

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 3348

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DATE	D-PG	OFFICIAL STATUS
02/20/2020	4835	Introduction and first reading
		Referred to Judiciary and Public Safety Finance and Policy
03/04/2020		Comm report: To pass as amended
		Second reading

1.1 A bill for an act

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

1.3 Act; creating a court approval process for proposed amendments to governing

1.4 documents of a common interest community; amending Minnesota Statutes 2018,

1.5 sections 515B.1-102; 515B.2-118.

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

1.7 Section 1. Minnesota Statutes 2018, section 515B.1-102, is amended to read:

1.8 **515B.1-102 APPLICABILITY.**

1.9 (a) Except as provided in this section, this chapter, and not chapters 515 and 515A,

1.10 applies to all common interest communities created within this state on and after June 1,

1.11 1994.

1.12 (b) The applicability of this chapter to common interest communities created prior to

1.13 June 1, 1994, shall be as follows:

1.14 (1) This chapter shall apply to condominiums created under chapter 515A with respect

1.15 to events and circumstances occurring on and after June 1, 1994; provided (i) that this

1.16 chapter shall not invalidate the declarations, bylaws or condominium plats of those

1.17 condominiums, and (ii) that chapter 515A, and not this chapter, shall govern all rights and

1.18 obligations of a declarant of a condominium created under chapter 515A, and the rights and

1.19 claims of unit owners against that declarant.

1.20 (2) The following sections in this chapter apply to condominiums created under chapter

1.21 515: 515B.1-104 (Variation by Agreement); 515B.1-105 (Separate Titles and Taxation);

1.22 515B.1-106 (Applicability of Local Requirements); 515B.1-107 (Eminent Domain);

1.23 515B.1-108 (This Chapter Prevails; Supplemental Law); 515B.1-109 (Construction Against

Implicit Repeal); 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(f) (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 of Directors, Officers, 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 Creation of Security Interests in, Common Elements); 515B.3-113 (Insurance); 515B.3-114 (Replacement Reserves); 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), and (e), 515B.4-107, and 515B.4-108, apply to all planned communities and

3.1 cooperatives regardless of when they are created, unless they are exempt under subsection
3.2 (e).

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

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

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

3.21 (2) In a condominium, the preexisting condominium plat shall be the CIC plat and an
3.22 amended CIC plat shall be required only if the amended declaration or bylaws contain
3.23 provisions inconsistent with the preexisting condominium plat. The condominium's CIC
3.24 number shall be the apartment ownership number or condominium number originally
3.25 assigned to it by the recording officer. In a cooperative in which the unit owners' interests
3.26 are characterized as real estate, a CIC plat shall be required. In a planned community, the
3.27 preexisting plat or registered land survey recorded pursuant to chapter 505, 508, or 508A,
3.28 or the part of the plat or registered land survey upon which the common interest community
3.29 is located, shall be the CIC plat.

3.30 (3) The amendment shall comply with section 515B.2-118(a)(3) and (c); except that the
3.31 unanimous consent of the unit owners shall not be required for (i) a clarification of the unit
3.32 boundary description if the clarified boundary description is substantially consistent with
3.33 the preexisting CIC plat, or (ii) changes from common elements to limited common elements
3.34 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), or section 515B.2-1101(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 that consists solely of platted lots or other separate parcels of real estate designed or utilized for detached single family dwellings or agricultural purposes, with or without common property, where no association or master association has 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), or section 515B.2-1101(d)(1) and (2), and cooperatives, which are limited by the declaration to nonresidential uses; 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 and section 515B.2-118, subsections (a)(5), (a)(7), and (d), shall apply to all common interest communities.

(h) Sections 515B.1-103(33a), 515B.2-110, 515B.3-105, 515B.3-115, 515B.4-102, and 515B.4-115 apply only to common interest communities created before August 1, 2010. Sections 515B.1-103(33b), 515B.2-1101, 515B.3-1051, 515B.3-1151, 515B.4-1021, and 515B.4-1151 apply only to common interest communities created on or after August 1, 2010.

(i) Section 515B.3-114 applies to common interest communities only for the association's fiscal years commencing before January 1, 2012. Section 515B.3-1141 applies to common interest communities only for the association's fiscal years commencing on or after January 1, 2012.

(j) Section 515B.3-104 applies only to transfers of special declarant rights that are effective before August 1, 2010. Section 515B.3-1041, subsections (a) through (i), apply only to transfers of special declarant rights that are effective on or after August 1, 2010. Section 515B.3-1041, subsections (j) and (k), apply only to special declarant rights reserved in a declaration that is first recorded on or after August 1, 2010.

Sec. 2. Minnesota Statutes 2018, section 515B.2-118, is amended to read:

515B.2-118 AMENDMENT OF DECLARATION.

(a) Except as otherwise provided in subsection (d), the declaration, including any CIC plat, may be amended only by vote or written 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.2-114, 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. 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.

(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.

(7) If any provision of this chapter, the declaration, the bylaws, or the articles of incorporation requires the vote or consent of unit owners as a condition for the approval or effectiveness of an amendment to the declaration, the bylaws, or the articles of incorporation, the affirmative vote or consent of a unit owner is deemed to be granted if the association sends notice and a copy of the amendment, by certified United States mail, postage prepaid and return receipt requested, and (i) if a vote is conducted, the unit owner's vote is not cast against the proposed amendment, or (ii) if consent is requested, the unit owner's written refusal to consent is not received by the association within 60 days after notice is mailed. This subsection shall not apply to any amendment that would require execution by the association and certain unit owners pursuant to subsection (a)(2).

(b) No action to challenge the validity of an amendment or a supplemental declaration may be brought more than two years after the amendment or supplemental declaration is recorded.

(c) Every amendment to 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, 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 shown as limited common elements on the CIC plat, or (v) makes any other change that 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.

(d) The association may petition the district court of any county in which any portion of the common interest community is located for an order reducing the percentage of affirmative votes or consents necessary for an amendment to the declaration, bylaws, or articles of incorporation, subject to the following qualifications:

(1) The petition shall describe the reason for the amendment, the approval requirements based on the governing documents and applicable law, the effort that has been made to solicit approval of the association members, the number of affirmative votes or consents actually received, the number of negative votes or denials actually received, the number or percentage of affirmative votes or consents required to effect the amendment, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following: (i) the governing documents; (ii) the complete text of the amendment; (iii) copies of any notice and solicitation materials utilized in the solicitation of member approvals; and (iv) any other documentation that the petitioner believes will be useful to the court in deciding whether to grant the petition.

(2) Upon filing the petition, the association shall contact the court administrator to obtain a hearing date not less than 90 days after the date of filing the petition.

(3) Not less than 15 days prior to the date of the hearing, the association shall serve a copy of the petition, excluding the exhibits, and notice of the hearing date on all members of the association in the same manner as service of a summons by personal service, or by publication in circumstances in which service of a summons by publication would be allowed under the Minnesota Rules of Civil Procedure. Notwithstanding the foregoing, to avoid unnecessary expenses of service, the association may obtain from any member of the association a signed waiver of service (i) acknowledging receipt of a copy of the petition, excluding the exhibits, and notice of the hearing date, and (ii) waiving service thereof.

(4) The court may grant the petition if it finds all of the following:

(i) each member of the association was served with a copy of the petition, excluding the exhibits, and notice of the hearing date not less than 15 days prior to the date of the hearing, or waived service thereof, pursuant to subsection (d)(3);

(ii) each secured party that is entitled to notice of the proposed amendment under the terms of the declaration, bylaws, or articles of incorporation, if any, either consented to the amendment, is deemed to have consented to the amendment pursuant to subsection (a)(5), or received a copy of the petition, excluding the exhibits, and notice of the hearing date not less than 15 days prior to the date of the hearing;

(iii) the association conducted a vote or requested the consent of the members regarding the proposed amendment in accordance with the declaration, the bylaws, the articles of incorporation, this chapter, and any other applicable law;

(iv) a reasonably diligent effort was made to permit all eligible members to vote, or to grant or deny consent, regarding the proposed amendment;

(v) the amendment was approved by the affirmative vote or consent of unit owners of units to which at least 67 percent of the votes in the association are allocated, or if all of the units are restricted to nonresidential use, by the affirmative vote or consent of unit owners of units to which a majority of the votes in the association are allocated;

(vi) the amendment is reasonable; and

(vii) granting the petition is not improper for any reason stated in subsection (d)(6).

(5) If the court makes the findings required by subsection (d)(4), any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes or consents actually received, or the order may dispense with any requirement relating to quorums or to the number or percentage of votes or consents needed for approval of the amendment that would otherwise exist under the governing documents.

(6) Subsections (d)(1) to (5), inclusive, notwithstanding, the court shall not be empowered by this subsection to approve any amendment that:

(i) would require execution by the association and certain unit owners pursuant to subsection (a)(2), unless the association and unit owners execute the amendment;

(ii) would require the unanimous written consent of the unit owners pursuant to subsection (a)(3);

(iii) would eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant; or

9.1 (iv) would impair the security interest of a secured party without the approval of the
9.2 percentage of secured parties specified in the declaration, if the declaration requires the
9.3 approval of a specified percentage of secured parties.

9.4 (7) An amendment to a declaration is not effective pursuant to this subsection until the
9.5 court order and amendment have been recorded in every county in which a portion of the
9.6 common interest community is located. Upon recordation of the amendment and court order,
9.7 the declaration, as amended in accordance with this section, shall have the same force and
9.8 effect as if the amendment were adopted in compliance with every requirement imposed
9.9 by this chapter and the declaration.