

(SENATE AUTHORS: GERLACH, Limmer, Scheid, Thompson and Tomassoni)

DATE	D-PG	OFFICIAL STATUS
03/21/2011	599	Introduction and first reading Referred to Judiciary and Public Safety
03/24/2011	702	Withdrawn and re-referred to Commerce and Consumer Protection
04/28/2011	1441a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety
05/02/2011	1601a 1604	Comm report: To pass as amended Second reading

1.1

A bill for an act

1.2

relating to real property; expanding and defining certain residential property

1.3

rights; modifying certain association vote and lien provisions of the Minnesota

1.4

Common Interest Ownership Act; amending Minnesota Statutes 2010, sections

1.5

500.215; 515B.2-119; 515B.2-123; 515B.2-124; 515B.3-113; 515B.3-116;

1.6

proposing coding for new law in Minnesota Statutes, chapter 500.

1.7

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

1.8

Section 1. Minnesota Statutes 2010, section 500.215, is amended to read:

1.9

**500.215 LIMITS ON CERTAIN RESIDENTIAL PROPERTY RIGHTS**

1.10

**PROHIBITED; FLAG DISPLAY; CERTAIN IMPROVEMENTS.**

1.11

Subdivision 1. **General rule.** (a) Any provision of any deed restriction, subdivision

1.12

regulation, restrictive covenant, local ordinance, contract, rental agreement or regulation,

1.13

or homeowners association document that limits the right of an owner or tenant of

1.14

residential property to display a noncommercial sign within the meaning of section

1.15

211B.045, the flag of the United States and the flag of the State of Minnesota is void

1.16

and unenforceable.

1.17

(b) "Homeowners association document" includes the declaration, articles of

1.18

incorporation, bylaws, and rules and regulations of:

1.19

(1) a common interest community, as defined in section 515B.1-103(C)(10),

1.20

regardless of whether the common interest community is subject to chapter 515B; and

1.21

(2) a residential community that is not a common interest community, as defined in

1.22

section 515B.1-103(C)(10).

1.23

Subd. 2. **Exceptions.** (a) This section does not prohibit limitations narrowly tailored

1.24

to protect health or safety.

1.25

(b) This section does not prohibit limitations that restrict:

(1) the size of the sign or flag to be displayed to a size customarily used on residential property;

(2) the installation and display of the sign or flag to a portion of the residential property to which the person who displays the sign or flag has exclusive use, but the limitation may not restrict the use of a flagpole affixed to a portion of real property to which the person who displays the flag has exclusive use; or

(3) illuminating the sign or flag.

(c) This section does not prohibit a requirement that the sign or flag be displayed in a legal manner under Minnesota law, that the sign or flag be in good condition and not altered or defaced, or that the sign or flag not be affixed in a permanent manner to that portion of property to be maintained by others or in a way that causes more than inconsequential damage to others' property. A person who causes damage is liable for the repair costs.

Subd. 2a. **Certain improvements.** (a) Any provision of any deed restriction, subdivision regulation, restrictive covenant, local ordinance, contract, rental agreement or regulation, or homeowners association document that limits the right of an owner or tenant of residential property to make alternative energy or landscaping improvements to a portion of the residential property to which the person who makes the improvements has exclusive use, is void and unenforceable.

(b) "Homeowners association document" has the meaning given in subdivision 1. "Landscaping" means the planting of trees, shrubs, bushes, and other vegetation, including home gardens. "Alternative energy" means a project to install and construct equipment to utilize solar, wind, geothermal, biomass, or other alternative energy sources in heating, cooling, or providing electricity for the residential real property.

(c) Any improvement in paragraph (a) must meet all applicable state and local building, fire, safety, and energy codes. No improvement in paragraph (a) may be affixed in a permanent manner to that portion of property to be maintained by others or in a way that causes more than inconsequential damage to others' property. A person who causes damage is liable for the costs.

Subd. 3. **Applicability.** This section applies to all limitations described in subdivision 1 and not excepted in subdivision 2, regardless of whether adopted before, on, or after August 1, 2005.

Subd. 4. **Recovery of attorney fees.** If an owner or tenant of residential property is denied the right provided by this section, the owner or tenant is entitled to recover, from the party who denied the right, reasonable attorney fees and expenses if the owner or tenant prevails in enforcing the right. If a sign or flag is installed or displayed, or improvement made, in violation of enforceable restrictions or limitations, the party

enforcing the restrictions or limitations is entitled to recover, from the party displaying the sign or flag, or making the improvement, reasonable attorney fees and expenses if the enforcing party prevails in enforcing the restrictions or limitations.

Sec. 2. **[500.216] LIMITS ON ACCESS TO PRIVATE PROPERTY.**

No agent or employee of a person hired by a common interest community or other residential community association to provide maintenance or management services to the association may enter onto a portion of residential property to which an owner or tenant has exclusive use, without the prior, express permission of the owner or tenant. Any provision of a homeowner's association document that purports to give permission to persons other than the owner or tenant, to inspect or examine residential property of an owner or tenant, without the prior, express permission of the owner or tenant, is void and unenforceable. For purposes of this section, a "homeowner's association document" has the meaning given in section 500.215, subdivision 1, paragraph (b).

Sec. 3. Minnesota Statutes 2010, 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~~ a simple majority of the votes in the association are allocated, and ~~80 percent~~ a simple majority 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

4.1 termination. If, pursuant to the agreement, any real estate in the common interest  
4.2 community is to be sold following termination, the termination agreement shall set forth  
4.3 the minimum terms of sale acceptable to the association.

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

4.9 (e) The association, on behalf of the unit owners, shall have authority to contract  
4.10 for the sale of real estate in a common interest community pursuant to this section,  
4.11 subject to the required approval. The agreement to terminate shall be deemed to grant  
4.12 to the association a power of attorney coupled with an interest to effect the conveyance  
4.13 of the real estate on behalf of the holders of all interests in the units, including without  
4.14 limitation the power to execute all instruments of conveyance and related instruments.  
4.15 Until the sale has been completed, all instruments in connection with the sale have been  
4.16 executed and the sale proceeds distributed, the association shall continue in existence  
4.17 with all powers it had before termination.

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

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

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

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

4.34 (1) In a planned community utilizing a CIC plat complying with section  
4.35 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 association shall be dissolved in accordance with law.

Sec. 4. Minnesota Statutes 2010, section 515B.2-123, is amended to read:

**515B.2-123 CHANGE OF FORM OF COMMON INTEREST COMMUNITY.**

(a) The legal form of a condominium, planned community or cooperative subject to this chapter may be changed to a condominium or planned community, subject to any requirements contained in the declaration or bylaws of the common interest community, and the following requirements:

(1) Subject to paragraphs (2) and (3), the change of form shall be approved in writing by the unit owners of units to which at least ~~80 percent~~ a simple majority of the votes in the association are allocated, and ~~80 percent~~ a simple majority of the first mortgagees of record of the units (each mortgagee having one vote per unit financed). The declaration or bylaws may specify a smaller percentage only if all of the units are restricted to nonresidential use. A declaration and bylaws complying with this chapter shall be approved, subject to the foregoing approval standards, with respect to the new common interest community.

(2) If the period of declarant control has not expired, the change of form shall also be approved in writing by the declarant.

(3) If the existing common interest community is a cooperative, the change of form shall also be approved in writing by (i) each holder of a blanket mortgage of record and

(ii) ~~80 percent~~ a simple majority of the secured parties holding interests in share loans encumbering the cooperative units or memberships (each secured party having one vote per share loan owned).

(b) Upon approval as provided in subsection (a), the association in the existing common interest community shall have authority to execute the declaration of the new common interest community on behalf of the unit owners of, and all other persons holding an interest in, the units or other property which is a part of the existing common interest community, and to do all other acts necessary to create the new common interest community.

(c) Upon approval as provided in subsection (a), the association in the existing common interest community shall have a power of attorney coupled with an interest to effect the conveyance of the units or any other real estate owned by the unit owners or the association, which is a part of the existing common interest community, on behalf of the unit owners and all other holders of interests in the common interest community, including without limitation the power to execute all instruments of conveyance and related instruments.

(d) In a change of legal form under this section, the offer, conveyance or exchange of a unit in the new common interest community to or with the person owning the unit in the existing common interest community shall not be subject to article 4 of this chapter.

(e) A change of legal form under this section shall not affect any preexisting obligations or liabilities of a declarant under any statute, or under the disclosure statement, declaration or bylaws of the existing common interest community. The declarant of the existing common interest community shall continue to have the rights and obligations of a declarant with respect to the offer and sale of units owned by it or its affiliates in the new common interest community.

Sec. 5. Minnesota Statutes 2010, 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~~ a simple majority 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

9.1 the approval of unit owners entitled to cast a majority of the votes allocated to units in  
9.2 the part of the common interest community being severed;

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

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

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

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

9.16 (d) The severance agreement shall:

9.17 (1) Approve an amendment to the declaration complying with this chapter, in  
9.18 substantially the same form to be recorded, and an amendment to the CIC plat if  
9.19 required. The declaration amendment shall, at a minimum, (i) legally describe the real  
9.20 estate constituting the remaining common interest community and the real estate being  
9.21 severed, (ii) restate the number of units in the remaining common interest community, (iii)  
9.22 reallocate the interests of the unit owners in the remaining common interest community  
9.23 among the remaining units in accordance with the allocation formula set forth in the  
9.24 declaration, and (iv) recite any easements to which the severed portion of the common  
9.25 interest community remains subject.

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

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

9.32 (4) Allocate the assets and liabilities of the association between the association and  
9.33 (i) a new association formed pursuant to subsection (g), or (ii) the owners of the units being  
9.34 severed, subject to a lien against their interest in the severed real estate or their share in the  
9.35 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 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~~ a simple majority 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.

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

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

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

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

11.20 (i) In a condominium or planned community, if the severed part of the common  
11.21 interest community is not to be reconstituted as a new common interest community  
11.22 following severance, title to all the real estate in the severed part of the common interest  
11.23 community vests in the unit owners of the units being severed, upon severance, as  
11.24 provided in the severance agreement.

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

11.29 Sec. 6. Minnesota Statutes 2010, section 515B.3-113, is amended to read:

11.30 **515B.3-113 INSURANCE.**

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

11.34 (1) subject to subsection (b), property insurance (i) on the common elements and,  
11.35 in a planned community, also on property that must become common elements, (ii)

12.1 for broad form covered causes of loss, and (iii) in a total amount of not less than the  
12.2 full insurable replacement cost of the insured property, less deductibles, at the time the  
12.3 insurance is purchased and at each renewal date, exclusive of items normally excluded  
12.4 from property policies; and

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

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

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

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

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

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

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

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

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

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

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

13.30 (h) Any portion of the common interest community which is damaged or destroyed  
13.31 as the result of a loss covered by the association's insurance shall be promptly repaired or  
13.32 replaced by the association unless (i) the common interest community is terminated and  
13.33 the association votes not to repair or replace all or part thereof, (ii) repair or replacement  
13.34 would be illegal under any state or local health or safety statute or ordinance, or (iii) ~~80~~  
13.35 ~~percent~~ a simple majority of the unit owners, including every unit owner and holder of a  
13.36 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. 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. 7. Minnesota Statutes 2010, 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, ~~fin~~<sup>es</sup> and interest charges pursuant to section 515B.3-102(a)(10), (11) and (12) are liens, and are enforceable as assessments, under this section, except that fines for violations of the declaration, bylaws, and rules and regulations of the association, may not become the basis of a lien, and are not 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(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 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 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.

(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.

(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.

- 18.1
- (k) An association may assign its lien rights in the same manner as any other secured
- 18.2
- party.