

Rule changes for homeowner associations

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Special to Minnesota Lawyer



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Townhome, condominium, and other homeowner associations are typically part of what is called a common interest community, or CIC. An association may be organized in the form of a profit, nonprofit, or cooperative organization, but CICs are generally controlled by the Minnesota Common Interest Ownership Act (MCIOA), Chapter 515B of Minnesota Statutes, and the association's governing documents.

The Minnesota Common Interest Ownership Act has recently been amended in significant ways. Notably, homeowners associations must give additional notice and obtain majority owner approval requirements before filing a construction defect claim. Parties are also now required to mediate unless they have completed the home warranty dispute resolution.

The statute has also been amended to include new preventative maintenance requirements which are required to be included in the declarant disclosure statements.

Notice required

Homeowners must receive written notice of construction defect claims and approve action by a majority vote before a lawsuit is started.

Specifically, before instituting litigation or arbitration involving construction defect claims, the association must mail or deliver written notice of the anticipated commencement to each unit owner specifying the nature of the construction defect claims to be alleged, the relief sought and the manner in which the association proposes to fund the costs of pursuing the claims. The association must also obtain the approval of a majority of owners at an annual or special meeting before instituting litigation. Minn. Stat. § 515B.3-102 (16)(d).

The association may intervene in litigation or arbitration involving a construction defect claim to comply with the notice requirements, but the association must comply with the notice and owner approval requirements within 90



DEPOSIT PHOTOS

days of the intervention. Minn. Stat. § 515B.3-102 (16)(e).

Definitions

The statute added a number of definitions including "construction defect claim" which is defined to mean a civil action or arbitration including claims for indemnity or contribution brought against the development party related to defects in the initial design or construction of an improvement to real property. Construction defect claim does not include claims related to subsequent maintenance, repairs, alterations or modifications to, or the addition of, improvements that are part of the common interest community. Minn. Stat. § 515B.1-103 (11a)

"Development party" is defined as an architect, contractor, construction manager, subcontractor, developer, declarant, engineer, or private inspector performing or furnishing the design, supervision, inspection, construction, coordination, or observation of the construction of any improvement to real property that is part of a common interest community, or any of the person's affiliates, officers, directors, shareholders, members, or employees. Minn. Stat. § 515B.1-103 (16a).

Next, in addition to notice and approval requirements, before moving forward with any construction defect claim, the parties must submit the matter to mediation. The statute of limitations is tolled from the date any party makes a written demand for mediation until the latest of the following: five business days after mediation is completed; or 180 days. Mediation shall not be required prior to commencement of a construction defect claim if the parties have completed home warranty dispute resolution under Sect. 327A.051. Minn. Stat. § 515B.4-116(c)(d).

Preventive planning

Associations must prepare and follow a preventive maintenance plan.

The statute imposes preventive maintenance obligations for the association under Minn. Stat. § 515B.3-107. The association's board of directors shall prepare and approve a written preventive maintenance plan, maintenance schedule and maintenance budget for the common elements and follow the plan. The association may amend, modify or replace the plan from time to time and must provide all unit owners with a copy.

A development party shall have no liability for implied warranty claims caused by the failure of the association or a unit owner to comply with maintenance and upkeep of the common interest community, unless the loss or damage is caused by the failure to comply with the statute while the declarant controlled the board. Minn. Stat. § 515B.4-113 (h).

Seller's disclosure

The declarant must include the preventative maintenance plan in its seller's disclosure statement.

The declarant disclosure statement is now required to include the initial maintenance plan, initial maintenance schedule and maintenance budget. The initial maintenance plan prepared by the declarant must be based on the best available information and must be dated and signed by the declarant and fully funded by the initial budget provided by the declarant. Minn. Stat. § 515B.4-1021.

(While this is not a change in the statute, it is worth noting that if the declarant fails to provide the maintenance plan information as specified, the purchaser has right to cancel the agreement, and a refund of all monies paid. The declarant may be subject to a statutory penalty of \$5,000 in addition to any other amounts available under statute. Minn. Stat. § 515B.4-106.)

Effective date for changes?

The pre-litigation notice and approval requirements apply *only* to associations created after Aug. 1, 2017.

The preventative maintenance plan requirements apply to all associations. However, if the association was created before Aug. 1, 2017, the association's board of directors shall have until Jan. 1, 2019, to comply.

If you have questions about these legislative changes, or any issues relating to real estate development or construction defect claims you should contact an attorney knowledgeable in these areas.

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