

# MCIOA Reshuffled

*By Michael D. Klemm, Esq.  
Severson, Sheldon, Dougherty & Molenda, P.A.  
July 2011*



On the last day of the 2011 legislative session, the Minnesota House and Senate passed a bill to reorganize Minnesota Statutes Chapter 515B, the Minnesota Common Interest Ownership Act (“MCIOA”).<sup>i</sup> Generally, the 2011 amendment restored sections of MCIOA that were revised in 2010 to the 2009 version, and moved the 2010 version of those sections to newly-created sections of MCIOA.<sup>ii</sup>

The 2010 amendment to MCIOA made numerous changes that only apply (i) to common interest communities (“CIC’s”) created on or after August 1, 2010, or (ii) for fiscal years commencing on or after January 1, 2012; however, the 2010 amendment did not preserve the language that applied in other circumstances. As a result, it was necessary to review both the 2009 version and the 2010 version of MCIOA to locate the sections that applied with respect to certain matters on particular dates. For example, under the 2010 amendment to MCIOA, a condominium created before August 1, 2010, was subject to the 2009 version of MCIOA regarding assessments and replacement reserves, but the 2010 version of MCIOA applied to annual reports and resale disclosure certificates.

The 2011 amendment improved the statute by compiling the provisions of MCIOA in one version of the statute, which will be published as 2011 Minnesota Statutes Chapter 515B.

Restored Sections. The 2011 amendment generally restored the following sections of MCIOA to the 2009 version; these sections apply only to CIC’s created before August 1, 2010:

- 515B.1-103(33a) - Definition of Special Declarant Rights
- 515B.2-110 - CIC Plat
- 515B.3-105 - Termination of Contracts, Leases

515B.3-115 - Assessments for Common Expenses  
515B.4-102 – Disclosure Statement  
515B.4-115 – Statute of Limitations for Warranties

New Sections. The 2011 amendment created the following new sections, which apply only to CIC's created on or after August 1, 2010:

515B.1-103(33b) - Definition of Special Declarant Rights  
515B.2-1101 - CIC Plat  
515B.3-1051 - Termination of Contracts, Leases, Licenses  
515B.3-1151 - Assessments for Common Expenses  
515B.4-1021 – Disclosure Statement  
515B.4-1151 – Statute of Limitations for Warranties (for CIC's created on or after August 1, 2010, and before August 1, 2011)  
515B.4-1152 – Statute of Limitations for Warranties (for CIC's created on or after August 1, 2011)

Lien for Assessments? The 2011 amendment revised section 515B.1-102(h) to provide that section 515B.3-116 (Lien for Assessments) applies only to CIC's created before August 1, 2010. However, the 2011 amendment did not create any new section to replace 515B.3-116 for CIC's created on or after August 1, 2010. Therefore, it appears that CIC's created on or after August 1, 2010, may not have a statutory lien for assessments, fees, charges, late charges, fines and interest under section 515B.3-116; the priority of any association lien may not be governed by section 515B.3-116; and the association may not be able to foreclose a lien as provided in section 515B.3-116. On the other hand, section 515B.3-1151, which applies only to CIC's created on or after August 1, 2010, authorizes fees, charges, late charges, fines, and interest to be assessed as provided in section 515B.3-116(a), and provides for the allocation of assessments under section 515B.3-116 to pay a judgment against the association. It is unclear how a court would resolve the conflict between these sections, and whether or to what extent section 515B.3-116 (Lien for Assessments) applies to CIC's created on or after August 1, 2010.

Replacement Reserves. Replacement reserves are governed by section 515B.3-114 for fiscal years commencing before January 1, 2012, but replacement reserves are governed by section 515B.3-1141 for subsequent fiscal years, regardless of the date that the CIC was created.

Transfers of Special Declarant Rights. Transfers of special declarant rights that are effective before August 1, 2010, are subject to section 515B.3-104, but transfers of special declarant rights that are effective on or after August 1, 2010, are subject to section 515B.3-1041, subsections (a) through (i). Section 515B.3-1041,

subsections (j) and (k), apply only to special declarant rights reserved in a declaration that is first recorded on or after August 1, 2010.

Miscellaneous. The 2011 amendment also made substantive changes to various section of MCIOA, including but not limited to the following:

515B.1-116 is revised to address the payment of taxes if a declaration, amendment or restatement changes the boundaries of an existing tax parcel.

515B.2-109 is revised to require the declarant to deliver a common element license to a unit owner, rather than to the association.

515B.2-121 is revised to provide that a declaration may authorize the board of an association, rather than the board of the master association, to delegate certain powers of the association to the master association.

515B.2-124 is revised to change the requirements for severance of part of a CIC to better protect the owners of severed units and to streamline the process.

515B.3-102 is revised to clarify that associations have power to amend certain easements.

Effective Dates. The 2011 amendment to MCIOA became effective June 1, 2011, except the amendments to sections 515B.1-116 (Recording), 515B.2-109 (Common Elements and Limited Common Elements), 515B.2-121 (Master Associations), 515B.2-124 (Severance of CIC) and 515B.3-102 (Powers of Unit Owners' Association) are effective August 1, 2011.

---

<sup>i</sup> House File No. 1023; Senate File No. 874; 2011 Minnesota Session Laws Chapter 116.

<sup>ii</sup> The information in this article is general information and does not constitute legal advice regarding any particular matter, which may vary depending on the facts, applicable statutes and governing documents.