

**SENATE  
STATE OF MINNESOTA  
EIGHTY-NINTH SESSION**

**S.F. No. 3224**

(SENATE AUTHORS: DZIEDZIC)

DATE	D-PG	OFFICIAL STATUS
03/24/2016	5260	Introduction and first reading Referred to Judiciary

1.1 A bill for an act  
 1.2 relating to real property; amending the Minnesota Common Interest Ownership  
 1.3 Act to provide for construction defect claims; amending Minnesota Statutes  
 1.4 2014, sections 515B.1-103; 515B.3-102; 515B.3-107; 515B.3-111; 515B.3-114;  
 1.5 515B.4-113; 515B.4-116.

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

1.7 Section 1. Minnesota Statutes 2014, section 515B.1-103, is amended to read:

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

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

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

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

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

1.21 (B) A person "is controlled by" a declarant if the declarant (i) is a general partner,  
 1.22 officer, director, or employer of the person, (ii) directly or indirectly or acting in concert  
 1.23 with one or more other persons, or through one or more subsidiaries, owns, controls, holds  
 1.24 with power to vote, or holds proxies representing, more than 20 percent of the voting

2.1 interest in the person, (iii) controls in any manner the election of a majority of the directors  
2.2 of the person, or (iv) has contributed more than 20 percent of the capital of the person.

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

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

2.10 (4) "Association" means the unit owners' association organized under section  
2.11 515B.3-101.

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

2.15 (6) "CIC plat" means a common interest community plat described in section  
2.16 515B.2-110.

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

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

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

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

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

3.5 (11a) "Construction defect claim" means a civil action or an arbitration proceeding  
3.6 based on any legal theory including, but not limited to, claims under chapter 327A for  
3.7 damages, indemnity, or contribution brought against a development party to assert a claim,  
3.8 counterclaim, cross-claim, or third-party claim for damages or loss to, or the loss of use of,  
3.9 real or personal property or personal injury caused by a defect in the design or construction  
3.10 of an improvement to real property that is part of the common interest community.

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

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

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

3.20 (15) "Declarant" means:

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

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

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

3.34 (16a) "Development party" means an architect, contractor, construction manager,  
3.35 subcontractor, developer, declarant, engineer, or inspector performing or furnishing  
3.36 the design, supervision, inspection, construction, coordination, or observation of the

4.1 construction of any improvement to real property that is part of the common interest  
4.2 community, or any of such person's affiliates, officers, directors, shareholders, members,  
4.3 or employees.

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

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

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

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

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

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

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

4.33 (24) "Period of declarant control" means the time period provided for in section  
4.34 515B.3-103(c) during which the declarant may appoint and remove officers and directors  
4.35 of the association.

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

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

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

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

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

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

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

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

5.31 (33a) This definition of special declarant rights applies only to common interest  
5.32 communities created before August 1, 2010. "Special declarant rights" means rights  
5.33 reserved in the declaration for the benefit of a declarant to:

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

- 6.1 (ii) add additional real estate to a common interest community;
- 6.2 (iii) subdivide or combine units, or convert units into common elements, limited  
6.3 common elements, or units;
- 6.4 (iv) maintain sales offices, management offices, signs advertising the common  
6.5 interest community, and models;
- 6.6 (v) use easements through the common elements for the purpose of making  
6.7 improvements within the common interest community or any additional real estate;
- 6.8 (vi) create a master association and provide for the exercise of authority by the  
6.9 master association over the common interest community or its unit owners;
- 6.10 (vii) merge or consolidate a common interest community with another common  
6.11 interest community of the same form of ownership; or
- 6.12 (viii) appoint or remove any officer or director of the association, or the master  
6.13 association where applicable, during any period of declarant control.

6.14 (33b) This definition of special declarant rights applies only to common interest  
6.15 communities created on or after August 1, 2010. "Special declarant rights" means rights  
6.16 reserved in the declaration for the benefit of a declarant and expressly identified in the  
6.17 declaration as special declarant rights. Such special declarant rights may include but  
6.18 are not limited to the following:

- 6.19 (i) to complete improvements indicated on the CIC plat, planned by the declarant  
6.20 consistent with the disclosure statement or authorized by the municipality in which the  
6.21 common interest community is located, and to have and use easements for itself and its  
6.22 employees, agents, and contractors through the common elements for such purposes;
- 6.23 (ii) to add additional real estate to a common interest community;
- 6.24 (iii) to subdivide or combine units, or convert units into common elements, limited  
6.25 common elements and/or units, pursuant to section 515B.2-112;
- 6.26 (iv) to maintain and use sales offices, management offices, signs advertising the  
6.27 common interest community, and models, and to have and use easements for itself and its  
6.28 employees, agents, and invitees through the common elements for such purposes;
- 6.29 (v) to appoint or remove any officer or director of the association during any period  
6.30 of declarant control;
- 6.31 (vi) to utilize an alternate common expense plan as provided in section  
6.32 515B.3-115(a)(2);
- 6.33 (vii) to grant common element licenses as provided in section 515B.2-109(e); or  
6.34 (viii) to review, and approve or disapprove, the exterior design, materials, size,  
6.35 site location, and other exterior features of buildings and other structures, landscaping

7.1 and other exterior improvements, located within the common interest community, and  
 7.2 any modifications or alterations thereto.

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

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

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

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

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

7.21 Sec. 2. Minnesota Statutes 2014, section 515B.3-102, is amended to read:

7.22 **515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.**

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

7.25 (1) adopt, amend and revoke rules and regulations not inconsistent with the articles  
 7.26 of incorporation, bylaws and declaration, as follows: (i) regulating the use of the common  
 7.27 elements; (ii) regulating the use of the units, and conduct of unit occupants, which may  
 7.28 jeopardize the health, safety or welfare of other occupants, which involves noise or  
 7.29 other disturbing activity, or which may damage the common elements or other units;  
 7.30 (iii) regulating or prohibiting animals; (iv) regulating changes in the appearance of the  
 7.31 common elements and conduct which may damage the common interest community;  
 7.32 (v) regulating the exterior appearance of the common interest community, including,  
 7.33 for example, balconies and patios, window treatments, and signs and other displays,  
 7.34 regardless of whether inside a unit; (vi) implementing the articles of incorporation,

- 8.1 declaration and bylaws, and exercising the powers granted by this section; and (vii)  
8.2 otherwise facilitating the operation of the common interest community;
- 8.3 (2) adopt and amend budgets for revenues, expenditures and reserves, and levy and  
8.4 collect assessments for common expenses from unit owners;
- 8.5 (3) hire and discharge managing agents and other employees, agents, and  
8.6 independent contractors;
- 8.7 (4) institute, defend, or intervene in litigation or administrative proceedings (i) in  
8.8 its own name on behalf of itself or two or more unit owners on matters affecting the  
8.9 common elements or other matters affecting the common interest community or, (ii) with  
8.10 the consent of the owners of the affected units on matters affecting only those units;
- 8.11 (5) make contracts and incur liabilities;
- 8.12 (6) regulate the use, maintenance, repair, replacement, and modification of the  
8.13 common elements and the units;
- 8.14 (7) cause improvements to be made as a part of the common elements, and, in the  
8.15 case of a cooperative, the units;
- 8.16 (8) acquire, hold, encumber, and convey in its own name any right, title, or interest  
8.17 to real estate or personal property, but (i) common elements in a condominium or planned  
8.18 community may be conveyed or subjected to a security interest only pursuant to section  
8.19 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative  
8.20 may be subjected to a security interest, only pursuant to section 515B.3-112;
- 8.21 (9) grant or amend easements for public utilities, public rights-of-way or other  
8.22 public purposes, and cable television or other communications, through, over or under  
8.23 the common elements; grant or amend easements, leases, or licenses to unit owners for  
8.24 purposes authorized by the declaration; and, subject to approval by a vote of unit owners  
8.25 other than declarant or its affiliates, grant or amend other easements, leases, and licenses  
8.26 through, over or under the common elements;
- 8.27 (10) impose and receive any payments, fees, or charges for the use, rental, or  
8.28 operation of the common elements, other than limited common elements, and for services  
8.29 provided to unit owners;
- 8.30 (11) impose interest and late charges for late payment of assessments and, after  
8.31 notice and an opportunity to be heard before the board or a committee appointed by it,  
8.32 levy reasonable fines for violations of the declaration, bylaws, and rules and regulations  
8.33 of the association;
- 8.34 (12) impose reasonable charges for the review, preparation and recordation of  
8.35 amendments to the declaration, resale certificates required by section 515B.4-107,  
8.36 statements of unpaid assessments, or furnishing copies of association records;



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

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

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

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

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

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

9.15 (d) Notwithstanding subsection (a)(4) or any other provision of this chapter,  
9.16 the association, before instituting or intervening in litigation or arbitration involving  
9.17 construction defect claims against a development party, shall:

9.18 (1) mail or deliver written notice of the anticipated commencement of such action to  
9.19 each unit owner at the owner's last known address. The notice shall specify the nature of  
9.20 the construction defect claims to be alleged, the relief sought, and the manner in which the  
9.21 association proposes to fund the cost of pursuing the construction defect claims, including  
9.22 attorney fees, expert fees, and court or arbitration costs;

9.23 (2) provide notice of and hold a special meeting in accordance with section  
9.24 515B.3-108 for the purpose of advising unit owners of the information specified in this  
9.25 subsection; and

9.26 (3) after the special meeting required by this subsection, obtain the written consent  
9.27 of the owners of units to which at least two-thirds of the total votes in the association are  
9.28 allocated, excluding votes allocated to units owned by the declarant. This consent must  
9.29 be obtained directly and not as a result of proxy voting.

9.30 (e) As a condition precedent to any construction defect claim, the parties to the claim  
9.31 must submit the matter to mediation before a mutually agreeable neutral third party.  
9.32 If the parties are not able to agree on a mediator, the parties shall use the alternative  
9.33 selection method specified in the governing documents or, if no alternative selection  
9.34 method is provided, the parties may petition the district court in the jurisdiction in which  
9.35 the common interest community is located to appoint a mediator.

10.1 Sec. 3. Minnesota Statutes 2014, section 515B.3-107, is amended to read:

10.2 **515B.3-107 UPKEEP OF COMMON INTEREST COMMUNITY.**

10.3 (a) Except to the extent provided by the declaration, this subsection or section  
 10.4 515B.3-113, the association is responsible for the maintenance, repair and replacement of  
 10.5 the common elements, and each unit owner is responsible for the maintenance, repair and  
 10.6 replacement of the unit owner's unit. Damage to the common elements or any unit as a  
 10.7 result of the acts or omissions of a unit owner or the association, including damage resulting  
 10.8 from the association's or unit owner's lack of maintenance or failure to perform necessary  
 10.9 repairs or replacement, is the responsibility of the ~~person~~ unit owner or association  
 10.10 responsible for causing the damage, or whose agents or invitees caused the damage.

10.11 (b) Annually, the association's board of directors shall prepare, approve, and provide  
 10.12 to all unit owners a written preventative maintenance plan and maintenance schedule  
 10.13 for the common elements. The minimum requirements of the association's preventative  
 10.14 maintenance plan shall include: providing for all maintenance required by manufacturer or  
 10.15 builder warranties on materials, systems, or equipment; inspection and repair of weather  
 10.16 barriers including roofing, windows, siding, caulking, and flashing; and inspection and  
 10.17 repair of minor nonstructural cracking of concrete and masonry elements. The association  
 10.18 shall follow the approved preventative maintenance plan.

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

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

10.29 Sec. 4. Minnesota Statutes 2014, section 515B.3-111, is amended to read:

10.30 **515B.3-111 TORT AND CONTRACT LIABILITY.**

10.31 (a) Neither the association nor any unit owner except the declarant is liable for that  
 10.32 declarant's torts in connection with any part of the common interest community. An action  
 10.33 alleging a tort or contract violation by the association shall not be brought against a unit  
 10.34 owner solely by reason of ownership. If the tort or contract violation occurred during  
 10.35 any period of declarant control and the association or a unit owner gives the declarant

11.1 reasonable notice of and an opportunity to defend against the action, the declarant who  
 11.2 then controlled the association is liable to the association or to any unit owner for (i) all  
 11.3 losses not covered by insurance suffered by the association or that unit owner, and (ii) all  
 11.4 costs that the association would not have incurred but for the tort or contract violation.

11.5 ~~(b) Whenever the declarant is liable to the association or a unit owner under this~~  
 11.6 ~~section, the declarant is also liable for all expenses of litigation, including reasonable~~  
 11.7 ~~attorney's fees, incurred by the association or unit owner. Any statute of limitation~~  
 11.8 affecting a right of action under this section is tolled until the period of declarant control  
 11.9 terminates. A unit owner is not precluded from maintaining an action contemplated by  
 11.10 this section because of being a unit owner or an officer or director of the association.

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

11.15 Sec. 5. Minnesota Statutes 2014, section 515B.3-114, is amended to read:

11.16 **515B.3-114 RESERVES; SURPLUS FUNDS.**

11.17 (a) The annual budgets of the association shall provide from year to year, on  
 11.18 a cumulative basis, for adequate reserve funds to cover the maintenance, repair, or  
 11.19 replacement of those parts of the common interest community which the association is  
 11.20 obligated to maintain, repair, or replace. These reserve requirements shall not apply to a  
 11.21 common interest community which is restricted to nonresidential use.

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

11.26 (c) This section applies to common interest communities only for their fiscal years  
 11.27 commencing before January 1, 2012.

11.28 Sec. 6. Minnesota Statutes 2014, section 515B.4-113, is amended to read:

11.29 **515B.4-113 IMPLIED WARRANTIES.**

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

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

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

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

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

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

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

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

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

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

12.22 Sec. 7. Minnesota Statutes 2014, section 515B.4-116, is amended to read:

12.23 **515B.4-116 RIGHTS OF ACTION; ATTORNEY'S FEES.**

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

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

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

13.4 **EFFECTIVE DATE.** This act is effective ..... and applies to construction defect  
13.5 claims arising from incidents occurring on or after that date.