for notice, the association shall send the notice to the address, if any, set forth in the recorded instrument that evidences the security interest. This subsection shall not apply to an amendment that affects the priority of a secured party's security interest or the ability of a secured party to foreclose its security interest. In such cases, the number or percentage of secured parties whose consent is required by the instrument to be amended must consent to the amendment in writing.

~~(4)~~ (6) The declaration may specify less than 67 percent for approval of an amendment, but only if all of the units are restricted to nonresidential use.

(b) No action to challenge the validity of an amendment ~~adopted by the association pursuant to this section~~ or a supplemental declaration may be brought more than two years after the amendment or supplemental declaration is recorded.

(c) Every amendment to ~~the~~ a declaration or supplemental declaration shall be recorded in every county in which any portion of the common interest community is located and is effective only when recorded. If an amendment (i) changes the number of units, (ii) changes the boundary of a unit, (iii) changes common elements to limited common elements, ~~or conversely,~~ where the limited common element is required by section 515B.2-110(c), to be shown on the CIC plat, (iv) changes limited common elements to common elements if the limited common elements are show as limited common elements on the CIC plat, or ~~(iv)~~ (v) makes any other change that ~~affects~~ creates an inconsistency between the declaration, as amended, and the CIC plat, then an amendment to the CIC plat reflecting the change shall be recorded.

Sec. 13. Minnesota Statutes 2008, section 515B.2-119, is amended to read:

515B.2-119 TERMINATION OF COMMON INTEREST COMMUNITY.

(a) Except as otherwise provided in this chapter, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, and 80 percent of the first mortgagees of units (each mortgagee having one vote per unit financed), or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted to nonresidential use.

(b) An agreement to terminate shall be evidenced by a written agreement, executed in the same manner as a deed by the number of unit owners and first mortgagees of units required by subsection (a). The agreement shall specify a date after which the agreement shall be void unless recorded before that date. The agreement shall also specify a date by which the termination of the common interest community and the winding up of its affairs must be accomplished. A certificate of termination executed by the association evidencing the termination shall be recorded on or before the termination date, or the agreement to terminate shall be revoked. The agreement to terminate, or a memorandum thereof, and the certificate of termination shall be recorded in every county in which a portion of the common interest community is situated and is effective only upon recording.

(c) In the case of a condominium or planned community containing only units having upper and lower boundaries, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement shall set forth the minimum terms of sale acceptable to the association.

(d) In the case of a condominium or planned community containing any units not having upper and lower boundaries, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the original declaration provided otherwise or all unit owners whose units are to be sold consent to the sale.

(e) The association, on behalf of the unit owners, shall have authority to contract for the sale of real estate in a common interest community pursuant to this section, subject to the required approval. The agreement to terminate shall be deemed to grant to the association a power of attorney coupled with an interest to effect the conveyance of the real estate on behalf of the holders of all interests in the units, including without limitation the power to execute all instruments of conveyance and related instruments. Until the sale has been completed, all instruments in connection with the sale have been

executed and the sale proceeds distributed, the association shall continue in existence with all powers it had before termination.

(1) The instrument conveying or creating the interest in the common interest community shall include as exhibits (i) an affidavit of the secretary of the association certifying that the approval required by this section has been obtained and (ii) a schedule of the names of all unit owners in the common interest community as of the date of the approval.

(2) Proceeds of the sale shall be distributed to unit owners and secured parties as their interests may appear, in accordance with subsections (h), (i), (j), and (k).

(3) Unless otherwise specified in the agreement of termination, until the association has conveyed title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter, the declaration or the bylaws.

(f) The legal description of the real estate constituting the common interest community shall, upon the date of recording of the certificate of termination referred to in subsection (b), be as follows:

(1) In a planned community utilizing a CIC plat complying with section 515B.2-110(d)(1) and (2), the lot and block description contained in the CIC plat, and any amendments thereto, subject to any subsequent conveyance or taking of a fee interest in any part of the property.

(2) In a condominium or cooperative, or a planned community utilizing a CIC plat complying with section 515B.2-110(c), the underlying legal description of the real estate as set forth in the declaration creating the common interest community, and any amendments thereto, subject to any subsequent conveyance or taking of a fee interest in any part of the property.

(3) The legal description referred to in this subsection shall apply upon the recording of the certificate of termination. The recording officer for each county in which the common interest community is located shall index the property located in that county in its records under the legal description required by this subsection from and after the date of recording of the certificate of termination. In the case of registered property, the registrar of titles shall cancel the existing certificates of title with respect to the property and issue one or more certificates of title for the property utilizing the legal description required by this subsection.

(g) In a condominium or planned community, if the agreement to terminate provides that the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having upper and lower boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interest as provided in subsection (k), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(h) The proceeds of any sale of real estate pursuant to subsection (e), together with the assets of the association, shall be held by the association as trustee for unit owners, secured parties and other holders of liens on the units as their interests may appear. Before distributing any proceeds, the association shall have authority to deduct from the proceeds of sale due with respect to the unit (i) unpaid assessments levied by the association with respect to the unit, (ii) unpaid real estate taxes or special assessments due with respect to the unit, and (iii) the share of expenses of sale and winding up of the association's affairs with respect to the unit.

(i) Following termination of a condominium or planned community, creditors of the association holding liens on the units perfected before termination may enforce those liens in the same manner as any lienholder, in order of priority based upon their times of perfection. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(j) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were perfected before termination may enforce their liens in the same manner as any lienholder, in order of priority based upon their times of perfection. All other creditors of the association shall be treated as if they had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) the lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) the amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the unit owners' interest shall be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) the lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's interest in the unit as of the date the lien was perfected; and

(5) the assets of the association shall be distributed to all unit owners and all lienholders as their interests may appear in the order described in this section. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(k) The respective interest of unit owners referred to in subsections (e), (f), (g), (h) and (i) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit's interest to that of all units is determined by dividing the fair market value of that unit by the total fair market values of all the units.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners shall be measured by: (i) in a condominium, their allocations of common element interests immediately before the termination, (ii) in a cooperative, their respective ownership interests immediately before the termination, and (iii) in a planned community, their respective allocations of common expenses immediately before the termination.

(l) In a condominium or planned community, except as provided in subsection (m), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community does not withdraw that portion from the common interest community.

(m) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

(n) Following the termination of a common interest community in accordance with this section, the ~~board of directors of the~~ association shall ~~cause the association to~~ be dissolved in accordance with law.

Sec. 14. Minnesota Statutes 2008, section 515B.2-121, is amended to read:

515B.2-121 MASTER ASSOCIATIONS.

(a) A master association formed after June 1, 1994, shall be organized as a Minnesota profit, nonprofit or cooperative corporation. A master association shall be incorporated prior to the delegation to it of any powers under this chapter.

(b) The members of the master association shall be any combination of (i) unit owners ~~of one or more common interest communities~~, (ii) ~~one or more~~ associations, (iii) ~~one or more~~ master associations, or (iv) owners of real estate or property owners' associations not subject to this chapter but only in combination with ~~any~~ at least one other category of member. An association or its members may be members of an entity created before June 1, 1994, which performs functions similar to those performed by a master association regardless of whether the entity is subject to this chapter.

(c) A master association shall be governed by a master board ~~of directors~~. Except as expressly prohibited by the master declaration, the master association's articles of incorporation or bylaws, or other provisions of this chapter, the master ~~association~~ board may act in all instances on behalf of the master association. The directors of a master association shall be elected or, if a nonprofit corporation, elected or appointed, in a manner consistent with the requirements of the statute under which the master association is formed and of the master association's articles of incorporation and bylaws, and subject to the following ~~requirements~~:

~~(1) Except as set forth in subsections (2) and (3), the members of the master association shall elect the board of directors. A majority of the directors shall be members of the master association or members of a member of the master association, and shall be persons other than a declarant or affiliate of a declarant. If the member is not a natural person, it may designate a natural person to act on its behalf.~~

~~(2) The articles of incorporation or bylaws of the master association may authorize any person, whether or not the person is a member of, or otherwise subject to, the master association, including a declarant, to appoint or elect one director.~~

~~(3) A master association's articles of incorporation may suspend the members' right to elect or, in the case of a nonprofit corporation, elect or appoint, the master association's board of directors for a specified time period. During this period, the person or persons who execute the master declaration under subsection (f)(1), or their successors or assigns,~~

~~may appoint the directors. The period during which the person or persons may appoint the directors begins when the master declaration is recorded and terminates upon the earliest of:~~

~~(i) the voluntary surrender of the right to appoint directors;~~

~~(ii) the date ten years after the date the master declaration is recorded;~~

~~(iii) the date, if any, in the articles of incorporation; or~~

~~(iv) the date when at least 75 percent of the units and other parcels of real estate which are referred to in subsection (f)(1)(vii) have been conveyed to such persons for occupancy by the persons or their tenants.~~

~~(4) The term of any director appointed under subsection (3) expires 60 days after the right to appoint directors terminates. The master association's board of directors shall call an annual or special meeting of the master association's members to elect or appoint successor directors within the 60-day period.~~

~~(5) The system for the election of directors shall be fair and equitable and shall take into account the number of members of each association any of whose powers are delegated to the master association, the needs of the members of the master association, the allocation of liability for master association common expenses, and the types of common interest communities and other real estate subject to the master association.~~

~~(d) The articles of incorporation or bylaws of the master association may authorize special classes of directors and allocations of director voting rights, as follows: (i) classes of directors that are elected by different classes of members, to address operational, physical, or administrative differences within the master association, or (ii) class voting by the classes of directors on specific issues affecting only a certain class or classes of members, units or other parcels of real estate, or to otherwise protect the legitimate interests of such class or classes. No person may utilize such special classes or allocations for the purpose of evading any limitation imposed on declarants by this chapter.~~

(1) The master declaration may provide for a period of master developer control of the master association during which a master developer or a person designated by the master developer may appoint and remove the officers and directors of the master association. The period of master developer control begins on the date of the recording of the master declaration and terminates upon the earliest of the following events:

(i) the voluntary surrender of the right to appoint directors;

(ii) the date ten years after the date the master declaration is recorded, unless extended by an amendment to the master declaration approved in writing by the master developer, and by 67 percent of the votes of members other than the master developer;

(iii) the termination date, if any, in the master declaration; or

(iv) the date when at least 75 percent of the total units and other parcels of real estate referred to in subsection (e)(1)(vii) have been conveyed to persons other than a master developer, master association, declarant, or association.

(2) Upon the termination of the period of master developer control, the master board shall cause a meeting of the members of the master association to be called and held within 60 days after said termination, at which time the directors shall be elected by all members, including the master developer if a member. If the master board fails or refuses to call a meeting of the unit owners required to be called by this subsection, then the members other than the master developer and its affiliates if they are members, may cause the meeting to be called pursuant to the applicable provisions of the statute under which the master association was created. If the master developer or its affiliates are members, they shall be deemed to be present at the meeting for purposes of establishing a quorum regardless of their failure to attend the meeting. The master board shall thereafter be subject to the following:

(i) unless otherwise approved by a vote of members other than the master developer or an affiliate of the master developer, a majority of the directors shall be members, or a natural person designated by a member that is not a natural person, other than the master developer or an affiliate of the master developer;

(ii) subject to the requirements of subsection (c)(2)(i), the articles of incorporation or bylaws may authorize the master developer or a person designated by the master developer to appoint one director, who need not be a member. The articles of incorporation or bylaws shall not be amended to change or terminate the authorization to appoint one director without the written consent of the master developer or other person possessing the power to appoint; and

(iii) subject to the requirements of subsection (c)(2)(i), the articles of incorporation or bylaws may authorize special classes of directors and director voting rights, as follows: (A) classes of directors, (B) the appointment or election of directors in certain classes by certain classes of members, or (C) class voting by classes of directors on issues affecting only a certain class or classes of members, units, or other parcels of real estate, or to otherwise protect the legitimate interests of such class or classes. No person may utilize such special classes or class voting for the purpose of evading any limitation imposed by this chapter on master developers or declarants.

~~(c)~~ (d) Subject to subsection (c)(1), the officers of a master association shall be elected, appointed, or designated in a manner consistent with the statute under which the master association is formed and consistent with the master association articles of incorporation and bylaws.

~~(f)~~ (e) The creation and authority of a master association shall be governed by the following requirements:

(1) A master declaration shall be recorded in connection with the creation of a master association. The master declaration shall be executed by the owners of the real estate subjected to the master declaration and by the master developer if not an owner. The master declaration shall contain, at a minimum:

(i) the name of the master association;

(ii) a legally sufficient description of the real estate which is subject to the master declaration, identifying any interest in the real estate which will be owned by the master association, and a legally sufficient description of any other real estate which may be subjected to the master declaration pursuant to subsection ~~(g)~~ (f);

(iii) a statement as to whether the real estate subject to, and which may be subjected to, the master declaration collectively is or collectively will be a separate common interest community;

(iv) a description of the members of the master association;

(v) a description of the master association's powers. To the extent described in the master declaration, a master association has the powers with respect to the master association's members and the property subject to the master declaration that section 515B.3-102 grants to an association with respect to the association's members and the property subject to the declaration. A master association also has the powers delegated to it by an association pursuant to subsection ~~(f)~~ (e)(2) or by a property owners' association not subject to the chapter; provided ~~(i)~~ (A) that the master declaration identifies the powers and authorizes the delegation either expressly or by a grant of authority to the master board of the association or property owners' association and ~~(ii)~~ (B) that the master association board has not refused the delegation pursuant to subsection ~~(f)~~ (e)(4). The provisions of the declarations of the common interest communities, or the provisions of recorded instruments governing other property subject to the master declaration, that delegate powers to the master association shall be consistent with the provisions of the master declaration that govern the delegation of the powers;

(vi) a description of the formulas governing the allocation of assessments and member voting rights, including any special classes or ~~allocations~~ class voting referred to in subsection ~~(d)~~ (c);

(vii) a statement, based upon the master developer's good faith estimate, of the total number of units and other parcels of real estate intended for ~~private~~ ownership ~~and use~~ by persons other than a master developer, master association, declarant, or association that are ~~(i)~~ (A) subject to the master declaration as initially recorded and ~~(ii)~~ (B) intended

to be created by the addition of real estate or by the subdivision of units or other parcels of real estate; and

(viii) the requirements for amendment of the master declaration, other than an amendment under subsection ~~(g)~~ (f).

(2) The declaration of a common interest community located on property subject to a master declaration may:

(i) delegate any of the powers described in section 515B.3-102 to the master association; provided, that a delegation of the powers described in section 515B.3-102(a)(2) is effective only if expressly stated in the declaration; and

(ii) authorize the master board to delegate any of the powers described in section 515B.3-102, except for the powers described in section 515B.3-102(a)(2), to the master association.

(3) With respect to any other property subject to a master association, there need not be an instrument other than the master declaration recorded against the property to empower the master association to exercise powers with respect to the property.

(4) If a declaration or other recorded instrument authorizes the master board or the board of a property owners' association to delegate powers to a master association, the master ~~association~~ board may refuse any delegation of powers that does not comply with (i) this chapter, (ii) the declaration or other recorded instrument, or (iii) the organizational documents of the master association.

(5) The failure of a declaration, a master board or an owner of property subject to a master association to properly delegate some or all of the powers to the master association does not affect the authority of the master association to exercise those and other powers with respect to other common interest communities or owners of properties that are subject to the master association.

(6) Any interest in the real estate subject to a master declaration that subsection (e)(1)(ii), or (f) indicates will be owned by the master association shall be conveyed to the master association immediately after the recording of the master declaration or amendment to the master declaration, as applicable.

~~(g)~~ (f) If the master declaration ~~may authorize~~ so provides, other real estate ~~to~~ may be subjected to the master declaration. The other real estate shall be subjected to the master declaration by an amendment executed (i) by the master developer and (ii) by the owner of the other real estate ~~and any other person or persons required by the master declaration, and recorded~~. The amendment shall identify any ownership interest in the other real estate that will be owned by the master association.

~~(h)~~ (g) Sections 515B.3-103(a), (b), and (g), 515B.3-108, 515B.3-109, 515B.3-110, and 515B.3-112 shall apply in the conduct of the affairs of a master association. But the rights of voting, notice, and other rights enumerated in those sections apply to persons who elect or appoint the directors of a master board ~~of a master association~~, whether or not those persons are otherwise unit owners within the meaning of this chapter.

~~(i)~~ (h) If so provided in the master declaration, a master association may levy assessments for common expenses of the master association against its members and the property subject to the master declaration, and have and foreclose liens securing the assessments. The assessment liens shall have the same priority against secured parties, shall include the same fees and charges, and may be foreclosed in the same manner, as assessment liens under section 515B.3-116. The master association's lien shall have priority as against the lien of an association or property owners' association subject to the master association, regardless of when the lien arose or was perfected.

(1) Master association common expenses shall be allocated among the members of the master association in a fair and equitable manner. If the members include associations or property owners' associations, then the master assessments may be allocated among and levied against the associations or property owners' associations, or allocated among and levied against the units or other parcels of real estate owned by the members of the association or property owners' association. If so provided in the master declaration, master assessments levied against a member association or property owners' association are allocated among and levied against the units or other parcels of real estate owned by the members of the association or property owners' association. If applicable and appropriate, the formulas and principles described in section 515B.2-108, subsections (b), (c), (d), and (e), shall be used in making the allocations. The assessment formulas and procedures described in the declarations of any common interest communities or any instruments governing other real estate subject to the master association shall not conflict with the formulas and procedures described in the master declaration.

(2) Subject to subsection (i), the master declaration may exempt from liability for all or a portion of master association assessments any person authorized by subsection (c)~~(3)~~(1) to appoint the members of the master ~~association~~ board, or any other person, and exempt any unit or other parcel of real estate owned by the person from a lien for such assessments, until ~~a~~ the building ~~constituting~~ containing the unit, or located within the boundaries of the unit or other parcel of real estate, is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy in a jurisdiction that issues that certificate.

~~(j)~~ (i) A master association shall not be used, directly or indirectly, to avoid or nullify any warranties or other obligations for which a declarant of a common interest community subject to the master association is responsible, or to otherwise avoid the requirements of this chapter.

Sec. 15. Minnesota Statutes 2008, section 515B.2-124, is amended to read:

515B.2-124 SEVERANCE OF COMMON INTEREST COMMUNITY.

(a) Unless the declaration provides otherwise, a part of a common interest community containing one or more units, with or without common elements, may be severed from the common interest community, subject to the requirements of this section. Subject to any additional requirements contained in the declaration, the severance shall be approved in a written severance agreement complying with this section, executed by:

(1) unit owners entitled to cast at least 67 percent of the votes in the association, which approval shall include the approval of unit owners entitled to cast a majority of the votes allocated to units in the remaining common interest community and the approval of unit owners entitled to cast a majority of the votes allocated to units in the part of the common interest community being severed;

(2) declarant until the earlier of five years after the recording of the declaration or the time at which declarant no longer owns an unsold unit; and

(3) in the case of a cooperative, all holders of mortgages or contracts for deed on the entire real estate constituting the cooperative.

(b) The declaration may specify a smaller percentage for unit owner approval only if all of the units are restricted to nonresidential use.

(c) The severance agreement shall specify a severance date by which the severance of the common interest community shall be accomplished, after which the severance agreement is void. The severance agreement shall be deemed to grant to the association a power of attorney coupled with an interest to effect the severance of the common interest community on behalf of the unit owners and the holders of all other interests in the units, including without ~~limit~~ limitations the power to execute the amendment to the declaration, any instruments of conveyance, and all related instruments.

(d) The severance agreement shall:

(1) Approve an amendment to the declaration complying with this chapter, in substantially the same form to be recorded, ~~which~~ and an amendment to the CIC plat if required. The declaration amendment shall, at a minimum, (i) legally ~~describes~~ describe the real estate constituting the remaining common interest community and the real estate being severed, (ii) ~~restates~~ restate the number of units in the remaining common interest

community, (iii) ~~reallocates~~ reallocate the interests of the unit owners in the remaining common interest community among the remaining units in accordance with the allocation formula set forth in the declaration, and (iv) ~~recites~~ recite any easements to which the severed portion of the common interest community remains subject.

(2) Approve an amendment to the articles of incorporation and bylaws of the remaining common interest community, if necessary.

(3) Authorize the association to execute and record the amended declaration, articles of incorporation or bylaws on behalf of the unit owners and all other persons holding an interest in the remaining common interest community, and to take other actions necessary to accomplish the severance of the common interest community.

(4) Allocate the assets and liabilities of the association between the association and (i) a new association formed pursuant to subsection (g), or (ii) the owners of the units being severed, subject to a lien against their interest in the severed real estate or their share in the assets of the association in favor of any person that held a security interest in their unit.

(5) If the units that are being severed from the common interest community will not be included in a new common interest community that is (i) formed simultaneously with the severance of the common interest community, and (ii) includes all of the units and substantially all of the common elements being severed, then the agreement shall contain the written consent of holders of first mortgages on all units that are being severed, and shall describe in detail the proposed disposition of all real estate to be severed and all assets of the association allocated to the severed units, and the distribution of the proceeds of the disposition, if any, consistent with subsection (i).

(e) The severance agreement or a memorandum of it shall be recorded in every county in which a part of the common interest community is located. The recording of the severance agreement or memorandum of it shall, from the date of recording, constitute notice to all persons subsequently acquiring an interest in the common interest community that the common interest community is being severed, and that those persons acquire their interests subject to the terms and conditions contained in the severance agreement and the amendment to the declaration.

(f) The amendment to the declaration of the remaining common interest community shall be recorded on or before the severance date or the severance agreement and the amendment to the declaration ~~is~~ are void as of the day after the severance date. The recording of the amendment to the declaration shall complete the severance of the common interest community and release the severed part of the common interest community from the declaration without further action by any person.

(g) If the unit owners whose units are being severed from the common interest community intend to form a new common interest community, then said unit owners shall, by at least 80 percent of the votes allocated by the existing declaration to said units, approve a new declaration, articles of incorporation and bylaws to govern the new common interest community no later than 60 days before the effective date of the severance. The new declaration shall be recorded simultaneously with the amendment to the existing declaration. No later than 30 days after the date of the severance agreement, the articles of incorporation creating the association intended to govern the new common interest community shall be filed with the secretary of state and promptly thereafter the unit owners whose units are being severed shall elect a board of directors to act on behalf of the new association. The board of directors of the new association shall cooperate with the board of directors of the existing association to complete the severance. The existing association shall retain all authority to act on behalf of the common interest community until the amendment to the existing declaration and the new declaration are recorded.

(h) The legal descriptions of the real estate constituting (i) the remaining common interest community, and (ii) the severed portion of the common interest community shall, at the time of recording of the amendment to the declaration referred to in subsection (e), be as follows:

(1) In a planned community using a CIC plat that complies with section 515B.2-110, subsection (d), the lot and block descriptions contained in the CIC plat, and any amendments to it, with respect to (i) the remaining common interest community, and (ii) the severed portion of the common interest community.

(2) In a condominium, or cooperative or planned community using a CIC plat that complies with section 515B.2-110, subsection (c), (i) the CIC plat description relating to the remaining common interest community, and (ii) the part of the underlying legal description of the real estate in the declaration creating the common interest community, and any amendments to it, relating to the severed part of the common interest community.

(3) The recording officer for each county in which the common interest community is located shall index the property located in that county in its records under the legal descriptions required by this subsection as of the date of recording of the amendment to the declaration. In the case of registered property, the registrar of titles shall cancel the existing certificates of title for the severed part of the common interest community and issue certificates of title for the property using the legal descriptions required by this subsection.

(i) In a condominium or planned community, if the severed part of the common interest community is not to be reconstituted as a new common interest community following severance, ~~title to the common elements and, in a common interest community~~

~~in which all units have upper and lower boundaries described in the declaration~~ title to all the real estate in the severed part of the common interest community~~,~~ vests in the unit owners of the units being severed, upon severance, ~~as tenants in common in proportion to their respective allocated interests in the declaration, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit, and a nonexclusive easement across, over and under any common elements contained in the severed portion of the common interest community for enjoyment, access, utilities, communication services, and other essential services, as applicable~~ as provided in the severance agreement.

(j) No common interest community shall be severed in such a manner as to materially impair access, utility services, communication services, or other essential services with respect to either the remaining common interest community or the severed part of the common interest community.

ARTICLE 3

ORGANIZATION AND OPERATION

Section 1. Minnesota Statutes 2008, section 515B.3-101, is amended to read:

515B.3-101 ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

A common interest community shall be administered by an association. The association shall be incorporated no later than the date the common interest community is created. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 515B.2-119 or their heirs, successors, or assigns. The association shall be organized as a Minnesota profit or nonprofit corporation, or may, in the case of a cooperative, be organized under chapter 308A or 308B. In the event of a conflict between this chapter and any other chapter under which the association is incorporated, this chapter shall control.

Sec. 2. Minnesota Statutes 2008, section 515B.3-102, is amended to read:

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

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

(1) adopt, amend and revoke rules and regulations not inconsistent with the articles of incorporation, bylaws and declaration, as follows: (i) regulating the use of the common

elements; (ii) regulating the use of the units, and conduct of unit occupants, which may jeopardize the health, safety or welfare of other occupants, which involves noise or other disturbing activity, or which may damage the common elements or other units; (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the common elements and conduct which may damage the common interest community; (v) regulating the exterior appearance of the common interest community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit; (vi) implementing the articles of incorporation, declaration and bylaws, and exercising the powers granted by this section; and (vii) otherwise facilitating the operation of the common interest community;

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

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

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

(5) make contracts and incur liabilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Minnesota Statutes 2008, section 515B.3-103, is amended to read:

515B.3-103 BOARD OF DIRECTORS, OFFICERS AND DECLARANT CONTROL.

(a) An association shall be governed by a board of directors whose appointment or election shall occur no later than the date of creation of the common interest community and shall be reflected in the association's records. Except as expressly prohibited by the declaration, the articles of incorporation, bylaws, subsection (b), or other provisions of this chapter, the board may act in all instances on behalf of the association. In the performance of their duties, the officers and directors are required to exercise (i) if appointed by the declarant, the care required of fiduciaries of the unit owners and (ii) if elected by the unit owners, the care required of a director by section 302A.251, 308B.455,

or 317A.251, as applicable. The officers and directors appointed by the declarant shall have a duty to fulfill, and to cause the association to fulfill, their respective obligations under the declaration, bylaws, articles of incorporation, and this chapter and to enforce the provisions of the declaration, bylaws, articles of incorporation, and this chapter against all unit owners, including the declarant and its affiliates, in a uniform and fair manner. The standards of conduct for officers and directors set forth in this subsection shall also apply to the officers and directors of master associations in the exercise of their duties on behalf of the master association.

(b) The board may not act unilaterally to amend the declaration, to terminate the common interest community, to elect directors to the board, or to determine the qualifications, powers and duties, or terms of office of directors, but the board may fill vacancies in its membership created other than by removal by the vote of the association members for the unexpired portion of any term.

(c) The declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and directors of the association. The period of declarant control begins on the date of creation of the common interest community and terminates upon the earliest of the following events: (i) five years after the date of the first conveyance of a unit to a unit owner other than a declarant in the case of a flexible common interest community or three years in the case of any other common interest community, (ii) the declarant's voluntary surrender of control by giving written notice to the unit owners pursuant to section 515B.1-115, or (iii) the conveyance of 75 percent of the units to unit owners other than a declarant.

(d) The board shall cause a meeting of the unit owners to be called, as follows:

(1) If the period of declarant control has terminated pursuant to subsection (c), a meeting of the unit owners shall be called and held within 60 days after said termination, at which the board shall be appointed or elected by all unit owners, including declarant, subject to the requirements of subsection (e).

(2) If 50 percent of the units that a declarant is authorized by the declaration to create have been conveyed prior to the termination of the declarant control period, a meeting of the unit owners shall be called and held within 60 days thereafter, at which not less than 33-1/3 percent of the members of the board shall be elected by unit owners other than a declarant or an affiliate of a declarant.

(3) If the board fails or refuses to cause a meeting of the unit owners required to be called pursuant to subsection (d), then the unit owners other than a declarant and its affiliates may cause the meeting to be called pursuant to the applicable provisions of the

law under which the association was created. The declarant and its affiliates shall be deemed to be present at the meeting for purposes of establishing a quorum regardless of their failure to attend the meeting.

(e) Following the termination of any period of declarant control, the unit owners shall appoint or elect the board. All unit owners, including the declarant and its affiliates, may cast the votes allocated to any units owned by them. The board shall thereafter be subject to the following ~~requirements~~:

(1) Unless otherwise approved by a vote of unit owners other than the declarant or an affiliate of the declarant, a majority of the directors shall be unit owners or a natural person designated by a unit owner that is not a natural person, other than a declarant or an affiliate of a declarant~~, or a natural person designated by a unit owner that is not a natural person~~. The remaining directors need not be unit owners unless required by the articles of incorporation or bylaws.

(2) ~~Subject to the requirements of subsection (1), the articles of incorporation or bylaws may authorize (i) the appointment or election of one director, who need not be a unit owner, by a declarant or by a person or persons other than a unit owner, (ii) classes of directors, and (iii) the election of certain directors by unit owners of a certain class or classes of units. The articles of incorporation or bylaws shall not be amended to change or terminate the authorization described in (i) without the written consent of the declarant or other person possessing the power to appoint or elect.~~ Subject to the requirements of subsection (e)(1), the articles of incorporation or bylaws may authorize the declarant or a person designated by the declarant to appoint one director, who need not be a member. The articles of incorporation or bylaws shall not be amended to change or terminate the authorization to appoint one director without the written consent of the declarant or other person possessing the power to appoint.

(3) ~~Subject to the requirements of subsection (1), if separate classes of directors are authorized under subsection (2), the articles of incorporation or bylaws may authorize class voting by classes of directors on specified issues affecting only a certain class of units, or to protect the legitimate interests of the class. A person shall not use special class voting to evade any limit imposed on declarants by this chapter.~~ Subject to the requirements of subsection (e)(1), the articles of incorporation or bylaws may authorize special classes of directors and director voting rights, as follows: (i) classes of directors, (ii) the appointment or election of directors in certain classes by certain classes of members, or (iii) class voting by classes of directors on issues affecting only a certain class or classes of members, units, or other parcels of real estate, or to otherwise protect the legitimate interest of such class

or classes. No person may utilize such special classes or class voting for the purpose of evading any limitation imposed on declarants by this chapter.

(4) The board shall elect the officers. The directors and officers shall take office upon election.

(f) In determining whether the period of declarant control has terminated under subsection (c), or whether unit owners other than a declarant are entitled to elect members of the board of directors under subsection (d), the percentage of the units conveyed shall be calculated using as a numerator the number of units conveyed and as a denominator the number of units subject to the declaration plus the number of units which the declarant is authorized by the declaration to create on any additional real estate. The percentages referred to in subsections (c) and (d) shall be calculated without reference to units that are auxiliary to other units, such as garage units or storage units. A person shall not use a master association or other device to evade the requirements of this section.

(g) Except as otherwise provided in this subsection, meetings of the board of directors must be open to the unit owners. To the extent practicable, the board shall give reasonable notice to the unit owners of the date, time, and place of a board meeting. If the date, time, and place of meetings are provided for in the declaration, articles, or bylaws, announced at a previous meeting of the board, posted in a location accessible to the unit owners and designated by the board from time to time, or if an emergency requires immediate consideration of a matter by the board, notice is not required. "Notice" has the meaning given in section 317A.011, subdivision 14. Meetings may be closed to discuss the following:

(1) personnel matters;

(2) pending or potential litigation, arbitration or other potentially adversarial proceedings, between unit owners, between the board or association and unit owners, or other matters in which any unit owner may have an adversarial interest, if the board determines that closing the meeting is necessary to discuss strategy or to otherwise protect the position of the board or association or the privacy of a unit owner or occupant of a unit; or

(3) criminal activity arising within the common interest community if the board determines that closing the meeting is necessary to protect the privacy of the victim or that opening the meeting would jeopardize investigation of the activity.

Nothing in this subsection imposes a duty on the board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the board meeting or any action taken at the meeting. The minutes of any part of a meeting that is closed under this subsection may be kept confidential at the discretion of the board.

Sec. 4. Minnesota Statutes 2008, section 515B.3-104, is amended to read:

515B.3-104 SPECIAL DECLARANT RIGHTS; TRANSFER ~~OF SPECIAL DECLARANT RIGHTS~~, LIABILITY OF TRANSFEROR AND TRANSFEREE, AND TERMINATION.

~~(a) A special declarant right created or reserved under this chapter may be voluntarily transferred only by a separate instrument evidencing the transfer recorded in every county in which any part of the common interest community is located. The separate instrument shall be recorded against all units in the common interest community, or in the case of a cooperative, against the real estate owned by the cooperative, or in the case of a condominium on registered land, the instrument must be filed pursuant to section 508.351, subdivision 3, or 508A.351, subdivision 3. The instrument may provide for the conveyance of less than all of the special declarant rights, and is not effective unless executed by the transferor and transferee. A deed in lieu of foreclosure, or other conveyance arising out of a foreclosure or cancellation, shall not be deemed a voluntary transfer within the meaning of this section.~~

~~(b) Upon the voluntary transfer of any special declarant right, the liability of a transferor declarant is as follows:~~

~~(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed on the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.~~

~~(2) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the common interest community.~~

~~(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising before or after the transfer.~~

~~(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.~~

~~(c) Upon the voluntary transfer of any special declarant right, the liability of a successor declarant is as follows:~~

~~(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.~~

~~(2) A successor to any special declarant right who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration, except: (i) misrepresentations by any previous declarant; (ii) warranty obligations on improvements made by any previous declarant, or made before the common interest community was created; (iii) breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board; (iv) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer; and (v) any liability arising out of a special declarant right which was not transferred as provided in subsection (a).~~

~~(d) In case of foreclosure of a mortgage or cancellation of a contract for deed or other security interest (or conveyance in lieu thereof), sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings, of any units or additional real estate, or interest therein, owned by a declarant, a person acquiring title to the property or interests succeeds to all special declarant rights related to the property or interests held by that declarant and acquired by it unless (i) the mortgage instrument or other instrument creating the security interest, (ii) the instrument conveying title or (iii) a separate instrument signed by the person and recorded within 60 days after the person acquires title to the property or interests, provides for transfer of less than all special declarant rights. The separate instrument need be recorded only against the title to the units or interests other than those being acquired under this subsection, or in the case of a cooperative, against the real estate owned by the cooperative. The declarant shall cease to have or exercise any special declarant rights which are transferred. If the person has limited the transfer of certain special declarant rights as provided in this subsection, then it and its successor's liability shall be limited, as follows:~~

~~(1) If the person or its successor limits its rights and liabilities only to maintain models, sales office and signs, and if that party is not an affiliate of a declarant, it is not subject to any liability or obligations as a declarant, except the obligation to provide a disclosure statement and any liability arising from that obligation, and it may not exercise any other special declarant rights.~~

~~(2) If the person or its successor is not an affiliate of a declarant, it may declare its intention in a recorded instrument as provided in subsection (a) to acquire all special declarant rights and hold those rights solely for transfer to another person. Thereafter, until the special declarant rights are transferred to a person acquiring title to any unit owned by~~

~~the successor, or until a separate instrument is recorded permitting exercise of all of those rights, that successor may not exercise any of those rights other than the right to control the board of directors in accordance with the provisions of section 515B.3-103 for the duration of any period of declarant control. So long as any successor may not exercise its special declarant rights under this subsection, it is not subject to any liability or obligation as a declarant other than liability for its acts and omissions under section 515B.3-103.~~

~~(c) Any attempted exercise by a purported successor to a special declarant right which is not transferred as provided in this section is void, and any purported successor attempting to exercise that right shall be liable for any damages arising out of its actions.~~

(a) Except as set forth in subsection (b) or (c), a special declarant right, as defined in section 515B.1-103(33), does not run with title and may only be transferred pursuant to a separate transfer instrument, titled a "Transfer of Special Declarant Rights," that both the transferor and the transferee execute.

(1) A transfer shall be recorded in compliance with applicable law, and is not effective (i) unless recorded and (ii) unless the transferee is the owner of record of a unit or additional real estate at the time the transfer is recorded.

(2) A transferor may transfer fewer than all of the special declarant rights the transferor holds provided that any special declarant rights not transferred are subject to item (i).

(3) If as a result of a transfer there will be multiple declarants holding special declarant rights, the transfer shall describe the allocation of each special declarant right between or among the transferor and each transferee, including, at a minimum, a description of the units or additional real estate to which the respective special declarant rights apply and the name and address of the owner or owners of record of the respective units or additional real estate at the time the transfer is recorded.

(b) If a declarant's ownership interest in a unit, or in additional real estate that may become subject to the declaration pursuant to the exercise of a special declarant right, is transferred to another person as a result of the foreclosure, termination, or cancellation of a security interest, foreclosure of a judgment lien, tax judgment sale, tax forfeited land sale, sale or transfer under bankruptcy code or receivership proceedings, or other sale or transfer approved by a court, or is transferred by a deed in lieu of foreclosure, then all special declarant rights that are reserved to the declarant in the declaration and that relate to the units or additional real estate transferred are automatically transferred to the person acquiring title from the declarant, and the transfer is effective as to all special declarant rights, unless or until: (i) the security instrument in the case of the foreclosure, termination, or cancellation of a security interest, (ii) the instrument effecting the involuntary transfer,

or (iii) a separate instrument executed by the transferee and recorded in compliance with applicable law within 60 days after the date the transferee acquires title to the declarant's ownership interest, provides for the transfer of fewer than all of the declarant's special declarant rights. For purposes of this subsection, the transferee shall be deemed to acquire title upon the expiration of the owner's period of redemption, or reinstatement in the case of contract for deed. The transferor shall cease to have and shall not exercise any special declarant right that relates to the transferor's ownership interest in the units or additional real estate transferred, whether or not the transferee subsequently disclaims the right, but the transferor retains all reserved special declarant rights that relate to its ownership interest that is not transferred to the transferee.

(c) If a declarant is an individual rather than a legal entity, and the individual dies, then all special declarant rights that are reserved to the declarant in the declaration and that relate to the units or additional real estate owned by the declarant are automatically transferred with the title to said units or additional real estate.

(d) A transferor's liability for the performance of obligations that this chapter imposes upon a declarant is as follows:

(1) A transferor remains liable under this chapter for all obligations that this chapter imposes upon a declarant and arising on or before the effective date of the transfer, except that a transferor is not liable under section 515B.4-112 for any express warranties that a transferee makes to a purchaser. Except as set forth in subsection (d)(2) and (3), a transferor is not liable under this chapter for the performance of any obligations that this chapter imposes upon a declarant and arising after the effective date of the transfer.

(2) If a transferor and a transferee are affiliates, the transferor and the transferee are jointly and severally liable under this chapter for the performance of all the obligations that this chapter imposes upon a declarant, whether such obligations arise before, on, or after the effective date of the transfer. Upon a subsequent transfer, a prior transferor remains liable to the extent its transferee remains liable under subsection (d) and is relieved of liability to the same extent that its transferee is relieved of liability under subsection (e).

(3) If, following a transfer of special declarant rights, the transferor retains special declarant rights, the transferor and transferee are jointly and severally liable for the performance of all the obligations that this chapter imposes upon a declarant and that arise after the effective date of the transfer, except that the transferor is not liable under section 515B.4-101(b) or 515B.4-102(b), and section 515B.4-109, 515B.4-110, 515B.4-111, 515B.4-112, 515B4.-113, 515B.4-117, or 515B.4-118, to any purchaser from or through the transferee.

(e) Except as provided in subsections (g) and (h), a transferee's liability for the performance of obligations that this chapter imposes upon a declarant is as follows:

(1) Except as set forth in subsection (e)(3), a transferee is liable under this chapter for all obligations that this chapter imposes upon a declarant and that arise after the effective date of the transfer. A transferee is not liable under this chapter for the performance of any obligations that this chapter imposes upon a declarant and that arise before or on the effective date of the transfer, except that a transferee is liable under section 515B.4-112 for any express warranties the transferee makes to a purchaser before or on the effective date of the transfer.

(2) If a transferor and a transferee are affiliates, the transferor and the transferee are jointly and severally liable under this chapter for the performance of all the obligations that this chapter imposes upon a declarant, whether such obligations arise before, on, or after the effective date of the transfer. Upon a subsequent transfer, a prior transferor remains liable to the extent its transferee remains liable under subsection (d) and is relieved of liability to the same extent that its transferee is relieved of liability under this subsection.

(3) If, following a transfer of special declarant rights under subsection (a) or (b), the transferor retains special declarant rights, the transferor and transferee are jointly and severally liable for the performance of all the obligations that this chapter imposes upon a declarant and that arise after the effective date of the transfer, except that the transferee is not liable under section 515B.4-101(b) or 515B.4-102(b), and section 515B.4-109, 515B.4-110, 515B.4-111, 515B.4-112, 515B.4-113, 515B.4-117, or 515B.4-118, to any purchaser from or through the transferor.

(f) For purposes of this section, a declarant's obligations under section 515B.3-111(a) arise when the tort or contract violation occurs; a declarant's obligations to a purchaser under section 515B.4-112 arise when the declarant makes an express warranty to the purchaser; and a declarant's obligations to a purchaser under sections 515B.4-113 and 515B.4-118(a), arise when the declarant conveys a unit to the purchaser.

(g) A transferee who acquires special declarant rights pursuant to subsection (b) and who is not an affiliate of the transferor may record an instrument in compliance with subsection (b) stating that the transferee elects to acquire only the special declarant rights described in section 515B.1-103(33)(i), (ii), and (iv). In that case, the transferee is liable as a declarant only to purchasers from said transferee and only for the obligations of a declarant under sections 515B.4-101(b) and 515B.4-102(b), and sections 515B.4-109, 515B.4-110, 515B.4-111, 515B.4-113, 515B.4-117, and 515B.4-118, and for any express warranties under section 515B.4-112 that the transferee makes to purchasers.

(h) A transferee who acquires special declarant rights pursuant to subsection (b) and who is not an affiliate of the transferor may record an instrument in compliance with subsection (b) stating that the transferee elects to acquire the special declarant rights solely for subsequent re-transfer to another person who acquires title to units or additional real estate from said transferee. In that case, (i) the transferee may not utilize special declarant rights in the sale of units or otherwise sell units, except to a person who also acquires one or more special declarant rights the transferee holds with respect to the units or additional real estate sold; (ii) the transferee may not exercise any special declarant rights other than the rights described in section 515B.1-103(33)(v); (iii) the transferee is not liable to make up any operating deficit under section 515B.3-115(a)(2); and (iv) the transferee is liable as a declarant only for the obligations of a declarant under sections 515B.3-103, 515B.3-111, and 515B.3-120, as applicable. A transferee who makes the election described in this subsection may subsequently rescind the election in whole or in part by recording an instrument in compliance with applicable law, and upon the recording of such an instrument the transferee's rights and obligations as a declarant shall be as otherwise set forth in this section.

(i) A special declarant right held by a declarant terminates upon the earlier of: (i) that declarant's voluntary surrender of the special declarant right by giving written notice to the unit owners pursuant to section 515B.1-115; or (ii) the conveyance, whether voluntary or involuntary, by that declarant, of all of the units and additional real estate owned by that declarant, unless immediately after the conveyance the special declarant right is transferred to the grantee. All special declarant rights terminate ten years after the date of the first conveyance of a unit to a person other than a declarant unless extended by the vote or written agreement of unit owners entitled to cast at least 67 percent of the votes allocated to units not owned by a declarant.

~~(f)~~ (j) No person shall exercise special declarant rights unless, at the time of exercise, the person holds title of record to one or more units or additional real estate. Any exercise of a special declarant right in violation of this section shall be void, and the person attempting to exercise the right shall be liable for all damages and costs arising from its actions. Nothing in this section shall subject any ~~successor to~~ transferee of a special declarant right to any claims against or other obligations of a transferor ~~declarant~~, other than claims and obligations arising under this chapter, or the declaration or bylaws.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to transfers of special declarant rights that are effective on or after that date.

Sec. 5. Minnesota Statutes 2008, section 515B.3-105, is amended to read:

515B.3-105 TERMINATION OF CONTRACTS, LEASES, LICENSES.

(a) If entered into prior to termination of the period of declarant control, (i) any management ~~contract~~, employment ~~contract~~, maintenance, or operations contract or any lease or license of recreational ~~facilities, or garages or other~~, parking, or storage facilities, that is binding on the association;~~,~~ (ii) any other contract, lease, or license ~~binding~~ entered into by the association, ~~and to which~~ a declarant or an affiliate of a declarant ~~is a party,~~ that is binding on the association; or (iii) any contract, lease, or license that is binding on the association or ~~any~~ all unit ~~owner~~ owners other than ~~the~~ a declarant or an affiliate of ~~the~~ a declarant which is not bona fide or which was unconscionable to the association or the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association under the procedures described in this section.

(b) ~~If prior to expiration of the suspension period described~~ If entered into prior to the termination of the period of master developer control described in section 515B.2-121, subsection (c), paragraph ~~(3)~~ (1), a contract, lease, or license of a type described in subsection (a) is entered into by ~~a person having authority to appoint the directors of the master association~~ the master developer and is binding upon the master association, then the master association~~, and not any association,~~ may terminate the contract, lease, or license under the procedures described in this section.

(c) Termination shall be upon no less than 90 days' notice. Notice of termination shall be given by the association or master association, as applicable, in accordance with section 515B.1-115; provided, that notice shall be effective only if given within two years following the termination of the period of declarant control or the ~~suspension period described in section 515B.2-121, subsection (c), paragraph (3)~~ period of master developer control, as applicable.

(d) This section does not apply to the following, provided that the rights and obligations created by the referenced instruments are (i) bona fide and not unconscionable as contemplated by subsection (a)(iii); and (ii) disclosed to the purchaser of the unit in the disclosure statement required by section 515B.4-102:

~~(1) any~~ (i) a lease the termination of which would terminate the common interest community;

~~(2)~~ (ii) in the case of a cooperative, a mortgage or contract for deed encumbering real estate owned by the association, except that if the mortgage or contract for deed contains a contractual obligation involving a type of contract, lease, or license which may be terminated pursuant to subsection (a) or (b), then that contractual obligation may be terminated pursuant to subsection (c); ~~or~~

~~(3)~~ (iii) an agreement between a declarant ~~or~~, an affiliate of a declarant, or a ~~person having authority pursuant to section 515B.2-121(c)(3) to appoint the directors of the master association~~ master developer, and any governmental entity, if such agreement is necessary to obtain governmental approvals, provide financing under any type of government program, or provide for governmentally required access, conservation, drainage, ~~or~~ utilities or other public purpose; or

(iv) subject to the requirements of section 515B.4-110(a), a lease, easement, covenant, condition, or restriction that (i) is recorded before the recording of the declaration, and (ii) runs in favor of a person other than a declarant or an affiliate of a declarant.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to common interest communities created on or after that date.

Sec. 6. Minnesota Statutes 2008, section 515B.3-106, is amended to read:

515B.3-106 BYLAWS; ANNUAL REPORT.

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

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

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

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

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

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

(2) a statement of the ~~balance in any reserve or~~ association's total replacement ~~fund~~ reserves, the components of the common interest community for which the reserves are set aside, and the amounts of the reserves, if any, that the board has allocated for the replacement of each of those components;

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

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

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

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

Sec. 7. Minnesota Statutes 2008, section 515B.3-109, is amended to read:

515B.3-109 QUORUMS.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if unit owners entitled to cast in excess of 20 percent of the votes in the association are present in person or by proxy at the beginning of the meeting. <u>If a master developer or declarant or their affiliates are members of a master association or an association, as applicable, they shall be deemed to be present for purposes of establishing a quorum at a meeting called pursuant to section 515B.2-121(c)(2) or 515B.3-103(d), as applicable, regardless of their failure to attend the meeting.</u>

(b) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the board if persons entitled to cast in excess of 50 percent of the votes on that board are present in person at the beginning of the meeting.

Sec. 8. Minnesota Statutes 2008, section 515B.3-110, is amended to read:

515B.3-110 VOTING; PROXIES.

(a) At any meeting of the association an owner or the holder of the owner's proxy shall be entitled to cast the vote which is allocated to the unit. If there is more than one owner of a unit, only one of the owners may cast the vote. If the owners of a unit fail to agree and notify the association as to who shall cast the vote, the vote shall not be cast. Any provision in the articles of incorporation, bylaws, declaration, or other document restricting a unit owner's right to vote, or affecting quorum requirements, by reason of nonpayment of assessments, or a purported violation of any provision of the documents governing the common interest community, shall be void.

(b) If permitted by the articles or bylaws, votes allocated to a unit may be cast pursuant to a proxy executed by the unit owner entitled to cast the vote for that unit. The board may specify the form of proxy and proxy rules, consistent with law.

(c) <u>If authorized by the statute under which the association is created, and to the extent not limited or prohibited by the articles of incorporation, bylaws, or declaration,</u> the

~~entire~~ vote on any ~~single~~ issue ~~(except the election of directors),~~ or issues may be taken by electronic means or by mailed ballots, ~~subject to (i) any prohibition or requirement contained in the articles of incorporation, bylaws, or declaration and (ii) any requirements of the statute under which the association is created~~ in compliance with the applicable statute, in lieu of holding a meeting of the unit owners. Such a vote shall have the force and effect of a vote taken at a meeting; provided, that the total votes cast are at least equal to the votes required for a quorum. The board shall set a voting period within which the ballots or other voting response must be ~~returned~~ received by the association, which period shall be not less than ~~ten~~ 15 nor more than ~~30~~ 45 days after the date of ~~mailing or hand~~ delivery of the ~~ballots~~ notice of the vote and voting procedures to the unit owners. The board of directors shall provide ~~written~~ notice of the results of the vote to the ~~members~~ unit owners within 30 days after the expiration of the voting period. All requirements in this chapter, the declaration or the bylaws for a meeting of the ~~members~~ unit owners, or being present in person, shall be deemed satisfied by a vote taken ~~by mail~~ in compliance with the requirements of this section. The voting procedures authorized by this section shall not be used in combination with a vote taken at a meeting of the unit owners. However, voting by electronic means and mailed ballot may be combined if each is done in compliance with the applicable statute.

(d) The articles of incorporation or bylaws may authorize class voting by unit owners for directors or on specified issues affecting the class. Class voting may only be used to address operational, physical, or administrative differences within the common interest community. A declarant shall not use class voting to evade any limit imposed on declarants by this chapter and units shall not constitute a class because they are owned by a declarant.

(e) The declaration or bylaws may provide that votes on specified matters affecting the common interest community be cast by lessees or secured parties rather than unit owners; provided that (i) the provisions of subsections (a), (b), and (c) apply to those persons as if they were unit owners; (ii) unit owners who have so delegated their votes to other persons may not cast votes on those specified matters; (iii) lessees or secured parties are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners, and (iv) the lessee or secured party has filed satisfactory evidence of its interest with the secretary of the association prior to the meeting. Unit owners must also be given notice, in the manner provided in section 515B.3-108(b), of meetings at which lessees or secured parties are entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast nor counted toward a quorum.

Sec. 9. Minnesota Statutes 2008, section 515B.3-112, is amended to read:

515B.3-112 CONVEYANCE OF, OR CREATION OF SECURITY INTERESTS IN, COMMON ELEMENTS.

(a) In a condominium or planned community, unless the declaration provides otherwise, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, approve that action in writing or at a meeting; but all unit owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted to nonresidential use.

(b) In a cooperative, unless the declaration provides otherwise, part of a cooperative may be conveyed, or all or a part subjected to a security interest, by the association if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units in which the declarant has no interest, or any larger percentage the declaration specifies, approves that action in writing or at a meeting. If fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted to nonresidential use. Any purported conveyance or other voluntary transfer of an entire cooperative is void, unless made pursuant to section 515B.2-119.

(c) The association, on behalf of the unit owners, may contract to convey or encumber an interest in the common elements of a common interest community pursuant to this subsection, subject to the required approval. After the approval has been obtained, the association shall have a power of attorney coupled with an interest to effect the conveyance or encumbrance on behalf of all unit owners in the common interest community, including the power to execute deeds, mortgages, or other instruments of conveyance or security. The instrument conveying or creating the interest in the common interest community shall be recorded and shall include as exhibits (i) an affidavit of the president or secretary of the association certifying that the approval required by this section has been obtained and (ii) a schedule of the names of all unit owners and units in the common interest community as of the date of the approval.

(d) Unless made pursuant to this section, any purported conveyance, creation of a security interest in or other voluntary transfer of any interest in the common elements, or of any part of a cooperative, is void. The grant of an easement, lease, or license pursuant to section 515B.3-102(a)(9) is not subject to this section.

(e) In the case of a conveyance involving a condominium, a planned community utilizing a CIC plat complying with section 515B.2-110(c), or a cooperative in which the unit owners' interests are characterized as real estate, the association shall record, simultaneously with the recording of the instrument of conveyance, an amended CIC plat showing the real estate constituting the common interest community exclusive of the real estate conveyed. ~~In all common interest communities, upon recording of the instrument of conveyance, the declaration, and all rights and obligations arising therefrom, shall be deemed released and terminated as to the real estate conveyed.~~

(f) A conveyance or encumbrance of common elements, or of a cooperative, pursuant to this section shall not deprive any unit of its rights of support, reasonable access or utility services.

(g) In all common interest communities, upon recording of the instrument of conveyance, the real estate conveyed shall be released from the declaration and all rights and obligations arising therefrom. Except as provided in subsection (a), or unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(h) Any proceeds of the conveyance or creation of a security interest under this section are an asset of the association.

(i) This section shall not apply to any conveyance or encumbrance of any interest in a proprietary lease.

Sec. 10. Minnesota Statutes 2008, section 515B.3-113, is amended to read:

515B.3-113 INSURANCE.

(a) Commencing not later than the time of the first conveyance of a unit to a unit owner other than a declarant, the association shall maintain, to the extent reasonably available:

(1) subject to subsection (b), property insurance (i) on the common elements and, in a planned community, also on property that must become common elements, (ii) for broad form covered causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, at the time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies; and

(2) commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the property in an amount, if any, specified by the common interest community instruments or otherwise deemed sufficient in the judgment of the board, insuring the board, the association, the management agent, and their respective employees, agents and all persons acting as agents. The declarant shall be included as an additional insured in its capacity as a unit owner or board member. The unit owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.

(b) In the case of a common interest community that contains units, or structures within units, sharing or having contiguous walls, siding or roofs, the insurance maintained under subsection (a)(1) shall include those units, or structures within those units, and the common elements. The insurance need not cover the following items within the units: (i) ceiling or wall finishing materials, (ii) ~~floor coverings~~ finished flooring, (iii) cabinetry, (iv) finished millwork, (v) electrical ~~or~~, heating, ventilating, and air conditioning equipment, and plumbing fixtures serving a single unit, (vi) built-in appliances, or (vii) other improvements and betterments, regardless of when installed. If any improvements and betterments are covered, any increased cost may be assessed by the association against the units affected. The association may, in the case of a claim for damage to a unit or units, (i) pay the deductible amount as a common expense, (ii) assess the deductible amount against one or more of the units affected in any reasonable manner, or (iii) require the unit owners of one or more of the units affected to pay the deductible amount directly.

(c) If the insurance described in subsections (a) and (b) is not reasonably available, the association shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association, the unit owners or officers, directors or agents of the association.

(d) Insurance policies carried pursuant to subsections (a) and (b) shall provide that:

(1) each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board of directors;

(3) no act or omission by any unit owner or secured party, unless acting within the scope of authority on behalf of the association, shall void the policy or be a condition to recovery under the policy; and

(4) if at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy is primary insurance.

(e) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units. If there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the common interest community is terminated, the board of directors may retain the surplus for use by the association or distribute the surplus among the owners on an equitable basis as determined by the board.

(f) Unit owners may obtain insurance for personal benefit in addition to insurance carried by the association.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance, upon request, to any unit owner or secured party. The insurance may not be canceled until 60 days after notice of the proposed cancellation has been mailed to the association, each unit owner and each secured party for an obligation to whom certificates of insurance have been issued.

(h) Any portion of the common interest community which is damaged or destroyed as the result of a loss covered by the association's insurance shall be promptly repaired or replaced by the association unless (i) the common interest community is terminated and the association votes not to repair or replace all or part thereof, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) 80 percent of the unit owners, including every unit owner and holder of a first mortgage on a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. Subject to subsection (b), the cost of repair or replacement of the common elements in excess of insurance proceeds and reserves shall be paid as a common expense, and the cost of repair of a unit in excess of insurance proceeds shall be paid by the respective unit owner.

(i) If less than the entire common interest community is repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the common interest

community, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units, including units to which the limited common elements were assigned, and the secured parties of those units, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the unit owners and secured parties as their interests may appear in proportion to their common element interest in the case of a condominium or in proportion to their common expense liability in the case of a planned community or cooperative.

(j) If the unit owners and holders of first mortgages vote not to rebuild a unit, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 515B.1-107~~, and~~. The association shall have the power to, and shall, promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, if the common interest community is terminated, insurance proceeds not used for repair or replacement shall be distributed in the same manner as sales proceeds pursuant to section 515B.2-119(e).

(k) The provisions of this section may be varied or waived in the case of a common interest community in which all units are restricted to nonresidential use.

Sec. 11. Minnesota Statutes 2008, section 515B.3-114, is amended to read:

515B.3-114 REPLACEMENT RESERVES~~; SURPLUS FUNDS~~.

(a) The ~~annual budgets of the~~ association shall ~~provide from year to year, on a cumulative basis, for adequate reserve funds~~ include in its annual budgets replacement reserves projected by the board to be adequate, together with past and future contributions to replacement reserves to ~~cover~~ fund the replacement of those ~~parts~~ components of the common interest community which the association is obligated to replace~~. These reserve requirements~~ by reason of ordinary wear and tear or obsolescence, subject to the following:

(1) The amount annually budgeted for replacement reserves shall be adequate, together with past and future contributions to replacement reserves, to replace the components as determined based upon the estimated remaining useful life of each component; provided that portions of replacement reserves need not be segregated for the replacement of specific components.

(2) Unless otherwise required by the declaration, annual budgets need not include reserves for the replacement of (i) components that have a remaining useful life of more than 30 years, or (ii) components whose replacement will be funded by assessments authorized under section 515B.3-115(e)(1), or approved in compliance with clause (5).

(3) The association shall keep the replacement reserves in an account or accounts separate from the association's operating funds, and shall not use or borrow from the replacement reserves to fund the association's operating expenses, provided that this restriction shall not affect the association's authority to pledge the replacement reserves as security for a loan to the association.

(4) The association shall reevaluate the adequacy of its budgeted replacement reserves at least every third year after the recording of the declaration creating the common interest community.

(5) Unless otherwise required by the declaration, after the termination of the period of declarant control, and subject to approval (i) by the board and (ii) by unit owners, other than declarant or its affiliates, of units to which 51 percent of the votes in the association are allocated, the association need not annually assess for replacement reserves to replace those components whose replacement is planned to be paid for by special assessments levied under section 515B.3-115(c), or by assessments levied under section 515B.3-115(e)(2). The approval provided for in the preceding sentence shall be effective for no more than the association's current and three following fiscal years, subject to modification or renewal by the same approval standards.

(6) Unless otherwise required by the declaration, subsection (a) shall not apply to a common interest community which is restricted to nonresidential use.

(b) Unless the declaration provides otherwise, any surplus funds that the association has remaining after payment of or provision for common expenses and reserves shall be (i) credited to the unit owners to reduce their future common expense assessments or (ii) credited to reserves, or any combination thereof, as determined by the board of directors.

EFFECTIVE DATE. The amendments to this section are effective and apply to common interest communities for their fiscal years commencing on or after January 1, 2012.

Sec. 12. Minnesota Statutes 2008, section 515B.3-115, is amended to read:

515B.3-115 ASSESSMENTS FOR COMMON EXPENSES.

(a) The association shall approve an annual budget of common expenses at or prior to the conveyance of the first unit in the common interest community to a purchaser and annually thereafter. The annual budget shall include all customary and necessary operating expenses and replacement reserves for the common interest community, consistent with this section and section 515B.3-114. For purposes of replacement reserves under subsection (b), until an annual budget has been approved, the reserves shall be paid based

upon the budget contained in the disclosure statement required by section 515B.4-102. The obligation of a unit owner to pay common ~~expense assessments~~ expenses shall be as follows:

(1) If a common expense assessment has not been levied by the association, the declarant shall pay all ~~operating~~ common expenses of the common interest community, ~~and shall fund~~ including the payment of the replacement reserve component of the common expenses ~~as required by~~ for all units in compliance with subsection (b).

(2) If a common expense assessment has been levied by the association, all unit owners, including the declarant, shall pay the assessments ~~allocated to~~ levied against their units, ~~subject to the following~~ except as follows:

(i) ~~If~~ The declaration ~~so provides, a declarant's liability, and the assessment lien, for the common expense assessments, exclusive of replacement reserves, on any unit owned by the declarant may be limited to 25 percent or more of any assessment, exclusive of replacement reserves, until the unit or any building located in the unit is substantially completed. Substantial completion shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate.~~ may provide for an alternate common expense plan whereby the declarant's common expense liability, and the corresponding assessment lien against the units owned by the declarant, is limited to: (A) paying when due, in compliance with subsection (b), an amount equal to the full share of replacement reserves allocated to units owned by the declarant, as set forth in the association's annual budget approved as provided in this subsection, and (B) paying when due all accrued expenses of the common interest community in excess of the aggregate assessments payable with respect to units owned by persons other than a declarant; provided, that the alternate common expense plan shall not affect a declarant's obligation to make up any operating deficit pursuant to item (iv), and shall terminate upon the termination of any period of declarant control unless terminated earlier pursuant to item (iii).

(ii) ~~If~~ The ~~declaration provides for a reduced assessment pursuant to paragraph (2)(i), the declarant shall be obligated, within 60 days following the termination of the period of declarant control, to make up any operating deficit incurred by the association during the period of declarant control. The existence and amount, if any, of the operating deficit shall be determined using the accrual basis of accounting applied as of the date of termination of the period of declarant control, regardless of the accounting methodology previously used by the association to maintain its accounts.~~ alternate common expense plan may be authorized only by including in the declaration and the disclosure statement required by section 515B.4-102 provisions authorizing and disclosing the alternate common expense plan as described in item (i), and including in the disclosure statement either (A)

a statement that the alternate common expense plan will have no effect on the level of services or amenities anticipated by the association's budget contained in the disclosure statement, or (B) a statement describing how the services or amenities may be affected.

(iii) A declarant shall give notice to the association of its intent to utilize the alternate common expense plan and a commencement date after the date the notice is given. The alternate common expense plan shall be valid only for periods after the notice is given. A declarant may terminate its right to utilize the alternate common expense plan prior to the termination of the period of declarant control only by giving notice to the association and the unit owners at least 30 days prior to a selected termination date set forth in the notice.

(iv) If a declarant utilizes an alternate common expense plan, that declarant shall cause to be prepared and delivered to the association, at the declarant's expense, within 90 days after the termination of the period of declarant control, an audited balance sheet and profit and loss statement certified to the association and prepared by an accountant having the qualifications set forth in section 515B.3-121(b). The audit shall be binding on the declarant and the association.

(v) If the audited profit and loss statement shows an accumulated operating deficit, the declarant shall be obligated to make up the deficit within 15 days after delivery of the audit to the association, and the association shall have a claim against the declarant for an amount equal to the deficit until paid. A declarant who does not utilize an alternate common expense plan is not liable to make up any operating deficit. If more than one declarant utilizes an alternate common expense plan, all declarants who utilize the plan are jointly and severally liable to the association for any operating deficit.

(vi) The existence and amount, if any, of the operating deficit shall be determined using the accrual method of accounting applied as of the date of termination of the period of declarant control, regardless of the accounting methodology previously used by the association to maintain its accounts.

(vii) Unless approved by a vote of the unit owners other than the declarant and its affiliates, the operating deficit shall not be made up, prior to the election by the unit owners of a board of directors pursuant to section 515B.3-103(d), through the use of a special assessment described in subsection (c) or by assessments described in subsections (e), (f), and (g).

(viii) The use by a declarant of an alternate common expense plan shall not affect the obligations of the declarant or the association as provided in the declaration, the bylaws or this chapter, or as represented in the disclosure statement required by section 515B.4-102, except as to matters authorized by this chapter.

(b) The replacement ~~reserve component of the common expenses~~ reserves required by section 515B.3-114 shall be ~~funded~~ paid to the association by each unit owner for each unit owned by that unit owner in accordance with the ~~projected~~ association's annual budget ~~required by section 515B.4-102(23); provided, that the funding of replacement reserves with respect to a unit shall commence no later than the date that~~ approved pursuant to subsection (a), regardless of whether an annual assessment has been levied or whether the declarant has utilized an alternate common expense plan under subsection (a)(2). Replacement reserves shall be paid with respect to a unit commencing as of the later of (1) the date of creation of the common interest community or (2) the date that the ~~unit or~~ structure and exterior of the building containing the unit, or the structure and exterior of any building located within the unit boundaries ~~is~~, but excluding the interior finishing of the structure itself, are substantially completed. ~~Substantial completion shall be evidenced by a certificate of occupancy in any jurisdiction that issues the certificate.~~ If the association has not approved an annual budget as of the commencement date for the payment of replacement reserves, then the reserves shall be paid based upon the budget contained in the disclosure statement required by section 515B.4-102.

(c) After an assessment has been levied by the association, assessments shall be levied ~~at least~~ annually, based upon ~~a~~ an annual budget approved ~~at least annually~~ by the association. In addition to and not in lieu of annual assessments, an association may, if so provided in the declaration, levy special assessments against all units in the common interest community based upon the same formula required by the declaration for levying annual assessments. Special assessments may be levied only (1) to cover expenditures of an emergency nature, (2) to replenish underfunded replacement reserves, (3) to cover unbudgeted capital expenditures or operating expenses, or (4) to replace certain components of the common interest community described in section 515B.3-114(a), if such alternative method of funding is approved under section 515B.3-114(a)(5). The association may also levy assessments against fewer than all units as provided in subsections (e), (f), and (g), subject to the requirements of section 515B.3-114(a)(5), with respect to assessments under section 515B.3-115(e)(2).

(d) Except as modified by subsections (a)(1) and (2), (e), (f), and (g), all common expenses shall be assessed against all the units in accordance with the allocations established by the declaration pursuant to section 515B.2-108.

(e) Unless otherwise required by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) any common expense or portion thereof benefiting fewer than all of the units may be assessed exclusively against the units benefited, equally, or in any other proportion the declaration provides;

(3) the costs of insurance may be assessed in proportion to risk or coverage, and the costs of utilities may be assessed in proportion to usage;

(4) reasonable attorneys fees and costs incurred by the association in connection with (i) the collection of assessments and, (ii) the enforcement of this chapter, the articles, bylaws, declaration, or rules and regulations, against a unit owner, may be assessed against the unit owner's unit; and

(5) fees, charges, late charges, fines and interest may be assessed as provided in section 515B.3-116(a).

(f) Assessments levied under section 515B.3-116 to pay a judgment against the association may be levied only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(g) If any damage to the common elements or another unit is caused by the act or omission of any unit owner, or occupant of a unit, or their invitees, the association may assess the costs of repairing the damage exclusively against the unit owner's unit to the extent not covered by insurance.

(h) Subject to any shorter period specified by the declaration or bylaws, if any installment of an assessment becomes more than 60 days past due, then the association may, upon ten days' written notice to the unit owner, declare the entire amount of the assessment immediately due and payable in full.

(i) If common expense liabilities are reallocated for any purpose authorized by this chapter, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

(j) An assessment against fewer than all of the units must be levied within three years after the event or circumstances forming the basis for the assessment, or shall be barred.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to common interest communities created on or after that date.

Sec. 13. Minnesota Statutes 2008, section 515B.3-116, is amended to read:

515B.3-116 LIEN FOR ASSESSMENTS.

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes

due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments, under this section. Recording of the declaration constitutes record notice and perfection of any assessment lien under this section, and no further recording of any notice of or claim for the lien is required.

(b) Subject to subsection (c), a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) any first mortgage encumbering the fee simple interest in the unit, or, in a cooperative, any first security interest encumbering only the unit owner's interest in the unit, (iii) liens for real estate taxes and other governmental assessments or charges against the unit, and (iv) a master association lien under section 515B.2-121~~(i)~~(h). This subsection shall not affect the priority of mechanic's liens.

(c) If a first mortgage on a unit is foreclosed, the first mortgage was recorded after June 1, 1994, and no owner or person who acquires the owner's interest in the unit redeems ~~during the owner's period of redemption provided by~~ pursuant to chapter 580, 581, or 582, the holder of the sheriff's certificate of sale from the foreclosure of the first mortgage or any person who acquires title to the unit by redemption as a junior creditor shall take title to the unit subject to a lien in favor of the association for unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding ~~the first day following~~ the end of the owner's period of redemption. The common expenses shall be based upon the association's then current annual budget, notwithstanding the use of an alternate common expense plan under section 515B.3-115(a)(2). If a first security interest encumbering a unit owner's interest in a cooperative unit which is personal property is foreclosed, the secured party or the purchaser at the sale shall take title to the unit subject to unpaid assessments for common expenses levied pursuant to section 515B.3-115(a), (e)(1) to (3), (f), and (i) which became due, without acceleration, during the six months immediately preceding the first day following either the disposition date pursuant to section 336.9-610 or the date on which the obligation of the unit owner is discharged pursuant to section 336.9-622. ~~This subsection shall not affect the priority of mechanics' liens.~~

~~(c) Recording of the declaration constitutes record notice and perfection of any lien under this section, and no further recordation of any notice of or claim for the lien is required.~~

(d) Proceedings to enforce an assessment lien shall be instituted within three years after the last installment of the assessment becomes payable, or shall be barred.

(e) The unit owner of a unit at the time an assessment is due shall be personally liable to the association for payment of the assessment levied against the unit. If there are multiple owners of the unit, they shall be jointly and severally liable.

(f) This section does not prohibit actions to recover sums for which subsection (a) creates a lien nor prohibit an association from taking a deed in lieu of foreclosure.

(g) The association shall furnish to a unit owner or the owner's authorized agent upon written request of the unit owner or the authorized agent a statement setting forth the amount of unpaid assessments currently levied against the owner's unit. If the unit owner's interest is real estate, the statement shall be in recordable form. The statement shall be furnished within ten business days after receipt of the request and is binding on the association and every unit owner.

(h) The association's lien may be foreclosed as provided in this subsection.

(1) In a condominium or planned community, the association's lien may be foreclosed in a like manner as a mortgage containing a power of sale pursuant to chapter 580, or by action pursuant to chapter 581. The association shall have a power of sale to foreclose the lien pursuant to chapter 580.

(2) In a cooperative whose unit owners' interests are real estate, the association's lien shall be foreclosed in a like manner as a mortgage on real estate as provided in paragraph (1).

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien shall be foreclosed in a like manner as a security interest under article 9 of chapter 336. In any disposition pursuant to section 336.9-610 or retention pursuant to sections 336.9-620 to 336.9-622, the rights of the parties shall be the same as those provided by law, except (i) notice of sale, disposition, or retention shall be served on the unit owner 90 days prior to sale, disposition, or retention, (ii) the association shall be entitled to its reasonable costs and attorney fees not exceeding the amount provided by section 582.01, subdivision 1a, (iii) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to disposition or retention, notwithstanding the value of the unit, and (iv) the notice of sale, disposition, or retention shall contain the following statement in capital letters with the name of the association or secured party filled in:

"THIS IS TO INFORM YOU THAT BY THIS NOTICE (fill in name of association or secured party) HAS BEGUN PROCEEDINGS UNDER MINNESOTA STATUTES, CHAPTER 515B, TO FORECLOSE ON YOUR INTEREST IN YOUR UNIT FOR THE REASON SPECIFIED IN THIS NOTICE. YOUR INTEREST IN YOUR UNIT WILL

TERMINATE 90 DAYS AFTER SERVICE OF THIS NOTICE ON YOU UNLESS BEFORE THEN:

(a) THE PERSON AUTHORIZED BY (fill in the name of association or secured party) AND DESCRIBED IN THIS NOTICE TO RECEIVE PAYMENTS RECEIVES FROM YOU:

(1) THE AMOUNT THIS NOTICE SAYS YOU OWE; PLUS

(2) THE COSTS INCURRED TO SERVE THIS NOTICE ON YOU; PLUS

(3) $500 TO APPLY TO ATTORNEYS FEES ACTUALLY EXPENDED OR INCURRED; PLUS

(4) ANY ADDITIONAL AMOUNTS FOR YOUR UNIT BECOMING DUE TO (fill in name of association or secured party) AFTER THE DATE OF THIS NOTICE; OR

(b) YOU SECURE FROM A DISTRICT COURT AN ORDER THAT THE FORECLOSURE OF YOUR RIGHTS TO YOUR UNIT BE SUSPENDED UNTIL YOUR CLAIMS OR DEFENSES ARE FINALLY DISPOSED OF BY TRIAL, HEARING, OR SETTLEMENT. YOUR ACTION MUST SPECIFICALLY STATE THOSE FACTS AND GROUNDS THAT DEMONSTRATE YOUR CLAIMS OR DEFENSES.

IF YOU DO NOT DO ONE OR THE OTHER OF THE ABOVE THINGS WITHIN THE TIME PERIOD SPECIFIED IN THIS NOTICE, YOUR OWNERSHIP RIGHTS IN YOUR UNIT WILL TERMINATE AT THE END OF THE PERIOD, YOU WILL LOSE ALL THE MONEY YOU HAVE PAID FOR YOUR UNIT, YOU WILL LOSE YOUR RIGHT TO POSSESSION OF YOUR UNIT, YOU MAY LOSE YOUR RIGHT TO ASSERT ANY CLAIMS OR DEFENSES THAT YOU MIGHT HAVE, AND YOU WILL BE EVICTED. IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, CONTACT AN ATTORNEY IMMEDIATELY."

(4) In any foreclosure pursuant to chapter 580, 581, or 582, the rights of the parties shall be the same as those provided by law, except (i) the period of redemption for unit owners shall be six months from the date of sale or a lesser period authorized by law, (ii) in a foreclosure by advertisement under chapter 580, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees authorized by the declaration or bylaws, notwithstanding the provisions of section 582.01, subdivisions 1 and 1a, (iii) in a foreclosure by action under chapter 581, the foreclosing party shall be entitled to costs and disbursements of foreclosure and attorneys fees as the court shall determine, ~~and~~ (iv) the amount of the association's lien shall be deemed to be adequate consideration for the unit subject to foreclosure, notwithstanding the value of the unit, and (v) the association shall not be required to provide notice of opportunity for counseling pursuant to section 580.021.

(i) If a holder of a sheriff's certificate of sale, prior to the expiration of the period of redemption, pays any past due or current assessments, or any other charges lienable as assessments, with respect to the unit described in the sheriff's certificate, then the amount paid shall be a part of the sum required to be paid to redeem under section 582.03.

(j) In a cooperative, if the unit owner fails to redeem before the expiration of the redemption period in a foreclosure of the association's assessment lien, the association may bring an action for eviction against the unit owner and any persons in possession of the unit, and in that case section 504B.291 shall not apply.

(k) An association may assign its lien rights in the same manner as any other secured party.

Sec. 14. Minnesota Statutes 2008, section 515B.3-117, is amended to read:

515B.3-117 OTHER LIENS.

(a) Except in a cooperative and except as otherwise provided in this chapter or in a security instrument, an individual unit owner may have the unit owner's unit released from a lien if the unit owner (1) pays the lienholder the portion of the amount which the lien secures that is attributable to the unit, or (2) provides in the manner set forth in section 514.10 the deposit or other security required by that section. Upon the receipt of payment or written evidence of the deposit or other security, the lienholder shall promptly deliver to the unit owner a recordable partial satisfaction and release of lien releasing the unit from the lien. The release shall be deemed to include a release of any rights in the common elements appurtenant to the unit. The portion of the amount which a lien secures that is attributable to the unit shall be equal to the total amount which the lien secures multiplied by a percentage calculated by dividing the common expense liability attributable to the unit by the common expense liability attributable to all units against which the lien has been recorded, or in the case of a lien under subsection (b), the units against which the lien is permitted or required to be recorded. At the request of a lien claimant or unit owners, the association shall provide a written statement of the percentage of common expense liability attributable to all units. After a unit owner's payment pursuant to this section, the association may not assess the unit for any common expense incurred thereafter in connection with the satisfaction or defense against the lien.

(b) Labor performed or materials furnished for the improvement of a unit shall be the basis for the recording of a lien against that unit pursuant to the provisions of chapter 514 but shall not be the basis for the recording of a lien against the common elements. Labor performed or materials furnished for the improvement of common elements, for which a lien may be recorded under chapter 514, if duly authorized by

the association, shall be deemed to be performed or furnished with the express consent of each unit owner, and shall be perfected by recording a lien against all the units in the common interest community, ~~but shall not be the basis for the recording of a lien against the common elements except~~ or in the case of a condominium or planned community on registered land, ~~in which case a lien must be filed~~ shall be perfected by recording a lien pursuant to section 508.351, subdivision 5, or 508A.351, subdivision 5. Where a lien is recorded against the units for labor performed or material furnished for the improvement of common elements, the association shall be deemed to be the authorized agent of the unit owners for purposes of receiving the notices required under sections 514.011 and 514.08, subdivision 1, clause (2).

(c) A security interest in a cooperative whose unit owners' interests in the units are personal property shall be perfected by recording a financing statement in the UCC filing section of the central filing system operated by the Office of the Secretary of State. In any disposition by a secured party pursuant to section 336.9-610 or retention pursuant to sections 336.9-620 to 336.9-622, the rights of the parties shall be the same as those provided by law, subject to the exceptions and requirements set forth in section 515B.3-116(h)(3), and except that the unit owner has the right to reinstate the debt owing to the secured party by paying to the secured party, prior to the effective date of the disposition or retention, the amount which would be required to reinstate the debt under section 580.30 if the unit were wholly real estate.

Sec. 15. Minnesota Statutes 2008, section 515B.3-120, is amended to read:

515B.3-120 DECLARANT DUTIES; TURNOVER OF RECORDS.

(a) During any period of declarant control pursuant to section 515B.3-103(c), declarant and any of its representatives who are acting as officers or directors of the association shall:

(1) cause the association to be operated and administered in accordance with its articles of incorporation and bylaws, the declaration and applicable law;

(2) be subject to all fiduciary obligations and obligations of good faith applicable to any persons serving a corporation in that capacity;

(3) cause the association's funds to be maintained in a separate bank account or accounts solely in the association's name, from and after the date of creation of the association; and

(4) cause the association to maintain complete and accurate records in compliance with section 515B.3-118.

(b) At such time as any period of declarant control terminates, declarant shall cause to be delivered to the board elected by the unit owners exclusive control of all funds of the association, all contracts and agreements which are binding on the association, all corporate records of the association including financial records, copies of all CIC plats and supplementary CIC plats, personal property owned or represented to be owned by the association, assignments of ~~all declarant's rights and interests under the~~ third party warranties relating to common element improvements or other improvements the association is obliged to maintain, repair or replace, if not in the name of the association, and, to the extent they are in the control or possession of the declarant, copies of all plans and specifications ~~in its control or possession~~ relating to buildings and related improvements which are part of the common elements, and operating manuals and warranty materials relating to any equipment or personal property utilized in the operation of the common interest community. The declarant's obligation to turn over the foregoing items shall continue to include additional new or changed items in its possession or control. Declarant shall not be obligated to assign any third-party warranty to the extent assignment is prohibited by the warranty or applicable law or otherwise prevents the declarant from enforcing the warranty.

(c) A person entitled to appoint the directors of a master association pursuant to section 515B.2-121(c)~~(3)~~ (1), and the master association's officers and directors, shall be subject to the same duties and obligations with respect to the master association as are described in subsections (a) and (b), to the extent applicable. A master association may not be used to circumvent or avoid any obligation or restriction imposed on a declarant or its affiliates by this chapter.

Sec. 16. Minnesota Statutes 2008, section 515B.3-121, is amended to read:

515B.3-121 ACCOUNTING CONTROLS.

(a) Subject to any additional or greater requirements set forth in the declaration or bylaws, a review of the association's financial statements shall be made at the end of the association's fiscal year, unless prior to 60 days after the end of that fiscal year, at a meeting or by mailed ballot, unit owners, other than declarant or its affiliates, of units to which at least 30 percent of the votes in the association are allocated vote to waive the review requirement for that fiscal year. A waiver vote shall not apply to more than one fiscal year, and shall not affect the board's authority to cause a review or audit to be made. The reviewed financial statements shall be delivered to all members of the association within 180 days after the end of the association's fiscal year.

(b) The review shall be made by a licensed, independent certified public accountant. A licensed, independent certified public accountant means an accountant who (i) is not an employee of the declarant or its affiliates, (ii) is professionally independent of the control of the declarant or its affiliates, (iii) is licensed by the Minnesota State Board of Accountancy and (iv) satisfies the tests for independence as promulgated by the American Institute of Certified Public Accountants.

(c) Where the financial statements are prepared by an independent certified public accountant, they shall be prepared in accordance with generally accepted accounting principles as established from time to time by the American Institute of Certified Public Accountants, and shall be reviewed in accordance with standards for accounting and review services. In such case, the financial statements shall be presented on the full accrual basis using an accounting format that separates operating activity from replacement reserve activity.

ARTICLE 4

PROTECTION OF PURCHASERS

Section 1. Minnesota Statutes 2008, section 515B.4-101, is amended to read:

515B.4-101 APPLICABILITY; DELIVERY OF DISCLOSURE STATEMENT.

(a) Sections 515B.4-101 through 515B.4-118 apply to all units subject to this chapter, except as provided in subsection (c) or as modified or waived by written agreement of purchasers of a unit which is restricted to nonresidential use.

(b) Subject to subsections (a) and (c), a declarant who offers a unit to a purchaser shall deliver to the purchaser a current disclosure statement which complies with the requirements of section 515B.4-102. The disclosure statement shall include any material amendments to the disclosure statement made prior to the conveyance of the unit to the purchaser. The declarant shall be liable to the purchaser to whom it delivered the disclosure statement for any false or misleading statement set forth therein or for any omission of a material fact therefrom.

(c) Neither a disclosure statement nor a resale disclosure certificate need be prepared or delivered in the case of:

(1) a gratuitous transfer;

(2) a transfer pursuant to a court order;

(3) a transfer to a government or governmental agency;

(4) a transfer to a secured party by foreclosure or deed in lieu of foreclosure;

(5) an option to purchase a unit, until exercised;

(6) a transfer to a person who "controls" or is "controlled by," the grantor as those terms are defined with respect to a declarant under section 515B.1-103(2);

(7) a transfer by inheritance;

(8) a transfer of special declarant rights under section 515B.3-104; or

(9) a transfer in connection with a change of form of common interest community under section 515B.2-123.

(d) A purchase agreement for a unit shall contain the following notice: "The following notice is required by Minnesota Statutes. The purchaser is entitled to receive a disclosure statement or resale disclosure certificate, as applicable. The disclosure statement or resale disclosure certificate contains important information regarding the common interest community and the purchaser's cancellation rights."

(e) ~~A purchase agreement for~~ The sale, to the initial occupant, of a platted lot or other parcel of real estate (i) which is or may be subject to a master declaration, (ii) which is intended for residential occupancy, and (iii) which does not and is not intended to constitute a unit, shall be subject to the following requirements:

(1) The purchase agreement for the lot or other parcel shall contain the following notice: "The following notice is required by Minnesota Statutes: The real estate to be conveyed under this agreement is or ~~will~~ may be subject to a master association as defined in Minnesota Statutes, chapter 515B. The master ~~association shall~~ developer is required to provide to the buyer, ~~pursuant to Minnesota Statutes, section 515B.4-102(c), upon the buyer's request,~~ within ten days after receipt of a request from the buyer of the buyer's authorized representative, a statement containing the information required by Minnesota Statutes, section 515B.4-102(a)(20)~~,~~ with respect to the master association~~, prior to the time that the buyer signs a purchase agreement for the real estate~~. The statement contains important information regarding the master association ~~and the buyer's obligations thereunder~~. The name, address, and telephone number of the master developer are [insert information]."

(2) A master developer shall, within ten days after receipt of a request described in clause (1), furnish to the requesting person the information required to be provided by section 515B.4-102(a)(20).

(f) A claim by a buyer based upon a failure to ~~include the foregoing notice in a purchase agreement~~ comply with subsection (e):

(1) shall be limited to legal, and not equitable, remedies; or

(2) shall be barred unless it is commenced within the time period specified in section 515B.4-115(a)~~; or~~

~~(3) may be waived by a separate written document signed by the seller and buyer~~.

Sec. 2. Minnesota Statutes 2008, section 515B.4-102, is amended to read:

515B.4-102 DISCLOSURE STATEMENT; GENERAL PROVISIONS.

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

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

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

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

(4) a general description of the common interest community, including, at a minimum, (i) the number of buildings, (ii) the number of dwellings per building, (iii) the type of construction, (iv) whether the common interest community involves new construction or rehabilitation, (v) whether any building was wholly or partially occupied, for any purpose, before it was added to the common interest community and the nature of the occupancy, ~~and~~ (vi) a general description of any roads, trails, or utilities that are located on the common elements and that the association or a master association will be required to maintain, and (vii) a description of any declarant licensing rights under section 515B.2-109(e);

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

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

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

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

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

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

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

(12) a statement that: (i) within ten days after the receipt of a disclosure statement, a purchaser may cancel any contract for the purchase of a unit from a declarant; provided, that the right to cancel terminates upon the purchaser's voluntary acceptance of a conveyance of the unit from the declarant or by the purchaser agreeing to modify or waive the right to cancel in the manner provided by section 515B.4-106(a); (ii) if a purchaser receives a disclosure statement more than ten days before signing a purchase agreement, the purchaser cannot cancel the purchase agreement; and (iii) if a declarant obligated to deliver a disclosure statement fails to deliver a disclosure statement which substantially complies with this chapter to a purchaser to whom a unit is conveyed, the declarant shall be liable to the purchaser as provided in section 515B.4-106(d);

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

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

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

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

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

(18) in a cooperative: (i) whether the unit owners will be entitled for federal and state tax purposes, to deduct payments made by the association for real estate taxes and interest paid to the holder of a security interest encumbering the cooperative; (ii) a statement as to the effect on the unit owners if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative; and (iii) the principal amount and a general description of the terms of any blanket mortgage, contract for deed, or other blanket security instrument encumbering the cooperative property;

(19) a statement: (i) that real estate taxes for the unit or any real property owned by the association are not delinquent or, if there are delinquent real estate taxes, describing the property for which the taxes are delinquent, stating the amount of the delinquent taxes, interest and penalties, and stating the years for which taxes are delinquent, and (ii) setting forth the amount of real estate taxes, including the amount of any special assessment certified for payment with the real estate taxes, due and payable with respect to the unit in the year in which the disclosure statement is given, if real estate taxes have been separately assessed against the unit;

(20) if the ~~association or the purchaser of the unit will~~ unit or other parcel of real estate being purchased is or may be ~~a member of~~ subject to a master ~~association~~ declaration at the time of the conveyance from the declarant to the purchaser, a statement to that effect, and all of the following information with respect to the master association: (i) ~~a copy of~~ copies of the following documents (which may be in proposed form if the master declaration has not been recorded): the master declaration, the articles of incorporation, bylaws, and rules and regulations for the master association, together with any amendments thereto; (ii) the name and address of the master developer, and the name, address and general description of the master association, including a general description of any other association, unit owners, or other persons which are or may become members; (iii) a description of any nonresidential use permitted on any property subject to the master ~~association~~ declaration; (iv) a statement as to the estimated maximum number of associations, unit owners or other persons which may become members of the master association, and ~~the degree and~~ a description of any period of control of the master association and rights to appoint master association directors by a ~~declarant~~

master developer or other person pursuant to section 515B.2-121(c); (v) a description of any facilities intended for the benefit of the members of the master association and not located on property owned or controlled by a member or the master association; (vi) the financial arrangements, including any contingencies, which have been made to provide for completion of the facilities referred to in subsection (v), or a statement that no arrangements have been made; (vii) any current balance sheet of the master association and a projected or current annual budget, as applicable, which budget shall include with respect to the master association those items in paragraph (23), clauses (i) through (iii), and the projected monthly or other periodic common expense assessment payment for each type of unit, lot, or other parcel of real estate which is or is planned to be subject to assessment; (viii) a description of any expenses or services not reflected in the budget, paid for or provided by a ~~declarant~~ master developer or ~~a~~ other person executing the master declaration, which may become an expense of the master association in the future; (ix) a description of any powers delegated to and accepted by the master association pursuant to section 515B.2-121~~(f)~~(e)(2); (x) identification of any liens, defects or encumbrances that will continue to affect title to property owned or operated by the master association for the benefit of its members; (xi) the terms of any warranties provided by any person for construction of facilities in which the members of the master association have or may have an interest, and any known defects in the facilities which would violate the standards described in section ~~515B.4-112(b)~~ 515B.4-113(b)(2); (xii) a statement disclosing, after inquiry of the master association, any unsatisfied judgments or lawsuits to which the master association is a party, and the status of those lawsuits which are material to the master association; (xiii) a description of any insurance coverage provided for the benefit of its members by the master association; and (xiv) any current or expected fees or charges, other than assessments by the master association, to be paid by members of the master association for the use of any facilities intended for the benefit of the members;

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

(22) ~~a copy~~ copies of the following documents (which may be in proposed form if the declaration has not been recorded): the declaration and any supplemental declaration, and any amendments thereto~~,~~ (exclusive of the CIC plat)~~,~~; any other recorded covenants, conditions, restrictions, ~~and~~ or reservations affecting the common interest community; the articles of incorporation, bylaws and any rules or regulations of the association; the names of the current members of the association's board of directors; any agreement excluding or modifying any implied warranties; any agreement reducing the statute of limitations for

the enforcement of warranties; any contracts or leases to be signed by purchaser at closing; and a ~~brief narrative~~ description of any ~~(i) contracts or leases that are or may be subject to cancellation by the association under section 515B.3-105 and (ii) any~~ material contracts, leases, or other agreements ~~entered into between the declarant and a governmental entity that affect~~ affecting the common interest community; and

(23) a balance sheet for the association, following the creation of the association, current within 90 days of the date of delivery of the disclosure statement; a projected annual budget for the association; and a statement identifying the party responsible for the preparation of the budget. The budget shall assume that all units intended to be included in the common interest community, based upon the declarant's good faith estimate, have been subjected to the declaration; provided, that additional budget portrayals based upon a lesser number of units are permitted. The budget shall include, without limitation: (i) a statement of the amount included in the budget as a reserve for replacement, the components of the common interest community for which the reserves are budgeted, and the amounts of the reserves, if any, that are allocated for the replacement of each of those components; (ii) a statement of any other reserves; (iii) the projected common expense for each category of expenditures for the association; (iv) the projected monthly common expense assessment for each type of unit; and (v) ~~a footnote or other reference to those components of the common interest community the maintenance, repair, or replacement of which the budget assumes will be funded by assessments under section 515B.3-115(c) rather than by assessments included in the association's annual budget, and a statement referencing section 515B.3-115(c)(1) or (2) as the source of funding~~ a statement as to the components of the common interest community whose replacement will be funded by assessments under section 515B.3-115(c) or (e), rather than by replacement reserves as approved pursuant to section 515B.3-114(a). If, based upon the association's then current budget, the monthly common expense assessment for the unit at the time of conveyance to the purchaser is anticipated to exceed the monthly assessment stated in the budget, a statement to such effect shall be included.

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

(c) The master association, within ten days after a request by a declarant, a holder of declarant rights, or a buyer referred to in section 515B.4-101(e), or the authorized representative of any of them, shall furnish the information required to be provided by subsection (a)(20). A declarant or other person who provides information pursuant to subsection (a)(20) is not liable to the buyer for any erroneous information if the declarant or other person: (i) is not an affiliate of or related in any way to a person authorized to

appoint the master association board pursuant to section 515B.2-121(c)(3), and (ii) has no actual knowledge that the information is incorrect.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to common interest communities created on or after that date.

Sec. 3. Minnesota Statutes 2008, section 515B.4-104, is amended to read:

515B.4-104 TIME SHARES.

If the declaration permits time shares, the disclosure statement shall contain or disclose, in addition to the information required by sections 515B.4-102 and 515B.4-103:

(1) the unit identifiers of the units in which time shares may be created;

(2) the total number of time shares that may be created;

(3) the minimum duration of any time shares that may be created;

(4) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 515B.3-116;

(5) a statement as to whether the time share interest is a fixed time period in a designated unit or if either the time period or unit may vary;

(6) copies of all organizational documents, contracts, leases and other documents affecting the time share association or the time shares, or the purchaser's rights therein;

(7) any state or federal ruling or nonaction letter regarding the ~~time shares~~ classification of the time shares as a security or a statement that there is no ruling or nonaction letter;

(8) a statement as to whether the time share is registered with the state under the Subdivided Land Sales Act or with the federal government under the Interstate Land Sales Act and, if the time share is so registered, a copy of the public offering statement or other disclosure document required by those acts; and

(9) if the time share owners are to be permitted or required to become members of or to participate in a program for the exchange of occupancy rights among themselves or with the owners of time shares in other projects or both, a general description of the program.

Sec. 4. Minnesota Statutes 2008, section 515B.4-105, is amended to read:

515B.4-105 COMMON INTEREST COMMUNITY WITH BUILDING ONCE OCCUPIED.

The disclosure statement ~~of~~ for a common interest community containing any building that was at any time before the creation of the common interest community wholly or partially occupied, for any purpose, by persons other than purchasers or persons

who occupied with the consent of purchasers, shall contain, in addition to the information required by sections 515B.4-102, 515B.4-103 and 515B.4-104:

(1) a professional opinion prepared by a registered professional architect or engineer, licensed in this state, describing the current condition of all structural components and mechanical ~~and~~, electrical, and plumbing installations material to the use and enjoyment of the building, to the extent reasonably ascertainable without disturbing the improvements or dismantling the equipment, which will be in place or be operational at the time of conveyance of the first unit to a person other than a declarant. Subject to such reasonable accessibility, the opinion shall include, at a minimum, the following information concerning the following components and installations: (i) the composition and condition of all roofs, (ii) the type of building frame and its condition, (iii) the composition and condition of exterior walls, (iv) whether any building foundation, or any exterior walls or exposed load-bearing components, show significant spalling, buckling, shearing, or other obvious settling, damage, or load distress, (v) the type, composition, and condition of predominant window and door systems, (vi) the condition of any furnaces or boilers, (vii) the stated capacity of common electrical service, (viii) the type and condition of any common elevator system serving any building, and (ix) evidence of water damage within any building and any apparent source of the damage;

(2) a statement ~~by the declarant~~ of the ~~expected~~ remaining useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard to some or all of the items; ~~and~~

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(4) the approximate age of each building and the approximate date of any major alterations or additions thereto; and

(5) a statement as to which, if any, the components or installations reported on in clause (1) has been replaced or will be replaced prior to the recording of the declaration and the approximate date when the replacement occurred or will occur.

Sec. 5. Minnesota Statutes 2008, section 515B.4-106, is amended to read:

515B.4-106 PURCHASER'S RIGHT TO CANCEL.

(a) A person required to deliver a disclosure statement pursuant to section 515B.4-101(b) shall provide at least one of the purchasers of the unit with a copy of the disclosure statement and all amendments thereto before conveyance of the unit. If a purchaser is not given a disclosure statement more than ten days before execution of the purchase agreement, the purchaser may, before conveyance, cancel the purchase

agreement within ten days after first receiving the disclosure statement. If a purchaser is given the disclosure statement more than ten days before execution of the purchase agreement, the purchaser may not cancel the purchase agreement pursuant to this section. The ten-day rescission period may be modified or waived, in writing, by agreement of the purchaser of a unit only after the purchaser has received and had an opportunity to review the disclosure statement. The person required to deliver a disclosure statement may not condition the sale of the unit on the purchaser agreeing to modify or waive the purchaser's ten-day right of rescission, may not contractually obligate the purchaser to modify or waive the purchaser's ten-day right of rescission, and may not include a modification or waiver of the ten-day right of rescission in any purchase agreement for the unit. To be effective, a modification or waiver of a purchaser's ten-day right of rescission must be evidenced by an instrument separate from the purchase agreement signed by the purchaser more than three days after the purchaser receives the disclosure statement.

(b) If an amendment to the disclosure statement materially and adversely affects a purchaser, then the purchaser shall have ten days after delivery of the amendment to cancel the purchase agreement in accordance with this section. The ten-day rescission period may be modified or waived, in writing, by agreement of the purchaser of a unit only after the purchaser has received and had an opportunity to review the amendment. To be effective, a modification or waiver of a purchaser's ten-day right of rescission under this section must be evidenced by a written instrument separate from the purchase agreement signed by the purchaser more than three days after the purchaser receives the amendment.

(c) If a purchaser elects to cancel a purchase agreement pursuant to this section, the purchaser may do so by giving notice thereof pursuant to section 515B.1-115. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly. Notwithstanding anything in this section to the contrary, the purchaser's cancellation rights under this section terminate upon the purchaser's acceptance of a conveyance of the unit.

(d) If a declarant obligated to deliver a disclosure statement fails to deliver to the purchaser a disclosure statement which substantially complies with this chapter, the declarant shall be liable to the purchaser in the amount of ~~$1,000~~ $5,000, in addition to any damages or other amounts recoverable under this chapter or otherwise. Any action brought under this subsection shall be commenced within the time period specified in section 515B.4-115, subsection (a).

Sec. 6. Minnesota Statutes 2008, section 515B.4-107, is amended to read:

515B.4-107 RESALE OF UNITS.

(a) In the event of a resale of a unit by a unit owner other than a declarant, unless exempt under section 515B.4-101(c), the unit owner shall furnish to a purchaser, before execution of any purchase agreement for a unit or otherwise before conveyance, the following documents relating to the association or to the master association, if applicable:

(1) copies of the declaration (other than any CIC plat), the articles of incorporation and bylaws, any rules and regulations, and any amendments or supplemental declarations;

(2) ~~the organizational and operating documents relating to the master association, if any~~ copies of the master declaration, articles of incorporation, bylaws, and rules and regulations, if the common interest community is subject to a master declaration; and

(3) a resale disclosure certificate from the association dated not more than 90 days prior to the date of the purchase agreement or the date of conveyance, whichever is earlier, containing the information set forth in subsection (b).

(b) The resale disclosure certificate must be in substantially the following form:

COMMON INTEREST COMMUNITY
RESALE DISCLOSURE CERTIFICATE

Name of Common Interest Community: .....

Name of Association: .....

Address of Association: .....

Unit Number(s) (include principal unit and any garage, storage, or other auxiliary ~~unit(s)~~ units):

Common elements licensed under Minnesota Statutes, section 515B.2-109(e):

.....

.....

The following information is furnished by the association named above according to Minnesota Statutes, section 515B.4-107.

1. There is no right of first refusal or other restraint on the free alienability of the above unit(s) contained in the declaration, bylaws, rules and regulations, or any amendment to them, except as follows: .....

.....

.....

.....

2. The following periodic installments of common expense assessments and special assessments are payable with respect to the above unit(s):

a. Annual assessment installments: $..... Due:.....

b. Special assessment installments: $..... Due:.....

c. Unpaid assessments, fines, or other charges:

(1) Annual $.....

(2) Special $.....

(3) Fines $.....

(4) Other Charges $.....

d. The association has/has not (strike one) approved a plan for levying certain common expense assessments against fewer than all the units according to Minnesota Statutes, section 515B.3-115, subsection (e). If a plan is approved, a description of the plan is attached to this certificate.

3. In addition to the amounts due under paragraph 2, the following additional fees or charges other than assessments are payable by unit owners (include late payment charges, user fees,

etc.): .....

.....

.....

4. There are no extraordinary expenditures approved by the association, and not yet assessed, for the current and two succeeding fiscal years, except as follows: .....

.....

.....

5. The association is obligated to replace the following components of the common interest community:

.....

.....

The association has ~~reserved~~ the following amounts in its reserves for ~~maintenance, repair, or~~ replacement of those components: .....

.....

.....

~~The following portions of these reserves are designated for the following specified projects or uses: ....~~ The replacement of the following components is funded by assessments levied only against the unit or units served by the component, pursuant to Minnesota Statutes, section 515B.3-115(e)(1) or (2).

6. The following documents are furnished with this certificate according to statute:

a. The most recent regularly prepared balance sheet and income and expense statement of the association.

b. The current budget of the association.

7. There are no unsatisfied judgments against the association, except as follows (identify creditor and amount): .....

.....

.....

8. There are no pending lawsuits to which the association is a party, except as follows (identify and summarize status): .....

.....

.....

9. Description of insurance coverages:

a. The association provides the following insurance coverage for the benefit of unit owners: (Reference may be made to applicable sections of the declaration or bylaws; however, any additional coverages should be described in this space)

.....

.....

.....

b. The following described fixtures, decorating items, or construction items within the unit referred to in Minnesota Statutes, section 515B.3-113, subsection (b), are insured by the association (check as applicable):

..... Ceiling or wall finishing materials

..... ~~Floor coverings~~ Finished flooring

..... Cabinetry

..... Finished millwork

..... Electrical, heating, ventilating, and air conditioning equipment, or plumbing fixtures serving a single unit

..... Built-in appliances

..... Improvements and betterments as originally constructed

..... Additional improvements and betterments installed by unit owners

10. The board of directors of the association has not notified the unit owner (i) that any alterations or improvements to the unit or to the limited common elements assigned

to it violate any provision of the declaration; or (ii) that the unit is in violation of any governmental statute, ordinance, code, or regulation, except as follows: .....

.....

11. The remaining term of any leasehold estate affecting the common interest community and the premises governing any extension or renewal of it are as follows: .....

.....

.....

This Resale Disclosure Certificate is given in connection with the resale of a unit by a unit owner who is not a declarant and who, therefore, is not liable for express warranties under Minnesota Statutes, section 515B.4-112, or implied warranties under Minnesota Statutes, section 515B.4-113. The conveyance of this unit may, however, result in a transfer of preexisting warranties made by a declarant under the referenced statutes, subject to the terms of Minnesota Statutes, sections 515B.4-114 and 515B.4-115.

~~12~~ 13. In addition to the above, the following matters affecting the occupancy or use of the unit, or the unit owner's obligations with respect to the unit, are deemed material~~.~~: .

.....

I hereby certify that the foregoing information and statements are true and correct as of .....

.....

(Date)

By: .....

Title: .....

(Association representative)

Address: .....

Phone Number: .....

RECEIPT

In addition to the foregoing information furnished by the association, the unit owner is obligated to furnish to the purchaser before execution of any purchase agreement for a unit or otherwise before conveyance, copies of the following documents relating to the association or to the master association (as applicable): the declaration (other than any common interest community plat), articles of incorporation, bylaws, rules and regulations (if any), and any amendments to these documents. Receipt of the foregoing documents, and the resale disclosure certificate, is acknowledged by the undersigned buyer(s).

Dated: ....

(Buyer)

.....

(Buyer)

(c) If the ~~association~~ common interest community is subject to a master declaration and governed by a master association to which has been delegated any of the association's powers under section 515B.3-102(a)(2), then the financial information required to be disclosed under subsection (b) may be disclosed on a consolidated basis.

(d) The association, within ten days after a request by a unit owner, or the unit owner's authorized representative, shall furnish the certificate required in subsection (a). The association may charge a reasonable fee for furnishing the certificate and any association documents related thereto. A unit owner providing a certificate pursuant to subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the certificate. A unit owner who has acquired title to a unit pursuant to section 515B.3-104 including, but not limited to, a unit owner who has acquired title through foreclosure or a deed in lieu of foreclosure, must indicate to the association in connection with a request for a resale disclosure certificate whether the requesting unit owner is or is not a declarant. The unit owner, not the association, is liable for any damage, loss, or other consequence arising out of the incorrect representation of its declarant status.

(e) A purchaser is not liable for any unpaid common expense assessments, including special assessments, if any, not set forth in the certificate required in subsection (a). A purchaser is not liable for the amount by which the annual or special assessments exceed the amount of annual or special assessments stated in the certificate for assessments payable in the year in which the certificate was given, except to the extent of any increases subsequently approved in accordance with the declaration or bylaws. A unit owner is not liable to a purchaser for the failure of the association to provide the certificate, or a delay by the association in providing the certificate in a timely manner.

Sec. 7. Minnesota Statutes 2008, section 515B.4-108, is amended to read:

515B.4-108 PURCHASER'S RIGHT TO CANCEL RESALE.

~~(a)~~ Unless a purchaser is given the information required to be delivered by section 515B.4-107, ~~by a delivery method described in that section,~~ more than ten days prior to the execution of the purchase agreement for the unit the purchaser may, prior to the conveyance, cancel the purchase agreement within ten days after receiving the information. The ten-day rescission period may be modified or waived, in writing, by agreement of the purchaser of a unit only after the purchaser has received and had an opportunity to review the information required to be delivered by section 515B.4-107. The person required to

deliver the information required to be delivered by section 515B.4-107 may not condition the sale of the unit on the purchaser agreeing to modify or waive the purchaser's ten-day right of rescission, may not contractually obligate the purchaser to modify or waive the purchaser's ten-day right of rescission, and may not include a modification or waiver of the ten-day right of rescission in any purchase agreement for the unit. To be effective, a modification or waiver of a purchaser's ten-day right of rescission must be evidenced by an instrument separate from the purchase agreement signed by the purchaser more than three days after the purchaser receives the resale disclosure certificate.

~~(b) A purchaser who elects to cancel a purchase agreement pursuant to subsection (a), may do so by hand delivering notice thereof or mailing notice by postage prepaid United States mail to the seller or the agent. Cancellation is without penalty and all payments made by the purchaser shall be refunded promptly.~~

Sec. 8. Minnesota Statutes 2008, section 515B.4-110, is amended to read:

515B.4-110 OBLIGATION TO RELEASE LIENS.

(a) In the case of a transfer of a unit where a disclosure statement is required, the declarant, before conveying the unit, shall:

(1) record or furnish to the purchaser recordable releases of all liens, the foreclosure of which could deprive the unit owner of title to or occupancy of the unit, that the purchaser does not agree in writing to take subject to or assume, that encumber:

(i) in a condominium, that unit and its common element interest, and

(ii) in a cooperative or planned community, that unit and any common elements; or

(2) if the purchaser agrees in writing, provide the purchaser with a surety bond, substitute collateral or title insurance assuring against loss or damage from the enforcement of the lien.

(b) Before conveying real estate to the association, the declarant shall have the real estate released from: (1) all liens the foreclosure of which would deprive unit owners of any material right of access to a unit or any material easements appurtenant to a unit, and (2) all other liens on that real estate, unless the disclosure statement specifically states that the declarant may convey the real estate to the association subject to liens and discloses the maximum amount and all other relevant terms of the lien.

Sec. 9. Minnesota Statutes 2008, section 515B.4-111, is amended to read:

515B.4-111 CONVERSION PROPERTY.

(a) A unit owner of a unit occupied for residential use in a common interest community containing conversion property shall not, for a period of one year following

the recording of the declaration creating the common interest community, require any occupant of the unit to vacate the unit unless the unit owner gives notice to the occupant in the manner described in this section. The notice shall be given no later than 120 days before the occupant is required to vacate the unit. The notice shall be sufficient as to all occupants of a unit if it is hand delivered or mailed to the unit to be vacated, addressed to the occupants thereof. If the holder of the lessee's interest in the unit has given the unit owner an address different than that of the unit, then the notice shall also be given to the holder of the lessee's interest at the designated address. The notice shall comply with the following requirements:

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

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

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

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

(b) Notwithstanding subsection (a), an occupant may be required to vacate a unit upon less than 120 days' notice by reason of nonpayment of rent, utilities or other monetary obligations, violations of law, waste, or conduct that disturbs other occupants' peaceful enjoyment of the premises. The terms of the tenancy may not be altered during the notice period, except that the holder of the lessee's interest or other party in possession may vacate and terminate the tenancy upon one month's written notice to the declarant. Nothing in this section prevents the unit owner and any occupant from agreeing to a right of occupancy on a month-to-month basis beyond the 120-day notice period, or to an earlier termination of the right of occupancy.

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

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

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

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

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

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

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

~~(h)~~ (j) Failure to give notice as required by ~~this section~~ subsection (a) is a defense to an action for possession ~~until a notice complying with this section is given and the applicable notice period terminates~~.

Sec. 10. Minnesota Statutes 2008, section 515B.4-115, is amended to read:

515B.4-115 STATUTE OF LIMITATIONS FOR WARRANTIES.

(a) A judicial proceeding for breach of an obligation arising under section 515B.4-101(e) or 515B.4-106(d), shall be commenced within ~~six~~ 12 months after the conveyance of the unit or other parcel of real estate.

(b) A judicial proceeding for breach of an obligation arising under section 515B.4-112 or 515B.4-113 shall be commenced within six years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than two years. An agreement reducing the period of limitation signed by one purchaser of a unit shall be binding on any copurchasers of the unit, and the ~~purchaser's successor~~ purchasers' successors and assigns. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument separate from the purchase agreement signed by ~~the~~ a purchaser of the unit.

(c) Subject to subsection (d), a cause of action under section 515B.4-112 or 515B.4-113, regardless of the ~~purchasers~~ purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the earlier of the time of conveyance of any interest in the unit by ~~the~~ a declarant to a bona fide purchaser ~~of the unit~~, other than an affiliate of a declarant, or the time ~~the~~ a purchaser enters into possession of the unit. As to a unit subject to time shares, a cause of action accrues upon the earlier of the conveyance of the unit or the conveyance of the first time share interest in the unit to a purchaser; and

(2) as to each common element, the latest of (i) the time the common element is completed~~.~~; (ii) the time the first interest in a unit in the common interest community is conveyed to a bona fide purchaser, or, if the common element is located on property that ~~is~~ was additional real estate, at the time the first interest in a unit ~~therein~~ created thereon is conveyed to a bona fide purchaser~~.~~; or (iii) the termination of the period of declarant control.

(d) If a warranty explicitly extends to future performance or duration of any improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

EFFECTIVE DATE. The amendments to this section are effective August 1, 2010, and apply only to common interest communities created on or after that date.

Sec. 11. Minnesota Statutes 2008, section 515B.4-116, is amended to read:

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

(a) In addition to any other rights to recover damages, attorney's fees, costs or expenses, whether authorized by this chapter or otherwise, if a declarant, an association, or any other person violates any provision of this chapter, or any provision of the declaration, bylaws, or rules and regulations any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The association shall have standing to pursue claims on behalf of the unit owners of two or more units.

(b) The court may award reasonable attorney's fees and costs of litigation to the prevailing party. Punitive damages may be awarded for a willful failure to comply.

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

APPENDIX
Article locations in 10-5188

ARTICLE 1	APPLICABILITY, DEFINITIONS, AND OTHER GENERAL PROVISIONS	Page.Ln 1.15
ARTICLE 2	CREATION, ALTERATION AND TERMINATION	Page.Ln 14.12
ARTICLE 3	ORGANIZATION AND OPERATION	Page.Ln 45.15
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