

House Research Act Summary

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TOPIC: Common Interest Ownership Act Amendments

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Overview

The Minnesota Common Interest Ownership Act (MCIOA) took effect in 1994. It governs development and operation of condominiums, cooperatives, twinhomes, and townhouses. The Minnesota State Bar Association Real Property Section proposed the amendments in this act to deal with consumer protections, clarifications, and technical changes. The bar association provided material for this summary. Major aspects of the act are:

- Clarifies technical requirements dealing with service of process for eminent domain proceedings, recording procedures, real estate titles, lien procedures, and CIC plat requirements.
- Expands and clarifies the disclosure requirements in connection with the sale of units in Common Interest Communities (CICs) and master associations.
- Updates procedures for adding additional real estate to CICs, and subdividing and combining units in CICs.
- Expands and clarifies the structure and procedures for creating and operating master associations.

- Reorganizes and clarifies the guidelines for turnover of control of the owners' association board of directors from the developer to the homeowners.

Reorganizes and clarifies the requirements for replacement reserves and the procedures for establishing the reserves.

- 1** **Applicability.** Adds a section (515B.2-119 governing the termination of CICs) to sections which automatically apply to condominiums formed under chapter 515.

Two of the exemptions from the applicability of MCIOA are modified.

- The provision exempting a planned community of 12 or fewer units is changed to two units. Gives unit buyers in smaller CICs the same protections as larger CICs. Still allows a duplex to avoid the applicability of MCIOA and have simpler documentation.
- Subsection (e)(4), which exempts planned communities and cooperatives limited to nonresidential use, is amended to limit the exempt planned community to one which utilizes a chapter 505 subdivision plat rather than a condominium-style plat under section 515B.2-110(c).

- 2** **Definitions.** Clause (10) clarifies that there are common interest communities subject to MCIOA and some which are not.

Changes terminology in subsections (12) and (22) to be consistent with related definitions, expands the special developer rights definition in subsection (32) to include the completion of improvements “planned by the developer” or “authorized by the municipality” in which the CIC is located.

Modifications are made in subsection (12) to recognize that a developer may combine units and in subsection (36) to recognize that a lessee under a proprietary lease is a unit owner.

- 3** **Applicability of local requirements.** Clarifies that the section applies only to residential property and not to commercial property.

- 4** **Eminent domain.** Clarifies that the association is authorized to accept service of process for eminent domain proceedings affecting the common elements.

- 5** **Recording.** Gives county recorders and registrars of title directions about the recording of documents affecting additional real estate.

Provides that the same recording fee structure applicable to CICs applies to units or parcels of real estate subject to a master declaration.

- 6** **Creation of common interest communities.** Paragraph (c) recognizes that the engineer or architect's certificate as to substantial completion also applies to a planned community utilizing a condo-style CIC plat under section 515B.2-110(c), and clarifies other language.

Requirements for incorporation of the association and the recording of the CIC plat are consolidated with all the CIC “creation” requirements.

- 7** **Unit boundaries.** Provides that a planned community, as well as a condominium or cooperative, may utilize a condo-style CIC plat under section 515B.2-110(c). Clarifies the unit boundary definition in cases where the walls, floors, or ceilings are designated as the

unit boundaries.

Provides that lot lines are the unit boundaries in CICs utilizing a chapter 505 subdivision plat.

Clarifies which items are “automatically” categorized as limited common elements.

8 Description of units. Clarifies that rights acquired by reason of a master declaration are appurtenant to a unit, like those rights which are acquired under the declaration for the CIC in which the unit is located.

9 Declaration contents. Requires a declaration to state whether a common interest community includes shore land and if so, to state that it may be subject to shore land development ordinances or rules.

10 Declaration of flexible common interest communities. Adds a requirement of good faith with respect to the developer’s estimate of the maximum number of units that may be created within additional real estate.

Clarifies that a developer (1) need not have an interest in additional real estate to identify it as such in the declaration, and (2) the mere identification of the additional real estate in the declaration does not encumber or otherwise affect the title to that real estate.

11 Allocation of interests. Clarifies (1) that votes need not be allocated to “auxiliary” units such as garage or storage units, and (2) the reference to the formulas governing the reallocation of interests in the CIC when adding additional units.

12 Common interest community plat (CIC plat). Clarifies the circumstances where the CID plat is part of the declaration. Adds a reference to “supplemental” CIC plats to accommodate the new term in section 515B.2-111.

Clarifies what easements must be shown on the CIC plat.

Conforms to the developer’s right to combine units pursuant to section 515B.2-112.

Clarifies that a CIC plat under subsection (c) is not a subdivision plat under chapter 505.

13 Expansion of flexible common interest community. Reorganized; uses new terminology.

Service of notice of adding additional real estate is modified to require service only on the association and only after the expiration of the period of developer control.

14 Subdivision, combination, or conversion of units. Reorganized. Adds specific authority for a developer or one or more other unit owners to combine units following the recording of the declaration, if such authority is included in the declaration.

Clarifies the procedures for obtaining approval of and recording an amendment to accomplish a subdivision, combination or conversion of units. Adds provisions to clarify the interests of a secured party which held a security interest in the units being combined or subdivided.

15 Technical.

16 Amendment of declaration. Conforms terminology. Clarifies that where common elements are converted into a unit or units, the title to the unit or units created vests in the association when the amendment to the declaration is recorded.

17 Termination of common interest community. Clarifies the underlying legal descriptions of the property following termination of a planned community which uses a condominium-

style CIC plat versus a subdivision-style CIC plat.

- 18 Master associations.** Changes sections governing master associations, to address practical issues encountered by practitioners in dealing with master plan communities.

Inserts a provision identifying the master board's authority to conform to the CIC board's grant of authority under subsection 515B.3-103(a).

The point at which control of the master association board of directors is turned over is triggered when 75 percent of the units and other parcels of real estate subject to the master association have been conveyed to the ultimate buyers. Excludes from the percentage computation units or lots which are conveyed by a master developer to builders, who in turn convey the lots to the ultimate buyers. MCIOA currently bases the master association turnover of control of 75 percent of the CIC subassociation boards of directors, which fails to take into account non-CIC subassociations.

Clarifies the delegation of powers between a subassociation and a master association and the alternatives for the granting of powers.

Recognizes that master associations can include non-CIC subassociations and related boards of directors.

Clarifies the persons required to execute an amendment to a master declaration.

Defines the standards that apply to master association operations.

Clarifies the manner in which master association common expenses may be allocated, as among member CIC associations, member property associations, or among the owners of units or other parcels of real estate subject to the master declaration.

Allows a master declaration to exempt from liability for master association assessments any person or any unit or other parcel of real estate. The exemption terminates when a building constituting or located within the unit or other parcel of real estate is substantially completed.

- 19 Change of form of common interest community.** Establishes clear approval standards for the declaration and bylaws of the new form of CIC resulting from the change of form. Currently under MCIOA it is unclear as to what unit owner approval is required.

- 20 Severance of common interest community.** Clarifies the procedures and authority which control the severance process. An 80 percent requirement for the approval of a declaration, articles of incorporation and bylaws for any new common interest community formed out of the severed units. Currently under MCIOA unanimous consent of the owners of the severed units is required. This is inconsistent with the current MCIOA, where the standard for approval of severance is 67 percent of the total votes in the CIC and a majority vote of the remaining and the departing owners.

- 21 Technical.**

- 22 Powers of unit owners' association.** Expands the easements the association may grant without approval of the unit owners to include all types of public easements and cable television or other communications easements.

- 23 Board of directors, officers, and developer control.** Clarifies the beginning and end of the developer control period, the obligations for holding the meeting at which the

homeowner board is elected, and the manner in which the owner percentage is calculated.

24 **Termination of contracts, leases.** Clarifies the procedures and rights of an association to terminate contracts and leases entered into prior to the expiration of developer control. Requires that the notice of termination must be given by the association within two years following the termination of the period of developer control or the period of master developer control. Currently under MCIOA there is no time limit on the period within which the association may give a termination notice.

The exemption for “blanket” cooperative mortgages and contracts for deed is modified so it does not apply to provisions of a blanket mortgage or contract for deed that involve a type of contract, lease, or license which may be terminated under section 515B.3-105.

Adds an exemption for any agreement with a governmental entity which is necessary to obtain governmental approvals, provide financing under any type of government program, or provide for governmentally required access, conservation, drainage, or utilities. Designed to protect from termination such agreements as TIF agreements, development agreements, governmentally mandated drainage and utility easements, and the like.

25 **Technical.**

26 **Voting; proxies.** Clarifies that the association’s governing documents may not deprive a unit owner of the right to vote, regardless of whether the unit owner is involved in a dispute with the association or is delinquent in the payment of assessments.

27 **Conveyance of, or creation of security interests in, common elements.** Utilizes the defined term “security interest” and clarifies that granting easements, leases, or licenses as authorized by section 515B.3-102(a)(9) is not subject to this section.

28 **Insurance.** Subsection (e) is modified to make clear that the association’s board of directors has authority over the distribution of excess insurance proceeds following the restoration of damaged or destroyed improvements.

29 **Reserves; surplus funds.** Exempts CICs restricted to nonresidential use from the replacement reserve requirements. Nonresidential CICs are exempt from a number of MCIOA requirements, and may by agreement with unit buyers be exempted from warranty and disclosure requirements. Recognizes that commercial developments require more flexibility in the handling of operations and finances.

Reorganizes language.

30 **Assessments for common expenses.** Clarifies that the developer is obligated for both the CICs operating expenses and replacement reserves if an assessment has not been levied.

Preserves the developer’s right to pay 25 percent of the association operating expenses (and full replacement reserves) if the declaration so provides. Adds a requirement that the developer make up any operating deficit incurred by the association during the period of developer control if the developer elects the reduced assessment plan.

Clarifies the commencement of funding for replacement reserves. The basic reserve concepts remain the same.

Places a three-year statute of limitations on the ability of the association to “back assess” units for assessments which benefit only those units.

31 **Lien for assessments.** Clarifies that a master association’s lien is superior to an association lien, and in subsection (j) clarifies the association’s right to bring an unlawful detainer action

in the case of a cooperative unit foreclosure.

32 Technical.

33 Developer duties; turnover of records. Modifies the types of contracts and agreements which must be turned over to an association upon the expiration of the developer control period.

Subsection (c) is modified to clarify the obligations of a master association's officers and directors to turn over the master association records, recognizing that many of the requirements of section 515B.3-120 may not have any application to a master association.

34 Applicability; delivery of disclosure statement. Requires a purchase agreement for a home in an exempt subdevelopment to include a notice advising the buyer (1) that the property is or will be subject to a master association and (2) that the master association must provide the master disclosure materials pursuant to section 515B.4-102(c). Allows waiver by separate written document of a purchaser's claim for failure to provide this notice.

Qualifies the selling builder's liability by (1) limiting any buyer claims for a failure to include the notice to legal (rather than equitable) remedies, (2) barring an action unless it is commenced within six months following the date of closing, and (3) allowing a waiver to be signed between the seller and the buyer.

35 Disclosure statement/general provisions. Adds new disclosure requirements for buyers. these include (1) requirements for the terms of any blanket mortgage in the case of a cooperative, (2) assessment disclosures for master associations, (3) summaries of material agreements between the developer and a governmental entity that affect the CIC, and (4) revised budget portrayals and references to expenses that the association intends to fund other than by annual assessments.

36 Common interest community with building once occupied. Current law requires a professional opinion by a registered architect or engineer in the case of "conversions." This clarifies that the opinion need only relate to components or systems which will be in place or operational at the time of conveyance of the first unit to a buyer.

37 Purchaser's right to cancel. Previous legislation, effective August 1, 2004, inadvertently changed the ten-day buyer rescission period to five days in the case of initial sales of units by a developer. The amendment restores the ten-day rescission period for initial sales by a developer.

This section also specifies the manner in which a purchaser can waive the right of rescission.

38 Technical.

39 Purchaser's right to cancel resale. Same as section 37. Applies to the rescission period for resale of units (515B.4-108). Specifies the manner in which a purchaser can waive the right of rescission in a resale situation.

40 Escrow deposits. Expands the types of authorized escrow accounts/agents for buyer earnest money deposits to include a governmental agency or instrumentality.

41 Technical.

42 Statute of limitations for warranties. Adds buyer claims arising under section 515B.4-101(e) to those which must be commenced within six months after the conveyance of the unit of other parcel of real estate.