

House File 2394 - Introduced

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BY WINCKLER

A BILL FOR

1 An Act relating to the declaration and bylaws for residential
2 condominiums, and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 499B.2, Code 2020, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 2A. "*Bylaws*" means the instruments, however
4 denominated, that contain the procedures for the administration
5 of a horizontal property regime, regardless of the form of
6 administration, including any amendments to such instruments.

7 NEW SUBSECTION. 4A. "*Declaration*" means the instrument,
8 however denominated, that creates a horizontal property regime,
9 including any amendments to the instrument.

10 Sec. 2. NEW SECTION. 499B.15A Declaration and bylaws —
11 residential condominiums.

12 1. As used in this section, unless the context otherwise
13 requires:

14 a. "*Administration*" means the administrator, board
15 of administration, or other form of administration for a
16 horizontal property regime as contained in the bylaws pursuant
17 to section 499B.15.

18 b. "*Developer*" means a person or group of persons who as the
19 record title owner of real estate, by a declaration pursuant
20 to section 499B.3, establish a residential horizontal property
21 regime, also known as residential condominiums.

22 2. The declaration recorded pursuant to section 499B.3 and
23 the bylaws recorded pursuant to section 499B.14 for residential
24 condominiums shall each contain a clause that either has the
25 effect of or provides for all of the following:

26 a. The administration, except as otherwise provided in the
27 declaration, the bylaws, paragraph "b", or this chapter, acts on
28 behalf of the council of co-owners. In the performance of its
29 duties, the administration members appointed by the developer
30 shall exercise the degree of care and loyalty to the council of
31 co-owners required of a trustee. Members of the administration
32 not appointed by the developer shall exercise the degree of
33 care and loyalty to the council of co-owners required of an
34 officer or director of a corporation organized under chapter
35 504, and such members are subject to the conflict of interest

1 rules governing directors and officers under chapter 504.

2 *b.* The administration shall not act on behalf of the
3 council of co-owners to amend the declaration, to terminate
4 the horizontal property regime, to elect members of the
5 administration, or to determine the qualifications, powers and
6 duties, or terms of office of administration members. The
7 administration may fill member vacancies in the administration
8 for the unexpired portion of any member's term.

9 *c.* (1) Subject to paragraph "*d*", the declaration
10 may provide for a period of developer control of the
11 administration during which a developer, or persons designated
12 by the developer, may appoint and remove members of the
13 administration. In no case, however, shall a period of
14 developer control continue upon the occurrence of any of the
15 following:

16 (i) Sixty days after the conveyance of seventy-five
17 percent of all apartments in the horizontal property regime to
18 co-owners other than the developer.

19 (ii) Two years after the developer has ceased to offer
20 apartments for sale in the ordinary course of business.

21 (iii) Two years after the addition of any number of new
22 apartments to the horizontal property regime.

23 (iv) The date the developer, after giving written notice to
24 the council of co-owners, records an instrument voluntarily
25 surrendering all rights to control the administration of the
26 horizontal property regime.

27 (2) A developer may voluntarily surrender the right to
28 appoint members of the administration before termination of
29 the period under subparagraph (1). However, the developer
30 may retain, for the duration of the period of developer
31 control, approval authority for specified actions of the
32 administration, as described in a recorded instrument executed
33 by the developer.

34 *d.* (1) Not later than sixty days after conveyance of
35 twenty-five percent of the apartments to co-owners other than a

1 developer, at least one member, and not less than twenty-five
2 percent of the members of the administration, must be elected
3 by co-owners other than the developer.

4 (2) Not later than sixty days after conveyance of fifty
5 percent of the apartments to co-owners other than the
6 developer, not less than one-third of the members of the
7 administration must be elected by co-owners other than the
8 developer.

9 e. Following the termination of any period of developer
10 control under this section, the council of co-owners shall
11 elect an administration, at least a majority of whom must be
12 co-owners.

13 f. Notwithstanding any provision of the declaration
14 or bylaws to the contrary, the council of co-owners, by a
15 two-thirds vote of all persons present and entitled to vote at
16 any meeting of the council of co-owners at which a quorum is
17 present, may remove any member of the administration with or
18 without cause, other than a member appointed by the developer.

19 Sec. 3. APPLICABILITY. This Act applies to all declarations
20 and bylaws for residential condominiums, amendments to
21 declarations and bylaws for residential condominiums, and
22 modifications to declarations and bylaws for residential
23 condominiums, that are recorded pursuant to sections 499B.3 and
24 499B.14 on or after July 1, 2020.

25 EXPLANATION

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

28 This bill relates to the declaration and bylaws recorded for
29 residential condominiums.

30 The bill requires that the declaration and bylaws
31 recorded for residential condominiums contain certain
32 language placing limitations on the residential condominium
33 developer's long-term control over the residential condominium.
34 "Developer" is defined in the bill as a person or group of
35 persons who as the record title owner of real estate establish

1 a horizontal property regime, also known as residential
2 condominiums, by declaration.

3 The bill applies to all declarations and bylaws for
4 residential condominiums, amendments to declarations and bylaws
5 for residential condominiums, and modifications to declarations
6 and bylaws for residential condominiums, that are recorded on
7 or after July 1, 2020.