

2010 Changes in the Minnesota Common Interest Ownership Act (MCIOA)

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After three plus years of work by the MCIOA Committee of the Minnesota State Bar Association, with input from the Legislative Committee of CIC Midwest and the Legislative Action Committee of the Minnesota Chapter of the Community of Associations Institute, as well as approximately twenty other interest groups, amendments were adopted to Chapter 515B of Minnesota Statutes, on April 22, 2010. The following is a summary of the amendments, emphasizing those changes of greatest import to existing associations. This article will only attempt to address changes to MCIOA that have general application or interest to a large number of associations. There are many additional changes to MCIOA that are of significant interest to limited audiences, including changes to the parties' various rights in failed CIC developments and Master Associations.

I. AMENDING THE DECLARATION.

515B.2-118. If a CIC must obtain mortgage holders' consent before amending governing documents, such consent is deemed granted if the CIC sends a request via certified mail and no response is received within sixty (60) days. This applies to all Associations currently subject to MCIOA, including condominiums formed under Chapters 515 and 515A. This Amendment does not apply to Planned Communities that wish to opt-in to MCIOA. (Long awaited change that will facilitate the amendment of governing documents and break the deadlock caused by high amendment requirements and the endless assignment of mortgages)

II. HEARINGS ON VIOLATIONS.

515B.3-102(a) (11). If a member requests a hearing regarding covenant violation, the Board may delegate the responsibility for such hearing to a committee. (Confirms a practice of many Associations)

III. ELECTRONIC BALLOTING.

515B.3-110 (c). Voting by electronic means is now permitted, if permitted by the association's governing documents, and if authorized under 317A.447. (Association cannot combine electronic and in-person voting, but can combine electronic voting with voting by mail ballot)

IV. SPECIAL ASSESSMENTS.

515B.3-115. MCIOA now provides associations with statutory authority to special assess. 515B.3-115. Special Assessments if authorized may be levied against all units in the CIC upon the same formula as regular assessments. Special assessments may be levied only: 1) to cover expenditures of an emergency matter; 2) replenish underfunded replacement reserves; 3) cover unbudgeted capital expenses; 4) replace

certain components. MCIOA now provides associations with statutory authority to special assess. This amendment only applies to CIC's created on or after August 1, 2010.

V. SUPER LIEN FOR JUNIOR CREDITOR REDEMPTIONS.

Super Lien for Junior Creditor Redemptions. 515B.3-116. When ownership of a unit transfers via a mortgage foreclosure, the holder of the mortgage takes title subject to a lien in favor of the association for amounts assessed to the unit during six months prior to the day the mortgage holder took title. Due to the wording of the statute, there were disputes over whether the same lien applied when a junior creditor redeemed from the mortgage foreclosure. This amendment removes the ambiguity in favor of the association.

VI. RE-SALE DISCLOSURE.

Carrying forward the changes to reserve provisions:

- Identifying components of the Common Interest Community the Association is obligated to replace; the amount in its reserves for these replacements; identifying the replacement of components funded by assessments only against the Units served by the Component.
- Identifying if finished flooring is insured by the Association.
- Stating whether the requesting unit owner is a declarant.
- Identifying those common elements that are licensed for use under Minnesota Statutes, Subsection 515B.2-109(e).

(Re-sale Disclosure currently in use should be compared with the new Certificate and the Statute)

VII. REPLACEMENT RESERVES.

- 515B.3-114.
 - Reserving/Reporting Requirement. The association shall include in its annual budget replacement reserves projected by the board to be adequate, together with past and future contributions to replacement reserves. The association's annual report shall now contain a statement of the association's total replacement reserves, the components of the CIC for which the reserves are set aside, and the amounts of the reserves, if any, that the board has allocated for the replacement of each of those components.
 - Exceptions. Unless required by the declaration, the annual budget need not include reserves for limited common elements, nor need the budget include reserves for components with a useful life of more than 30 years.

- Segregating Reserve Funds. If it wasn't doing so before, the association must now keep the replacement reserves in an account or accounts separate from the association's operating funds. Further, the association cannot use the replacement reserves to fund operating expenses, or borrow from the replacement reserves to fund operating expenses; however, the association can pledge the reserves as security for a loan.
- Reviewing Adequacy. The association must re-evaluate the adequacy of its replacement reserves at least every third year after the recording of the declaration. This method of re-evaluation is within the association's discretion, and there is no statutory requirement of a formal reserve-study.
- Special Assessments. Unless otherwise provided in the declaration, the association retains the power to fund certain replacement costs through special assessments. This situation can only happen after termination of declaration control, and requires approval by both the board and by a majority of votes in the association (other than the declarant or its affiliates).
- Applicability. Like the current reserves provision, the proposed changes would not apply to non-residential CICs unless otherwise required by their declarations.
- Taking Effect. To allow time for CICs to adjust to the new requirements, the proposed changes regarding reserve requirements would not take effect until the fiscal years commencing on or after January 1, 2012.

VIII. Declarant Control.

515B.1-103(33). Special declarant rights are expanded to include rights expressly described in the Declaration. (The Declaration in addition to Chapter 515B must be reviewed to determine the special rights of the declarant)

515B.3-103. Directors appointed by the declarant have a duty to fulfill their obligations under the governing documents and to enforce the governing documents in a uniform and fair manner. This section also now authorizes unit owners other than a declarant to call a special meeting for the purpose of turning over the association and electing new directors if the declarant fails to do so after the period of declarant control has terminated. It further provides that the declarant will be deemed to be present at such a meeting for the purpose of establishing a quorum whether or not they are actually in attendance. (Prevents the declarant from stalling turn-over)

Special Declarant Rights. 515B.3-104. This section was re-written in its entirety to clarify how special declarant rights are transferred through voluntary or involuntary

means and who is responsible for what following transfer. Changes include the addition of provisions for transferring special declarant rights to multiple transferees as well as subsequent transfers by the transferee. It also makes transferors and transferees jointly liable for the performance of declarant obligations in cases where the transferor retains some special declarant rights, clarifies when certain obligations are deemed to have arisen for purposes of determining who is responsible for which obligations and provides that all special declarant rights terminate 10 years after the date of the first conveyance of a unit by the declarant until extended by vote or agreement of at least 67% of owners other than the declarant. (Clarifies what special declarant rights are and what happens to them in the event of foreclosure)

IX. Creation.

515B.2-101. A cooperative may be created by recording a declaration and by immediately thereafter recording a conveyance of the real estate subject to the declaration to the cooperative.

The declarant shall immediately, after the recording of the declaration, record a conveyance of the common elements other than those that pass upon the recording of the declaration without a separate conveyance.

X. Quorum.

515B.3-109. If a Master Developer, declarant or affiliates are members of a master association or an association, they shall be deemed to be present for the purposes of establishing a quorum whether they are present or not.

XI. Assessments.

515B.3-115. The declarant's ability to limit liability for operating assessments to 25% was deleted. The declarant now must pay assessments levied against units owned by the declarant and paying when due all accrued expenses of the CIC in excess of the aggregate assessments payable with respect to units owned by persons other than the declarant; provided that the alternate common expense shall not affect the declarant's obligation to make up any operating deficit and shall terminate upon the termination of any period of declarant control. Provision is made for an audited balance sheet and profit and loss statement. The declarant must make up any accumulated operating deficit within 15 days after delivery to the association of the accounting information. The audit is to be prepared at the expense of the declarant by an accountant meeting the requirements of MCIOA. If the declarant has elected an alternate common expense plan, the super lien is based on the budget without any reduction for the plan. This amendment only applies to CIC's created on or after August 1, 2010.

XII. Rights of Action; Attorneys' Fees.

515B.4-116. Expands the parties who may be held liable for damages, including attorneys' fees, to include the association.

There are many more details in this seventy-five (75) page statute. To review the complete amendment visit <https://www.revisor.mn.gov/pubs/> when it becomes available on the internet.

XIII. LICENSES.

515B.2-109. If the declaration so provides, and subject to any different licensing provisions in a declaration recorded before August 1, 2010, the declarant may grant to a unit owner an exclusive license for the use of a common element. (This is a new concept and will require good record keeping by the Association, i.e., parking spaces, storage lockers)

XIV. CONVERSION OF UNITS.

515B.2-112. A unit owned exclusively by the condominium may be converted to a common element. (Previously this applied only to units owned by the declarant.)

XV. POWERS OF UNIT OWNERS ASSOCIATION.

515B.3-102. Clarification was made that the association may assess interest and late charges for late payment of assessments. (Previously referred only to “charges.”)

XVI. INSURANCE.

515B.3-113. The exclusions from coverage were expanded to include, heating, ventilating and air conditioning equipment (HVAC).

XVII. COMMON INTEREST COMMUNITY WITH BUILDING ONCE OCCUPIED.

515B.4-105. The professional opinion has been expanded to include plumbing and sets forth the required minimum information.

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