
**WARRANTY AND CONSTRUCTION DEFECT CLAIMS
FOR COMMON INTEREST COMMUNITIES**

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I. Introduction

If it is true that condominium ownership is the illusion of real property ownership, then it is axiomatic that warranty and construction defect claims against condominium developers and builders are a harsh reality. Associations also must be aware of the potential for such claims from individual unit owners as well as the imputation of notice of construction defects through agents of the associations.

This presentation will cover the statutory framework for liability under Chapter 515B, as well as the related warranty liabilities arising under Chapter 327A which applies to residential units. We will also address the affect of the statute of repose and limitation of M.S.A. § 541.051 on the various statutory and common law causes of action relevant to this discussion. In addition, we will cover disputes between the individual unit owners and the association. This presentation does not attempt to create a detailed road map except as necessary to discuss construction liability. The reader should consult the applicable statutes and secondary sources interpreting the bases for liability for further information.

II. The Minnesota Common Interest Ownership Act—Chapter 515B

A. Definitions. Some general background is in order. Chapter 515B is derived from the Uniform Common Interest Community Act and from Minnesota Statutes Chapter 515A. Chapter 515B applies to all common interest

communities ("CICs") created in Minnesota on or after June 1, 1994. The statute defines a CIC as "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, 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." M.S.A. § 515b.1-103(10). The statute applies not only to multi-family, owner-occupied residential housing, such as condominiums, planned communities and cooperatives, but also to mixed-use projects.

As to preexisting CICs, Chapter 515B applies automatically to condominiums created under Chapter 515A (effective on and after August 1, 1980), except as follows:

1. Chapter 515B applies only "with respect to acts and circumstances occurring on and after June 1, 1994" as to Chapter 515A condominiums;
2. Chapter 515B does not invalidate the declarations, bylaws or condominium plats of Chapter 515A condominiums; and

3. Chapter 515A governs the rights and obligations both of a Chapter 515A declarant and of unit owners against that declarant. M.S.A. § 515B.1-102(b)(1).

Chapter 515B applies only in certain regards to Chapter 515 (effective on and after May 28, 1971) condominiums. It affects various important aspects of CIC titling, recording and taxation; applicability of local ordinances, regulations and building codes; regulation of affairs; and powers of unit owners' associations, among other topics. M.S.A. § 515B.1-102(b)(2). Although many of these sections affect the question of whether a Chapter 515 condominium association should opt in to Chapter 515B, as a practical matter it is highly unlikely that the rights created in the statute will have much effect on such condominiums. In any event, Chapter 515B applies only to events and circumstances occurring on and after its effective date.

Chapter 515B does not apply to preexisting planned communities or cooperatives. M.S.A. § 515B.1-102(b)(3). Such entities may elect to be subject to the new statute under subsection (d) thereof.

Another point of interest are the definitions of "declarant," "affiliate of a declarant," "controls," and "is controlled by." M.S.A. § 515B.1-103(15) and (2). A detailed recitation of the term "declarant" is not necessary here; suffice it to say

that a declarant is, except for secured parties, persons who essentially organize the CIC. The statute does not include within the definition of declarant those who hold an interest in the CIC, but will not transfer that interest to unit owners, and lessors in leasehold CICs who have no special declarant rights and are not affiliated with anyone who does. A declarant is also defined as a person or "persons acting in concert" who have offered, before creation of the CIC, to transfer their interest in a unit neither created nor transferred.

Of more interest, especially in light of Chapter 515B's express warranty provision at section 515B.4-112, are the definitions related to affiliation and control. The new statute continues both the substance of Chapter 515A's definitions and its rule of liberal interpretation. M.S.A. § 515B.1-114. The statute also defines declarant as any person who "controls, is controlled by, or is under common control with a declarant." M.S.A. § 515B.1-103(2). Control exists, in either direction, under four situations:

1. the person is a general partner, officer, director, or employer of the declarant;
2. the person, directly or indirectly, or acting in concert with others, or through subsidiaries, "owns, controls, holds with

