

House File 2041 - Introduced

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BY MOMMSEN

A BILL FOR

1 An Act relating to reinstatement of lapsed use restrictions
2 within a common interest community and including
3 applicability provisions.

4 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. "*Common interest community*" means real estate described
5 in a declaration with respect to which a person, by virtue of
6 the person's ownership of a parcel, is obligated to pay for a
7 share of real estate taxes, insurance premiums, maintenance,
8 improvements, services, or other expenses related to common
9 elements or other real estate described in the declaration.

10 2. "*Declaration*" means a duly recorded instrument and any
11 amendments thereto, however denominated, that establish the
12 common interest community and use restrictions for the common
13 interest community, and that subject the common interest
14 community to administration by an owners' association in which
15 the parcel owners are required to be members.

16 3. "*Executive board*" means the body, however denominated,
17 designated to act on behalf of the owners' association.

18 4. "*Owners' association*" means an entity responsible for
19 administration of a common interest community in which the
20 voting membership is made up of parcel owners and in which
21 membership is a mandatory condition of parcel ownership.

22 5. "*Parcel*" means a physical portion of the common interest
23 community designated for separate ownership.

24 6. "*Parcel owner*" means the record owner of legal title to
25 a parcel or, if the parcel is subject to a contract for deed,
26 the vendee of the real estate contract. "*Parcel owner*" does
27 not include a person having an interest in a parcel solely as
28 security for an obligation.

29 7. "*Use restrictions*" means the same as defined in section
30 614.24, subsection 5.

31 Sec. 2. NEW SECTION. 564B.2 Reinstatement of use
32 restrictions.

33 1. Parcel owners in a common interest community having
34 five hundred or more parcels may reinstate use restrictions in
35 a declaration that have become unenforceable by operation of

1 section 614.24 in the manner provided in this chapter.

2 2. The proposal to reinstate use restrictions may contain
3 fewer than all of the use restrictions that have become
4 unenforceable. The proposal must not amend or modify any use
5 restriction sought to be reinstated.

6 3. Use restrictions reinstated pursuant to this chapter
7 shall affect the same parcels as were affected at the time the
8 use restrictions became unenforceable.

9 Sec. 3. NEW SECTION. **564B.3 Procedure to reinstate use**
10 **restrictions by recorded agreement.**

11 1. Use restrictions may be reinstated upon the filing
12 with the recorder of each county in which the common interest
13 community is located a reinstatement agreement that contains
14 the complete text of the use restrictions being reinstated
15 and is executed by the owners of a majority of the affected
16 parcels. The executive board shall file the reinstatement
17 agreement within thirty days after a majority of the owners of
18 the affected parcels have executed the reinstatement agreement.

19 2. The reinstated use restrictions filed by the executive
20 board shall have annexed a certification by the executive board
21 that the reinstatement agreement was executed by the owners of
22 a majority of the affected parcels.

23 3. Immediately after recording the reinstatement agreement,
24 the executive board shall mail or hand deliver to each parcel
25 owner a complete copy of the recorded agreement.

26 Sec. 4. NEW SECTION. **564B.4 Procedure to reinstate use**
27 **restrictions by vote of parcel owners.**

28 1. Use restrictions may be reinstated by vote of the parcel
29 owners in the manner provided in this section.

30 2. A proposal to reinstate use restrictions may be initiated
31 by either of the following:

32 a. The executive board.

33 b. A petition signed by owners of at least ten percent of
34 the affected parcels. Such petition shall include the text of
35 the use restrictions proposed to be reinstated.

1 3. If a proposal is initiated under subsection 2, the
2 executive board shall give notice, by mail or hand delivery,
3 to the persons who own the affected parcels as of the close of
4 business on the business day preceding the day on which notice
5 is given. If notice is given by mail, the notice is deemed
6 given on the date of mailing. The notice shall contain the
7 following information:

8 a. The complete text of the proposed use restrictions to be
9 submitted to the affected parcel owners for approval.

10 b. A graphic depiction of the property and parcels affected
11 by the reinstated use restrictions.

12 c. The place, date, and time of the meeting at which the
13 reinstatement of the use restrictions will be considered and
14 voted upon, or instructions for an action by written ballot,
15 including the last date that a written ballot will be accepted.

16 d. A statement that the use restrictions will be reinstated
17 if parcel owners who own a majority of the affected parcels
18 vote to approve reinstatement.

19 4. The use restrictions contained in the proposal shall be
20 reinstated upon approval by the owners of a majority of the
21 affected parcels by a vote at a meeting conducted in the manner
22 described in section 564B.5, or by written ballot as described
23 in section 564B.6, and shall be effective in accordance with
24 section 564B.7.

25 5. There shall be one vote per parcel, regardless of the
26 number of parcel owners who own such parcel. If a parcel is
27 owned by more than one person, all owners must vote to approve
28 or the vote shall not be counted as a vote for approval.

29 **Sec. 5. NEW SECTION. 564B.5 Meetings to reinstate use**
30 **restrictions.**

31 1. A meeting on the matter of voting to reinstate use
32 restrictions shall not be held less than fourteen days or more
33 than sixty days after the last notice is given under section
34 564B.4, subsection 3.

35 2. The parcel owners entitled to vote at the meeting are the

1 owners of affected parcels as of the date of the meeting.

2 3. *a.* The parcel owners have the right to vote in person
3 or by proxy.

4 *b.* To be valid, a proxy must be dated, must state the place,
5 date, and time of the meeting for which the proxy was given,
6 and must be signed by the parcel owner. If a parcel is owned by
7 more than one person, each parcel owner must sign the proxy for
8 such proxy to be valid.

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

11 *d.* A proxy is revocable at any time at the discretion of any
12 parcel owner who executed the proxy.

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

16 4. A quorum shall be met if parcel owners who own a majority
17 of the affected parcels are present at the meeting, either in
18 person or by proxy.

19 **Sec. 6. NEW SECTION. 564B.6 Action by written ballot.**

20 1. A vote to reinstate use restrictions may be taken without
21 a meeting if the executive board includes a written ballot
22 with the notice and other documents required to be given under
23 section 564B.4, subsection 3.

24 2. A written ballot must set forth the use restrictions
25 proposed to be reinstated and provide an opportunity to vote
26 for or against reinstatement.

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

29 4. The deadline for the written ballot to be received in
30 order to be counted shall be at least fourteen days, but not
31 more than sixty days, after the notice containing the written
32 ballot is given.

33 5. A written ballot that has been cast shall not be revoked
34 by any person.

35 **Sec. 7. NEW SECTION. 564B.7 Recording and notice of**

1 **recording.**

2 1. Within thirty days after a majority of the parcel
3 owners have voted to approve the reinstatement of the use
4 restrictions, the executive board shall file the reinstated
5 use restrictions with the recorder of each county in which the
6 common interest community is located.

7 2. The reinstated use restrictions filed by the executive
8 board shall have annexed a certification by the executive board
9 that the reinstated use restrictions were approved by a vote of
10 the owners of a majority of the affected parcels.

11 3. Immediately after recording the reinstated use
12 restrictions, the executive board shall mail or hand deliver to
13 each parcel owner a complete copy of the recorded reinstated
14 use restrictions.

15 **Sec. 8. NEW SECTION. 564B.8 Effect of reinstated use**
16 **restrictions.**

17 1. The reinstated use restrictions shall be effective upon
18 recordation with respect to each affected parcel, regardless of
19 whether an owner of an affected parcel approved the reinstated
20 use restrictions.

21 2. The reinstated use restrictions shall not be given
22 retroactive effect with respect to any affected parcel.

23 3. A reinstated use restriction shall not be enforced
24 against a parcel if each of the following are true:

25 *a.* A parcel owner made a good-faith investment that would be
26 impaired by such enforcement.

27 *b.* The good-faith investment described in paragraph "a"
28 was made after the use restriction became unenforceable by
29 operation of section 614.24 and before reinstatement under this
30 chapter.

31 **Sec. 9. Section 614.24, Code 2018, is amended by adding the**
32 **following new subsection:**

33 **NEW SUBSECTION. 4A. If use restrictions are reinstated**
34 **pursuant to chapter 564B, the recording date for purposes of**
35 **the twenty-one-year limitation in subsection 1 shall be the**

1 date the reinstated use restrictions are recorded under section
2 564B.3 or 564B.7.

3 Sec. 10. APPLICABILITY. This Act applies to common interest
4 communities created prior to, and still in existence on, July
5 1, 2018, and created on or after July 1, 2018.

6 EXPLANATION

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

9 This bill relates to the ability of a common interest
10 community to reinstate lapsed use restrictions.

11 The bill defines "common interest community" as real estate
12 described in a declaration with respect to which a person, by
13 virtue of the person's ownership of a parcel, is obligated
14 to pay for a share of real estate taxes, insurance premiums,
15 maintenance, improvements, services, or other expenses related
16 to common elements or other real estate described in the
17 declaration.

18 The bill references the definition of "use restriction" in
19 Code section 614.24, which is a limitation or prohibition on
20 the rights of a landowner to make use of the landowner's real
21 estate, including limitations or prohibitions on commercial
22 uses, rental use, parking and storage of recreational vehicles
23 and their attachments, ownership of pets, outdoor domestic
24 uses, construction and use of accessory structures, building
25 dimensions and colors, building construction materials, and
26 landscaping. "Use restriction" does not include an easement
27 granting a person an affirmative right to use land in the
28 possession of another person, including but not limited to an
29 easement for pedestrian or vehicular access, reasonable ingress
30 and egress, solar access, utilities, supporting utilities,
31 parking areas, bicycle paths, and water flow, an agreement
32 between two or more parcel owners providing for the sharing of
33 costs and other obligations for real estate taxes, insurance
34 premiums, and for maintenance, repair, improvements, services,
35 or other costs related to two or more parcels of real estate

1 regardless of whether the parties to the agreement are owners
2 of individual lots or incorporated or unincorporated lots
3 or have ownership interests in common areas in a horizontal
4 property regime or residential housing development, or an
5 agreement between two or more parcel owners for the joint use
6 and maintenance of driveways, party walls, landscaping, fences,
7 wells, roads, common areas, waterways, or bodies of water.

8 Under Code section 614.24, an action arising or existing
9 by reason of the provisions of any contract providing for use
10 restrictions in and to real estate may not be maintained after
11 21 years from the recording of the contract unless a claimant
12 has filed a verified claim with the county recorder within the
13 21-year period. Therefore, if an owners' association or other
14 claimant does not file a verified claim regarding a common
15 interest community's declaration before the expiration of the
16 21-year period, the use restrictions in the declaration become
17 unenforceable.

18 The bill enacts new Code chapter 564B to provide a mechanism
19 for common interest communities with 500 or more parcels,
20 as defined in the bill, to reinstate use restrictions which
21 have become barred by operation of Code section 614.24. Use
22 restrictions may be reinstated upon the filing with the
23 county recorder of a reinstatement agreement that contains the
24 complete text of the use restrictions being reinstated and
25 is executed by owners of a majority of the affected parcels.
26 Use restrictions may also be reinstated after an affirmative
27 vote by a majority of the affected parcel owners, either at
28 a meeting or by written ballot. A proposal for a vote to
29 reinstate use restrictions may be brought by the executive
30 board of the owners' association or by petition of parcel
31 owners who own at least 10 percent of the affected parcels.

32 The bill specifies the form of the notice the executive
33 board shall provide to parcel owners regarding a proposal for a
34 vote to reinstate use restrictions. The proposal may be voted
35 upon at a meeting which shall be held no less than 14 days and

1 no more than 60 days after notice is provided to the parcel
2 owners. The proposal may also be voted on by written ballot.
3 If the vote is by written ballot, the notice must specify when
4 ballots are due, which must be no earlier than 14 days and no
5 later than 60 days after the written ballots are delivered.

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

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

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

24 The bill applies to common interest communities created
25 prior to, and still in existence on, July 1, 2018, and created
26 on or after July 1, 2018.