

House Research Act Summary

CHAPTER: 11

SESSION: 1999 Regular Session

TOPIC: Real Property Law

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Overview

Article 1 eliminates the need for the owner of registered property ("Torrens property") to have an owner's duplicate title in order to sell the property or record documents affecting it.

Article 2 makes changes in the Common Interest Ownership Act that governs condominiums, townhouses, and cooperatives.

Article 3 amends other statutes that reference the Common Interest Ownership Act.

Article 4 makes miscellaneous changes affecting real property concerns.

Section

Article 1

Article 1 eliminates the requirement that a property owner of registered land ("Torrens property") must have an owner's duplicate certificate of title in order to file a mortgage or sell the land. The intent is to save owners the expense of a court proceeding to replace a lost duplicate since there is no real need for the owner's duplicate in the real property law system. The owner will still have a photocopy of the certificate. (Sections 19 and 48)

The article also makes other changes in certificate of title and certificate of possessory title law.

- 1-6 Agricultural and wetlands.** Amend statutes dealing with agricultural land use and wetlands to remove references to the owner's duplicate certificate of title (owner's duplicate).
- 7 Documents misfiled.** Allows a county recorder to reasonably rely on statements, by a party filing real property instruments, that the property is registered or unregistered. A party who requests correction of misfiling is responsible for fees or a new certificate if the misfiling was

due to the party's incorrect statements.

- 8-12 Agricultural use.** Amend chapter 473H dealing with covenants to keep land in agricultural use. Strike references to the owner's duplicate.
- 13-17 Registered title.** Amend provisions of chapter 508 on registered land to strike references to the owner's duplicate.
- 18 Forms of records adopted.** Amends section 508.38. Provides that after an instrument affecting real property is registered with the registrar of titles, it is returned to the party who presented it for filing. Under prior law, the registrar kept the original and provided a copy.
- 19 Copy of certificate of title.** Amends section 508.40. Provides that when a certificate of title is entered, the registrar gives the owner a copy. States the copy need not be presented to permit an instrument to be filed, a new certificate of title to be entered, or a memorial to be made on a certificate.
- 20 Multiple parcels or interests.** Amends section 508.421, subdivision 2 to strike references to the owner's duplicate.
- 21 Survey; requisites; filing; copies.** Amends section 508.47, subdivision 4 to allow the registrar of titles to request that a land survey drawing be 20 inches by 30 inches. Prior law specified a size of 17 inches by 14 inches.
- 22-26** Amend provisions in chapter 508 to strike references to the owner's duplicate and a reference that implies the existence of a duplicate.
- 27 Foreclosure; notice.** Amends section 508.57 to provide that notice of a mortgage foreclosure suit be memorialized on the certificate of title. Under prior law, it was placed on the register.
- 28-32** Amend provisions of chapter 508 to strike references to the owner's duplicate.
- 33 Death of owner; issuance of new certificate.** Amends section 508.68. Changes "certificate" to "certificate of title."
- 34 Corrections of registrar's clerical errors.** Permits the registrar to correct clerical errors made in proposing certificates of title. Prohibits erasing an error. Requires a memorial to note the correction made, nature of the error, and date and time of entry. Requires that an error that might adversely affect a party's interest in the property be referred to the examiner of titles. Provides for subsequent certificates to be prepared correctly without the memorial of correction.
- 35-38** Amend provisions of chapter 508 to strike references to the owner's duplicate and to change "certificate" to "certificate of title."
- 39 Registrar's liability.** Amends section 508.76 on damages caused by the registrar in performing duties under this chapter. Adds the same language added in section 7.
- 40 Standard documents.** Amends section 508.82, subdivision 1 to strike references to the owner's duplicate.
- 41-46** Amend chapter 508A on certificates of possessory title/CPT. Strike references to the owner's duplicate.
- 47 Forms of records adopted.** Amends section 508A.38. Requires instruments affecting CPT land titles filed with the registrar to be numbered consecutively. Requires instruments to be copied and then the original returned to the party who presented it for filing.
- 48 Copy of CPT to be furnished to owner.** Amends section 508A.40 to provide that the owner gets a duplicate CPT but does not have to present the duplicate to file an instrument, enter a new CPT, or make a memorial on a CPT.
- 49 Multiple parcels or interests.** Amends section 508A.421, subd. 2 to remove references to the owner's duplicate.

- 50 Survey; requisites; filing; copies.** Amends section 508A.47, subdivision 4. Allows the registrar to request a survey drawing 20 inches by 30 inches, instead of the 17 inch by 14 inch size provided in prior law. Requires presenting a certificate from the treasurer that current taxes have been paid before a survey will be accepted for filing.
- 51 Interest less than fee.** Amends section 508A.49 to strike reference to the owner's duplicate.
- 52-60** Amend various provisions of chapter 508A to strike references to the owner's duplicate. In section 54, references the possibility that a party other than the owner or the owner's attorney-in-fact who an interest registered on a CPT may register a mortgage on the property.
- 61 Corrections of registrar's clerical errors.** Allows the registrar to correct clerical errors made by the registrar's office. Prohibits erasing the error. Allows the registrar to sign and file a correction statement and memorialize it on the CPT or make a correction memorial. Requires a memorial to show date and time of entry, nature of error, and correct information. If the error adversely affects any party's interest, the registrar must refer the correction to the examiner of titles. Requires subsequent CPTs to be prepared correctly without the memorial of correction.
- 62-66** Amend various provisions of chapter 508A to strike references to the owner's duplicate and make other technical corrections.
- 67 Registrar's liability.** Amends section 508A.76. Allows the registrar to reasonably rely on the representation of the party presenting instruments to file that the land is registered or unregistered. A party requesting refiling of misfiled instruments is responsible for additional fees due to incorrect misrepresentation and, if applicable, to enter a new CPT.
- 68-71** Amend various provisions of chapter 508A to strike references to the owner's duplicate.
- 72 Repealer.** Repeals provisions in the statutes on agricultural preserves, certificates of title, and certificates of possessory title that are unnecessary when the requirement that the owner present a duplicate certificate or CPT is eliminated.
- 73 Effective date.** Article 1 is effective January 1, 2000.

Article 2

This article amends Minnesota Statutes, chapter 515B, the Common Interest Ownership Act that governs condominium, townhouse, and cooperative housing associations. Changes include applying various provisions to condominiums that existed before chapter 515B took effect, as well as making numerous changes throughout chapter 515B. The summary of this article contains material from the Minnesota State Bar Association.

- 1 [515B.1-102.] Applicability.** Specifies sections of chapter 515B that now apply to "old" condominiums formed prior to August 1, 1980, under Minnesota Statutes, chapter 515. Sections of chapter 515B that now apply to chapter 515 condominiums include the following sections of article 1:
- Sections 515B.1-104 (Variation by agreement); 515B.1-108 (Supplemental general principles of law); 515B.1-109 (Construction against implicit repeal); 515B.1-110 (Uniformity of application and construction); 515B.1-111 (Severability); 515B.1-112 (Unconscionable agreement on term of contract); 515B.1-113 (Obligation of good faith); 515B.1-114 (Remedies liberally administered); and 515B.1-115 (Notice).
- The following sections of articles 2 and 3 of Minnesota Statutes, chapter 515B, would apply retroactively:
- Section 515B.2-108(d), which authorizes special allocations of unit owner votes among classes of association members, or allocations of common expenses among certain classes of units, on particular matters specified in the condominium declaration.

Section 515B.2-109(c), which deals with common elements and limited common elements.

Sections 515B.2-112, 2-113, 2-114, and 2-115, which authorize the subdivision or conversion of units, the alteration of units, the relocation of boundaries between adjoining units, and minor boundary variations.

Sections 515B.3-103(a), (b), and (g), which clarify the authority of the board of directors to govern the association and provide that the minutes of any portion of a board meeting which is closed pursuant to the Act may be kept confidential at the discretion of the Board.

Section 515B.3-107 on upkeep of common interest community.

Section 515B.3-108, which contains requirements for holding annual association meetings and notices of meetings.

Section 515B.3-109, which sets a minimum quorum requirement for meetings of the association members, subject to any greater requirements established by the association's governing documents.

Sections 515B.3-112, which authorizes the conveyance or encumbrance of the common elements, subject to certain approval requirements.

Section 515B.3-114, which requires "adequate" reserves.

Sections 515B.3-115(c), (e), (f), (g), (h), and (i), which (among other things) (1) authorize the assessment of costs for repair of limited common elements against the units to which the limited common elements are assigned, (2) authorize the assessment of common expenses against only the units which are benefitted by the expense, and (3) authorize the acceleration of all assessments due with respect to a unit in any assessment year when one or more of the assessment installments becomes more than 60 days past due.

Section 1 makes two sections of chapter 515B apply to planned communities and cooperatives created before June 1, 1994, the effective date of chapter 515B:

(1) Section 515B.1-116(a), (c), (d), (e), (f), and (h), covers certain recording matters.

(2) Section 515B.4-107 contains disclosure requirements for unit resales.

Other listed sections apply as specified in the bill either (1) with reference to events and circumstances occurring on or after June 1, 1994 or (2) on or after May 31, 1999.

Section 1 does not invalidate provisions contained in the declarations, bylaws, or condominium plats of common interest communities created before the effective date of this article.

Section 1 does not supersede the governing documents, CIC plats, and rules and regulations of preexisting common interest communities, where the applicable section of the act defers to those documents.

2 [515B.1.-103.] Definitions. Clause (10) clarifies the definition of common interest community (CIC) by stating that property subject to a master association does not collectively constitute a separate common interest community, unless so stated in the master declaration.

Clause (21) clarifies the definition of a master association by specifying that the entity must have been created on or after June 1, 1994.

Clause (22) creates a new definition for a "master declaration" as the reference term for the recorded instrument governing a master association.

3 [515B.1-116.] Recording. Paragraph (d) lets all common interest communities (whether or not subject to the act) submit an affidavit of the president or secretary as to the outcome of the vote or approval process, rather than attaching notarized signatures of the required number of voting members when something must be recorded.

Paragraph (h) does away with the requirement for surrendering the owner's duplicate certificate

of title in order to record an amendment to an association's documents; except for the owner's duplicate relating to real estate being added by an amendment under section 515B.2-111.

- 4 **[515B.2-101.] Creation of common interest communities.** States that the section applies to common interest communities created on or after June 1, 1994
- 5 **[515B.2-104.] Description of units.** Amends the form of legal description for a unit to remove the requirement for a reference to the common interest community number in a deed immediately following the legal description of a unit in a planned community.
- 6 **[515B.2-105.] Contents of declaration; all common interest communities.** Requires a declaration to include a description of any appurtenant easements necessary for access to a public street or highway and a general reference to any other appurtenant easements.
- 7 **[515B.2-108.] Allocation of interests.** Provides that if the declaration uses equality as the formula to allocate votes, votes do not attach to auxiliary units like garages.
Paragraph (d) authorizes special allocations (i) of unit owner votes among certain units or classes of units on particular matters specified in the declaration or (ii) of common expenses among certain units or classes of units on particular matters specified in the declaration.
- 8 **[515B.2-109.] Common elements and limited common elements.** Provides that common elements may be subject to restrictions contained in the declaration.
- 9 **[515B.2-110.] Common interest community plat (CIC plat).** Paragraph (a) separates the requirements for CIC plats into three clauses, each of which deals with one of the three types of common interest communities. Clarifies when the CIC plat must be recorded for planned communities and condominiums.
Paragraph (b) eliminates the requirement for an architect's certification on the CIC plat where all portions of the CIC plat are prepared by a land surveyor.
Paragraph (c), clause (8) makes clear that only material limited common elements such as porches, balconies, decks, patios, and garages must be shown on the CIC plat. Eliminates a conflict with section 515B.2-102, paragraph (f).
- 10 **Alterations of units.** Authorizes a unit owner, at the owner's expense, to alter a unit to make it handicap accessible.
- 11 **[515B.2-118.] Amendment of declaration.** Divides into clauses, current paragraphs (a) and (d) on the requirements for amending a common interest community declaration.
- 12 **[515B.2-119.] Termination of common interest community.** Allows other sections of chapter 515B to control over the vote of the unit owners and mortgagees on termination of the community.
- 13 **[515B.2-121.] Master associations.** Covers the organization of master associations, the manner in which they are governed, the levying of master association expenses and the obligation of a person forming a master community to pay assessments.
New paragraph (c) provides requirements for the election of directors, including permitting a person other than a member of the master association or a unit owner, including a declarant of a constituent CIC, to appoint or elect one director. It also authorizes a person named in the articles of incorporation to appoint the master association board of directors for a defined period of time, similar to the right of a declarant to appoint the board of a common interest community.
Paragraph (d) authorizes special classes of directors and allocations of director voting rights.
Paragraph (e) requires that the officers of a master association be elected or appointed consistent with the statute under which the master association is formed.
Paragraph (f) provides specific requirements for the creation of a master association, including the requirements for a master declaration. Clarifies the delegation of powers of a constituent

common interest community to the master association.

Paragraph (g) authorizes adding real estate to the master association and sets forth the requirements for an amendment to the master declaration to do so.

Paragraph (i) authorizes a master association to levy and collect assessments for common expenses and authorizes liens and establishes the priority of the master association's liens as against the assessment liens of a common interest community subject to the master association. It also authorizes an exemption from assessments for the person who is authorized to appoint the members of the master association board, and exempts any unit owned by the person from a lien for common expenses until a dwelling is substantially completed.

14 [515B.2-122.] Merger or consolidation of common interest communities. Paragraph (e) authorizes the association which results from the merger of two common interest communities to execute the declaration and CIC plat for the surviving common interest community, and to do all other acts necessary to merge the common interest communities.

15 [515B.2-124.] Severance of common interest community. Unless the declaration of the common interest community provides otherwise, authorizes the association to sever units from the common interest community. Severance requires, among other things, the approval of at least 67 percent of the votes in the association, including a majority of the votes allocated to units remaining in the common interest community and a majority of the votes allocated to units being severed from the common interest community.

Requires a "severance agreement" which, among other things, (1) approves an amendment to the declaration of the remaining common interest community, (2) authorizes the association to execute and record the amended declaration, (3) reallocates the interests of the units, (4) allocates the assets and liabilities of the association between the remaining association and the severed units, and (5) deals with the formation of any new common interest community consisting of the severed units.

16 [515B.2-125.] Addition of common elements. Authorizes the association to add common elements to the common interest community, subject to various approval requirements. These requirements include the approval of at least 67 percent of the votes in the association and the declarant until the earlier of (1) five years after the recording of the declaration or (2) the time at which the declarant no longer owns an unsold unit. The association is required to record an amendment to the declaration which describes the real estate added and designates it as part of the common elements. For a common interest community using a condominium type CIC plat, the association must also record an amended CIC plat reflecting the change in the common elements.

17 [515B.3-103.] Duty of board, officers; period of declarant control. Paragraph (e) clarifies the requirements for the election of directors following the turnover of control of the association by the declarant. Retains the basic requirement that a majority of the directors must be unit owners, but allows the requirement to be varied by the articles of incorporation or bylaws of the association. The articles of incorporation or bylaws may also (1) authorize the appointment or election of one director; (2) authorize classes of directors and/or the election of certain directors by unit owners of a certain class or classes of units; or (3) authorize class voting by classes of directors on specified issues affecting only a certain class or classes of units.

Paragraph (f) requires that the percentages required for the turnover of control by the declarant be calculated without reference to units which are "auxiliary" to other units, such as garage units or storage units.

Paragraph (g) provides that the minutes of any portion of a directors meeting which is closed in accordance with that subsection may be kept confidential at the discretion of the board.

- 18 **[515B.3-105.] Termination of contracts and leases.** Authorizes a master association to terminate contracts, leases, or licenses entered into during the developer control period, but not to terminate a mortgage or contract for deed encumbering a cooperative property.
- 19 **[515B.3-106.] Bylaws; annual report.** Requires a detailed description of the insurance coverage provided by the association, including a statement as to which, if any, of the specific items referred to in the insurance provisions of chapter 515B are insured by the association.
- 20 **[515B.3-110.] Voting; proxies.** Authorizes class voting by unit owners for directors or on other specified issues affecting the class of unit owners. Prohibits using class voting to evade limits imposed on declarants by chapter 515B. Provides that units do not constitute a class by virtue of being owned by a declarant.
- 21 **[515B.3-113.] Insurance.** Exempts from required association property insurance coverage the following items within the units: (i) ceiling or wall finishing materials, (ii) floor coverings, (iii) cabinetry, (iv) finished millwork, (v) electrical or plumbing fixtures serving a single unit, (vi) built-in appliances, or (vii) other improvements and betterments, regardless of when installed.
- 22 **[515B.3.115.] Assessments for common expenses.** Paragraph (a) clarifies the obligations of a unit owner to pay assessments for reserves. Requires assessments for replacement reserves to be levied against a unit upon the earlier of substantial completion of the exterior of (i) the building containing the unit or (ii) any dwelling located within the unit.
Paragraph (b) redefines the declarant's exemption from the payment of assessments. A declarant may exempt itself in an amount equal to 25 percent of any assessment levied, until the unit or any building located within the unit is substantially completed. This exemption is available for condominiums and cooperatives as well as planned communities. Eliminates alternative of the specified guaranteed maximum assessment.
- 23 **[515B.3-116.] Lien for assessment.** Paragraph (b) clarifies that any prior first mortgagee's interest must encumber the "fee simple interest" in the unit, rather than a partial interest such as a contract seller's interest.
Paragraph (f) makes clear that commencement of an action to recover past due assessments does not constitute an election of remedies if the action is dismissed before commencement of the foreclosure of the assessment lien.
- 24 **[515B.3-121.] Accounting controls.** Paragraph (a) increases the time period within which the association may waive the annual review requirement from 30 to 60 days, and increases the time for delivery of the reviewed financial statements to the association members from 120 to 180 days.
Paragraph (c) clarifies that generally accepted accounting principles are required only where the association's financial statements are prepared by an independent certified public accountant.
- 25 **[515B.4-101.] Applicability; delivery of disclosure statement.** Adds a qualifying reference to paragraph (a).
- 26 **[515B.4-102.] Disclosure statement; general provisions.** Changes requirements for disclosure by a declarant upon the initial sale of a unit in a common interest community.
Paragraph (a), clause (4) adds specific components to the requirement for a general description of the common interest community, including the number of dwellings per building, whether the common interest community involves new construction or rehabilitation, whether any building was occupied previously, and a general description of any roads, trails, or utilities which the association or a master association will be required to maintain.
Clause (14) clarifies the conditions under which earnest money will be held in escrow and disbursed, consistent with section 515B.4-109.

Clause (19) requires the disclosure of real estate taxes only where the taxes have been separately assessed against the units.

Clause (20), relating to master associations, requires that a statement indicate facilities not located on the property owned or controlled by a member association and indicate whether any person is subsidizing the master association expenses.

- 27 **[515B.4-106.] Purchaser's right to cancel.** Changes the 15-day rescission period to ten days and states it cannot be waived unless specifically authorized by chapter 515B. References the statute of limitations for actions against a declarant that has failed to deliver a disclosure statement.
- 28 **[515B.4-107.] Resale of units.** Makes changes in the resale disclosure requirements: (1) the reference to capital expenditures was removed, and replaced by a requirement to disclose "extraordinary" expenditures approved by the association and not yet assessed, for the current and two succeeding fiscal years; (2) a requirement was added for a specific disclosure with regard to items within the units which are insured by the association; (3) a requirement was added for the disclosure of any plan approved by the association for levying assessments against fewer than all of the units (e.g., based upon benefit); and (4) a section was added allowing the association to disclose "any other matters affecting the unit or the unit owner's obligations with respect to the unit which the association deems material."
- 29 **[515B.4-108.] Purchaser's right to cancel resale.** Changes the purchaser's 15-day rescission period to ten days and states that it cannot be waived, except as otherwise provided in chapter 515B.
- 30 **[515B.4-111.] Conversion property.** If property converts to condominium status, the unit owner must give any tenant 120 days notice before requiring the tenant to vacate. Under prior law, the declarant had to give this notice, but the act has the unit owner do so because the declarant may no longer be involved by the time a tenant is asked to vacate.

Also allows the unit owner/lessor to require the tenant to vacate the unit for non-payment of utilities or other monetary obligations under the lease, or for violations of law, in addition to the previously existing reasons such as non-payment of rent, commission of waste or conduct that disturbs other occupants' peaceful enjoyment.

Article 3

This article makes technical changes in chapter 515B, the Common Interest Ownership Act. The changes consist of (1) making terms consistent with chapter 515B terminology and (2) providing more specific cross references. The article is 21 sections long. No section-by-section summary has been prepared for this article due to its technical nature.

Article 4

This article deals with renewal of notary public commissions, numbering of real property documents by the county recorder, real property conveyancing, attorney fees in contract for deed defaults, and the redemption period for voluntary foreclosure.

- 1 **Term.** Amends the statute on the term of notaries public. Allows re-appointment within seven months before expiration of the term. Prior law allowed re-appointment within 30 days of expiration. (Because all notary terms currently expire on the same date -- January 31, 2000 -- it will be impossible to process all renewals within a month.)
- 2 **Consecutive numbering.** Adds to the requirement that documents be recorded in the order received: "to the extent practicable."
- 3 **Estates and trusts.** Amends a statute dealing with conveying real property to the estate of a

ward. Adds the parallel and related terms "conservator" and "ward's or conservatee's guardian or conservator." Technical.

- 4 For post 7/31/1985 contract.** Amends the statute on contract for deed defaults to provide attorney fees applicable to contracts executed on or after August 1, 1999. Provides for attorney fees of (1) \$250 if the default amount is under \$1,000 or (2) \$500 if the amount in default is \$1,000 or more.

The amounts applicable to contracts executed before August 1, 1999, are (1) \$125 for a default under \$750 and (2) \$250 for a default of \$750 or more.

- 5 Foreclosure procedure; notice to creditors.** Amends a reference to a mortgager's "two month" redemption period that is internally inconsistent with the section where it is found. Under paragraph (d) of the same section, the redemption period is two months or 120 days, depending on the situation.

- 6 Effective date.** Section 1 of this article (notary commissions) is effective July 1, 1999.