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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4723

03/07/2024 Authored by Bahner, Hemmingsen-Jaeger, Moller and Howard
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to common interest communities; governing the right of unit owners to
1.3 speak at board meetings and proxy voting; amending Minnesota Statutes 2022,
1.4 sections 515B.3-103; 515B.3-110.

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

1.6 Section 1. Minnesota Statutes 2022, section 515B.3-103, is amended to read:

1.7 515B.3-103 BOARD OF DIRECTORS; OFFICERS AND DECLARANT
1.8 CONTROL.

1.9 (a) An association shall be governed by a board of directors whose appointment or
1.10 election shall occur no later than the date of creation of the common interest community
1.11 and shall be reflected in the association's records. Except as expressly prohibited by the
1.12 declaration, the articles of incorporation, bylaws, subsection (b), or other provisions of this
1.13 chapter, the board may act in all instances on behalf of the association. In the performance
1.14 of their duties, the officers and directors are required to exercise (i) if appointed by the
1.15 declarant, the care required of fiduciaries of the unit owners and (ii) if elected by the unit
1.16 owners, the care required of a director by section 302A.251, 308B.455, or 317A.251, as
1.17 applicable. The officers and directors appointed by the declarant shall have a duty to fulfill,
1.18 and to cause the association to fulfill, their respective obligations under the declaration,
1.19 bylaws, articles of incorporation, and this chapter and to enforce the provisions of the
1.20 declaration, bylaws, articles of incorporation, and this chapter against all unit owners,
1.21 including the declarant and its affiliates, in a uniform and fair manner. The standards of
1.22 conduct for officers and directors set forth in this subsection shall also apply to the officers

2.1 and directors of master associations in the exercise of their duties on behalf of the master
2.2 association.

2.3 (b) The board may not act unilaterally to amend the declaration, to terminate the common
2.4 interest community, to elect directors to the board, or to determine the qualifications, powers
2.5 and duties, or terms of office of directors, but the board may fill vacancies in its membership
2.6 created other than by removal by the vote of the association members for the unexpired
2.7 portion of any term.

2.8 (c) The declaration may provide for a period of declarant control of the association,
2.9 during which a declarant, or persons designated by the declarant, may appoint and remove
2.10 the officers and directors of the association. The period of declarant control begins on the
2.11 date of creation of the common interest community and terminates upon the earliest of the
2.12 following events: (i) five years after the date of the first conveyance of a unit to a unit owner
2.13 other than a declarant in the case of a flexible common interest community or three years
2.14 in the case of any other common interest community, (ii) the declarant's voluntary surrender
2.15 of control by giving written notice to the unit owners pursuant to section 515B.1-115, or
2.16 (iii) the conveyance of 75 percent of the units to unit owners other than a declarant.

2.17 (d) The board shall cause a meeting of the unit owners to be called, as follows:

2.18 (1) If the period of declarant control has terminated pursuant to subsection (c), a meeting
2.19 of the unit owners shall be called and held within 60 days after said termination, at which
2.20 the board shall be appointed or elected by all unit owners, including declarant, subject to
2.21 the requirements of subsection (e).

2.22 (2) If 50 percent of the units that a declarant is authorized by the declaration to create
2.23 have been conveyed prior to the termination of the declarant control period, a meeting of
2.24 the unit owners shall be called and held within 60 days thereafter, at which not less than
2.25 33-1/3 percent of the members of the board shall be elected by unit owners other than a
2.26 declarant or an affiliate of a declarant.

2.27 (3) If the board fails or refuses to cause a meeting of the unit owners required to be called
2.28 pursuant to subsection (d), then the unit owners other than a declarant and its affiliates may
2.29 cause the meeting to be called pursuant to the applicable provisions of the law under which
2.30 the association was created. The declarant and its affiliates shall be deemed to be present
2.31 at the meeting for purposes of establishing a quorum regardless of their failure to attend the
2.32 meeting.

2.33 (e) Following the termination of any period of declarant control, the unit owners shall
2.34 appoint or elect the board. All unit owners, including the declarant and its affiliates, may

3.1 cast the votes allocated to any units owned by them. The board shall thereafter be subject
3.2 to the following:

3.3 (1) Unless otherwise approved by a vote of unit owners other than the declarant or an
3.4 affiliate of the declarant, a majority of the directors shall be unit owners or a natural person
3.5 designated by a unit owner that is not a natural person, other than a declarant or an affiliate
3.6 of a declarant. The remaining directors need not be unit owners unless required by the
3.7 articles of incorporation or bylaws.

3.8 (2) Subject to the requirements of subsection (e)(1), the articles of incorporation or
3.9 bylaws may authorize the declarant or a person designated by the declarant to appoint one
3.10 director, who need not be a member. The articles of incorporation or bylaws shall not be
3.11 amended to change or terminate the authorization to appoint one director without the written
3.12 consent of the declarant or other person possessing the power to appoint.

3.13 (3) Subject to the requirements of subsection (e)(1), the articles of incorporation or
3.14 bylaws may authorize special classes of directors and director voting rights, as follows: (i)
3.15 classes of directors, (ii) the appointment or election of directors in certain classes by certain
3.16 classes of members, or (iii) class voting by classes of directors on issues affecting only a
3.17 certain class or classes of members, units, or other parcels of real estate, or to otherwise
3.18 protect the legitimate interest of such class or classes. No person may utilize such special
3.19 classes or class voting for the purpose of evading any limitation imposed on declarants by
3.20 this chapter.

3.21 (4) The board shall elect the officers. The directors and officers shall take office upon
3.22 election.

3.23 (f) In determining whether the period of declarant control has terminated under subsection
3.24 (c), or whether unit owners other than a declarant are entitled to elect members of the board
3.25 of directors under subsection (d), the percentage of the units conveyed shall be calculated
3.26 using as a numerator the number of units conveyed and as a denominator the number of
3.27 units subject to the declaration plus the number of units which the declarant is authorized
3.28 by the declaration to create on any additional real estate. The percentages referred to in
3.29 subsections (c) and (d) shall be calculated without reference to units that are auxiliary to
3.30 other units, such as garage units or storage units. A person shall not use a master association
3.31 or other device to evade the requirements of this section.

3.32 (g) Except as otherwise provided in this subsection, meetings of the board of directors
3.33 must be open to the unit owners. To the extent practicable, the board shall give reasonable
3.34 notice to the unit owners of the date, time, and place of a board meeting. If the date, time,

4.1 and place of meetings are provided for in the declaration, articles, or bylaws, announced at
 4.2 a previous meeting of the board, posted in a location accessible to the unit owners and
 4.3 designated by the board from time to time, or if an emergency requires immediate
 4.4 consideration of a matter by the board, notice is not required. "Notice" has the meaning
 4.5 given in section 317A.011, subdivision 14. A unit owner or a person designated in writing
 4.6 by a unit owner as the unit owner's representative must be permitted to attend and speak
 4.7 during a meeting. The unit owner or representative must be allowed to speak at a time
 4.8 designated by the board on any subject that is on the meeting agenda before the board takes
 4.9 action on the agenda item. The unit owner or representative must be allowed to speak on
 4.10 any subject not on the meeting agenda that is related to the common interest ownership
 4.11 community at a time designated by the board. The board may place a reasonable limit on
 4.12 the time a unit owner or representative is allowed to speak on any one subject. Meetings
 4.13 may be closed to discuss the following:

4.14 (1) personnel matters;

4.15 (2) pending or potential litigation, arbitration or other potentially adversarial proceedings,
 4.16 between unit owners, between the board or association and unit owners, or other matters in
 4.17 which any unit owner may have an adversarial interest, if the board determines that closing
 4.18 the meeting is necessary to discuss strategy or to otherwise protect the position of the board
 4.19 or association or the privacy of a unit owner or occupant of a unit; or

4.20 (3) criminal activity arising within the common interest community if the board
 4.21 determines that closing the meeting is necessary to protect the privacy of the victim or that
 4.22 opening the meeting would jeopardize investigation of the activity.

4.23 Nothing in this subsection imposes a duty on the board to provide special facilities for
 4.24 meetings. The failure to give notice as required by this subsection shall not invalidate the
 4.25 board meeting or any action taken at the meeting. The minutes of any part of a meeting that
 4.26 is closed under this subsection may be kept confidential at the discretion of the board.

4.27 Sec. 2. Minnesota Statutes 2022, section 515B.3-110, is amended to read:

4.28 **515B.3-110 VOTING; PROXIES.**

4.29 (a) At any meeting of the association an owner or the holder of the owner's proxy shall
 4.30 be entitled to cast the vote which is allocated to the unit. If there is more than one owner of
 4.31 a unit, only one of the owners may cast the vote. If the owners of a unit fail to agree and
 4.32 notify the association as to who shall cast the vote, the vote shall not be cast. Any provision
 4.33 in the articles of incorporation, bylaws, declaration, or other document restricting a unit

5.1 owner's right to vote, or affecting quorum requirements, by reason of nonpayment of
5.2 assessments, or a purported violation of any provision of the documents governing the
5.3 common interest community, shall be void.

5.4 (b) If permitted by the articles or bylaws, votes allocated to a unit may be cast pursuant
5.5 to a proxy executed by the unit owner entitled to cast the vote for that unit. The board may
5.6 specify the form of proxy and proxy rules, consistent with law.

5.7 (c) If authorized by the statute under which the association is created, and to the extent
5.8 not limited or prohibited by the articles of incorporation, bylaws, or declaration, the vote
5.9 on any issue or issues may be taken by electronic means or by mailed ballots, in compliance
5.10 with the applicable statute, in lieu of holding a meeting of the unit owners. Such a vote shall
5.11 have the force and effect of a vote taken at a meeting; provided, that the total votes cast are
5.12 at least equal to the votes required for a quorum. The board shall set a voting period within
5.13 which the ballots or other voting response must be received by the association, which period
5.14 shall be not less than 15 nor more than 45 days after the date of delivery of the notice of
5.15 the vote and voting procedures to the unit owners. The board of directors shall provide
5.16 notice of the results of the vote to the unit owners within 30 days after the expiration of the
5.17 voting period. All requirements in this chapter, the declaration or the bylaws for a meeting
5.18 of the unit owners, or being present in person, shall be deemed satisfied by a vote taken in
5.19 compliance with the requirements of this section. The voting procedures authorized by this
5.20 section shall not be used in combination with a vote taken at a meeting of the unit owners.
5.21 However, voting by electronic means and mailed ballot may be combined if each is done
5.22 in compliance with the applicable statute.

5.23 (d) The articles of incorporation or bylaws may authorize class voting by unit owners
5.24 for directors or on specified issues affecting the class. Class voting may only be used to
5.25 address operational, physical, or administrative differences within the common interest
5.26 community. A declarant shall not use class voting to evade any limit imposed on declarants
5.27 by this chapter and units shall not constitute a class because they are owned by a declarant.

5.28 (e) The declaration or bylaws may provide that votes on specified matters affecting the
5.29 common interest community be cast by lessees or secured parties rather than unit owners;
5.30 provided that (i) the provisions of subsections (a), (b), and (c) apply to those persons as if
5.31 they were unit owners; (ii) unit owners who have so delegated their votes to other persons
5.32 may not cast votes on those specified matters; (iii) lessees or secured parties are entitled to
5.33 notice of meetings, access to records, and other rights respecting those matters as if they
5.34 were unit owners, and (iv) the lessee or secured party has filed satisfactory evidence of its
5.35 interest with the secretary of the association prior to the meeting. Unit owners must also be

6.1 given notice, in the manner provided in section 515B.3-108(b), of meetings at which lessees
6.2 or secured parties are entitled to vote.

6.3 (f) No votes allocated to a unit owned by the association may be cast nor counted toward
6.4 a quorum.

6.5 (g) Notwithstanding any other provision in this chapter, a vote cast by a board member
6.6 on any matter requiring a vote of the board must be cast in person or by absentee ballot,
6.7 and must not be cast by proxy.