

Senate File 2012 - Introduced

SENATE FILE 2012

BY HART

A BILL FOR

1 An Act relating to the revival of lapsed use restrictions by a
2 common interest community.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 564B.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Bylaws" means the instruments, however denominated,
5 that contain the procedures for conducting the affairs of the
6 homeowners' association or the executive board regardless of
7 the form in which the homeowners' association is organized,
8 including any amendments to such instruments.

9 2. a. "Common interest community" means real estate
10 described in a declaration with respect to which a person, by
11 virtue of the person's ownership of a parcel, is obligated
12 to pay for a share of real estate taxes, insurance premiums,
13 maintenance, or improvement of, or services or other expenses
14 related to, common elements, other parcels, or other real
15 estate described in the declaration. "Common interest
16 community" includes a cooperative under chapter 499A and a
17 horizontal property regime under chapter 499B.

18 b. "Common interest community" does not include a covenant
19 that requires the owners of separate parcels of real estate to
20 share costs or other obligations related to a wall, driveway,
21 well, or other similar structure, unless all such owners
22 consent in writing to the creation of a common interest
23 community.

24 3. "Declaration" means a recorded written instrument in the
25 nature of covenants running with the land that subject the land
26 comprising the common interest community to the jurisdiction
27 and control of a homeowners' association in which the owners of
28 the parcels are required to be members.

29 4. "Executive board" means the body, regardless of name,
30 designated in the declaration, formation document, or bylaws to
31 act on behalf of the homeowners' association.

32 5. "Formation document" means the document filed with the
33 secretary of state that creates a business entity, including
34 but not limited to articles of incorporation, articles of
35 organization, and a certificate of organization.

1 6. "*Homeowners' association*" means an entity responsible
2 for the operation of a common interest community in which the
3 voting membership is made up of parcel owners and in which
4 membership is a mandatory condition of parcel ownership, and
5 which is authorized to impose assessments that, if unpaid, may
6 become a lien on the parcel.

7 7. "*Parcel*" means a physical portion of the common interest
8 community designated for separate ownership or occupancy or
9 as otherwise defined in the statute under which the common
10 interest community is organized.

11 8. "*Parcel owner*" means the record owner of legal title to
12 a parcel or, if the parcel is subject to a contract for deed,
13 the vendee of the real estate contract. "*Parcel owner*" does
14 not include a person having an interest in a parcel solely as
15 security for an obligation.

16 9. "*Use restrictions*" means the same as defined in section
17 614.24, subsection 5.

18 Sec. 2. NEW SECTION. **564B.2 Revival of use restrictions.**

19 Parcel owners in a common interest community may revive use
20 restrictions in a declaration that have become unenforceable
21 by operation of section 614.24 if all of the following
22 requirements are met:

23 1. All parcels which will be subject to the revived use
24 restrictions were previously subject to the use restrictions.

25 2. The affected parcel owners approve the revived use
26 restrictions in the manner provided in this chapter.

27 Sec. 3. NEW SECTION. **564B.3 Procedure to revive use**
28 **restrictions.**

29 1. The proposal to revive use restrictions may contain
30 less than all of the use restrictions which have become
31 unenforceable by operation of section 614.24, but shall not
32 modify any use restriction sought to be revived.

33 2. The proposal to revive use restrictions in a declaration
34 under the terms of this chapter may be initiated by either of
35 the following:

1 *a.* The executive board.

2 *b.* The parcel owners, if a petition is signed by parcel
3 owners who own at least ten percent of the parcels. Such
4 petition shall include the language of the use restrictions
5 proposed to be revived.

6 3. If a proposal is initiated under subsection 2, the
7 executive board shall prepare or cause to be prepared the
8 complete text of the proposed use restrictions to be submitted
9 to the affected parcel owners for approval.

10 4. *a.* The executive board shall present or cause to be
11 presented to all of the affected parcel owners, by mail or hand
12 delivery, all of the following:

13 (1) A notice containing either the place, date, and time of
14 the meeting at which the revival of the use restrictions will
15 be considered and voted upon or instructions for an action by
16 written ballot, including the last date that a written ballot
17 will be accepted.

18 (2) A copy of the complete text of the use restrictions
19 proposed to be revived.

20 (3) The existing declaration, formation document, and
21 bylaws of the homeowners' association.

22 (4) A graphic depiction of the property and the parcels to
23 be governed by the revived use restrictions.

24 (5) A statement that the use restrictions will be revived
25 if parcel owners who own a majority of the affected parcels
26 approve revival.

27 *b.* The parcel owners entitled to receive notice and the
28 materials described in paragraph "a" are the owners of affected
29 parcels as of the close of business on the business day
30 preceding the day on which notice is given.

31 5. The use restrictions contained in the proposal shall be
32 revived if the owners of a majority of the affected parcels
33 approve the revived use restrictions by a vote at a meeting of
34 the affected parcel owners conducted in the manner described in
35 section 564B.4 or in an action by written ballot as described

1 in section 564B.5, and shall be effective in accordance with
2 section 564B.7.

3 Sec. 4. NEW SECTION. **564B.4 Meetings to revive use**
4 **restrictions.**

5 1. A vote to revive use restrictions shall not be held
6 unless the parcel owners described in section 564B.3,
7 subsection 4, paragraph "b", received the notice and documents
8 specified in section 564B.3, subsection 4, not less than
9 fourteen days or more than sixty days before such a vote.

10 2. A quorum shall be met if parcel owners who own a majority
11 of the affected parcels are present at the meeting, either in
12 person or by proxy.

13 3. The parcel owners entitled to vote at the meeting are the
14 owners of affected parcels as of the date of the meeting.

15 4. At the meeting, there shall be one vote per parcel,
16 regardless of the number of parcel owners who own such parcel.

17 5. *a.* The parcel owners have the right to vote in person
18 or by proxy.

19 *b.* To be valid, a proxy must be dated, shall state the date,
20 time, and place of the meeting for which the proxy was given,
21 and shall be signed by the parcel owner. If a parcel is owned
22 by more than one person, each owner of the parcel shall sign
23 the proxy for such proxy to be valid.

24 *c.* A proxy is effective only for the specific meeting for
25 which the proxy was originally given.

26 *d.* A proxy is revocable at any time at the discretion of a
27 parcel owner who executed the proxy.

28 *e.* If the proxy form expressly so provides, any proxy holder
29 may appoint, in writing, a substitute to act in the proxy
30 holder's place.

31 Sec. 5. NEW SECTION. **564B.5 Action by written ballot.**

32 1. A vote to revive use restrictions may be taken without a
33 meeting if the executive board delivers a written ballot with
34 the notice and other documents required to be delivered under
35 section 564B.3, subsection 4, to the owners of every affected

1 parcel.

2 2. A written ballot shall set forth the use restrictions
3 proposed to be revived and provide an opportunity to vote for
4 or against revival.

5 3. One written ballot shall be provided for each parcel,
6 regardless of the number of parcel owners who own such parcel.

7 4. The deadline for the written ballot to be received to
8 be counted shall be at least fourteen days, but not more than
9 sixty days, after the written ballot was delivered.

10 5. A written ballot that has been cast shall not be revoked.

11 **Sec. 6. NEW SECTION. 564B.6 Recording and notice of**
12 **recording.**

13 1. No later than thirty days after the parcel owners have
14 approved the revival of the use restrictions, the executive
15 board shall file the revived use restrictions with the recorder
16 of each county in which the land comprising the common interest
17 community is located.

18 2. Immediately after recording the revived use
19 restrictions, the executive board shall mail or deliver, or
20 shall cause to be mailed or delivered, a complete copy of the
21 revived use restrictions to each parcel owner.

22 **Sec. 7. NEW SECTION. 564B.7 Effect of revived use**
23 **restrictions.**

24 1. The revived use restrictions shall be effective upon
25 recordation with respect to each affected parcel, regardless
26 of whether an owner of an affected parcel approved the revived
27 use restrictions.

28 2. The revived use restrictions shall not be given
29 retroactive effect with respect to any affected parcel.

30 3. A use restriction revived under this chapter shall not be
31 enforced against a parcel if each of the following are true:

32 a. A parcel owner made a good-faith investment that would be
33 impaired by such enforcement.

34 b. The good-faith investment described in paragraph "a" was
35 made after the use restriction was unenforceable under section

1 614.24 and before the use restriction was revived pursuant to
2 this chapter.

3 Sec. 8. Section 614.24, Code 2016, is amended by adding the
4 following new subsection:

5 NEW SUBSECTION. 4A. If use restrictions are revived
6 pursuant to chapter 564B, the recording date for purposes of
7 the twenty-one year limitation in subsection 1 shall be the
8 date the revived use restrictions are recorded under section
9 564B.6, subsection 1.

10 Sec. 9. APPLICABILITY. This Act applies to common interest
11 communities created prior to, and still in existence on, July
12 1, 2016, and created on or after July 1, 2016.

13 EXPLANATION

14 The inclusion of this explanation does not constitute agreement with
15 the explanation's substance by the members of the general assembly.

16 This bill relates to the ability of a common interest
17 community to revive lapsed use restrictions.

18 The bill defines "common interest community" as real
19 estate described in a declaration with respect to which a
20 person, by virtue of the person's ownership of a parcel, is
21 obligated to pay for a share of real estate taxes, insurance
22 premiums, maintenance, or improvement of, or services or other
23 expenses related to, common elements, other parcels, or other
24 real estate described in the declaration. "Common interest
25 community" includes a cooperative under Code chapter 499A and a
26 horizontal property regime under Code chapter 499B.

27 The bill references the definition of "use restriction" in
28 Code section 614.24, which is a limitation or prohibition on
29 the rights of a landowner to make use of the landowner's real
30 estate, including limitations or prohibitions on commercial
31 uses, rental use, parking and storage of recreational vehicles
32 and their attachments, ownership of pets, outdoor domestic
33 uses, construction and use of accessory structures, building
34 dimensions and colors, building construction materials, and
35 landscaping. "Use restriction" does not include an easement

1 granting a person an affirmative right to use land in the
2 possession of another person, including but not limited to an
3 easement for pedestrian or vehicular access, reasonable ingress
4 and egress, solar access, utilities, supporting utilities,
5 parking areas, bicycle paths, and water flow, an agreement
6 between two or more parcel owners providing for the sharing of
7 costs and other obligations for real estate taxes, insurance
8 premiums, and for maintenance, repair, improvements, services,
9 or other costs related to two or more parcels of real estate
10 regardless of whether the parties to the agreement are owners
11 of individual lots or incorporated or unincorporated lots
12 or have ownership interests in common areas in a horizontal
13 property regime or residential housing development, or an
14 agreement between two or more parcel owners for the joint use
15 and maintenance of driveways, party walls, landscaping, fences,
16 wells, roads, common areas, waterways, or bodies of water.

17 Under Code section 614.24, an action arising or existing
18 by reason of the provisions of any contract providing for use
19 restrictions in and to real estate may not be maintained after
20 21 years from the recording of the contract unless a claimant
21 has filed a verified claim with the county recorder within
22 the 21-year period. Therefore, if a homeowners' association
23 or other claimant does not file a verified claim regarding a
24 common interest community's declaration before the expiration
25 of the 21-year period, the use restrictions in the declaration
26 become unenforceable.

27 The bill enacts new Code chapter 564B to provide a mechanism
28 for common interest communities to revive use restrictions
29 which have become barred by operation of Code section 614.24.
30 A proposal to revive use restrictions may be brought by the
31 executive board of the homeowners' association or by petition
32 of parcel owners who own at least 10 percent of the affected
33 parcels.

34 The bill specifies the form of the notice the executive board
35 shall provide to parcel owners regarding a proposal for the

1 revival of use restrictions. The proposal may be voted upon at
2 a meeting which shall be held no less than 14 days and no more
3 than 60 days after notice was provided to the parcel owners.
4 The proposal may also be voted on by written ballot. If the
5 vote is by written ballot, the notice must specify when ballots
6 are due, which must be no earlier than 14 days and no later than
7 60 days after the written ballots were delivered.

8 Upon proper notice, if the owners of a majority of the
9 affected parcels in the common interest community approve the
10 revival of lapsed use restrictions, the lapsed use restrictions
11 are revived as to all parcels in the common interest community.

12 The revived use restrictions become effective upon
13 recordation. The revived use restrictions are not given
14 retroactive applicability. Revived use restrictions may not be
15 enforced against a parcel if a parcel owner made a good-faith
16 investment that would be impaired by such enforcement and such
17 investment was made while the use restriction was unenforceable
18 under Code section 614.24 and before the use restriction was
19 revived under new Code chapter 564B.

20 The bill provides that if use restrictions are revived under
21 new Code chapter 564B, the 21-year limitation period under Code
22 chapter 614.24 begins as of the recordation date of the revived
23 use restrictions.

24 The bill applies to common interest communities created
25 prior to, and still in existence on, July 1, 2016, and created
26 on or after July 1, 2016.