

MCIOA Amendments in a Nutshell

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This article provides a brief summary of significant amendments to the Minnesota Common Interest Ownership Act ("MCIOA"), Minnesota Statutes Chapter 515B, that apply to existing common interest communities ("CIC's") that are subject to MCIOA. The amendments will take effect on August 1, 2010, except as otherwise noted.

Vacation of Public Land. The MCIOA amendments create a new section, Minn. Stat. § 515B.1-1105, to address ownership and related issues that arise in connection with the vacation of a street, alley, or other public land adjacent to a CIC.

Common Element Licenses. Minn. Stat. § 515B.2-109 is amended to provide that a declaration may authorize a declarant to grant exclusive licenses to unit owners for the use of common element garage stalls, storage lockers or similar common element spaces. The amendment also addresses license requirements, payments, transfer restrictions and record keeping.

Expansion of Flexible CIC. Minn. Stat. § 515B.2-111 is amended to provide that any document adding additional real estate to a flexible CIC must be captioned "Supplemental Declaration" and must contain the declarant's current good faith estimate of the total number of units that may be created within any remaining additional real estate, as well as the other information currently required by the statute.

Subdivision, Combination or Conversion of Units Owned by Association. Minn. Stat. §§ 515B.2-112 and 515B.2-113 are amended to give an association the unilateral right to subdivide, combine or convert units owned exclusively by the association, by the method described in the statute, if the declaration so provides.

Mortgagee Consent. Minn. Stat. § 515B.2-118 is amended to provide that if a secured party does not object in writing to a proposed amendment to the declaration, bylaws, or articles of incorporation within 60 days after receiving notice and a copy of the proposed amendment by certified mail, postage prepaid and return receipt requested, then the amendment is deemed approved, unless the amendment affects the priority of the secured party's security interest or its ability to foreclose its security interest.

Hearings by Committee. Minn. Stat. § 515B.3-102(a)(11) is amended to authorize a committee appointed by the board to conduct hearings regarding alleged violations of the

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declaration, bylaws, and rules and regulations, subject to the provisions of the declaration and bylaws.

Enforcement by Officers and Directors Appointed by Declarant. Minn. Stat. § 515B.3-103(a) is amended to provide that officers and directors appointed by the declarant must comply with the declaration, bylaws, articles of incorporation, and MCIOA and enforce the same against all unit owners, including the declarant and its affiliates, in a uniform and fair manner. The same standards of conduct apply to officers and directors of master associations.

Turnover Meetings. Minn. Stat. § 515B.3-103(d) is amended to provide that if the board fails or refuses to timely call a meeting to elect non-declarant directors, then the unit owners other than a declarant and its affiliates may call the meeting.

Annual Reports. Minn. Stat. § 515B.3-106(c)(2) is amended to provide that the annual report must include a statement of the association's total replacement reserves, the components of the CIC for which the reserves are set aside, and any allocations for particular components.

Quorums. Minn. Stat. § 515B.3-109 is amended to provide that a master developer or declarant or their affiliates shall be deemed to be present for purposes of establishing a quorum at a meeting called to elect non-declarant directors, regardless of their failure to attend the meeting.

Electronic Voting. Minn. Stat. § 515B.3-110(c) is amended to authorize electronic voting, if authorized by the statute under which the association was created and not prohibited by the governing documents. Electronic voting may be used in combination with mailed ballots, but electronic voting may not be used in combination with a vote taken at a meeting of unit owners.

Replacement Reserves. Minn. Stat. § 515B.3-114 is amended effective January 1, 2012, to require an association to include in its annual budgets, for fiscal years commencing on or after January 1, 2012, replacement reserves projected by the board to be adequate, together with past and future contributions, to fund the replacement of those components of the CIC which the association is obligated to replace due to ordinary wear and tear or obsolescence. The projections must be based on the estimated remaining useful life of each component, but replacement reserves need not be segregated for specific components. Unless the declaration provides otherwise, replacement reserves are not required for (i) components with a remaining useful life of more than 30 years, (ii) limited common elements, if their replacement cost will be assessed against the units to which they are assigned, (iii) certain other components that an association plans to fund by other assessments, subject to statutory requirements, or (iv) non-residential CIC's. The

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association may not borrow from replacement reserves or comingle them with operating funds, but may pledge replacement reserves as security for a loan.

Declarant's Duty to Assign Warranties. Minn. Stat. § 515B.3-120 is amended to provide that a declarant shall not be obligated to assign any third-party warranty to the association, if assignment is prohibited or prevents the declarant from enforcing the warranty.

Accounting Controls. Minn. Stat. § 515B.3-121 is amended to provide that votes by a declarant or its affiliates do not count toward the 30% approval required to waive annual review of the association's financial statements.

Disclosure Statement for Conversion CIC. Minn. Stat. § 515B.4-105 is amended to list detailed information that must be included in the opinion of a professional architect or engineer regarding the condition of a building that was occupied before the creation of the CIC.

Declarant's Liability for Failure to Deliver Disclosure Statement. Minn. Stat. § 515B.4-106(d) is amended to increase the declarant's liability to a purchaser for failure to deliver a disclosure statement that substantially complies with MCIOA from \$1,000 to \$5,000, in addition to any damages or other amounts recoverable by the purchaser.

Resale Disclosure Certificate. Minn. Stat. § 515B.4-107 is amended to require the seller to provide the buyer with copies of the master declaration, articles of incorporation, bylaws and rules and regulations, if the CIC is subject to a master declaration. The Resale Disclosure Certificate form is amended to require the disclosure of additional information regarding common elements, reserves and warranties. If a unit owner who acquired title to the unit through foreclosure asks the association to provide a resale disclosure certificate, the unit owner must inform the association whether the unit owner is a declarant; if the unit owner is a declarant, then the unit owner must give the buyer a declarant's disclosure statement, not a resale disclosure certificate.

Notice to Prospective Tenant Regarding Intent to Convert Property to CIC. Minn. Stat. § 515B.4-111 is amended to provide that a tenant does not have the rights described in Minn. Stat. § 515B.4-111 or under any municipal ordinance if the tenant received a sufficient written notice of intent to convert the property to a CIC before signing a lease or lease renewal and before occupying the space, and less than two years before the CIC was created.

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Disclaimer. This article does not cover all of the MCIOA amendments that may affect existing CIC's, nor does it address amendments that will apply only to CIC's created on or after August 1, 2010. The information in this article is general information and does not constitute legal advice regarding action to be taken in any particular case, which may vary depending on the facts, applicable statutes, governing documents and other variables.