

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 886

Introduced by Harr, 8.

Read first time January 14, 2014

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to real property; to amend sections 76-854,
2 76-855, 76-870, and 76-871, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to the Nebraska
4 Condominium Act; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 76-854, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 76-854 (a) Except in cases of amendments that may be
4 executed by (1) a declarant under subsection (f) of section 76-846 or
5 under section 76-847, (2) the association under section 76-831 or
6 76-850, subsection (d) of section 76-843, subsection (c) of section
7 76-845, or subsection (a) of section 76-849, or (3) certain unit
8 owners under subsection (b) of section 76-845, subsection (a) of
9 section 76-849, subsection (b) of section 76-850, or subsection (b)
10 of section 76-855, and except as limited by subsection (d) of this
11 section, the declaration, including the plats and plans, may be
12 amended only by vote or agreement of unit owners of units to which at
13 least sixty-seven percent of the votes in the association are
14 allocated or any larger majority the declaration specifies. The
15 declaration may specify a smaller number only if all of the units are
16 restricted exclusively to nonresidential use.

17 (b) No action to challenge the validity of an amendment
18 adopted by the association pursuant to this section may be brought
19 more than one year after the amendment is recorded.

20 (c) Every amendment to the declaration must be recorded
21 in every county in which any portion of the condominium is located
22 and is effective only upon recordation.

23 (d) Except to the extent expressly permitted or required
24 by other provisions of the Nebraska Condominium Act, no amendment may
25 create or increase special declarant rights, ~~increase the number of~~

1 ~~units, or change the boundaries of any unit, the allocated interests~~
2 ~~of a unit, or the uses to which any unit is restricted in the absence~~
3 of the unanimous consent of the unit owners. In addition, no
4 amendment may change the boundaries of any unit, the allocated
5 interests of any unit, or the uses to which any unit is restricted
6 without the consent of the owner of the unit.

7 (e) Amendments to the declaration required by the act to
8 be recorded by the association shall be prepared, executed, recorded,
9 and certified on behalf of the association by any officer of the
10 association designated for that purpose or, in the absence of
11 designation, by the president of the association.

12 Sec. 2. Section 76-855, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 76-855 (a) Except in the case of a taking of all units by
15 eminent domain as provided in section 76-831, a condominium may be
16 terminated only by agreement of unit owners of units to which at
17 least ~~eighty-sixty-seven~~ percent of the votes in the association are
18 allocated, or any larger percentage the declaration specifies. The
19 declaration may specify a smaller percentage only if all of the units
20 in the condominium are restricted exclusively to nonresidential uses.

21 (b) An agreement to terminate must be evidenced by the
22 execution of a termination agreement, or ratifications thereof, in
23 the same manner as a deed, by the requisite number of unit owners.
24 The termination agreement must specify a date after which the
25 agreement will be void unless it is recorded before that date. A

1 termination agreement and all ratifications thereof must be recorded
2 in every county in which a portion of the condominium is situated,
3 and is effective only upon recordation.

4 (c) In the case of a condominium containing only units
5 having horizontal boundaries described in the declaration, a
6 termination agreement may provide that all the common elements and
7 units of the condominium shall be sold following termination. If,
8 pursuant to the agreement, any real estate in the condominium is to
9 be sold following termination, the termination agreement must set
10 forth the minimum terms of the sale.

11 (d) In the case of a condominium containing any units not
12 having horizontal boundaries described in the declaration, a
13 termination agreement may provide for sale of the common elements,
14 but may not require that the units be sold following termination,
15 unless the declaration as originally recorded provided otherwise or
16 unless all the unit owners consent to the sale.

17 (e) The association, on behalf of the unit owners, may
18 contract for the sale of real estate in the condominium, but the
19 contract is not binding on the unit owners until approved pursuant to
20 subsections (a) and (b) of this section. If any real estate in the
21 condominium is to be sold following termination, title to that real
22 estate, upon termination, vests in the association as trustee for the
23 holders of all interests in the units. Thereafter, the association
24 has all powers necessary and appropriate to effect the sale. Until
25 the sale has been concluded and the proceeds thereof distributed, the

1 association continues in existence with all powers it had before
2 termination. Proceeds of the sale must be distributed to unit owners
3 and lienholders as their interests may appear, in proportion to the
4 respective interests of unit owners as provided in subsection (h) of
5 this section. Unless otherwise specified in the termination
6 agreement, as long as the association holds title to the real estate,
7 each unit owner and his or her successors in interest have an
8 exclusive right to occupancy of the portion of the real estate that
9 formerly constituted his or her unit. During the period of that
10 occupancy, each unit owner and his or her successors in interest
11 remain liable for all assessments and other obligations imposed on
12 unit owners by sections 76-825 to 76-894 or the declaration.

13 (f) If the real estate constituting the condominium is
14 not to be sold following termination, title to the common elements
15 and, in a condominium containing only units having horizontal
16 boundaries described in the declaration, title to all the real estate
17 in the condominium, vests in the unit owners upon termination as
18 tenants in common in proportion to their respective interests as
19 provided in subsection (h) of this section, and liens on the units
20 shift accordingly. While the tenancy in common exists, each unit
21 owner and his or her successors in interest have an exclusive right
22 to occupancy of the portion of the real estate that formerly
23 constituted his or her unit.

24 (g) Following termination of the condominium, the
25 proceeds of any sale of real estate, together with the assets of the

1 association, are held by the association as trustee for unit owners
2 and holders of liens on the units as their interests may appear.
3 Following termination, creditors of the association holding liens on
4 the units, which were recorded before termination, may enforce those
5 liens in the same manner as any lienholder. All other creditors of
6 the association are to be treated as if they had perfected liens on
7 the units immediately before termination.

8 (h) The respective interests of unit owners referred to
9 in subsections (e), (f), and (g) of this section are as follows:

10 (1) Except as provided in paragraph (2) of this
11 subsection, the respective interests of unit owners are the fair
12 market values of their units, limited common elements, and common
13 element interests immediately before the termination, as determined
14 by one or more independent appraisers selected by the association.
15 The decision of the independent appraisers shall be distributed to
16 the unit owners and becomes final unless disapproved within thirty
17 days after distribution by unit owners of units to which twenty-five
18 percent of the votes in the association are allocated. The proportion
19 of any unit owner's interest to that of all unit owners is determined
20 by dividing the fair market value of that unit owner's unit and
21 common element interest by the total fair market values of all the
22 units and common elements.

23 (2) If any unit or any limited common element is
24 destroyed to the extent that an appraisal of the fair market value
25 thereof before destruction cannot be made, the interests of all unit

1 owners are their respective common element interests immediately
2 before the termination.

3 (i) Except as provided in subsection (j) of this section,
4 foreclosure or enforcement of a lien or encumbrance against the
5 entire condominium does not of itself terminate the condominium, and
6 foreclosure or enforcement of a lien or encumbrance against a portion
7 of the condominium, other than withdrawable real estate, does not
8 withdraw that portion from the condominium. Foreclosure or
9 enforcement of a lien or encumbrance against withdrawable real estate
10 does not of itself withdraw that real estate from the condominium,
11 but the person taking title thereto has the right to require from the
12 association, upon request, an amendment excluding the real estate
13 from the condominium.

14 (j) If a lien or encumbrance against a portion of the
15 real estate comprising the condominium has priority over the
16 declaration, and the lien or encumbrance has not been partially
17 released, and the parties foreclosing the lien or encumbrance have
18 not assented to or are not joining the declaration establishing such
19 condominium, such parties may upon foreclosure, record an instrument
20 excluding the real estate subject to that lien or encumbrance from
21 the condominium.

22 Sec. 3. Section 76-870, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 76-870 (a) Portions of the common elements may be
25 conveyed or subjected to a security interest by the association if

1 persons entitled to cast at least ~~eighty-sixty-seven~~ percent of the
2 votes in the association, including ~~eighty-sixty-seven~~ percent of the
3 votes allocated to units not owned by a declarant, or any larger
4 percentage the declaration specifies, agree to that action; but all
5 the owners of units to which any limited common element is allocated
6 must agree in order to convey that limited common element or subject
7 it to a security interest. The declaration may specify a smaller
8 percentage only if all of the units are restricted exclusively to
9 nonresidential uses. Proceeds of the sale are an asset of the
10 association.

11 (b) An agreement to convey common elements or subject
12 them to a security interest must be evidenced by the execution of an
13 agreement, or ratifications thereof, in the same manner as a deed, by
14 the requisite number of unit owners. The agreement must specify a
15 date after which the agreement will be void unless recorded before
16 that date. The agreement and all ratifications thereof must be
17 recorded in every county in which a portion of the condominium is
18 situated and is effective only upon recordation.

19 (c) The association, on behalf of the unit owners, may
20 contract to convey common elements or subject them to a security
21 interest, but the contract is not enforceable against the association
22 until approved pursuant to subsections (a) and (b) of this section.
23 Thereafter, the association has all powers necessary and appropriate
24 to effect the conveyance or encumbrance, including the power to
25 execute deeds or other instruments.

1 (d) Any purported conveyance, encumbrance, judicial sale,
2 or other voluntary transfer of common elements, unless made pursuant
3 to this section, is void.

4 (e) A conveyance or encumbrance of common elements
5 pursuant to this section does not deprive any unit of its rights of
6 access and support.

7 (f) Unless the declaration otherwise provides, a
8 conveyance or encumbrance of common elements pursuant to this section
9 does not affect the priority or validity of preexisting encumbrances.

10 Sec. 4. Section 76-871, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 76-871 (a) Commencing not later than the time of the
13 first conveyance of a unit to a person other than a declarant, the
14 association shall maintain, to the extent reasonably available:

15 (1) Property insurance on the property including the
16 common elements insuring against all risks of direct physical loss
17 commonly insured against or, in the case of a conversion building,
18 against fire and extended coverage perils. The total amount of
19 insurance after application of any deductibles shall be not less than
20 eighty percent of the actual cash value of the insured property at
21 the time the insurance is purchased and at each renewal date,
22 exclusive of land, excavations, foundations, and other items normally
23 excluded from property policies; and

24 (2) Liability insurance, including medical payments
25 insurance, in an amount determined by the executive board but not

1 less than any amount specified in the declaration, covering all
2 occurrences commonly insured against for death, bodily injury, and
3 property damage arising out of or in connection with the use,
4 ownership, or maintenance of the common elements.

5 (b) In the case of a building containing units having
6 horizontal boundaries described in the declaration, the insurance
7 maintained under subdivision (a)(1) of this section, to the extent
8 reasonably available, shall include the units, but need not include
9 improvements and betterments installed by unit owners.

10 (c) If the insurance described in subsections (a) and (b)
11 of this section, is not reasonably available, the association
12 promptly shall cause notice of that fact to be hand delivered or sent
13 prepaid by United States mail to all unit owners. The declaration may
14 require the association to carry any other insurance, and the
15 association in any event may carry any other insurance it deems
16 appropriate to protect the association or the unit owners.

17 (d) Insurance policies carried pursuant to subsection (a)
18 of this section must provide that:

19 (1) Each unit owner is an insured person under the policy
20 with respect to liability arising out of his or her interest in the
21 common elements or membership in the association;

22 (2) The insurer waives its right to subrogation under the
23 policy against any unit owner or member of his or her household;

24 (3) No act or omission by any unit owner, unless acting
25 within the scope of his or her authority on behalf of the

1 association, will void the policy or be a condition to recovery under
2 the policy; and

3 (4) If, at the time of a loss under the policy there is
4 other insurance in the name of a unit owner covering the same risk
5 covered by the policy, the association's policy provides primary
6 insurance.

7 (e) Any loss covered by the property policy under
8 subdivisions (a)(1) and (b) of this section must be adjusted with the
9 association, but the insurance proceeds for that loss are payable to
10 any insurance trustee designated for that purpose, or otherwise to
11 the association, and not to any mortgagee or beneficiary under a deed
12 of trust. The insurance trustee or the association shall hold any
13 insurance proceeds in trust for unit owners and lienholders as their
14 interests may appear. Subject to the provisions of subsection (h) of
15 this section the proceeds must be disbursed first for the repair or
16 restoration of the damaged property, and unit owners and lienholders
17 are not entitled to receive payment of any portion of the proceeds
18 unless there is a surplus of proceeds after the property has been
19 completely repaired or restored, or the condominium is terminated.

20 (f) An insurance policy issued to the association does
21 not prevent a unit owner from obtaining insurance for his or her own
22 benefit.

23 (g) An insurer that has issued an insurance policy under
24 this section shall issue certificates or memoranda of insurance to
25 the association and, upon written request, to any unit owner,

1 mortgagee, or beneficiary under a deed of trust. The insurer issuing
2 the policy may not cancel or refuse to renew it until thirty days
3 after notice of the proposed cancellation or nonrenewal has been
4 mailed to the association, each unit owner and each mortgagee or
5 beneficiary under a deed of trust to whom a certificate or memorandum
6 of insurance has been issued at their respective last-known
7 addresses.

8 (h) Any portion of the condominium for which insurance is
9 required under this section which is damaged or destroyed shall be
10 repaired or replaced promptly by the association unless (i) the
11 condominium is terminated, (ii) repair or replacement would be
12 illegal under any state or local health or safety statute or
13 ordinance, or (iii) ~~eighty-sixty-seven~~ percent of the unit owners,
14 including every owner of a unit or assigned limited common element
15 which will not be rebuilt, vote not to rebuild. The cost of repair or
16 replacement in excess of insurance proceeds and reserves is a common
17 expense. If the entire condominium is not repaired or replaced, (i)
18 the insurance proceeds attributable to the damaged common elements
19 must be used to restore the damaged area to a condition compatible
20 with the remainder of the condominium, (ii) the insurance proceeds
21 attributable to units and limited common elements which are not
22 rebuilt must be distributed to the owners of those units and the
23 owners of the units to which those limited common elements were
24 allocated, or to lienholders, as their interests may appear, and
25 (iii) the remainder of the proceeds must be distributed to all the

1 unit owners or lienholders, as their interests may appear, in
2 proportion to the common element interests of all the units. If the
3 unit owners vote not to rebuild any unit, that unit's allocated
4 interests are automatically reallocated upon the vote as if the unit
5 had been condemned under subsection (a) of section 76-831, and the
6 association promptly shall prepare, execute, and record an amendment
7 to the declaration reflecting the reallocations. Notwithstanding the
8 provisions of this subsection, section 76-855 governs the
9 distribution of insurance proceeds if the condominium is terminated.

10 (i) The provisions of this section may be varied or
11 waived in the case of a condominium all of whose units are restricted
12 to nonresidential use.

13 Sec. 5. Original sections 76-854, 76-855, 76-870, and
14 76-871, Reissue Revised Statutes of Nebraska, are repealed.