

CHAPTER 515B

MINNESOTA COMMON INTEREST OWNERSHIP ACT

515B.1-102	Applicability.	515B.2-110	Common interest community plat (CIC plat).
515B.1-103	Definitions.	515B.3-112	Conveyance or encumbrance of common elements.
515B.1-116	Recording.	515B.3-113	Insurance.
515B.2-104	Description of units.	515B.3-115	Assessments for common expenses.
515B.2-105	Contents of declaration; all common interest communities.		
515B.2-109	Common elements and limited common elements.		

ARTICLE 1

APPLICABILITY, DEFINITIONS AND OTHER GENERAL PROVISIONS

515B.1-102 APPLICABILITY.

(a) Except as provided in this section, this chapter, and not chapters 515 and 515A, applies to all common interest communities created within this state on and after June 1, 1994.

(b) The applicability of this chapter to common interest communities created prior to June 1, 1994, shall be as follows:

(1) This chapter shall apply to condominiums created under chapter 515A with respect to events and circumstances occurring on and after June 1, 1994; provided (i) that this chapter shall not invalidate the declarations, bylaws or condominium plats of those condominiums, and (ii) that chapter 515A, and not this chapter, shall govern all rights and obligations of a declarant of a condominium created under chapter 515A, and the rights and claims of unit owners against that declarant.

(2) The following sections shall apply to condominiums created under chapter 515: 515B.1-105 (Separate Titles and Taxation); 515B.1-106 (Applicability of Local Ordinances, Regulations, and Building Codes); 515B.1-107 (Eminent Domain); 515B.1-116 (Recording); 515B.2-103 (Construction and Validity of Declaration and Bylaws); 515B.2-104 (Description of Units); 515B.2-118 (Amendment of Declaration); 515B.3-102 (Powers of Unit Owners' Association); 515B.3-110 (Voting; Proxies); 515B.3-111 (Tort and Contract Liability); 515B.3-113 (Insurance); 515B.3-116 (Lien for Assessments); 515B.3-117 (Other Liens); 515B.3-118 (Association Records); 515B.3-121 (Accounting Controls); 515B.4-107 (Resale of Units); 515B.4-108 (Purchaser's Right to Cancel Resale); 515B.4-116 (Rights of Action; Attorney's Fees); and 515B.1-103 (Definitions) to the extent necessary in construing any of those sections. The foregoing sections shall apply only with respect to events and circumstances occurring on and after June 1, 1994, and shall not invalidate the declarations, bylaws or condominium plats of those condominiums.

(3) This chapter shall not apply to cooperatives and planned communities created prior to June 1, 1994; except by election pursuant to subsection (d).

(c) This chapter shall not invalidate any amendment to the declaration, bylaws or condominium plat of any condominium created under chapter 515 or 515A if the amendment was recorded before June 1, 1994. Any amendment recorded on or after June 1, 1994, shall be adopted in conformity with the procedures and requirements specified by those instruments and by this chapter. If the amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions contained in this chapter shall also apply to that person.

(d) Any condominium created under chapter 515, any planned community or cooperative which would be exempt from this chapter under subsection (e), or any planned community or cooperative created prior to June 1, 1994, may elect to be subject to this chapter, as follows:

(1) The election shall be accomplished by recording a declaration or amended declaration, and a new or amended CIC plat where required, and by approving bylaws or amended bylaws, which conform to the requirements of this chapter, and which, in the case of amendments, are adopted in conformity with the procedures and requirements specified by the ex-

isting declaration and bylaws of the common interest community, and by any applicable statutes.

(2) In a condominium, the preexisting condominium plat shall be the CIC plat and an amended CIC plat shall be required only if the amended declaration or bylaws contain provisions inconsistent with the preexisting condominium plat. The condominium's CIC number shall be the apartment ownership number or condominium number originally assigned to it by the recording officer. In a cooperative in which the unit owners' interests are characterized as real estate, a CIC plat shall be required. In a planned community, the preexisting plat recorded pursuant to chapter 505, 508, or 508A, or the part of the plat upon which the common interest community is located, shall be the CIC plat.

(3) The amendment shall conform to the requirements of section 515B.2-118(d).

(4) Except as permitted by paragraph (3), no declarant, affiliate of declarant, association, master association nor unit owner may acquire, increase, waive, reduce or revoke any previously existing warranty rights or causes of action that one of said persons has against any other of said persons by reason of exercising the right of election under this subsection.

(5) A common interest community which elects to be subject to this chapter may, as a part of the election process, change its form of ownership by complying with the requirements of section 515B.2-123.

(e) Except as otherwise provided in this subsection, this chapter shall not apply, except by election pursuant to subsection (d), to the following:

(1) a planned community or cooperative which consists of 12 or fewer units subject to the same declaration, which is not subject to any rights to add additional real estate and which will not be subject to a master association;

(2) a common interest community where the units consist solely of separate parcels of real estate designed or utilized for detached single family dwellings or agricultural purposes, and where the association has no obligation to maintain any building containing a dwelling or any agricultural building;

(3) a planned community or cooperative where, at the time of creation of the planned community or cooperative, the unit owners' interests in the dwellings consist solely of leasehold interests having an unexpired term of fewer than 20 years, including renewal options;

(4) a common interest community containing only a combination of dwellings described in paragraphs (2) and (3);

(5) planned communities and cooperatives limited by the declaration to nonresidential use; or

(6) real estate subject only to an instrument or instruments filed primarily for the purpose of creating or modifying rights with respect to access, ditches, drainage or irrigation.

(f) Section 515B.1-106 shall apply to all common interest communities.

History: 1995 c 92 s 4

515B.1-103 DEFINITIONS.

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

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

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

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

(B) A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power

to vote, or holds proxies representing, more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person.

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

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

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

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

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

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

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

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

(10) "Common interest community" means contiguous or noncontiguous real estate within Minnesota that is subject to an instrument which obligates persons owning a separately described parcel of the real estate, or occupying a part of the real estate pursuant to a proprietary lease, by reason of their ownership or occupancy, to pay for (i) real estate taxes levied against; (ii) insurance premiums payable with respect to; (iii) maintenance of; or (iv) construction, maintenance, repair or replacement of improvements located on one or more parcels or parts of the real estate other than the parcel or part that the person owns or occupies.

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

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

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

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

(15) "Declarant" means:

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

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

(16) "Declaration" means any instrument, however denominated, including any amendment to the instrument, that creates a common interest community.

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

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

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

(20) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of section 515B.2-102(d) or (f) for the exclusive use of one or more but fewer than all of the units.

(21) "Master association" means an entity that directly or indirectly exercises any of the powers set forth in section 515B.3-102 on behalf of one or more members described in section 515B.2-121(b), (i), (ii) or (iii), whether or not it also exercises those powers on behalf of one or more property owners associations described in section 515B.2-121(b)(iv). An entity hired by an association to perform maintenance, repair, accounting, bookkeeping or management services is not, solely by virtue of that relationship, a master association.

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

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

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

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

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

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

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

(29) "Secured party" means the person owning a security interest as defined in paragraph (30).

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

(31) "Special declarant rights" means rights reserved in the declaration for the benefit of a declarant to:

- (i) complete improvements indicated on the CIC plat;
- (ii) add additional real estate to a common interest community;

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

(32) "Time share" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof.

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

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

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

History: 1995 c 92 s 5

515B.1-116 RECORDING.

(a) A declaration, bylaws, any amendment to a declaration or bylaws, and any other instrument affecting a common interest community shall be entitled to be recorded. In those counties which have a tract index, the county recorder shall enter the declaration in the tract index for each unit affected. The registrar of titles shall file the declaration on the certificate of title for each unit affected.

(b) The recording officer shall upon request promptly assign a number (CIC number) to a common interest community to be formed or to a common interest community resulting from the merger of two or more common interest communities.

(c) Documents recorded pursuant to this chapter shall in the case of registered land be filed, and references to the recording of documents shall mean filed in the case of registered land.

(d) Subject to any specific requirements of this chapter, if any document to be recorded pursuant to this chapter requires approval by a certain vote or agreement of the unit owners or secured parties, an affidavit of the secretary of the association stating that the required vote or agreement has occurred shall be attached to the document and shall constitute prima facie evidence of the representations contained therein.

(e) If a common interest community is located on registered land, the recording fee for any document affecting two or more units shall be the then-current fee for registering the document on the certificates of title for the first ten affected certificates and one-third of the then-current fee for each additional affected certificate. This provision shall not apply to recording fees for deeds of conveyance, with the exception of deeds given pursuant to sections 515B.2-119 and 515B.3-112.

(f) An amendment to or restatement of a declaration or bylaws, or an amended CIC plat, approved by the required vote of unit owners of an association may be recorded without the necessity of paying the current or delinquent taxes on any of the units in the common interest community.

(g) The registrar of titles shall not require the filing on certificates of title previously issued for units in a flexible common interest community of an amendment to a declaration pursuant to section 515B.2-111 made solely to add additional real estate.

History: 1995 c 92 s 6

ARTICLE 2 CREATION, ALTERATION AND TERMINATION

515B.2-104 DESCRIPTION OF UNITS.

(a) A description of a unit is legally sufficient if it sets forth (i) the unit identifier of the unit, (ii) the number assigned to the common interest community by the recording officer, and (iii) the county in which the unit is located.

(b) If the CIC plat for a planned community complies with chapter 505, 508, or 508A, then a description of a unit in the planned community is legally sufficient if it is stated in terms of a plat or registered land survey. Any instrument conveying or asserting an interest in a unit shall reference the county and the common interest community number immediately following the name of the plat or registered land survey. In planned communities whose CIC plats comply with section 515B.2-110(c), and in all condominiums and cooperatives created under this chapter, a unit identifier shall contain no more than six characters, only one of which may be a letter.

(c) A description which conforms to the requirements of this section shall be deemed to include all rights, obligations, and interests appurtenant to the unit which were created by the declaration or bylaws, or by this chapter, whether or not those rights, obligations, or interests are expressly described.

(d) If the CIC plat for a planned community complies with section 515B.2-110(c) a description of the common elements is legally sufficient if it sets forth (i) the words "common elements," (ii) the number assigned to the common interest community by the recording officer, and (iii) the county in which the common elements are located. The common elements may consist of separate parcels of real estate, in which case each parcel shall be separately identified on the CIC plat and in any recorded instrument referencing a separate parcel of the common elements.

History: 1995 c 92 s 7

515B.2-105 CONTENTS OF DECLARATION; ALL COMMON INTEREST COMMUNITIES.

(a) The declaration shall contain:

(1) the number of the common interest community, whether the common interest community is a condominium, planned community or cooperative, and the name of the common interest community, which shall appear at the top of the first page of the declaration in the following format:

Common Interest Community No.
(Type of Common Interest Community)

(Name of Common Interest Community)

(DECLARATION)

(2) a statement as to whether the common interest community is or is not subject to a master association;

(3) the name of the association, a statement that the association has been incorporated and a reference to the statute under which it was incorporated;

(4) a legally sufficient description of the real estate included in the common interest community, including the name of the county, and any appurtenant easements;

(5) a description of the boundaries of each unit created by the declaration and the unit's unit identifier;

(6) in a planned community containing common elements, a legally sufficient description of the common elements;

(7) in a cooperative, a statement as to whether the unit owners' interests in all units and their allocated interests are real estate or personal property;

(8) an allocation to each unit of the allocated interests in the manner described in section 515B.2-108;

(9) a statement of (i) the total number of units and (ii) which units will be restricted to residential use and which units will be restricted to nonresidential use;

(10) a statement of the maximum number of units which may be created by the subdivision or conversion of units owned by the declarant pursuant to section 515B.2-112;

(11) any material restrictions on use, occupancy, or alienation of the units, or on the sale price of a unit or on the amount that may be received by an owner on sale, condemnation or casualty loss to the unit or to the common interest community, or on termination of the common interest community; provided, that these requirements shall not affect the power of the association to adopt, amend or revoke rules and regulations pursuant to section 515B.3-102;

(12) a statement as to whether time shares are permitted; and

(13) all matters required by sections 515B.1-103(31), Special Declarant Rights; 515B.2-107, Leaseholds; 515B.2-109, Common Elements and Limited Common Elements; 515B.2-110, Common Interest Community Plat; 515B.3-115, Assessments for Common Expenses; and 515B.2-121, Master Associations.

(b) The declaration may contain any other matters the declarant considers appropriate.

History: 1995 c 92 s 8

515B.2-109 COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.

(a) Common elements other than limited common elements may be used in common by all unit owners. Limited common elements are designated for the exclusive use of the unit owners of the unit or units to which the limited common elements are allocated, subject to subsection (b) and the rights of the association as set forth in the declaration, the bylaws or this chapter.

(b) Except for the limited common elements described in section 515B.2-102, subsections (d) and (f), the declaration shall specify to which unit or units each limited common element is allocated.

(c) An allocation of limited common elements may be changed by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made and the association. The amendment shall be approved by the board of directors of the association as to form, and compliance with the declaration and this chapter. The association shall establish fair and reasonable procedures and time frames for the submission and processing of the reallocations, and shall maintain records thereof. If approved, the association shall cause the amendment to be recorded promptly. The amendment shall be effective when recorded. The association may require the unit owners requesting the reallocation to pay all fees and costs for reviewing, preparing and recording the amendment and any amended CIC plat.

History: 1995 c 92 s 9

515B.2-110 COMMON INTEREST COMMUNITY PLAT (CIC PLAT).

(a) The CIC plat is required for condominiums and planned communities, and cooperatives in which the unit owners' interests are characterized as real estate. The CIC plat for a planned community which does not comply with subsection (c) may consist of all or part of the subdivision plat satisfying the requirements of chapter 505, 508, or 508A, and the number of the common interest community need not appear on the CIC plat. The CIC plat is a part of the declaration in condominiums, and in cooperatives in which the unit owners' interests are characterized as real estate, but need not be physically attached to the declaration. In cooperatives in which the unit owners' interests are characterized as personal property, a CIC plat shall not be required. In lieu of a CIC plat, the declaration or any amendment to it creating, converting, or subdividing units in a personal property cooperative shall include an exhibit

containing a scale drawing of each building, identifying the building, and showing the perimeter walls of each unit created or changed by the declaration or any amendment to it, including the unit's unit identifier, and its location within the building if the building contains more than one unit.

(b) The CIC plat for condominiums, for planned communities using a plat complying with subsection (c), and for cooperatives in which the unit owners' interests are characterized as real estate, shall contain certifications by a registered professional land surveyor and registered professional architect, as to the parts of the CIC plat prepared by each, that (i) the CIC plat accurately depicts all information required by this section, and (ii) the work was undertaken by, or reviewed and approved by, the certifying land surveyor or architect. The portions of the CIC plat depicting the dimensions of the portions of the common interest community described in subsections (c)(8), (9), (10), and (12), may be prepared by either a land surveyor or an architect. The other portions of the CIC plat shall be prepared only by a land surveyor. Certification by the land surveyor or architect does not constitute a guaranty or warranty of the nature, suitability, or quality of construction of any improvements located or to be located in the common interest community.

(c) A CIC plat for a condominium or cooperative shall show:

(1) the number of the common interest community, and the boundaries, dimensions and a legally sufficient description of the land included therein;

(2) the dimensions and location of all existing, material structural improvements and roadways;

(3) the intended location and dimensions of any contemplated common element improvements to be constructed within the common interest community after the filing of the CIC plat, labeled either "MUST BE BUILT" or "NEED NOT BE BUILT";

(4) the location and dimensions of any additional real estate, labeled as such, and a legally sufficient description of the additional real estate;

(5) the extent of any encroachments by or upon any portion of the common interest community;

(6) the location and dimensions of all recorded easements within the common interest community serving or burdening any portion of the common interest community;

(7) the distance and direction between noncontiguous parcels of real estate;

(8) the location and dimensions of limited common elements, for example, storage lockers, porches, balconies, decks and patios, other than limited common elements described in section 515B.2-102, subsections (d) and (f);

(9) the location and dimensions of the front, rear, and side boundaries of each unit and that unit's unit identifier;

(10) the location and dimensions of the upper and lower boundaries of each unit with reference to an established or assumed datum and that unit's unit identifier;

(11) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(12) any units which may be converted by the declarant to create additional units or common elements identified separately.

(d) A CIC plat for a planned community either shall comply with subsection (c) or it shall:

(1) satisfy the requirements of chapter 505, 508, or 508A, as applicable; and

(2) satisfy the platting requirements of any governmental authority within whose jurisdiction the planned community is located, subject to the limitations set forth in section 515B.1-106.

(e) If a declarant adds additional real estate, the declarant shall record a supplemental CIC plat or plats for the real estate being added, conforming to the requirements of this section which apply to the type of common interest community in question. If less than all additional real estate is being added, the supplemental CIC plat for a condominium, a planned community whose CIC plat complies with subsection (c), or a cooperative in which the unit owners' interests are characterized as real estate, shall also show the location and dimensions of the remaining portion.

(f) If a declarant subdivides or converts any unit into two or more units, common elements or limited common elements, the declarant shall record an amendment to the CIC plat showing the location and dimensions of any new units, common elements and limited common elements thus created.

History: 1995 c 92 s 10

ARTICLE 3 ORGANIZATION AND OPERATION

515B.3-112 CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

(a) In a condominium or planned community, unless the declaration provides otherwise, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, approve that action in writing or at a meeting; but all unit owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted to nonresidential use.

(b) In a cooperative, unless the declaration provides otherwise, part of a cooperative may be conveyed, or all or a part subjected to a security interest, by the association if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units in which the declarant has no interest, or any larger percentage the declaration specifies, approves that action in writing or at a meeting. If fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted to nonresidential use. Any purported conveyance or other voluntary transfer of an entire cooperative is void, unless made pursuant to section 515B.2-119.

(c) The association, on behalf of the unit owners, may contract to convey or encumber an interest in the common elements of a common interest community pursuant to this subsection, subject to the required approval. After the approval has been obtained, the association shall have a power of attorney coupled with an interest to effect the conveyance or encumbrance on behalf of all unit owners in the common interest community, including the power to execute deeds, mortgages, or other instruments of conveyance or security. The instrument conveying or creating the interest in the common interest community shall be recorded and shall include as exhibits (i) an affidavit of the secretary of the association certifying that the approval required by this section has been obtained and (ii) a schedule of the names of all unit owners and units in the common interest community as of the date of the approval.

(d) Except as provided in section 515B.3-102(a)(9), unless made pursuant to this section, any purported conveyance, encumbrance, or other voluntary transfer of common elements, or of any part of a cooperative, is void.

(e) In the case of a conveyance involving a condominium, or a cooperative in which the unit owners' interests are characterized as real estate, the association shall record, simultaneously with the recording of the instrument of conveyance, an amended CIC plat showing the real estate constituting the common interest community exclusive of the real estate conveyed. In all common interest communities, upon recording of the instrument of conveyance, the declaration, and all rights and obligations arising therefrom, shall be deemed released and terminated as to the real estate conveyed.

(f) A conveyance or encumbrance of common elements, or of a cooperative, pursuant to this section shall not deprive any unit of its rights of support, reasonable access or utility services.

(g) Except as provided in subsection (a), or unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

(h) Any proceeds of the conveyance or creation of a security interest under this section are an asset of the association.

(i) This section shall not apply to any conveyance or encumbrance of any interest in a proprietary lease.

History: 1995 c 92 s 11

515B.3-113 INSURANCE.

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

(1) subject to subsection (b), property insurance (i) on the common elements and, in a planned community, also on property that must become common elements, (ii) for broad form covered causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, at the time the insurance is purchased and at each renewal date, exclusive of items normally excluded from property policies; and

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

(b) In the case of a common interest community that contains units sharing or having contiguous walls, siding or roofs, the insurance maintained under subsection (a)(1) shall include the units and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected. The association may, in the case of a claim for damage to a unit or units, (i) pay the deductible amount as a common expense, (ii) assess the deductible amount against the units affected in any reasonable manner, or (iii) require the unit owners of the units affected to pay the deductible amount directly.

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

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

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

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

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

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

(e) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units. Unit owners and secured parties

are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the common interest community is terminated.

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

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

(h) Any portion of the common interest community which is damaged or destroyed as the result of a loss covered by the association's insurance shall be promptly repaired or replaced by the association unless (i) the common interest community is terminated and the association votes not to repair or replace all or part thereof, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) 80 percent of the unit owners, including every owner and holder of a first mortgage on a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement of the common elements in excess of insurance proceeds and reserves shall be paid as a common expense, and the cost of repair of a unit in excess of insurance proceeds shall be paid by the respective unit owner.

(i) If less than the entire common interest community is repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the common interest community, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units, including units to which the limited common elements were assigned, and the secured parties of those units, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the unit owners and secured parties as their interests may appear in proportion to their common element interest in the case of a condominium or in proportion to their common expense liability in the case of a planned community or cooperative.

(j) If the unit owners and holders of first mortgages vote not to rebuild a unit, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 515B.1-107, and the association shall promptly prepare, execute and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, if the common interest community is terminated, insurance proceeds not used for repair or replacement shall be distributed in the same manner as sales proceeds pursuant to section 515B.2-119.

(k) The provisions of this section may be varied or waived in the case of a common interest community in which all units are restricted to nonresidential use.

History: 1995 c 258 s 65

515B.3-115 ASSESSMENTS FOR COMMON EXPENSES.

(a) If a common expense assessment has not been levied, the declarant shall pay all accrued expenses of the common interest community. If a common expense assessment has been levied, all unit owners including the declarant shall pay the assessments allocated to their units, except as otherwise permitted by this section. Subject to the requirements of this section, a declarant may institute one, but not both, of the alternative assessment programs described in subsections (a)(1) and (a)(2), whereby:

(1) if a common expense assessment has been levied, the purchaser shall pay when due only the common expenses up to a specified limit guaranteed by the declarant, and the declarant shall pay all common expenses in excess of the limit; or

(2) if a common expense assessment has been levied in a planned community, the declarant may limit its liability for assessments on units owned by it to 25 percent or any greater percentage of any assessment levied until such time as a certificate of occupancy is issued by the municipality in which the common interest community is located for the unit or units owned by the declarant.

(b) The alternative assessment programs described in subsection (a)(1) or (2), shall be permitted only by including in the declaration, and the disclosure statement required by section 515B.4-102, provisions authorizing declarant to establish an alternative assessment program and a detailed explanation of the program, including at a minimum, as applicable, (i) the maximum amount of any guaranty on a monthly and aggregate basis with respect to each type of unit, (ii) the minimum and maximum duration of the alternative assessment program, (iii) the time when the declarant's authority to commence the alternative assessment program expires, which shall be no later than the expiration of any period of declarant control, and (iv) a statement that the alternative assessment program will have no effect on the level of services for items set forth in the association's budget, or a statement that no assurances are made in those regards.

(c) Notwithstanding any disclosure in the declaration or disclosure statement, the declarant shall give the unit owners at least 60 days prior notice of the termination of the alternative assessment program, subject to any minimum duration described in the declaration and disclosure statement.

(d) Any alternative assessment program instituted by declarant shall not affect declarant's obligation to fund the reserves disclosed in the association's budget included in the disclosure statement or otherwise approved by the association.

(e) Any representations or agreements made by a declarant with respect to an alternative assessment program shall be enforceable against declarant by any unit owner or by the association.

(f) After an assessment has been levied by the association, assessments shall be levied at least annually, based upon a budget approved at least annually by the association.

(g) Except as modified by subsections (a)(1) and (2), (h), (i) and (j), all common expenses shall be assessed against all the units in accordance with the allocations established by the declaration pursuant to section 515B.2-108.

(h) Unless otherwise required by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) any common expense or portion thereof benefiting fewer than all of the units may be assessed exclusively against the units benefited, equally, or in any other proportion the declaration provides;

(3) the costs of insurance may be assessed in proportion to risk or coverage, and the costs of utilities may be assessed in proportion to usage;

(4) reasonable attorneys fees incurred by the association in connection with (i) the collection of assessments and, (ii) the enforcement of this chapter, the articles, bylaws, declaration, or rules and regulations, against a unit owner, may be assessed against the unit owner's unit; and

(5) fees, charges, late charges, fines and interest may be assessed as provided in section 515B.3-116(a).

(i) Assessments levied under section 515B.3-116 to pay a judgment against the association may be levied only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(j) If any damage to the common elements or another unit is caused by the act or omission of any unit owner, or occupant of a unit, or their invitees, the association may assess the costs of repairing the damage exclusively against the unit owner's unit to the extent not covered by insurance.

(k) Subject to any shorter period specified by the declaration or bylaws, if any installment of an assessment becomes more than 60 days past due, then the association may, upon ten days written notice to the unit owner, declare the entire amount of the assessment immediately due and payable in full.

(l) If common expense liabilities are reallocated for any purpose authorized by this chapter, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

History: 1995 c 92 s 12